

Eligibility Criteria for the Entrance to the Judiciary in Bangladesh: A Review with Reference to the Legal Instruments Regarding the Persons with Disabilities to be Appointed in Subordinate Courts

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Abstract

Despite the constitutional and legal guarantee of the right to equality in public employment, the Bangladesh Judicial Service Commission Rules 2007 (BJSC Rules 2007) does not permit physically challenged person entrance to the Judicial Service of Bangladesh. Against this backdrop, this article extensively researches the relevant legal instruments governing the right to equality in public employment in Bangladesh. Eventually, it finds that the denial of the entrance of physically challenged persons to the Judiciary constitutes a violation of their constitutionally and legally protected right to equality. Therefore, this article argues for the removal of the disqualifying rules. Simultaneously, it suggests, amongst others, the opening of placements for physically challenged persons at the Judicial Service of Bangladesh.

1. Introduction

Bangladesh Judicial Service Commission (hereinafter BJSC) has the obligatory duty to examine the person's intellectual abilities, analytical skills, and proficiency in law for appointment to the post of Assistant Judge in Bangladesh Judicial Service.¹ BJSC runs its function under the BJSC Rules-2007². The BJSC's rule specifically defines that no medically disqualified or unfit person shall be appointed to the Judiciary of Bangladesh.³ It violates the right to equality, equality of opportunity, and employment. A person with physical shortcomings but possesses the qualification to be appointed to Judiciary must be given the same opportunity to be employed as others, guaranteed by the constitution and domestic and international laws related to the right of persons with disabilities. Also, state practice makes this right an extensive example. A person's blindness or physical disabilities is not a disqualification for appointment as a judge⁴ if the concerned authority provides them reasonable accommodation at the workplace, constructing the courtroom by following the Building Construction Act, 1952 and National Building Code 2008 which give accessibility to disabled persons in public establishments. Ensuring the rights of physically challenged persons to be appointed in Bangladesh Judicial Service, this paper analyzes BJSC Rules-2007, The Constitution,⁵ Domestic laws, United Nations Disability Inclusion Strategy⁶, and State

¹Bangladesh Judicial Service Commission (bjsc.gov.bd), available at < <http://www.bjsc.gov.bd/> > accessed 28 February 2023.

² Bangladesh Judicial Service Commission, Statutory Regulatory Order No. 9-Act 2007; 16 January 2007.

³ Ibid s 5 sub-s 4(a), 4757

⁴ *Surendra Mohan vs State of Tamil Nadu* [2019] Supreme Court of India, Civil Appeal No. 83 of 2019.

⁵ *Constitution of the People's Republic of Bangladesh* [Bangladesh], adopted on November 4, 1972, effected on December 16, 1972.

⁶ United Nations, 'United Nations Disability Inclusion Strategy' (Disability Inclusion Strategy, October 2021), available at < <https://www.un.org/en/content/disabilitystrategy/> > accessed 28 February 2023.

Practices. After analyzing the legal instruments, the paper concludes that physically challenged persons, if capable, have constitutional rights, legal rights under domestic laws, and international legal rights to be appointed in Bangladesh's Judicial Function. Persons with disabilities may have all the qualities of a judge, and if so they must be allowed to take the job of a judge.

2. Analysis of BJSC Rules-2007

Medically disqualified persons are excluded by the Medical Board of BJSC and shall not be eligible to be appointed in the Judiciary of Bangladesh.⁷ On the contrary, prior section 4 of BJSC Rules—2007⁸ stated that people should be appointed in the Judiciary to fulfill the purpose of article 29(3) of the constitution. This article expresses the equality of opportunity in public employment, and it enables the State to make special provisions in favor of any backward section of citizens and secure their adequate representation in the service of the republic⁹. In *AKM Fazlul Haq v Bangladesh* (2015), the High Court Division observes that there shall be equality of opportunity for all citizens in public employment, stating that persons placed in the same class or category are to be treated equally and cannot be discriminated against merely on the ground of their placement.¹⁰ In another case, *Afsar Ali Chowdhury v Bangladesh* (1991), it was held that equality should be ensured between citizens or persons of the same footing.¹¹ By analyzing BJSC Rules 2007, the judgment of AKM Fazlul Haq and Afsar Ali Chowdhury cases, it is established that who possess the same qualification shall be deemed as the same class and enjoy equal rights as well, as no discrimination should be done merely on the ground of placement. If a person, in spite of disability, may fulfill the basic criteria to be appointed in Judiciary prescribed in section 5, sub-section 1(a)(b), which states that who have obtained not less than 2nd class in LL.B or not less than 2nd class in LL.M degree from any recognized university and does not exceed 30 years of age,¹² they shall be treated as the same class and eligible for recruitment. BJSC Rules 2007 declared the prime criteria, which shall be a real sense of equality irrespective of disability. But the medical criteria of BJSC violate the norms of equality, equality of opportunity, and the right to employment.

3. BJSC Rules 2007 'The Dream Destroyer'

In *BLAST and others v Bangladesh and others* [*JSC Disability Discrimination' Case*], Shapan Chowkidar was a visually impaired person. Despite being visually impaired, he completed all his educational qualifications with star marks. He earned an LL.B. and LL.M. degree from the University of Dhaka and enrolled as an advocate by passing the Bangladesh Bar Council Examination. He participated in all examinations with the help of aid. In spite of his outstanding qualification in his academic career, BJSC refused to allow him to sit for the judiciary examination on the ground of disability. The High Court issued a rule to the respondent to show cause why certain provisions of BJSC Rules 2007 should

⁷ See (n 3).

⁸ Bangladesh Judicial Service Commission (n 2) s 4, 4756.

⁹ Constitution of Bangladesh (n 5) art 29(3)(a).

¹⁰ *AKM Fazlul Haq v Bangladesh* (2015) 67 DLR 178, 182.

¹¹ *Afsar Ali Chowdhury v Bangladesh* (1991) 593, 595.

¹² Bangladesh Judicial Service Commission (n 2) s 5 sub-s 1 (a)(b), 4756.

not be declared unconstitutional to the extent that they are inconsistent with the fundamental rights of persons with disabilities to equality, equality of opportunity, and the right to a profession.¹³

In Sudip Das's writ petition, who is also visually impaired, graduated with LL.B. from the University of Chittagong and achieved all the educational qualifications to be appointed in Bangladesh Judiciary, he was denied the chance to sit for the Judicial Services Examination based on his disability.¹⁴

By denying Shapan Chowkidar and Sudip Das, who proved their qualification to be appointed to the Judiciary, BJSC violated their legal rights to be employed. BJSC may have its own service rules and restrictions in appointments, but those must be reasonable. In *Oali Ahad v Bangladesh* case, High Court Division held that restriction must be objective, standard-based, and reasonable.¹⁵ BJSC Rules 2007 is not objective and standard based; rather, it treats the person on the basis of disability, which constitutes a violation of the principle of equality, equality of opportunity, and right to employment.

4. Constitutional Rights of Physically Challenged Persons to be Employed in Judiciary

4.1 Fundamental Rights Relating to the 'Right to Equality in Public Employment

Articles 27, 29(1), and 40 of the constitution of Bangladesh, respectively, express equality before the law¹⁶, equality of opportunity in public employment¹⁷, and the right to enter any lawful profession or occupation¹⁸ and no discrimination on the ground of mere placement is the real sense of equality¹⁹. Articles 28(1), 28(3), and 29(2) highlight no discrimination on the ground of placement in respect of any employment or office in the service of the republic. In the case of *Bangladesh Biman vs. Rabia Bashri Irane*, Md Ruhul Amin, Justice of Appellate Division of Bangladesh Supreme Court, while interpreting article 28 of the constitution, observed that the matter of fixing the age of retirement of the stewards and stewardesses being gender-based is discriminatory and violation of article 28 of the constitution.²⁰ The aforementioned articles are the fundamental rights guaranteed by the constitution, and the laws, rules, or regulations inconsistent with the provisions of fundamental rights shall be declared void to the extent of the inconsistency.²¹ Therefore, the constitution gives the right to all citizens, irrespective of any kind of disability, to be employed in the service of the republic on the basis of equality, equality of opportunity, and right to employment.

¹³ *BLAST and others v Bangladesh and others* [‘JSC Disability Discrimination’ Case] [2010] Writ Petition No 2867 (HCD) (Pending hearing) <<https://www.blast.org.bd/issues/air/216>> accessed 28 February 2023.

¹⁴ Md. Abdur Razzak, ‘Can we make our justice system disabled -friendly?’ The Daily Star (Dhaka, 12 November 2019) <www.thedailystar.net/law-our-rights/news/can-we-make-our-justice-sys> accessed 28 February 2023.

¹⁵ *Oali Ahad v Bangladesh* (1974) 26 DLR 376.

¹⁶ Constitution of Bangladesh (n 5) art 27.

¹⁷ *ibid* art 29(1).

¹⁸ *ibid* art 40.

¹⁹ *AKM Fazlul Haq case* (n 10).

²⁰ *Bangladesh Biman vs Rabia Bashri Irane* (2007) 55 DLR (AD) 132.

²¹ Constitution (n 5) art 26.

4.2 Fundamental Principles Relating to 'Equality of Opportunity

Article 19 of the constitution expresses the State's responsibility to ensure equality of opportunity and remove all kinds of social and economic inequalities.²² The preamble of the constitution of Bangladesh expresses that the society will be free from exploitation, fundamental human rights and socio-economic justice shall be secured for all citizens²³, and the preamble is part of the constitution.²⁴ Fundamental principles of state policy obligate the State to take positive action to secure equal opportunity for all citizens. Although fundamental principles are not judicially enforceable,²⁵ no one can make any provision of laws by violating fundamental principles. If it happens, the provision shall be declared void under Article 7 (2) of the constitution.²⁶

4.3 Delegate the Power to the State for making Special Provisions in favor of Disabled Persons

Articles 28(4) and 29(3)(a) of the constitution delegate the power to the State to make special provisions in favor of backward sections of citizens for their advancement and securing their adequate representation in the service of the Republic. 'Backward classes of people are those who are underprivileged and marginalized.'²⁷ Persons with Disabilities do not get equal rights and opportunities economically or socially. They are underprivileged and marginalized. Therefore, they are backward sections of the citizen. The State has been delegated the power to make any special provision in its favor by the constitution. The State must perform this duty appropriately so that disabled persons can easily access their legally protected equal rights to be employed in the service of the republic. Therefore, the constitution gives the right to physically challenged persons to be appointed in the Judiciary of Bangladesh based on the principles of equality. Besides, the constitution has ensured no discrimination on the grounds of placement.

5. Statutory Rights of Persons with Disabilities to be Employed in Judiciary

The constitution of Bangladesh delegated legislative power to the parliament.²⁸ Parliament has enacted an act to protect the rights of disabled persons called the Rights and Protection of Persons with Disabilities Act, 2013²⁹ (hereinafter RPPDA-2013). The Act gives the right to all persons with disability to employment in public and private sectors³⁰, and they have the right to get reasonable accommodation

²² Ibid art 19 cls 1, 2

²³ Constitution (n 5) Preamble, Para 3

²⁴ *Anwar Hossain Chowdhury v Bangladesh* [1989] BLD (Special Issue) 1, 41 DLR (AD) 165 [1989]

²⁵ Constitution (n 5) art 8(2)

²⁶ Constitution (n 5) art 7(2)

²⁷ 'Definitional Issues' (Defining Backward Class, 25 June 2017), available at < <https://blog.forumias.com/defining-backward-class/>> accessed 28 February 2023

²⁸ Constitution of Bangladesh (n 5) art 65(1)

²⁹ Rights and Protection of Persons with Disabilities Act 2013, [Bangladesh] Adopted on 3 October 2013

³⁰ Ibid s 16(1)(i)

at the workplace.³¹ Section 35(1) prohibits the State from depriving any person on the ground of disability from engaging in any suitable work if they are capable.³² The Act provides the remedy to those who face discrimination on the ground of disability.³³ High Court issued a rule on the respondent to activate section 36.³⁴ The Act created a National Coordination Committee, which is responsible for deciding whether persons with disabilities can be employed. Committee's decision shall be deemed final.³⁵ And for the protection of the rights of disabled persons, the committee may give order and advice over any state organization, constitutional organization, government, or non-governmental institution.³⁶

The Act reflects equal rights to be employed, reasonable accommodation for physically disabled persons, and non-discrimination on the basis of disability. It provides the remedy for violation of these principles.

6. United Nations Disability Inclusion Strategy

6.1 Introduction of The Strategy

United Nations states its strategy for the rights of disabled persons through the Convention on the Rights of Persons with Disabilities and other international human rights instruments, as well as in achieving the Sustainable Development Goals.³⁷ Secretary-General of the UN, Antonio Guterres, said, "I want the United Nations to lead by the example and invite you to join me in moving decisively to achieve the goals of the United Nations Disability Inclusion Strategy." Persons with disabilities should be considered in all our work – this is the first track.³⁸ Persons with disabilities should be actively involved in what general people do, and they should be allowed to access the buildings and facilities, workspaces, information and communications, conferences, and events. They should have specific measures, equipment, and services to achieve it.³⁹

6.2 United Nations Convention on the Rights of Persons with Disabilities or UNCRPD

UNCRPD stated that state parties should ensure and promote all human rights and fundamental freedoms for all persons with disabilities. But there shall be no discrimination based on disability.⁴⁰ Article 27 gives the right to persons with disabilities to get reasonable accommodation in the workplace as well.⁴¹

31 Ibid s 16(1)(m)

32 Ibid s 35(1)

33 Ibid s 36(2)

34 BLAST, NGDO and NCDW v Bangladesh and Others [2015] Writ petition no 5025 (HCD)

35 (n 29) s 35(2)

36 Ibid s 18

37 United Nations, United Nations Disability Inclusion Strategy, available at <https://www.un.org/en/content/disabilitystrategy/> accessed 28 February 2023

38 Twin Track Approach, see (n 37)

39 Inclusiveness, see (n 37)

40 UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, art 4

41 Ibid art 27

In the case of *Nyusti and Takacs v Hungary* concerning UNCRPD, it was held that the failure to provide unimpeded ATM access to visually disabled clients constituted discrimination under the Convention on the Rights of Persons with Disabilities.⁴² CRPD Committee's recommended that the Hungarian government provide regular training to judges and other judicial officials to adjudicate cases in a disability-sensitive manner.⁴³ Suppose they are given the opportunity to participate effectively in a free society. In that case, the development of personality, talents, creativity, as well as mental and physical abilities shall be enriched as per article 24 of UNCRPD.⁴⁴

6.3 Sustainable Development Goals (SDG)

United Nations announced Sustainable Development Goals⁴⁵ in 2015; the Sustainable Development Goals are a set of 17 specific targets. Goal 10 expresses eliminating inequalities within countries and reducing them. The policy should be universal for paying attention to the needs of disadvantaged and marginalized populations.⁴⁶ Disabled persons are disadvantaged and marginalized people. Distinction based on age, sex, disability, race, ethnicity, origin, religion, or economic or other status shall be reduced by SDG policy.⁴⁷

Therefore, two strategies of the United Nations, which are UNCRPD and SDG, ensure rights to persons with disabilities on the ground of no discrimination policy, giving reasonable accommodation principle as well as removing the inequalities strategy.

6.4 Obligatory duty of Bangladesh as a party of the United Nations Disability Inclusion Strategy

Article 25 of the constitution of Bangladesh expresses respect towards international laws and United Nations Charter⁴⁸. Bangladesh is a member of the United Nations.⁴⁹ Consequently, following the rules of the United Nations and international law is Bangladesh's constitutional duty. Furthermore, Bangladesh

42 *Nyusti and Takacs v Hungary*, Merits, Communication No 1/2010, UN Doc CRPD/C/9/D/1/2010, IHRL 3830 (CRPD 2013), 16th April 2013, United Nations [UN]; Committee on the Rights of Persons with Disabilities [CRPD]

43 Professor Anna Lawson, 'Judges, Domestic Case Law & the UN CRPD' (Centre for Disability Studies, 9 December 2018), available at < <https://disability-studies.leeds.ac.uk/category/blog/>> accessed 28 February 2023

44 See (n 41) art 24

45 United Nations, 'The Sustainable Development Agenda' (Sustainable Development Goals), available at < <https://www.un.org/sustainabledevelopment/developmentagenda/#:~:text=The%2017%20Goals%20were%20adopted,the%20speed%20or%20scale%20required> > accessed 28 February 2023

46 SDG academy, '10 Reduced Inequalities' (SDGacademy), available at < <https://sdgacademy.org/goal/reduced-inequalities/>> accessed 28 February 2023

47 United Nations Office for Outer Space Affairs, 'Reduced Inequalities' (Sustainable Development Goal 10: Reduced Inequalities), available at < <https://www.unoosa.org/oosa/en/ourwork/space4sdgs/sdg10.html#:~:text=Sustainable%20Development%20Goal%2010%20aims,other%20status%20within%20a%20country.>> accessed 28 February 2023

48 Constitution of Bangladesh (n 35), art 25

49 United Nations, 'Bangladesh marks 40 years as Member State of the UN' (UN News, 26 September 2014), available at < <https://news.un.org/en/audio/2014/09/592702>> accessed 28 February 2023

ratified UNCRPD⁵⁰ and committed to achieving Sustainable Development Goals.⁵¹ As a ratified state of the Convention, Bangladesh must perform such conventional provisions.

7. International Bill of Human Rights (The Armor to Protect the Human Rights of Physically Disabled Persons)

The International Bill of Human Rights is the legal instrument to protect human rights worldwide, irrespective of race, caste, sex, disability, religion, or any other barriers. It is the main source of internationally recognized human rights. There are mainly three components of the human rights bill. 1. Universal Declaration of Human Rights (UDHR),⁵² 2. International Covenant on Civil and Political Rights (ICCPR),⁵³ 3. International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵⁴ In 1948, a bunch of human rights were declared which are applicable universally. Among 30 articles of UDHR, article 2 prohibits distinction based on race, color, sex, language, religion, political or another opinion, national or social origin, property, birth, or another status and ensures everyone is entitled to all the rights.⁵⁵ This article uses the term 'another status of distinction.' Directly the term 'disabled person' has not been cited in the article, but the term 'disability' shall be introduced in 'another status of distinction.' Article 23(1) gives all people the right to work and free choice of employment.⁵⁶ Article 3 of ICCPR states that the state parties shall ensure equal civil and political rights.⁵⁷ On the other hand, article 6 of ICESCR also imposes the obligatory duty on state parties to ensure the right to work, the right to live by work and right to choose work freely.⁵⁸ Thus UDHR, ICCPR, and ICESCR recognize that everyone has the right to work and the freedom to choose employment, and no discrimination can be made on the ground of any kind of distinction.

Bangladesh ratified ICCPR on 06 Sep 2000.⁵⁹ Subsequently, Bangladesh ratified ICESCR on 05 Oct 1998.⁶⁰ As a ratified state, Bangladesh is bound to follow the provisions regarding the right to employment for all persons, including persons with disability.

50 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, signature date of Bangladesh on 9 May 2007 and ratification date on 30 November 2007

51 United Nations, 'Voluntary National Review 2020' (Sustainable Development Goals Knowledge , Bangladesh), available at <<https://sustainabledevelopment.un.org/memberstates/bangladesh#>> accessed 01 March 2023

52 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

53 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

54 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

55 See (n 53) art 2

56 *ibid* art 23(1)

57 See (n 54), art 3

58 See (n 55), art 6

59 United Nations, 'International Covenant on Civil and Political Rights' (United Nations Treaty Collection, 16 December 1966) see list <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en> accessed 01 March 2023

60 United Nations, 'International Covenant on Economic, Social and Cultural Rights' (United Nations Treaty Collection, 16 December 1966) see list<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en> accessed 01 March 2023

8. State Practice to appoint Physically Challenged Persons in Judiciary

In the USA, Justice Richard Bernstein, who was visually impaired, became the first blind justice to the Michigan Supreme Court in November 2014.⁶¹ He has delivered judgment in 26 cases along with six other judges.⁶² He is assisted by an assistant to serve judgment. He fought for disabled people's rights as an attorney heading the public service division of The Sam Bernstein Law Firm in Farmington Hills, Michigan. Justice Zak Yacoob, a blind person, became a Justice of the Constitutional Court in South Africa.⁶³ This practice is also seen in Indian Subcontinent. Brahmananda Sharma is a visually impaired judge of Rajasthan.⁶⁴ Judge T Chakkaravarthy became a visually-impaired judicial officer in Tamil Nadu in 2009.⁶⁵ Yousaf Saleem became the first visually impaired judge in Pakistan.⁶⁶ Those judges successfully perform their judicial function to ensure justice. They exercise judicial function with the help of aid or scribe, clerk, or other assistance. Visual impairment is the most critical disability to be appointed in the Judiciary. Despite that disability, the State helped them overcome the barrier and allowed them to be appointed to Judiciary. In a landmark case *Surendra Mohan vs. State of Tamil Nadu* (2019), the apex court of India stated that blindness and disability are no bar to becoming a judge. Supreme Court of India ruled that a person's blindness or physical disabilities is not a disqualification for appointment as a judge.⁶⁷ Suppose India, Pakistan, and South Africa can appoint physically disabled persons to judicial service. In that case, Bangladesh also has the capability to appoint them due to having a stronger economic structure and social infrastructure and following legal rights.

61 'Richard H. Bernstein' (Michigan Supreme Court Historical Society) <<https://www.micourthistory.org/justices/bernstein/>> accessed 01 March 2023

62 Sadaf Modak, 'Justice Richard H Bernstein on how people with disabilities make for good judges' The Indian Express (7 March 2020) <<https://www.google.com/amp/s/indianexpress.com/article/express-sunday-eye/justice-richard-h-bernstein-on-how-people-with-disabilities-make-for-good-judges/lite/>> accessed 01 March 2023

63 Zak Yacoob, 'Growing up blind: Retired Judge Zak Yacoob helps challenge an archaic law' (Daily Maverick, 8 April 2021) <<https://www.dailymaverick.co.za/article/2021-04-08-growing-up-blind-retired-judge-zak-yacoob-helps-challenge-an-archaic-law/>> accessed, 01 March 2023

64 Kshitiz Gaur, 'Meet The First Visually Impaired Judge of Rajasthan' Times of India (Rajasthan, 15 April 2018) <<https://timesofindia.indiatimes.com/city/ajmer/meet-the-first-visually-impaired-judge-of-rajasthan/articleshow/63767440.cms>> accessed 01 March 2023

65 Staff Correspondent, 'Tamil Nadu Gets First Blind Judicial Officer' Times Of India (Tamil Nadu, 2 June 2019) <<https://timesofindia.indiatimes.com/city/chennai/tn-gets-first-blind-judicial-officer/articleshow/4605945.cms>> accessed 01 March 2023

66 Umar Cheema, 'Yousaf Saleem to become first visually impaired judge in Pakistan' Geo News (Islamabad, 13 May 2018) <<https://www.thenews.com.pk/print/316123-yousaf-set-to-become-first-blind-judge-in-pakistan>> accessed 01 March 2023

67 Dhananjay Mahapatro, 'Blindness, disability no bar to being judge: SC' (The Times of India, 12 February 2021) <https://www.google.com/amp/s/m.timesofindia.com/india/blindness-disability-no-bar-to-being-judge-sc/amp_articleshow/80871072.cms> accessed 01 March 2023

9. Method of Solving Physical Disability Barrier to be Appointed as Judge

9.1 Reasonable Accommodation

Rights and Protection of Persons with Disabilities Act,2013, as well as UNCRPD, stated that reasonable accommodation should be provided to disabled persons at the workplace to perform their concerned service. The Supreme Court of India, in the case of *Jeeja Ghosh v. Union of India*, held that equality is not only limited to preventing discrimination but also embraces a wide ambit of positive rights, including reasonable accommodation.⁶⁸ Therefore, providing reasonable accommodation is the component of inclusive equality⁶⁹, known as a real sense of equality. Providing reasonable accommodation to ensure equity is known as positive discrimination. The following grounds determine the solution to appoint disabled persons as judges :

- i) A quota system must be incorporated for the physically challenged people to be appointed.
- ii) Overcoming the structural barriers in working place is a must to reasonably accommodate persons with disabilities.
- iii) Blind persons can read with the help of Braille and may perform their duty with the help of a scribe.
- iv) A deaf person may hear by using hearing aids.
- v) Dumb persons may perform their duty by writing only or using sign language.
- vi) Loss of limb or a disfigured person also can perform the duty with the help of a wheelchair, standing stick, or other help.

Providing those accommodations to a physically disabled person, they will be able to perform the duty in judicial service. In the case of Bangladesh Civil Service or other job sectors, physically disabled people are given reasonable accommodation; therefore, they are participating successfully and performing their service. But in certain cases, a psychological phenomenon which is called mental disability may create hindrance to performing the service of the Judiciary. A person affected with an unsound mind or a lack of intellectuality may not perform the technical duty of judicial service. In case of a physical disability rather than a mental one, it may be resolved, and the person successfully may serve in the Judiciary.

9.2 Infrastructural Barriers

Infrastructural issues are fundamental to guaranteeing the rights of persons with disabilities. But in Bangladesh, the accessibility to Courtrooms, Buildings, Roads, or Transport for physically challenged people is unsatisfactory. Even in Dhaka, few buildings have pavements and ramps for disabled persons. The Protection of the Rights of the Persons with Disabilities Act 2013 ensures that public establishments

⁶⁸ *Jeeja Ghosh v. Union of India* (2016) 7 SCC 761

⁶⁹ *Vikas Kumar vs UPSC* (2021) Supreme Court of India, Civil Appeal No. 273 of 2021
Special Leave Petition (C) No. 1882 of 2021

must be accessible to people with disabilities. Moreover, in the Building Construction Act 1952 and National Building Code 2008, it is stated that every establishment should be designed in a way which can be accessible to disabled persons so that he or she can enter and exit from the building. Article 2 of UNCRPD defines the universal design of accessibility, which includes designing products, environments, programs, and services to be usable by persons with disabilities where needed. Barrier-free environment means buildings, roads, and transport shall be free of obstacles for the disabled. It will be a friendly system for those who are physically disabled, requiring wheelchairs and prosthetics. It cannot be said that our court structure, roads, and path are completely designed against disabled people's accessibility. Although not completely as expected, court building has been made by following the rules in which physically disabled people can enter and exit using pavements, ramps, or lift.

On the other hand, merely structural barriers cannot suppress the constitutional rights, statutory rights, and international legal rights of physically disabled people to be appointed to the Judiciary. Every year thousands of candidates participate in Bangladesh Judicial Service Examination. Among them, a few candidates who are physically disabled want to participate in the examination. After passing MCQ, written and viva-voce, a few physically disabled candidates may be qualified. It shall not be difficult for Bangladesh to provide them accessibility in the court area and outside.

10. Conclusion

A blind judge may have all the qualities of a judge, and they must be allowed to explore the field.⁷⁰ One billion people, or 15% of the world's population, are disable persons.⁷¹ In Bangladesh, 47.42 lakh people, which is 2.4% of the total population in the country, are physically or mentally disabled.⁷² In accordance with the constitution, RPPDA-2013, United Nations Disability Inclusion Strategy, and States Practices, persons with disabilities have the right to employment in public or private service. Nevertheless, without considering the qualification of a disable person for entrance into judicial service, BJSC Rules 2007 discourages persons with disabilities from being appointed as an Assistant Judge, which violates the provisions of the constitution, and domestic and international laws. Therefore, Bangladesh Judicial Service Commission should consider these matters to ensure the right of disabled persons to be appointed in the judicial system.

70 Ashok Kini, 'The Blind Can Indeed Judge, My Lords!' (LiveLaw.in, 23 January 2019)

<<https://www.google.com/amp/s/www.livelaw.in/amp/columns/the-blind-can-indeed-judge-my-lords-142342>>

71 Disability Inclusion Strategy (n 40)

72 Jahidul Islam & Tawsia Tajmim, 'Number of persons with disabilities twice than previously assessed' The Business Standard (Dhaka, 15 June 2022) <<https://www.tbsnews.net/bangladesh/health/number-persons-disabilities-twice-previously-assessed-440522>>