HUMAN RIGHTS *advocacy*

Refugees status, UN Convention and Bangladesh

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ACCORDING to the UN Charter and Article 15 of the Universal Declaration of Human Rights (UDHR) of 1948 everyone has the right to a nationality and no one shall be arbitrarily deprived of his/her nationality nor denied the right to change his/her nationality. 56 years ago in 1951, representatives from 26 countries drafted and adopted the Convention relating to the Status of Refugees in Geneva. From then onward so far a total of over 50 million people have been sheltered through international refugee protection under the Convention.

As per the decision of the General Assembly, a UN Conference of Plenipotentiaries met at Geneva in 1951 to draft a Convention regulating to the legal status of refugees. As a result of their deliberations, the UN Convention relating to the Status of Refugees was adopted on 28 July 1951 under General Assembly resolution 429 (V) of December 14, 1950 and entered into force on April 22, 1954 upon submission of the 6th instrument of accession in accordance with Article 43. The Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees yet attempted on the international level. It lays down basic minimum standards for the treatment of refugees, without prejudice to the granting by States of more favourable treatment. The Convention is applied without discrimination as to race, religion or country of origin, and contains various safeguards against the expulsion of refugees. .

It has a preamble, divided in seven chapters with 46 Articles. Chapter I (Article 1-11) deals with general provisions, Chapter II (Article 12-16) with juridical status, Chapter III (Article 17-19) with gainful employment, Chapter IV (Article 20-24) with welfare, Chapter V (Article 25-34) with administrative measures, Chapter VI (Article 35-37) with executory and transitory provisions, and Chapter VII (Article 38-46) with final clauses. Article 1 of the Convention provides the definition of a refugee "A person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution." It was initially limited to protecting European refugees after World War II, but a 1967 Protocol removed the geographical and time limits, expanding the Convention's scope under which mainly Europeans involved in events occurring before January 01, 1951 could apply for refugee status. Denmark was the first state to ratify the treaty on December 04, 1952 and there are now 145 signatories to either or both the Convention and Protocol.

It was the first truly international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of basic human rights which should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognised the international scope of refugee crises and the necessity of international cooperation, including burden sharing among states, in tackling the problem.

The UN Convention relating to the Status of Refugees is an international convention that is the key legal document in defining who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grants it. The Convention also sets out which people do not qualify as refugees, such as war criminals. It provides for some visa-free travel for holders of travel documents issued under the Convention. Other than defining the term 'refugee', it also outlines a refugee's rights including such things as freedom of religion and movement, the right to work, education and accessibility to travel documents in passport form. Most States, parties to the Convention, issue this document. It also underscores a refugee's obligations to a host government. A key provision stipulates that refugees should not be returned to a country where they fear persecution.

International protection is based on human rights principles. Certain provisions of the Convention are considered so fundamental that no reservations may be made to them. Since the refugees do not enjoy the protection of the country of origin, the international community must come forward to provide that protection. For international protection one could rely on international legal Conventions and Declarations adopted by the UN or by the regional organizations. Accession has also been recommended by various regional organisations, such as the European Council, the Organisation of African Unity, and the Organisation of American States. By establishing the UNHCR in 1949, the UN reaffirmed and recognised the responsibilities of UN for the international protection of refugees.

It is to be mentioned here that no country from the SAARC region became party to the Convention. But all the countries have a traditional and long experience of providing shelter and attaching dignity to the refugees. Bangladeshi people became refugee in India for nine months in 1971. Bangladesh has also been confronted with the flow of refugees from Myanmar. According to UNHCR, around 26,000 Rohingya refugees have been living in Bangladesh and a total of 2,36,599 have been so far repatriated since 1992, when a influx of refugees came from Arakan in Myanmar following religious and political persecutions.

Signing of the 1951 UN Convention Relating to the Status of Refugees by Bangladesh can give a legal framework and certain rights for the protection of the refugees in the region. This is not emotional rather an obligation to the international community. The signing of the Convention will also increase the reputation and good will of Bangladesh in the international arena.

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LAW *campaign*

Urge for ratifying the Rome Statute on the International Criminal Court

Odhikar, as a member of the Coalition for the International Criminal Court (CICC) held a discussion meeting to observe the International Day of Justice at Odhikar's office. Globally the 17 July commemorates the adoption of the statue establishing ICC on that day in 1998 in Rome. On 16 September 1999 Bangladesh became the first South Asian country to sign the Rome Statue creating the International Criminal Court (ICC). However, the Government of Bangladesh is still to ratify the Treaty.

The discussion meeting was presided over by Ahmed Ziauddin of Asian Network for the International Criminal Court (ANICC), who said- "As a signatory to the ICC Treaty, Bangladesh has an obligation to ratify the Treaty. Ratifying the Treaty would demonstrate the commitment of the Government of Bangladesh to uphold human rights as is enshrined in our Constitution and is exemplified by our troop contributions to UN Peacekeeping missions. Ratification would improve the image of this Government in the eyes of the international community."

The International Criminal Court is a permanent independent judicial body established by the international community of states through the Rome Statute to prosecute the perpetrators of grave crimes under international law, including genocide, crimes against humanity, war crimes and the crime of aggression.

The meeting also discussed the present status of ICC campaigns in Asia and, in particular, South Asia. In Sri Lanka, Nepal, Pakistan and India the human rights activists continue to campaign on for their countries to ratify the ICC Treaty. Until today 139 countries have signed the Rome Statue and among them 104 countries have ratified it.

Odhikar urges the Government of Bangladesh to ratify of the Rome Statue to contribute to the international criminal justice system. In addition, Odhikar urges the UN General Assembly to formally recognize 17th July as International Day of Justice. And urges all other South Asian governments to ratify the ICC Treaty immediately. The other discussants of the meeting were J Hasan, Sultana Razia and Acting Director of Odhikar, ASM Nasiruddin Elan.

Source: Odhikar.

LAW *opinion*

Make legal aid a national priority

AL ASAD MD. MAHMUDUL ISLAM

IT is evident that no state can attain meaningful development without establishing rule of law, equality, justice, democracy and human rights. Accordingly, it has been felt that the poor and the marginalised be given some sort of advantage so that they could get equal access with the rich to the service delivery system of the state. It is for that reason, the poor, marginalised and people from backward sections as well as minority groups, women and children are considered to receive aid or assistance in the court premises so that their economic and other constraints do not bar them to avail proper remedy or relief in case of infringement of their legal rights.

Though the notion of legal aid emerged and developed from that benevolent point of view, it's no longer considered as a relief or charity work for the poor by the state or the power elite. Today, right to legal aid is conceived as a fundamental right of the poor, marginalised and low income people and considered as one of the cornerstones of enhancing access to justice for them.

This concept of "legal aid" has already become a catchphrase among the lawyers, judges as well as students and faculties of law in our country. Legal aid services are also getting importance here from all quarters of state and non-state actors including the judiciary. Perhaps, the long-standing poor demonstration of governance and socio-economic downtrend of the state have also been pouring in some elements that require a need-based and comprehensive approach of legal aid services in our country.

In a jurisprudential view, the interlinking and interdependence of right to legal aid and other fundamental and basic human rights also necessitated the rapid development of this concept. But it can be said without any other speculation that, despite global and national initiative to provide legal aid for the poor and the marginalised, any legal aid program is bound to be unsuccessful without mass awareness and active participation of the beneficiaries and other stakeholders. Keeping this in mind, an attempt has been made here to assess the need of legal aid and current state of government legal aid programme in Bangladesh.

What is legal aid

The phrase "legal aid" is often replaced as legal support, legal help, legal service, legal assistance, free lawyers' services etc. In a general and simple meaning it refers to legal advice, opinion or legal representation that is provided by an organisation or an individual at low or no cost to people who cannot afford to pay for such legal services. In other words, It means to provide legal counseling, engaging lawyers, meeting other costs of conducting a suit, giving every legal assistance to enjoy the constitutional, statutory and other rights and liberties to the poor, downtrodden and have-nots, the marginalised and vulnerable people who do not have enough means to arrange for such steps by themselves at nominal fee or without any cost.

Implication

The importance of "legal aid" cannot be stated in a few words. A free, fair, neutral court system and a good parliament that enacts pro-poor laws will have no affirmative impact upon the poor if they could not be able to invoke justice from that court system and body of laws. Legal aid by the government or other organisations enables them to struggle for their rights and liberties. Providing equal opportunity and equal standing to the poor with the rich through legal aid could ensure rule of law, equality and justice of the society. If legal aid is not provided, the poor might feel insecure in the court of law which dispenses justice. This insecurity destabilises social harmony and peace, increases criminal activities and private disputes resulting in thousands of conflicting issues and interests between the poor and the rich, the power holders and the powerless, the privileged and the under-privileged with the threat of ensuing a great fall of human rights.

Essential relevance of legal aid programme

If we take the instance of our justice delivery system, we find that the poor have been the worst sufferers, women have been in the centre of deprivation and rights of children have been subject to negligence for quite a long period. This three categories of peoplethe poor, women and childrenhardly enjoy their rights as guaranteed in the fundamental rights portion of our Constitution, including right to equal protection of law, right to access to justice, fair trial, consulting with a lawyer chosen by themselves, right to know the cause of arrest or detention, right to not being tortured, detained etc. It is because of the fact that, firstly they are completely unknown and unaware of their rights, and secondly, they are incapable of establishing their rights by invoking justice from the court due to lack of financial ability. As a result, our justice delivery system is yet to be proved as useful machinery for ensuring justice in the society, enhancing social progress through empowering the poor who are the majority, women who are almost half and children who are a considerable number of our population. Justice and judicial activities of the state, not being an affair of the rich, elite, power holders and political leaders only, is a people's concern and should be equally accessible, applicable and friendly to every person as contemplated in our Constitution. The relevance of setting up a tangible legal aid programme is also collaborated by the following provisions of the law:

1) Constitution of the People's Republic of Bangladesh (especially, Article 33(1); right to consult and be defended by a legal practitioner).
2) Code of Civil Procedure 1908 (Order XXXIII, Rule 1, Provisions relating to pauper suit).
3) Code of Criminal Procedure, 1898 (Section 340(1) right of an accused person to be defended by a pleader.

Government legal aid

First effort for providing legal aid to the indigent litigants was taken by the government by a notification dated 18th January 1994. Under the said notification Legal Aid Committee was formed in every district with the District and Session Judge as Chairman; District Magistrate, president of the district bar association, government Advocate, Public Prosecutor, and a government nominee as members and judge in charge of accounts as secretary. The said committee after considering applications of the indigent litigants allowed legal aid by paying fees of the advocates of such applicants appointed from a panel prepared by a committee consisting of the District Judge, District Magistrate and two government nominees from amongst the advocates of at least five years standing practice, from a fund provided by the government for the purpose.

Subsequently by another notification dated 19th March 1997 government formed a National Legal Aid Committee and also reconstituted District Legal Aid Committee. The function of the National Legal Aid Committee was to coordinate and supervise the functions of the District Legal Aid committees. Despite these initiatives from the government, the objectives of legal aid appeared unfulfilled and unfeasible due to lack of a comprehensive scheme and shortage of fund. Hence the government enacted the Legal Aid Act 2000 to put the legal aid activities on firm footing and also amended the Act in 2005 with a view to making it more pro-people and poor friendly.

Salient features of legal aid act

Legal Aid Institution: A legal Aid Institution comprising of the National Legal Aid Board headed by the Minister of Law, Justice and Parliamentary Affairs and District Legal Aid Committees headed by the relevant District or Session Judge has been established under this Act. The Act also empowers National Legal Aid Board to formulate plan of action and coordinate the activities of the District Legal Aid Committees. The function and authority of National Legal Aid Board and District Legal Aid Committees have been detailed in the Legal aid Rules provided by the Act.

What and how given: Legal aid is not given in the form of cash to the poor litigants to bear their litigation expenditure. It is not a monetary help but a procedural assistance. According to the Act legal aid means and includes- (1) Providing legal assistance and advice in cases to be filed, already filed or pending before a court, (2) Paying honorarium to the mediators or arbitrators engaged to mediate or arbitrate a dispute under section 89A and 89B of the CPC, (3) Providing incidental costs related to a case selected for legal aid, and (4) Paying honorarium to lawyers engaged in legal aid cases.

Who are eligible for legal aid?

The Act categorises the following groups of people as eligible to apply for the legal aid to the National Legal Aid Board and District Legal Aid Committees:

1. People with average annual income of less than Taka 3000.
2. Physically disabled, jobless people, and freedom fighters whose annual income is less than taka 6000.
3. Recipients of retirement benefit.
4. Impoverished mothers holding VGD cards.
5. Women and children that are victims of acid burns, trafficking.
6. People having land or house at Adarsha Gram.
7. Financially insolvent widows, economically disadvantaged women, deserted wives.
8. The handicapped that are helpless and incapable of earning.
9. Under trial prisoners that are unable to afford legal representation.
10. Persons declared insolvent or helpless by the jail authority.
11. Persons considered eligible for legal aid by the institution due to their insolvency, helplessness or socio economic backwardness.

The application procedure

The application is to be written in white paper or in the prescribed form describing the name and address of the applicant, causes for applying for the legal aid and submitted to the Chairman of the Board, in case of matters under the jurisdiction of the Supreme Court and to the Chairman of the District Committee, in case of matters under the jurisdiction of other courts. Then the application is due to be placed in the next committee meeting which is scheduled to be held once in every month for the District Committee and once in every three months for the Board. The relevant committee will scrutinise the application and decide on the availability of the legal aid. In case of approval they will transmit it to the applicant.

Few suggestions

Even after six years the Legal Aid Programme remains to be proved as a successful programme of the state. Several shortcomings and shortsightedness of the Act and the Legal Aid Programme could be identified for its unsatisfactory operation and less effectiveness, but lack of public awareness and meagre steps for dissemination activities on the part of the Legal Aid Institution will stand at the top. No justification is necessary for the forgoing reason as we know the programme still remains unheard of to the common people including the community leaders and locally elected representatives like UP Chairmen, Members, Matbars (persons having influence in local matters among the villagers and slum dwellers) and religious clerics.

We must know that, above all, it is the common people whose awareness is most important in carrying out the activities under this programme and by this institution. But, how far the concept of 'legal aid' is intelligible to those people who really need it? Do we really care for its comprehensibility to those persons who live in the rural areas, who do not know how to read, how to write and therefore, how to apply and where to apply for this legal aid? Do we have any scheme to reach this fundamental right to them? In order to make positive answers of these questions and to impede the move of making it a cliché, it is high time to adopt a practical approach for making legal aid an effective instrument of empowering the poor and women. Coordinated effort from state and non-state actors is crucially important in this regard for establishing it as a vehicle of poverty reduction.

Dissemination of information and awareness building is not an easy job resting on the government or concerned government agencies, it's a matter of coordination and cooperation between and among governmental and nongovernmental organisations, conscious citizens and the media. It will also help in building national and regional funds for providing legal aid to the persons applied and selected for legal aid. Foreign and local aid in addition to government allocation through budget will definitely play an effective role in the operation of this programme throughout the country and even across the borders in enhancing access to justice of the poor.

Conclusion

Bangladesh is a developing country with more than thirty percent ultra poor population living in the darkness of illiteracy and therefore without access to any such state-run programme. The existing wide range of disparities between the poor and the rich can only be mitigated through strengthening this Legal Aid Programme which is closely linked with the Poverty Reduction Strategy and it must be seen as an instrument of achieving Millennium Development Goal. Democracy means equality and empowerment of every citizen. Therefore in order to ensure meaningful democracy, establishment of legal aid services and institutionalisation of the Legal Aid Institution should be a top priority for every government including this interim caretaker government.

The author is an advocate and legal researcher.