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Legal Framework for Preventive and Proactive Measures under the Bangladesh of Mental Health Act 2018

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Abstract

Mental health issues are a growing concern globally, and Bangladesh is no exception. Despite International treaties like Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Rights of Persons with Disabilities (CRPD), emphasizing the protection of individuals with mental health problems, domestic implementation remains a challenge. The Bangladesh Mental Health Act, 2018 aims to align with international standards to safeguard the rights of individuals with mental disabilities, yet the law has had some successes in certain areas but has also faced challenges or shortcomings in others. This article analyzes the strengths and weaknesses of the Act, examining how well it adheres to international standards and its impact on the rights and treatment of mentally challenged individuals. The Act's objectives, implementation, and adaptation, focusing on its potential to prevent mental health problems and enforce legal protections.

Keywords: *mental health, disable people' rights, advance directive, mental health tribunal.*

A. INTRODUCTION

Bangladesh faces significant challenges in mental health due to low health literacy, inadequate human resources, and poor financial management. The Constitution underscores the states duty to promote public health, requiring extensive reforms and better support networks. With the 18% of the Bangladesh population experiencing

mental distress and 49% of suicide victims aged 20-35, the nation faces severe shortage of mental health professional, having 270 psychiatrists for 22.5 million people. Notably, there is no Human Rights Review Commission to address rights violations of those with psychosocial illnesses.³

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

The Mental Health Act 2018, replacing the outdated Lunacy Act 1912,⁴ was a positive step, yet it lacked a detailed list of rights for individuals with mental illness.⁵ In comparison with a neighboring country India's Mental Health Act 2017 includes comprehensive rights (Articles 18-28), updated definitions of mental illness (Articles 3-4),⁶ and provisions for capacity assessments. This comparison suggests that Bangladesh needs to incorporate thorough human rights and mental health protections in future legislation because India's legislative approach to human rights and mental health due to India's established frameworks, regional similarities, and implementation experience. Adopting India's models could help Bangladesh develop effective laws, leverage legal precedents, and foster regional collaboration in protecting vulnerable populations and promoting well-being.⁷ In addition to Article (5-13) advance directives which is permitted the persons with mental illness to direct future care.⁸ In fact the United Kingdom's (UK) Mental Health Act 2007, in Article 8 also regulates about fundamental principles for Mental illness people.⁹

It is found that, in Bangladesh has a lack of legislation addressing the infringement of patients' rights during the treatment of mental illness, especially in difficult social settings.

Additional law is required to protect the rights of those who do not come into the disability category, even if the Disability Rights and Protections Act of 2013 recognizes the rights of those with mental disabilities.¹⁰ Effective social reintegration is further hampered by the absence of comprehensive laws governing patient confidentiality and the acceptance of community-based treatment. In order to protect the fundamental rights protected by Bangladesh's Constitution, it is imperative that the criminal justice system take into account the mental health of mentally ill people.¹¹

An important legislative provision that is being adopted in many different countries across the world is the recognition of the mental health of women and children who are victims of abuse within their homes and other forms of violence. However, in other situations, this clause might discourage psychiatrists from doing essential assessments and treatments, preventing patients from receiving mental health services because they are afraid of facing legal consequences. This is a legitimate concern, especially for a nation where it is easy to fabricate certificates, which might have major consequences for guardianship, property rights, inheritance, custody, criminal responsibility, and other related issues.¹²

⁴ Ayazuddin Ahmad, "Repeal Lunacy Act", The Daily Star, Dec. 16, 2014, <<https://www.thedailystar.net/repeal-lunacy-act-55527>>.

⁵ Section 6 of Mental Health Act, 2018

⁶ Ministry of law and justice, "the mental healthcare act, 2017", (2017), the gazette of India 51 <https://www.prsindia.org/uploads/media/mental_health/mental_healthcare_act_2017.pdf>.

⁷ S Madhusudan N.R. Prashanth, Shalu Elizabeth Abraham, Chandrashekar Hongally, "Dealing with Statutory Bodies under the Mental Healthcare Act 2017" *Indian Journal of Psychiatry*, (2019), <https://doi.org/10.4103/psychiatry.IndianJPsychiatry_152_19>.

⁸ Indian Mental Health Act, 2017

⁹ UK Mental Health Act, 2007

¹⁰ Disability Rights and Protections Act 2013.

¹¹ Richard M Duffy and Brendan D Kelly, "The Right to Mental Healthcare: India Moves Forward", *British Journal of Psychiatry*, (2019) <<https://doi.org/10.1192/bjp.2018.250>>.

¹² Avital Alfandari Cohen, Magnezi Racheli and Weinstein Orly, "Review and Analysis of Mental Health Reforms in Several Countries: Implementation, Comparison and Future Challenges", *Annals of Psychiatry and Treatment*, (2020), <<https://doi.org/10.17352/apt.000015>>.

B. Research Methods

It would be a thematic it means; Thematic analysis is a method of analyzing qualitative data. It emphasizes identifying, analyzing, and interpreting patterns of meaning (or "themes") within qualitative data¹³ and doctrinal it also explains that, Doctrinal research asks what the law is in a particular case and is concerned with the analysis of the legal doctrine and how it was developed and applied.¹⁴ A logical framework shall be developed on the basis of various ways of data analysis such as, newspapers and case laws shall be studied, factor analysis and secondary data analysis. In this sort of research work data collection is pretty important, due to that I would like to critically analyze the study relevant sources and data. In order to give complete shape to the study, a range of research methods would be used, such as review of:

- a. Primary and secondary sources;
- b. Literature, books;
- c. Journal;
- d. Relevant public records;
- e. Research papers;
- f. Available statistical data or reports published in both indigenous and extraneous scope.

The analysis of Bangladesh's existing legal instruments on mental health, along with relevant case law, reveals the importance of both national and international frameworks in safeguarding human rights. Key international treaties like the UDHR, ICCPR, ICESCR, and CRPD are particularly relevant, as they mandate

Bangladesh to protect civil, political, economic, social, and cultural rights, including those of people with disabilities. These instruments serve as a foundation for addressing human rights issues and ensuring the protection of all citizens, particularly vulnerable groups, while underscoring Bangladesh's commitment to human rights and good health governance as recognized by the World Health Organization (WHO).

Additionally, comparing the legal responses in India, the United States (US) and the United Kingdom (UK) highlights the different approaches to mental health issues. Although significant progress has been made, continued reform and international cooperation are essential to advance mental health care and protect individual rights globally. It shows how the country is making progress every day in tackling mental health issues.

C. ANALYSIS AND DISCUSSION

1. Mental Health Definition and Its Protection

Mental health encompasses social, emotional, and psychological well-being, influencing our thoughts, feelings, and responses, as well as our stress management, interpersonal relationships, and decision-making. Each life stage, from childhood to adulthood, plays a vital role in mental health. If individuals experience mental health issues, these may have lasting effects on their cognition, mood, and behavior throughout their lives. Section 2, Subsections (15, 16) of the Mental Health Act 2018 in Bangladesh define "mental illness" as a form of mental disease excluding drug

¹³DC: American Psychological Association : Braun, V. & Clarke, V. (2012) Thematic analysis. In H. Cooper, P. M. Camic, D. L. Long, A. T. Panter, D. Rindskopf, & K. J. Sher (Eds), APA handbook of research methods in psychology, Vol. 2: Research designs: Quantitative, qualitative, neuropsychologic, 'Apa-Thematic-Analysis-Pre-Pub'.

¹⁴Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research'. *Deakin Law Review* Vol. 17, No. 1 (2012), <<https://doi.org/10.21153/dlr2012vol17no1art70>>.

addiction and mental retardation, as determined by the responsible Medical Officer. "Mental disorder" is defined as a clinically recognized set of symptoms or behaviors, including mental retardation and drug addiction, which interfere with an individual's normal life and are associated with various physical and mental conditions, as stated by the law.¹⁵ The World Health Organization (WHO) in 1948 emphasized the critical factors of mental health

- a. There are practical, workable, and affordable methods for promoting, preserving, and regaining mental health.
- b. It is without conflict that additional work needs to be taken to deal with mental health problems.
- c. Mental health is required to our wellbeing and has both essential and practical benefits.
- d. A complex relationship of individual, social, and internal pressures and vulnerabilities figures out mental health.¹⁶

Mental illnesses can range in severity from moderate to severe and can negatively impact a person's thoughts, feelings, or attitude. The National Institute of Mental Health estimates that nearly one in five people have a mental illness. A number of factors influence mental health conditions,¹⁷ including:

- a. Biological effects include brain chemistry and genes:
 - i. Abuse and trauma are experiences in life.

- ii. A family history of mental health issues.

2. International Treaties and Policies on the Right to Mental Health

Several International treaties guarantee the right to mental health for individuals with mental disabilities. These treaties outline specific rights that States are expected to uphold to ensure the well-being and dignity of those affected by mental health conditions:

- a. UDHR (1948 and its related Treaties)

Article 25 of the UDHR asserts that everyone has the right to a standard of living adequate for the health and well-being of themselves and their families, including essential necessities like food, clothing, housing, and medical care, as well as access to essential social services. Furthermore, the article emphasizes the right to security in the event of unemployment or sickness.¹⁸ The "ICESCR" (1966) under Article 12, recognized the right to enjoy the maximum standard of physical and mental health rights for their betterment. This highlights the commitment to ensuring not just physical health but also mental well-being, emphasizing the importance of mental health as an integral part of overall health and well-being. It underscores the obligation of governments to promote and protect the mental health of their citizens

¹⁵Mental Health Act, 2018, Bangladesh sec 2, sub section 15, 16.

¹⁶World Health Organization, 'Comprehensive Mental Health Action Plan' (2021); Amar Shah, 'Is the Mental Health Review Tribunal Inherently Unfair to Patients?' (2010) 17 Psychiatry, Psychology and Law 25

¹⁷Information about Mental Illness and the Brain <<https://www.ncbi.nlm.nih.gov/books/NBK20369/>>

¹⁸Universal Declaration of Human Rights, UDHR (1948), Article 25

as a fundamental human right. The general comment no 14 of ICESCR¹⁹ mentioned in 34 of legal obligations that, it emphasizes the need to adhere to best practices and international standards, including those outlined in the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. This serves as a commitment to ensuring that individuals with mental illnesses²⁰ receive appropriate and ethical treatment, respecting their rights and dignity.²¹

- b. Moreover, Article 5(iv) of the (ICERD)²² implies that the right to public health, medical care, social security, and social services should be provided without discrimination based on race, color, descent, or national or ethnic origin. This includes individuals with mental disabilities, as they should not face any discrimination in accessing these essential services. The provision underscores the importance of ensuring that individuals with mental disabilities, regardless of their racial or ethnic background, have equal access to public health services, medical care,

social security, and social services. On the contrary, in accordance with Article 7 of the (ICCPR) 1966²³ prohibits the use of torture or cruel, inhuman, or degrading treatment or punishment under any circumstances. This provision is relevant to individuals with mental disabilities as it emphasizes the need to protect them from any form of abuse or mistreatment, whether in medical settings, care facilities, or within the criminal justice system. This article underscores the obligation of states to ensure that individuals with mental disabilities are treated with dignity and respect, and that their rights to humane treatment are upheld. In General Comment no. 20²⁴ it serves as a crucial safeguard against any form of discrimination, neglect, or abuse that individuals with mental disabilities might be vulnerable²⁵ to, reaffirming the principle of their inherent dignity and the importance of protecting their well-being.²⁶

- c. (CRPD), 2006
The (CRPD), contains several articles directly relevant to the rights of individuals with

¹⁹Article 12,14 International Covenant on Economic, Social and Cultural Rights, "ICESCR" (1966)

²⁰Office of the High Commissioner for Human Rights, 'CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)', vol 2000 (2000)
<<https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf>>.

²¹General comment 14(34) of ISESCR, <https://www.refworld.org/pdfid/4538838d0.pdf>,<https://www.degruyter.com/document/doi/10.9783/9780812205381.359/html?lang=en>

²²Article 5(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination

(ICERD1965, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

²³International Covenant on Civil and Political Rights (ICCPR) 1966, Article 7

²⁴Duffy and Kelly (n 10).

²⁵Human Rights Committee's Monitoring of ICCPR Rights, 'A Commentary on the International Covenant on Civil and Political Rights The UN', Cambridge University Press, (2020).

²⁶General comment 20." <https://www.refworld.org/docid/453883fb0.html>

mental illnesses. Article 12²⁷ and the General comment no 1²⁸ emphasizes the right of individuals with mental illnesses to enjoy legal capacity on an equal basis with others, promoting their autonomy and decision-making in all aspects of life, including medical treatment and care.²⁹ Article 25 highlights the right of individuals with disabilities, including those with mental illnesses, to attain the highest standard of health without discrimination. It emphasizes the importance of ensuring access to necessary health services, including mental health care and rehabilitation. Article 26 underscores the right of individuals with disabilities, including those with mental illnesses, to access rehabilitation services and support that enable them to achieve maximum independence and participation in all aspects of life. These articles within the CRPD emphasize the importance of protecting the rights of individuals with mental illnesses, ensuring their equal treatment, access to health services, and support for their full participation in society.³⁰

- d. (WHO), 1948 and Mental Health Action Plan 2020-2030 On April 7, 1948, the United Nations. officially formed the

World Health Organization (WHO) as a specialized organization. Although its early focus was on more general global health issues, the WHO has now emerged as a major force in advancing study, advocacy, and awareness of mental health.³¹ The WHO has played a crucial role in developing policies, programs, and initiatives to address mental health issues globally. Through extensive research, collaborations, and initiatives, WHO has significantly improved awareness, management, and reduced stigma around mental illnesses. The Comprehensive Mental Health Action Plan (2013-2030) is a strategic framework designed to enhance mental health services and support. This plan emphasizes a holistic approach to mental well-being, incorporating facets like knowledge, treatment, safeguarding, and support. It sets specific targets to improve mental health, prevent mental illnesses, and ensure quality care. Key initiatives focus on eliminating negative perceptions, increasing access to mental health services, promoting community-based treatments, and protecting the rights and dignity of individuals with mental disabilities. This strategy is vital for fostering a

²⁷Stephen P Marks and others, "12 - Mental Health and Human Rights from Part III - Contemporary Issues in Psychology and Human Rights", *Cambridge University Press*, (2020), p. 183.

²⁸Ellionior flynn Anna arstien kersaleke, "The General Comment on Article 12 of the Convention on the Rights of Persons with Disabilities: A Roadmap for Equality before the Law", *The International Journal of Human Rights* 1, (2015).

²⁹United Nations Convention on the Rights of Persons with Disabilities.

³⁰The Convention on the Rights of Persons with Disabilities (CRPD), Article 12, 25 and 26, (2006), <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>>.

³¹Organization (n 18).

supportive environment and promoting the rights and well-being of people with mental disorders.³²

3. Bangladesh National Laws and Policies on the Right of Mental Health Based on Mental Health

a. The origin of the Lunacy Act, 1912 and how it became the Mental Health Act, 2018

The Lunacy Act, 1912 for Bangladesh, which was then part of British India which was enacted during the British colonial period. This Act basically produced British colonial legislation and policies to regulate the treatment and care of individuals who were considered to have mental illnesses. It was part of a broader legal framework that governed various aspects of colonial administration, together with healthcare, social welfare, and the management of individuals with mental disabilities. The Lunacy Act of 1912 provided procedures for the detention, care, and legal management of individuals deemed to be "lunatics"; it means unsound mind. It included provisions for inquests and medical certificates to determine the mental state of individuals and to facilitate their fair treatment and duty of care.³³ So, it is important to understand that the term "lunacy" used in the Act was a historical and now outdated term called mental illness. The Act showed the understanding

and attitudes toward mental health dominant during the colonial era. Since Bangladesh achieved independence in 1971, it has passed significant legal reforms and changes in the field of mental health. The Lunacy Act of 1912 has been replaced or amended by more modern legislation, including the Mental Health Act of 2018, which has modern principles of mental care and human rights.³⁴

b. The Constitution of the People's Republic of Bangladesh, 1972

The Bangladesh Constitution does not explicitly address mental health but includes broader rights relevant to it. Article 32 protects the right to life and personal liberty, which can encompass mental health care. Article 27 ensures equal protection under the law, applying to all citizens, including those with mental disabilities. Article 15 mandates the government to safeguard citizens' physical and mental health as part of comprehensive medical care. These provisions collectively imply the government's duty to protect the rights and well-being of individuals with mental health issues, forming a constitutional basis for their inclusion and care.³⁵

c. National Mental Health Strategic Plan 2020-2030

The National Mental Health Strategic Plan 2020-2030 of Bangladesh aims to establish a comprehensive framework to

³²World health Organization, Mental Health Action Plan (2021).

³³The Lunacy Act 1912.

³⁴The Lunacy Act 1912.

³⁵The Constitution of the People's Republic of Bangladesh, 1972.

promote mental health, prevent and treat mental illnesses, and ensure lifelong rehabilitation. It focuses on accessible, community-oriented mental health services using a human rights approach, enhancing existing government programs, and addressing equity, gender equality, empowerment, social and family support, resource augmentation, and participation of individuals with mental illnesses and their caregivers. This plan supports the Sustainable Development Goals (SDGs) and aims for universal healthcare.³⁶

- d. National Health Policy 2011
The National Health Policy 2011 addresses mental health needs by setting nine specific targets to improve mental healthcare services and accessibility. It ensures an effective allocation of the healthcare budget to support mental health services and treatment.³⁷
- e. The Disability Rights and Protection Act of 2013
The Disability Rights and Protection Act of 2013 safeguards the rights of persons with disabilities, including mental disabilities. It prohibits discrimination in all areas of life, promotes inclusivity, and guarantees equal access to healthcare services, including mental health services, for people with disabilities.³⁸
- f. The Mental Health Act of 2018

The Bangladeshi Mental Health Act of 2018 is very pertinent to resolving the difficulties brought on by mental diseases. The Act recognizes the significance of full guidance for those affected by mental diseases by attempting to respect the dignity of people with mental health concerns, ensuring their access to treatment, preserving their property rights, and supporting their recovery. The provisions of the Act 31 sections are essential in regulating and overseeing a variety of areas of mental health care, including the coordination, growth, and expansion of government efforts. The Mental Health Act of 2018 shows the government's commitment to modernizing mental health treatment, expanding support networks, and establishing a far better and more effective system for managing mental diseases by replacing the antiquated Lunacy Act of 1912 in Bangladesh.³⁹

4. Comparison of Right to Mental Health Protection comparison: (India, USA and UK)
Mental health is crucial as it affects everyone. Dealing with stress and depression, especially when feeling isolated, can be challenging. Personal hardships often lead to anxiety and despair, making it vital to encourage open conversations and support. Robust mental health national laws, such as India's Mental Health Act 2017, are crucial for ensuring the

³⁶Government of the Republic of Bangladesh, "National Mental Health Strategic Plan", (2020).

³⁷Government of the Republic of Bangladesh, "National Health Policy", (2012).

³⁸The Disability Rights and Protection Act of 2013.

³⁹Mental Health Act, 2018.

provision of high-quality care and safeguarding the rights of individuals. Historically, India struggled with inadequate legislation and community-based services, but the 2017 Act signifies progress. Many nations still lack proper mental health laws, impacting individuals' personal and professional lives.⁴⁰

This provision highlights the significance of an advance directive under the Act, granting every adult the right to outline their preferred treatment for mental illness and specify their refusal of certain forms of care. The advanced directive comes into effect when the individual becomes incapable of making mental health care decisions and remains applicable until they regain decision-making capacity.⁴¹ This emphasis on personal agency and autonomy is crucial for ensuring that individuals receive care in accordance with their wishes and preferences.⁴² According to India Mental Health Act, 2017 in section (5-13) of chapter (III) mentioned about Advance directive which are

consists of 9 sections. Furthermore, three criteria should be considered for making ADs:⁴³

The India Mental Health Act, 2017 grants individuals with mental illnesses the right to create advance directives, specifying their treatment preferences and nominating a representative.⁴⁴ These directives, validated by a medical practitioner or registered with the Mental Health Board, ensure legal support. Section 5(1) allows any adult to outline their mental health care preferences. Directives can be altered anytime (Sections 5(3) and 8(1)), except in emergencies (Section 5(5)). Disputes are resolved by the Mental Health Review Board (Section 11),⁴⁵ Section 13 provides legal protection for practitioners following valid directives. This framework promotes autonomy, flexibility, and compliance in mental health care planning.⁴⁶

The Landmark cases, *Common Cause (A Regd. Society) v. Union of India and Another (2018) Supreme Court of India, Writ Petition (Civil) No. 215 of 2005*.⁴⁷ It is stated that, in 2018, the

⁴⁰Pooja Sharma, Ankita Singh and Dipanjan Bhattacharjee, "Human Rights of People with Mental Illness: Provisions Made in Mental Healthcare Act 2017", *Indian Journal of Psychiatric Social Work*, Vol. 11, No. 1, (2020), <<http://www.redibw.de/db/ebsco.php/search.ebscohost.com/login.aspx?direct=true&db%3Dcin20%26AN%3D147289023%26site%3Ddehost-live>> NS>.

⁴¹Paul S Appelbaum, "Psychiatric Advance Directives and the Treatment of Committed Patients", *Psychiatric Services*, Vol. 55, No. 7, (2004), <<https://doi.org/10.1176/appi.ps.55.7.751>>, p. 751.

⁴²Daniel L Ambrosini and Anne G Crocker, "Psychiatric Advance Directives and the Right to Refuse Treatment in Canada", *Canadian Journal of Psychiatry*, Vol. 52, Issue 6, (2007), <<https://doi.org/10.1177/07067437070520061>>, p. 397.

⁴³Fiona E. Morrissey, "Advance Directives in Mental Health Care: Hearing the Voice of the Mentally Ill", *Medico Legal Journal of Ireland*, Vol. 55, No. 1, (2010).

⁴⁴Ambrosini and Crocker (n 44); Elena Porcar Rodado, David Peral Sanchez and Marina Gisbert Grifo, 'Advance Directives. Comparison of Current Legislation within the

European Union' *Spanish Journal of Legal Medicine*, (2021), <<https://doi.org/10.1016/j.remle.2020.05.011>>.

⁴⁵(Fiona, 2010; Ministry Of Law And Justice, 2017)

⁴⁶Moffat Maitele Ndou, 'A Comparative Discussion of the Regulation of Mental Health Review Boards in South Africa and the Mental Health Review Tribunal in the United Kingdom', *Comparative and International Law Journal of Southern Africa*, Vol 50, No. 1, (2017), <<https://journals.co.za/content/journal/10520/EJC-b5ef95a79>>; Cognitive Therapy and others, 'Proposal to Amend the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 In' <<http://search.ebscohost.com/login.aspx?direct=true&db=sph&AN=119374333&site=ehost-live&scope=site%0Ahttps://doi.org/10.1016/j.neuron.2018.07.032%0Ahttp://dx.doi.org/10.1016/j.tics.2017.03.010%0Ahttps://doi.org/10.1016/j.neuron.2018.08.006>>; Shah (n 18).

⁴⁷An Analysis of The Judgment of The Supreme Court in *Common Cause (A Regd Society) V Union of India - Vini Singh (2018) 4.2*.

Supreme Court of India delivered a judgment concerning advance directives and noted that 'Section 5 of the Mental Healthcare Act, 2017 recognizes the validity of advance directives for the treatment of mental illness under the Mental Healthcare Act, 2017. The judgment also emphasized the importance of advance directives or living wills, which allow individuals to state their preferences regarding medical treatment and end-of-life decisions in advance. It provided guidelines for the proper execution and recognition of advance directives. This case had significant implications for medical ethics, end-of-life care, and the rights of individuals to make decisions about their own medical treatment, particularly when facing terminal illnesses or irreversible conditions.

The Richardson Report advocates for alignment between the regulations governing mental health treatment and those governing physical health care whenever feasible. However, disparities persist in the treatment of advance directives in mental health compared to physical health care. In the prominent case of *Hargraves v. State of Vermont*, Nancy Hargraves highlighted the fundamental injustice in her ability to choose or refuse life-saving radiation therapy compared to her lack of similar autonomy in deciding whether to take psychiatric medication. In the famous case of *Hargraves v. State of Vermont*, No.2: 99-CV 128

(2001).⁴⁸ Nancy Hargraves's statement emphasizes the unequal treatment between physical and mental health care in terms of decision-making autonomy. In the legal case, the court supported the district court's injunction, noting the defendants' failure to specify consistently the 'program, service, or activity' that they believed would undergo fundamental changes. Additionally, the court ruled that Act 114 breached the advance directive by discriminating between "qualified individuals" based on their mental illness.⁴⁹

So, there are a lot of countries that have mandatory written advance directives in their Mental Health law mandates. India and US are among them. Current analysis has also confirmed that many countries have incorporated a 'mental health review tribunal' within their Mental Health Act. The UK is one of them. In 1983, the Mental Health Act 1983 was introduced, which significantly revised and updated mental health law in the UK. This act continued the provisions Chapter 5 and Article (65-79) for mental health review tribunals. The key role of these tribunals is to review and make decisions about the detention and treatment of individuals under the Mental Health Act, ensuring that their rights are protected and that detention is justified. The Mental Health Act 2007 introduced further amendments which in Chapter 5 Articles (37-38) mentioned to the legal framework, including

⁴⁸Michael Allen, 'Hargrave v. Vermont', (2004), *Psychiatric Services* Vol. 55, No. 9.

⁴⁹Ian Freckelton, 'Mental Health Review Tribunal Decision-Making: A Therapeutic Jurisprudence Lens', *Psychiatry, Psychology and Law*, Vol. 10, (2003), p. 44; East London

NHS Foundation Trust, "Advance Directive for Mental Health What You Need to Know".; Dalia Sofer, 'Psychiatric Advance Directives', *American Journal of Nursing*, Vol. 119, No. 16, (2019).

amended Articles (65,68,71,78,79)⁵⁰ to the criteria for detention and treatment, as well as the rights of patients. Mental health review tribunals continued to play a vital role in this revised legislation. Moreover, there shall consist of two tribunals in the UK, these are⁵¹ English common Case law in order to protect those with mental disabilities: There are a lot of cases are dealt with by the Mental Health Review Tribunal. The landmark case *R (East London and the City Mental Health NHS Trust) v Mental Health Review Tribunal (IH as Interested Party)* stated that, the tribunal has empowered to discharge the patients in Section 72 under The Mental Health Act, 1983 of UK.⁵²⁵³ On the other hand, another landmark case law which was *DJ, R (on the application of) v Mental Health Review Tribunal* stated⁵⁴ that, the standard of proof required in mental health cases is the balance of probability.⁵⁵ The Mental Health Review Tribunal did not err in applying the bare 'balance of probabilities' standard when determining whether the criteria for detention under sections 72 of Mental health Act, 1983. So the patients was discharged.⁵⁶ So, these are all landmark case laws that showed us how to protect the innocent mentally disabled people's rights with speedy trial. So, Mental

health review tribunal plays a vital role in UK.

5. The positive aspects of Mental Health Act, 2018

The (WHO) is increasingly focused on mental health, addressing issues like exploitation of vulnerable individuals and unlicensed mental hospitals. Criminals often exploit those with mental health issues, while mentally disabled individuals may unintentionally commit crimes or suffer harm. Recognizing the need for updated legislation, Bangladesh introduced the Mental Health Act, 2018, replacing the outdated Lunacy Act of 1912. This new law aims to protect the rights and ensure fair justice for people with mental disabilities, marking a significant step forward in safeguarding their well-being and addressing mental health challenges in the country.⁵⁷

Moreover, the Mental Health Act of Bangladesh, which consists of 31 Sections⁵⁸ In Section 2 explained that, the Mental Health Act, 2018, 2(14) defines 'Drug addiction' as the detrimental physical and mental changes stemming from regular substance use or sudden cessation of intake. Section 2(15) clarifies 'Mental illness' as a form of mental disease distinct from drug addiction and mental retardation, as determined

⁵⁰UK Mental Health Act,2007

⁵¹Barry O'Muirithe and Rohit Shankar, 'An Audit of the Quality of Reports to Mental Health Review Tribunals' *Medicine, Science and the Law*, No. 48, (2008), p. 221, <10.1258/rsmmsl.48.3.221>; NSW Health, 'Mental Health Review Tribunal: A Review in Respect of Forensic Patients' 1 <<https://www.health.nsw.gov.au/mentalhealth/reviews/tribunal/Pages/default.aspx>> .

⁵²RAJ Prithivi and Jatin Patil, 'Mental Health Laws in India', *International Journal of Health Sciences*, Vol. 6, No. S1, p. 9775, (2022).

⁵³Simon Brown, Mummery, Dyson, "Appeal of Regina (H) v Ashworth Special Hospital Authority".

⁵⁴*DJ, R (on the application of) v Mental Health Review Tribunal* stated.

⁵⁵*R (DJ) v Mental Health Review Tribunal; R (on the application of N) v Mental Health Review Tribunal (Northern Region) Case 2005.*

⁵⁶Therapy and others (n 48).

⁵⁷World Health Organization, 1948; Bangladesh Mental Health Act, 2018

⁵⁸Bangladesh Mental health Act,2018a

by the overseeing Medical Officer. Additionally, Section 2(16) defines 'Mental disorder' as any clinically recognized symptom or behavior, including mental retardation and drug addiction, which affects an individual's physical and mental well-being, hindering their regular life. Lastly, section 2(17) specifies a 'Psychiatrist' as a doctor who is obtaining a Master's degree in Psychiatry from a government-recognized institution registered by the Bangladesh Medical and Dental Council (BMDC).⁵⁹

The Mental Health Act defines mental illness and emphasizes the role of psychiatrists in diagnosing it. Section 7 mandates the government to establish mental health facilities across Bangladesh, including specialized units for drug-addicted, adolescent, and incarcerated patients. This section aims to aid recovery and reintegration into society. The law's application is illustrated by the case of Oishi, who, despite her mental health and addiction issues, received life imprisonment instead of the death penalty, showing a balance between treatment and accountability. Additionally, Section 12 requires consent for the voluntary admission of adult patients, safeguarding their autonomy.⁶⁰

Under the Mental Health Act, of 2018, medical officers must assess applicants within 24 hours and decide on admission. Voluntary

patients can discharge themselves or refuse treatment, and must be informed about any changes to their admission status. The Mental Health Review and Monitoring Committee reviews patient admissions regularly. Section 14 covers involuntary treatment, allowing admissions initiated by a guardian, law enforcement, or physician. Treatment durations vary from urgent care for 72 hours to long-term care up to 180 days, with extensions if needed. Assessments consider illness severity, attack tendencies, medication reluctance, and risks to safety. Guardians are notified about changes in the patient's status.⁶¹

Therefore, these two Sections, 12 and 14 emphasize that, the Mental Health Act of Bangladesh, 2018, significantly contributes to protecting the rights of mentally disabled individuals. Section 12 ensures that adult patients have the right to provide consent for their admission and treatment, with the option to refuse treatment if they are voluntarily admitted. Additionally, the section highlights the importance of regular review to ensure the well-being and rights of the patients.⁶²

As stated in Section 15, the procedure for admitting mental patients accused of criminal offenses generally involves the steps you mentioned, such that a

⁵⁹Dean A Shepherd Johan Wiklund, Isabella Hatak, Holger Patzelt, 'Mental Disorders in the Entrepreneurship Context: When Being Different Can Be an Advantage', 32 *Academy of Management Perspectives*, (2018); and Susan L Ettner Sarah A. Friedman, a Francisca Azocar, Haiyong Xu, 'The Mental Health Parity and Addiction Equity Act (MHPAEA) Evaluation Study: Did Parity Differentially Affect SUD and Mental Health Benefits

Offered by Behavioral Healthcare "Carve-Out" and "Carve-In" Plans?', (2018), *Drug Alcohol Depend.*

⁶⁰Bari Dhali, 'From Murder to Religion; How Is Oishee Spending Her Days in Jail', *Dhaka Tribune*, (2021).

⁶¹Moin Ghani, 'Right to Liberty', *Ain o Salish Kendra (ASK) A Legal Aid & Human Rights Organisation*, (2006), <<https://www.askbd.org/ask/right-liberty/%0A%0A>>.

⁶²Mental Health Act, 2018, Section 12,14,15

reception order, issued by the magistrate serves as the legal basis for admitting the patient to a mental health facility. This order recognizes the need for psychiatric evaluation and treatment due to the individual's mental state related to the alleged criminal offense. Moreover, while acceptance of admission orders and related matters are governed by rules and regulations established in particular jurisdictions, these rules outline admission criteria and provide guidance on the procedures to be followed during the evaluation and treatment of such patients. If a person commits a criminal offense and if that person is mentally ill, then until such time as his intention and motive can be proved by examination, the magistrate shall order reception and he shall be admitted to a mental hospital and shall be protected under the Mental Health Act, 2018. His case goes on when he recovers. So, it is another positive side to protect mentally disabled people.⁶³

Section 20 of the Mental Health Act, 2018, allows judicial inquiry into an individual's mental status, enabling relatives or guardians to request a court evaluation. If approved, a medical officer must report on the person's mental capacity. Section 21 addresses guardianship, prioritizing parents as guardians for mentally ill individuals. If

parents are unable to serve, the court appoints a suitable guardian, considering the individual's welfare. The Act outlines guardian responsibilities, requiring local authorities to report any neglect to a magistrate. This framework ensures the protection and well-being of mentally disabled individuals, providing clear procedures for their care and guardianship.⁶⁴

Another major positive side is that, Section 25 of the statute empowers the Government, under sections 9 and 10, to designate one or more mobile courts in specified conditions or areas as per the regulations. This power is granted despite any contradictory provisions within the Act. The utilization of this authority is subject to the guidelines outlined in the Mobile Courts Act, 2009. As we know that, we know mobile courts try petty or small cases. So, when they considered the mental health hospitals in Sections 9 and 10, the Mobile Court imposed fines which were mentioned in Section 10. But an unlicensed or licensed mental hospital or unlicensed or unlicensed hospital gives false certificates stating that if he/she is mentally disabled person but they are a sane person. If he commits this intentionally wrongful act, then the criminal case under Section 23. Since, it mentions that this offense is non-cognizable, complex billable. So, these criminal cases go to court.⁶⁵

⁶³Caroline Bersch, 'The State of Mental Health in Bangladesh', (2021), The Borgen Project, <<https://www.bing.com/ck/a?!&&p=3df7e8aec9d2ad99JmItdHM9MTY5ODUzNzYwMCZpZ3VpZD0wOWNiYWYwMS0wYTJlTY1MGYtM2E5Mi1hMDAyMGlxMzY0MGEmW5zaWQ9NTIwMQ&ptn=3&hsh=3&fclid=09cbaf01-0a2b-650f-3a92->

a0020b13640a&psq=the+borgen+project+mental+health&u=a1aHR0cHM6Ly9ib3JnZ

⁶⁴Rahaman, (2021)

⁶⁵Syed A K Shifat Ahmed, Motunrayo Ajisola, Kehkashan Azeem, Pauline Bakibinga, Yen-Fu Chen © Nazratun Nayeem Choudhury, 1 Olufunke Fayehun, Frances Griffiths Bronwyn Harris 5 Peter Kibe Ric hard J Lilford (n 11); Agumasie Semahegn and Bezatu Mengistie,

6. Gaps within Mental Health Act, 2018

There are still difficulties in successfully treating mental health concerns in Bangladesh, despite the country having made significant progress by ratifying the UNCRPD and adopting the Mental Health Act of 2018 into effect.⁶⁶ In Bangladesh, mental health disorders still affect 16.8% of adults and 13.6% of children, for a total prevalence of 21.5 percent, according to the National Mental Health Survey of Bangladesh 2018-2019. The lack of awareness and stigma around mental health remain major barriers to providing sufficient care for people with mental health illnesses, even after the National Mental Health Policy was introduced in 2022. The restrictions or inadequacies in the Mental Health Act of 2018's protection of the rights and well-being of persons who are afflicted with mental diseases may be cited as one of the law's deficiencies.⁶⁷ Can we observe that this Act was written by a lot of researchers. Such as, they are talking about legal rights, economic burdens, and rehabilitation, and there is no adequate training center for protecting mentally disabled people's rights, and also the budget is allocated. 0.5% for health care. But when we can see the Act in Section 2, which basically consists of general definitions. It doesn't contain the actual

mentally disabled people's definitions. What is mental illness, different types of illness or disabilities? It doesn't modify it.

Moreover, Section 6 of MHA, 2018 mentioned the rights of mentally disabled persons in a nutshell. But when we look at our Bangladesh constitution 1972, and also jump into other countries' Mental Health Acts, such as UK and India, they mentioned it with clarifications. So, in my previous Chapter it was mentioned that what rights have to be taken for mentally disabled people in a broader context? Because it's interconnected with mentally disabled people's human rights. So, we shouldn't violate the human rights of mentally disabled people.⁶⁸

The fact that the Mental Health Act of 2018 is the newest but lacks in addressing people's human rights when they have a mental illness is another cause for concern. In every aspect of life, including access to food, shelter, healthcare, and education, people with mental health disorders constantly experience human rights abuses and discrimination. In the case laws, 'Kalandiar Kabir v. Bangladesh and others (54 DLR 258)' it's a Dhaka Law Case Report of Bangladesh,⁶⁹ the court recognized that those who suffer from mental illness frequently endure cruel and inhumane treatment. Most frequently, this led to a direct violation of the right

⁶⁵Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review', *Reproductive Health*, Vol. 12, (2015), <<http://dx.doi.org/10.1186/s12978-015-0072-1>>.

⁶⁶United Nations Convention on the According to, Rights of Persons with Disabilities (UNCRPD), (2006)

⁶⁷Fatema Zahra Ahshan Raisa, "Reshaping Mental Health Legislation in Bangladesh", *The Daily Stars*, (Dhaka, Bangladesh, 15 September 2023).

⁶⁸Mustafa Nowshin, "Violation of Right to Liberty by Involuntary Mental Health Treatment in Bangladesh: A Legal Analysis on Mental Health Act,2018", EWU institutional Repository, (2023), <<http://dspace.ewubd.edu:8080/handle/123456789/4021%0A>>.

⁶⁹Afsana Ferdous Mimi, "Mental Health Act, 2018: Vagueness of Provision and Untold Suggesting of the Practice", *Studies, Society for Critical Legal*, (2020).

to life. These essential human rights for people with mental disabilities were not included in the new Act. So, in this MHA, 2018, we should focus on each and every legal right that has been already mentioned in the previous chapter. It basically talks about the India Mental health Act, 2017 which gives us a good example of utilizing these rights because they possess the same rights as others.⁷⁰

Section 10 of the Mental Health Act, of 2018 allows the government to fine unlicensed mental hospitals up to five lakh takas for first offenses and twenty lakh takas for subsequent ones. This aims to uphold high standards in mental healthcare. However, the murder of ASP Anisur Karim at the unlicensed Mind Aid Hospital highlights concerns about the adequacy of these fines in ensuring justice and addressing human rights violations. Section 12 outlines the process for voluntary admission, requiring adult patients' consent and a mental health assessment by a medical officer within 24 hours. This framework seeks to protect patients' rights and ensure proper care.⁷¹

The Mental Health Act, of 2018, specifies that voluntary admission applications are invalid if the patient meets involuntary admission criteria, with reviews every 15 days for adults and seven days for children. However, ASP Anisur Karim's death at an unlicensed hospital highlights failures in these provisions.

Sections 12 and 14 on voluntary and involuntary admissions lack enforceability. To address this, the Act should incorporate mandatory advance directives, as exemplified by India's Mental Health Act, 2017. This would strengthen patient rights and ensure proper treatment, preventing similar tragedies and improving mental healthcare standards.⁷²

The Mental Health Act, of 2018 in Bangladesh, specifies penalties for infractions and outlines court procedures. Section 23 details fines and imprisonment for violations, while Section 24 mandates that offenses be tried by a magistrate, requiring a government report to proceed. Offenses are non-cognizable, compoundable, and bailable, handled under the Code of Criminal Procedure. Section 25 allows mobile courts to fine unlicensed mental hospitals, but they only handle minor cases, insufficient for serious offenses like the death of ASP Anisur Karim due to hospital negligence. The act's enforcement gaps and societal unawareness about mental health issues hinder justice and rights protection for the mentally disabled. Establishing a Mental Health Review Tribunal, as in the UK, could expedite justice and ensure proper treatment. A societal shift is needed to recognize and support mentally disabled individuals, promoting their rights and dignity. Education and awareness are crucial to changing perceptions and improving mental health outcomes

⁷⁰Anika Nower Suvra, "Legal Remedies Malpractice with Mental Patients", *The New Nation*, (Dhaka, Bangladesh, 2020) <<https://ep.thedailynewnation.com/2020/12/01/index.php>>.

⁷¹Ahmadul Hassan, 'ASP Murder in Hospital: Adabor Police Charges 4 Owners, PBI Acquits Them' *English Prothom Alo* (Dhaka, Bangladesh, May 2023).

⁷²Baroness Hale of Richmond, 'Mental Capacity and Mental Health' 17.

in Bangladesh. Mental Health Act 2018 of Bangladesh is not exhaustive in nature, therefore some drew back have been explained. The government should take the necessary steps to look forward to them.

D. CONCLUSION

This study shows that mental health protection is affecting not only Bangladesh but also various countries, India, the US, and the UK have been reviewed under the discussion. With the existence of international treaties and policies, we know that Mental health rights protection has been one of the major concerns around the world. The study presented in this article has mentioned the beneficial role and deficiency of the Mental Health Act, 2018. Furthermore, the absence of a dedicated mental health authority and inadequate mental health services for the mentally challenged further compound the challenges in accessing mental health services in Bangladesh.⁷³

The Mental Health Act 2018 marks a significant step forward from the outdated Lunacy Act 1912 by addressing mental health issues and protecting the rights of people with mental disabilities. Despite this progress, the new law has serious shortcomings, especially with regard to human rights and international standards. It lacks adequate provisions to protect the legal rights of people with mental disabilities and does not establish clear guidance on advance directives or mental health tribunals. These shortcomings highlight the need for comprehensive legal reform to ensure fair and equitable treatment of people with mental disabilities. Governments must update their laws to ensure they are consistent with best practices and human

rights principles. Moreover, raising public awareness of mental health issues is crucial to reducing stigma and promoting inclusion.

The significance of these results lies in their potential to improve human rights protection and serve as a model for other countries facing similar challenges. Closing these gaps not only benefits those directly affected, but also contributes to a more inclusive and rights-respecting international society. Such reforms are essential to promoting social progress and ensuring that the rights of all people, especially those with mental disabilities, are fully protected and respected.⁷⁴

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⁷³Eshrat Sharmin, 'Contextualizing Mental Health in Bangladesh: The Youth Perspective', *The Daily Star* (Dhaka, Bangladesh, 2022) <<https://www.thedailystar.net/opinion/views/news/contextualising-mental-health-bangladesh-the-youth-perspective-3073396%3E%0A%0A>>.

⁷⁴Kristina Stern and David Hewitt, 'Re-Admission under the Mental Health Act Following Discharge by a Mental Health Review Tribunal' [2014] *International Journal of Mental Health and Capacity Law* 169.

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