

## **Promoting Access to Justice through Legal Aid in Bangladesh: A Critical Analysis**

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**Abstract:** Inarguably, any violation of law demands legal remedy. It is an established order and a protection in the existing legal realm. If anyone is deprived of it, the moral stand point of justice system becomes questionable. Equality before law and access to justice are crucial instruments to maintain check and balance in a society. Dictating this motto, civilized states formulate policies so that every victim can have access to justice. Day by day, the legal proceedings are becoming expensive. In a poverty stricken country like Bangladesh, cost is a major concern for justice seekers. Hence, legal aid services have been introduced in the legal order. This paper will trend to evaluate the existing legal aid framework in Bangladesh. Light will be shed to unearth the imperfections of relevant laws and their viable solutions in ensuring access to justice.

**Keywords:** Access to Justice, judicial system, legal-aid, rights, constitution, reform, Bangladesh.

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### **I. INTRODUCTION**

Access to justice is regarded as a fundamental principle of the rule of law. To quote William E. Gladstone, 'Justice delayed is justice denied'. [1]

To describe it in a narrow sense, access to justice means the right to appear in court. But in a proper and wider sense, it includes every step from the beginning of the suit to the delivery of justice. Administration of justice totally depends on access to justice because it is the gateway to justice. It may fail miserably to ensure rule of law if the access is delayed or denied. People demanding justice must get the opportunity to access in the process and should not be denied due to an operational fault. To ensure justice in the light of rule of law, access to justice must be operated in an easy, quick and responsive way.

Government is the most important collaborator in this procedure. From the law enforcement agencies to judicial administration along with NGOs, development partners, each group has a particular role to play. And most importantly, the state itself is bound by the constitution to provide legal and administrative assistance in favor of the justice seekers. Without the state's active participation and positive initiatives, the whole scheme is bound to fail.

### **II. DISCUSSION**

#### **1. Meaning of the term 'Access':**

Generally, the term 'Access' means a way of opportunity. [2] According to Merriam-Webster dictionary 'access' means a way of being able to use or get something. [3] According to the Ayer's Judicial Dictionary, the term 'Access' means approach or means of approach. [4] According to the Free Online Dictionary by Farlex define the term 'Access' as freedom of approach or communication; or means, power, or opportunity of approaching, or passing to and from. In order words "Access", means "convenient, understandable, timely, and affordable to everyone". [5] According to Dictionary.com 'access' means the state or quality of being approachable. [6]

#### **2. Meaning of the term 'Justice':**

Generally, the term 'Justice' means the awarding of what is due. [7]

The term 'Justice' implies the virtue by which we give to every man what is his due, opposed to injury or wrong. [8]

According Dictionary.com 'justice' means the quality of being just; righteousness, equitableness, or moral rightness [9]

### **3. Access to Justice**

Access to justice has been defined by the UNDP as “The ability of people from disadvantaged groups to prevent and overcome poverty by seeking and obtaining a remedy, through the justice system, for grievance in accordance with human rights principles and standards.” [10]

The UNDP emphasizes on quality of justice, indicating that there are least standards to be met along with human rights principles and standards accordingly.

On Lawrence Friedman's idea, citizens' view on 'access to justice' means many different things, but every discussion assumes a goal called justice and assumes further that some groups or persons living in a society find the door closed.[11]

As the laissez-faire societies grew in size and complexity, the concept of human rights began to undergo a radical transformation. At the same time, actions and relationships increasingly assumed a collective rather than an individual character. The movement has been toward recognizing the social rights and duties of governments, communities, associations, and individuals. These new human rights, exemplified by the Preamble of the French Constitution of 1946, are above all those necessary to make effective, i.e., actually accessible to all, the rights proclaimed earlier.[12]

### **4. Bangladesh Scenario**

Bangladesh has achieved the fastest growth in the Asia-Pacific economies comprised of 45 countries, according to the Asian Development Bank (ADB). The country attained 7.9 percent growth which was the fastest expansion since 1974 in the outgoing fiscal year of 2018-19, according to the Manila-based donor.[13] Bangladesh's per capita gross national income (GNI) jumped more than 9 percent to \$1,909 last fiscal year from \$1,751 a year ago, showed provisional official figures. [14]

Bangladesh's poverty rate came down at 21.8% while the poverty rate, as per the lower poverty line or people living in extreme poverty, came down to 11.3% in 2018, according to the latest data of the Bangladesh Bureau of Statistics (BBS). [15] The country's judiciary is now facing a huge backlog of around 34 lakh pending cases in the courts, causing immense suffering to the justice seekers, according to findings of the Justice Audit Bangladesh. [16] Amid such situation, only 13 percent people are now getting judicial services from the courts across the country, according to the report of Justice Audit Bangladesh. [17]

People severely suffer from the denial of justice and it starts from obstruction to initiate judicial procedure. Poor people face a lack of financial resources and awareness, difficulties in communicating with legal practitioners and understanding of legal procedures, etc. Again physically disabled people suffer from frequent appearances in courthouses in person and this hinders access to justice. Indigenous people can't access to justice because of long term distrust on the legal system, unnecessary formalities as well as lack of cultural awareness. Again elderly people, women, urban poor, illiterate people and homeless people have various problems to access the system.

### **5. Constitutional Framework**

The Constitution of Bangladesh is the supreme law of the land. Importantly, it guarantees fundamental rights like equality before the law and all citizens to be treated in accordance with law, not otherwise. It also provides explicit articles ensuring justice to the citizens.

Constitution of Bangladesh incorporates the concept of 'rule of law', 'equality before the law' 'equal protection of the law' and also includes concepts like legal aid. Admittedly, the scope is not wide but the implementation of legal aid is very progressive both in civil and criminal justice.

Bangladesh constitution provides the basis for legal aid and it is ensured by various articles of constitution. There are implicit mechanisms in articles 14, 18, 27, 31(2), 32, 33(1), 35(3). Article 14 puts importance and urges the state patronize the backward section of society and merge them with the mainstream of society by taking special measures and save them from all sorts of exploitation. Article 18 provides provision for equal opportunities. According to this article state shall ensure equality to all citizens of Bangladesh. Article 27 explicitly provides basis for equal treatment. According this article all citizens are equal before law and all of them are entitled to equal treatment and protection of law.

Article 31(2) says that the state must ensure the protection of law and the accused must be treated in accordance law not otherwise. Article 32 states, “No person shall be deprived of life or personal liberty, save in accordance with law”. Article 33(1) provides protection for arrested person by providing rights to consult and defending in courts by lawyers. Article 35(3) clearly emphasizes on speedy trial and it also ensures fair trial. Article 44(1) states that the right to move to the high court division in accordance with clause (1) of article 102 for the enforcement of the rights conferred by this part is guaranteed.

In a renowned case of Bangladesh, **Mohiuddin Farooque vs Bangladesh**, [18] Appellate Division observes “If justice is not easily and equally accessible to every citizen there then can hardly be any rule of law. If access to justice is limited to the rich, the more advantaged and more powerful section of the society, then the

poor and deprived will have no stake in the rule of law. Ready and equal access to justice is a sine qua non for the maintenance of rule of law.”

## **6. Laws Concerning Judiciary**

Any person aggrieved by the violation of his civil rights can initiate a proceeding in the civil court established under the Civil Courts Act, 1887. Under section 9 of the Code of Civil Procedure, the civil courts have the power to hear and settle any suits of civil nature. The Code of Criminal Procedure of 1898 is a set of laws to try the cases of criminal nature and access to justice is promised. Again, the Administrative Tribunal Act 1980 deals with specific bodies like civil aviation, Sonali Bank, and Grameen Bank etc. In Bangladesh, laws like Bangladesh Labour Act 2006, Artha Rin Adalat Act 2003, Environmental Court Act 2000, Family Courts Ordinance 1985, Small Causes Act 1887, State Acquisition and Tenancy Act 1950, etc. laws ensure access to justice within the legal framework.

Besides, the legal system of Bangladesh introduces public interest litigation (PIL), is an open door for the concerned citizen to take court's help on behalf of other's who are poor or illiterate and totally in the dark on issues concerning them. Again, alternative dispute resolution can settle issues outside courtrooms. Moreover, as informal judicial bodies to ensure justice we have 'Salish' custom and also various NGOs like BLAST, ASK, ODHIKAR, as the watchdog of our society. National Human Rights Commission is one of the most active organizations playing a crucial role in this arena.

## **7. International Frameworks**

Bangladesh has specific treaty obligations to protect, promote human rights pursuant to its ratification to the major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Elimination of Racial Discrimination (CERD), the International Convention on Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention Against Torture (CAT).

The UDHR states, 'Everyone has the right to recognition everywhere as a person before the law.' [19] This right is, however, only realizable if equal access in legal trials is ensured. Human rights norms and standards dictate that all persons, irrespective of characteristics that may define their location or standing in society, are equal before the law, i.e. all are equal before the courts. All must be granted right of equal access to courts and must enjoy certain procedural guarantees in court proceedings. The ICCPR 1966 also guarantees equality before the law and protection against discrimination on the grounds of sex under Article 26. [20]

Thus, under the UDHR and the ICCPR, Bangladesh is committed to undertaking measures to ensure equality before the law and to prohibit discrimination against women.

The Committee under the ICCPR, in its General Comment No. 28 also mandates, 'State Parties to take all steps necessary, including the prohibition of discrimination on the grounds of sex, to put an end to discriminatory actions, both in the public and private sector, which impair the equal enjoyment of rights.' [21]

## **8. National Human Rights Commission**

To protect and promote human rights related issues, the national human rights commission was reconstituted in 2009 as a national body in Bangladesh. It covers the human rights issues to uphold human dignity and honour as promised in Bangladesh constitution and other international human rights conventions. The national human rights commission does perform its job by providing protection to vulnerable people.

### **Functions of National Human Rights Commission**

- a) National Human rights commission-NHRC can act on after accepting complaints or it can act as *suomotio* basis.
- b) NHRC can ask for reports and documents from disciplinary forces and law enforcement agencies or any department of government to look into any issues relating to violation of human rights. NHRC holds the power to visit concentration area or jail and can recommend government thereon for the development of such places.
- b) Being referred by the Supreme Court, the Commission can inquire and report any matter to the court. The commission enjoys the power of civil court in inquiry and investigation.
- c) The Commission is empowered to appoint mediators and can establish rules for disposal of human rights issues and can lodge writ petition if the case fits in the conditions under the constitution.
- d) In case of non-compliance of the reports and recommendations of NRHC, the President can order to present the issue before the parliament.
- e) The governmental organizations are bound to give information on human rights violation issues once asked by the commission. Moreover, the Commission can start to work at its own initiative.
- f) The commission can recommend the government to allocate funds. The witnesses before the commission are protected for their deposition.
- g) The commission can do any other things deemed necessary to protect and promote human rights.

## **9. Legal Aid in Bangladesh**

### **The Legal Aid Services Act, 2000**

Bangladesh has enacted The Legal Aid Services Act, 2000 with a view to providing legal aid for those who are in need. Legal Aid Services act 2000 establishes a national body named National Legal Aid Services Organization.[22] Under the supervision of body district committees are formed. District committees provide the legal aid services while the national board reserves the power as central authority of administration, regulates and facilitates district committees as well. The national board also centrally promotes legal aid education and research while districts bodies do so in grass root level. National board determines the eligibilities of getting legal aid and enacts rules of business while district committee declares pauper who are eligible to get aid according to rules set by national board. Publication, research, media coverage, seminars are conducted by both the district committees and national body.

### **Eligibility for Legal Aid**

The act does not provide any criteria of eligibility to get legal aid explicitly. But under section 24 of the act, law ministry formulated some rules and guidelines. And within those guidelines the following groups of people are eligible to get legal aid: [23]

- a. Freedom fighter who is incapable of earning or partially incapable of earning or who is without any employment or whose annual income is below 6000 BDT. Any other financially incapable person whose annual income is below 3000 BDT;
- b. Women and children who are victims of human trafficking;
- c. Vulnerable Group Feeding (VGF) card holder poor women;
- d. Old age honorarium receiving persons;
- e. Victims of acid violence like women and children;
- f. Physically or mentally handicapped person with financial crisis or without income source;
- g. Poor widow, women deserted by her husband and a person who has been allocated land/house in a village;
- h. People who are unable to defend them in court due to financial crisis;
- i. Due to financial crisis, disaster or any socio-economic reasons, the legal aid board can declare any person eligible for legal aid.

### **Loopholes of the Legal Aid Act**

There are some loopholes in the act and rules as well, regarding the procedure, selection of applicants, timeframe etc. which hinders the true notion of the law and causes unnecessary delay in the legal aid providing the service. After analyzing the act deeply, the following loopholes become noticeable:

- a) Delay in declaring a person as 'pauper' due to the administrative procedures hampers easy access to legal aid.
- b) In the act, there is no specification of cases for which the legal aid will be served.
- c) The accountability of the members of various committees relating to legal aid has not been assured till date.
- d) Lack of frequent meetings in national and district levels and huge number of applications make it difficult to get legal aid for the disadvantageous people.
- e) The process of selecting applications for legal aid is not clear in the act. Therefore, it's difficult to merit an application of legal aid which frustrates the very purpose of this act.
- f) Local politicians and representatives are the members of the legal aid committee in Upazilla (Sub district) and village level. [24] Very often, the victims file complaint against them in the same committee where the alleged offenders take seats. It creates a very vulnerable position for the victims.
- g) Committee members of the district body and national board often fail to realize the problems of the victims from suburbs and villages and that is reflected in the policy making framework in higher stages. Certainly, it hampers the true notion of the legal aid services.
- h) Due to lack of media coverage and publicity, many people are unaware of the available legal aid facilities.
- i) Complex bureaucratic system is a major obstacle to implement this law.
- j) There is no specific timeframe to finish a legal aid procedure for pauper persons who are considered appropriate to receive the aid.

## **10. Challenges to Implement Reforms**

The reform of judiciary is difficult because it is one of the most conservative institutions in Bangladesh. There are always interested groups who do not want changes that might compromise their vested interests. Some lawyers in Bangladesh were originally resistant to the introduction of alternative dispute resolution (ADR) mechanisms in family courts. However, after months of workshops and seminars, they began to accept the new mechanisms. After the successful introduction of ADR in the family courts, it is being introduced in the civil courts step by step.

It is necessary to gain positive public support before a law is introduced or amended. Consulting with stakeholders including lawyers, judges, civil societies, and non-governmental organizations involved with the

justice system can be helpful for building widespread support. To implement new laws and reforms, it is important to remain open to suggestions and feedback from the judiciary and the legal community. [25]

After the alternative dispute resolution amendment was passed, the Ministry of Law held meetings and seminars with the districts as well as Supreme Court Bar. Legal reform always depends on individual judges and lawyers for effective implementation. There must be support for the reforms from within the judicial system if reforms are to be succeeded. The leadership of district judges who have to implement a particular new law is important. Reform of any System never brings quick results rather it takes time. A stable government facilitates the process. And the longer the reforms are allowed to entrench themselves in the system, the result will be more positive. The legal reform programs currently being implemented in Bangladesh to ensure easy, inexpensive, and speedy trials in the courts as the prerequisite of access to justice.

### **11. Recommendations**

To ensure access to justice along with effective legal aid services under the laws of Bangladesh, the following steps should be considered by the concerned authority-

- (i) The condition of getting legal aid is only 3000 BDT annually.[26] It is very unrealistic in present situation. It should be raised up to 20000 BDT annually.
- (ii) Services of legal aid should be enhanced by appointing adequate lawyers and developing a responsive coordination network.
- (iii) Offices of legal aid should be located in nearby district courts areas so that those could be found out with minimum effort.
- (iv) National Legal Aid Committee should have regular meetings with district legal aid committee and district court officials.
- (v) Legal aid awareness activities should be promoted through various media like newspaper, TV, radio, seminars, symposiums etc.
- (vi) There should be national report on a yearly basis by National Legal Aid Services Organization regarding the current legal aid condition, challenges and recommendation to improve services.

### **III. CONCLUSION**

Access to justice can assure citizens with hope and provide better solutions for the justice seeker. If this basic system is hampered for various problems, people will lose trust on governmental systems which may result in massive public disorder. On the other hand, access to justice is a constitutional promise and can uphold the basic ideas of creation of Bangladesh. So, all the organs of government must work hand to hand with each other and should include non-governmental organizations to promote justice by making way for access to justice. And in this regard the governmental organizations of Bangladesh can play the key role.

### **NOTES**

- [1]. Suzy Platt (ed.). Entry 954. William Ewart Gladstone (1809–98). Respectfully Quoted: A Dictionary of Quotations Requested from the Congressional Research Service. Library of Congress, 1989. (Attributed to William E. Gladstone. — Laurence J. Peter, Peter's Quotations, p. 276 (1977)
- [2]. Chambers English Dictionary (Reprinted 1991), p.7.
- [3]. Access.(n.d.). Retrieved 2 July 2019 from <http://www.merriam-webster.com/dictionary/access>
- [4]. K.J. Aiyer. Judicial Dictionary (12th Edn.), p. 12
- [5]. Talukder, Dr. S.M. Hassan.(2010) Access to Justice: Bangladesh Perspective Bangladesh: Bangladesh Law Research Centre. p.1.
- [6]. Access.(n.d.). Retrieved 6 July 2019 from <http://dictionary.reference.com/browse/access>
- [7]. Chambers English Dictionary (Reprinted 1991), p.776.
- [8]. K.J. Aiyer. Judicial Dictionary (12th Ed.), p. 699.
- [9]. Justice.(n.d.). Retrieved 6 July 2019 from <https://www.dictionary.com/browse/justice>
- [10]. Sharing Experience in Access to Justice : Engaging with Non-State Justice Systems & Conducting Assessments October 2010 Retrieved 24 May 2019 from [https://www.undp.org/content/dam/rbap/docs/Research%20%26%20Publications/democratic\\_governance/RBAP-DG-2012-Sharing-A2J-Experience.pdf](https://www.undp.org/content/dam/rbap/docs/Research%20%26%20Publications/democratic_governance/RBAP-DG-2012-Sharing-A2J-Experience.pdf)
- [11]. Friedman, Lawrence M. (1986). The Law and Society Movement. Stanford Law Review Vol. 38, No. 3 (Feb., 1986), pp. 763-780
- [12]. Talukder, Dr. S M Hassan. (1994). Independence of Judiciary in Bangladesh: Law and Practice ( 2nd ed.) Bangladesh : Bangladesh Law Research Centre p. 15
- [13]. Bangladesh Economy.(n.d.). Retrieved 10 July 2019 from <https://www.thedailystar.net/business/bangladesh-fastest-growing-economy-in-asia-pacific-ADB-1759753>

- [14]. Capita Income.(n.d.). Retrieved 19 June 2019 from <https://www.thedailystar.net/business/news/capita-income-hits-1909-1717606>
- [15]. Poverty rate. (n.d.). Retrieved 21 June 2019 from <https://www.dhakatribune.com/bangladesh/nation/2019/05/13/poverty-rate-comes-down-to-21-8-in-2018>
- [16]. Judicial backlog. (n.d.). Retrieved 22 June 2019 from <https://www.thedailystar.net/country/news/judiciary-suffering-backlog-34-lakh-cases-1735606>
- [17]. Ibid;
- [18]. MohiuddinFarooquevs Bangladesh 1997 49 DLR AD PARA 71, P. 18
- [19]. United Nations Organization. 1948. Universal Declaration of Human Rights .Retrieved from[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)
- [20]. United Nations Organization. 1976. International Covenant on Civil and Political Rights. Retrieved from <https://treaties.un.org/doc/publication/unts/.../volume-999-i-14668-english.pdf>
- [21]. Office of the High Commissioner of Human Rights. 2000. The Equality of Rights between Menand Women. Retrieved from <https://www.refworld.org/pdfid/45139c9b4.pdf>
- [22]. Section 3 (1), The Legal Aid Services Act 2000.
- [23]. Rule 2, The Legal Aid Services Rule 2001
- [24]. Section 12(2), Legal Aid Services Act 2000
- [25]. Talukder , Dr. S M Hassan. (1997) . Development of Administrative Law in Bangladesh : Outcomes and Prospects (3rd ed. ). Bangladesh: Bangladesh Law Research Centre p. 34
- [26]. Supra, note at 15

#### **BIBLIOGRAPHY**

- [27]. The Constitution of the People's Republic of Bangladesh (1972)
- [28]. Halim, A., &Siddiki, N. E. (2008). The Legal System of Bangladesh: After Separation. **Dhaka, Bangladesh:** Shams Publication.
- [29]. Haque, K. E. (2003). Administration of Justice in Bangladesh. Dhaka,Bangladesh:Asiatic Society of Bangladesh.
- [30]. Khan, A. A. (2010).An Introduction to Alternative Dispute Resolution (ADR) and Legal Aid.
- [31]. Dhaka, **Bangladesh:** Hira Publication.
- [32]. Iyer, V. R. (1993). Access to Justice. Delhi, India: B. R. Publishing Corporation
- [33]. Bangladesh Legal Aid and Services Trust (BLAST) (2006). Strategic policy and future direction of BLAST. Dhaka: Bangladesh Legal Aid and Services Trust
- [34]. Talukder , Dr. S M Hassan. (2010). **Access to Justice: Bangladesh Perspective** ( 1st ed.) Dhaka, **Bangladesh:** Bangladesh Law Research Centre.
- [35]. Talukder , Dr. S M Hassan.(1997).Development of Administrative Law in Bangladesh : Outcomes and Prospects (3rd ed. ). Dhaka, Bangladesh: Bangladesh Law Research Centre.

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