



Star LAW analysis



LAW event

Legal aid and access to justice: Prospects and problems

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"JUSTICE is open to all like the Ritz Hotel." Behind this remark lies an age-long complaint that the cost of law prevents the poor from getting justice.

Hotel Ritz or hotel Sheraton is open for public but can the poor people dare enter there let alone stay there? In line with international commitment to the principle of equality of justice as enshrined in Article 7 of the Universal Declaration of Human Rights, it has been pledged in the preamble of our Constitution that one of the fundamental aims of the state is to realise a society in which equality of justice would be secured for all citizens. Not only that, article 27 of the Constitution provides for a fundamental right that all citizens are equal before law and are entitled to equal protection of law. It does not require any reference to cite how illusory and meaningless those commitment and constitutional protection of fundamental rights are when we see that most of the indigent litigants in the country cannot afford the cost of defending their basic civil rights by appointing a lawyer or traveling to the District Court. Protection of equality before law and equal access to law in the Constitution becomes a mere paper tiger when an indigent people finds himself in the police custody or jail custody and cannot defend himself by affording a lawyer. The economic condition of the common people forming 90% of the total population baffles description. They are not only poverty-stricken but are deprived of the minimum basic needs of life. Modern life and civilisation 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 basic human rights and amenities. Their fate revolves round the globe of darkness without any better change". "Our poor litigant people, most of whom pass more than half of the year through acute starving condition, cannot afford to reach the doors of any law chamber and derive any benefit of their services in many cases and as a result, they silently bear the agonies and burns of injustice done to them in various spheres of life without any legal relief. This is nothing but a negation to them of one of their fundamental rights of equality before law and the equal protection of law."

Access to the court is depended upon three conditions: first, the payment of necessary court fees; second, other incidental costs, like collection of documents, copying, fees for the Bar Association etc; and third, the assistance of a skilled lawyer with a view to properly presenting the case in the court. Thus the concept of legal aid in the form of assistance for matters inside the court encompasses all the above three conditions. Apart from court-matters legal aid, non-court matters legal aid has widely been recognised in most civilised countries. This includes legal aid for consultation, advice, pre-negotiation etc. Unless legal aid could be claimed as of right it cannot be said that equality before law has been achieved. Legal aid should not be considered as charity; it should be a part of social service.

In its independent history legal aid movement in Bangladesh has not gained any momentum at the governmental level until 2000 when the Government in assurance of financial cooperation by the Canadian International Development Agency (CIDA) made an initiative to provide legal aid to indigent litigants and in view of that plan the Legal Aid Act 2000 was passed providing for legal mechanism and access to legal aid

throughout the country. The purpose of this writing is to give a brief idea of the legal aid scheme under the Legal Aid Act, 2000 and its problems and prospects.

Provisions of the legal aid act, 2000

Section 3 of the Legal Aid Act 2000 provides for an

Litigant: The ceiling of taka 3000.00 should be raised at taka 10,000.00. This is because the ceiling of annual income seems to be inconsistent with the present state of socio-economic perspective of the country. According to the present legal arrangement a person is not entitled to get legal aid whose income is more than taka 3000.00

will in consultation with the G.P or P.P. appoint a panel lawyer and the appointment is to be approved by the District Committee in its next meeting.

Legal aid committees in thanas and upzillas

The present law compels indigent litigants to travel to the District to get legal aid which is very disadvantageous for them. Legal Aid Committees in thanas and upzillas should be formed as per section 12 of the Act. This will also relieve the burden of the District Judges to deal with lots of application at the same time.

Incidental Legal Cost and advance Payment: 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 witnesses if necessary, and other miscellaneous expenses like photocopying or releasing documents etc. The problem with regard to procurement of document necessary to start a case is fundamental. There is no provision for payment for vakalatnama. A lawyer needs some documents to start a proceeding in the court and he cannot procure these without cost which he naturally needs in advance. Problem becomes grave when the case is a civil suit between two individuals and appointed lawyer is unable to collect relevant documents from the lawyer of the other side. The lawyer has to approach the bench clerk for necessary help and it is open secret that no bench clerk gives any document without money (illegal gratification). Payment after service which is the rule under the legal aid law makes the lawyers disinterested in dealing with legal aid cases.

Complicated Procedure: 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.

Lack of Cooperation among three concerned Agencies: There is a huge lack of cooperation between three concerned agencies: Legal Aid Committee, legal aid lawyers and legal aid clients. Communication between the engaged lawyer and the client especially when he is in jail is very much important. There is evidence that appointed lawyers do not make contacts with the accused persons in jail custody. Very often because of bad communication network the indigent client living in a remote area finds it very difficult to consult the lawyer concerned. Legal aid clients express their dissatisfaction as to the performance of their legal aid lawyers.

Choice of Lawyer: As per the provisions of the Legal Aid Act the client has to choose advocates from the panel of three advocates formed by the committee. By this the client is actually debarred to engage advocate of his own choice. This provision should be redrafted. Most of the established law firms should be sent the details of how the national legal aid programme works for indigent litigants. This is because litigants more tend to approach law firms than elsewhere for their legal help.

At the moment no senior lawyers are interested in taking up a legal aid case because of very low fees; fees should be increased so that senior lawyer could be engaged in a complicated case. In view of their being extremely busy with their briefs some special provisions may be made with enhanced rate of fees for some senior lawyers.

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organisation named National Legal Aid Organisation which will organise and monitor proper functioning of this Act. Section 5 provides that the management and administration of the National Legal Aid Organisation will be vested on a National Management Board the main function of which is to provide legal aid to poor litigants and to supervise the activities and effectiveness of the District Committee. The main operating bodies are the district committees whose main function is to provide legal aid to poor litigants according to the rules and principles fixed by the National Legal Aid Organisation and to adopt and implement projects and plans relating to legal aid in the district. Under the Act and rules framed thereunder a litigant can get legal aid on fulfillment of the condition of "financially incapable and poor". Who is financially incapable and poor? The rule specifies that it means a person whose yearly average income is not more than Tk. 3000.00. An application for legal aid is to be submitted to the Board or the District Committee. If the application is made for legal aid for any matter in the Supreme Court, it is to be made to the Chairman of the National Legal Aid Organisation, i.e., the Minister of the Law, Justice and Parliamentary Affairs.

Problems and challenges of the legal aid scheme

The main purpose of this article is to high light the prospects and defects and put for some suggestions of the legal aid law and programmes.

The Ceiling and Determining the Means of the

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 his scanty income or convince the legal aid committee to believe him to be an indigent. There is also a fundamental question as to whether an indigent client whose monthly income is below taka 250 does really face any court case apart from some criminal allegation or arrest? Even a slum dweller or a beggar earns more than this amount. There is no specific guideline on the basis of which the committee determines a litigant to be an indigent litigant or not. It is because of this reason that a huge amount of legal aid money remains balance at the end of the year.

Proper monitoring and follow-up measures

After allocating a case to a panel lawyer, what is he doing? Is he doing his job with proper responsibility? Lawyers once appointed become disinterested because of the absence of proper follow-up measures. If a lawyer appointed on legal aid is found irresponsible, there should be effective system of removing him from the panel.

Monthly Meeting: The monthly meeting of the District Committee should be made more rule-oriented. After completion of one meeting if any indigent client files a petition it is left to be considered in the following meeting. Provision should be made that immediately after receiving any application, it is to be placed before the Chairman (District Judge of the respective district) who

HUMAN RIGHTS advocacy



Workshop on combating domestic violence

SHAILA SHAHID

DEEPLY rooted patriarchal values in communities along with the economic and physical insecurity of the majority of women in the country, have become a significant barrier to accessing justice. In order to break this barrier and help women establish their rights as

training and she elaborately discussed the main goal and objectives of the program "Combating Violence against Women and Children" which is being supported by Manusher Jonno. Chief executive Tanvir Jahan of DCHD, Pakistan shared her experiences on combating domestic violence and discussed the different form and format of violence against women.

used by the executive branch of the country for taking any measures, or to procedures for judicial pronouncements and judgements.

The participants at the workshop came to the point that that although the Government of Bangladesh has taken stern measures to combat violence against women and children with the help of the NGOs, CBOs and development partners, but a lack of knowledge about human rights and existing law makes the assurance of equitable justice more difficult for ordinary people. The objectives of the workshop are mainly:

- = Facilitating the local stakeholders for improving women and children's domestic, social, legal and economic status.
- = Ensuring justice for all and combat violence against women and children.
- = Creating equal opportunities and equal rights for every women and children in Bangladesh
- = Establishing a working relationship and network with law enforcing authorities, local people, local elected bodies, and civil society as well as with other organisations.
- = Enhancing the professional status and scope for Bangladeshi women lawyers.

The whole workshop was coordinated by project coordinator Sadrul Hasan Majumder.

Advocate Rehana Sultana, advocate Tauhida Khandakar, Nusrat Amin, Professor, Law Department of Dhaka University spoke ate the workshop on different topics.

In most cases of violations the victim are unable to lodge formal complaints. Different studies shows that most people in the rural areas do not even know what sorts of services and legal support, either from government and NGOs are available for victims. Many miscreants are taking advantage of this ignorance and ultimately the violation of human rights is increasing alarmingly. In this respect BNWLA is providing legal assistance through its central office as well as it has been continuously contributed in critical ways- from facilitating rescue, release and repatriation of victims, advocating their rights, helping them to recover and re-enter the mainstream of family life and the wider society. All the participants shared their views and experiences at the ending ceremony and expressed their firm strength to combat violence against women and children.



inseparable from human rights, BNWLA incorporated provision of legal assistance as a major service of the organization. As part of its program BNWLA organized training workshop for trainers who are working at local level for giving legal assistance to the most vulnerable of domestic violence. The three day workshop titled "Follow up training on domestic violence" begins from May 29 to 31, 2005 at Praboin Nibash, Sherebangla, Agargaon, Dhaka. In her inauguration speech advocate Salma Ali, executive director of BNWLA said that women and children's basic rights in Bangladesh are still unrealized for the most part of the country and the struggle to overcome the odds in providing such marginalized persons legal aid, education, economic opportunities and other forms of support is still a matter of priority. Fauzia Karim Firoz the former chairperson of BNWLA explained the necessity and need for such kind of

Thousands of destitute women in Bangladesh are passing their days in a distress situation. They remain outside the orbit of the justice system for many reasons. The main objective of the workshop was to improve the socio-economic status of women lawyers in the country and also to upgrade and gain recognition for developing the professional skills of the women lawyers engaged in providing services at grass root level.

In our country we have high quality laws and legislative institutions and the system of mediation is elaborately defined. However, good laws by themselves cannot guarantee the rule of law and secure human rights. Despite constitutional guarantees and carefully drafted laws, the reality of of life for poor people at the grass root level, particularly women and children are very different from the ideal and expected conditions as promised by our legal system. It is very clear that achieving law is not limited to the mechanisms

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LAW week



Bidisha not freed after granted bail

Former military ruler HM Ershad's estranged wife Bidisha was not released from the jail despite her obtaining an ad-interim bail in the passport forgery case, as the authorities showed her arrested the same day in a cheating case.

Ershad filed the case with the Court of First Class Magistrate, Dhaka on June 5 on charges of her hiding her marriage with a British Peter Stuart Wilson from him and marrying him without divorcing Wilson. Yesterday, Ershad's lawyers filed a petition with the Court of First Class Magistrate, Dhaka for showing Bidisha arrested in the cheating case and sending a custody warrant to the Dhaka Central Jail. Later, Magistrate Rehana Yasmin issued the warrant, which was sent to the jail. The news of the case broke when relatives and lawyers were waiting for Bidisha's release at the prison cell of Bangabandhu Sheikh Mujib Medical College Hospital (BSMMUH) where she was undergoing treatment under police watch. *The Daily Star, June 14.*

Law secy tells of judges' corruption

Law Secretary Alauddin Sardar said there are widespread allegations of corruption against some judges and the staff of the Dhaka District and Sessions Judge's Court. While speaking at the inaugural function of a computer training programme for the staff of Dhaka judgship, the law secretary alerted all concerned in this regard. Minister for Law, Justice and Parliamentary Affairs Moudud Ahmed inaugurated the training programme at the judges' court conference room. State Minister for Law Shahjahan Omar also spoke at the function chaired by Dhaka District and Sessions Judge Mohammad Rafiqul Islam.

Asking all to work to bring back people's confidence in the judiciary, Moudud Ahmed said the government has amended different laws to ease the way of justice to litigants. Moudud termed the amendments a landmark step which has already quickened trial and justice to the litigants. Lauding Dhaka District and Sessions Judge Mohammad Rafiqul Islam for arranging such a timely training programme taking no fund from the government, the law minister said such computer training programmes will also be introduced in all judgships across the country. *The Daily Star, June 15.*

Sex abuse trial pop superstar Jackson found not guilty

Michael Jackson walked out of court a free man, cleared of all charges in a dramatic sex abuse trial that threatened to destroy his career and send him to prison for nearly two decades.

Jackson gripped the hand of his lead attorney, Tom Mesereau, and dabbed at his face with a tissue as the verdicts were read to a courtroom packed with reporters and about three dozen fans of the 46-year-old entertainer, many of whom broke into prayers or sobs. Defence lawyer Susan Yu and Jackson's mother, Katherine, wiped away tears as he was hustled from the courtroom and returned to his sprawling Neverland Valley ranch -- where a teenage boy had claimed the singer molested him after nights of heavy drinking.

Jackson, who looked expressionless and gaunt as he left the court, refused comment but blew a kiss to waiting fans. He faced nearly two decades in prison if convicted on 10 counts of lewd acts with a child, giving a minor alcohol and conspiring to commit child abduction, extortion and false imprisonment. The case against Jackson was sparked by a February 2003 television documentary in which the singer was shown holding hands with his acuser and defending his practice of sharing a bed with young boys. *Reuters, Santa Maria, June 15.*

Mobile courts hit road to nab adulterators The Daily Star reports prompt home ministry action

Two mobile courts begin a round-the-year operations to hunt down unscrupulous traders who spray chemicals on fruits, a serious health concern. "We're very alarmed at this (spraying of chemicals) and we want it to be checked immediately," State Minister for Home Lutfuzzaman Babar said. "The mobile courts will work regularly from now on," Babar told reporters after a high-level meeting on law and order at the home ministry.

The courts, each headed by a metropolitan magistrate, will primarily work in the capital. Two platoons of police and four vehicles will be kept ready round-the-clock to rush to the spot to arrest dishonest traders. The move came after trial raids on Tuesday when 12 people were held with chemically poisoned mangoes in Old Dhaka. A mobile court sentenced five of them to six months' imprisonment. The home ministry had ordered the raids. The Daily Star on Tuesday carried a report titled "Food tainted with toxic colours, risky mixings".

Experts said traders use carbide for artificial ripening and preservation of fruits, especially mango. "Mixing hazardous chemicals is a punishable act for which the offender could be awarded a maximum of six months' imprisonment," said Magistrate Mamun-Al-Rashid, who headed the mobile court on Tuesday. The meeting also decided to strengthen security at city markets that recently saw some burglaries, the latest one on Friday at Rapa Plaza. Close circuit televisions (CCTV) will be set up to watch the movement of the market-goers, the meeting decided. Deputy commissioners (DCs) of Dhaka Metropolitan Police have been instructed to supervise setting up the CCTV by market committees. *The Daily Star, June 16.*

Aug 21 Grenade Attack Interpol invited to probe 'disclosures'

The government has invited Interpol to carry out a follow-up probe into last year's grisly grenade attack on an Awami League rally following 'disclosure of crucial clues' by two recent high-profile arrestees. "We've got some crucial clues regarding the August 21 grenade attack," State Minister for Home Lutfuzzaman Babar told reporters yesterday, referring to the interrogation of top terror Arman Khan and former city corporation ward commissioner and AL leader Mokhlesur Rahman. On the expected time for the arrival of Interpol members, Babar, emerging out of a law and order meeting at the Home Ministry conference room yesterday, said, "I hope, very soon." Asked whether the government is going to invite the Federal Bureau of Investigation (FBI) for the investigation, Babar said: "We're not planning to invite them at this moment. But they are always welcome, if they want to investigate."

A letter was sent to the Interpol Headquarters at Lyon in France Monday, requesting agents to assist Bangladesh investigators following the reported 'disclosures' made by Arman and Mokhlesur. Twenty people including AL's women affairs secretary Ivy Rahman were killed and hundred others were injured when unknown assailants hurled several grenades at the AL rally on the Bangabandhi Avenue. *Pratham Alo, June 16.*

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