Research Monograph

On

"Implementation of Legal Aid Act, 2000: Problems and Prospect"

Research Paper submitted in partial fulfillment of the requirements
of the degree of LL.B (4 years) under Sonargaon University

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LETTER OF TRANSMITTAL

To
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Subject: Submission of research monograph

Dear Madam,

It is a great pleasure to submit my thesis on 'Implementation of Legal Aid Act, 2000: Problems and Prospect' I have giver best efforts to finish the thesis with relevant information that I have collected from various sources. I have collected from various sources. I have concentrated my efforts to achieve to objectives of the work and hope that my endeavor will serve the purpose. I shall be grateful and obliged if you kindly accept may thesis and evaluate it.

Sincerely yours,

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DECLARATION

I, hereby, declare that unless otherwise mentioned by quotation or reference, this dissertation has been entirely and solely composed by me. I further declare that all the rules prescribed for writing the dissertation have strictly been complied with. I will be subjected to penal action to be taken by the university in case these declarations are proved to be false.

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CERTIFICATION

This is to certify that the thesis paper on **"Implementation of Legal Aid Act, 2000: Problems and Prospect"** placed to the evaluation board. It is done by **Farzana Sultana** in partial fulfillment of the requirement for the degree of the Bachelor of Law. The research monograph has been carried out under my guidance and is a record of the bona fide work carried out successfully.

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Abstract

The Constitution of the People's Republic of Bangladesh 1972 has theoretically ensured access to justice, fair trial, rule of law, fundamental rights, human rights, equality before law, and equal protection of law. However, to provide legal aid services and ensuring access to justice the Legal Aid Services Act, 2000 was enacted in 2000. But due to financial crisis and ignorance of law, these protections have become a fake promise to the vast majority of the people. The study will evaluate the existing legal aid services of the country and the challenges faced by the service seekers and providers which may aid to ensure access to justice. Equal access to justice for the rich and the poor alike is prerequisite to the maintenance of the rule of law. But, the justice system through judicial adjudication is very costly and that cost has been the most difficult factor for the average people to get justice.If justice is not made accessible to subjects of society as a whole, the whole administration of justice indeed becomes meaningless. Bangladesh is poor country massed with thousands of problems. Although the State has initiated several steps to make justice accessible to the common people, but justice has not yet been accessible to a large number of people. The research paper mainly deals with the Implementation of Legal Aid Act, 2000: Problems and Prospect.

List of Cases

1. Salma Begum v. Managing Director
2. ArifaKhatun v. Rashid Motta & others
3. Selina Begum v. Md. Abdul Malek
4. Jahanara v. Managing Director

Chapter- 01

1.1 Introduction

Law is a gift of God and a decision of sages.[1] It has two great objects: to preserve order and to do justice: and the two do not always coincide. Plato expressed that equity is a necessary element supplementary to the imperfect generalization of legal rules.[1]

Seven hundred years old clarion call of Magna Carta- 'To no one will we sell, to no one will we refuse or delay the right to justice" very pertinently embodies the principle of legal aid. However, it was only when the colonial hangover of the Indian legal system was pointed by the Committee for Legal aid and was stated that the shadow of law created by the British to suit their convenience, has resulted in an insensitive system especially towards the socio-economic problems of the masses.

The rise of welfare state in the twentieth century has brought forward with it the concept of legal aid for those who cannot afford the cost of litigation.[4] Bangladesh is a developing democratic country of the world. *The Constitution of the People's Republic of Bangladesh, 1972* has theoretically ensured access to justice, fair trial, rule of law, fundamental rights, human rights, and equality before law.

But no amount of the constitutional protection of these high ideals can help a poor citizen of a country like ours to protect his rights and liberties unless there is some one to stand by his side to provide legal aid.In this thesis paper, at first I'll give a concept of legal aid with its general meaning as well as the meaning given in *the Legal Aid Act, 2000 ;* after that there will be a brief discussion about some provisions of international and national legal instruments in which the concept of legal aid has been ensured or may be found indirectly; then I'll try to analyze some important provisions of *the Legal Aid Act, 2000* and show how far the legal aid is made available through this Act by the government of Bangladesh as well by the NGOs, and the limitation if any. Finally I'll give some recommendations to GOB legal aid programme and NGOs legal aid programme and as to whether NGOs can play a role in mitigating the gap in the process and the GOB programme.

[1]B.M. Gandhi, *Equity, Trusts and Specific Relief,* 4th ed. (New Delhi: Eastern BookCompany, 2009).

1.2 Meaning of Legal Aid

The concept 'legal aid' denotes a wide meaning and includes counseling, payment of lawyer's fees and other incidental cost for expenses of the litigation. The general meaning of the term "Legal Aid" is a legal support, social security, social arrangement, extending and providing special assistance or help to the poorer and weaker members to enable them enforce their legal rights through legal process.

Legal aid means the assistance in the legal matters both inside and outside the courts to the indigent litigants. The New Encyclopedia Britannica defines legal aid as the 'the professional legal assistance given, either free or for a nominal sum, to indigent persons in need of such help. *Section 2(a)* of *the Legal Aid Act, 2000* provides that Legal Aid means providing legal advice, paying lawyer's fees and cost of litigation including providing any other assistance to those who suffer financial insolvency, destitution, helplessness or, are unable to access justice due to various socio-economic conditions.[2]

1.3 Importance of Legal Aid

The modern justice system through judicial adjudication is very costly and that cost has been the most difficult factor for the average people to get justice in both developed and developing countries.[11] In a suit where one party is poor and the other party is opulent, here equality, rule of law, and fair trail, ensured in our constitution and other constitutions and documents of the world can not be maintained because the opulent party is able to appoint an expert advocate who can easily take the fruits of the suit in favour of his clients which the opposite advocate fails to do.

In the case of *BandhuMuktiMorcha v. Union of India*[12], the former chief justice of India P.N. Bhagwati observed, where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate socials and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent.[13] Therefore, as long as poor exist in the society, legal aid will be necessary to uphold human rights and equality. Thus, the provision of legal aid is essential for the safe walk of democracies, on the track of rule of law and the equal protection of laws.

[2] Abdul Halim & N.E. Siddiki, (2008), The Legal System of Bangladesh after Separation, 1st ed. (Dhaka: University Publication Limited).

1.4 Access to Justice through Legal Aid

The main object of providing a legal aid scheme is to make the law and legal services accessible, to all in commitment to the internationally recognized principle of equality of justice. Unless legal aid could be claimed as of right, it cannot be said that equality before law has been achieved.[3]

In a democratic country, it is a prerequisite that all citizens get economic and all justice. In developing countries, the law is often discriminatory while the process to access justice is slow, cumbersome and complex. The result is that people especially the poor have inadequate and unequal access to justice through the formal system. Thus, they tend to rely more on customary justice system. Improving access to justice requires that both these systems be made to work justly and equitably and this is possible by way of giving legal aid to the indigent litigants only.

The objectives around which the programme of the legal aid is woven by the developing countries, is that there should be a uniformity of law for the poor and the privileged sections of a democratic country.[16]

1.5 Cases Where Legal Aid may be given

Providing legal aid to some people benefits even those who do not get legal aid by changing community standards; but in order for this to happen, legal aid must be to a significant number of people. Legal aid is thus an important issue in the development of a society. The emphases on the group who are the beneficiaries are disadvantaged in society. Legal Aid may provide representation in the types of cases:

- Public benefit – This includes Welfare, food stamps, medical assistance, supplemental
- security income, social security and unemployment compensation.
- Housing Problem- This includes eviction, lockouts, confiscation of personal foreclosures, discrimination (racial and against families with children), disputes with landlords over repairs, rent, contracts, deposits or difficulties with public housing.

[3]Md. Ansar Ali Khan, (2007), *The Legal System of Bangladesh*, 1st ed. (Dhaka: National Law Book House).

- Consumer Cases- This includes debt problems, contracts, warranties, repossessions, wage garnishments, discrimination, and counseling on small claims court and bankruptcy procedures.
- Family Law Issues- This includes divorce, adoption, custody, support, visitation, guardianship, restraining orders, defense in paternity suits, and modification of decrees.
- Senior Law Problem- This includes Medical, Medicare, guardianship defense, and issues involving nursing homes or other types of care facilities.
- Juvenile Legal Problems- This includes expulsion and suspension from school and other disputes involving schools. In addition, some offices may represent juveniles in criminal proceeding; however, this is by court appointment only.
- Immigration- Some programs handle a limited number of cases in the area of immigration law.[4]

[4] V.D. Mahajan, (1987), Jurisprudence & Legal Theory, 5th ed. (New Delhi: Eastern Book Company).

Chapter 2

CONCEPT OF LEGAL AID ENSHRINED IN INTERNATIONAL AND NATIONAL LEGAL INSTRUMENTS

2.1 Concept of Legal Aid in International Legal Instruments

It is vividly expressed in *the Universal Declaration of Human Rights, 1948* that all are equal before the law and are entitled without any discrimination to equal protection of the law.[18]Besides this, various international documents have also been framed for the protection of these rights which imply the concept of legal aid.[5]

2.1.1 Universal Declaration of Human Rights, 1948

Under the provisions of *the Universal Declaration of Human Rights, 1948* everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law and everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.[20]

2.1.2 International Covenant on Civil and Political Rights, 1966

According to the provisions of the *International Covenant on Civil and Political Rights, 1966,* all persons shall be equal before the courts and tribunals and in the determining of any criminal charge against him, everyone shall be entitled to be tried in his presence, and to defend himself in person or through legal assistance of his own-choosing; to be informed, if he does not have legal assistance of this right; and to have legal assistance assigned to him, in

any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

2.1.3 African Charter on Human and People Rights, 1981

It is also provided in *the African Charter on Human and People Rights, 1981* that every individual shall be equal before the law and entitled to equal protection of the law.[22]

[5] V.D. Mahajan, (1987), Jurisprudence & Legal Theory, 5th ed. (New Delhi: Eastern Book Company).

2.1.4 Arab Charter on Human Rights, 1994

Everyone is equal before the judiciary, and the right to judicial recourse is guaranteed for every person in the territory of a state as to the provisions of *the Arab Charter on Human Rights, 1994.*

2.1.5 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995

All persons shall be equal before the judicial system. In the determination of any charge against him, everyone shall be entitled to a fair and public hearing within a reasonable time by an independent and impartial court. The decisions of the court or the sentence shall be pronounced publicly, but all or part of the trial may take place *in camera* for reasons of public order or state secrecy or where the interests of juveniles or the protection of the private life of the parties so require according to the provisions of' the *Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995.*[6]

2.2 Concept of Legal Aid in National Legal Instruments

The concept of legal aid has been found in some of the legal instruments in our country such as *the Constitution of the People's Republic of Bangladesh, the Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1898, the Legal Aid Act, 2000 and the Legal Aid Rules, 2001.*

2.2.1 The Constitution of the People's Republic of Bangladesh

In line with the international commitment to the principle of equality of justice as enshrined in *Article 7* of the *Universal Declaration of Human Rights, 1948,* it has been pledged in the preamble of *the Constitution of the People's Republic of Bangladesh* that one of the fundamental aims of the state is to realise a society in which equality of justice would be secured for all citizens.[7]

There is a stipulation that it shall be fundamental responsibility of the state to emancipate backward sections of the people from all forms of exploitation.[26]*Article 27* of *the Constitution of the People's Republic of Bangladesh, 1972* states the fundamental rights as follows, 'all citizens are equal before law and are entitled to equal protection of law'.

[6] Commonwealth of Independent States Convention on Human Rights and Fundamental Freedom, 1995.

[7] The Constitution of the People's Republic of Bangladesh, 1972.

'Equal before Law' implies the absence of any special privilege to any individual in his or her favour. The expression 'equal protection of law' is dependent and based on equal before law as one cannot be achieved without the other. Therefore, violation of one tantamount without the other.

Protection of law that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law, is guaranteed [28] and speedy and fair trial are ensured.

25 Preamble of *the Constitution of the people's Republic of Bangladesh*

26 *The Constitution of the people's Republic of Bangladesh, Art.28.*

27 The Constitution of the people's Republic of Bangladesh, Art.27

28 The Constitution of the people's Republic of Bangladesh , Art.31

29 The Constitution of the people's Republic of Bangladesh, Art. 33

2.2.2 Code of Civil Procedure, 1908

Theprovision of legal aid is found in the *Code of Civil Procedure, 1908* for those *who* file pauper suits. As regards civil matters, *Order 33* of *CPC* deals with the "pauper' suit. The Conscious Law Dictionary says that a pauper, is a poor person especially one so indigent as to depend on charity for maintenance or one supported by some public provisions; one so poor that he must be supported at public expense. The words 'pauper' and 'poor' have nearly the same meaning and they both embrace several classes. But Explanation of r*ule I of Order 33 of CPC* provides that a person is a "Pauper" who is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, when be is not entitled to property worth five thousand taka other than his necessary wearing-apparel and the subject-matter of the suit.[8]

2.2.3 Code of Criminal Procedure, 1898

The need for legal aid is felt more in criminal matters as the life; property and personal liberty of a person are inseparably connected there. As regards criminal matters, *section 340 of the Code of Criminal Procedure, 1898* states that an accused should be defended by a lawyer and he must pay the fees and nothing more. Commenting on *section 340(1) of the Code of Criminal Procedure, 1898,* the Supreme Court of India observed that the right

[8] The Code of Civil Procedure, 1908.

conferred by section 340(1) does not extend to a right in an accused person to be provided with a lawyer by the State, or by the police or by the Magistrate. That is a privilege given to him and it is his duty to ask for a lawyer if he wants to engage one and to engage one himself or get his relations engage one for him. The only duty cost on the Magistrate is to afford him the necessary opportunity.[9]

2.2.4 The Legal Aid Act, 2000 & Legal Aid Rules, 2001

Therefore, our poor litigant people, most of whom pass more than half of the year through acute starving condition, cannot afford to reach the doors of any law chamber[34]. Moreover, in our country for the disposal of a civil suit several years are required, but poor litigants after fighting one or two years, lose their every thing and rail to move the suit, so the court pronounce decree in favor of the strong party.[10]

Thus the poor people cannot derive any benefit of their services in many cases and as a result, they silently bear the agonies and burns of injustice done to them in various spheres of life without any legal relief. This is nothing but a negation to them of one of their fundamental rights of equality before law and the equal protection of law[36]It is, therefore, legal aid is essential for these people to protect their fundamental rights which is preserved in the constitution under Article-11.

[9] The Code of Criminal Procedure, 1898.

[10]*The Legal Aid Rules, 2001.*

Chapter 3

ANALYZING THE PROVISIONS OF *THE LEGAL AID ACT, 2000* AND *THE LEGAL AID RULES, 2001*

Legal aid must not be viewed as extraneous to the legal system. It is neither a charitable sentiment, nor a Utopian project, and should be considered a normal function of the justice system.[11]The basic features of *the Legal Aid Act, 2000* have been discussed as follows:

3.1 Composition of National Legal Aid Organization

The Legal Aid Act, 2000 provides for an Organization named "National Legal Aid Organization" which will organise and monitor proper functioning of this Act.[12]The Act requires the organization to be formed by notification in official Gazette.

3.1.1 National Management Board

The Act provides that the management and administration of the National Legal Aid Organisation will be vested on a National Management Board.The head office shall be in Dhaka and the management board will be headed by a Chairman who is the Minister, Law, Justice and Parliamentary affairs.

3.1.2 Director of National Legal Aid Organisation

It is provided in *the Legal Aid Act, 2000 that the* National Legal Aid Organisation will have a director who will be appointed by government of Bangladesh and will be responsible for implementation of the decisions of the organisation; and he discharge his functions in accordance with the direction of the Board.

However, the director will appoint employees and staff with prior permission of the Government or the Organisation.

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[11] Bangladesh Legal Aid and Services Trust (BLAST). (2005a). Annual report 2004-2005.Dhaka: Bangladesh Legal Aid and Services Trust (BLAST).

[12] The Legal Aid Act, 2000 (Act V1 of 2000).

3.1.3 District Legal Aid Committee

The District Legal Aid Committee is solely responsible to provide legal aid at grass root level subject to the availability of fund from the Government. The committee shall invite application from the seeker of legal aid, screen the applications, determine criterion for provision of legal aid and finally provide legal aid.

3.1.5 Fund of the Board

The Act provides for establishment of a legal aid fund for both national and district level. The fund of the Board will come from government, foreign donation, local bodies, any other source such as any organisation or companies etc.

The amount of fund will be deposited in a government bank in the name of the Board. The amount can be drawn up by the joint signature of the Chairman and the member Secretary of the Board. In cases where necessary the District Committee will get found from this fund. The board will meet all types expenses from this fund. The Board will be able to invest this fund in any if the government authorized project.

According to the provision *of the Legal Aid Act, 2000,* financial assistance is to : provided to the underprivileged based on the fees they incur; for example, lawyer's court fees and other expenses. The committee that has been formed is responsible to utilise the funds, including criteria for eligibility. Funds are to come from national revenue but the officials responsible believe that external support will be necessary to get the programme up and running.[13]

3.1.6 Panel of Lawyers

The provisions as to panel lawyers under *the Legal Aid Act, 2000* are as follows:

For the Supreme Court panel would include a group of lawyers who have practice experience not less than 7 years in the High Court Division; for District Court panel would include a group of lawyers who have practice experience not less then 5 years; once an application for legal aid is granted, the Board or committee shall appoint a lawyer from among those in the panel provided that in such appointment will be considered as far as possible.

[13] Halim, A., & Siddiki, N. E. (2008). The Legal System of Bangladesh: After Separation. Dhaka: Shams Publication

3.1.7 Supply of Papers and Documents

The legal aid lawyers and the court to whom the applicant is seeking redress will all necessary papers and documents related to the case concerned free of cost except the court fees.[14]

3.2 Persons eligible for Legal Aid

In the*Legal Aid Act 2000*, there is no reference as to the eligibility criteria to get legal aid. Subsequently, the Ministry of Law, Justice, and Parliamentary affairs formulated guidelines and rules under *section 24* of the Act to carry out the objectives of the Act.[52] As per *Legal Aid Rules, 2001,* the freedom fighter who is incapable of earning or partially incapable of earning or who is without any employment or whose annual is below six thousand taka; the person who is receiving old age honorarium; women who is holder of VGF Card; women and children who are victim of trafficking; women and Children who are acid-burnt by miscreants; any person who has been allocated land or house in Model/Ideal villages, poor window, women deserted by her husband; physically or mentally handicapped persona who is incapable of earning and without means of subsistence; person who is unable to establish his/her right to defend him/her in a court of law due to financial crisis; any person who has been detained without trial and is in capable of defend himself due to financial crisis; any person who is considered by the court as poor or helpless; any person who is recommended by the jail authority as financially helpless or poor; any other person who are considered by the Legal Aid Board from time to time due to the financial crisis or any other socio-economic reasons or disaster are eligible for availing legal aid.

In this guideline, the phrase "poor and financially poor person" will be used to mean person whose annual income is not above three thousand taka.[53]

3.3 Application Procedure for Legal Aid

All applications for getting legal aid must be submitted to the National Board of Legal Aid or in appropriate cases to the District Legal Aid Committee. If an application is rejected by the District Committee and the person feels aggrieved by that decision, than the applicant may prefer an appeal to the National Legal Aid Board within 60 days of the pronouncement of the decision of the District Committee.[54]

[14] Haque, K. E. (2003). Administration of Justice in Bangladesh. Dhaka: Asiatic Society of Bangladesh.

3.4 Fees of Legal Aid

As per the *Legal Aid Rules, 2001* for conducting legal aid cases legal aid lawyers will get maximum of taka 1000.00 for drafting a plaint or memo of appeal; maximum of taka 1000.00 for drafting of a written statement; maximum of taka 600.00 for preparing an application or written statement of any miscellaneous case; maximum of taka 500.00 for any interlocutory applications or any reply of thereof; maximum of taka 100.00 for any time petition; maximum of taka 500.00 for final hearing of a family matter; taka 800.00 for hearing of a civil suit; taka 500.00 for argument of a criminal case; and taka 200.00 for any urgent application paid out of the legal aid fund.

To conduct criminal cases hi courts other than High Court Division the panel lawyers will get paid as per the rate the Assistant Public Prosecutors are paid.[15]

[15] Ali, T. (2007). BRAC's legal aid program and justice seeking behaviour. Dhaka: BRAC. BRAC Research report unpublished.

Chapter 4

IMPLEMENTATION OF GOVERNMENT LEGAL AID VERSUS NGO LEGAL AID

Realising the importance of legal aid in a given social atmosphere the developed countries like UK, USA, and Canada have adopted the legal aid programme. In these developed nations, legal aid has been identified as an effective instrument for erasing the socio-economic disparities in their societies. Therefore, understanding the government machinery and NGO's efforts in providing legal aid is of importance.

In 40 year time of its independent constitutional history, legal aid movement in Bangladesh has not gained any momentum at the governmental level until 2000. It was in 2000 when the Government in assurance of financial cooperation by the Canadian International Development Agency (CIDA) made an initiative to provide legal aid to indigent litigants.[16]

4.1 Enactment of *the Legal Aid Act, 2000 by* the Government of Bangladesh

With the enactment of *the Legal Aid Act, 2000* and forming committees to dispose off cases, the government's initiative cannot be ignored.[59]*The Legal Aid Act (Act No. VI of 2000)* comprehensively provides for the declaration of the activities in National and District level. At national level there is National Legal Aid Board, at district level there are District Legal Aid Committees, in the Upazilla or Thana level there are Upazilla Legal Aid Committees and in Union level there are provisions of Union Legal Aid Committee.

4.1.1 The performance of the National Legal Aid Organisation at a Glance

According to statistics published in December 2003 by the National Legal Aid Organisation, legal aid has been given in total of 8208 cases which include 1296 civil cases, 5915 criminal cases, 886 family matters and 111 miscellaneous cases. In 61 districts under the coverage of legal aid programme 1807 panel lawyers in total have been appointed; total fund granted for legal aid is Tk. 1,87,23012 out of which Tk. 40,88,723 has been expended and the balance is Tk. 1,79,15,076.

[16] Khan, A. A. (2010). An Introduction to Alternative Dispute Resolution (ADR) and Legal Aid. Dhaka: Hira Publication.

The reason of such a big balance against the background of unmanageable number of indigent litigants is lack of proper publicity, awareness among indigent litigants and some other operational lacunae in the handling of legal aid programme.

4.2 Legal Aid through NGOs

The Legal Aid support of the NGOs is worth mentioning. In Bangladesh some leading NGOs have pioneered the legal aid movement. Among them most prominent are Bangladesh Legal Aid and Services Trust (BLAST), Ain o Salish Kendro (ASK), Madaripur Legal Aid Association. Bangladesh Environmental Lawyers Association, Bangladesh ShishuAdhikar Forum (BSAF) etc.[17]

4.2.1 Legal Aid by BLAST

The Bangladesh Legal Aid Services Trust has national networks of lawyers and currently provides legal aid and mediation services in eighteen districts and five legal aid clinic.[63]

Vision and Mission

BLAST envisions a society based on the rule of law in which every individual, particularly the poor and the disadvantaged women and children access to justice and there human rights are respected and protected.[64]

Goals and Strategies

The goal of BLAST is to contribute in increasing general awareness of the concept of legal redress and the availability of free legal aid to the poor. BLAST has developed its expertise in protecting the rights of people in areas like labour rights, violence against women, trafficking, child rights, legal counseling and training for community awareness and Salish.[65]

The BLAST model for providing legal aid has been very effective. It combines use of paid staff and private lawyers who are basically providing volunteer services for a modest stipend which does not cover a great deal more than their out of pocket costs. In choosing this approach BLAST has leveraged services for poor people which have a market value that far exceeds their cost.

[17] Bangladesh Legal Aid and Services Trust (BLAST). (2005a). Annual report 2004-2005. Dhaka: Bangladesh Legal Aid and Services Trust (BLAST)

Activities and Programmes of BLAST

BLAST has been providing legal aid to the needy selected on the basis of low range of income (TK. 3000/- or less per month) on pro bono basis. BLAST organized meetings with the local journalists at its 19 unit offices with a view to involving the local journalists with the activities of BLAST, identifying the problems of the people at the grass root level, conveying the activities of BLAST to the people at grassroots level through newspapers and making them aware of their rights through print and electronic media. The national and local level journalists of both print and electronic media took part in the meetings.[18]

The Performance of BLAST at a glance

During the April 2001 to March 2002, BLAST dealt with 7,541 cases in litigation and resolved 2,225 of them. Of the cases that were resolved through a court judgment, BLAST won 85% of the time. A significant number of cases done by BLAST involve family disputes which includes failure to pay maintenance and child support, illegal dowry demands and domestic violence.

4.2.2 Legal Aid through Ain o Salish Kendra (ASK)

Ain o Salilsh Kendra (ASK), (literally. Law and mediation Centre), a legal aid and human rights organisation, was started in 1986 with the purpose of providing free legal aid, particularly to women, workers and working children, and to promote and protect human rights. Founded by nine individuals, including lawyers, professionals, social workers and development workers, it began life in a small garage, loaned by a supporter.[69]

Goals and Strategies of ASK

ASK's goal is to create a society based on equality, social justice and the rule of law with a special focus on gender equality. It has consultative status with UNECOSOC and continues its commitment to promoting human rights within a democratic framework.

Programmes and Activities of ASK

[18] Bangladesh Legal Aid and Services Trust (BLAST). (2005b). Gender, knowledge, networking and human rights intervention in Bangladesh (GKNHRIB): Concept note on extension of GKNHRIB, BLAST. Dhaka: Bangladesh Legal Aid and Services Trust (BLAST).

Human Rights Awareness

One of ASK's major strategies has been to create awareness of human rights, in order to generate a demand for rights and entitlements within the community and to make state institutions and duty bearers responsible for promotion, protection and prevention of human rights. A wide range of persons from the grass roots to state level institutions is included in ASK's awareness raising programmes.

Community Activism for Gender and Social Justice

The Gender and Social Justice Programme has been instrumental in developing and sustaining Community Based Organizations (CBOs) that promote and protect human rights. Significant among these are ManobadhikarSongrokkhanPorishod (MSP) and ManobadhikarNariSadarthana level. Gender and Social Justice (GSJ) Unit promotes community activism for gender and social justice in the working areas. The Unit has assisted in the formation of ManobadhikarAinjibiPorishod (MAP), a federation of lawyers in the districts, who offer legal advice and voluntary services to the disadvantaged.[19]

Access to justice

Access to justice through legal support and other related services beyond the ambit of legal services has been an overarching goal of ASK. Four units (Mediation and Rapid Response, Litigation, Outreach and Child Rights Unit) have adopted an interconnected and coordinated approach to provide access to justice. ASK's legal support system set up in Dhaka is replicated now in villages by ASK's partner NGOs such as BRAC. Disadvantaged women, workers, working children and economically well off yet vulnerable women have gained access to both the formal (court) and informal (stitionhahsh) systems of justice.

Litigation

The Litigation Unit facilitates access to justice by conducting court cases free of charge. The Unit receives criminal offences such as rape, murder, torture, acid burns, dowry violence, polygamy, detention matters, civil, revision, criminal appeal, etc. When mediation Unit to the Litigation Unit for processing in the court. Panel lawyers mainly conducted cases in the High Court Division and Labour Court in Dhaka, while staff

[19] The Legal system in Bangladesh by Abdul Halim and N.E Siddiki, p. 346

lawyers conducted district court cases and outside Dhaka and in some cases in the Labour Court.

Legal Aid Clinics

In collaboration with local Partner Non-Government Organization, the Unit set up three legal aid clinics in 2008, where women's access to justice was enhanced through legal and counseling advice to women in the above three districts. The Partner Non-Government Organization staff ran the clinics under regular supervision and monitoring by ASK staff lawyers. This included examining medication files, case files, reports and registers followed by necessary suggestions.

Child Rights

The Child Rights Unit has developed a flexible system of non-formal education for working children in drop-in centers. The Unit provided health and legal support to 1600 working children in 2008. ASK has also sensitized local communities to the need for protection of the rights for the child and about negative consequences of child labour.

Success of ASK

Access to justice though legal support and other related services beyond the ambit of legal services has been an overarching goal of ASK. Four units (Mediation and Rapid Response, Litigation, Outreach and Child Rights Unit) have adopted an interconnected and coordinated approach to provide access to justice. ASK's legal support system set up in Dhaka is replicated now in villages by ASK's partner NGOs such as BRAC. Disadvantaged women, workers, working children and economically well off yet vulnerable women have gained access to both the formal (court) and informal (shalish) systems of justice.[20]

4.2.3 Legal Aid Programme by Madaripur Legal Aid Association (MLAA)

MLAA was established on March, 1978.[74]It has been working in the field of providing free legal aid to the poor and marginalized people since 1978. MLAA has a mediation and legal aid committee in three districts of Madaripur, Shariatpur, Gopalgonh. Initially the organisation provided legal assistance to those who are incapable to access the state legal

[20]Nusrat Ameen, (2000), 'The Legal Aid,: Implementation of Government Legal Aid Versus NGO Legal Aid, Journal of the Faculty of Law, vol. XV. No, 2 (Dec. 2004¬).

machinery due to the lack of awareness regarding their rights coupled with poverty, which acts as hindrance to surface their grievance.

Vision and Mission

The vision of MLAA is to create a just and fair Cambodian society, where everyone enjoys equal rights before the law. The Mission of the MLAA is to establish a society where people, particularly poor and destitute women and their children can live in justice and peace.

Goals and Strategies

One of the strategies of MLAA is to ensure that poor people have access to justice by providing legal aid in or outside court by qualified LAC lawyers. Besides this, to promote respect of laws and human rights in Cambodia by building awareness in communities about their legal rights and laws and advocating for-poor policies, and legal frameworks, empowering poor people to advocate for their rights.

Objectives

To make local justice systems more effective, improve disadvantage people's access to the formal judicial system, institutionalize and modernize the traditional mediation system, contribute to the establishment of the rule of law and human rights culture in Bangladesh by raising awareness, advocate for law reform and reform of the legal system to make it more systematic, dynamic and acceptable are the objectives of MLLA.

Improving quality of life for disadvantaged people through establishing their human and legal rights, as well as women's rights, to encourage peaceful coexistence. Is the goal of MLLA.[21]

Current Activities

Creating UP Judicial system to activate Village Court & Arbitration Council, giving free legal assistance for the disadvantaged to access the formal judicial system, providing advocacy and lobbying for policy reform, making dissemination of Madaripur Model of

[21] Sumaiya Khair, Legal Empowerment of Women and Disadvantaged Group. Country Situation Analysis Report, Dhaka: The Asian Foundation, 200

Mediation to institutionalize ADR, institutional capacity building (staff development, monitoring & evaluation, human resource development) of MLAA are the current activities of MLLA.

4.3 Some Cases filed by NGOs in Defense of Legal and Human Rights

NGO's success through movement may be visualised from the landmark cases. Here some cases settled by different NGOs have been discussed below:

4.3.1 Jahanara v. Managing Director

On 24/4/06 Jahanara came to BLAST alleging that she had been working as cleaner in Oriental Group from 9 months ago sincerely and honestly. She was a permanent worker. Her last working day was 14/04/06. On 14/04/06, the Managing Director (the opposite party), terminated her employment verbally. The applicant also claimed that when she had asked for her back wages, the authority denied to pay. Then the complainant approached BLAST for legal help to realize her back wages and other legal benefits.

On 7/05/06 BLAST sent first letter to the opposite party for the payment of the complainant's dues through mediation.

On 28/05/06 BLAST sent second letter to the opposite party for the payment of the complainant's dues through mediation.[22]

The learned court served summons to the opposite party. The opposite party then communicated with BLAST. The opposite party agreed to pay the claimant's arrear wages. On 16/01/07 the complainant received TK. 3,000/- (Three thousand only) and withdrew the case on oath before the learned court. On receiving the back wages and the legal benefits the complainant being satisfied expressed his gratitude to BLAST.[80]

4.3.2 Salma Begum v. Managing Director

The Complainant Salma Begum being appointed as a permanent Senior Operator had been working in Jeacon Garments Ltd. from 06/05/2001 until 14/12/06 satisfactorily. She submitted an application seeking her maternity leave and benefits which she is entitled to according to labor law, subject to a medical certificate to be provided to the opposite party management within 8 months of her pregnancy period. On this basis the authority dismissed her form service with false allegations and this is unlawful. Thereafter the applicant contacted the opposite party management demanding her back wages and

[22] Jahanara v. Managing Director

maternity benefits but the authority did not pay any heed to that. Then finding no alternative the complainant came to BLAST and sought legal help.

On 13.02.2007 BLAST sent a letter to the opposite party to resolve the complaint through mediation.[23]

The opposite party replied to the letter in writing on 18/05/06.

The representative of the opposite party Md. HabibHasan (admin) contacted BLAST by telephone. After telephone discussions and mediation the representative of the opposite party agreed to pay the complainant arrears and maternity benefits amounting to Tk. 22,000/-(Twenty two Thousand only).

Thereafter final mediation sittings were held on 12/03/2007 in the presence of the opposite party's representative Md. HabibHasan (admin) and BLAST Staff Lawyer Md. HafijurRahman and Sheikh AzizurRahman. In this final sitting the opposite party paid BLAST TK. 22000.00 as the complainant's benefits.

On receiving Tk. 22,000.00 from the opposite party, as the complainant was unwell, BLAST staff had gone to the complainant's residence and given her the said amount. On receiving the back wages and the legal benefit the complainant being satisfied expressed her gratitude to BLAST.

4.3.3 ArifaKhatun v. Rashid Motta & others

On 3 July 2008, a girl student of class VIII of GaibandhaSadar was about to be abducted by a man and his group but they were seen by the thana CBO secretary. He stopped them and mobilized people on the street to help him. They were taken to the police station, but the police did not help because of pressure from a former MP. In the meantime other villagers came to support the girl, and they file a case. Without in forming the CBO Secretary, the victim's father and the man's family members settled the matter in the thana and withdrew the case. The father promised that his sons would not do this again; the MP also obtained a written statement from his son promising not to harass a girl again.[24]

It was difficult for the CBO to take action if the family did not want to continue the case. However, the CBO kept in touch with the student and found that the girl was not being harassed.[81]

4.3.4 Selina Begum v. Md. Abdul Malek

[23] *Salma Begum v. Managing Director*

[24] *ArifaKhatun v. Rashid Motta & others*

On 15 July 2008 a shalish was arranged in the office of the thana MSP in Kushtia by the thana Committee to mediate in the complaint filed by a woman who hased discovered after her marriage that her husband was already married. She continued living with him, but later, when he stopped giving her maintenance and became violent, she filed a complaint with the union MSP member. Upon receiving the complaint the thana MSP called both parties, where she clearly stated that she did not want to stay with her husband. It was decided that he would pay her taka 20,000 as dower, and a divorcee would take place in accordance with Muslim Family Law Ordinance, 1961.[25]

The MSP was able to obtain her dower money, which is rare in case of a village divorce, and the woman's decision to opt out of the marriage was respected.

4.3.5 Amena 's Long Struggle for Dower and Maintenance

The following case illustrates the problems faced in pursuing litigation due to length of the trial and the change of address by the defendant to escape the trial. Amena's marriage to Faruque was registered on 18 May 1991 in Dhaka. According to Muslim law, Taka 90,001.0 was fixed as dower money. They had a six year old daughter. After a few years of marriage, Faruque demanded dowry from Amena, and because her family was unable to meet his demands Faruque beat Amena and foreced her to leave his house.[26]

4.4 Legal Aid is Common People's Right not a Charity

Legal aid means the assistance in the legal matters both inside and outside the courts to the poor and indigent litigants. Legal aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation. Legal professionals use the phrase 'legal aid' to mean- counseling on any legal issue, giving honorarium to any pleader/ conciliator/ arbitrator, providing monetary aid to bear expenditure of the case, defending a person in a court of law. From the definition of 'legal aid' it can be inferred that the history of legal aid is as old as the practice of law because throughout the history, lawyers have advised and represented poor people without charge. Eight hundred years old clarion call of Magna Carta- "To no one will we sell, to no one will we refuse or delay the right to justice" very pertinently embodied the principle of legal aid.

[25] *ArifaKhatun v. Rashid Motta & others*
[26] *Amena 's Long Struggle for Dower and Maintenance*

Legal aid is recognized as right under various international human rights documents. Under article 7 of the Universal Declaration of Human Rights (UDHR), 1948 "all are equal before the law and are entitled without any discrimination to equal protection of the law". International Covenant on Civil and Political Rights (ICCPR), 1966 set out specific obligations of states to provide state-funded counsel for indigent persons. **Article 14(3) (d**) of the ICCPR requires that an accused offender is entitled "and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

In line with the international commitment to the principle of equality of justice, it has been pledged in the preamble of the Constitution of the People's Republic of Bangladesh that one of the fundamental aims of the state is to realize a society in which equality of justice will be secured for all citizens. Constitution guarantees 'equality before law', 'equal protection of law', 'rule of law' as fundamental rights and also incorporated principle of 'equality of opportunity', 'emancipation of people from exploitation' as fundamental principles of state policy. Unless legal aid could be claimed as of right it cannot be said that equality before law has been achieved. Legal aid should not be considered as charity; it should be provided in a right based approach to the poor, destitute, deprived, marginalized and backward sections of the people. It is reality that providing state sponsored legal aid is connected with the question of the burden on the public exchequer, but a sincere effort should be made to implement the Constitutional principles. Unless this can be done, for the vast majority of the people of the country the principle of rule of law and fundamental fairness grafted in the Constitution will have no meaning.

The concept of legal aid is also embodied in some other laws of Bangladesh. The Code of Criminal Procedure, 1898 in section 340(1) provides that "any person accused of an offence before a criminal court, or against whom proceedings are instituted under this Code in any such court, may of right be defended by a pleader". The Legal Remembrance's Manual, 1960 in chapter XII provides that an indigent person accused of an offence punishable with death sentence is to be provided with the assistance of a lawyer at the expense of the state. The Code of Civil Procedure, 1908 in Order XXXIII provides for legal aid for 'Pauper' or indigent persons and allows them to institute suits without payment of requisite court fees.

In Bangladesh, legal aid to the indigent litigants was first taken up by the government by a resolution dated 06 January 1994. Under the resolution a legal aid committee was formed in every district chaired by the District Judge. Subsequently by another resolution dated 22 March 1997, government formed a national legal aid committee and also reconstituted district legal aid committees.

In the year 2000, to establish a firm legal and institutional framework, 'the Legal Aid Services Act' has been enacted in the Parliament of Bangladesh. The Act aims to provide legal aid to the poor litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and also for various socio-economic constrains. The Act came into force with effect from 28 April 2000. In 2013 the Act has been amended to extend its function in the Supreme Court and *Chowki* Courts. In accordance with the mandate of the Act, government framed 'Legal Aid Services Policy- 2014' to determine the eligibility for getting legal aid. As per art.2 of the Policy following persons, among others will be entitled to receive legal aid: any financially incapable person whose annual average income is below Tk. 1,50,000 in case of Supreme Court cases and in case of other courts Tk. 1,00000; any freedom fighter who is unable to earn Tk. 1,50,000 annually; any worker whose annual income is below Tk. 1,00,000; any children; victims of trafficking and acid violence; Women and children victim of physical, mental and sexual oppression; person having no shelter/vagabond; person belonging to minor races, ethnic sects and communities; victims of domestic violence; Any individual receiving old age allowance; destitute mothers holding VGD card; allottee of a house or land in a model village; any financially incapable widow, a woman abandoned by husband and a destitute woman; any person who is disable, partly or fully unable to work or unemployed; and victims of natural disaster.

To implement and monitor the government legal aid scheme in Bangladesh National Legal Aid Services Organization (NLASO) has been established under the Legal Aid Services Act on 11th June 2000. The NLASO is a statutory body headed by an officer in the rank of District Judge as the Director and having its head office at Dhaka. The general direction and administration of the affairs and functions of the NLASO is vested in a National Board of Management. There are 64 District Legal Aid Committee functioning under the NLASO to maintain legal aid fund allocated by the government which is spent for poor litigants upon their applications. *Upazila*& Union Legal Aid Committees were formed

under a Regulation of 2011, with the main function of collecting and receiving application for legal aid and sending thereof to the District Committees.

Chapter 5

PROBLEMS IN THE EXISTING LEGAL AID SYSTEM OF BANGLADESH

5.1 Flaws in the Legal Aid Law

Though the Government has good intention to provide legal aid throughout the whole country, yet there are some defects in the Legal Aid Law for which the implementation of the legal aid scheme cannot be properly possible.

These defects have been discussed as follows:

As per *Section 16 of the Legal Aid Act, 2000*, all applications for getting legal aid must be submitted to the National Board of Legal Aid or in appropriate cases to the District Committee. The procedure for applying for legal aid by the poor is not practical.[83]The present law compels indigent litigants to travel to the District to get legal aid which is very disadvantageous for them.[27]

As per *Rule 3(2) of the Legal Aid Rules, 2001*, for legal aid for any matter in the Supreme Court, application is to be made to the Chairman of the National Legal Aid Organisation, i.e. the Law Minister. Making an application to the Law Minister seems to be a big hurdle for an indigent client. It has not been clarified in the Rules how and to whom an indigent client will approach for legal aid in the Supreme Court matter. Few lawyers or judges in the Supreme Court know anything about this system.

There is no uniform printed form for application for legal aid. The available form is very cumbersome and difficult for the indigent litigants to fill up.

According to the present legal arrangement, a person is not entitled to get legal aid whose income is more than taka 3000.00 per annum. A person of such a meagre income is rarely found. An indigent client whose income is below taka 250 per month faces the real problem as to how he/she proves his scanty income or convince the legal aid committee to believe him to be an indigent. There is also a fundamental question as to whether an indigent client whose monthly income is below taka 250 does really face any court case apart from some criminal allegation or arrest. Even a slum dweller or a beggar earns more than this amount. There is no specific guideline on the basis of which the said committee determines a litigant to be an indigent litigant or not.

[27]Dutt, Bikash (2011) "Legal Aid Money Goes Back! Low Fee-Lawyers Are Not that Much Interested, Inadequate Publicity-Justice Seekers Do Not Get the Service," The Daily Janakhantha, 30 May.

The law only allows the fees to be paid to the appointed lawyer. There is no specific rule about other expenses such as court fees, commission fees, adjournment cost. TA/DA for witness if necessary, and other miscellaneous expenses like photocopying or releasing documents etc, It is impossible for a client whose monthly income is below taka 250 to afford these if he does not get any help from the Government as part of legal aid.
The duties and responsibilities of the Co-ordinators are not defined and his responsibility to report to the District Judge is not made mandatory in *the Legal Aid Act, 2000.*

There is no provision for any advance payment to legal aid lawyers. In case of filing new cases under the legal aid scheme, appointed lawyers very often seek prior allocation of fund for payment of court fees and meeting incidental expenses. This is an outstanding factor, which requires proper decision. Before filing a suit, the indigent client has to collect many documents which has a cost-consideration involved and which is beyond his means.

Condition of five years practice for the empanelment of an advocate as provided in the Act[86] is debarring many young lawyers having attitude to help indigent people and thereby to serve the community. Also is the fact that lawyers with five years standing keep themselves busy with their own briefs.
As per the provisions of *the Legal Aid Act,* the client has to choose advocates from the panel of three advocates formed by the committee. By this, the client is actually debarred to engage advocate of his own choice.

5.2 Present Structural Defects

There are some obstacles derived from the defects in the Legal Aid Law to implement the legal aid scheme in practice. By focusing on these obstacles, the real situation in providing legal aid in Bangladesh practically could be realized and then it will be easy to find out the solutions so as to overcome the situation.
There is no media propaganda about the legal aid and so people are unaware of the government initiative.[87]The lack of awareness about the legal aid scheme and its purposes among the indigent litigants and also among the lawyers and judges in general, is the main obstacle to achieve the objectives of the scheme of legal aid.[88]

The distance between the Bench and Bar makes it complicated to work together. The nature of the work of District Judge isolates him from the Bar and other officials. Therefore, calling a meeting becomes embarrassing for him as he may be exposed to uneasy situation.

The District Judge is disinterested in legal aid programme also because it is an extra job on his shoulder without remuneration. Being in the position of the District Judge, it is not possible for him to monitor the lawyers and see whether they are discharging their duties properly. Therefore, whether a lawyer is taking money from the client (who is mostly illiterate and ignorant) and also drawing money from the fund is difficult to monitor.

The following steps to get the legal aid accepted by the committee takes a long time and a litigant who is poor cannot afford to visit the office to pursue the matter let alone bear the expense of traveling cost and other related expenses. Constitution of the Committees itself shows that it is quite impossible to bring all the concerned people in a proceeding under one umbrella on a particular day. Therefore, to hold meetings by them, becomes a futile exercise. Firstly, it is doubtful whether a poor person can have access to the District Judge as there is no specific office to register the complaint. Secondly, it is also doubtful whether after much persuasion with the office clerk the application will actually reach the committee without providing any money to the clerk. Moreover, to prove the insolvency, one has to bring a certificate from the Chairman of the Upazilla, which is also a questionable process.[28]

The funds are not allotted every year but according to need. Amounts of unutilized money in forty eight (48) districts under the GOB legal aid committee at the end of 1997 was 89,76,185.00 taka according to the Law Ministry. This plainly shows the disinterested of the committees in providing legal aid as most of the fund is un-utilized.[89]

5.3 Legal Aid Empowers the Critically Disadvantaged People of Bangladesh

As a welfare state, Bangladesh cherished protect and promoterights of citizen to ensure socio-economic justice to all sectionof society. Legal aid is inevitable to ensure Rule of law andjustice to poor litigant. Legal aid is not a mercy but is ajustifiable right of poor litigants. All the cherished goal of ourindependence to establish a society free from

[28] Bryman A (2012) Social Research Methods (4th ed.) New York. Oxford University Press.

exploitation willbe frustrated if the poor, deprived, critically disadvantaged poorlitigants fail to avail the legal aid to protect and defend theirrights. Introduction of Alternative Dispute Resolution in legalaid is a step ahead to provide distributive justice among the downtrodden litigant people.

Critically disadvantaged people are those vulnerable groups ofsociety who are unable to defend their rights due to varioussocio-economic constraints, they are well segregated from themainstream of the society and backwardness is such that theyare on the verge of extinction, so it necessitates affirmative state action to protect and promote their right and in order to commingle them to themainstream of the society. In a democratic society in order to establish Goodgovernance participation of all walks of life to national life is a requisite condition. Ifthe backward section can able to protect and promote their rights they will be wellconscious about their right of self-determination and can take part in the developmentof national life.

The preamble of the Constitution of the People's Republic of Bangladesh states that, "it shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation, a society in which the rule of law, fundamental human rights and freedom, quality and justice, political economic and social, will be secured for all citizen". Article 27 of the constitution of the People's Republic of Bangladesh, 1972 ensures that all citizens are equal before law and are entitled to have equal protection of law. Article 14 of the Constitution of the People's Republic of Bangladesh, 1972 states that, it shall be a fundamental responsibility of the state to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms of exploitation. Our constitution contains all the aspects of equitable and justice-oriented society in which rights of all sections are protected. Providing legal aid to critically disadvantaged people will pave the way to establish society free from exploitation and where all constitutionally guaranteed right will be ensured for all.[29]

Formal legal system is very much costly, litigants have to face many formalities and have to spend huge amount of money regarding appointing a lawyer to face his case, court fees and other requite fee to issue summons to other party. Getting access to justice had remained a far cry for the toiling masses of this country. Due to various

[29]Islam, Syed Aminul (2013) "Where Government Legal Aid Stands Now," The Daily Star Dhaka, 27 April.

socio-economic constraints they are failed to avail justice from Court of Law. They have no remedy in cases where their rights are violated. They are helpless and victimized silently. In order to avail easy access to justice and protect the right of indigent litigant the government passed the Legal Aid Services Act, 2000. This Act provides free legal aid to vulnerable group of the society. Critically disadvantaged people can get access easily to the doorsteps of formal judicial system. they can obtain free effective legal aid service; can get proper legal suggestions and advice to remedy a problem. By dint of this Act they are well aware of their rights and got the legal knowledge how to protect their rights and the remedy if their rights are violated. The preamble of the Legal Aid services Act 2000 contains that this Act is enacted for providing Legal aid to economically insolvent, helpless and who are due to various socio-economic constraint have failed to avail justice. According to the Section 2(a) of Legal Aid Services Act, 2000; Legal aid means the assistance in terms of legal advice, the cost paid to the Mediator or Saliskar for any Mediation or Salish under the code of civil Procedure 1908 any other existing law, lawyer's fees as provided under Rules, litigation costs and other incidental expenses, provided to the economically insolvent, rootless, and other indigent litigants who for various socio-economic constraint have failed to avail justice. Under Rule 2 of Legal Aid Services Rules 2014 the following groups of people are categorized as eligible to apply for the legal aid;
1. (a) Insolvent or economically insolvent person whose annual income is less than Tk.1,50,000/- for Legal Aid in Supreme Court and Tk.1,00,000/- for Legal Aid in any other Court.[30]

(b) Physically challenged, partially challenged, jobless person.
(c) Freedom fighter whose annual income is less than Tk. 1,50,000/- and any worker whose annual income is less than Tk.1,00,000/-
2. Whatever contrary mentioned in sub rule-1 the following person shall be entitled to legal aid;
(a) Any child.
(b) Any person victim of human trafficking.
(c) Any child and women victim of physical, mental and sexual torture.
(d) Homeless or rootless person.

[30] "Bruce. J Garcia Bolivar, O. Hans tad, T.Roth, M.Nielsen, R.Knox, A.Schmidt,J.(2007). Legal Empowerment of the poor: From Concepts to Assessment USAID,Washington, D.C.

(e) Any person of minor races, ethnic sects and communities.
(f) Any person victim of family violence or any aggrieved person who are on the risk of being victim of family violence.
(g) Recipients of old age benefit.
(h) Impoverished mother holding VGD cards.
(i) Women and child who are victims of acid burns by miscreants.
(j) People having land or house at Adarsha Gram.
(k) Financially in solved widows, economically disadvantaged women, deserted wives.
(l) The handicapped.
(m) Persons considered eligible for legal aid by the institution due to their insolvency, helplessness or socio-economic backwardness.
(n) Prisoners who are detained in custody untried by Court of law unable to afford legal representation to defend his own case.
(o) Persons declared or considered in solvent or helpless by the court of law.
(p) Persons who are recommended or considered as in solvent or helpless by jail authority.
(q) Any other person who are determined as economically in solvent, rootless to implement the aim of Legal Aid Service Act, 2000 and any person due to various socio-economic constraints and any person affected by natural calamities who are unable to defend their right or file a suit.

Stephen Golub defined legal empowerment as "Legal empowerment is the use of legal rights, services, systems and reform by and for the disadvantaged populations and often in combination with other activities, to directly alleviate their poverty, improve their influence on government actions and services, or otherwise increase their freedom, i.e. definition provided by the USAID's; Legal empowerment of the poor occurs when the poor, their supporters, or governments_ employing legal and other means_ create right, capacities and/or opportunities for the poor that give them new power to use law and legal tools to escape poverty and marginalization. Empowerment is a process and end in itself, and a means of escaping poverty, ii. Many scholars agree on the four entry points of legal empowerment as categorized by USAID as i. Rights enhancement. Rights awareness, iii. Rights enablement iv. Rights enforcement, iii. Rights Enhancement involves reforming the law, giving the poor a voice. It focuses on marginalized people's capability to access the law and to provide a more favorable

environment in which marginalized groups effectively can claim and enjoy their rights, iv. Government enacts Legal Aid Services Act, 2000 to provide legal aid to marginalized communities. It opens the door of access to justice of critically disadvantaged people. Legal Aid Services Rules 2014 widen the scope for availability of legal aid and it increase level of income to avail the legal aid and persons who are eligible to avail legal aid. Government by enacting National Legal Aid Organization (formation, obligation and duties of Upozilla, and Union Committee) Regulation 2011 has provided access to legal aid and spreading the essence of legal aid into upozilla and union level grass root people. Government also enacts legal aid Services (legal suggestion and alternative dispute resolution) Rules 2015 to provide legal advice and alternative dispute resolution (ADR) to mitigate the sufferings and to protect the rights of disadvantaged peoples. ADR provides effective solution to their legal problems. The Legal aid officer helps them to arrive at a concrete decision as mutual agreement between the parties. Legal Aid Officer provides legal information how to vindicate their rights. He provides and creates a multiple effective option to get remedy about their problems after perusing and hearing their legal problems. Rights Awareness involves providing knowledge as a means to legal empowerment. Awareness and knowledge is key for vulnerable people to understand their rights and processes. The rationale is that rights awareness will enhance the demand side of justice in which the citizens can demand for the implementation and fulfilment of rights among the duty bearers, v. Legal Aid program increase legal awareness among thedowntrodden people. Right Enablement involves enhancing vulnerable people's legal means to access justiceby providing affordable and accessible legal aid, as well as promoting affirmative action and the process of incorporating vulnerable people in public procedures, vi. People can easily enforce their rights by court of law through legal aid. It will raise public confidence over judiciary, justice delivery system. Legal aid raise judicial activism among the presiding judges to provide justice to the insolvent and marginalized people and it also raises legal reasoning among the stakeholder how to provide justice to the justice seeker, generating more options of solution of problem and way of providing justice to critically disadvantaged people by way of court and through alternative dispute resolution or local Salish.[31]

[31]Stephen Golub, "The Commission on legal Empowerment of the poor: One Big Step Forward and a Few Steps Back for Development Policy and Practice, "Hague journal

Right Enforcement involves providing access to enforcement so that poor and vulnerable people can access and protect their rights through fair mechanisms through developing the capacities of formal institutions as well as through traditional and ADR mechanisms, vii. In order to protect and defend rights o critically disadvantage people all the state machinery is ready to enforce their rights. They can protect their civil rights i.e. dower and maintenance, guardianship rights, partition, declaration of rights, specific performance of contract, land rights personal rights child rights, constitutional rights, any other rights which will affect right to life and property. Procedural laws areamended to modify and provide flexibility to justice delivery system by providing A.D.R. Strategic Plan 2012-2017 of National Legal Aid Service Organization provides following Fundamental Principle of Government Legal Aid;

i) **Poor focused:** Legal services meet the real needs of poor justice seekers. Poor justice seekers are treated with dignity and respects.

ii) **Accessible:** Legal aid is well advertised in the communities. Poor justice seekers can easily come to places where applications are taken. The application processes are simple. Applications are processed quickly.

iii) **Accountable:** Legal aid programs run in accordance with law. Legal aid is accountable to government for funds spent and to service providers for services contracted.

iv) **High quality:** Legal aid service providers act with highest standards of professionalism to serve the best interest of the clients.

v) **Effective:** Legal aid makes a positive difference to the lives of the poor clients. Legal aid services are prompt and appropriate for clients needs. Rights and entitlement are protected.

vi) **Equitable:** Legal aid operates without discrimination. The special needs of women, children and disadvantaged are recognized. Legal Aid takes proactive steps to raise awareness of legal aid and to provide appropriate services to meet the special needs of women, children and disadvantaged groups.

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vii) **Collaborative:** Legal aid collaborates with other government and non-government organization at all levels to ensure that poor justice seekers get the most efficient and effective services possible.

Bangladesh Rural Advancement Committee (BRACK), Madaripur Legal Aid Organization, Bangladesh Legal Aid and Service Trust (BLST), Ain-O-Salish Kendro (ASK), and various other local and national Nongovernmental organization provide various types of legal aid service i.e. provides legal aid in terms of cost and advice to conduct a suit in court, solve the problems through ADR, local Salish, Mediaton etc and provide community awareness campaign to awake legal consciousness about how to protect their right.

Legal Aid provides and creates the way of access to justice of downtrodden people. Critically disadvantage people by way of availing legal aid are easily capable to protect and defend their right. They can easily solve their problems by way of accessing legal aid office for obtaining legal aid and services by way of ADR or mediation. They are well aware about legal aid, how to obtain it, the procedure of legal aid service to conduct a suit and availability of legal suggestions of their legal problems in legal aidoffice. The Government are enacting and formulating various Rules and regulation to make the process of legal aid service more flexible, simple, and well accessible to the downtrodden people.

Government and legal aid committees and various other non-governmental organizations are proactively awakening the essence of legal aid among the stakeholders by way of campaigning, leaflets through print and electronic media, courtyard meetings, mellow drama and publication of books. Critically Disadvantaged People are much aware about their right and have gained the inner strengths to defend and enforce their rights by availing legal aid, legal aid inevitably empowers the Critically Disadvantaged people through changing their way of thinking about their life, providing machinery to protect and defend their rights.

Chapter 6

CONCLUSION

6.1 Recommendations

The present structural defects are impediment in ensuring the effective service. The word of caution being very clear that the traditional legal service programme, which is essentially court of litigation, oriented cannot meet the specific needs and the peculiar problems of the poor demand a unique approach to this socio-economic philosophy. The notion of legal aid conceived wisely by the pioneers of legal world certainly needed vigorous execution by meticulous planning.

Some recommendations have been given below to overcome the present situation so as to make *the Legal Aid Act, 2000* successful:

6.1.1 Governmental Initiatives

The first and foremost task is to inform people of the existence of the GOB legal aid programmes through wide media coverage and local bodies. For example, the union, thana and district level administration should act in a proactive manner and let the programme be known at its respective levels. Any judgment regarding legal aid by the higher courts should be circulated to the members of the lower judiciary, who matter more in delivery of legal aid benefits. The need for legal aid and the role of judiciary in dispensing it should be reiterated in the training courses and seminars attended by the lawyers and judicial officers.[90]

The procedural measures adopted needs to be altered for practical needs. Therefore, filing of suits may be entrusted to the Bar than the District Judge, for ensuring easy access and smooth functioning, In this regard, GOB may adopt the procedure followed by the NGO's legal aid programme.

Legal aid scheme of GOB should be widened so as to include payment of court and lawyers' fees, expenses of witnesses charges incurred in connection with legal proceedings, supply of certified copies of judgment and orders, preparation of appeal papers including printing and translation of documents in a legal proceeding. It must lead to reform in the legal and judicial system, so that it may be capable of meeting the mass demand for justice.

There should be a specific office and at least a clerk for collecting the application. Otherwise, applying to an illusory body is absurd. Instead of chairing the committee the District Judge may act as an advisor and the Bar President may act as the chairman.

District Judge is a neutral person and chairing a committee in an executive manner exposes him to risks and criticisms. The very nature of his job isolates him from people for ethical reasons. Therefore, this executive job should be bestowed to the District Magistrate or the Bar. Judicial reform is mandatory for effective implementation of legal aid and expanding access to justice and to ensure quick disposal of cases.

Separation of judiciary is necessary for legal aid. The judges should be honest. The capacity of the judiciary should be built in such a way that it is possible to give poor a fair chance. Therefore, the court system should be changed to ensure legal aid. In this regard, GOB should open an independent office in a pilot basis to assess its success for legal aid in few districts with GOB appointed lawyers.

The programme must demonstrate law as an instrument of social change in the mental outlook of the beneficiaries, to prepare them to take active part in self-help programmes, to value for a higher standard of life. Unless the beneficiaries are educated this cannot be achieved, and so education is a pre-requisite for success of any self-help programme or scheme whether be it government or non-government.

6.1.2 NGOs Initiatives

NGO's as an organization with expertise in the delivery of legal services to the poor, are in a good position to give direction to the government's effort. Therefore, the NGO can play a pro-active role in implementing the legal aid programme by conducting a survey to assess and identify the specific areas of human rights violation, making the government answerable to the detrimental situation of the poor who cannot access the law, bringing into notice the gap between the inadequacies of law and practice of the government legal aid and persuading the government to take remedial measures, putting pressure on government by public interested litigation where government fails to respond to the need of the poor for legal aid.

The NGO may also play role in making the poor aware of their rights which the law of the land guarantees, encouraging the poor to use the law as an instrument of redress, promoting social dialogues and literacy programme of redress, assisting government programme by providing expertise on concerned issues.[92]

6.1.3 Linkage between Government and NGOs Legal Aid

The linkage between Government and NGO legal aid is a relative issue. In this regard, whether any mechanism can be developed to bring NGOs and Government to work together is vital to consider. By this mechanism NGOs may send their clients to Government legal aid committee and vice versa or utilize Government's fund to assist their clients.

The alternations to be brought in the Government legal aid to ensure its functioning is not easy but time consuming as many questions like legal and procedural factors has to be considered. However, NGOs may give assistance in this regard with their legal expertise.

Moreover, NGOs may develop good relations with Government in respect to legal aid and work side by side in the long run for their own greater interest.[93]

6.2 Concluding remarks

Without the capacity to provide individual representation on as wide a scale as possible, other efforts including legal literacy, court reform, and systemic changes in the law will not achieve the goal of giving poor people greater control of their lives. From the overall discussion presented in this thesis, it is clear that legal aid is not a charity or bounty, but is the prime object of the state and right of the citizens. The problems of human law and justice, guided by the constitutional goals to the solution of disparities, agonies, despairs, and handicaps of the weaker, yet larger brackets of Bangladesh's humanity is the prime object of the dogma of "equal justice for all".Again, the constitution not being a mystic parchment but a Pragmatic package of mandates we have to decode its articles in the context of Bangladeshi life's tearful realities and it is here when the judiciary has to take center stage. Time and again it has been reiterated by our courts that legal aid may be treated as a part of right created under *Articles 27, 14 and 31(2) ofthe Constitution of the People's Republic of Bangladesh.* The apex court has held access to justice as a human right, thus imparting life and meaning to law. Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society.[94]Since we as a nation really want to eradicate poverty and establish a truly free, just and egalitarian society; the legal service programme should be implemented wholly and in its entirely. But recognizing the difficulties that the state government may face, it may mot be possible for the State Government to implement the whole of the legal service programme immediately in one single stage. Therefore, the legal service programme may be implemented in stages according to a phased plan. The state government may implement the legal service programme immediately in so far as it relates to the provisions of legal aid in civil cases and cases before the administrative tribunals and also in regard to criminal cases other than committal proceedings.In conclusion it may be well deserved to state that in order to make *the Legal Aid Act, 2000* successful, many structural changes are necessary. The machinery of the government engaged in the execution of free legal aid movement in the State must be geared from bottom to top to the goal of this mission. The state must sense the poplar needs and respond to the implementing policy according to such needs. Thus, the legal aid programme, if implemented will go a long way towards wiping the tears from the eyes of the teeming millions of our countrymen, by advancing social justice and providing them equal access to the law and justice institutions of the country.

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