

Property Rights of Persons with Disabilities in Bangladesh: An Appraisal of Legal Implementations and Challenges

Md. Abu Bakar Siddiq*
Md. Ali Morsad Kazem**

Abstract: Although among the nine core human rights treaties, the Convention on the Rights of Persons with Disabilities, 2006, deals with various aspects of the rights of persons with disabilities, there is no direct stipulation for the right to land as a content of property. Bangladesh, as a ratifying state of these treaties, took on a lot of legal as well as administrative undertakings as an obligation towards fulfilling human rights obligations, i.e., the Disabled Persons Rights and Protection Act, 2013, which was enacted to secure the interests of disabled persons by recognizing certain types of rights and providing enforcing mechanisms. Moreover, there are two further pieces of legislation called the Children Act, 2013 and the Domestic Violence (Prevention and Protection) Act, 2010, which can be correlated with the protection of the interests of disabled persons, whether they are children or women. What if the disabled person is an adult male? The answer suggests ordinary legal protection and a trial system, which might not be suitable for him. However, this paper aims to justify existing legal mechanisms and how well these laws protect the interests of disabled persons, as well as identify problems in accessing justice along with other issues found in fieldwork.

1. Introduction

Persons with disabilities connote those who have been suffering for long-term intellectual, mental, sensory, and physical inabilities in interaction with members of society and facing hinderance in effective participation on an equal basis in society.¹ Any discrimination on the basis of disabilities is amount to a renunciation of human dignity and human right.² Less access to resources and property is a paramount indicator of poverty causation,³ which implies that the right to own, hold, transfer, or alienate property, including both moveable and immovable property, is not only a tool for poverty alleviation and human rights enjoyment assurance⁴ but also fundamental rights that are not subject to arbitrarily deprivation without due process of law, whether by an individual or government.⁵ The majority of disabled people in Bangladesh lack access to basic necessities such as housing, employment, transportation, education, healthcare, and political participation opportunities. As a

* Assistant Professor and Head (Acting), Department of Law, Comilla University.

** Assistant Professor, Department of Law, Comilla University.

¹ Convention on the Rights of Persons with Disabilities 2006, art 1.

² *ibid* art 1(8).

³ 'Sustainable Development Goals: United Nations Development Programme' (UNDP) <www.undp.org/sustainable-development-goals#no-poverty> accessed 10 June 2023.

⁴ Universal Declaration of Human Rights 1948, art 17.

⁵ The Constitution of Bangladesh 1972, art 42.

result of widespread discrimination and social isolation, disabled individuals experience economic hardship and a decline in their capacity for productivity. In fact, they perform significantly worse than non-disabled people in practice on every measure of well-being, such as education, employment, and income. Poverty can be both a cause and a result of disability. A handicap can result in poverty since people with impairments are frequently excluded from social, professional, and educational opportunities. On the other hand, poverty-related factors contribute to greater rates of illiteracy and disability, poor nutrition, lower birth weight, higher rates of unemployment and underemployment, and reduced occupational mobility.⁶ Moreover, the salient factors responsible, among others, for deprivation of property rights in the context of Bangladesh have been caused by both familial stakeholders by debarring the disabled person from claiming inheritance and government or its subsidy agencies by acquiring without adequate compensation or not giving legal protection with special measures considering physical incapacities. Such unwillingness causes or sometimes pave the way of violation of human rights which is indented as vital attributes of poverty as a result of violation of human rights.⁷ To check such violations, the High Court Division of Supreme Court of Bangladesh is mandated with giving compensation for violation of fundamental rights as guaranteed in the Constitution of the People's Republic of Bangladesh⁸ which is avowed by the Appellate Division of the Supreme Court.⁹ However, this paper is to show the findings of research that is based on a mixed formula of qualitative and quantitative methodologies.¹⁰ For qualitative purpose, data have been collected on legal issues from primary sources, e.g., national legislations, United Nations official documents, UNDP data-base, international conventions, treaties, and protocols etc., and secondary sources e.g., international articles, research monographs, literatures through internet access.¹¹ For the quantitative purpose, fieldwork, personal interviews of different disabled persons, and case studies on their lives have been resorted.

2. Background of Study

Among more than 160 million people, according to the Population and Housing Census, 2011, there are about 2.80% of populations suffering disabilities, of which at least 3.28% are male and 2.32% are female that is evident in Table 1.¹² Until the date of June 10, 2023, the total population of Bangladesh, based on United Nations data, was

⁶ Arlene S Kanter, 'The Globalisation of Disability Rights Law' (2003) 30 Syracuse Journal of International Law and Commerce 2.

⁷ Quazi MH Supan, 'A Rights-based Assessment of Microfinance as a Poverty Alleviation Tool' (2017) 28(2) The Dhaka University Studies Part-F 89.

⁸ Raushan Ara, 'Defying Torture: The Role of Judiciary in Bangladesh' (2017) 28(2) The Dhaka University Studies: Part-F 93.

⁹ *Habib Ullah Khan v SA Ahmed* (1983) AD 35 DLR 72.

¹⁰ MA Salam Akanda, *Research Methodology: A Complete Direction for Learners* (2nd edn, Akanda & Sons 2019) 6.

¹¹ Abdullah Al Faruque, *Essentials of Legal Research* (2nd edn, Palal Prokashoni 2010) 41.

¹² Report on National Survey on Persons with Disabilities 2021 (NSPD 2021), 39.

169,372,363 people.¹³ In Bangladesh, there are no visible statistics from the part of government regarding the exact searching figure of disabled persons like men, women, and children, until 2021. Recently, the Bangladesh Bureau of Statistics, a Division of the Ministry of Planning in Bangladesh, published a report titled Report on the National Survey on Persons with Disabilities, 2021 (hereinafter NSPD, 2021) based on the Population and Housing Census, 2011, while the government already completed the nation-wide Population and Housing Census, 2021 and published the statistics in 2022.¹⁴ It is alleged that, since the NSPD, 2021 is based on outdated data from 2011, the actual figure of disabled people till the date of 2023 might be more than 10% of the population.¹⁵ Bangladesh, in the meantime, became party to one of the core human rights treaties on May 9, 2007 and November 30, 2007 by signing and ratifying the Convention on the Rights of Persons with Disabilities, 2006 (hereinafter CRPD, 2006). The General Assembly of the United Nations has adopted “Transforming our world: the 2030 Agenda for Sustainable Development,” with 17 goals and 169 targets that aim to eradicate poverty and a society free from poor and vulnerable or disabilities, and ensure favorable conditions of environment and climate for the next generation and living entities.¹⁶ It is identified that more than 736 millions of people in the world, as of 2015, lived with USD\$1.90 where vulnerable gender like women is holding less property.¹⁷ Bangladesh is targeted to reduce extreme poverty earning less 3% with in 2030 where property rights obviously would play vital role along with income. Moreover, the United Nations published DESA Working Paper No. 91 where Ruth Meinzen Dick, a Washington based research scholar at International Food Policy Research Institute, claims “Poor people not only lack current income, but also assets with which to generate incomes. Billions of poor people have access to land which may not be legally recognized.”¹⁸ Access to land stands for empowerment of people irrespective physical conditions and social status which enhances the ability of a person not only of crops production but also of livelihood and credit facilities in modern society.¹⁹In another legal reference publication of the United Nations Office of the High Commissioner for Human Rights (hereinafter OHCHR) land rights is recognized as “land is not a mere commodity, but an essential element for the realization of many

¹³ ‘Bangladesh population 2021: StatisticsTimes.com’ (*StatisticsTimes.com, Collection of Statistics and charts*) <<https://statisticstimes.com/demographics/country/bangladesh-population.php>> accessed 10 June 2023.

¹⁴ ‘Bangladesh Bureau of Statistics’ (*Bangladesh Bureau of Statistics- Government of the People’s Republic of Bangladesh*) <www.bbs.gov.bd/site/page/451290c8-6121-46b8-b84b-cbcd2f35f7cf/Census-Brief> accessed 10 June 2023.

¹⁵ ‘Key focus areas: Disability in Bangladesh’ (*Cdd - centre for disability in development*) <<https://cdd.org.bd/about-disability>> accessed 10 June 2023.

¹⁶ Transforming our world: the 2030 Agenda for Sustainable Development (adopted 21 October 2015) UNGA Res A/RES/70/1.

¹⁷ ‘Sustainable Development Goals: United Nations Development Programme’ (*UNDP*) <www.undp.org/sustainable-development-goals#no-poverty> accessed 10 June 2023.

¹⁸ Ruth Meinzen-Dick, ‘Property Rights for Poverty Reduction?’ DESA Working Paper No. 91, United Nations: Department of Economic and Social Affairs (December 2009), ST/ESA/2009/DWP/91, abstract <https://www.un.org/esa/desa/papers/2009/wp91_2009.pdf> accessed on 2 July 2022.

¹⁹ *ibid* 1.

human rights.”²⁰ Many international human rights instruments may not have direct reference²¹ to land rights but the contents of land rights is developed for enjoyment of different rights like no discrimination,²² equality between men and women,²³ equal protection of law, ²⁴prohibition of racial discrimination. ²⁵These rights are universal, indivisible, interdependent and interrelated²⁶ where Bangladesh has responsibility for uplifting human rights standards as state party to international human rights treaties. However, as result of ratification of CRPD, 2006, Bangladesh enacted a legislation called the Disabled Persons Rights and Protection Act, 2013 (hereinafter DPRPA, 2013).²⁷ The DPRPA, 2013, has categorized different disabled persons with certain privileges but didn’t mention any special procedures relating to land-oriented problems’ solutions or familial disputes with special attention and care, which causes prima facie concerns for legal scholars.

Background Characteristics	Sex of persons with at least one type of disability		Both
	Male	Female	
Total	3.28	2.32	2.80
Area			
Rural	3.44	2.35	2.89
Urban	2.69	2.20	2.45

²⁰ Office of the High Commissioner for Human Rights, Land and Human Rights: Standards for Applications (2015) HR/PUB/15/5/Add.1: introduction <https://www.ohchr.org/sites/default/files/Documents/Publications/Land_HR-StandardsApplications.pdf> accessed on July 2, 2022.

²¹ *ibid* 3.

²² UDHR 1948, art 2; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3(ICESCR 1966) art 2; International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR 1966) art 2(1); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195(ICERD 1965) art 1 (1); CRPD 2006 (n 1) art 5(2).

²³ ICESCR 1966 (n 22) art 3; ICCPR 1966 (n 22) art 3; International Covenant on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW 1979) art 2(a).

²⁴ UDHR 1948, art 7; ICCPR 1966, art 26; CEDAW 1979, art 15.

²⁵ ICERD 1965, arts 5(d)(v), (vi), (e)(iii); United Nations Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007) UNGA Res A/RES/61/295 (DRIP 2007) art 2; Convention concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, entered into force 5September 1991) 1650 UNTS 383(ILO Convention No. 169) art 3.

²⁶ Vienna Declaration and Program of Action (adopted 12 July 1993) GNGA Res A/CONF.157/23(VDPA 1993), art 5.

²⁷ Act No. 39 of 2013.

Division			
Barishal	2.80	2.03	2.42
Chattogram	2.84	2.00	2.41
Dhaka	3.00	2.01	2.51
Khulna	4.31	2.92	3.62
Mymensingh	2.76	2.13	2.45
Rajshahi	3.74	2.86	3.30
Rangpur	4.07	3.00	3.54
Sylhet	2.62	1.69	2.15
Age group (in year)			
0-4	0.91	0.74	0.83
2-4	1.17	0.94	1.05
Source: Report on National Survey on Persons with Disabilities (NSPD), 2021, Page 39			

3. Basics of Property and Disability

3.1. Property: What Does It Mean?

The periphery of property is broader and evolving with the passing of time. It includes, in terms of visibility, tangible property as well as intangible property. Tangible property includes both movable and immovable property, while intangible property entails intellectual property. Although, the Constitution of the People’s Republic of Bangladesh (hereinafter Bangladesh Constitution) doesn’t define the term property which might be categorized into either movable or immovable property, it can be elucidated by following article 152(2) which stipulates for the following of the General Clauses Act, 1897 (hereinafter GCA, 1897) in case of missing definition in the Bangladesh Constitution, if any. However, the GCA, 1897 defines both immovable and movable property in clauses 25 and 34 of section 3 stating that immovable property is characterized as land or benefits derived from it, things underlying on the earth, as well as attached things to the earth, while movable property refers to all types of property excluding immovable property.²⁸ Moreover, the Transfer of Property Act, 1882 (hereinafter TPA, 1882) does not define the term property directly but its contents by categorizing it into immovable property, which does not include standing timber, growing crops, or grass but everything that is fastened to the earth. In modern times, copyright,²⁹ patents, literary and artistic works, and other things entangling the intellect of a human being are considered moveable property.³⁰

²⁸ Mulla Dinshah Fardunji, *The Transfer of Property Act, 1882* (LexisNexis Butterworths India 2006) 16.

²⁹ *Sibtain Fazili v Star Film Distributors* 14 DLR 307.

³⁰ Mohammad Towhidul Islam, *TRIPS agreement of the WTO: Implications and Challenges for Bangladesh* (Cambridge Scholars Publishing 2013) 21.

3.2. Disability: What Does It Mean?

A person has a disability if they are unable to perform daily tasks or interact ordinarily with others and the outside world due to a mental or physical impairment.³¹ Disabilities can impact a person's cognition, development, intelligence, mind, body, or sensibilities, or a combination of these and other facets. Permanently disabling conditions may be present at birth or develop over time. People with disabilities are frequently unjustly segregated from the general population. People with disabilities may be born with their impairments, or they may acquire them later in life. A person is considered to have a disability under the United Nations Convention on the Rights of Persons with Disabilities if they have a long-term physical, mental, or sensory impairment that, when combined with other barriers, prevents them from fully and equally participating in society. In the DPRPA, 2013, the terms "disability", "persons with disabilities", and "rights of persons with disabilities" have been defined in clauses 9, 10, 11 of section 2 respectively which refer to those who are unable to completely participate in society due to different factors of society and environment. A person is treated as disabled if he becomes unable to defend himself independently. There are about 12 types of causations have been identified by the DPRPA, 2013 under section 16.³²

3.3. Types of Syndromes of Disability

There are about 12 types of syndrome for disabilities that have been identified like "a) autism or autism spectrum disorders; b) physical disability; c) mental illness leading to disability; d) visual disability; e) speech disability; f) intellectual disability; g) hearing disability; h) deaf-blindness; i) cerebral palsy; j) Down syndrome; k) multiple disability; l) other disability."³³ To illustrate- firstly, autism is a developmental disorder that causes overexcitement and aberrant behaviour in children six months to three years after birth.³⁴ Secondly, physical disability refers to a person's inability to balance because of a partially or completely paralyzed leg or fingers.³⁵ Thirdly, mental diseases cause psychological imbalances, which include medical depression.³⁶ Fourthly, visual disability encompasses three forms of visibility syndromes: fully visual, partially visual, and indistinct visual disorder.³⁷ Fifthly, disability in speaking includes speech difficulty, such as muttering.³⁸ Sixthly, mental impairment with rationality suggests an inability to be self-sufficient without outside assistance.³⁹ Seventhly, hearing

³¹ CRPD 2006, preamble.

³² Abdullah Al Faruque and M Jashim Ali Chowdhury (eds), *New Dimensions of Law: Analysis of Selected Laws of Bangladesh* (Higher Education Quality Enhancement Project (HEQEP), Faculty of Law, CP-3156, University of Chittagong 2017) 51.

³³ Disabled Persons Rights and Protection Act 2013, s 3.

³⁴ *ibid* s 4.

³⁵ *ibid* s 5.

³⁶ *ibid* s 6.

³⁷ *ibid* s 7.

³⁸ *ibid* s 8.

³⁹ *ibid* s 9.

impairment is defined as wetness, which is defined as a person's inability to hear below 60 dB in both or one ear, inaudibility, or weakening and shattered hearing capacity.⁴⁰ Eighthly, deaf-blind people are persons who have hearing and visual impairments.⁴¹ The ninth condition is cerebral palsy, which is a range of conditions that impact a person's balance and posture.⁴² Tenthly, down syndrome is linked to a hereditary impairment.⁴³ Eleventhly, multiple disabilities refer to the disability of a person who has one or more of the aforementioned syndromes.⁴⁴ Finally, some disabilities are ones that are currently unforeseeable.⁴⁵

3.4. Periphery of the Right to Property as Human Rights

Thomas Paine originally used the word "human rights" in his English translation of the French Declaration of Rights of Men and Citizens, which was accepted by the French National Assembly in 1789.⁴⁶ Human rights are sine qua none component for human development and survival on the planet. These are inherent to human beings being human throughout their lives. These are to be protected for their survival to protect their best interest without discrimination based on religion, race, color, sex, political ideology and opinion, and place of birth.⁴⁷ The contents of natural rights were ornamented in the medieval period by various philosophers and scholars namely John Locke, Hutcheson, and Burlamaqui whose workings started in revolution and political discourse in America and French. However, the contents of human rights are nowadays codified in different international conventions like the Charter of the United Nations and treaties like the International Bill of Rights e.g., the Universal Declaration on Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social, and Cultural Rights, 1966. Right is the demand for the necessary opportunities for human self-development which is based on a moral or legal basis.⁴⁸ The language of rights has received a centrality in modern-day questioning that can't be ignored. Human rights are those legal and ethical rights which can be claimed by means of any person for the very reason that he is a human being.⁴⁹ Human rights are the birthright of human beings. It has a deep connection with human dignity. No one gives this right to anyone, as a human being he deserves this right.⁵⁰ People need this right to grow up to be perfect human beings.

⁴⁰ *ibid* s 10.

⁴¹ *ibid* s 11.

⁴² *ibid* s 12.

⁴³ *ibid* s 13.

⁴⁴ *ibid* s 14.

⁴⁵ *ibid* s 15.

⁴⁶ Md. Shahjahan Mondol and Reba Mondol, *Human Rights Law: Global and Bangladesh Context* (Kamrul Book House 2017) 29.

⁴⁷ Surendra Kumar Sinha, *A Broken Dream: Rule of Law, Human Rights and Democracy* (California: Create Space Independent Publishing Platform 2018) 50.

⁴⁸ Michael Freeman, *Human Rights* (Polity Press 2017) 50.

⁴⁹ Abdullah Al Faruque, *International Human Rights Law: Protection Mechanism and Contemporary Issues* (2nd edn, New Worsi Book Corporation 2015) 2.

⁵⁰ *ibid*.

In a word, human rights are freedom from all kinds of fears and deprivations. These rights come with birth and apply to all people in the world irrespective of their race, color, sex, language or political or another opinion.⁵¹ Human rights are equal and the same for all, regardless of race, religion, caste, political ideology, nationality, or social thought.⁵² We all are born free and we all are equal regarding human rights from the point of view of dignity and rights.⁵³ Human Rights are universal because it is equally enjoyable for everyone around the world. Human rights cannot be taken away. No one has the right to be deprived of human rights.⁵⁴ Even if a state does not recognize human rights, or violates human rights, every human being can still claim human rights. For example, where slavery is practiced, every slave deserves human rights although it is being violated. Human rights are not transferable and ensure that people live with dignity where every human being has the right to live on their land in freedom, security and dignity.⁵⁵ Land rights Prima facie has not been recognised in any international treaty or international law as human rights to land. However, the right to property and ownership, although recognised in Article 17 of the Universal Declaration of Human Rights, 1948 (hereinafter UDHR), are absent in the latter two paramount human rights treaties, the International Covenant on Civil and Political Rights, 1966 (hereafter ICCPR) and the International Covenant on Economic, Social, and Cultural Rights, 1966 (hereafter ICESCR).⁵⁶ Moreover, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (hereinafter ICERD) and the International Covenant on the Elimination of All Forms of Discrimination Against Women, 1979 (hereinafter CEDAW) stipulate the right to property but do not talk about the right to property covering the right to land. Surprisingly, the ICESCR in article 11(1), the Convention on the Rights of the Child, 1989 (hereinafter CRC) in article 27(3), the CEDAW in article 14(2)(h), the ICERD in article 5(e), and the UDHR in article 25 stipulate the right to housing based on the context, subject to ensuring non-discrimination and equality. The Committee on Economic, Social, and Cultural Rights (hereinafter CESCR) through General Comment No. 4 of 1991 referred to seven key factors to determine the right to housing, and among such seven factors, the first one is security for tenure. Security for tenure entangles so many things, like accommodation, housing in a cooperative way, lease, ownership and possession, formal and informal settlement, emergency housing, as well as security over land.⁵⁷

⁵¹ *ibid.*

⁵² Abu Noman and Md Abul Bashar, 'Regional Mechanism in the ASEAN Region for Strengthening Human Rights Promotion and Protection: An Analysis' (2007) 12 *The Chittagong University Journal of Law* 139.

⁵³ Louis Henkin, 'International Human Rights as Rights' (1981) 23 *Nomos: American Society for Political and Legal Philosophy* 257.

⁵⁴ Burns H Weston, 'Human Rights' (1984) 6(3) *Human Rights Quarterly* 257 <<http://dx.doi.org/10.2307/762002>> accessed 27 October 2023.

⁵⁵ David P Forsythe, *Human Rights in International Relations* (Cambridge University Press 2017) 9.

⁵⁶ Jérémie Gilbert, 'Land Rights as Human Rights: The Case for a Specific Right to Land' (2013) 10(18) *SUR-International Journal on Human Rights* 118 <<https://sur.conectas.org/en/land-rights-human-rights/>> accessed 6 June 2023.

⁵⁷ *ibid* 124.

The CESCR invited on 14 November, 2019 the individuals, states, and non-state actors to submit proposal for Draft General Comment No. 26 of 2022 on Land and Economic, Social and Cultural Rights by 15 August 2022. Till the date there about 100 proposals are pending for consideration on that context.⁵⁸ In domestic context, right to property has been recognised as fundamental human rights but no direct reference to land i.e., article 42 of the Bangladesh Constitution. Therefore, the ability to possess, use, and dispose of property, as well as the ability to inherit, lease, mortgage, and sell it, are all included in the right to property. It also covers the right to intellectual property, such as trademarks, creative creations, and innovations.

4. Discussion on the Human Rights Treaties and National Legislations

4.1. Right to Property under Core International Human Rights Instruments

There nine basic core human rights treaties besides the UDHR.⁵⁹ Right to property is recognised therein but there is a contend about the inclusion of the land into the definition of property. In no human rights treaties, the right to land is not considered as human rights. In the article 17 of UDHR, the right to property is considered as customary right in nature. Similarly, articles 1 and 17 of the ICCPR entangled the right to property under the periphery of self-determination where no one shall be deprived from his alienable right to property. The ICESCR considers the right to property as an equipment of right better standard of living in broadened sense. Moreover, the article 5(e) of the ICERD and article 16 of the CEDAW both protect women’s rights. However, in article 27 of the UDHR, land rights are either considered as or can be interpreted as an inclusion of the cultural rights of indigenous people. In addition, regional human rights accord such as the “African Charter on Human and Peoples’ Rights, 1981” (hereinafter ACHPR, 1981) recognize the right to land as an integral part of the indigenous people’s ability to maintain their cultural identity besides article 14 which considers right to property. In the year 2010, the African Commission on Human Rights concluded that evicting aboriginal or indigenous people from their homes constituted a breach of their traditional rights to land, religion, and natural resources, which in turn equates to a violation of articles 8, 17, and 21 of the ACHPR, 1981. This decision was

⁵⁸ ‘Call for written contributions to the draft general comment (No. 26) on Land and Economic, Social and Cultural Rights’ <www.ohchr.org/en/calls-for-input/2021/call-written-contributions-draft-general-comment-no-26-land-and-economic> accessed 6 June 2023.

⁵⁹ Core nine human rights treaties are: “International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD)”; the “International Covenant on Civil and Political Rights, 1966 (ICCPR)”; the “International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)”; the “Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)”; the “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT)”; the “Convention on the Rights of the Child, 1989 (CRC)”; the “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990(ICMW)”; the “International Convention for the Protection of All Persons from Enforced Disappearance, 2006 (CPED)”; the “Convention on the Rights of Persons with Disabilities, 2006 (CRPD)”<<https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>> accessed 9 June 2023.

made by the African Commission on Human Rights.⁶⁰ Despite this, the right to housing and an appropriate quality of life is recognized in article 25 of the UDHR, article 11(1) of the ICESCR, article 5(v) of the ICERD, article 14(2)(h) of CEDAW, and article 27(3) of CEDAW. None of these provisions allow for any form of discrimination. In its General Comment No. 4 of 1991, the CESCR outlined the main elements that determine a person's right to housing. The right to security of tenure was ranked as the most important of these seven conditions. The idea of having secure tenure involves a wide variety of other ideas as well, such as lodging, cooperative housing, lease, ownership, and possession, in addition to formal and informal forms of settlement, emergency housing, and security over land.⁶¹ The hope is that, it has been mentioned in the preceding section, the CESCR invited individuals, governments, and non-state entities to provide feedback by the deadline of August 15, 2022 for Draft General Comment No. 26 of 2022 on "Land and Economic, Social, and Cultural Rights." In addition, the CRPD, 2006 has two clauses, namely articles 26 and 28, that intertwine comparable stipulations of the aforementioned agreements. These stipulations include habilitation and rehabilitation, in addition to familial integrity and social protection. However, there is a human rights treaty on the rights of the persons with disabilities called CRPD, 2006 adopted on 13 December, 2006. The preamble of the CRPD, 2006 introduced disabilities as a result of interaction between persons with disabilities as well as the social and environmental attitudes that interfere in active participation in social activities.⁶² The CRPD, 2006 stipulates in article 3 a number of general principles for this convention, like non-discrimination, gender equality, accessibility, equal opportunities, active participation in society, etc., which have to be valued by the state party to this covenant. Although the CRPD, 2006, is a general convention for the protection of persons with disabilities, special consideration has been given to women and children in particular issues like, for women and girls, full enjoyment and freedom as well as development, and for children, special attention and care until attainment in the majority.⁶³ However, there are no separate provisions for adult male disabled persons except for considering them as a general person with disabilities. The cornerstone of the CRPD, 2006, can be considered article 8, which stipulates for the state party not only to adopt general obligatory measures as provided in article 4, but also to make awareness among the general public as well as stakeholder groups called disabled persons of the CRPD, 2006's rights and the facilities available in the state's existing legal system. Article 10 of the CRPD, 2006 further recalls the obligation of the state to ensure the right to life of every human, including persons with disabilities. However, right to life is a broad term that should not be elaborated literally but be illustrated based on the context as well as all of the human rights that are recognized in the core human rights treaties. Because, all human rights are universal, indivisible, inalienable, inseparable, and

⁶⁰ Gilbert (n 56) 120.

⁶¹ *ibid.*

⁶² CRPD 2006 (n 1) preamble para (e).

⁶³ *ibid* arts 6-7.

indispensable.⁶⁴ Therefore, a number of human rights for disabled persons have been recognized by the CRDP, 2006, along with the state's obligation to take adequate measures and steps for full realization, i.e., the right to education,⁶⁵ health,⁶⁶ a better or higher standard of living,⁶⁷ personal security and privacy,⁶⁸ political participation,⁶⁹ participation in cultural life,⁷⁰ habilitation and rehabilitation,⁷¹ as well as no exploitation.⁷²

4.2. Right to Property under Domestic Legal System

There are two pieces of legislation in Bangladesh that deal expressly with the protection of the interests of disabled persons: the DPRPA, 2013 and the Neuro Developmental Disability Protection Trust Act, 2013 (hereinafter NDDPTA, 2013), a part from the Bangladesh Constitution. Furthermore, there are another two sector-oriented legislations that deal either expressly or impliedly with the protection of the interests of children as well as women, namely the Domestic Violence (Prevention and Protection) Act, 2010 (hereinafter DVPPA, 2010) and the Children Act, 2013 (hereinafter CA, 2013). First of all, the Bangladesh Constitution guarantees the holding, acquisition, transfer, or alienation of property by every citizen.⁷³ The property of the citizen shall not be nationalized forcefully except in accordance with law and paying compensation.⁷⁴ The article clause 1 of article 42 of Bangladesh Constitution states that- "Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law." Clause 2 of article 42 further states that- "A law made under clause (1) of this article shall provide for the acquisition, nationalization or requisition with compensation and shall fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision of the law in respect of such compensation is not adequate." The right to property mentioned in article 42 is subject to reasonable restriction and acquisition by the government. A trespasser is not saved by this article.⁷⁵ The administrative actions are cannot affect the right to property except following the provision of the Acquisition and Requisition of Immovable Property Act, 2017 (hereinafter ARIPA, 2017) meaning that not property cannot be acquired without

⁶⁴ VDPA 1993 (n 26).

⁶⁵ CRDP 2006 (n 1) art 24.

⁶⁶ *ibid* art 25.

⁶⁷ *ibid* art 28.

⁶⁸ *ibid* art 22.

⁶⁹ *ibid* art 29.

⁷⁰ *ibid* art 30.

⁷¹ *ibid* art 23.

⁷² *ibid* art 16.

⁷³ Bangladesh Constitution 1972.

⁷⁴ The Acquisition and Requisition of Immovable Property Act 2017 (ARIPA 2017, Bangladesh) s 9(2).

⁷⁵ *Rabeya Khatun v Bangladesh* (2008) 60 DLR (AD) 9.

paying compensation.⁷⁶ The amount of compensation under the ARIPA, 2017 cannot be challenged in the court on the ground of inadequacy.⁷⁷ The inclusion of a man's property on a list of abandoned properties is a violation of his right to property, and his rights can be enforced under articles 44 and 102(1).⁷⁸ The DPRPA, 2013 aims to reach into the standard for the disabled persons as enshrined in the CRPD 2006, adopted in 13 December of 2006 and entered into force in 3 May of 2008. This is an Act which repealed the Bangladesh Disabled Persons Welfare Act, 2001.⁷⁹ The salient feature of this legislation is categorization of disability syndrome.⁸⁰ Moreover, there about twenty-one types of rights and their protection have been recognised in the section 16 which are subject to further addition by official notification of the government.⁸¹ Among these twenty types of rights of the disabled persons, the right to property or hereditament are paramount important in the context of recognition in law and equal protection of law.⁸² Section 16 further stipulates that If anyone, whether a person or a company, discriminates against the enjoyment of these rights, the disabled person may seek compensation using the procedure outlined in Section 36. The disabled individual may seek compensation from the District Committee, which is led by the Deputy Commissioner (hereinafter DC).⁸³ If the DC order generates a grievance, the applicant has 30 days to appeal to the National Executive Committee (hereinafter NEC), which is chaired by the Secretary of the Ministry of Social Welfare.⁸⁴ The NEC must rule on the issue within 45 days after receiving the appeal. Furthermore, five types of committees for functioning in top to lower administration level of the country have been constituted with mandate for accountability, transparency, and surety for the protection of the interest of the disabled persons i.e., national coordinating committee,⁸⁵ national executive committee⁸⁶ district committee,⁸⁷ upazila committee,⁸⁸ and city committee.⁸⁹ The upazila committee or the city committee, as the case may be, has been assigned to provide Disabled Identification Card to the disabled person by utilization of which the disabled person can invoke the facilities under this Act.⁹⁰ It is also prohibited to discriminate on the basis of disability at any educational institution as well as job establishment.⁹¹ Five percent reserve seats have been provisioned for

⁷⁶ *Raj Kumar Behani v Bangladesh* (1995) BLD 633.

⁷⁷ *Shahjahan Ali Khan v Bangladesh* (2000) 52 DLR 99.

⁷⁸ *Nurun Nahar v Bangladesh* (1997) 49 DLR 432.

⁷⁹ DAPRPA 2013, 44.

⁸⁰ *ibid* s 3.

⁸¹ *ibid*.

⁸² Faruque (n 32).

⁸³ DPRPA 2013, s 36 (3).

⁸⁴ *ibid* s 19.

⁸⁵ *ibid* s 17.

⁸⁶ *ibid* s 19.

⁸⁷ *ibid* s 21.

⁸⁸ *ibid* s 23.

⁸⁹ *ibid* s 24.

⁹⁰ *ibid* s 31.

⁹¹ *ibid* s 29, 33.

disabled persons in the public transport that operates for hire either in road, air, or water.⁹² Section 31 requires disabled people to register themselves or have their legal guardians, agencies, or non-governmental organizations register them on their behalf. The application must be sent to the chairman of the upazilla committee, also known as the Upazilla Nirbahi Officer (hereinafter UNO). The UNO must then register the applicant as a disabled person and provide an identity card. However, the UNO may deny the disabled person's registration application. Within 30 days, the disgruntled applicant may appeal the UNO's rejection to the chairman of the district committee, known as the DC. All of the committees indicated above must hear the applicant and make a decision. However, Section 37(2) provides for a punishment of up to 3 years in prison or a fine of up to 5 lac BDT, or both, if someone prevents a disabled person from receiving a proportionate share of hereditary wealth. However, the offences under DPRPA, 2013, is non-cognizable, but bailable and compoundable.⁹³ Non-cognizable offence meaning that a police officer cannot investigate any information by the disabled person about his right violation without permission of the magistrate.⁹⁴ However, besides the complexity of access to justice as contained in section 38(2) of the DPRPA, 2013, there is still discrimination against disabled persons in public employment, and that attitude amounts to a violation of article 12 of the CRPD, 2006. In 1998, in writ petition No. 1783/98 titled BLAST vs. Bangladesh and others, it was challenged that the government proclaimed by circular only 10% quota for disabled persons for 3rd and 4th class posts, whereas in other cases 10% quota was allocated for all posts. This case essentially emphasized that this circular violated articles 27, 29, 31, and 42 of the Bangladesh Constitution. This circular demonstrated the state's discriminatory stance towards people with disabilities in all aspects of life. NDDPTA, 2013 is considered a land mark legislation to get financial protection and assistance at the moment of crisis. By this legislation, a trust has been established under section 8(1) called "Neuro Developmental Disability Protection Trust" especially for those disabled persons who are suffering from "autism, down syndrome, intellectual disability, cerebral palsy". The guild for disabled persons or the guardian of the disabled persons can apply to the Board of Trust for any types of financial assistance for the purposes as enshrined in sub-section 3 of section 22 of the NDDPTA, 2013, like initiatives for the living of disabled persons with honor and dignity or any initiatives for counseling disabled persons or members of their families.

⁹² *ibid* s 32.

⁹³ *ibid* s 38(3).

⁹⁴ Code of Criminal Procedure 1898 (CrPC 1898, Bangladesh) s 154.

5. General Discussions on various Aspects of Property Rights and Disabilities

5.1. Right to Property and Sustainable Development Goals

In 2015, the United Nations, in its 70th session, adopted the Sustainable Development Goals (hereinafter SDGs), which contain 17 goals followed by 169 targets. The time frame for reaching these targets has been fixed for 2030. Among the seventeen goals, the Goal 4 stipulates equality of opportunity without any disparity in educational institutions based on physical conditions like disability. The Goal 8 requires the state party to ensure equal values of payment for all persons based on the intensity of labor and responsibility in order to secure sustainable economic growth, while the Goals 10 and 17 demand the international empowerment of all persons with cooperation and data sharing, including disabled persons. The most important feature of Goal 11 is that it includes various expectancy of life of the persons with disabilities, like safe and secure mobility through any form of transport, either by road, air, or water.⁹⁵ However, for the complement of Goal 11 of the SDGs, section 32 of the DPRPA, 2013 mandatorily requires each type of transport to reserve 5% of seats for physically disabled persons. Moreover, for the fulfillment of the rest of the mentioned goals, section 16 of the DRPA, 2013, recognized 21 categories of rights for disabled persons, like that no disabled person should be discriminated against at any educational institution,⁹⁶ at work,⁹⁷ or in social life etc.⁹⁸

Now the question is: how far is the right to property or land relating to the SDGs that are being mandated by the State to the UN? The answer is still unsettled. Right to Land is not recognised under international Human Rights Law as human rights. By August 15, 2021, as it is mentioned earlier, the CESCR requested submissions for Draft General Comment No. 26 of 2022 on “Land and Economic, Social, and Cultural Rights” from individuals, states, and non-state actors, there are roughly 100 proposals waiting to be taken into account in that situation. In the domestic setting, however, right to property inter alia land is considered a vital tool for poverty alleviation in Bangladesh that enhance capabilities.⁹⁹

5.2. Proper Treatment and Care of Disabled Persons and Solution of Familial Disputes

There are frequent questions that- Does a disabled person get proper treatments and measures from their family members when the symptom of disabilities becomes visible and public? If so, how much, and if no, why not? How do disabled persons solve familial disputes? As to article 12 of the ICESCR, proper treatment and care entangle

⁹⁵ Report on National Survey on Persons with Disabilities 2021 (NSPD 2021, Bangladesh), 7.

⁹⁶ DPRPA 2013, s 16(1)(h)

⁹⁷ DPRPA 2013, s 16(1)(i)

⁹⁸ DPRPA 2013, s 16(1)(k)

⁹⁹ Supan (n 7) 19.

the right to the highest attainable standard of living and the right to health.¹⁰⁰ However, the DPRPA, 2013 recognized the right of a person with disabilities to live with the fullest meaning of life but did not mention the necessary elements of life.¹⁰¹ Similarly, article 32 of the Bangladesh Constitution affirms everyone's right to life but does not specify what constitutes a meaningful life. But the right to life is acknowledged in the Bill of Rights as essential and unassailable, specifically in articles 3 of the UDHR and 6 of the ICCPR. In 2019, the Human Rights Committee published the General Comment No. 36 which entails various aspects of meaningful life that stipulates for every necessary step for goods as well as services entangling health, sanitation, electrification etc. Similarly, article 10 of the CRPD, 2006 necessities the state party to take adequate measure for the enjoyment of right to life. As we found that article 16 of the CRPD, 2006 requires state party to take appropriate measures for protecting disabled persons from familial violence, torture and exploitation. However, there is no provision in the DPRPA, 2013 which devolve upon the private individuals to ensure medication and treatment of the disabled persons rather than an evasive term of enjoyment of fullest meaningful life in the section 16(1)(a). There could be a positive elaboration of the CA, 2013 which categorized disabled children as "Disadvantaged Children".¹⁰² Whenever a police officer knows or come to know about a disadvantaged child under sections 90 or 91 of the CA, 2013, he has to depute that Child Affairs Police Officer with the child to the Probation Officer or the Child Welfare Boards, as the case may be, in order to take necessary steps under section 84 or 85 of the CA, 2013. On the other hand, the CA, 2013 categorized a child, if he either becomes victim, witness or accused off, as "child in contact with the law" and "child in conflict with the law" respectively.¹⁰³ The familial disputes of disabled children can be resolved by following the procedure of trial as provided in the CA, 2013, but there are no provisions in that legislation for resolving familial disputes considering the physically disabled status of an adult. Although section 38(2) of the DPRPA, 2013 provides for conducting a trial by a 1st class judicial magistrate subject to a complaint lodged either by the disabled person or by a guardian, as well as by an NGO, if any, but no first information report by the police which mean that the disabled person cannot get any police assistance in term of the protection of their rights. The section 39 of the DPRPA, 2013, moreover, requires the magistrate to follow the procedure, for trial, inquiry or investigation, of the Code of Criminal Procedure, 1898. The trial procedure as provided in the Code of Criminal Procedure, 1898 is proved time consuming and too much complex. However, there is another legislation called the DVPPA, 2010 which defines aggrieved person as children and women who comes under the purview of this Act being aggrieved by the familial disputes as defined in the section 3.¹⁰⁴ Section 3 of the DVPPA, 2010, considers property

¹⁰⁰ 'General Comment No. 14: Right to the Highest Attainable Standard of Health' (*Committee on Economic, Social, and Cultural Rights*, 2000, UN Doc E/C.12/2000/4) <<https://undocs.org/E/C.12/2000/4>> accessed 9 June 2023.

¹⁰¹ DPRPA 2013, s 16(1)(a).

¹⁰² The Children Act 2013, s 89(1)(h).

¹⁰³ *Ibid* s 2(3), (4).

¹⁰⁴ Domestic Violence (Prevention and Protection) Act 2010, s 2(6).

disputes as familial disputes that can be redressed under this Act. Moreover, the application has to be made to the 1st class judicial magistrate or metropolitan magistrate with the help of an executive officer, an NGO, or any person empowered under this Act on behalf of the aggrieved person.¹⁰⁵ So, the DVPPA, 2010, only protects disabled children and women, but no adult male can seek priority-based remedies under this Act.

5.3. Inheritance of Disabled Persons Under Personal Laws

Personal laws indicate those laws that govern a person based on their spiritual beliefs. There is a question: are the persons with disabilities getting their inheritance properly as per their personal law? The Hindu personal law does not recognize the right to property of a person with disabilities.¹⁰⁶ Such as the blind, deaf, dumb, impotent and disabled do not get any share in the property.¹⁰⁷ Briefly stated, Hindus in Bangladesh adhere to the Dhayabhaga school, which holds that all forms of physical and mental impairments preclude the acquisition of property rights under Hindu inheritance. As a result, many Hindus with disabilities in Bangladesh are denied their inheritance rights. On the other hand, Islamic law considers property right is indispensable to every Muslim. A disabled person holds equal status of a man with limb. He has the same rights to hold, exchange, transfer, and acquire property as like any other person. Islamic ideologies bear the principle of the protection of the property of the disabled persons even if he is an alien or enemy. However, a Muslim man or woman, either is with limb or not with limb, will not get a property of a propositus if he leaves Islam or cause death willingly of the propositus.¹⁰⁸ Moreover, the Muslim Family Laws Ordinance, 1961 enables the heir of the predeceased children to get property of their parents.¹⁰⁹

5.4. Constitutional Recognition of the Right to Property and Disability

As it is mentioned elsewhere that- the right to property is guaranteed by article 42 of the Bangladesh Constitution. It includes the rights to own, use, and dispose of property as well as the ability to inherit, lease, mortgage, and sell it. It also includes the right to intellectual property, which includes innovations, trademarks, and original artistic works.¹¹⁰ The right to possess property, on the other hand, is not unconditional and may be subject to restrictions in some circumstances, such as when it's necessary to ensure the equitable distribution of resources or to protect public morals, health, or safety. These limitations are frequently imposed by laws and regulations that seek to strike a balance between the demands of society as a whole and the interests of specific property owners.

¹⁰⁵ *ibid* s 11(1).

¹⁰⁶ Mulla (n 28) 150.

¹⁰⁷ *ibid* 152.

¹⁰⁸ Syed Khalid Rashid, *Muslim Law* (VP Bharatiya ed, 4th edn, Eastern Book Company 2004)353.

¹⁰⁹ Muslim Family Laws Ordinance 1961, s 4.

¹¹⁰ Islam (n 30) 21.

Now, the question is: do modern human rights instruments protect persons with disabilities with more dignity than a constitutional parameter? How far is the statement true in the context of Bangladesh? The section titled “Periphery of the Right to Property as Human Rights” of this paper detailed the origin of human rights and the status of the right to property as well. From the above-mentioned discussion, it is plausible that the human rights instruments referred to in the relevant section, although they recognized the right to property and ownership, but did not refer to land. On the other hand, the constitutional provisions of article 42 guarantee that every citizen has the right to hold, acquire, transfer, or alienate property, including land, subject to reasonable restriction.¹¹¹ The land is subject to acquisition by the government on the condition of paying compensation of either 200% if acquired for the government itself or 300% if acquired for an individual’s large-scale farming.¹¹² Although the Bangladesh Constitution apparently protects the property rights, including the right to land, of every citizen, irrespective of physical or mental capability, better than all other human rights treaties, its implication is not satisfactory, as has been depicted in the relevant sections of the field survey. Moreover, the contents of property are contentious and scattered in different laws, and the enforcement mechanism for property rights is not easy to access, which has been described in the following next section.

5.5. Enforcement Mechanisms of Property Rights by Disabled Persons

There is a frequent question: is the existing legal framework in Bangladesh sufficient to protect the rights to property of persons with disabilities? If we consider it from a constitutional perspective, then we can see that article 42 of the Bangladesh Constitution contained in Part Three, which is enforceable by the judiciary by filing a writ in the High Court Division of the Supreme Court of Bangladesh following the principles of article 102.¹¹³ Moreover, the right to property is a fundamental right of every citizen of Bangladesh that is subject to judicial review under the hood of writ, a much more common phenomenon since the case of *Marbury vs. Madison* (1803) 5 USA 137.¹¹⁴

But the concern still remains towards different aspects of the rights of persons with disabilities like how far do a disabled person able to get remedies through judiciary? The ability for remedies for a disabled person to enforce property rights if he is deprived of inheritance can be realized in two ways: through arbitration or mediation or by filing a suit in a civil court. The mediation procedure is subject to Part Five of the Code of Civil Procedure, 1908. On the other hand, the provisions of the Order 32 of the Schedule one of the Code of Civil Procedure, 1908 deal with the procedure of filing a suit on behalf of the minor as well as unsound mind by next friend or guardian for

¹¹¹ Mahmudul Islam, *Constitutional Law of Bangladesh* (2nd edn, Mullick Brothers 2002) 274.

¹¹² ARIPA 2017, Bangladesh (n 74) s 9(2).

¹¹³ Bangladesh Constitution 1972 (n 5) art 44.

¹¹⁴ M Jashim Ali Chowdhury, *Comparative Constitutional Law: Issues, Debates and Stories from the US, UK and Indian Jurisdictions* (Bengal Press 2022) 267.

enforcing civil rights like right to office and right to property. It is pertinent to mention that there are five types of the civil court i.e., the Court of Assistant Judge, Senior Assistant Judge, Joint District Judge, and Additional District Judge, and District Judge.¹¹⁵ Among all of these five types of court first three types of court try civil suit as court of first instance.¹¹⁶ The Court of Assistant Judge has to try a suit of which pecuniary value of property or subject matter of suit does not exceed 15 lac while the court of Senior Assistant Judge up to 25 lac taka.¹¹⁷ The Court of Joint District Judge exercise unfettered power of pecuniary jurisdiction which indicate no financial limitation in the trial of civil suit. However, the Additional District Judge only try those case which has been referred to him by the District Judge. The Court of District Judge only acts an appellate court subject to special original jurisdiction, if any.¹¹⁸

However, there are further two legislations called the DVPPA, 2010, and the CA, 2013 which specially aims to give access to justice of the women and children whether they are with limb or not. What if, the disabled person is male and adult? The only way remains opening to recourse the protection is the DPRPA, 2013. There is no provision for a First Information Report, which means that the disabled person cannot claim as a right any police assistance in terms of the protection of their rights at first instance in the police station, despite section 38(2) of the DPRA, 2013, which provides for a trial to be conducted by a first-class judicial magistrate subject to a complaint lodged by the disabled person or by a guardian, as well as by an NGO, if any. Additionally, the magistrate must adhere to the Code of Criminal Procedure, 1898, for trial, inquiry, and investigation as per section 39 of the DPRPA, 2013. The trial system in the Code of Criminal Procedure, 1898, has been proven to be more time-consuming and too complicated. Therefore, it is evident that the adult male disabled person in Bangladesh has to face a complex situation while invoking judicial remedy for enforcing his right to property, which is considered, in general,

6. General Discussion on Fieldworks and Findings

The respondents were split into four age groups, shown in Table 2 as well as Figure A, ranging from 13 to 18 (5 respondents), 19 to 30 (10 respondents), 31 to 45 (10 respondents), and 46 to 60+ (10 respondents). Moreover, across all age groups, there were a total of 20 male respondents, while there were 15 responders who identified as female overall age ranges. In terms of geographical distribution, the respondents came from Dhaka, Cumilla, and Noakhali districts in Bangladesh. The following Table 2 provides a thorough breakdown of respondents by location, gender, and age ranges. A semi-structured questionnaire containing 10 questions relating to the research field has been used, i.e., a. name, age, and place of birth; b. knowledge about the DPRPA,

¹¹⁵ CK Takwani, *Civil Procedure* (6th edn, Eastern Book Company 2009) 40.

¹¹⁶ Mahmudul Islam and Probir Niogi, *The Law of Civil Procedure*, vol 1 (2nd edn, Mullick Brothers 2015) 45.

¹¹⁷ The Civil Courts Act 1887 (CCA 1887, Bangladesh) s 19.

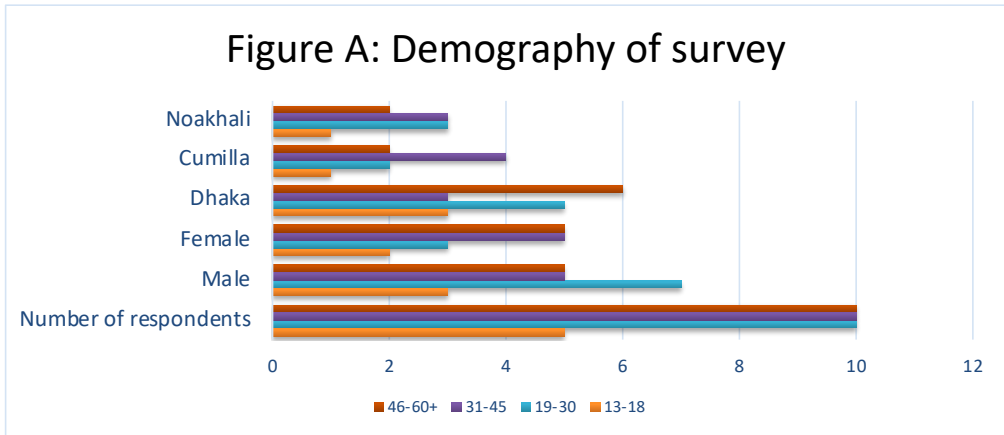
¹¹⁸ *ibid* s 20.

2013; c. registration status under section 31 of the DPRPA, 2013; d. taking action by resorting to legal aid services; e. awareness about their right to property; f. status of the disabled persons in holding ancestral property; g. causation of disabilities; h. equality in getting property share; i. satisfaction with the trial system; and j. future prospects.

Table 2: Demography of Survey in Details

Age Range	Number of respondents	Male	Female	Dhaka	Cumilla	Noakhali
13-18	5	3	2	3	2	1
19-30	10	7	3	5	2	2
31-45	10	5	5	3	4	3
46-60+	10	5	5	6	2	2
Sub-total	35	20	15	17	10	8

Source: fieldwork

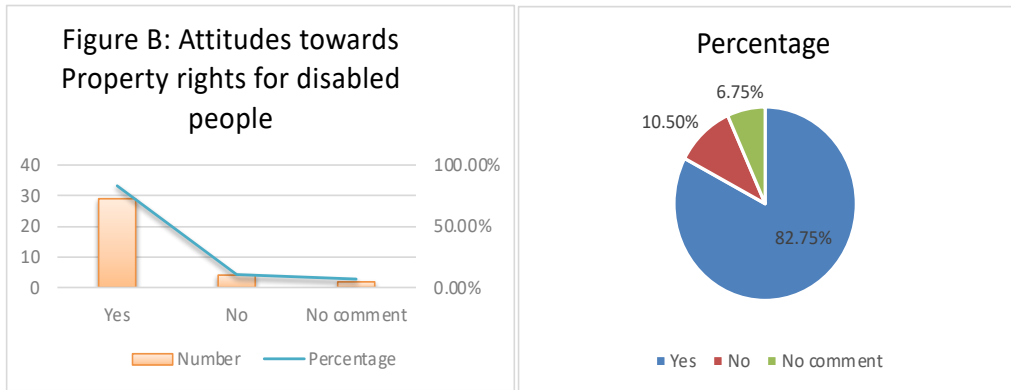


The analysis in Figure A comprehensively summarizes the respondents' demographic makeup. It shows that an equal number of men and women responded, with the majority falling within the 19 to 30 age group.

6.1. Attitudes towards Property Rights for Disabled People: It shows in Table 3 that about 82.75% of people think it is reasonable to have property rights for disabled people. Among 35 disabled persons, there have 10.5% of people who think that it is not reasonable to have property rights for physically or mentally disabled people and 6.75% of people didn't respond about this.

Table 3: Attitudes towards property rights		
Variable	Number	Percentage
Yes	29	82.75%
No	4	10.50%
No comment	2	6.75%

Source: fieldwork



Source: fieldwork

6.2. Causation of Disabilities

Table 4 shows the causes of disabilities, where about 28.58% of disabled persons are born disabled among 35 disabled people. About 54.28% of people are disabled from different traffic accidents and have lost their limbs. It has been found that about 8.57% of people are being forcefully disabled for begging or as a result of quarrels with neighbors, and another 8.57% have been disabled for erroneous treatment in medical centers.

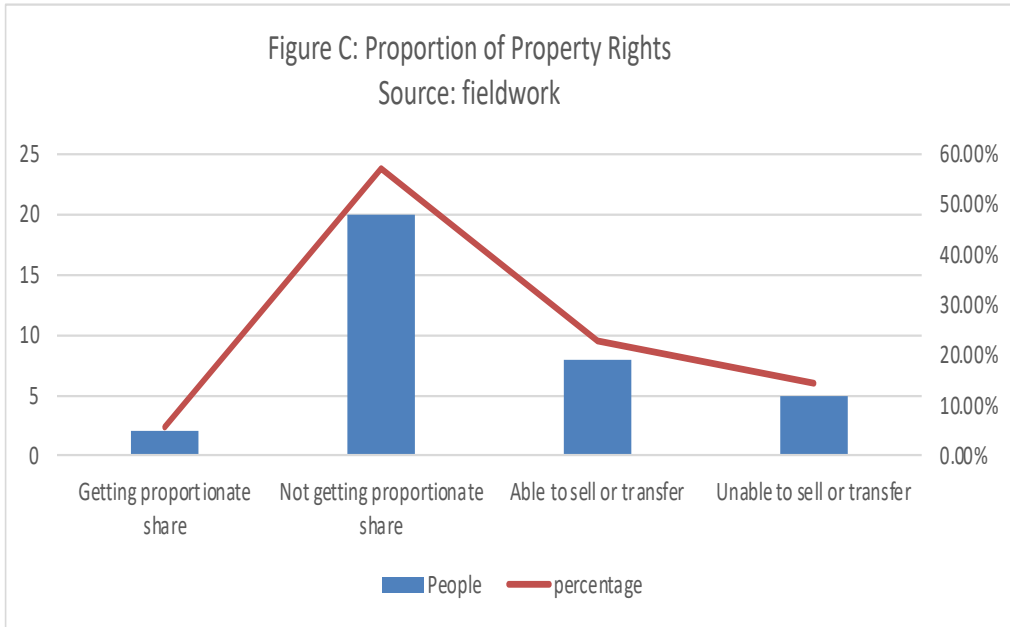
Srl. No.	Variables	Number of Participant	Outcome in Percentage
1.	By born disabilities	10	28.58%
2.	Accidental disabilities	19	54.28%
3.	Forceful disabilities	3	8.57%
4.	Medical disabilities	3	8.57%
Sub-total		35	100%

Source: fieldwork

6.3. The Rate of Getting Property by Disabled Persons

The participant in the survey shows their disappointment in the enjoyment of their right to land that they inherited from their ancestors. In most cases, they could not get their exact share of land by competing with their counterparts according to their personal laws. Although they get their property, the amount is disproportionate. However, the exercise of the right to transfer property either by sale or mortgage or by any other approved means is always hindered by its counterpart. Figure C shows the ratio of hereditament under Muslim law of inheritance, where about 57.14% (20 people) of disabled persons claimed that they didn't get any property from their father, while 5.71% (2 people) were satisfied with their counterparts and got property by following Muslim law of inheritance. However, about 14.29% (5 people) would not be able to

transfer their property by sale, etc. in the near future, while 22.86% (8 people) are hopeful and would be able to sell or transfer their property in the future.



6.4. The Rate of Taking Privileges from Legal Aid Services

Getting legal aid is a human right for every human. The Government of Bangladesh enacted the Legal Aid Services Act, 2000, which defines legal aid as a service that renders an insolvent, destitute, and helpless person to file a suit or defend a suit or any type of criminal case either by providing advice or remuneration for a lawyer and expenses of the suit or case.¹¹⁹ The disabled person, if he is a pauper, can make an application under Section 16 of the Bangladesh Legal Services Aid Act, 2000, either to the Supreme Court Committee,¹²⁰ District Committee,¹²¹ or Special Committee,¹²² as the case may be. If the application is rejected, then the aggrieved person can file an application with the Board¹²³ within 60 days from the date of the order. However, Figure D shows the rate of taking privileges from Legal Aid Services Authorities, where it has been found that only 2.50% of people took privileges of Legal Aid to get the right to property, and about 97.50% of disabled persons were ignorant of the assistance by Legal Aid.

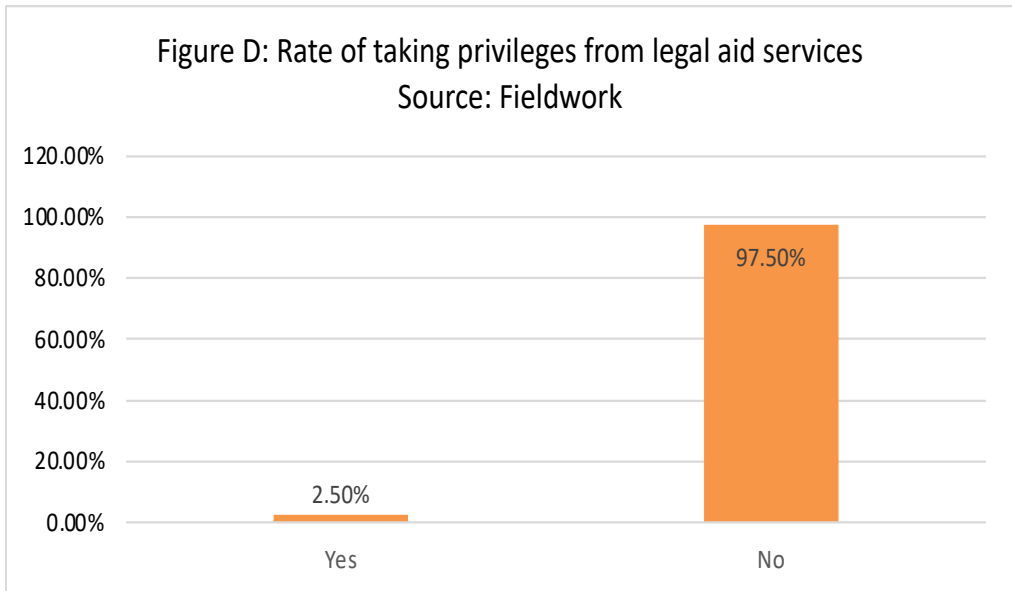
¹¹⁹ Legal Aid Services Act 2000 (LASA 2000, Bangladesh) s 2(a).

¹²⁰ *ibid* s 8A.

¹²¹ *ibid* s 9.

¹²² *ibid* s 12A.

¹²³ *ibid* s 9.



6.5. Right to Equality of Getting Property

Although human rights treaties talk about equal treatment in every sector of human life, Islamic law differs. As to the Islamic law of inheritance, the male gets double share of female.¹²⁴ There is no provision in Islamic law to exclude the heirs from inheritance except the heir commits assassin to the propositus or apostate the Islam.¹²⁵ Therefore, a disabled person will get the Quranic share as provided in 12 categories of heirs like father, mother, grandfather, paternal and maternal grandmother, sister, daughter, uterine brother and sister, consanguine sister, wife, and son's daughter.¹²⁶ It is observed in above Figure C that the ratio of disabled people getting property is trivial. But because they got the property from their father, they didn't get an equal share of the property as the other family members. However, Section 37(2) of the DPRPA, 2013 stipulates punishment of imprisonment up to 3 years or a fine up to 5 lakh BDT or both if any person impedes the disabled person from getting proportionate share in heritance. It has been found in the field survey in Table 5 that about 31.42% of disabled persons get their property as per their personal law, while 62.85% didn't get an equal share or got a smaller share, violating the principles of the law of inheritance of personal law. However, surprisingly, 5.71% of disabled people get more property than others.

¹²⁴ Mohammad Ekramul Haque, *Islamic Law of Inheritance: Rules and Calculations* (London College of Legal Studies: South 2009)10.

¹²⁵ Rashid (n 108).

¹²⁶ Haque (n 124).

Table 5: Scenario of equality in property distribution

Variables	Number	Percentage
Getting the same amount of property as others	11	31.42%
Getting the less amount of property than others	22	62.85%
Getting the more amount of property than others	2	5.71%
Subtotal	35	100
Source: fieldwork		

6.6. Awareness among the Disabled Persons about Their Property Rights

There are about 21 categories of rights of disabled persons that have been recognized, and among them, the right to property by inheritance is placed in the 3rd order of sequence under section 16 of the DPRPA, 2013. If anyone, either a person or corporation, shows any discrimination towards the enjoyment of these rights, the disabled person is enabled to get compensation following the procedure as provided in section 36. The disabled person can file an application with the District Committee headed by DC for compensation.¹²⁷ However, if the order of DC causes any grievance, the applicant may make an appeal within 30 days towards the NEC headed by the Secretary of the Ministry of Social Welfare.¹²⁸ The NEC has to dispose of the issue within 45 days from the date of appeal. However, it is contemplated that most disabled people don't know about the DPRPA, 2013. It has been found throughout the fieldwork among 35 participants that about 5% of disabled persons heard about this legislation, and among them, only 1.5% took remedies by applying to the district committee, being they are living in the center or sadar of districts, while 95% of them are unaware of this Act and the rights as well as privileges provided thereby.

6.7. Scenario of Registration of Disabled Persons

Section 31 of the DPRPA, 2013, stipulates for the registration of disabled persons either by themselves or by their legal guardian, agencies, or NGO on their behalf. The application has to be lodged with the chairman of the upazilla committee, called UNO. Then the UNO has to register the applicant as a disabled person and provide the identity card. However, the UNO may refuse the application for registration of the disabled person. The aggrieved applicant may appeal against the refusal of the UNO to the Chairman of the District Committee, called DC, within 30 days. All of the committees mentioned above have to hear the applicant and decide accordingly. Figure E shows that only 5% registered at the upazilla committee, while the rest, 95%, didn't register or did not know about the process of registration.

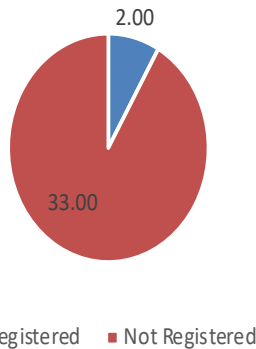
¹²⁷ DPRPA 2013, Bangladesh (n 34) s 36(3).

¹²⁸ *ibid* s 19.

Figure E: Scenario of registration of Disabled Persons under the DPRPA, 2013

Total Respondent	Registered	Not Registered
35	5%	95%

scenario of registration under Section 31 of the DPRPA, 2013



Source: fieldwork

7. Recommendations

From the general discussions and the analysis of field data, the following recommendations are mostly preferred: *First of all*, raising awareness among the people, including disabled persons, about the rights of the imbalanced is a general obligation of the state as per article 8 of the CRDP, 2006. Often, disabled persons may not be aware of their rights or may face barriers in accessing information about their rights. Therefore, it is important to raise awareness about these rights so that disabled people can exercise them. As a medium of awareness enhancement, the government can arrange a road rally twice a year, and advertisements on television, radio, and newspapers should be circulated periodically. *Secondly*, it is true that the right to property is a fundamental right in Bangladesh, which can be enforced by filing a Writ Petition to the High Court Division of the Supreme Court of Bangladesh. Filing a writ with the High Court Division demands financial solvency as well as physical capacity in order to defend or claim remedy if violated. Although there are two other special legislations called DVPPA, 2010, and the CA, 2013, which specially aim to give access to justice to women and children, whether they are with limbs or not, what if the disabled person is male and an adult? So, those laws should be amended based on the proposed context. *Thirdly*, the complaint mechanism under the DPRA, 2013 is complex in nature. There is no provision for a First Information Report (in short FIR) by the police, which means that the disabled person cannot claim as a right any police assistance in terms of the protection of their rights at first instance in the police station,

in spite of section 38(2) of the DPRPA, 2013, which provides for a trial to be conducted by a first-class judicial magistrate subject to a complaint lodged by the disabled person or by a guardian, as well as by an NGO, if any. Additionally, the magistrate must adhere to the Code of Criminal Procedure, 1898, for trial, inquiry, and investigation as per section 39 of the DPRPA, 2013. The trial system in the Code of Criminal Procedure, 1898 has been proven to be more time-consuming and too complicated. Therefore, a flexible complaint mechanism and trial system should be introduced where the police can take cognizance of any offense that comes under the purview of the Act. *Fourthly*, the registration of disability should be more persuasive based on the circumstances. Section 31 of the DPRPA, 2013 requires a medical certificate for a disabled person in order to get a disability identity card for availing facilities under this Act. What if a person is completely paralyzed by birth? Who will bear the cost of medical certification? The DPRPA, 2013 is completely silent about this issue. Therefore, there should be a provision that the cost of medication should be free at every upazila health complex or hospital. Moreover, if the situation demands, the necessary medical test might be conducted at the home of a completely paralyzed disabled person. *Fifthly*, at the time of the survey, it was found that no participant had taken legal assistance since the enactment of the Bangladesh Legal Aid Services Act, 2000. All of them expressed their pathetic situation while claiming their land rights as hereditaments. Therefore, the Bangladesh Legal Aid Services Act, 2000, should be amended by containing a provision that if the applicant is a disabled person, his application should obviously be prioritized irrespective of his financial conditions, like whether he is a pauper or not. *Sixthly*, disabled persons may require reasonable facilities for accessing to justice for enforcing their property rights. For example, a blind person may require reasonable assistance from the UNO or Upazila Land Office, such as a braille document or an audio recording from the concerned authority, to access information about their property. Therefore, it is important to provide reasonable accommodations to disabled people to help them exercise their property rights. And *finally*, the Neuro Developmental Disability Protection Trust under the NDDPTA, 2013 is aiming to give support to four types of disabled persons, like autism, Down syndrome, intellectual disability, and cerebral palsy, while the rest of the eight types of disabled persons as provided in section 3 of the DPRPA, 2013 do not fall under the purview of this trust. Therefore, the other eight types of disabled persons should be included as beneficiaries of trust.

8. Conclusion

The disabilities of the people in society could be transformed into a mechanism for empowerment if their human rights, especially various aspects of the right to property, were ensured not only by the state but also by individual stakeholder groups. Although Bangladesh Government had took a lot of compliance mechanism with international human rights law mandate, it is far behind to fulfill state's obligation towards raising awareness among the members of society and paving the way for access to justice of

the persons with disabilities. Overall, protecting the property rights of disabled persons requires a concerted effort from governments, organizations, and society as a whole. By increasing awareness, enforcing existing laws, providing legal assistance, ensuring accessibility, and providing reasonable accommodations, we can help protect the property rights of disabled persons.