

THE LEGAL AID ACT, 2000 : IMPLEMENTATION OF GOVERNMENT LEGAL AID VERSUS NGO LEGAL AID

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In a democratic country it is a prerequisite that all citizens get economic and social justice. Therefore, as long as poor exist in the society, legal aid will be necessary to uphold human rights and equality. Realising the importance of legal aid in a given social atmosphere the developed countries like UK, USA and Canada have adopted the legal aid programme. In these developed nations legal aid has been identified as an effective instrument for erasing the socio-economic disparities in their societies. It is for this reason that the benefit of legal aid has been extended to the deserving members of the society not as a charity but as their civil right, having the Constitutional backing and support. Legal aid is an instrument to achieve protection in law is also embedded in the Constitution of Bangladesh.¹

The New Encyclopaedia Britannica defines legal aid as ‘the professional legal assistance given, either free or for a nominal sum, to indigent persons in need of such help’.² The International Commission of Jurists includes the provisions of legal advice and representation in the courts to all those threatened as to their life, liberty, property or reputation, who are unable to pay for it.³

The objectives around which the programme of the legal aid is woven by the developing countries, is that there should be a uniformity of law for the poor and the privileged sections of a democratic country. And equal laws also mean the equal opportunities for availing the benefits of such laws.

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1. Article 33(1) of the Bangladesh Constitution.
 2. The New Encyclopaedia Britannica, Vol. VI, 1974 (ed.) 122.
 3. The International Commission of Jurists, Report of Committee IV, Clause X, New Delhi, 1959.

In developing countries the law is often discriminatory while the process to access justice is slow, cumbersome and complex. The result is that people, especially the poor have inadequate and unequal access to justice through the formal legal system. Thus they tend to rely more on customary justice system. Improving access to justice requires that both these systems be made to work justly and equitably. In many developing countries, traditional or customary legal systems account for 80% of total cases. Therefore, understanding the government machinery and NGO's efforts in providing legal aid is of importance.

Moreover, without the capacity to provide individual representation on as wide a scale as possible, other efforts including legal literacy, court reform and systemic changes in the law will not achieve the goal of giving poor people greater control of their lives. Providing legal aid to some people benefits even those who do not get legal aid by changing community standards, but in order for this to happen legal aid must be provided to a significant number of people. NGO's in this regard can play a significant role to deliver services on a wide enough scale to begin to make a difference.

Legal aid is thus an important issue in the development of a society. The emphasis on the group who are the beneficiaries of legal aid draws its support from the sociological fact that these beneficiaries are the most disadvantaged in society. Legal aid means either aid that enables utilization of the legal services that are available in the society or aid as a part of a movement to access to justice. The paper seeks to underline how far this legal aid is made available through the Legal Aid Act 2000 by the government of Bangladesh and the limitation if any. Furthermore, whether NGOs can play a role in mitigating the gap if any in the process and the GOB programme.

Until the enactment of Legal Aid Act 2000 there was no state sponsored system of legal aid, except in criminal cases for those facing capital charges and in civil cases for those filing pauper suits. In criminal proceedings, legal aid has been available only through NGOs or through court appointed lawyers. Access to

legal aid or legal representation is therefore limited, particularly in rural areas.

CONSTITUTION AND FUNDAMENTAL RIGHTS

In Bangladesh the statutory provision regarding legal aid can only be found in the civil matters in the Code of Civil Procedure of 1908, Order xxxiii which allows a person to institute a civil suit without court fee as a “pauper”. On the other hand, under the Criminal Procedure Code, section 340 (1) provides that, any person accused of an offence before a criminal court, or against whom proceedings are instituted, may of right be defended by a pleader. But the section does not confer a right on the accused to be provided with a lawyer by the state or court. Moreover, the Constitution of Bangladesh under Article 33(1) gives right to all person for legal representation, yet this right is only permissive in nature meaning that a person cannot be denied representation if s/he so desires. However, for establishing rule of law and upholding human rights and dignity it is essential that no person should be denied of their basic rights. Thus, if legal aid is not to remain a mere symbolic right, the state should shoulder this responsibility with commitment.

Article 27 of Bangladesh Constitution states the fundamental rights as follows, ‘all citizens are equal before law and are entitled to equal protection of law’.⁴ The article consists of two parts, that is, equal before law and equal protection of law. ‘Equal before law’ can be found in all written constitutions that guarantee fundamental rights. Both the rights are in conformity with the Universal Declaration of Human Rights. Article 7 of the Declaration provides that, “All are equal before the law and are entitled without any discrimination to equal protection of law”.

‘Equal before law’ implies the absence of any special privilege to any individual in his or her favour. Nevertheless, it does not mean absolute equality among human beings which is physically not possible to achieve. The expression ‘equal protection of law’ is dependent and based on equal before law as one cannot be

4. Hamidul Huq Chowdhury v. Bangladesh (1982) 34 DLR 190.

achieved without the other. Therefore, violation of one tantamount to violation of the other.⁵ This right is similar to the American Constitution that guarantees equal protection of law.⁶ This is interpreted to mean subjection to equal law, applying to all in the same circumstances.⁷

“The principle on which the doctrine of ‘equal protection of law’ is founded in the Constitution of Bangladesh means that persons in similar circumstances must be governed by the same laws. The legislative classification by itself does not offend against the principle of equal protection of the laws provided the law operates equally on all members of the said class or group. For a valid legislation, classification must be reasonable for the purpose of legislation, should be based on proper and justifiable distinction, should not be clearly arbitrary, and should have all reasonable relation to the objects and to the public purpose sought to be achieved by the legislation”.⁸ Nevertheless, in the Bangladeshi context, it becomes impending with different classes of people to call for a special dealing for the weak and the wanting. Therefore, to achieve the objective of achieving equality in the Bangladeshi context and to dispense justice amongst its unequal segments, legal aid becomes necessary.

Thus, providing legal aid to the poor litigant is not a minor problem but a question of a fundamental character. Effective access to justice is the most basic requirement of a system which purports to guarantee legal rights to the people at large.⁹ Therefore, if a person is unable to obtain access to the court of law for having his wrongs redressed for defending himself against such wrong, justice have no meaning and to that extent fail in their purpose. Unless some provisions are guaranteed for the poor litigants by

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5. Sastri, Patanjali (CJ), *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 S.C. 75.
 6. 14th Amendment to the American Constitution.
 7. *Lindsley v. National Carbonic Gas Co.* (1910) 220 US 61.
 8. *Dr. Nurul Islam v. Bangladesh* (1981) 33 DLR (AD) 205.
 9. Universal Declaration of Human Rights, Article 8 A; International Covenant on Civil and Political Rights, Article 14, Clause 3.

ensuring the payment of court and lawyers' fees and other incidental costs of litigation, he is denied equality in the opportunity to see justice as envisaged in the our Constitution.

GOVERNMENT OF BANGLADESH: LEGAL AID ACT, 2000

In Bangladesh, the Ministry of Law, Justice and Parliamentary Affairs passed a resolution in 1994 to provide legal aid to poor litigants, and a particular amount of money was allocated to cover the costs of such representation under the authority of the District Judge. However, another resolution was passed in March 1996 repealing the Resolution of 1994. The necessity of a legislation to require legal aid was felt immensely. Several meetings of the Law Ministry paved the way to draft the legislation by 1998. Through various advocacy activities of The Asia Foundation partner NGOs, under the Democracy Partnership, several workshops were organised in 1998 and 1999 involving representation from 51 districts. They were invited to take part in the discussion when the bill on legal aid legislation was placed before the Parliament by the Standing Committee of the Ministry of Law. Thus, NGO's like BLAST along with Bangladesh Human Rights Organisation, Proshika, Madaripur Legal Aid Association, Legal Awareness Forum took active part in formulating the Legal Aid Act. The Legal Aid Act, 2000 was passed by Parliament in January 2000 and was effective beginning April 28, 2000.

LEGAL AID

Legal aid means providing legal advice, paying lawyers fees and cost of litigation including providing any other assistance to those who suffer financial insolvency, destitution, helplessness or are unable to access justice due to various socio-economic conditions (section 2a).

MODE OF APPLICATION

The persons eligible for legal aid under the Act may apply to the Board or District Committee. If an application is rejected, the aggrieved applicant may appeal to the Board within sixty (60) days of the decision and the Board's decision shall be final.

FUNDING

The Act provides for establishment of a legal aid fund for both national and district level. The main source of fund according to section 13 shall be from inter alia the following sources; the government, local office, institutions, companies or individuals, any foreign donor, any other source.

According to the provision of the Legal Aid Act, 2000, financial assistance is to be provided to the underprivileged based on the fees they incur; for example, lawyer's fees, court fees and other expenses. The committee that has been formed is responsible to utilise the funds, including criteria for eligibility. Funds are to come from national revenue but the officials responsible believe that external support will be necessary to get the programme up and running.

THE NATIONAL AND DISTRICT MANAGEMENT BOARD/ COMMITTEE

The Act requires that a National Legal Aid Organisation be formed by notification in official Gazette, to carry out the purpose of the said Act. The head office shall be in Dhaka and the management board will be headed by a Chairman, who is the Minister, Law, Justice and Parliamentary affairs. This Board under section 6 includes people from all walks of the society starting from MP's nominated by the Speaker, Attorney General, Secretary of Law, Home and Social Welfare, Inspector General of Police and Prison, Vice-Chairman of the Bar Council, the President of the Supreme Court Bar Association, the Chairman of the National Women's Commission, three representatives of any NGO's nominated by the Government working for human rights and legal aid which have activities in Districts, and three representatives from women's organizations nominated by the government which have activities in districts, with the Director of the Board acting as member secretary.

Although as early as 4th June 2000 this management Board was constituted but this is only in paper and in practice hardly any action was initiated except several periodic meetings of the

Board. Moreover, since its inception in 2000, Director of the Commission (under section 21) who is responsible for the implementation of any decision by the Commission and to conduct its activities according to the decision of the Board is yet to be appointed. However, a Joint Secretary of the Law Ministry has been appointed as a Director under section 21(4) since 2000 in an ad hoc basis.

Likewise, according to section 9, the District Committee shall consist of 13 members, including District and Session Judge as Chairman, the District Magistrate, the SP, the Jail Superintendent, an official of the District Social Welfare, if any, the District Women's and Children's officer, if any, the President of the District Bar Association, the government legal advisor, the Public Prosecutor, any jail visitor nominated by government, if any available, one representative nominated by the Chairman from district level NGO, the Secretary of Bar Association who shall act as member-secretary and where there are Metropolitan cities in any district, also the CMM and Metropolitan Police Commissioner.

The tenure of the nominated members of both the National and District Committee shall be for two maximum years and may be removed without reason by the government during the tenure.

FIELD RESPONSE/OBSERVATION ON LEGAL AID

The paper consists of research and observations from the field regarding the working of legal aid of GOB and NGOs. It includes observation of BLAST (2002), BMP (2003) and MLAA (2004).¹⁰ Therefore, in this respect, the NGOs legal aid support is worth mentioning. The Bangladesh Legal Aid Services Trust (BLAST) has a national network of lawyers and currently provide legal aid and mediation services in eighteen districts and five legal aid clinic. Madaripur Legal Aid Association (MLAA) encompasses the districts of Madaripur, Faridpur and Shariatpur. Bangladesh Mahila Parishad (BMP) is 34 year old membership based, non-profit movement oriented voluntary organisation, with

10. Research in Appraisal Mission of BLAST (2002), BMP (2003) and MLAA (2004).

approximately 134,000 general members working for women's rights.

A number of other NGOs, like ASK, BNWLA BSEHR also provide legal services. While the general focus is on providing legal support in civil cases, relating mainly to matrimonial or land disputes, criminal work is also undertaken. Nature of disputes centered generally around matrimonial issues like, divorce, non-maintenance, non-payment of dower, child marriage, dowry and polygamy. There were also cases over inheritance, land and property matters.

Success of legal aid rests on the fact that it opens an opportunity for clients to claim their legal rights. The number of cases filed demonstrates people's faith in the justice system and legal aid. It is rare for the poor or the powerless to find free and friendly legal services, where the entire system favours the powerful. Therefore, power relations may make it difficult to seek legal redress. The success stories of the legal aid provided by the NGO's show that it has a lot of landmark cases in hand and they are the strength of the legal aid they extend to the society. However, the GOB legal aid does not have a flavour of such success.

SUCCESS OF BLAST LEGAL AID

Legal aid is BLAST's core activity. The panel lawyers in the units are very enthusiastic about their involvement in legal aid activities. Direct legal assistance to poor people is an absolute necessary component of the effort to bringing the rule of law to the poor of Bangladesh. Field experience showed that BLAST legal support are increasingly sought by poor clients. The Dhaka, Mymensingh, Comilla, Chittagong, Tangail shows that people are seeking legal support from BLAST lawyers.

The BLAST model for providing legal aid has been very effective. It combines use of paid staff and private lawyers who are basically providing volunteer services for a modest stipend which does not cover a great deal more than their out of pocket costs. In choosing this approach BLAST has leveraged services for poor people which have a market value that far exceeds their cost. By establishing close ties to the district bar associations through its

management committees it has gained important support for the idea of legal services for the poor.

During the April 2001 to March 2002, BLAST dealt with 7,541 cases in litigation and resolved 2,225 of them. Of the cases that were resolved through a court judgement, BLAST won 85% of the time. A significant number of cases done by BLAST involve family disputes which includes failure to pay dower on divorce, failure to pay maintenance and child support, illegal dowry demands and domestic violence. BLAST takes relatively few land cases and it accounts for about 7% of the total accepted for representation. The labour cases involve claims for wages submitted to the Labour Court. BLAST has also filed, alone or with others, over 30 public interest litigation (PIL) cases since 1996 covering a wide range of subjects including shrimp cultivation, slum evictions, pay and working conditions for garment workers, health care, jail conditions, "safe custody", land disposition, local government, education, police misconduct, consumer safety (the iodised salt case) and other matters affecting the lives of the poor.

PIL must be assessed in terms of the accomplishments in particular cases, but also in terms of the use of PIL as a strategy for change. Taking the latter issue first, BLAST and other NGO's have done a tremendous job establishing PIL as a viable strategy for social change. Unlike in India, where courts led the way, PIL in Bangladesh came about as a result of persistent and creative advocacy. The Supreme Court eventually accepted the idea, but only in a concerted effort by a small group of public interest lawyers.

It should be mentioned that BLAST is the only organisation which routinely files cases challenging the legality of preventive detention under the Special Powers Act, 1974.¹¹ The *Habeus Corpus* writs filed by the BLAST lawyers under the Special Powers Act, 1974 in the High Court Division, have been uniformly successful in

11. BLAST Annual Report, January 2000- March 2001.

getting the detentions declared illegal by the Court. In spite of the nominal fees offered to BLAST lawyers for conducting these writs compared to private lawyers shows the commitment of panel lawyers for public service.

SUCCESS OF BMP LEGAL AID

BMP's success through movement may be visualised from the landmark cases. For example, in early 1980's Shabmeher, a minor of 11 years hailing from Narshindi, was brutally tortured for not agreeing to prostitution. She was taken to Dhaka medical college hospital by a stranger. BMP went to visit her in the hospital learning the news from the newspaper. BMP extended all out cooperation for her recovery. But she died on 9th April, 1980. A case was registered by BMP and a movement was launched by BMP against the culprits to be brought to books. Finally, the offenders were punished to 7 years imprisonment. However, Daulat Khan, the main accused escaped the penalty.

Again, in Chattockchora village, Maulvi Bazar District, Maulana Mannan, local Imam, along with eight village sardars, issued a *fatwa* at a *shalish*, which accused Nurjahan of adultery because she had remarried after a divorce. She and her husband were stoned 101 times, both her parents were beaten with a bamboo 101 times. Nurjahan allegedly committed suicide subsequently. On the face of movement by BMP and other women organisation action was taken. Police investigation; followed by criminal case for abetment to suicide against Maulana Mannan and eight others in the Maulvibazar Magistrate's court was taken. Judgement was delivered in February 1994 convicting all accused and sentencing them to seven years rigorous imprisonment.

The case of Shapnahaar is another example of BMP's long movement against violence to women. The case in nut and shell is that Shapnahaar was a victim of rape who conceived as a consequence and fatwa was pronounced on her conceiving illegally. The BMP gave her shelter in Rokeya Sadan, where she is still residing with her girl who is now 8 years of age. BMP was able to mobilise the public opinion in favour of the case but a hostile

administration was the main hindrance to get desired justice. Even the foreign media, the BBC, CNN broadcasted the interview on the case. However, the police administration could not work efficiently on the face of local fundamentalist pressure. For lack of evidence even after several years the case has not seen the light of the day. It is still pending in the High Court Division.

SUCCESS OF MLAA LEGAL AID

MLAA has been working in the field of providing free legal aid to the poor and marginalized people since 1978. MLAA has a mediation and legal aid committee in three districts of Madaripur, Shariatpur, Gopalganj. Initially the organisation provided legal assistance to those who are incapable to access the state legal machinery due to the lack of awareness regarding their rights coupled with poverty which acts as hindrance to surface their grievances. The organisation also campaigned for raising social awareness regarding legal and human rights.

However, in doing so the organisation felt the limit of litigation on the impact of the poor in their actual lives. Traditional shalish has its origin in history throughout the Indian Subcontinent. Nevertheless, the present day shalish that is applied in the rural areas has its limitation for being prejudicial and biased as the shalishkars often impose the shalish arbitrarily on the weaker party. Moreover, the shalish hardly follow any uniform principle of equity and justice. In recognition of such limitation MLAA developed an alternative forum for dispute resolution for the rural poor through the reformed shalish, popularly known as the Madaripur Model of Mediation (MMM). The object obviously is to introduce a free, equitable and effective alternative to a large number of commonly occurring litigation. The most significant role of MLAA is to introduce the community members in the mediation process. There is a committee known as Community Based Organisation (CBO) that is mandatory in the UP and Ward level. The participation of CBO members enhances the confidence of the disputing parties.

In the district level the cell are run by either co-ordinator or Senior

Assistant or Assistant Co-ordinator. There are advocates in this committee but there is no fixed number because there are panel lawyers engaged to institute cases in situations where it is required. The number of panel lawyers also differs from place to place. MLAA currently has 75 panel lawyers in the three districts.

Once the case is decided by the MLAA free legal aid project and confirmed by the secretary, the paralegal worker takes the client to the respective panel lawyers. The appointed lawyers then file a case before the court and conduct the same up to the disposal of the case.

For land cases the coordinator of the project goes to the chamber of the convenor of Land Project with the land dispute for consultation and for approval of land cases. Convenor is a veteran lawyer and also President of MLAA. Only after the approval by him a lawyer is appointed who prepares and conducts the case in the court.

District paralegal assist the client in the court proceedings. They also give reminder to the client of his attendance either by himself or by the union workers requesting them to visit the house and request them to appear before the court. The poor clients are also given the travel expenses to appear in court and to bring witnesses.

Runa Akhter vs. Ahad Ali Matabbor and others, 1st Class Magistrate Court, Rajoir, Madaripur.

Runa Akhter, married to Ahad Ali filed a complaint initially for mediation in MLAA on 29/04/01 on plea that her husband demanded dowry and abused her physically. Five dates were set for the husband to appear but he did not. At this point MLAA instituted a dowry case under section 3/4 of the Dowry Prohibition Act, 1980 on 11/09/01. Summons were issued and the plaintiff arrived but not the defendant. The defendant was arrested on 25/04/02 and granted a bail. On 29/05/02 both parties were present and hearing began. Case went on in its pace. On 25/09/02 witnesses were cross-examined. After hearing the parties a date was fixed for the judgement. In the meantime the defendant

absconded. The decree was passed *ex parte*. The defendant was sentenced to 2 years rigorous imprisonment.

The cell also institute cases based on issue. For example, during the year 1995-2004 MLAA has instituted cases on behalf of the workers of A.R. Hawlader Jute Mill for realising their wages and certificate (61 cases pending). One criminal case under section 26 of Employment of Labour Standing Orders Act, 1965, which is pending in Madaripur District Magistrate Court. Eight cases under section 54/65 of Industrial Relations Ordinance 1969 are pending in the Second Labour Court, Dhaka. All these cases are done with help of BLAST and ASK. However, in recent time MLAA is not doing any cases with these organisations.

There are cases in the legal cell which are ultimately settled through mediation by MLAA. For example, in the cases of Lylee of Shariatpur, who came to seek redress against her husband for not maintaining her and her daughter had to file a case against her husband, Motahar. A Family Suit was filed by the Shariatpur Sadar Thana Family Court on 19/08/98. The court ordered to pay 45,000 Taka maintenance and dower to Lylee and 1,500 Taka maintenance for the daughter each month. The defendant did not comply with the court order and MLAA filed an execution case in favour of Lylee to realise the money. The defendant realising the danger came to MLAA for a out of court settlement. At last Lylee received 15,000 Taka and got divorced. She has kept the money in postal savings.

FIELD RESPONSE/OBSERVATION ON GOB LEGAL AID

While working on legal aid and BLAST's contribution in this area in 2002 many District Judges were interviewed. In Dhaka, the District Judge who also worked in Khulna as District Judge said that, although the government has good intention but the procedure for applying for legal aid by the poor is not practical. This scheme is not working for several reasons. Firstly, the application to the District Judge is not feasible for practical reason. The distance between the public and his office makes it impossible to work. In this regard he mentioned about BLAST and said that BLAST is

functioning better because it has direct link with the client which is very important in service delivery. Secondly, there should be a specific office and at least a clerk for collecting the application. Otherwise, applying to an illusory body is absurd. Thirdly, there is no media propaganda about the legal aid and so poor people are unaware of the government initiative. He has not received any application as yet since his joining in September, 2002. However, there are four jail appeal cases pending in the High Court.

In Comilla the response was somewhat the same. The District Judge said that he worked in three districts as District Judge in Feni, Jhenidah and Comilla and his opinion regarding the working of legal aid of the GOB is disappointing. His observation also reflects the fact that the distance between the Bench and Bar makes it complicated to work together. The nature of the work of District Judge isolates him from the Bar and other officials. Therefore, calling a meeting becomes embarrassing for him as he may be exposed to uneasy situation. He opined that instead of chairing the committee the District Judge may act as an advisor and the Bar President may act as the chairman. Moreover, being in his position it is not possible for him to monitor the lawyers and see whether he is discharging his duties properly. Therefore, whether a lawyer is taking money from the client (who is mostly illiterate and ignorant) and also drawing money from the fund is difficult to monitor. Furthermore, he confessed that the poor litigants cannot have easy access to District Judge, rather they have this access to NGO's like BLAST who are providing legal aid in a simple way. At this point he said that, "GOB's programme on legal aid has failed compared to BLAST legal aid".

In regard to funding the District Judge said that the fund in Comilla is not utilised although some of it is misapplied in the sense that since his assuming office in February 2002 to October 2002 two meetings were held and money was spend on these meetings.

The Bar President of Comilla said that since 1995 to 2002 only eight (8) meetings were held. Two cases were recommended by the District Judge committee but for want of proper procedure to

follow a case was not maintained and so the lawyers were not ready to take up the cases. He also said in line with the District Judge that cases were sent to BLAST office for legal aid. Asked why the GOB programme was not working he said the complicated procedure to file an application and the following steps to get the legal aid accepted by the committee takes a long time and a litigant who is poor cannot afford to visit the office to pursue the matter let alone bear the expense of travelling cost and other related expenses. He also said that the GOB has 4,62,000 approximately since 1995 which is un-utilised.

The field response shows that constitution of the Committees itself shows that it is quite impossible to bring all the people mentioned therein under one umbrella on a particular day. Therefore to hold meetings by them becomes a futile exercise. Interviews from several district offices also revealed this fact. In Mymensingh the Bar Association office bluntly said that it is not desirable to work under the present system which makes it mandatory for the Bench and the Bar to sit together and so the district judge feels embarrassed. Moreover, in their opinion the District Judge is disinterested in legal aid programme also because it is an extra job on his shoulder without remuneration. They said that in the last 10 months only 3 meetings were held although meetings are supposed to be held every month. The funds are not allotted every year but according to need. However, the member-secretary of the Bar who is also the member-secretary of the District Committee has no specific knowledge about the funding system but said that funds were sent back to the government as it was not utilised.

Moreover, the long procedure of applying to the District Judge by the poor client and then convening a meeting of the committee for approval of the legal aid seems impractical. Firstly, it is doubtful whether a poor person can have access to the District Judge as there is no specific office to register the complaint. Secondly, it is also doubtful whether after much persuasion with the office clerk the application will actually reach the committee without providing any money to the clerk. Moreover, to prove the insolvency one has

to bring a certificate from the Chairman of the Upa Zilla which is also a questionable process.

Amounts of unutilised money in forty eight (48) districts under the GOB legal aid committees at the end of 1997 was 89,76,185.00 taka according to the Law Ministry. The table below documents the expenditure of the government fund. This plainly shows the disinterest of the committees in providing legal aid as most of the fund is un-utilised. The number of complaint received and cases filed also indicates the committees ineffective functioning.

TABLE: FUND IN DIFFERENT DISTRICTS UNDER GOB LEGAL AID 1994-2002

Name of district	Fund with interest (1994-2002)	Expenditure	Balance	Complaints received Since 1994	Cases filed	Meeting In 2002
BARISAL	544,994.00	84,079.00	460,915.00			
COMILLA	485,549.00		485,549.00		2	Two
DHAKA	524,841.00	6,000.00 (for publication)	518,841.00			
KHULNA	479,014.00	8,939.00	470,075.00	32	15	Four
PATUAKHALI	278,801.92	72,868.00	205,933.92			
PABNA	307,310.52	6,245.00	301,065.52			
RAJSHAHI	415,000.00	15,000.00	400,000.00		12	One
SYLHET	350,000.00					Nil

Source: Office of District Judge and the Office of District Bar Association

The table is incomplete for reasons beyond control. The information obtained has been given where it was supplied voluntarily. The expenditure may vary as it is not official and the ones mentioned has been stated in the table only, e.g. expenditure in Dhaka for

publication. The other expenditures has not been specified. The columns empty shows that correct information was not made available. Moreover, these information were obtained orally. Therefore, there may be some discrepancies.

However the following table has been obtained from the Law Ministry which shows the total allotment and funding done in the preceding five years.

TABLE : TOTAL ALLOTMENT OF FUNDS IN ALL DISTRICTS

Fiscal year	Allotment by GOB Legal Aid Committee	Amount allotted to districts	Comment
1997-98	10,00,000	10,00,000	Fund allotted 50,000tk in 4 districts,30,000tk in 4 districts, 20,000tk in 12 and 10,000tk in rest of the districts
1998-99	25,00,000	25,00,000	Except Khaghrachori, Banderban & Rangamati in the rest 61 districts funds allotted was in equal rate of 40,983,60tk
1999-00	25,00,000	10,00,000	Fund allotted 50,000tk in 4 districts,30,000tk in 4 districts, 20,000tk in 12 and 10,000tk in rest of the districts
2000-01	25,00,000	20,00,000	Fund allotted in Dhaka 83,000tk, in Chittagong, Rajshahi, Khulna, Barisal districts 50,000tk and in rest of the districts 30,300tk
2001-02	24,00,000	20,00,000	The same allotment as 2000-01 fiscal year was decided

Source: Law Ministry, People's Republic of Bangladesh

Attorney General of Bangladesh shared his views and said that although government has a good intention, the beauracracy move slow. Therefore, to facilitate the process of legal aid the NGO's have a role to play. The District Judge is already burdened with responsibility, moreover, he is not approachable for the nature of his office.

Justice Naimuddin Ahmed (retired), who is a member, Board of Trustees of BLAST and then a member of Law Commission of Bangladesh in 2002 also reiterates the fact that GOB legal aid is not functioning for practical reasons. Firstly, the beauracratc norms and the cumbersome procedure for the application by the poor makes it a task next to impossible to achieve. Secondly, the District Judge feels embarrassed to work with the Bar and other officials for reasons well understood.

In regard to the working of GOB legal aid the MLAA also holds a significant role in the districts it works for. Thus field study in this area in 2004 showed that legal aid of GOB is not functioning as it should. In Madaripur the District Judge, Sikendar Ali, said that it is not desirable to work under the present system which makes it mandatory for the Bench and the Bar to sit together and so the district judge feels embarrassed. The District Judge of Madaripur, reiterated the fact that when he was questioned by the GOB for the failure of getting enough response from his district; he pointed MLAA for taking away all the clients.

The clients have gained a confidence over MLAA over the past 25 years and also benefit from MLAA as it pays a poor client his travel expenses along with the expenses of the witnesses. Moreover, the constant monitoring and supervision by MLAA workers have raised the clients dependency also to go to MLAA. Assistant Judge of Family Court of Madaripur, Md. Nazimudduala working for two and half years said he has not seen any case being disposed within this time. Owing to the procedural defect the parties prefer going to MLAA. However, the District Judge said that in the past four months 72 cases has been registered, 50% of which is jail cases, rest are either family matter or civil.

District Judge of Shariatpur, Diproman Sarker is also aware of MLAA legal aid work and says that they are active and committed. The Joint District Judge said that MLAA is vibrant in their legal aid activities and no other NGO is present providing legal aid. The team observed from the conversation with the Bar and Bench that

the nature of the work of District Judge isolates him from the Bar and other officials. Therefore, calling a meeting becomes embarrassing for him as he may be exposed to uneasy situation. Moreover, being in a position of District Judge it is not possible for him to monitor the lawyers and see whether he is discharging his duties properly. Therefore, whether a lawyer is taking money from the client (who is mostly illiterate and ignorant) and also drawing money from the fund is difficult to monitor.

On the other hand, the panel lawyers of Madaripur MLAA felt that the District Judge is disinterested in legal aid programme also because it is an extra job on his shoulder without remuneration. The reasons for failure of GOB to provide adequate support through legal aid are numerous according to the panel lawyer. Firstly, GOB do not bear the preliminary expenses for filing the suit which MLAA provides. Secondly, accountability is ensured by MLAA monitoring cell which is absent in GOB. Thirdly, there is a close link between MLAA, client and the lawyer which ensures smooth running of the case. But the District Judge is isolated from general mass and the lawyers feel alien. Fourthly, preliminary documentation is done by MLAA which is absent in GOB. Fifthly, if Bar President is made chairman and the District Judge an advisor the programme will be more effective. Sixthly, administrative weak management acts as hindrance to go to GOB.

Fifteen panel lawyers amongst the 75 panel lawyers were interviewed in Madaripur which included the Bar President who happens to be the Chairperson of MLAA Executive Committee. Moreover, amongst these lawyers 25-30 also belongs to GOB panel lawyers. When asked whether they differentiate between the two- the answers were inevitable. When a lawyer belongs to both places, they usually refer it to MLAA. The reasons are obvious from the earlier discussion.

The then Additional Secretary of Law Ministry, is of the opinion that GOB is not very successful. Firstly, he personally opposed the very concept of involving District Judge in legal aid committee.

Because District Judge is a neutral person and chairing a committee in an executive manner exposes him to risks and criticism. The very nature of his job isolates him from people for ethical reasons. Therefore, this executive job should be bestowed to the District Magistrate or the Bar. Secondly, GOB legal aid does not have sufficient publicity. Thirdly, legal aid committee should be reconstructed and sensitised in human rights perspectives. Judicial reform is mandatory for effective implementation of legal aid and expanding access to justice and to ensure quick disposal of cases. He says, for example, a poor man litigating for 18 years spends more than if the case is disposed within three years.

Separation of judiciary is necessary for legal aid. The judges should be honest. The capacity of the judiciary should be built in such a way that it is possible to give poor a fair chance. Therefore the court system should be changed to ensure legal aid.

In this regard, he suggested that GOB should open an independent office in a pilot basis to assess its success for legal aid in few districts with GOB appointed lawyers to deal with the cases. The poor litigants may come directly to this office to file a case. He, however, was suggesting BLAST design.

Nasrin Begum, the ad hoc Director of GOB legal aid commission is although hopeful of the success of GOB legal aid thinks that, involving the District judge is not justifiable. This is the main reason legal aid is not working along with the long procedure of application of the poor to the committee and holding of meetings. She suggested that amendments should be made to reduce the size of the Board.

Chairperson of BRAC said that GOB legal aid is non-functioning. The present structure is the main impediment and at this point he said that BLAST is one of the very few organisations providing legal aid successfully.

Therefore, the non-functioning of GOB legal aid gives more rationale to provide fund to NGO's providing legal aid like

BLAST. The need for legal aid is unquestionable and providing fund to bodies that actually render legal aid service is thus something to consider.

LINKAGE BETWEEN GOB AND NGO LEGAL AID

The linkage between GOB and NGO legal aid is a relative issue. With the enactment of the Legal Aid Act, 2000 and forming committees to dispose off cases, the government's initiative cannot be ignored. Although, the present structural defects is an impediment in ensuring the effective service. In this regard, whether any mechanism can be developed to bring NGO's and GOB to work together is vital to consider. By this mechanism NGO's may either send their clients to GOB's legal aid committee and vice versa or utilise GOB's fund to assist their clients.

The alterations to be brought in the GOB legal aid to ensure its functioning is not easy but time consuming as many questions like legal and procedural factors has to be considered. However, NGO'S may give assistance in this regard with their legal expertise. Moreover, NGO'S may develop a good relation with GOB in respect of legal aid and work side by side in the long run for their own greater interest.

The field response of possible linkage between the two is important to consider. Whether any linkage can be done between the GOB and BLAST legal aid the President of Mymensingh Bar, replied in the negative. He said that the governments bureaucratic norms makes it impossible to combine the two system together. Moreover, the government officials are not trained in human rights approach but perform their duties as per bureaucratic rules. Whereas, the BLAST officials get training and are equipped to deal with the issue in a more humanitarian way. The District Judge neither denied nor encouraged the possible linkage but was optimistic in providing fund to BLAST for better working. The District Judge of Dhaka, also reiterated the fact that any linkage between the government legal aid and BLAST is neither practical nor feasible.

Whether any linkage can be done between the GOB and BLAST, Justice Naimuddin Ahmed, answered very diplomatically by saying that it is possible but not desirable. In his opinion, the government officials work in a beauracritic manner whereas the NGO works in the human rights approach. The latter is essential in any legal aid service. Additional Secretary of Law Ministry also thinks that possible linkage between GOB and BLAST is not practical. The long procedure of recruitment will make it impossible to include any particular NGO or NGO's in the government legal aid sector. The same criticism and reaction was found with MLAA field research.

CONCLUSION

Despite the flaws in the current structure, there does appear to be support for government provision of legal aid. Once the programme is in full operation it will likely focus all dimensions including criminal defense. NGO's, as an organisation with expertise in the delivery of legal services to the poor, are in a good position to give direction to the government's effort. Therefore, the NGO's can play a pro-active role in implementing the legal aid programme by,

1. conducting a survey to assess and identify the specific areas of human rights violation.
2. making the government answerable to the detrimental situation of the poor who cannot access the law.
3. bringing into notice the gap between the inadequacies of law and practice of the government legal aid and persuading the government to take remedial measures.
4. putting pressure on government by public interest litigation where government fails to respond to the need of the poor for legal aid.
5. making the poor aware of their rights which the law of the land guarantees.

6. encouraging the poor to use the law as an instrument of redress.
7. promoting social dialogues and literacy programmes to uphold the importance of legal aid and providing training to para-legals to voice against injustice to the poor and to defend their rights.
8. assisting government programme by providing expertise on concerned issues.

In conclusion it may be well deserved to state that in order to make the Legal Aid Act, 2000 successful, many structural changes are necessary. The machinery of the government engaged in the execution of free legal aid movement in the State must be geared from bottom to top to the goal of this mission. The state must sense the popular needs and respond to the implementing policy according to such needs. Therefore, the first and the foremost task is to inform people of the existence of the GOB legal aid programmes through wide media coverage and local bodies. For example, the union, thana and district level administration should act in a proactive manner and let the programme be known at its respective levels. Any judgement regarding legal aid by the higher courts should be circulated to the members of the lower judiciary, who matter more in delivery of legal aid benefits. The need for legal aid and the role of judiciary in dispensing it should be reiterated in the training courses and seminars attended by the lawyers and judicial officers.

The procedural measures adopted needs to be altered for practical needs. Therefore, as seen and suggested in the field response, filing of suits may be entrusted to the Bar than the District Judge for ensuring easy access and smooth functioning. In this regard, GOB may adopt the procedure followed by the NGO's legal aid programme. Moreover, as noted, it is difficult for the District Judge to monitor the lawyers' efficiency and conduct the cases timely. His neutral position exposes him to risks and criticism which is undesirable.

Legal aid scheme of GOB should be widened so as to include payment of court and lawyers' fees, process fees, expenses of witnesses charges incurred in connection with legal proceedings, supply of certified copies of judgement and orders, preparation of appeal papers including printing and translation of documents in a legal proceeding. It must lead to reform in the legal and judicial system, so that it may be capable of meeting the mass demand for justice. The programme must demonstrate law as an instrument of social change and economic restructuring. Therefore, the programme should bring about a change in the mental outlook of the beneficiaries, to prepare them to take active part in self-help programmes, to value for a higher standard of life. Unless the beneficiaries are educated this cannot be achieved, and so education is a pre-requisite for success of any self-help programmes or schemes whether be it government or non-government.