
‘JUSTICE FOR ALL’? A CRITICAL REVIEW OF GOVERNMENT LEGAL AID MECHANISMS IN BANGLADESH

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ABSTRACT

Inarguably, any violation of the law demands a legal remedy. It is an established order and a protection in the existing legal realm. If anyone is deprived of it, the moral standpoint of the justice system becomes questionable. Equality before the law and access to justice are crucial instruments to maintain checks and balances in 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 evaluate the existing government-facilitated legal aid framework in Bangladesh. This paper highlights the gaps in the current government legal aid mechanism and suggests viable remedies to ensure greater access to justice.

Keywords: Access to justice, legal-aid, constitution, reform, Bangladesh.

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. The 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. Key Concepts

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 other 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] 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 to Dictionary.com, ‘justice’ means the quality of being just; righteousness, equitableness, or moral rightness [9]. 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].

Legal aid refers to the provision of assistance and representation to individuals who cannot afford legal services, ensuring that everyone has access to the justice system, regardless of their financial circumstances. It encompasses a range of services, including legal advice, representation in court, and various forms of legal assistance aimed at enabling individuals to exercise their rights effectively [12].

III. 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 a situation, only 13 percent of 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 the obstruction of initiating the judicial procedure. Poor people face a lack of financial resources and awareness, difficulties in communicating with legal practitioners, and an 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 justice because of long-term distrust of the legal system, unnecessary formalities, as well as a lack of cultural awareness. Again, elderly people, women, urban poor, illiterate people, and homeless people have various problems accessing the system.

IV. Constitutional Framework

The Constitution of Bangladesh is the supreme law of the land. Importantly, it guarantees fundamental rights such as equality before the law and that all citizens are to be treated in accordance with the law, not otherwise. It also provides explicit articles ensuring justice to the citizens. The 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 the 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 to patronize the backward section of society and integrate them with the mainstream of society by taking special measures and save them from all sorts of exploitation. Article 18 provides a provision for equal opportunities. According to this article state shall ensure equality to all citizens of Bangladesh. Article 27 explicitly provides a basis for equal treatment. According to this article all citizens are equal before the law and all of them are entitled to equal treatment and protection of the 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) protects an arrested person by providing rights to consult and defending in courts by lawyers. Article 35(3) clearly emphasizes a 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,

then there can hardly be any rule of law. If access to justice is limited to the rich, the more advantaged and more powerful section of 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 the rule of law.

V. Laws Concerning the Judiciary

Any person aggrieved by the violation of civil rights can initiate proceedings 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 a civil nature. The Code of Criminal Procedure of 1898 is a set of laws to try cases of a 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 such as Bangladesh Labour Act 2006, Artha Rin Adalat Act 2003, the Environmental Court Act 2000, Family Courts Ordinance 1985, the Small Causes Act 1887, the 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), which is an open door for the concerned citizen to take the court's help on behalf of others 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 such as BLAST, ASK, ODHIKAR, as watchdogs of our society. The National Human Rights Commission is one of the most active organizations playing a crucial role in this arena.

VI. 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 the right to 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 “the 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].

VII. National Human Rights Commission of Bangladesh

To protect and promote human rights-related issues, the National Human Rights Commission (NHRC) 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 the Bangladesh Constitution and other international human rights conventions. The NHRC performs its job by protecting vulnerable people. The National Human Rights Commission (NHRC) can act on complaints or on a *suo motu* basis.

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 the violation of human rights. NHRC holds the power to visit a concentration area or jail and can recommend government thereon for the development of such places.

Being referred by the Supreme Court, the Commission can inquire and report any matter to the court. The commission enjoys the power of a civil court in inquiry and investigation. The Commission is empowered to appoint mediators and can establish rules for the disposal of human rights issues, and can lodge a writ petition if the case fits in the conditions under the constitution. In case of non-compliance with the reports and recommendations of NRHC, the President can order to present of the issue before the

parliament. 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 on its initiative. The commission can recommend that the government allocate funds. The witnesses before the commission are protected for their depositions. The commission can do any other things deemed necessary to protect and promote human rights.

VIII. 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 the National Legal Aid Services Organization [22]. Under the supervision of the body, district committees are formed. District committees provide legal aid services while the national board reserves the power as the central authority of administration, regulates and facilitates district committees as well. The national board also centrally promotes legal aid education and research, while district bodies do so at the grassroots level. The national board determines the eligibility of getting legal aid and enacts rules of business, while the district committee declares paupers who are eligible to get aid according to the rules set by the national board. Publication, research, media coverage, and seminars are conducted by both the district committees and the national body.

Eligibility for Legal Aid

Under the Legal Aid Policy, 2014 of Bangladesh, specific categories of individuals are identified as eligible to receive legal aid services to ensure access to justice for the most vulnerable. These include destitute or financially insolvent individuals whose average annual income does not exceed BDT 150,000 in cases before the Supreme Court and BDT 100,000 in cases before other courts. The policy also covers persons who are incapacitated, partially incapacitated, or unemployed, acknowledging their limited ability to bear legal expenses. Additionally, freedom fighters earning less than BDT 150,000 annually are entitled to legal aid. Furthermore, workers whose average annual income does not exceed BDT 100,000 are also included

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 hinder the true notion of the law and cause unnecessary delay in the legal aid providing the service. Delay in declaring a person as 'pauper' due to the administrative procedures hampers easy access to legal aid. In the act, there is no specification of cases for which the legal aid will be provided. The accountability of the members of various committees relating to legal aid has not been assured to date. Lack of frequent meetings at the national and district levels and a huge number of applications make it difficult to ensure legal aid for the disadvantaged people. 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. Local politicians and representatives are the members of the legal aid committee in the Upazilla (sub-district) and village level [24]. Very often, the victims file a complaint against them in the same committee where the alleged offenders take seats. It creates a very vulnerable position for the victims. Committee members of the district body and national board often fail to realize the problems of the victims from the suburbs and villages, and that is reflected in the policy-making framework in higher stages. Certainly, it hampers the true notion of legal aid services. Due to lack of media coverage and publicity, many people are unaware of the available legal aid facilities. Complex bureaucratic system is a major obstacle to implement this law. There is no specific timeframe to finish a legal aid procedure for pauper people who are considered appropriate to receive the aid.

Challenges to Implement Reforms

The reform of the 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 the 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 succeed. 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 aim to ensure easy, inexpensive, and speedy trials in the courts as a prerequisite for access to justice.

Recommendations

To ensure access to justice, several critical reforms and strategic actions must be undertaken. The income threshold for qualifying for legal aid should be increased, given the economic upliftment of the country. Secondly, the services and quality of legal assistance can be enhanced by appointing experienced and dedicated lawyers. In addition, a well-organized and coordinated legal aid team can provide better service to poor justice seekers. To ensure more accessibility of legal aid services, legal aid offices should be established near to district court premises. This will reduce the time and cost of travel for potential beneficiaries. The National Legal Aid Committee should convene regular meetings with district legal aid committees and court officials, thereby creating a smooth functioning through identifying challenges and effective remedies. Besides, public awareness about legal aid should be raised as many people may not be aware of legal aid. Last but not the least, the budget for legal assistance must be increased so that more people can avail the service of legal aid.

IX. Conclusion

Legal aid can provide citizens with better solutions in the quest for justice. Deteriorating trust in the justice system may result in massive public disorder. We must keep in mind that access to justice is a constitutional promise, and it is one of the basic tenets

underlying the creation of Bangladesh. All the organs of government must work hand in hand with each other and should include non-governmental organizations to promote justice through legal aid. All three branches of government—the executive, legislature, and judiciary—need to work concertedly. Besides, non-governmental organizations (NGOs) and community based initiatives can play a crucial role to reach vulnerable population and provide legal aid.

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