



# Legal aid: Popularize its use

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To get the justice prerequisite is access to justice. Ensuring the right of access to justice for the citizens is fundamental for establishing a discrimination free society. But unfortunately the poor and disadvantaged portion of the society is always denied the path to move to the court due to their economic instability and inability. Ultimately the social mechanism compels them to compromise with their situation. The modern justice system through judicial adjudication is very costly and that cost has been the most difficult factor for the average people to get justice both in developing and developed country. Therefore to vindicate their rights and uphold dignity it is essential to assist them to put their footstep before the court house. Our constitution guarantees the equality before law and equal protection of law but what in reality is different from theory. The constitutional guarantees seems merely as black letter when we see that bulk of the indigent litigant either fails or stop at mid in their travel to get justice. Here comes the concept of legal aid, not as charity but as rights, to arm the poor and disadvantage in the battle of litigation.

In our system justice delivery is always time consuming and the litigants requires passing of various step of a long stairs. And in each step numerous money eater demons eagerly awaits for them whom the litigants needs to satisfy. Therefore, poor and indigent litigant hardly dare to knock at the door of court as they cannot afford to pay lawyers, court fees and other incidental charges like conveyance cost, collection of document, copying them etc. They can never stand in a level playing field with his affluent opposition. It is simple to realise that how a pauper will struggle in court room where he/she is struggling to afford his minimum basic human needs and that's why they often left to bear the agonies of injustice silently. The constitutional guarantee, therefore, also proves here far away from practical. For these reasons, to address this problem and ensuring access to justice for poor and disadvantaged people the government activated legal aid services by enacting Legal Aid Services Act-2000[LASA]. The Act intends to provide legal aid services to the poor to institute and defend suit in court.

**Concept of Legal Aid:** Legal aid helps with the cost of the legal advice which a litigant fails to afford it. In plain meaning legal aid means any sort of legal assistance or legal representation in favour of poor litigants both in inside and outside of the court. The assistant may be of rendering legal advice, engaging lawyer, legal help etc. but not hand cash; rather it is kind of procedural assistance in litigation where cost is provided either by non government or government actor. The basic purpose of legal aid is to enable an indigent litigant to enjoy and vindicate his constitu-

tional as well as other laws rights for uniformity of law application.

## The Legal Aid Services Act-2000

The Legal Aid Services Act -2000 has been enacted in order to provide legal advice and support to people who are incapable of seeking justice due to financial difficulties, destitution, helplessness and for various socio-economic conditions. With a view to implement the legal aid program across the country a statutory body called National Legal Aid Services Organization (NLASO) has been established whose administration and function is vested upon National Board of Management consisted of 19 members. Fund is allocated in 64 districts to the District Committee headed by respective District Judge with members from gov-



ernment officer, lawyer, voluntary and woman organization respectively. To spread the activities of legal aid program at grassroots level upazilla and union committee is also working under this Act. To conduct the suit lawyer is appointed from a panel of experienced lawyer. According to the Act nature of the legal aid provided to the people are following - Providing legal assistance and advice in a litigation to be filed, filed or pending before any court of law; Giving honorium to any conciliator or arbitrator appointed to conciliate or mediate any case under the provisions of section 89B of the Code of Civil Procedure-1908; Providing any other incidental cost including expenditure of the case; Providing the honorium to the appointed lawyer.

**How to apply and who can apply?** As per the provision of this Act the application asking for legal aid is to be submitted either in prescribed form or in plain paper mentioning name, address and reason for invoking legal aid either to the Board or District Committee. If the subject matter is in the Supreme Court then it is to be made to the chairman of the organization and if in any other court then to be made to the Chairman of the District Committee. The application placed before the committee is considered in

next meeting. In the event of rejection of the application by the District Committee the applicant may prefer appeal to the Board within 60 days from the date of decision and Boards' decision will be final.

Who will be eligible to get legal aid is mentioned in Legal Aid Policy- 2001. According to the Policy the following persons can avail legal aid assistance- Freedom fighters disabled, partially disabled, unemployed or unable to make yearly income above 75000 tk; Individual receiving old age allowance; Distressed mother holding a VGD card; Woman and children victim of trafficking and acid throwing; Allottee of a house or land in a model village; Insolvent widow and woman abandoned by husband; Person with financial insolvency; A detainee without trial and unable to take self defense for financial insolvency; Person considered by the court as financially helpless; Person recommended or considered as insolvent by jail authority; Person considered eligible for legal aid by the institution due to their insolvency, helplessness or socio economic backwardness. It is mentionable that in this regard insolvent or financially insolvent person means person whose annual average income is not above 50000 tk.

Undoubtedly Legal Aid Act is a praiseworthy pro-poor initiative of the government. But yet it is to be proved as a successful program. It cannot be denied that the Act has some shortcomings but the question is, did we make a proper use of what we have? Positive answer cannot be expected here because we see that legal aid program is yet peculiar to the beneficiaries for whom it is activated. This program is alien at grassroots level due to the absences of proper mechanism of awareness rising. They don't know how to apply and where to apply; local administration is unwilling to let people know about this. That's why the village people prefer to resort to their traditional justice system rather formal justice system. Although they frequently denied the true justice but less consuming of time, no cost at all persuade them to resort on age old system which itself contribute to the violation of human rights. It is the common people whose awareness is most important in carrying out this activity. Therefore what should be done is to create awareness and it must get the top priority. But it is not easy to build aware and put forward the information among people on the part of the government only rather it is a matter of coordination among government and non government actor, civil society, vigilant citizens and media. Removal of the shortcomings of the law is also to be ensured. Availability and utilization of fund is also a necessary criterion in this regard and last not least, without proper institutional arrangement, it is our realization that, the cry for access to justice for socially downtrodden people will be far away from reality.

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# Citizens and the UN deceived

## A Joint Press Release by Odhikar and the Asian Legal Resource Centre

THE Asian Legal Resource Centre (ALRC) and Odhikar, national human rights organisation based in Bangladesh, have jointly submitted a report to the United Nations' Universal Periodic Review (UN, UPR) concerning Bangladesh. The report establishes, through illustrations and analysis, that the Government of Bangladesh is not honest in meeting its human rights mandate. The report critically questions Bangladesh's commitment in implementing the observations and recommendations made during the first UPR cycle that was held in 2009.

Bangladesh will undergo its second UPR cycle between 22 April and 3 May in 2013. Human rights organisations working from within and outside Bangladesh have filed similar reports to the UN on Bangladesh in preparation for the second cycle of review. Thematic mandate holders like the UN Rapporteurs and UN Working Groups have also filed their reports. The last date for filing the report was 9 October 2012.

During the first UPR session, 42 recommendations were made of which Bangladesh accepted 34. The original

document at the UN could be accessed here: UPR Working Group's Report and Addendum of Bangladesh. During the first session, the Minister of Foreign Affairs promised the people of Bangladesh and the international community that her country has "zero tolerance" to torture, extrajudicial executions and custodial deaths. Despite the solemn statement, the number of instances of torture, custodial deaths and extrajudicial executions reported from Bangladesh has not reduced. In fact the government has tried its best to silence those who reported such cases from the country. The government, though has accepted the request for visit from the UN Rapporteur on Extrajudicial Executions, it is yet to arrange for the visit.

Over the past four years the country's cooperation with the international human rights mechanisms has not improved and remains inadequate. For a state that is a member in the UN Human Rights Council, such neglect is not just inappropriate, but is an act of dishonesty. For instance, the country is yet to submit its periodic reports to the

Committee against Torture; Human Rights Committee; and the Committee on Economic, Social and Cultural Rights at the UN. In fact, the country has missed the fourth deadline extension set by the CAT Committee for submission of the periodic report. The Convention against Torture, ratified by Bangladesh in 1998, required the country to file its report to the CAT in 1999. The report was due on 11 April 1999 that was extended to 11 April 2003 and further to 11 April 2007 and the latest to 11 April 2011.

Contrary to the assurance to the UN and against the domestic law in Bangladesh, negating due process, the Government of Bangladesh has thus far withdrawn 6855 cases of murder, rape, robbery, corruption, extortion and the keeping of illegal arms. The excuse cited while executing the 'crown prerogative' by the government is that all these cases are 'politically motivated.' If this is true then it only exposes the height of misuse of investigation agencies in Bangladesh. If the excuse is not true such massive number of withdrawal of cases, undermines the very notion of

justice and the victims' right for remedies.

During the first UPR process the government claimed that it "is committed to end all extra-judicial activities by law enforcement agencies, and will bring any official found responsible for such actions to justice." In reality, however, more than five hundred extrajudicial executions undertaken by the state agents are reported from the country since 2009. Due to the blanket impunity enjoyed by the law enforcement agencies in the country from investigation and prosecution, the number of enforced disappearances has gone up in the recent months unabatedly.

The incumbent government has more than 300 out of 350 seats in the national parliament. However, its laxity and absence of commitment to end torture and extrajudicial execution in the country is evident from the non-passing of the Bill pending before the parliament to criminalise torture and extrajudicial executions.

Source: Asian Human Rights Commission. (<http://www.humanrights.asia/news/news/alrc-news/>)



## Mollah verdict any day

The International Crimes Tribunal-2 will deliver the verdict any day on the war crimes case against Jamaat-e-Islami leader Abdul Quader Mollah as the proceedings of the case concluded on January 17. The tribunal however did not fix any date for the judgement. The Jamaat assistant secretary general is facing six specific charges for his alleged involvement in murders and mass killings during the Liberation War in 1971. After concluding the arguments, the three-member tribunal led by Justice Obaidul Hasan kept the case as CAV (Curia Advisari Vult, a Latin legal term), which means the verdict could be delivered any time. During the trial, the prosecution sought capital punishment for Jamaat assistant secretary general Abdul Quader Mollah for 'committing' crimes against humanity during the Liberation War in 1971. -The Daily Star online edition January 17 2013.

## ACC sues 4 WDB engineers

Anti-Corruption Commission (ACC) in Chittagong on January 16 sued six persons including four engineers of Water Development Board (WDB) on charge of misappropriating its project fund. ACC Chittagong Metro-1 Deputy Assistant Director Humayun Kabir filed two cases against them with Banshkhali Police Station. The four engineers are--WDB Chittagong Municipality Division Executive Engineer Md Ashraf Zaman; Deputy Divisional Engineer Nur Mohammad; Deputy Assistant Engineer Abul Bashar; and Banshkhali Municipality Deputy Assistant Engineer Abdur Rahim. WDB project contractors Nur Mohammad and Md Alamgir were also made accused in the cases. According to the cases, the six misappropriated about Tk 30 lakh from a project of about 10km embankment construction work in Banshkhali. -The Daily Star January 17 2013.

## Fakhrul again denied bail

A Dhaka court on January 15 rejected BNP acting secretary general Mirza Fakhrul Islam Alamgir's bail petition in a case hours after granting him bail in another case. Judge Md Zahirul Haque of the Metropolitan Sessions Judge's Court in Dhaka denied the bail to Fakhrul in a case filed with Motijheel Police Station for blasting cocktails and assaulting police during the opposition's countrywide road blockade on December 9 last year. Earlier in the day, the same judge granted bail to the BNP leader in another case filed with Sutrapur Police Station for assaulting police and preventing them from discharging duties during the road blockade. - The Daily Star January 16 2013.

## HC upholds 2 JMB men's death sentence

The High Court on January 15 upheld the death sentence of two leaders of banned Jama'atul Mujahideen Bangladesh (JMB) in a murder case. Convicts Salauddin alias Salehin of Narayanganj and Rafiq Hassan alias Hafez Mahmud of Jamalpur are now in Dhaka Central Jail's condemned cell, Deputy Attorney General Md Selim told The Daily Star. The court delivered the verdict rejecting their appeals against the judgement of Speedy Trial Tribunal-1, Dhaka in 2006 which convicted and sentenced them to death for killing Abdul Gani alias Joseph Gani Gomez Mandal, a medicine businessman, at Duyanipara of Jamalpur in Sept, 2004. - The Daily Star January 16 2013.

## Contempt plea against SQ Chy's counsel

The International Crimes Tribunal-1 on January 14 ordered a counsel for war crimes accused Salauddin Quader Chowdhury to explain why contempt of court proceeding should not be initiated against him 'for interfering in the tribunal's proceedings'. Serving a show-cause notice on defence counsel Fakhrul Islam, the tribunal asked him to reply on February 6. The notice was issued in response to a petition filed by Fakhrul. The lawyer filed the petition against the backdrop of an alleged Skype conversation between the tribunal's former chairman Justice Md Nizamul Huq and expatriate legal expert Ahmed Ziauddin. In the petition the defence counsel asked the tribunal to clarify its independence beyond any doubt and state whether any of its members was privy to the alleged Skype conversation or have been in contact with Ziauddin. - The Daily Star January 15 2013.

## HC asks to investigate if any grabbing occurs

The High Court on January 13 directed the authorities concerned to investigate whether any portion of Biswa Ijtema grounds on the bank of the river Turag in Gazipur has been occupied and any structure has been constructed there illegally. Tongi municipality mayor in Gazipur has been asked to submit the investigation report to the HC by January 30. In response to a writ petition, filed by Tablig Jamaat Shura Committee Member Md Ismail Hossain, the HC also issued a rule upon the officials concerned of government to explain in two weeks why they should not be directed to keep the grounds free from encroachment if there is any grabber on the land. Land secretary, deputy commissioner of Gazipur, superintendents of police in Gazipur, and the municipality mayor have been made respondents to the rule. A division bench of the HC came up with the order and rule following the writ petition. -The Daily Star January 14 2013.

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