Chapter-one

Introduction

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.[2] 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 illegal aid and was stated that the shadow of the law created by the British to suit there convinces, has resulted in an insensitive system especially towards the socio-economic problems of the masses.[3]

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 Bangladesh, 1972* has theoretically ensured access to justice, fair trail 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 ors 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*

---

1 V. D Mahajan, *Jurisprudence & Legal Theory*, 1st ed. (New Delhi: Eastern Book Company, 1987), p. 29.

2 B. M. Gandhi, *Equity Trusts and Specific Relief*, 4th ed. (New Delhi: Eastern Book Company 2009), pp. 9 & 25.

3 http://www.legalscrivceindia.com/airticle/1240-Legal Aid.html,

4 Md. Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009), p. 254.

Act, 2000; after that there will be a brief discussion about some provision of international and national legal instrument in which the concept of legal aid has been ensured or may be found indirectly: then I'll tray to analyze some important provision 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 recommendation to GOB legal aid program and NGOs legal aid program and as to whether NGOs can play a role in mitigating the gap in process and the GOB program.

1.2 Background of the Study

This tough scenario requires Implementation of Legal Aid Act, 2000: Problems and Prospect, and this dream could become a reality. An honest and committed government can make this dream a reality. However, it is not something that can be achieved in the blink of an eye. It requires a lot of effort and sacrifice. Civil society can play an important role in this. Today it is very easy to use electronic media to raise public opinion for Implementation of Legal Aid Act, 2000: Problems and Prospect. Gatherings and rallies are also very important tools to keep the Implementation of Legal Aid Act, 2000: Problems and Prospect trend on track.

1.3 Statement of the Problem

Intellectuals, bureaucrats and civil society members alike are accepting the spirit of the concept and are conceiving in it the content of their own experience and environment. The Bangladesh government has recently been under construct pressure from various donor agencies for ensuring mechanism to implement of human rights. This presupposes freedom of information to ensure that the actions and decisions of law-makers.

1.4 Research Questions

This research is a collection of views and advice on composing research questions from problem statements. It mostly reads as a list of tips and suggestions.

- What is Implementation of Problems and Prospect?
- What is the Legal Aid Act, 2000?

1.5 Objectives of the Study

The specific objectives are:

- The ways and means by which competent legal aid could be brought within the means of poor litigants.
- To suggest the recommendations this with necessary modification in the light of circumstances prevailing in our society would best meet our judicial needs.
- To find out the problems in implementing with a recommendation how it will be more effective of Implementation of Legal Aid Act, 2000: Problems and Prospect.

1.6 Research Methodology

To make this research monograph, the instruction of my course teacher is followed. The whole research monograph has been done in an organized way. First, necessary divisions have been selected. Then I made every possible effort to collect required information for each division. The methodology followed throughout the research.

1.7 Scope and Limitation of the Study

Research on this topic an evolution study on the legal Aid this research has been asked to complete in a time frame which is too inadequate to complete the work. For this time constraint the work has not been developed to the full satisfaction of research. The amount of time that was needed to give it a complete and adequate shape was not there at disposal of the research. However due care has been taken to make this study as much consistent and coherently developed as possible within schedule time. Legal aid had been come from immoral time in different types of court. As a result, Legal aid limitation this research work has been completed using mainly most modern materials through the use of internet browsing.

Chapter 2

The Concept of Legal Aid & History

2.1 History of Legal Aid

Although access to the courts was recognized as a constitutional right, there was no constitutional right to the provision of legal assistance at public expense if one could not afford a lawyer, although from time to time statutory or quasi-statutory arrangements provided some form of help. For instance, the Court of Requests, established by the Privy Council as a poor man's small claims court in Tudor and early Stuart times, provided legal help for those who needed it, and in more recent times the Poor Prisoners Defense Act 1903 ensured that legal aid would be paid once it was decided that a prisoner had a defense.

There was also the Poor Man's Lawyers movement, first established at the end of the nineteenth century at Mansfield House and Toynbee Hall, charitable settlements in East London, which provided pro bono help that stopped short of representation in court. In 1926 one of its founders explicitly recognized the limitations of charity in providing access to justice, saying that it made the rule of law "an anemic attenuated make-believe which we flash in the eyes of the poor as justice." A little earlier a committee chaired by Mr Justice Finlay, responding to a witness who had used the analogy of health to argue for a "Legal Hospital System", expressed the view that while it was the state's interests for people to be healthy, it was not necessarily in its interest for them to be litigious.

There was always a tradition by which lawyers on occasion provided *pro bono* services on an ad hoc basis, but this was an unpredictable source of assistance and attracted a strong social stigma because of its explicit link with the concept of pauperism.

During the Second World War the Law Society had had to set up a salaried divorce department because of the non-availability of *pro bono* lawyers, but it was not anxious to continue this service after the war, and in 1944 the Coalition Government set up the Rushcliffe Committee, chaired by Lord Rushcliffe, a former backbench Conservative MP, to advise it on the way forward.

The Committee reported in 1945, and the post-war Labour Government accepted its recommendations, saying in a White Paper in 1948 that legislation would be introduced

"to provide legal advice for those of slender means and resources, so that no one would be financially unable to prosecute a just and reasonable claim or defend a legal right; and to allow counsel and solicitors to be remunerated for their services."Legal aid, however was never one of the four pillars of the new welfare state . Under the Legal Aid and Advice Act 1949 legal aid was to be available in all courts and tribunals where lawyers normally appeared for private clients. Eligibility should be extended to those of "small or moderate means", and above a free limit there should be a sliding scale of contributions.

There should be a test of merit: for civil cases they should be judged on a basis similar to that applied to private clients. Legal aid was to be funded by the state, but administered by the Law Society. The Lord Chancellor was to be the responsible minister, assisted by an advisory committee. Means investigations were to be undertaken by the National Assistance Board. Barristers and solicitors should receive adequate remuneration.

The essence of the system established by this Act was that if a citizen with a legal problem could establish that he/she qualified for legal aid under the means test and the merits test, he/she had an entitlement to legal aid. There was an annual budget

approved by Parliament, but if the budget was exceeded, a supplementary grant was always obtained. This applied to both civil and criminal legal aid.

2 .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.[5] 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 numbers to enable them enforce their legal rights through legal process.[6]

Legal aid means the assistance in the legal matters both inside and outside the courts to the indigent litigants.[7] The New Encyclopedia Britannica defines legal aid as 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 lawyers fees and cost of litigation including providing any other assistance to those who suffer financial insolvency, destitution, helpless or are unable to access justice due to various socio-economic conditions.[8]

2.3 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.[9] In a suit-where one party is poor and the other

---

5 http://bdlawdigest.org/legal-aid-in-bangladesh.html

6 Abdul Halim & N.E.Siddiki, *The Legal System of Bangladesh*, 1st ed. (Dhaka: University Publications, 2008), p. 446.

6 http:www.indiansocialstudies.com/2009/04/concept-of-legal-aid-social-justice.html,

7 Md. Ansar Ali Khan, *Legal System of Bangladesh*, 1st ed. (Dhaka: National Law Book House, 2007), p. 424.

8 Nusrat Ameen, The Legal Aid Act 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV, No, 2 (Dec. 2004), p. 63.

9 Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009). p. 269.

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 Bondhu Mukti Morcha vs. Union of India, the former chief justice of India P.N Bhagwati Observed, where one of the parties to litigation belongs to a poor and deprived section of the community and does not process adequate socials and material resources he is bound to be at a disadvantage as against a strong powerful opponent.[10]

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.[11]

2.4 Access to Justice through Legal Aid

The main 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.[12]

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 requires that both these systems be made to work justly and equitably and this is possibly by way of giving legal aid to the indigent litigants only.

---

10 http://www.osbar.org/public/rih/lowcost-Legalhelp/legalAid.html,

11 http://www.indiansocialstudies.com/2009/04/concept-of-legal-aid-social-justice.html

12 Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009), p. 269.

The objective around which the program of the legal aid woven by the developing countries is that there should be uniformity of law for the poor and the privileged sections of a democratic country.[13]

2.5 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 orders 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 the society. The emphases on the group who are the beneficiaries are disadvantages 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.

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 and modification of decrees.

Senior Law Problem

This includes Medical, Medicare, Guardianship defense, and Issue involving nursing homes or other types of care facilities.

Juveniles Legal Problems

---

[13] Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).p. 59.

This includes expulsion and suspension from school and other disputes involving school. In addition, some office may represent juveniles in criminal proceedings; however, this is by court appointment only.

Immigration

Some program handle a limited number of cases the area of immigration law.[14]

[14] http://www.osbar.org/publie/rih/LowcostLegalHelp/LegalAid.html,

Chapter 3

Concept of Legal Aid Enshrined in International and National Legal Instrument

3.1 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.[15] Besides this, various international documents have also been framed for protection of these rights which imply the concept of legal aid.[16]

3.1.1 Universal Declaration of Human Rights, 1948

Under the provision of the *Universal Declaration of Human Rights, 1948* everyone has the rights to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by 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 declaration of his rights and obligation and any Criminal Charge against him.[17]

3.1.2 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 does not have sufficient means to pay for it.[18]

---

[15] *Art. 7. Universal Declaration of Human Rights, 1948,*
[16] http://www.airticlebase.com/law-airticles/access-to-justice-through-legal-aaid-1431939.1939.html,
[17] *Arts. 8 & 10.Universal Declaration of Human Rights, 1948,*
[18] *Art.14. International Covenant on Civil and Political Rights, 1966,*

3.1.3 African Charter on Human and People Rights, 1981

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.

3.1.4 Arab Charter on Human Rights, 1994

Everyone is equal before the judiciary, and the right to judicial resources is guaranteed for every person in the territory of state as to the provisions of the *Arab Charter on Human Rights, 1994*.[19]

3.1.5 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedom, 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 decision of the court or the sentence shall be pounced publicly, but all or part of the trial may take place in camera for reason of public order or state secrecy or where the interest of juveniles or the protection of the private life of the parties so requires according to the provision of the Commonwealth of Independent State Convention on *Human Rights and Fundamental Freedoms, 1995.*[20]

3.2 Concept of Legal Aid in National Legal Instruments

The Concept of legal aid has been found in some of the legal instrument in our country such as the Constitution of the Peoples Republics of Bangladesh, *The Code* of

3.2.1 The Constitution of the Peoples Republic of Bangladesh

In line with the international commitment to the principle of equality of justice as enriched in Airticle7 of the *Universal Declaration of Human Rights, 1948* it has been

---

[19] *Art 9. Arab Charter on Human Rights, 1994,*

[20] *Arts. 6(1) & 21(1). Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995,*

pledged in the preamble of the Constitution of the Peoples Republic of Bangladesh that one of the fundamental aims of the state is to realize a society in which equality of justice would be secured all citizens.

There is a stipulation that it shall be fundamental responsibility of the state to emancipate backward section of the people from all forms of exploitation. 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" – "Equal Before Law" implies the absence of any special privilege to any individual in his or her favors. The expression "equal protection of Law" is defendant and based on equal before law as one cannot achieved without the other. Therefore, violation of one tantamount without the other"

Protection of law that the citizen and the residents of Bangladesh have the inalienable right to be treated in accordance with law is guaranteed and speedy and fair trials are ensured[21].

3.2.2 The Code of Civil Procedure, 1908

The provision of legal aid is found in the *Code of Civil Proceddure, 1908* for those who file pauper suits. As regards civil matters, order 33 of CPC deals with "Pauper Suit"[22]. 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 provision; one so poor that he must be supported at public expense. The word "Pauper" and "poor" have nearly the same meaning and they both embrace several classes. But Explanation rule 1 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

[21] Art 27,, *The Constitution of the People's Republic of Bangladesh, 1972.*
[22] Order.33,*The Code of Civil Procedure, 1908.*

be is not entitled to property worth five thousand taka other than his necessary wearing-appearing and the subject –matter of the suit.[23]

3.2.3 The 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 *Criminal Procedure, 1908* 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 Civil Procedure, 1908* the Supreme Court of India observed that the right conferred by section 340(1) does not extend to right in an accused person to provided with a lawyer if he wants to engage one and it engage one himself or get his relation engage one for him. The only duty cost on the Magistrate is to afford him .The only duty cost on the Magistrate is to afford him the necessary opportunity.[24]

3.2.4 The Legal Aid Act, 2000 &Aid Rules, 2001[25]

The economic condition of the common people forming 90% of the total population of our country baffles description. They are not only poverty –stricken but deprived of the minimum basic needs of life.[26] Above fifty percent people are unable to maintain there livelihood.[27] Modern life and civilization seem to have been a beckoning of the horizon to them. The demon of illiteracy and wants has still kept them subjugated and ignorant of the basis human rights and amenities. Their fate revolves round the glove of darkness without any better change.

---

[23] Abdul Halim & N.E. Siddiki, *The Legal System of Bangladesh after Separation*, 1st ed. (Dhaka: University Publication Limited, 2008).., p. 348.

[24] Section.340, *The Code of Criminal Procedure, 1898.*

[25] Art.11,*The Legal Aid Act, 2000 and Legal Aid Rules, 2001.*

[26] Abdul Halim, *The Legal System of Bangladesh,* 4th ed. (Dhaka: CCB Foundation, 2009).., p. 270.

[27] Md. Ansar Ali Khan, *The Legal System of Bangladesh,* 1st ed. (Dhaka: National Law Book House, 2007).p. 424.

Therefore, our poor litigant people, most of whom pass more than half of the year through acute starving condition, cannot afford to reach the door of any law chamber.[28] Moreover, in our country for the disposal of a civil suit several years 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.[29]

Thus the poor people cannot drive 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 legation to them of one of their fundamental rights of equality before law and the equal protection of law. [30] It is, therefore, legal aid is essential for these people to protect their fundamental rights which are preserved in the constitution under Article 11.[31]

In Bangladesh the Ministry of Law Justice and Primarily Affairs passed a resolution in 1994 to provide legal aid to poor litigants, and a particular amount of money was allocated to the District Judge. However, another resolution was passed in March 1996 repealing the Resolution of 1994. The necessity of legislation to require legal aid was failed immensely.

---

[28] Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009).p. 270.
[29] http://www.articlebaase.com/law-airticles/access-to-justice-through-legal-aid-1431939.1939
[30] Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009).p. 424.
[31] Md. Ansar Ali Khan, *The Legal System of Bangladesh*, 1st ed. (Dhaka: National Law Book House, 2007).p. 424.

Chapter 4

Analyzing the Provision of the Legal Aid Act, 2000

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.[32] The basic feature of the *Legal Aid Act, 2000* has been discussed as follows:

4.1 Composition of Nation Legal Aid Organization

The Legal Aid Act 2000 provides for an Organization named "National Legal Aid Organization" which will organization and monitor proper functioning of this Act.[33] The Act requires the organization to be formed by notification in official Gazette.

4.1.1 National Management Board

The act provides that the management and administration of the national legal aid organization will be vested on a National Management Board.[34] The head office shall be in Dhaka and the management beard will be headed by a chainman who is the Minister, Law, Justice and Parliamentary affairs.

This Broad includes people from all walks of the society starting from MP's nominated by the Speaker. Attorney General, Secretary of law, Home and Social Welfare, Inspector General of Police and Prison, Vice–Chairman of the Bar Council, the President of the Supreme Court Bar Association, the Chairman of the National Women Commission, three representative of any NGO's nominated by the

---

[32] Abdul Halim & N.E. Siddiki, *The Legal System of Bangladesh after Separation*, 1st ed. (Dhaka: University Publication Limited, 2008).349.

[33] Section.3, *The Legal Aid, Act, 2000*.

[34] *Sections*. 5. *The Legal Aid, Act, 2000*.

Government working for human right and legal aid which have activities in Districts, with the Director of the Board acting as member secretary.

These members will be appointed for 2 years term. Provided that the Government may remove any of the member from the post without showing any reason.[35]

i. Institutional Framework and Functions of the National Board

Under the provisions of the *Legal Aid, 2000,* National legal Aid Board will mainly act as policy – making authority and will formulate rules and policies to select a person and to provide legal aid to the people who are unable to get justice due to financial crisis and due to different socio-economic reasons. Frame the scheduled to provide legal, aid, take initiative to organize research and educational activities to provide legal aid, telecast different programs in order to create awareness among general people about the availability of legal aid in different print and electronic media, review the application rejected by the district committee, monitor the activities of the District Committee, publish different books, leaflet, pamphlets etc, for making people aware of getting legal aid, and any other activities necessary for the performance of the above mentioned activities.[36]

4.1.2 Director of National Legal Aid Organization

It is provided in the *Legal Aid Act 2000* that the National Legal Aid Organization will have a director who will be appointed by government of Bangladesh and will be responsible for implementation of the decision of the organization 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 Organization.[37]

---

35 *Section* 6. *The Legal Aid, Act, 2000*.
36 *Section.* 7. *The Legal Aid, Act, 2000*.
37 *Section* 21. *The Legal Aid, Act, 2000*.

4.1.3 District Legal Aid Committee

The District Legal Aid Committee is solely responsible to provide legal aid at grass root level subject to the available of found from the Government. The committee shall invite application from the seeker of legal aid screen the application, determine criterion for provision of legal aid and finally provide legal aid.[38]

i. Constitution of the District Legal Aid Committee

According to the provision of the act, the District Committee shall consist of 13 member, including District and Session judge as Chairman, the District Magistrate, the Superintendent of Police (SP) of the District, the District Jail Super, an official of the District Social Welfare, if any, the District Women's and Children's officer if any, the Chairman of the District women's Federation or his nominee, the President of the District Lawyers Association, Government pleader of the District, the Public Prosecutor in the District, Inspector of the District Civil Jail, if any available, one representative from any charitable society (NGO) in the District nominated by the Chairman of the District Committee, elected General Secretary of the District Lawyer Association, who will also be member – Secretary of the Committee, and also the Chief Metropolitan Magistrate and Metropolitan Police Commissioner if the district is in any Metropolitan City.

The tenure of the nominate members of both the National and District Committee shall be for two maximum year and may be removed without reason by the government during the ternate.[39]

ii. Functions of the District Committee

As per the provision of the *Legal Aid Act 2000*, the District Legal Aid Committee is responsible to provide legal aid to the people who satisfy the criteria as set up by the Broad of Governors and who are unable to get justice due to financial cries or due to

---

[38] Abdul Halim & N.E. Siddiki, *The Legal System of Bangladesh after Separation*, 1st ed. (Dhaka: University Publication Limited, 2008).p. 354.

[39] Section. 9.*The Legal Aid Act, 2000,*

different socio-economic reasons, to set up the conditions on which a successful applicant will get the legal aid; to make initiatives to make the people aware of availability of legal aid; to perform the duty invested by the Board and any other activities necessary for the performance of these activities.[40]

4.1.4 Upazila and Union Committee

The Upazilla Committee will consist of one chairman and 14 other members. All issues relating to the Committee will be set up by the subsequent rules.[41]

4.1.5 Fund if the Board

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

The amount of fund will be deposited in a government 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.

Fund of District Committee will be fund of District Legal Aid Committee Consisting of government donation, donation from the legal authority, company or person, donation from the foreign organization and any other fund obtained Committee from any other sources.

According to the provision of the *Legal Aid Act 2000*, Financial assistant is to provided to the under privileged based on the fees they incur; for example lawyer's court fees and other expenses. The committee that has been formed is responsible to utilize the funds, including criteria for eligibility. Funds are to come from national

---

[40] *Section.* 10. *The Legal Aid Act, 2000,*
[41] *Section.* 21. *The Legal Aid Act, 2000,*

revenue but the official responsible believes that external support will be necessary to gad the programmed up and running.[42]

4.1.6 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 lawyer who have practice experience not less than 7 years in the High Court Division; for District Court panel would include a group of lawyer who have practice experience not less then 5 years, once an application for legal aid is granted, the Broad or Committee shall appoint a lawyer from among those in the panel provided that in such appointment will be considered as far as possible.[43]

4.1.7 Supply of Papers and Documents

The legal aid lawyer and the court to whom the applicant is seeking redress will all necessary papers and document related to the case concerned free of cost except the court fees.[44]

4.2 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, 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.[45] As per *Legal Aid Rules 2001* the freedom fighter who is incapable of caring or partly incapable of craning 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

---

[42] *section* 13. *The Legal Aid Act, 2000,*
[43] *Section.* 15. *The Legal Aid Act, 2000,*
[44] *Section.*19. *The Legal Aid Act, 2000,*
[45] Abdul Halim & N.E Siddiki, *ibid.*, p. 350.

and children who are acid -burnt by miscreant; 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 carrying and without means of subsistence; person who is unable to established his/her right to defend him/her in a court of law due to financial crises; any person who has been detrain without trail and is in capable of defend himself due to financial crisis; any person who is recommended by the jail authority as financially helpless or poor; any other person who are considered by the Legal Aid Broad from time to time due to the financial crisis or any other socio-economic reason 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.[46]

4.3 Application Procedure for Legal Aid

All application 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.

Apart from the previously mentioned provision, the *Legal Aid Rule 2000* provides for following for how to make an applicant for Legal Aid.

The candidate shall apply, along with his full name and address and the underlying causes foe his applicant. In a paper, if the applicant is made for legal aid for any matter in the Supreme Court, it is to be submitted to the Chairman of the Organization, on the other hand, if it is for legal aid in any contract, it is to be made to the Chairman of the Committee.[47]

---

[46] *Rule. 2. The Legal Aid Rules, 2001*

[47] *Section 16. The Legal Aid Act, 2000,*

The application accepted by the committee is considered in next meeting. If it is not possible for the committee to take decision based on the submitted information, then the committee may require for further information, and once any application considered to have been accepted. The application litigant shall be informed in the prescribed manner.[48]

4.4 Fees of Legal Aid.

As per the *Legal Aid Rules, 2001* for conducting legal aid cases legal aid lawyers will gad 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 cases maximum of taka 500.00 for any interlocutory application or any reply of thereof, maximum of taka 100.00 for any time petition; maximum of taka 500.000 for final hearing of a family matter, taka 800.00 for hearing of a civil suit; taka 500.00 for argument of a criminal cases; and taka 200.00 for any argent application paid out of the legal aid fund.

To conduct Criminal Cases in courts other than High Court other than High Court Division the panel lawyer will get paid per the rate the Assistant Public Prosecutors are paid and for conducting a case in the Supreme Court, maximum of taka 2000.[49]

---

[48] *Rule. 3. The Legal Aid Rules, 2001,*

[49] *The Legal Aid Rules, 2001* as edited by Abdul Halim, *ibid*., p. 318.

Chapter 5

Implementation of Government Legal Aid versus Ngo Legal Aid

Realizing the importance of the 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 there societies. Therefore, understanding the government machinery and NGO‘s efforts in providing legal aid is of importance.[50]

In 37 year 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 imitative to provide legal aid indigent litigants.[51]

5.1 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 of cases, the government imitative cannot be ignored.[52] *The Legal Aid Act (Act of 2000*) comprehensively provides for the declaration of the activities in National and District level. At national level there is 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.[53]

---

[50] Nusrat Ameen, ‘The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).pp. 59-60.

[51] Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009).p. 314.

[52] Nusrat Ameen, ‘The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004). *ibid.*, p. 79.

[53] Abdul Halim & N.E. Siddiki, *The Legal System of Bangladesh after Separation*, 1st ed. (Dhaka: University Publication Limited, 2008).p. 352.

5.1.1 The performance of the national legal aid organization at glance

According to statistics published in December 2003 by the National Legal Aid Organization, 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 penal lawyers in total have been appointed, total fund granted for legal aid is taka 1,87,23012 out of which Tk.40,88723 has been expended and the balance is Tk. 1,79,15,076.

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.

In the fiscal year 1996-1997, the total allocation for legal aid fund was 13.7 million Taka, to be distributed though the District and Session judge of each district, the amount varying in proportion to be size of the respective district. In 2001-2002, the total allocation for this legal aid fund was 2.5 million taka. In 2002-2003, 3.0 million taka. In 2003-2004, 5.0 million taka. In 2004-2005, 10 million taka were sanctioned for legal aid.[54]

During 2005 to 2006, legal aid has been given in total of 11808 cases, in 61 districts total fund granted for aid is Tk. 54,60,000.During 2007 to 2008, 3267 penal lawyers in total have been appointed throughout 61 districts under the coverage of legal aid programme. No statistics of 2004-2005 was available in the Legal Aid Cell, Ministry of Law, Justice and Parliamentary Affairs. Statistics of 2005-2008 are also not coherent and done incompletely. Even the Supreme Court Report 2007 is silent on this point.[55]

During 2008-09 the financial allocation was downsized to 0.80 million Taka which subsequently has been increased again to 18.37 million Taka in 2009-10. However,

---

[54] *Ibid.,* p. 357.

[55] Abdul Halim & N.E. Siddiki, *The Legal System of Bangladesh after Separation*, 1st ed. (Dhaka: University Publication Limited, 2008).pp. 314-15.

although squeezed, the financial disbursements during 2010-11 and 2011-12 financial years have been remained steady amounting to 15 million taka.[56]

5.2 Legal Aid through NGOs

The Legal Aid support of the NGOs is worth mentioning. In Bangladesh some leading NGOs have pointed 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 (MLAA). Bangladesh Environmental Lawyers Association, Bangladesh Shishu Adhikar Forum (BSAF), etc.

5.2.1 Legal Aid by BLAST

The Bangladesh Legal Aid Service and Trust has national networks of Lawyers and currently provides legal aid and mediation services in 18 district and 5 legal aid clinic.[57]

i. Vision and Mission

BLAST envisions a society based on the rule of law in which every individual, particularly the poor and the disadvantaged woman and children excess to justice and their human rights are respected and protected.[58]

ii. 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 people. BLAST has developed its expertise in protecting the right of people in areas like labour rights, violence against women, trafficking, child rights, legal counseling and training for community awareness and Salish. [59]

---

[56] Interview with the Director of Bangladesh Legal Aid and Services Trust (BLAST), Dhaka.

[57] Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).p. 66.

[58] http://www.blast/vision/mission.html

[59] Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).p. 66.

The BLAST model for providing legal aid has been very affective it combines use for paid staff and private lawyers who are basically providing volunteer services for a modest stipend who is does not cover a great deal more than their out of pocket costs. In choosing the approach BLAST has lever aged services for poor people which have a market value that far exceeds their cost.[60]

iii. Activities and Program 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 officers with a view to involving the local Journalists with the activities if BLAST, identifying the problem of the people at the grass root level, conveying the activities of BLAST to the people at grass roots level though newspapers making them aware of their rights though print and electronic media.

The national and local level journalist of both print and electronic media to part in the meetings.

5.2.2 Legal Aid through Ain o Salish Kendra (ASK)

Ain o Salish Kendra (ASK), (Literally, Law and Mediation Center) a legal aid and human rights organization, 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, and developments workers, it began life in a small garage, loaned by a supporter.[61]

---

[60] http://www.blast.org.bd/legalaid.html

[61] Annual Report 2008, Ain o Salish Kendra (ASK), p. 10.

a. Goal 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 UNESCOSOC and continues its commitment to prompting human rights with in a democratic framework.

ASK's strategies are generating human rights awareness and activating responses against human rights violation's (HRV's); Promoting community activism for gender equity and social justice; Ensuring excess to justice though legal aid; Providing emergency support service; campaigning and advocacy for law and policy reforms; ensuring transparency and accountability in public institutions; enhancing capacity of human rights defenders; and ensuring and effective institutional system.

b. Programmers and Activities of ASK

i. 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 awareness rising program.

ii. Community Activation for Gender and Social justice

The Gender and Social Justice Programme has been instrumental in developing and sustaining Community Based Organization (CBOs) that promote and protect human right. Significant among these are Manobadhikar Songrokkhan Porishod (MSP) and Manobadhikar Nari Sadar thana 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 Manobadhikar Ainjibi Prorishod (MAP), a federation of lawyers in the district, who offer legal advice and voluntary service to the disadvantaged[62].

[62] Annual Report, 2008, Ain o Salish Kendra (ASK), p. 10.

iii. Access to justice

Access to justice though legal support and other related service beyond the ambit of legal service has been an overarching goal of ASK's. Four units (Mediation and Rapid Response, Litigation, Outreach and Child Right Unit) have adopted anointer connected 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 systems of justice.

iv. 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 apple etc. When mediation Unit to the Litigation Unit for processing in the court. Panel lawyers mainly conducted cases in the High Court division and Labor Court in Dhaka, while staff lawyers conducted district court cases and outside Dhaka and in some cases in the Labour Court.[63]

v. Legal Aid Clinics

In collaboration with local partner Non-Government Organization, the Unit set up three legal aid clinics in 2008, where woman's access to justice was enhanced through legal and counseling advice to woman in the above three district. The Partner Non-Government Organization staff ran the clinics under regular supervision and monitoring by ASK staff lawyers. This included examining medication files, reports and registers by necessary suggestion.[64]

vi. Child Rights

---

[63] *Ibid.*, p. 17.
[64] *Ibid.*, p. 18.

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 rights for the child and about negative consequences of child labor.

vii. Success of ASK Annual Report, 2008, Ain o Salish Kendra (ASK).

Access to justice though legal support and other related services beyond the ambit of legal services has been an overarching goal of ASK's. Four units (Mediation and Rapid Response, litigation, Outreach and Child Right 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 village by ASK's partner NGOs such as BRAC. Disadvantaged woman, workers, working children and economically well off yet vulnerable women have gained access to both the formal (court) and informally (shalish) systems of justice.[65]

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

MLAA was established on March, 1978. 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. Gopalgong. Initially the organization provided legal assistance to those who are incapable to access the start legal machinery due to the lack of awareness regarding their right coupled with poverty, which acts as hindrance to surface their grievance.[66]

i. 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

---

[65] *Ibid.,* p. 18.

[66] http://dhr.org/legalaid/index.php?option=com content &tesk=19&temid=34.

where people, particularly poor and destitute women and their children can live in justice and peace.[67]

ii. 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 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 foe-poor policies, and legal frameworks, empowering poor people to advocate for their rights.[68]

iii. 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 established 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 disadvantage people through establishing their human and legal rights, as well as women's rights to encourage peaceful coexistence.

iv. Current Activities

Creating UP judicial system to activate village court and arbitration council, giving free legal assistance for the disadvantaged to access the formal judicial system, providing advocacy and lobbying for policy, making dissemination of Madaripur Model of Mediation to institutionalize ADR, institutional capacity building (staff development, monitoring and evaluation, human resources development) of MLAA are the current activities of MLLA.[69]

---

[67] Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).p. 76.

[68] http://dhr.org/legalaid/index.php?=com_content&task =new 19&temid=34.html

[69] http://dhr.org/legalaid/index.php?option=ccom content&task=new&id=19&temid-34.

5.3 Some Cases filed by NGO's in Defense of Legal and Human Rights

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

5.3.1 Amena v. Shafiqul 57 DLR (2010)

Amena, a 40-year old divorcee, and her elderly mother Mominunnesa Beua, had been living in Shafiqul's house in Rajshahi for about 13 years. Amena sold bangles and ribbons in villages to earn a livelihood. Amena developed a sexual relationship with Shafiqul after he promised to marry her. When Amena became pregnant, Shafiqul denied that he had ever had a relationship with her, and threw her out of the house. Amena gave birth to a daughter, Asia. When Asia was about 12 years old, Amena came to BLAST's Rajshahi unit office and sought advice and assistance in establishing that Shafiqul was Asia's father. BLAST's Rajshahi unit office sent a letter to Shafiqul asking him to attend a mediation session. In October 2010, with the assistance of a local freedom fighter, Mr. Golam Mortuza, BLAST arranged a mediation session at its Rajshahi unit office. After a fruitful discussion, Shafiqul finally admitted that Amena's allegations were true. He agreed to provide maintenance to Asia, and also swore an affidavit to formally declare that Asia is his daughter.[70]

5.3.2 Kabir v. Director 63 **DLR** (2011) 565

In October 2010, Kabir came to BLAST's head office seeking legal assistance to recover the benefits owed to him following his resignation as a senior operator of a

---

70

http://www.clcbd.org/judgment/1065.html?q=Faiz+Ahmed+Chowdhury+%26+another+Vs.+Baktear+Ahmed+Chowdhury+%26+other,
http://www.clcbd.org/judgment/search.html?q=non+party+caretaker+Government&category=19&Judgment_page=8
http://blast.org.bd/success/familylaw.html,

factory. He had not received his arrears of wages or benefits following his resignation in April 2010, due to a family crisis, following 13 years of service. Kabir sought BLAST's assistance to obtain his back wages, along with certain legal entitlements guaranteed by the *Bangladesh Labour Act, 2006*. BLAST sent letters to the factory authorities seeking mediation of the dispute. The factory authorities replied positively, and agreed to settle the dispute through mediation. They then asked BLAST to arrange for Kabir to contact the factory, and when Kabir did so, he received Tk. 71,744.00. In November 2010, Kabir returned to BLAST's head office to report that he had received the full amount, and was very satisfied with the outcome.[71]

5.3.3 Arifa Khatun v. Rashid Motta and Others

On 3 July 2008, a girl student of class 8 of Gaibandha sadar 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 meaning other village came to support the girl, and they file a case. Without in forming the CBO Secretary, the victim's father and the mans 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. It was difficult for the CBO to take action if the family did not want to continue the cases; however, the CBO kept in touch with the student and found that the girl was not being harassed.[72]

5.3.4 Selina Begum v. Md. Abdul Malek , 42 **DLR** 450

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 women who has

[71] http://blast.org.bd/success/labourlaw.html, https://www.lawyersnjurists.com/article/implementation-of-government-legal-aid-versus-ngo-legal-aid/

[72] Annual Report, 2008, Ain o Salish Kendra, pp. 11-12.

discovered after her marriage that her husband was already married. She continued living with him, but later, when he stopped giving her maintenance and become 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 divorce would take place in accordance with *Muslim family law ordinance, 1961*.

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

Chapter 6

Problems and Prospect of the Existing Legal Aid System of Bangladesh

6.1 Flaws in the Legal Aid Law

Though the Government has good intention to provide legal aid through 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.[73] The present law compels indigent litigants to travel to the District to get legal aid which is very disadvantageous for them.[74]

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 Organization, 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 judge 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 meager income is rarely fund. An indigent client whose income is below taka 250 per month faces the real problem as to how he/she proves has scanty income or convince the

[73]Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004). p. 71.

[74] Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009).p. 326.

legal aid committee to believe him to 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.[75]

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- Ordinates 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 [76] is debarring many young lawyers having attitude to help indigent people and thereby to serve the community. Also is the fact that lawyers standing keep themselves busy with their own briefs. As per the provisions of the *Legal Aid Act*, the client has to choose advocates form the panel of three advocates formed by the

---

[75] Abdul Halim, *The Legal System of Bangladesh,* 4th ed. (Dhaka: CCB Foundation, 2009).p. 326.
[76] Section15, *The Legal Aid Act, 2000*.

committee. By this, the client is actually debarred to engage advocate of his own choice.

6.2 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 solution so as to overcome the situation.

There is no media propaganda about the legal aid and so people are unaware of the government initiative.[77] The lack of awareness about the legal aid scheme and its purpose 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.[78]
The Distance between the Bench and Bar makess it complied 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 expose to uneasy situation.

The District judge is disinterested in legal aid programme also become 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 expense. Constitution of Committees itself show that it is quite impossible to bring all the concerned people in

---

[77] Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).p. 72

[78] Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009). p. 325.

a proceeding under one umbrella on a particular day. Therefore to hold meetings by them. Become 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.

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.[79]

[79] Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009).p. 357.

Chapter 7

FINDINGS, RECOMMENDATIONS AND CONCLUSION

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.

7.1 Findings

On a careful analysis of the Aingoto Sohayata Prodan Ain, 2000 the following loopholes may be worth nothing-

i) The Act does not specify cases for which legal aid can be provided.

ii) The process of consideration of application can be identified as another source of delay in meeting the ends of justice as the member of the board and committee who will consider the application is often very busy. Hence, it so happens that the applicant does not get justice when really needed.

iii) In comparison with the legal aid seekers, the members of the meeting held to consider these application falls short of requirement, as the board holds at least on meeting in every three months and the committee holds one meeting in every months.

iv) The accountability of the members of the Board and Committee are not ensured in the Act and for this reason this Act may meet the same fate as other Acts of Bangladesh. It will be treated as mere ambitious work of the Government and this Act will help the Govt. to seek up the national and international seminars but the fate to the poor people will remain largely unchanged.

v) The procedures of the selection of the application is not clear in this Act, i.e. the basis of consideration, the criteria of selection and above all the requisite number of members to give consent to such granting of application is not clear.

7.2 Recommendations:

1. Governmental Initiatives

The fast and foremost task is to inform people of the existence of the GOB legal aid programmers 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 judicially in dispensing it should be reiterated in the training courses and seminars attend by the lawyers and judicial officers.[80]

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

---

[80] Nusrat Ameen, 'The Legal Aid, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid, *Journal of the Faculty of Law*, vol. XV. No, 2 (Dec. 2004).p. 76.

There should be a specific office 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 a 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 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.[81]

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 programme, 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.

2. NGO s Initiatives

NGO's as an organized 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, marking the government answerable to the detrimental situation of the poor who cannot access the law and practice of the government legal aid and persuading the government to take remedial measure, 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

[81] *Ibid.*, pp. 77-78.

redress, promoting social dialogues and literacy programme of redress, assisting government programme by providing expertise on concerned issues.[82]

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.

7.3 Conclusion

Implementation of legal aid act in both development and underdeveloped countries indicates government's willingness to serve the poor. Bangladesh is a developing country with more than thirty percent ultra poor population living in the darkness of illiteracy and therefore without access to any such state-run programmed. the existing wide range of disparities between the poor and the rich can only be mitigated through strengthening this Legal Aid Programmed which is closely linked with the poverty reduction strategy and it must be seen as an instrument of achieving Millennium Development Goal. However, the government must also ensure that the act is regularly reviewed to address loopholes. The Government should follow a strategy of continuous improvement. In order to judge the success of reforms in legal aid provision, it is necessary to first establish a set of criteria against which it will be evaluated.

---

[82] *Ibid.*, p. 83.

BIBLIOGRAPHY

1. Books

1. B.M. Gandhi, *Equity, Trusts and Specific Relief*, 4th ed. (New Delhi: Eastern Book company, 2009).
2. Abdul Halim & N.E. Siddiki, *The Legal System of Bangladesh after Separation*, 1st ed. (Dhaka: University Publication Limited, 2008).
3. Abdul Halim, *The Legal System of Bangladesh*, 4th ed. (Dhaka: CCB Foundation, 2009).
4. Md. Ansar Ali Khan, *The Legal System of Bangladesh*, 1st ed. (Dhaka: National Law Book House, 2007).
5. V.D. Mahajan, *Jurisprudence & Legal Theory*, 5th ed. (New Delhi: Eastern Book Company, 1987).

2. Article

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

3. Statutes

1. *(Art.27),The Constitution of the People's Republic of Bangladesh, 1972.*
2. *(Act.3,6,11,s.9,15,16,24), The Legal Aid Act, 2000*
3. *(Rule.2,3,3.2)The Legal Aid Rules, 2001.*
4. *(Order.33&sec.340&340.1)The Code of Civil Procedure, 1908.*
5. *(S.340)The Code of Criminal Procedure, 1898.*
6. *(Art.7,8,10)Universal Declaration of Human Rights, 1948.*
7. *(Art.7,14)International Covenant on Civil and Political Rights, 1966.*
8. *(Art.14)African Charter on Human and People Rights, 1981.*
9. *(Art.9)Arab Charter on Human Rights, 1994.*

10. (Art.6.1&21.1)Commonwealth of Independent States Convention on Human Rights and

11. Fundamental Freedom, 1995.

4. Internet Sources

1. http://www.legalscrivceindia.com/airticle/1240-Legal Aid.html,
2. http://bdlawdigest.org/legal-aid-in-bangladesh.html
3. http:www.indiansocialstudies.com/2009/04/concept-of-legal-aid-social-justice.html,
4. http://www.osbar.org/public/rih/lowcost-Legalhelp/legalAid.html,
5. http://www.indiansocialstudies.com/2009/04/concept-of-legal-aid-social-justice.html
6. http://www.osbar.org/publie/rih/LowcostLegalHelp/LegalAid.html,
7. http://www.airticlebase.com/law-airticles/access-to-justice-through-legal-aaid-1431939.1939.html,
8. http://www.articlebaase.com/law-airticles/access-to-justice-through-legal-aid-1431939.1939
9. http://www.blast/vision/mission.html
10. http://www.blast.org.bd/legalaid.html
11. http://dhr.org/legalaid/index.php?option=com content &tesk=19&temid=34.
12. http://www.clcbd.org/judgment/1065.html?q=Faiz+Ahmed+Chowdhury+%26+another+Vs.+Baktear+Ahmed+Chowdhury+%26+other,
13. http://www.clcbd.org/judgment/search.html?q=non+party+caretaker+Government&category=19&Judgment_page=