

# State of Mental Health Rights in Bangladesh 2024

A human rights report examining major laws related to  
mental health

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## Executive Summary

### Introduction

This report examines four key statutes that affects the human rights of individuals with mental health conditions in Bangladesh and compares them with the current international human rights standards regarding mental health.

The statutes analyzed include: The Mental Health Act 2018, Persons with Disabilities Rights and Protection Act 2013, The Penal Code 1860 and The Code of Criminal Procedure 1898. The publication: Mental Health, Human Rights and Legislation by WHO and OHCHR has been used as a benchmark against which the statutes were compared with.

### Key Findings:

A sample of key findings include:

1. **Budgetary Allocation:** In 2022, a mere 0.5% of the total government health budget was allocated to mental health.
2. **Criminalization of Suicide:** Section 309 of The Penal Code criminalizes attempt to suicide with an imprisonment of up to one year, with fine or with both.
3. **Involuntary Hospitalization and Treatment and Substitute Decision Making:** The Mental Health Act provides for the involuntary hospitalization and treatment of individuals for whom treatment is deemed necessary but who refuses treatment. Individuals without guardians, relatives or a home address are to be transferred to a mental health hospital. Minors can be forcefully admitted and treated against their will, with the only consent required is that of their guardians.
4. **Arrest and Hospitalization of Individuals deemed “dangerous”:** The Mental Health Act calls for police officers to take into custody and hospitalization of any individual who is suspected to have a mental health condition and is deemed “dangerous”. Police officers are not trained in forensic psychology and may not be able to correctly determine dangerousness. The law is vague and does not provide the same level of safeguards and due process rights as individuals without mental health condition.
5. **Guardianship of Property:** The Mental Health Act enables administrators to manage the property of individuals with mental health conditions on their behalf. This is in contradiction of current international human rights standards.
6. **Focus on Institution based treatment:** The Mental Health Act focuses on treating individuals in the hospital which is in contradiction with the community based model as suggested by CRPD.
7. **Outdated and Derogatory Terminology:** Some of the laws including The Code of Criminal Procedure employs outdated and derogatory language referring to individuals with mental health conditions using disrespectful and stigmatizing terms such as “lunatics”, “insane”, “unsound mind” undermining their dignity.

### Legislative Shortcomings:

In comparing the four statutes against the benchmarks outlined in “Mental Health, Human Rights and Legislation”, it is evident that these statutes lack the majority of the essential provisions recommended for comprehensive mental health legislation.

## **Recommendations**

Comprehensive legal reform is needed along with comprehensive change in the mental health care system. Current legislation needs to be repealed, amended and new legislation created until the legal framework in Bangladesh is in line with the current international human rights standards. The mental health care system needs to be reformed from the current institution based model to a community based system.

### **Highlighted Recommendations:**

1. Transition from the current institution based treatment model to a community based mental health care system and crisis support where individuals are treated in the community without coercion and where their human rights are respected.
2. Invest more of the annual state budget into mental health care expanding community based and crisis support services. Crisis support services should provide non-coercive alternative to forced hospitalization and forced treatment.
3. Train health and social care workers including hospital staff in human rights based approach to dealing with individuals with mental health conditions.
4. Abolish the regime of forced hospitalization and forced treatment. Respect the right to informed consent for both adults and minors. Treatment of adults must only be done based on informed consent. For minors, informed consent should be obtained based on the child's maturity and age. Supported decision making should be made available for both adults and minors for making decisions.
5. Abolish the current regime of substitute decision making regarding treatment. Instead allow for supported decision making that considers the wills and preferences of individuals.
6. Similar to substitute decision making in treatment, matters of property and finance should also be managed through supported decision making that considers the will and preferences of the individuals. The current system is based on substitute decision making on the best interests of the individual which goes against current human rights standards.
7. Create laws protecting privacy of individuals with mental health conditions and enforce those consistently holding perpetrators accountable. Privacy protection should cover a wide range of activities and domains including (but not limited to) privacy of: body, home, personal life, family life, digital life and health related information.
8. Decriminalize suicide attempts by completely repealing section 309 of the Penal Code.
9. Prohibit discrimination in insurance
10. Change outdated and disrespectful terminology in legislation to respectful and non-stigmatized language. This includes replacing terms such as lunatics, unsound mind, insane etc.
11. Create laws on hate crimes against individuals with mental health conditions.
12. Develop and maintain ongoing awareness programs that educate the public on the human rights of individuals with mental health conditions.
13. Mandate the right to access health related information from mental health services.
14. Mandate that inpatients be allowed to communicate unhindered and unmonitored from inpatient facilities. Enable access to information from the outside world through newspapers, radio, television and internet.
15. Provide mental health service users, especially inpatients information about their rights.
16. Require that prescription of psychotropic drugs should be allowed only after their short term and long term effects has been described to the individual and after non-pharmaceutical and non-medical alternatives have been informed.
17. Electroconvulsive therapy should be banned for minors and if allowed for adults, it should only be permitted after documented informed consent after the individual is given information on its short term and long term side effects.

18. Psychosurgery should be expressly banned using legislation.
19. Strictly regulate medical research and experimentation.
20. Create a system for honoring advance planning documents.
21. Explicitly ban practices such as seclusion and restraint in the community. In health care settings, seclusion and restraint can only be allowed as a last resort to prevent harm to the individual or others. All cases must be documented for review by an independent monitoring body
22. Ensure that individuals with mental health conditions and their representative organizations can participate in decision making without the need for registration.
23. Create nation-wide information systems that collect a wide variety of data related to mental health and mental health rights.
24. Create a fully independent monitoring body that monitors the human rights of individuals with mental health conditions.
25. Create a code of conduct to hold mental health professionals and hospital staff accountable.
26. Provide for procedural adjustments throughout the judicial process.
27. Create code of conduct for law enforcement and ensure police involvement meets human rights standards.
28. Train justice involved officials such as judges, prosecutors, defense lawyers, law enforcement personnel, prison staff on the human rights based approach to dealing with individuals with mental health conditions for the administration of justice.

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Given the limitations of the study, errors and inaccuracies are bound to be present. Readers are encouraged to view this report in a forgiving light, understanding the constraints under which it was prepared. The inclusion or exclusion of certain statutes, regulations, or legal interpretations should not be construed as a definitive assessment of the current legal framework. Readers are advised to consult legal professionals or authoritative sources for comprehensive legal guidance and interpretation.

## About the Author

**Monirul** (pronounced Moh-nee-rool) is a human rights defender based in Bangladesh. With a deep commitment to promoting and protecting human rights, Monirul works tirelessly to advocate for the rights of those who are often overlooked and marginalized in Bangladeshi society.

As the founder and driving force behind **MindfulRights**, Monirul leads a human rights initiative focused on often ignored areas such as mental health rights, digital and privacy rights, white-collar workplace rights, and the protection of human rights defenders. Through MindfulRights, he aims to bring about meaningful change and foster a just, fair, and equitable society.

Monirul was born and raised in Bangladesh, where he continues to live and work. In his spare time, he indulges in his passion for writing.

## About MindfulRights

MindfulRights is a human rights project founded and run by Monirul. The project's aim is to peacefully protect and promote human rights in Bangladesh. The project focuses on mental health rights, digital and privacy rights, white collar workplace rights and the protection and rights of human rights defenders.

To learn more about the project, please visit [www.mindfulrights.rf.gd](http://www.mindfulrights.rf.gd)

## Terms

**Psychosocial Disability:** The preferred term to describe people with mental health conditions such as depression, bipolar, schizophrenia, obsessive compulsive disorder, catatonia etc. The term “psychosocial disability” describes conditions commonly referred to—particularly by mental health professionals and media—as “mental illness” or “mental disorders.”

The Convention on the Rights of Persons with Disabilities recognizes that disability is an evolving concept and that it results from the interaction between people with impairments and social, cultural, attitudinal, and environmental barriers that prevent their full and effective participation in society on an equal basis with others. The term “psychosocial disability” is preferred as it expresses the interaction between psychological differences and social or cultural limits for behavior, as well as the stigma that society attaches to people with mental health conditions.

A very broad view of disability has been taken here for this report. An individual may have a mental health condition that does not significantly affect their life on its own, but given the stigma surrounding it, the individual may face significant barriers in fully and effectively participating in society on an equal basis with others.

For e.g. An individual may have a vocal tic that involves blurting out profanities. The tic might not happen often during a typical day but in stressful situations the tic might increase in frequency severely. The condition does not significantly affect the individual’s daily life and he wouldn’t consider it as a disability. Nonetheless, the individual might sometimes get refused entry to a cinema, coffee shop or other establishments because of his condition. Such an individual would be considered to face psychosocial disability.

**Mental Health Rights:** Mental Health Rights (also called Mental Health Human Rights among other terms) are human rights concerned with mental health. This includes the rights of individuals who identifies as having one or more mental health conditions, as well as those who do not identify as such but nonetheless are considered to have a mental health condition by society at large.

This is a broader term that includes those whose condition is severe enough to be considered a disability, as well as those whose condition is mild enough to not fall under any definition of disability.

**WHO:** World Health Organization

**OHCHR:** Office of the High Commissioner of Human Rights (also sometimes called OCHR)

**MHHRL:** The short form of the book: Mental Health, Human Rights and Legislation: Guidance and Practice by WHO and OHCHR. The book is a benchmark tool and several key laws touching on mental health rights has been compared with the standards mentioned in this book.

**A Note on Language:** Language is not neutral and is constantly evolving. Terms commonly used to refer to mental and emotional experiences include “mental illness”, “mental disorders”, “mental health problems”, “mental health conditions” among others. Although some people may identify with their diagnosis and the medical terminology used, others may consider certain terms stigmatizing or reject the medicalization of distress, trauma or diversity and use other expressions such as “persons with lived experience”, “consumers”, “service users”, or “psychiatric survivors”. Individuals must be able to decide on the vocabulary, expressions and descriptions of their own experience, situation, or distress.

Throughout this report, the inclusive terms “persons with mental health conditions”, “persons with psychosocial disabilities”, “individuals with lived experience” is used for the sake of simplicity and practicality.

While individuals can self-identify with certain expressions or concepts, human rights apply to everyone, everywhere. Above all, a mental health diagnosis or attribution of a disability status should never define a person: every individual has a unique social context, personality, autonomy, dreams, goals, aspirations and relationships.



## Methodology

The aim of this report was to undertake a critical review of some of the major legislation concerning mental health rights in Bangladesh and assess their compliance with contemporary international human rights standards.

This report was prepared based on desk research and was solely supported by materials available online. Mainly, four major statutes were considered. The statutes were downloaded from the official website of the Ministry of Law, Justice and Parliamentary Affairs of Bangladesh.

The following steps explain the methodology undertaken to produce this report:

### **Research Process**

**1. Identification of Relevant Statutes:** First, several legislation regarding mental health rights were obtained. The following legislation were selected for examination since they were considered major legislation bearing on the rights of individuals with mental health conditions in the country. These major statutes are:

- The Mental Health Act 2018 (called Mental Health Act in short)
- Persons with Disabilities Rights and Protections Act 2013 (called Disabilities Act in short)
- The Penal Code 1860
- The Code of Criminal Procedure 1898

Although there exist other laws that touch on matters concerning mental health rights, they were not considered because of time constraints.

### **2. Consultation of Statutory Texts:**

The statutes were considered in their entirety where available. The text of the laws was obtained from the official Ministry of Law website. Rules and regulations made under these statutes were not considered because of time constraints.

### **3. Benchmarking Against International Standards:**

The book "Mental Health, Human Rights and Legislation: Guidance and Practice" (called MHHRL in short) by WHO and OHCHR served as a benchmark of international human rights standards against which the statutes were reviewed.

The MHHRL is based primarily upon the Convention on the Rights of Persons with Disabilities and provides a comprehensive framework within which mental health legislation in a particular country can be assessed for its adequacy and improved.

### **Limitations of the Study**

**Incomplete Legal Coverage:** This study did not considered all laws bearing upon mental health rights in Bangladesh due to time constraints and the difficulty of finding relevant legal texts online. Laws not found online were not considered.

This may result in an incomplete picture of the total legal framework governing mental health in Bangladesh.

**Exclusion of Rules and Regulations:** The rules and regulations made under the statutes were not considered for examination. Hence, some relevant information regarding the enforcement and functional characteristics of the laws may remain incomplete.

**Dependency on Available Legal Texts:** Only legal texts that were found online were used in the research. If these texts do not present the latest versions of the acts, there would be a deviation between the observations made in this report and the actual legal situation in the country.

**Case Law Not Covered:** Case laws, judicial pronouncements, and administrative practices have all been excluded. Therefore, any differences or developments in this area will not be reflected in this report.

**Extent of Comparative Analysis:** The analysis has been based on comparing principal legislation with international standards as espoused in the MHHRL book. Contradicting provisions were highlighted. Some recommendations have been given but it does not delve into a detailed recommendation for legislative changes

**Incomplete Benchmarking with the MHHRL:** Not all the points highlighted in the MHHRL were analyzed for this report. Some of the points were not analyzed because of time constraints.

### **Challenges Faced**

**Difficulty of Locating some Laws Online:** Some laws and legal material could not be located by a simple Google search. Though they may exist online they were not found during the research.

**Official English translation could not be found for some of the laws:** The official English translation could not be found for some of the statutes. This is a problem because international readers who can speak English and not Bengali will not be able to read the laws themselves and get a full understanding of the legal framework in the country.

Ultimately, the purpose of this report is to start a discussion on the current situation of human rights of individuals with mental health conditions in Bangladesh. By taking the first step and initiating the dialogue, it is hoped that others will carry on this work by conducting more comprehensive research into the laws and human rights violations in practice. Over time, this should lead to an improvement in the mental health rights situation in Bangladesh in the future.

## Background

### Introduction

Bangladesh is a country located in the Indian subcontinent bordering India and Myanmar. The country has a population of roughly 169 million and a GDP per capita income (PPP) of USD 9410 per year. The country is classified as a lower middle income country by the World Bank.

Regarding disability rights, Bangladesh became a signatory to the CRPD on 9<sup>th</sup> May 2007 and ratified the convention on 30<sup>th</sup> November 2007. It signed the Optional Protocol to the CRPD on 27<sup>th</sup> September, 2007 and ratified it on 30<sup>th</sup> December 2008.



### Incidence

According to the National Mental Health Survey conducted between 2018 and 2019 the prevalence of mental health conditions is 18.7% among adults and 12.6% among children. The prevalence of mental health conditions was higher among woman than men (21.5% vs 15.7%). Urban and rural presentation was found to be nearly equal.

The National Mental Health Policy 2022 mentions that according to WHO AIMS, the total number of mental health workers per 100,000 population was just 1.17. The breakdown is as follows:

- 0.13 psychiatrist
- 0.01 Other specialist doctors
- 0.87 mental health nurses
- 0.12 psychologists and other paid mental health workers

Most of the mental health professionals worked at a tertiary care setup situated in large cities.

There are only two specialized mental health hospitals in the country: The National Institute of Mental health and Hospital and the Pabna Mental Hospital. Other than these two hospitals, there are psychiatric units in some of the general hospitals.

There are 31 community based psychiatric inpatient units for a total of 0.58 beds per 100,000 populations and on average patients spend 29 days in the facility. There are 11 community residential facilities in the country and 55% beds in these facilities are for children and adolescents. Of the admitted patients 81% are female and 73% are children.

### Budget Allocation

As per the National Mental Health Policy 2022, the budget allocation for mental health in 2022 was *only* **0.50%** of the total health budget. Of the total mental health budget, mental health hospital expenditures accounted for 35.59%.

## Mental Health Legislative Framework in Bangladesh

For more than one hundred years, the principal mental health legislation in force was the Lunacy Act 1912. The act was created during the time of the British Raj and governed the treatment of individuals with mental health conditions.

Currently, the primary legislation that governs mental health is the **Mental Health Act 2018** (called the Mental Health Act in short). The legislation repeals the century old Lunacy Act. Other than that the **Persons with Disabilities Rights and Protection Act 2013** (called Disabilities Act in short) also covers individuals with mental health conditions amounting to a disability.

The following is a list of legislation related to mental health. This list is not meant to be exhaustive, rather it only lists those legislation that were considered key and has been analyzed in this report.

<u>Legislation</u>	<u>Addressed Topic</u>	<u>Key Points</u>
The Mental Health Act 2018	Management of mental health patients and services	<ul style="list-style-type: none"> <li>-Definition of corresponding terminologies</li> <li>-Precedence over other laws on related issues</li> <li>-Healthcare management, review and monitoring</li> <li>-Rights of mentally ill patients, admissions procedure of different categories of patients, judicial inquiry, rehabilitation, guardianship, protection</li> <li>-Regulations for healthcare centers, fine and penalty.</li> </ul>
Persons with Disabilities Rights and Protection Act 2013	Rights of persons with disabilities.	<ul style="list-style-type: none"> <li>-Rights of individuals with disabilities.</li> <li>-Various types of disabilities mentioned</li> <li>-Penalties and redress for discrimination and other violation of rights of persons with disabilities.</li> </ul>
The Penal Code 1860	Defining crimes and punishments	<ul style="list-style-type: none"> <li>-Criminalization of suicide.</li> </ul>
The Code of Criminal Procedure 1898	Procedures for forensic mental health patients	<ul style="list-style-type: none"> <li>-Judgement of acquittal on the ground of mental illness</li> <li>-Incapability of defense</li> <li>-Care of forensic mental health patients.</li> </ul>

## International Mental Health Rights Framework

When it comes to Mental Health Rights, the key human rights instrument in force globally is the United Nations' **Convention on the Rights of Persons with Disabilities (CRPD)**.

The Convention on the Rights of Persons with Disabilities (CRPD) is an international human rights treaty adopted by the United Nations in 2006. It aims to protect the rights and dignity of persons with disabilities, ensuring their full and equal enjoyment of all human rights and fundamental freedoms. The CRPD promotes accessibility, inclusion, and participation in society, obligating signatory countries to enact and uphold laws and policies that support these principles. It represents a significant milestone in advancing global disability rights and fostering a more inclusive world.

Other than the CRPD, there are two other UN human rights documents concerning persons with a mental health condition. These include:

- **Declaration on the Rights of Mentally Retarded Persons.**
- **Principles for the protection of persons with mental illness and the improvement of mental health care.**

The above human rights documents were created long before the CRPD and the CRPD has been envisioned to supersede these two documents.

Furthermore, there are additional documents such as UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Declaration on the Rights of Disabled Persons and other instruments that has provisions relating to mental health rights.

In this report, the book “Mental Health, Human Rights and Legislation: Guidance and Practice” by WHO and OHCHR has been used as a benchmark for comparing the key laws related to mental health rights in Bangladesh. The book is primarily based on the CRPD.

## Findings

### Ensuring Equality and Non-Discrimination

#### **Prohibition of Discrimination**

**Analysis:** The Mental Health Act does not explicitly provision prohibiting discrimination based on mental health status. The Disabilities Act forbids discrimination against persons with disabilities. However as per the definition of mental disability given in the Disabilities act, only those individuals whose mental health conditions cause substantial impairment in everyday functioning fall under this definition.

**Comment:** As per the MHHRL, individuals with mental health conditions must be protected from discrimination in all areas of their lives. This includes discrimination in mental health services, legal capacity, and employment and so on.

**Recommendation:** Establish legal clarity by making legislative changes to provide protection against discrimination for all individuals with mental health conditions in all domains of life. Regardless of impairment in day to day functioning and regardless of whether they identify as having a mental health condition or not.

#### **Provision of Reasonable Accommodation**

**Analysis:** There are no provisions regarding reasonable accommodations in the Mental Health Act. Similar to what is mentioned in the previous section, The Disabilities Act encourages reasonable accommodation for those with disabilities. However, under the definition of mental disability only individuals with mental health conditions who have a significant day to day impairment are covered.

**Comments:** As mentioned in the MHHRL and in CRPD, reasonable accommodation is a part of anti-discrimination and legislation should be created to uphold individuals' right to reasonable accommodation in all domains of life.

**Recommendation:** Revise legislation to clearly impose a duty to provide reasonable accommodation for individuals with mental health conditions regardless of impairment in day to day functioning and regardless of whether the individuals identify as having a mental health condition or not.

#### **Discrimination in Insurance**

**Analysis:** None of the examined statutes provide any protection against discrimination in insurance. Specific laws on insurance were not examined.

**Comments:** Article 25e of the CRPD requires that States Parties prohibit discrimination against persons with disabilities regarding health insurance and life insurance. The MHHRL argues that insurance companies must not discriminate against individuals due to pre-existing mental health conditions or perceived risk factors, like family history or genetic predisposition. This is a practice—prevalent in many countries where individuals with mental health conditions are denied coverage or have to pay substantially higher premiums simply because they have a mental health condition. As per the MHHRL, insurance premiums must be set based on fair and unbiased statistical estimations and not based on discriminatory attitudes.

**Recommendation:** Bangladesh should legislate and pass laws which expressly prohibit discrimination in all forms of insurance, particularly health and life insurances, based on pre-existing

psychosocial disabilities or mental health conditions. It is important to develop laws that will provide for the fixing of premiums on a non-arbitrary and non-discriminatory basis based on actuarial and statistical evaluation.

### **Fighting Stigma, Prejudice and Discrimination in the Community**

**Analysis:** None of the examined statutes provide for reducing stigma, prejudice and discrimination in the community for individuals with mental health conditions – in the way envisioned by the MHHRL.

**Comments:** Most individuals with mental health conditions spend much of their life in the community, while hospitalization might be only for a few months and sporadic throughout their lives. It is in the community, where such individuals face the most severe of problems since much of one's life involves dealing with other people. And if other individuals have strong stigma, since this is where. They are often subjected to prejudice, discrimination, stigma and even hatred in many cases. These add on top of the distress often experienced by such individuals because of their condition resulting in a higher burden of suffering for such individuals. If such prejudices can be reduced in society, individuals with mental health conditions are likely to suffer less and be able to live a much higher quality of life.

The MHHRL suggests that legislation is key to changing societal attitudes and behavior. Laws that have outdated or derogatory language and are based on the medical model perpetuate stigma and stereotypes. Laws that criminalize suicide or allow coercive practices add to the problem. This in turn feeds into a culture of shame and secrecy that discourages individuals from seeking help and enhances the potential for marginalization and human rights violations.

**Recommendation:** The authorities should legislate making hate crimes against individuals with mental health conditions a part of the criminal law. Reports of such crimes should be promptly investigated and prosecuted.

Additionally, it is recommended that the authorities institute a compulsory school curriculum on mental health awareness and mental health rights founded on the human rights approach. This can help de-stigmatize mental health issues and enable the acceptance of diversity while dispelling myths about mental illness.

The authorities should further have an ongoing program, raising awareness among the general public regarding mental health rights and mental health. A supportive society needs to be created that is more inclusive towards individuals with mental health conditions.

The Code of Criminal Procedure contains a section on “Lunatics”. Lunatics is an outdated and derogatory term that leads to stigma and prejudice. There is also terminology on “unsound mind”, “insane”. These terminology, not only in the Code of Criminal Procedure but in all other laws, needs to be replaced with respectful, non-stigmatized and person centered language.

### **Equal Recognition of Rights within Mental Health Services**

**Analysis:** The Mental Health Act, does not contain any express provision on the equal recognition of rights within mental health services, the way the MHHRL envisions. Nor does any of the other examined statutes.

**Comments:** All users of mental health services must have equal rights within the mental health services, and also equal recognition of rights compared to medical (non-mental) health care service users. As per the MHHRL, legislation should clearly spell out that users of the mental health services

have rights equal to those using other health services. Such that people receiving mental health care do not to face any kind of discrimination based on their mental health diagnosis or capacity..

**Recommendations:** It is necessary to enact provisions in the law that explicitly spell out equal recognition of the rights of all individuals with mental health conditions within mental health services, guaranteeing all patients fair treatment and protection of their rights in gaining access to care.

### **Right to Access Information**

**Analysis:** None of the surveyed legislation have any provisions which provide a right to access information in the way the MHHRL envisions. Specific right to information statutes were not examined.

**Comments:** Everyone has the right to access information about their diagnosis, treatment, prognosis, and other health data. As per the MHHRL this right extends to medical files, records and reports. Information should be available in languages understood by service users. There should be no oversimplification or paternalism in the presentation of information. Service users may allow individuals they trust or independent advocates to access this information on their behalf if they wish. Information should also be available in formats accessible to service users, including Easy Read and other accessible formats (eg for those with visual disabilities). There must be procedures to ensure the privacy and dignity of mental health service users. Complaint mechanisms to an independent authority must be there (along with the option to get redress and justice) if individuals are denied access to their medical information, or other related complaints.

**Recommendation:** The authorities should enact laws incorporating principles of the MHHRL to guarantee that all persons receiving mental health care, as well as their duly authorized representatives, have access to mental health-related medical records. The information must be maintained under the highest international standards of privacy and confidentiality.

Mechanisms should be created for individuals or their representatives to issue complaints to an independent monitoring body or courts if they are denied access to the data. Victims should be able to get compensation as a redress and perpetrators should be held accountable under criminal or civil law where appropriate.

### **Confidentiality and Personal Data Protection**

**Analysis:** Section 9 of the Mental Health Act in Bangladesh addresses confidentiality by specifying that no document or registers relating to the mental illness of any patient in a mental hospital shall be collected or disclosed publicly without the permission of the patient or guardian. Other than that, the Mental Health Act is mostly silent on the matter.

**Comments:** The MHHRL states that users of mental health services have the right to confidentiality and protection of their personal and health-related information. Information disclosed without consent may lead to discrimination in employment, education, health insurance, and migration. Individuals in mental health care settings who are in contact with individuals with mental health conditions such as mental health professionals, nurses, orderlies, administrative and other service staff etc must work under a code of conduct. The code of conduct should have rules including requirements for respecting confidentiality and personal data protection.

There should be stringent procedures in place that allow only those individuals access to data that is required to provide care for the service user. The concepts of human rights, privacy and dignity must be maintained throughout the procedures.



Legislation plays a very important role in ensuring confidentiality by introducing penalties and sanctions against breaches of confidentiality and personal and health related data protection.

In certain cases, disclosure for specific purposes such as planning, improving health care services, or independent human rights monitoring may be legitimately authorized by law. However express documented consent from the individual still needs to be obtained. Also, individuals should not be compelled to disclose their information about their mental health or disability. Where disability status needs to be figured out, a certification of psychosocial disability by a competent professional or authority should be enough.

**Recommendations:** Enact laws that provide for compensation for victims and sanctions against perpetrators for breach of confidentiality under criminal and civil law.

Create a code of conduct that covers all individuals who are likely to come into contact with individuals with mental health conditions as part of their occupational duties. This includes not only mental health professionals but all hospital staff as well.

Establish mechanisms where victims or their representatives can file complaints to an independent monitoring body or to courts to get redress and accountability.

### **Communication**

**Analysis:** None of the statutes examined have any provisions regarding communication that is in line with the vision of the MHHRL.

**Comments:** The MHHRL points out that individuals in mental health facilities and services have the right to communicate with anyone without restrictions. Communication is an essential element for ensuring accountability and preventing human rights violations. It creates an unofficial monitoring system for violence and abuse prevention. Unfortunately, many inpatient mental health services around the world restrict and monitors communication of inpatients. Their communication is often monitored under the "best interest" standard. Intimate meetings with family, including spouses and friends, are frequently restricted.

Law based on human rights should suppress such restrictive communication practices and move towards equal recognition of rights, and move away from the best interest principle. Inpatient mental health services should ensure that outside information is available, including regular and meaningful access to newspapers, television, radio, and the internet.

**Recommendation:** Legislation should provide for the right of individuals with mental health conditions in mental health care facilities to communicate with others. Monitoring of communications must be banned. Individuals should be able to receive newspapers, internet, television, radio or other medium. Individuals must also be allowed to meet privately with their families and relatives or other persons of their choosing. Individuals and mental health facilities that breach these provisions must be held accountable under civil and criminal laws. Mechanisms should be established for individuals to make complaints to independent monitoring bodies and to courts.

### **Receiving Information About Rights**

**Analysis:** The reviewed statutes lack provisions on how individuals with mental health conditions are to be informed about their rights.

**Comments:** Individuals using mental health services are often unaware of their rights and hence they are often vulnerable to human rights abuses. Individuals' needs to be made aware of the rights that they have under international and domestic laws and the ways they can complain if they believe their rights are being violated. This information on rights must be made available in formats and languages which are accessible to the individual, including Easy Read, sign language interpretation, and other alternative communication methods.

**Recommendation:** The laws should make it mandatory that every inpatient should have a leaflet or booklet outlining the rights of service users and mention the mechanism for reporting violations of such rights.

## Respecting Personhood and Legal Capacity in Mental Health Services

### **Respecting Legal Capacity in Mental Health Services**

**Analysis:** The Mental Health Act contains provisions for forcefully admitting and treating individuals with mental health conditions – those for whom mental health treatment is considered necessary but who are refusing treatment.

**Comment:** Since the adoption of the CRPD, many countries have adjusted their laws to clearly recognize the legal capacity of individuals with mental health conditions. These countries often allow those with mental health conditions and psychosocial disabilities to retain legal capacity in decisions concerning treatment and allowing them access to supported decision-making.

Legislation plays an important role in ensuring that mental health services respect the legal capacity of all service users. Respect for legal capacity is not only related to the act of seeking free and informed consent; it is also about the facilitation of appointment of supporters, filing of complaints, participation in clinical trials, and autonomy in decisions related to treatment. The principle of "dignity of risk" underlines the right of a person to decide and undertake risks, recognizing autonomous agency regardless of mental health status.

Legislative and policy regimes should further support models of supported decision-making, accounting for-and catering to-individual differences in decision-making capacity. States and other actors have an obligation to avoid any such limitation that restricts legal capacity based on decision-making skills, mental health diagnosis, or other such grounds.

Legislation has huge potential to begin changing this approach through mandating respect for legal capacity within mental health services, hence giving more weight to autonomy and dignity of persons with mental health conditions. Besides being in total compliance with human rights principles, it also lays the ground for further legal reforms and judicial interventions that uphold these rights.

**Recommendations:** Provide protection in legislation so that legal capacity is respected for individuals with mental health conditions.

### **Abolition of Substitute Decision-Making in Mental Health Services**

**Analysis:** The Mental Health Act allows guardians, relatives or other individuals to make decisions regarding the treatment of individuals with mental health conditions. It also outlines procedures for the property of individuals to be managed by appointed persons. This violates the right to legal capacity and is a form of substitute decision making that needs to be abolished.

**Comments:** The MHHRL emphasizes that individuals with mental health conditions and psychosocial disabilities should have equal right to legal capacity compared to anyone else. Currently

many countries implement a “best interest” principle where the treatment and other decisions regarding an individual are made by someone else. As per the MHHRL, such best interest principle needs to be abolished.

Individuals with mental health conditions (including those with intellectual, developmental and psychosocial disabilities) should retain their full legal capacity. Substituted decision making should be abolished. Instead, those who are not incapable of making decisions, should be offered *supported decision* making. In cases, where supported decision making cannot be performed, decisions needs to be done based on the “will and preferences” of the individuals.

A description of supported decision making and the concept of “will and preferences” can be found in the MHHRL and beyond the scope of this report.

Countries like Colombia, Costa Rica, Georgia, Spain, and Peru have already abolished guardianship instruments and other substitute decision-making regimes.

**Recommendation:** Repeal laws that call for substitute decision making. Instead frame laws to allow for supported-decision making based on the CRPD and the MHHRL.

### **Promotion and Protection of the Right to Free and Informed Consent**

**Analysis:** The Mental Health Act makes provisions for involuntary admission and treatment of those suffering from mental health disorders who refuse to accept the necessary treatment.

**Comments:** As per the MHHRL, individuals with mental health conditions and psychosocial disabilities has the right to free and informed consent regarding treatment.

**Recommendation:** Reform provisions that allow the forceful hospitalization and treatment of individuals with mental health conditions. This should be done in line with the CRPD and the MHHRL.

### **Respect for a Child's Evolving Capacities in Mental Health Services**

**Analysis:** Section 11 of the Mental Health Act, requires that only the consent of guardians or relatives is required in order to hospitalize a minor.

**Commentary:** Children also have the right to participate in all health-care decisions affecting them to the best of their evolving capacities. According to Article 12 of the Convention on the Rights of the Child, States shall respect children's right to express themselves and to participate in all matters pertaining to them, considering their age and maturity.

Legislation should provide a range of measures for health professionals to involve children actively in health care decisions to the best of their ability, particularly where mental health is involved.

Appropriate provision of information allows a child to understand relevant aspects of their health care and make informed decisions where possible. Adolescents need access to essential health information to guide their development and make appropriate health decisions on their own.

Legislation needs to respect the right of teenagers to confidential mental health counseling and advice without parental assent; this, in turn, ensures privacy and increases the willingness of an adolescent to seek help.

**Recommendations:** Reform the law so that, children are given the opportunity to make decisions regarding their mental health care based on their age and maturity. Adolescents should have the right to confidential counseling.

### **Arrest and Forced Hospitalization on the basis of Homelessness and Dangerousness**

**Analysis:** Section 17(1) of the Mental Health Act calls for individuals with mental health conditions who do not have any guardian, relative or address to be transferred to the nearest government mental hospital.

Section 17(2) of the same act calls for any individual who is thought to have a mental illness and if there is reason to consider the individual dangerous than the local police officer must take the individual into custody and transfer them to the nearest mental hospital.

**Comments:** Section 17(1) goes against the principles of informed consent to treatment. An individual must not be forced to be hospitalized or treated against their will.

Section 17(2) is a vague provision. The provision allows for the arrest and involuntary hospitalization of an individual simply on the basis of having a mental health condition and suspecting them to be dangerous. The provision is broad, vague and unclear. The provision might lead to the arrest and hospitalization of individuals who may not have committed any crimes or may not even be dangerous.

They might simply be thought dangerous and mentally ill on the perception of a police officer who considered who may not even be trained in forensic psychology to determine (based on scientific and objective principles) whether the individual is actually dangerous and likely to commit a crime or not.

In any case, the legal provision discriminates against individuals with mental health conditions by not providing the same level of legal safeguards and due process rights as compared to individuals without mental health conditions.

Laws prescribing for arrests of any individual must be based on international human rights standards and must have safeguards to protect against arbitrary arrests of individuals. Only a commission of a crime, including an attempt to commit a crime, can be a criteria for an arrest to be made. This is a provision that has a high likelihood of leading to human rights violations, abuse or miscarriage of justice.

**Recommendation:** These two provisions must be repealed and replaced with provisions that are in line with CRPD and the MHHRL. Consultation with forensic psychologists and CRPD experts should be made before replacing these provisions.

### **Prescription of Psychotropic Drugs**

**Analysis:** None of the laws examined explicitly deal with the prescription of psychotropic drugs.

**Comments:** Because psychotropic drugs can have serious short and long-term risks, according to the MHHRL, countries should enact stringent standards for obtaining free and informed consent prior to their administration. For example, countries could require that consent be written or otherwise documented, such as through video or audio recording. Before consent, individuals must be informed about the benefits and risks of medication, other kinds of treatments available, and non-medical treatment options.

**Recommendations:** Legislation should ensure the written or otherwise documented informed consent, perhaps by video or audio recording, before any prescription of a psychotropic drug is

administered to a patient. It serves to establish that a patient understands the treatment options open for them to make decisions in accordance with their wishes and in their best interests.

### **Electroconvulsive Therapy (ECT)**

**Analysis:** There are no provisions explicitly governing the practice of Electroconvulsive Therapy (ECT) noted in any of the examined legislation.

**Comments:** According to the MHHRL, ECT should only be carried out (if allowed), with the express and documented free consent of that concerned individual. International human rights standards reflect that ECT application without consent, not only means violation of physical and mental integrity, but it also constitutes torture or ill-treatment. Anyone considered for ECT should be fully informed about all the dangers this form of therapy poses for the patient, including possible short-term and long-term negative consequences of the treatment, among them memory loss and brain damage. If it is allowed, ECT should only be allowed under the modified method – that is with anesthesia and muscle relaxants, not only to reduce the discomfort experienced but also to reduce risks. Legislation at the very least must clearly forbid the use of ECT on any child under 18 years of age.

**Recommendations:** Legislation is needed to ban the use of ECT for anyone under the age of 18. For adults, legislation should mandate that ECT can only be initiated with the informed, free and documented consent of the patient after the individual has been made fully aware of its risks and benefits both in the short term and long term. ECT must only be administered in the modified form mentioned above.

### **Psychosurgery**

**Analysis:** None of the laws analyzed establish any prohibition in relation to psychosurgery.

**Comments:** Given the irreversibility of psychosurgery and that its safety and efficacy is questionable and that it possesses serious human rights abuse potential, the MHHRL recommends that States consider prohibiting psychosurgery in its entirety, regardless of method and population.

**Recommended:** The authorities should legislate a complete ban on psychosurgery in Bangladesh.

### **Medical Research and Experimentation**

**Analysis:** None of the laws analyzed include any provisions which explicitly cover medical research and experimentation on persons with mental health conditions.

**Comments:** Article 7 of the ICCPR, has been interpreted by the MHHRL as clearly prohibiting clinical and experimental research without free and full informed consent. Moreover, Article 15 of the CRPD, also considers medical and scientific experimentation without consent to go against the provision of freedom from torture or cruel inhuman or degrading treatment or punishment.

Laws must explicitly outlaw all medical and scientific research, including drug testing and psychiatric clinical trials, without securing informed consent. Discrimination against people with mental illnesses, by denying them the protection on grounds of supposed "lack of mental capacity," should be forbidden. For informed consent to be achieved with supported decision-making, rigorous safeguards must uphold, at all times, and protect the rights and the will and preferences of the individual.

**Recommendations:** Include provisions in legislation that clearly prohibit medical research and experimentation on people with mental health conditions without written or documented free and informed consent. Put in place robust safeguards where informed consent obtained through supported decision making is not abused and medical research and experimentation are carried out under strict ethical and human rights standards.

### **Advance Planning**

**Analysis:** None of the scanned legislation contains explicit provisions on advance planning.

**Comments:** Advance planning, also referred to as advance directives or living wills, is an important practice in mental health treatment where patients express their treatment preferences in advance. Such that if they are ever in a psychiatric crisis and is unable to express their treatment preferences, the advance planning document can spell out their wishes for treatment. The advance planning document can be used to appoint a third person to make decisions on behalf of the individual based on their wills and preferences, including dealing with practical matters such as caring for children, managing property and finances, and refusals or preferences of specific treatments or care.

**Recommendation:** The legislation of Bangladesh should allow for the use of advance planning documents. The process should be in line with the vision of the MHHRL and CRPD. It should be noted that it's the individual who ultimately decides when the advance directive document comes into force.

Advanced planning is a detailed area and it is not within the scope of this report to discuss the topic in full. Interested readers can read the MHHRL to learn more.

### **Crisis Support**

**Analysis:** The Mental Health Act legislates the involuntary admission to mental hospitals for treatment; it does not provide for crisis support consistent with the CRPD and MHHRL.

**Comments:** The MHHRL envisions a system where individuals experiencing psychiatric crisis are given non-coercive support such as community-based crisis support services, telephone hotlines, and respite services that provide 24-hour support and counseling. The aim would be de-escalation of the conflict and prevent hospitalization. This would both protect their human rights and reduce their contact with the police, consequently reducing the risk of death at the hands of police officers. The WHO guidelines on community mental health services provide a model of care that respects legal capacity and human rights of the individual and provides support services while avoiding force and coercion.

**Recommendation:** Legislation should allow for the creation of crisis support services that the MHHRL envisions and move away from the current coercive treatment approach.

### **Eliminating Seclusion and Restraint**

**Analysis:** None of the reviewed legislation provided for explicit prohibition against seclusion and restraint for those suffering from mental health conditions.

**Comments:** According to the MHHRL, the use of seclusion and restraint is a violation of international human rights law and is not compatible with recovery-oriented care. There are physical

and psychological harms, with some incidents resulting in death. Some countries have banned seclusion or solitary confinement where as some countries have banned restraints.

**Recommendation:** The laws of Bangladesh should expressly prohibit restraint in the community, including shackling, and declare it a criminal offense in law.

Seclusion and restraint in healthcare settings must be employed only when such interventions are required to avoid harm to the self or others when all other measures have been exhausted. Cases of seclusion and restraint should be documented and reported to an independent monitoring body. Victims of unjust or unreasonable seclusion or restraint must have the ways open to them to seek redress via established legal pathways.

### **Care Process Redesigning: Transition to Community-Based Human Rights Centered Model of Mental Health Care**

**Analysis:** The Mental Health Act of Bangladesh emphasizes a coercive model of mental health care that involves forced hospitalization and treatment.

**Comments:** In contrast to this, the principles enshrined in the CRPD emphasize a shift from institutionalization to community-based treatment.

**Recommendation:** The Bangladeshi authorities should carry out comprehensive reform of legislation for the whole mental health care system and bring it in line with the model established under the CRPD—community-based and centered on human rights. The care process should be redesigned so that individuals are treated in the community with gradual deinstitutionalization.

### **Decriminalization of Suicide**

**Analysis:** Section 309 of the Penal Code criminalizes attempt to suicide with an imprisonment for a term that may extend to one year, or with fine, or with both.

**Comments:** The MHHRL holds that laws criminalizing suicide or attempted suicide are in contravention of human rights and acts as an obstacle for implementing effective suicide prevention strategies. Furthermore, criminalization tends to obstruct a person from getting necessary support and perpetuates the stigma that those who attempt suicide out of mental distress are somehow to be blamed for their attempts. Many countries have recognized these challenges and moved toward decriminalizing suicide.

**Recommendation:** Given how the criminalization of suicide is a severe violation of human rights, section 309 of the Penal Code should be repealed completely. It does not matter whether this section of the Penal Code is rarely enforced or not. The provision should be eliminated from the statute.

### **Better Financing for Mental Health**

**Analysis:** According to the Mental Health Policy 2022 of Bangladesh, only 0.5 percent of the total health budget is allocated for mental health services.

**Comment:** Under Article 25 of the Convention on the Rights of Persons with Disabilities, persons with disabilities, including those with psychosocial disabilities, have the right to enjoy the highest attainable level of health without discrimination, including access to gender-sensitive health services and health-related rehabilitation.

**Recommendation:** To meet international human rights standards and improve mental health care in Bangladesh, the government should significantly increase its investments in mental health services. Increased funding should focus on the development and scaling up of community-based treatment facilities. This is important to reduce over-reliance on institutional care, moving towards a more balanced model where people with mental health conditions are treated in accordance with their rights and dignity in community-based settings.

### **Training of Health Care and Social Care Providers**

**Analysis:** None of the four statutes analyzed contains any express provision on training health care and social care providers on mental health rights.

**Comment:** The MHHRL places significant importance on training for health care and social care providers. Health care and social care providers' needs to be trained in providing healthcare based on a human rights based model as envisioned by the MHHRL and CRPD.

WHO Quality Rights modules provides the relevant evidence-based material and e-training programs on increasing knowledge and skills for rights-based mental health services.

**Recommendation:** Legislation should be enacted that requires comprehensive training on mental health rights for all health care and social care occupations who are likely to interact with individuals with mental health conditions. This includes mental health professionals, nurses and orderlies, hospital staff etc.

Such training programs should be designed after consultation with persons with lived experience.

### **Right to Actively Participate in Decision-Making**

**Analysis:** None of the reviewed legislation stipulates that an individual with mental health conditions should be part of decision-making, either in policies, plans, or laws. The reviewing and monitoring committee for the Mental Health Act has no reserved seats for persons with lived experience.

**Comments:** The CRPD mentions that states should directly involve persons with disabilities, including those with mental health conditions and psychosocial disabilities, in decision-making processes that affect them. This should apply to all mental health provision, legislation, policies, strategies, and action plans. Effective participation means direct involvement of people with lived experience and their representative organizations, so that their voices are able to be heard without bureaucratic barriers.

**Recommendations:** Legislation needs to clearly provide for the inclusion of persons with lived experience, with a mental health condition and psychosocial disability, and their representative organizations, at all levels of decision-making. This should include broadened consultations and direct participation mechanisms. Organizations that are not registered as a legal entity should be allowed to participate as well.

## **Ensuring Accountability**

### **Information Systems**

**Analysis:** None of the legislation reviewed contains any provisions requiring information systems to collect data on mental health and mental health rights.



**Comments:** The MHHRL points out that legislation should prescribe that mental health services systemically collect, analyze, and disseminate data. All of this information is very important in assessing the performance of services, and to monitor human rights situations on the ground.

International frameworks have been developed in this area. These include the WHO Guidance on community mental health services and human rights indicators under the CRPD by OHCHR. These systems should operate at population, service, and individual levels and within the health sector and beyond.

**Recommendations:** Provision should be made in law for establishing a nation-wide mental health information system. Data should be collected as per the WHO guidance documents. There should be strong and rigorous protection of privacy and strong security measures based on the latest and highest international standards.

### **Independent Monitoring Bodies**

**Analysis:** While the Mental Health Act provides for a mental health review and monitoring committee that makes decisions regarding involuntary treatment and other matters – there are no monitoring bodies mentioned in the act that are in line with CRPD. The Disabilities Act has committees on disabilities but none that focus solely on mental health and that is in line with the vision of MHHRL and CRPD.

**Comments:** As per the MHHRL, monitoring mechanisms are pivotal for ensuring accountability and safeguarding the rights of individuals receiving mental health services. Various frameworks exist internationally, such as mental health review bodies, national human rights institutions, and mechanisms mandated under Article 33(2) of the CRPD. Legislation should define the scope, composition, and independence of these bodies to ensure they operate with institutional, financial, and political autonomy. Options include centralized national bodies or decentralized structures aligned with existing administrative divisions.

These bodies play critical roles:

- Conducting regular, unannounced inspections of mental health facilities, ensuring unrestricted access to all areas and confidential interviews with service users.
- Reviewing incident reports and mortality records to assess institutional practices.
- Providing guidance on reducing coercion and overseeing its implementation.
- Collecting comprehensive data on service delivery, including hospitalization durations, treatment modalities, and mortality rates.
- Monitoring deinstitutionalization efforts and community-based services.
- Overseeing major interventions to ensure they are voluntary and informed.
- Maintaining registers of accredited mental health facilities and enforcing quality and rights standards.
- Proposing penalties for legislative breaches and recommending improvements.
- Reporting findings to government ministers and international human rights bodies.
- Promoting awareness and training on human rights in mental health care.

**Recommendations:** Legislation should mandate the creation of a national mental health rights monitoring body with other such bodies at the district level reporting to the national body. The bodies must be fully independent and advocate for the rights of individuals with mental health conditions. It would be charged with receiving complaints and investigating cases of all human rights violations against individuals with mental health conditions whether the incidents took place in the community or in a mental health care setting. Serious cases that cannot be adequately adjudicated by the body

would be referred to the courts for adjudication and the monitoring body would play a role as an advocate for the individual with the mental health condition.

The monitoring body must have individuals with mental health conditions and individuals with lived experience in their decision making strata.

Other functions of the body could involve the points mentioned in the comments section above.

### **Professional Responsibility and Liability**

**Analysis:** The Mental Health Policy 2022 mentions a code of conduct being developed. It is unclear if such a code of conduct has been created as of the writing of this report. The analyzed laws do not mention any code of conduct.

**Comments:** As per the MHHRL, code of conducts should be created for holding mental health professionals and hospital staff accountable. Without clear guidelines and standards, there can be inconsistencies in practice and accountability. A robust code of conduct is essential to define professional responsibilities, uphold ethical standards, and provide recourse for grievances

**Recommendations:** The authorities should create a comprehensive code of conduct for all professionals likely to come into contact with those suffering from mental illnesses in the course of their duties. This will include:

- Mental Health Professionals: Psychiatrists, psychologists, social workers, counselors, and therapists.
- Hospital Staff: Psychiatric nurses, administrative officers, security personnel, and all staff who play any role in the delivery of care for mental illnesses.

Each code of conduct should:

- Be specific to the roles and responsibilities unique to each profession.
- Introduce the process of complaint initiation, investigation, and adjudication regarding professional conduct.
- Provide an appeal mechanism where an appeal can be made to the national mental health rights monitoring body or escalating the complaint to judicial courts where appropriate.
- Emphasize respect for human right, informed consent, confidentiality, and non-discrimination.
- Provide in clear terms the type of punishment that will be imposed on any violation on the code befitting the severity of the offense.

### Access to Justice

#### **Procedural Adjustments**

**Analysis:** None of the laws examined provides for any procedural accommodations when it comes to individuals with mental health conditions accessing justice.

**Comments:** As per the MHHRL and CRPD, individuals with mental health conditions must be given procedural adjustments so that they can access justice system. There are already guidance in place, such as the International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020).

**Recommendations:** Make legislative reforms to ensure individuals with mental health conditions have equal access to justice.

- **Mandate Procedural Accommodations:** Enact laws that establish an enforceable right to receive individually determined procedural accommodation. These accommodations should be tailored to the specific needs of the individual so they can effectively participate in legal processes.
- **Eliminate Discriminatory Doctrines:** Repeal provisions that prevent individuals with mental health conditions from participating in legal proceedings based on concepts such as “unfit to stand trial” or “incapacity to plead”. Instead offer support so they can stand trial. This is a sensitive area and further guidance can be found by reading the relevant international standard or documents in this regards.
- **Legal Assistance:** Guarantee free legal assistance to those who cannot afford it and their fundamental rights are concerned.
- **Psychosocial support:** Individuals also needs to be provided with psychosocial support so they can effectively participate in the legal proceedings.

### **Police Involvement**

**Analysis:** The laws reviewed is not in line with the MHHRL

**Comments:** The MHHRL recommends that police interventions in crises involving individuals with mental health conditions be regulated. Police involvement must be free from discrimination and discriminatory use of force.

There should be crisis support services that are separate from law enforcement that should approach individuals in crisis without the involvement of the police. Where police involvement is necessary, it must be done in accordance with human rights based practices as outlined in the CRPD and the MHHRL.

### **Recommendations:**

- **Mandatory human rights training:** This will mean codifying into statute a requirement for all police officers to undertake comprehensive human rights-based training for dealing with individuals with mental health conditions. Such training should address trauma-informed practices and de-escalation skills that can be used to effectively manage individuals with mental health conditions in crisis.
- **Create crisis response teams:** These teams should be sent out to deal with crisis involving individuals with mental health conditions. When this is not possible, law enforcement can intervene, but law enforcement must involve the crisis response teams as soon as possible.
- **Enforce Procedural Accommodations:** Ensure that individuals receive procedural and communication accommodations throughout the process.
- **Accountability Promotion:** Develop a code of conduct that guides law enforcement personnel and crisis response teams. The code of conduct must enable a mechanism where code of conduct violations could be adjudicated. Reports of violations should go out to the national monitoring body and in appropriate cases to the judiciary.

### **Training for the Administration of Justice**

**Analysis:** None of the surveyed legislation currently requires training in rights-based mental health for justice officials from all branches of the administration of justice.

**Comments:** The MHHRL recommends the training of justice officials on rights-based mental health approaches. Such training is crucial for all justice officials, including police officers, judicial officers, lawyers, health professionals, forensic experts, victim service professionals, social workers, probation officers, staff of prisons and youth detention facilities, so that they are themselves prepared to respond effectively and respect the rights of individuals with mental health conditions.

**Recommendations:** Ensure in law that training be mandated for all justice officials who may come in contact with individuals with mental health conditions.

The training must be comprehensive, based on the latest human rights based approach to mental health as envisioned by the CRPD and the MHHRL and other international standards.

### **Privacy**

**Analysis:** None of the laws surveyed explicitly protect privacy in regards to individuals with mental health conditions.

**Comments:** The right to privacy is a fundamental human rights for all individuals including those with mental health conditions. This right encompasses various aspects, including but not limited to: personal information, communications, bodily privacy, privacy at home, privacy at work, privacy of family life, privacy of personal, health and rehabilitation information.

Article 22 of the CPRD explicitly protects the privacy of persons with disabilities, including those with a mental health condition. Protection includes personal, health, and rehabilitation information, communications, personal and family life, and protection against unlawful attacks on a person's honor or reputation.

**Recommendation:** Create legislation explicitly protecting the privacy of individuals with mental health conditions in all areas of life. Legislation must also provide sanctions for perpetrators who violate the right to privacy under both criminal and civil law.

Violations of privacy must be reported to the independent monitoring body.

## Additional Recommendations

To the Government of Bangladesh

### **Comprehensive legal reform is needed**

The laws in Bangladesh regarding mental health rights are not in line with the contemporary international human rights standards. A full review of all laws needs to be made and a comprehensive legislative reform is needed.

The book, Mental Health, Human Rights and Legislation by WHO and OHCHR is an excellent resource that has been created to help lawmakers make the necessary legislative legal reforms. The book should be consulted and its recommendations meticulously taken to ensure that legal reforms are in line with international standards.

A large number of changes in law is required and it is beyond the scope of this report to list them all. Nonetheless, several recommendations has been given in the Findings section.

### **Pending legislative reforms**

Legislative changes are bureaucratic by their very nature and takes time. The government of Bangladesh must continue to use existing laws to hold perpetrators of human rights violations accountable. The current legal framework must be used to the fullest extent to align the human rights situation on the ground as closest as possible to the international human rights standards. In practice, this means, ensuring that laws criminalizing suicide are not enforced (until it is repealed) or that restraints in community are prevented and address until legal reforms are made banning the practice.

In additions to the recommendations mentioned before here are some additional recommendations:

### **Recommendations for the Justice System**

- 1. Training and Education:** Provide comprehensive training programs related to mental health human rights standards and the appropriate handling of people with mental health conditions to law enforcement officers, judges, prosecutors, lawyers, and prison staff.
- 2. Mental Health Liaison Officers:** Appoint some police officers as mental health liaison officers to assist during a case concerning a person with a mental health condition and to ensure respect for their rights.
- 3. Legal Representation and Advocacy:** Ensure that those with mental illnesses can access legal representation and advocacy to protect their rights. Provide procedural accommodations throughout the legal process. In cases where the individual's fundamental rights are violated and the individual does not have the financial capacity, provide legal aid.
- 4. Diversion Programs:** Design and implement diversion programs that move individuals with mental health conditions who have committed victim-less crimes away from the criminal justice system into relevant mental health care services.
- 5. Judiciary Guidelines:** Design judiciary guidelines and protocols for judges and prosecutors when handling such cases to ensure that the rights of the mentally ill are observed and treated fairly.

**6. Prison Mental Health Services:** Ensure, through regular mental health assessments of prisons that prison mental health services are operating effectively and efficiently. Train prison staff on how to handle inmates with mental health conditions.

**7. Monitoring and Accountability and Code of Conduct:** Establish independent monitoring mechanisms for ensuring that the practices of law enforcement, judicial, and prison officials adhere to international human rights standards concerning individuals with mental health conditions. Establish codes of conduct for law enforcement officials, judicial officials, and prison officials in terms of their dealings with those having mental health conditions. Ensure accountability in case of violations.

**8. Inter-agency Collaboration:** Ensure collaboration between the justice system and mental health care providers for the integration of programs and services to assist individuals with mental illness.

**9. Public Awareness Campaigns:** Organize public awareness campaigns to break down prejudices against such individuals; increase understanding and empathy in both the community and in the justice system for those who have mental health conditions.

#### To Mental Health Professionals and Hospital Staff

##### 1. Adopt a Human Rights-Based Approach

- **Respect for Dignity:** Ensure that all interactions with individuals with mental health conditions respect their inherent dignity.
- **Informed Consent:** Keep in mind to obtain informed consent for all treatments and interventions, providing necessary information and support for decision-making.
- **Avoid Coercion:** Eliminate the use of coercion, seclusion, and restraint, and adopt alternative practices that respect the rights and dignity of individuals as outlined by the CRPD.

##### 2. Develop and Enforce Codes of Conduct

- **Professional Standards:** Until a government mandated code of conduct is created, establish and enforce professional codes of conduct that align with international human rights standards.
- **Accountability:** Implement own mechanisms for accountability and redress in mental health care settings to address human rights violations.

##### 3. Training and Education

- **Human Rights Training:** Provide ongoing training on international human rights standards regarding mental health rights to all mental health professionals and hospital staff.
- **Public Awareness:** Carry out regular public awareness campaigns to combat stigma, prejudice and discrimination against individuals with mental health conditions in the country.

#### To International Organizations and Donors

##### 1. Support Legal and Policy Reforms

- **Technical Assistance:** Provide technical assistance to the Government of Bangladesh in reviewing and amending mental health laws and policies to align with international human rights standards.
- **Capacity Building:** Support capacity-building initiatives for mental health professionals, legal practitioners, policymakers and other stakeholders.

##### 2. Monitor and Report

- **Independent Monitoring:** Establish independent mechanisms to monitor the human rights situations of individuals with mental health conditions in the country.
  - **Reporting Violations:** Document and report violations of mental health rights to international human rights organization, intergovernmental organizations, international media and provide recommendations for corrective actions.
3. **Funding and Resources**
- **Support Services:** Fund the development and expansion of community-based mental health services in Bangladesh.
  - **Litigation Funding:** Fund civil society organizations engaged in strategic litigation and in providing legal aid to individuals with mental health conditions.
  - **Public Awareness:** Support public awareness campaigns to promote understanding and respect for the rights of individuals with mental health conditions.
4. **Advocate:**
- **Advocate for mental health rights in the International Community:** Individuals with mental health conditions in Bangladesh are an extremely marginalized demographic and often do not have anyone to advocate for their rights. Advocate for their rights at international forums such as the United Nations and its entities, relevant international organizations and other relevant bodies.
  - **International Media Exposure:** Bring human rights violations to the international spotlight, by providing publicity to topics regarding mental health rights in Bangladesh and to individual stories of human rights violations. International media exposure can also provide protective publicity by preventing and stopping human rights violations against individuals.

## To Civil Society Organizations

1. **Advocacy and Awareness**
- **Advocacy Campaigns:** Advocate for the rights of individuals with mental health conditions and the reform of mental health laws, policies and practices.
  - **Awareness Programs:** Conduct regular and ongoing awareness programs to educate the general public about mental health rights and reduce prejudice, stigma and discrimination.
2. **Legal Support and Assistance**
- **Legal Aid:** Provide legal aid and support to individuals with mental health conditions to ensure their rights are protected and upheld. This is especially important for individuals facing fundamental human rights violations since many individuals with mental health conditions do not have the financial means, knowledge of the legal system or knowledge of their rights and might not have the courage to seek accountability and justice. For these individuals psychological support is needed in addition to legal so they can continue to participate in their legal cases.
  - **Strategic Litigation:** Engage in strategic litigation to challenge laws that contradict contemporary international human rights standards regarding mental health.
3. **Monitoring and Reporting**
- **Rights Violations:** Monitor and report violations of the rights of individuals with mental health conditions, and advocate for holding perpetrators of human rights violations accountable.
  - **Collaboration:** Collaborate with international organizations, donors, and other stakeholders to promote and protect mental health rights in Bangladesh.

## Call for Further Research and Data Collection

This report is not comprehensive and provides only a small sample of the laws related to mental health rights in Bangladesh. It focuses on the analysis of four key laws.

Several important laws were not included in this report, such as The Police Ordinance, The Bangladesh Jail Code, and laws regarding divorce that touch on mental health rights. There may be other statutes, regulations, and legal instruments affecting the rights of individuals with mental health conditions that remain unexamined due to time and resource constraints.

Future research should expand on this initial work by undertaking a comprehensive analysis of all relevant legislation in Bangladesh. This would involve identifying and reviewing the full range of laws affecting mental health and ensuring a thorough evaluation of the legal framework governing mental health rights in the country.

Personal narratives are crucial for understanding the actual human rights situation on the ground. It is essential to identify victims of human rights violations, gather and share their stories to give a voice to the voiceless, and provide a thorough picture of the human rights situation for individuals with mental health conditions.

Robust data collection is vital for monitoring and improving the human rights situation for individuals with mental health conditions. Efforts should focus on developing mechanisms to systematically gather data on human rights violations and thereby creating reliable statistics. This data can then be used to make policy decisions and monitor the human rights situation.

This report is meant to serve as a starting point and start the conversation regarding mental health rights in Bangladesh. By taking this step, it is hoped that others will do more comprehensive work regarding mental health rights in the country thus ensuring that there is real and meaningful changes on the ground.



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