

# LEGAL AID FOR POOR AND INDIGENT LITIGANT IN BANGLADESH

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## **ABSTRACT**

*Legal aid is a widely accepted system for poor and indigent litigant with intends to ensure natural justice in Bangladesh. Our poor litigant people cannot meet the expenses of the high fees of lawyers so that to give them legal aid there are governmental and nongovernmental organization. In Bangladesh, the law is often discriminatory and complex in the procedure for poor and indigent person. The poor and indigent person faces problem of inadequate and unequal access in justice and trial system. For this reason, Legal aid plays an important role for the development of justice system of Bangladesh, to ensure fundamental rights, equality before law and the equal protection of laws. However, the current Legal aid system of Bangladesh is facing some critical technical and policy related predicaments while extending their services to the poor and destitute local as well as indigent people. Thus, the present paper has penned to highlight all the exiting shortcomings of the Legal aid services in Bangladesh, analyses critically the legal and technical barriers of the service and propose a policy recommendation of how to overcome these problems in Bangladesh.*

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## **INTRODUCTION**

Legal aid means the assistance in the legal matters both inside and outside of the courts to poor and indigent litigants. The New Encyclopedia Britannica defines legal aid as ‘the professional legal assistance given, either free or for a nominal sum, to indigent persons in deed of such help’.<sup>1</sup> 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 pleader, conciliator, arbitrator, providing monetary aid to bear expenditure of the case, defending a person in a court of law. In Bangladesh government and non –governmental organization (NGO) are playing an important role to protect the poor and indigent person for equal opportunity in the legal system of Bangladesh.

## **STATUTORY PROVISION REGARDING LEGAL AID**

The Legal Aid Act, 2000 was passed by Parliament in January 2000 and was effective April 2000 which paved the way to provide the service of Legal Aid. It provides legal aid to poor litigants, and particular amount money was allocated to cover the costs of such representation under the authority of the District Judge. Articles 27 of Constitution states the fundamental rights as follows, ‘all citizens are equal before law and are entitled to equal protection of law’.<sup>2</sup> In Bangladesh the statutory provision regarding legal aid is also found in the civil matters in the Civil law allows a person to institute a civil suit without court fee as a “pauper”.<sup>3</sup> On the other hand, Criminal law provides that, any person accused of an offence before a criminal court, or against whom proceedings are instituted, may of right be defended by a pleader.<sup>4</sup> But the section does not confer a right on the accused to be provided with a lawyer by the state or court. Moreover, the Constitution of Bangladesh under Article 33(1) gives right to all person for legal representation, yet this right is only permissive in nature meaning that a person cannot be denied representation if s/ he so desires. The Universal Declaration on Human Rights declared that, “All are equal before the law and are entitled without any discrimination to equal protection of law”.<sup>5</sup> International Covenant on Civil and Political Rights confers effective access to justice is the most basic requirement of a system which purports to guarantee legal rights to the people at large.<sup>6</sup> All of these statutory provisions have binding force to ensure legal aid for poor and indigent person in Bangladesh.

## **NATIONAL LEGAL AID SERVICES ORGANIZATION**

National Legal Aid Services Organization Government of the People’s Republic of Bangladesh has been formed by notification in official Gazette to carry out the purpose of the legal aid. Section 3 of the Legal Aid Act 2000 provides for an organization named Legal Aid

Organization which will organize and monitor proper functioning of this Act. The head office shall be in Dhaka and the management board will be headed by the Chairman who is the Minister, Law, Justice and Parliamentary affairs.

All application for getting legal aid must be submitted to the National Board of Legal Aid Committee. If the application is rejected by the District committee and the person feels aggrieved by that decision, then 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. (Sec,16. the Legal Aid Rules,2001).

#### **Function of the District Committee**

Section 10 of the Legal Aid Act, 2000 provides the functions of the District Committee to provide legal aid to poor litigants according to the principles fixed by the National Legal Aid Organization.

### **NGO AND LEGAL AID SYSTEM IN BANGLADESH**

Bangladesh Legal Aid and Services Trust (Blast) is one of the legal services organizations in Bangladesh, and only one that provides access to legal aid across the spectrum, from the frontlines of the justice system to the apex court. It priorities to support men, women and children living in poverty or facing disadvantage or discrimination. It also provides legal aid, advice and representation across a range of areas, including civil, criminal, family, labor and land law, as well as on constitutional rights and remedies, providing access to judicial remedies alongside individual legal aid, BLAST undertakes strategic litigation, or public interest litigation, as a key part of its advocacy for law and policy reforms to ensure effective legal protection of rights.<sup>7</sup>Bangladesh Mahila Parishad nonprofit movement oriented voluntary organization is working for women's rights.

In 1998, HRLS instigated its Legal Aid component in order to provide legal support and make the government courts accessible to the poor and destitute. Through its 400 plus nationwide legal aid clinics, which is the first port of call for those seeking legal redresses, HRLS's legal aid initiative has nurtured an alternative dispute resolution (ADR) mechanism. It has worked towards making legal offices, courts, and counsels, more transparent in the delivery of equitable justice, spread gender awareness, and promoted a unique human rights based culture for its clients. In this way, their program has harmonized its legal aid component with the legal literacy module to create the momentum to improve legal legislation and the judicial system. Under the leadership of dynamic field personnel, the HRLS program utilizes a vast network of communities and proactive partners to detect, handle, and report, human rights violations. Today HRLS continues to provide holistic legal aid and support services across the country.

They strengthen the capacity of a large network of Panel Lawyers for research, litigation, ensuring transparency in the formal legal sector, and

monitoring case results. With this, clients receive due protection under the law, the rights to a fair trial, and do not face unnecessary delays resulting from the negligence of various actors in the formal judicial system. By this process, they ensure proper and equal access to justice for poor and marginalized people.

Many NGOs though claim themselves as legal aid providers; very few of them are seen to provide legal aid as of their regular program. In spite of this, there are a number of NGOs that operate wide ranging legal aid program in Bangladesh. Some NGOs have a long-standing engagement with human rights. Some leading NGOs have pioneered the legal aid movement in Bangladesh. Among these Ain o Salish Kendro (ASK), Bangladesh Legal Aid and Services Trust (BLAST), Madaripur Legal Aid Association (MLAA) There is a committee known as Community Based Organization (CBO) that is mandatory in the Upazilla Parisad and Ward Level, Bangladesh Rural Advancement Committee (BRAC), Bangladesh National Woman Lawyers' Association (BNWLA) etc. There are other NGOs that also operate legal aid program for the poor and marginalized on top of other regular program.

Blast are working for poor people which have a market value far exceed their cost .Blast is the only organization which routinely files cases challenging the legality of preventive detention under the Special Power Act,1974.9Bangladesh Mohila Parisod success through movement may be visualized from the land mark cases. Madaripur Legal Aid Association (MLAA) is introduced a free, equitable and effective alternative to a large number commonly occurring litigation. Though there are various NGO are working their own sphere these are not enough to provide legal aid for the poor and indigent people a large number of population of Bangladesh.

### **Opinion of Supreme Court**

It is one of the principles of Natural Justice that “Nobody should be condemned unheard”. That is, before condemning a person, the judge must hear the person, if he has anything to say to prevent the miscarriage of justice. Again, article 27 of the Bangladesh Constitution, 1972 provides that all citizens are equal before law and are entitled to have equal protection of law. 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. Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Even after passing the Legal Aid Act 2000, it was not possible to provide service to the justice seekers due to the absence of required rules on providing legal aid at the highest court of the land. In 2010,

National Legal Aid Service Organization provided only Jail Appeal to the people who are socially and financially vulnerable through 37 lawyers who were included into the panel. After that, National Legal Aid Service Organization (NLASO) and ManusherJonno Foundation (MJF) jointly took the initiative to conduct a survey on how legal aid can be provided by the government.

After intense observation on the report prepared on the basis of the findings, the advisory committee recommended enacting and publishing the Legal Aid Regulation 2015. The publication of the regulation as gazette notification created the scope of a new beginning on the way of providing legal aid at the highest court of the land. The recently published gazette includes the issues regarding increasing fees of lawyers, jurisdiction of filling cases and some other related issues as well. This official inception of the Supreme Court Legal Aid Office ensures that legal aid is accessible to the poor and distressed. Any eligible applicant can now access free legal aid by submitting an application to the Supreme Court Legal Aid Office. After reviewing the application, a lawyer is appointed to represent the applicant free of cost. The government will pay the honorarium directly to the advocate. The Supreme Court Legal Aid Office is now available for Civil, Criminal appeals and Writ and others.

The Supreme Court Committee was comprised of 10 members. The Committee provided the Following aid to the persons whose yearly income is not more than 1, 50,000 /= taka. The subject matter of the assistance are F.A (First Appeal) & Civil Revision, Criminal Appeal and Criminal Revision, Jail Appeal, Writ Petition, Leave to Appeal CP filing of the cases. Supreme Court Legal Aid office is also providing the services Legal advice, Filing and dealing cases, Expert opinion of the merit of cases, Bearing the actual cost.10 Supreme Court Legal Aid Committee appointed 47 lawyers at the High Court Division and 7 lawyers at the Appellate Division.

Limitations of the Legal Aid Though the Government has taken good initiative to provide legal aid through the whole country, but there are some limitations in the Legal Aid Law for which the implementation of the legal aid scheme cannot be properly possible. These limitations are following--

All applications for getting legal aid must be submitted to the National Board of Legal Aid or in appropriate cases to the District Committee.<sup>11</sup> The procedure for applying for legal aid by the poor is not practical. The present law compels indigent litigants to travel to the District to get legal aid which is very disadvantageous for them. For legal aid for any matter in the Supreme Court, application is to be made to the Chairman of the National Legal Aid Organization,<sup>12</sup> 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. The most of the poor and indigent person are not properly educated to know the legal system and procedure.

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 found. 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 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. 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 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 from the panel of three advocates formed by the committee<sup>13</sup>. By this, the client is actually debarred to engage advocate of his own choice.

### **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.<sup>14</sup> 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. 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 expose to uneasy

situation. The District judge is disinterested in legal aid program 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 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 Upzilla, 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 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. To ensure Legal Aid its functioning for poor and indigent person is not easy but time consuming as many questions like legal and procedural factors has to be considered. The poor are not encourage using of law as an instrument of redress. Absence of making the poor aware of their rights which the law of the land guaranteed. There are gaps for assisting government program by providing expertise on concerned issues. The gap between the inadequacies of law and practice of the government legal Aid and persuading the government to take remedial measures. Proper monitoring and follow-up measure is absence. The duties and responsibilities of the coordinators are not specific and clear. Lawyers appointed become disinterested because of the absence of proper follow-up measure. If an application is rejected by the District Committee and the person feels aggrieved by that decision, then 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. There are some obstacles derived from the defects in the Legal Aid Law to implement. There is no media propaganda about the legal aid and so people are unaware of the government initiative. 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. 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 program also because it is an extra job on his shoulder without remuneration.<sup>16</sup> 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. 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 travelling cost and other related expenses a poor person can have access to the District Judge as there is no specific office to register the complaint. 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. To prove the insolvency, one has to bring a certificate from the chairman of the upazilla, which is also a questionable process. Because of the cost involved in the process of litigation, the poor and vulnerable sections of society seldom get the benefit of the Constitutional guarantee of the protection of rights. Thus, if we mean actual and real protection we need to consider the provision of legal aid, as well as, measures ensuring that court services are accessible to the people.

Absence of Legal Aid Supported Centre or Cell that indigent and poor litigant can easily find out the office. There should be specific office with all logistic supports so the poor and indigent person can get the legal aid easily. The ceiling of annual income is inconsistent with the present state of socio-economic perspective of the country. The ceiling money of taka 3000.00 should be raised at a reasonable range so that actual poor and indigent people can be found out. There are absent specific rule about other expenses such as court fees, commission fees, adjournment cost, TA/DA for witness and other necessary documents. There are no provisions of for any advance payment to legal aid lawyers. Beside these when filing a suit the poor and indigent litigant has to collect many documents which has a cost – consideration involved and which is beyond his means. Provisions must be made for such advance payment and cost regarding documentation. Senior Advocate who has 5-year experience or more for empanelment of an advocate as provided in sub-section (2) of section 15 of the Act is debarring many young lawyers having attitude to help indigent people and thereby to serve poor people.

Complicated filing Procedure and other procedural difficulties are main reason of the legal aid service for the poor and indigent person. The poor litigants cannot have easy access to District Judge and procedural complexity a large number of governmental and non-governmental fund also remain unutilized and sent back to the government. Beside these the long applying to the District Judge by the poor litigant and then convening a meeting of the committee for approval of the legal aid seems impractical. More over a man is insolvent or not and collecting a certificate from the chairman of the Upazilla which is also a questionable process. To ensure legal aid is not



easy but time consuming as many questions like legal and procedural factors has to be considered. Fear of case or suit and other social insecurity of the poor and there are want of logistic support regarding justice can't bring the success of the legal aid for the poor. How can be ensured the legal aid to the poor and indigent persons

Firstly, government and NGO must play an important role to deliver the legal aid service to the poor. Number of governmental and non-governmental legal aid services for the poor must be increase in the Thana, Upazilla and District level so that mass people can reach to the Legal aid services easily. Secondly, to make aware the poor and indigent person about their rights and if their rights are violated how they can reach the legal aid services and can get appropriate remedy. Government and media, especially television, radio and other multi-media channel may create awareness about the program. Thirdly, where the laws are insufficient and are not specific there laws and rules must be clear by specific enactment. Where government fails to meet the demand of the poor for legal aid there public Interest litigation may fill up the gap and the government ensures the process. Fourthly, encouraging the poor to use the law as an instrument of redress. Procedural aspect must be made easy so that the poor and indigent person can take it easily. Government program by providing expertise on concerned issues must be ensured. Fifthly, Legal aid Supported cell or Institutional Legal Aid Center must be established with all logistic support in the District Bar so that poor litigant can recognize the unit and can get the service easily. And lastly, above all cooperation among Legal Aid Committee, Legal Aid Lawyers and poor litigant or Clint is very essential to reach the Legal Aid goal.

### CONCLUSION

Bangladesh is over burden with the civil suit and criminal cases. To increase speedy and effective trial legal aid services plays very important role for the judiciary. It will be more effective if the complexities of filing and other procedure can be solved carefully. For this purpose, it is very essential to implement and monitor the legal aid scheme. In Bangladesh National Legal Aid Services Organizations (NLASO) has been established under the Legal Aid Services Act on 11th June 2000. There are 64 District Legal Aid Committee functioning under the NLASO to maintain legal aid fund allocated by the government which is spent poor litigants upon their Upazilla and Union Legal aid committee 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 Committee. To ensure natural Justice and to reach in a developed country Bangladesh has introduced and implement the Legal Aid Service for the poor and indigent person. If the limitations of the services can be increased or mitigate the objectives of the legal aid program may ensure natural justice though lower cost to the poor and indigent litigant.

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