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Vulnerable People of Khulna are Accessing to Courts and Securing their Human Rights and Social Justice through Governmental Legal Aid: An Analysis

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ABSTRACT: Khulna is a Divisional City in Bangladesh and both government and non-government organisations are providing legal aid in Khulna. In Bangladesh, the government legal aid service is based on the Legal Aid Services Act (LASA) 2000. It is very formal and systematic in nature. In every district government legal aid service is available and open for all the people who are eligible under the LASA 2000. The procedure of access to government legal aid service is little bit complicated but everyone can claim it as of their right. It is become a blessing for the poor and vulnerable. Government legal aid service has facilitated the access to court and justice for the destitute in the whole country with expert legal counsel in free. ADR and ICT are also being used to make the service more easy and available. There is no limitation for fund and number of cases like the non-government organisations. Through this service, the faith on law and court system has been regained, social justice and human rights have been ensured specially for the poor people.

KEY WORDS: Legal Aid, Access to Justice, Social Justice, Human Rights, Equality before law etc.

I. INTRODUCTION

Effectiveness means the capability of producing a desired result or the ability to produce desired output. When something is deemed effective, it means it has an intended or expected outcome, or produces a deep, vivid impression¹. The Government Legal Aid Service in Khulna as well as in other districts are mainly based on LASA 2000². In this sense, the outcome of the government legal aid service in Khulna is a remarkable one and day by day it's increasing. Among all the focused success, the prime outcome may be the creation of the opportunity of access to justice for the poor, helpless and destitute people of this district. Before the launching of the legal aid service in Khulna those people might not think of going to court to ensure their rights and justice due to their poverty and fear to the law and legal system. Now they can access to court very easily. Another outcome may be that the underprivileged women are becoming aware and receiving legal protection from the legal aid organisations when they are victimized. In fact the penniless women are always in a vulnerable situation in our country because most of them are dependent on their husbands and other male family members for their livelihood. They don't have any concept about their rights. So, when they are victimized, they cannot even think to regain their rights. Government Legal Aid organisations are providing hope and help to those helpless women by informing them about their various rights and opportunity to get free legal assistance. Except these two grounds, there are also some convincing successes of the legal aid service organisations in Khulna which proves it as a very useful and necessary one. They are discussed below in two segments:

II. ENSURES 'ACCESS TO JUSTICE' FOR THE INDIGENT PEOPLE

'Access to Justice' is a constitutional right in our country. The ultimate object of the legal aid services to make the opportunity of access to justice available for the poor and destitute people in a modern democratic society. In our country, that opportunity was not available, especially for the poor before the promulgation of the Legal Aid Services Act 2000. Now the eligible poor and deprived people can access to the court, from the lowest to the apex in free of cost under the government legal aid scheme. To ensure this opportunity, government has taken some time worthy steps. Firstly, it has enacted the Legal Aid Services Act 2000; secondly it has established National Legal Aid Services Organisation in Dhaka and thirdly, Legal Aid Office in every district. Before receiving the free legal assistance people

¹ 'Effectiveness' at '<https://en.wikipedia.org/wiki/Effectiveness>' accessed on 02.10.2024

² Legal Aid and Services Act 2000

should be informed of it. So, the government has initiated various types of awareness programs all over the country. Not only is this, in every year government is allocating a huge amount of money in the annual budget for the National Legal Aid and Services Organization the purpose of ensuring 'Access to Justice' for the poor and destitute people all over the country. In case of the legal aid providing NGOs, it is a common matter that their budget, target and number of filled cases are limited as they are donor based and most of them don't have any own source of income. But the government has planned for beyond any type of limitation regarding legal aid service. Now it's no matter how much the number of the legal aid seeker is. Every eligible person will receive legal aid from the government. This is how; the government is not only ensuring the right to access to justice but also securing their human rights. Though the government has started providing legal aid just a few years ago but it has achieved a great acceptance among the mass people, especially among the vulnerable groups. It has brought to new hope of justice for them.

III. PERMANENT GATEWAY TO JUSTICE

Bangladesh is a developing country. Like the other developing countries, a big portion of the mass people lives below the poverty line in our country also. Moreover, this destitute group of people cannot access to court to ensure their justice due to lack of money and ignorance. It is not possible to reduce this poverty within a short span of time. It's crystal clear that the poor people will need financial help from the government for a long time for establishing their rights in the courts. The government felt that free legal assistance is needed for the poor mass as a permanent solution. That's why; government has established 'The National Legal Aid Services Organisation with perpetual succession. It means that people will receive free legal assistance from the government till the organization exists. This organisation will continue with its free legal assistance until the government bans its mother act LASA 2000. What has been discussed so far is a general calculation. There are poor people also in the richest countries of the world and it is not possible to turn all the poor people into rich. Those rich countries have developed their own legal aid system for assisting their poor mass. As mentioned earlier, the 'Right to go Court' or 'Access to Justice' is a constitutional and fundamental right in our country. Till the existence of this country and its constitution, free legal assistance will be needed and the government will be officially responsible to ensure this. Otherwise the object of our constitution will be failed. So, to fulfill this constitutional goal, the government legal aid scheme has been planned as a permanent one like the other essential government departments. It's not formed as a project for a short time like the NGO's. From the date of the establishment of National Legal Aid Services Organisation the poor and vulnerable people of our country have a permanent solution of accessing to court in free of cost for establishing their justice.

IV. SERVES IN THE ENTIRE DISTRICT

One of the successes of the government legal aid service is that it has been designed in such a system that it can be available in the entire districts as well as in the entire country. Because this is a government service and as a democratic country it should be open and accessible for all. Under this research 'entire district' means 'entire Khulna'. A district is comprised of some Upazillas and Unions. In every Union and Upazilla there is a government legal aid committee with the chairmanship of the Union and Upazilla chairman. These have been formed so that the each and every people, from all the corners of the village can easily access this free legal assistance. In case of the NGOs we see that most of the legal aid providing NGOs are not capable to serve in the whole country, even in the whole district. Some of them are serving in some specific districts as their projects are designed and some are found serving only in some parts of a district or districts. This system of legal aid service causes problem for those who are not under the coverage areas of those NGOs. The government legal aid service removed this problem by ensuring legal aid service in all the Unions and Upazillas of all the districts of the country. In a single word, government has designed its master plan to bring all the people under the legal aid umbrella from each and every corner of the country.

V. GUARANTEED SERVICE

Government has designed its legal aid program in a 'guaranteed' or 'must serve' nature for the ultra-poor. It confirms that every poor justice seeker, who is eligible under the LASA 2000, must receive legal aid when necessary for him. The government could frame a policy for a specific period for providing legal aid like the other state policies and projects. But instead of doing so, it has enacted the Legal Aid and Services Act 2000 in the Parliament which creates the binding force on the part of the state and concerning authorities for providing free legal assistance to the eligible people under the act. Moreover, systems have been initiated for creating accountability of the government legal aid staffs of different stages. Several visits are given by the higher officials from the head office for round the year. Any

poor justice seeker can file complain to the legal aid officer, district judge or directly to the head office through hot line if he faces any problem to receive legal aid. Necessary measures have been taken so that every single people can receive free legal aid easily and cannot be deprived of it in any way.

VI. SERVICE PROVIDED BY THE EFFICIENT AND PROACTIVE ADVOCATES

Lawyers are indispensable to any type of legal aid service. Above the concept of state responsibility, legal aid is a humanitarian initiative also. Lawyers are more than advocate here. They become the friends of the poor and destitute people of the country and uplift their human rights. In our country, lawyers are not paid a handsome amount for their service under the government legal aid service. This is because of the sense that legal aid is one kind of voluntary service which comes from the social responsibility of the advocates. This is why, those lawyers are chosen and nominated for providing legal aid who feels for the poor from their heart and willing to work for them in any cost or free. Like their humanity, efficiency and proactive attitude of the advocates are also essential in legal aid. High class proficiency of the advocates is required because not all the cases are of normal nature or merit. Most of the times there are some deeply merited cases which demand some top professional skills to solve or defend. Proactive attitude from the lawyers is also necessary because a good number of poor legal aid seekers are illiterate and not aware about their cases and related other issues. Moreover, they don't understand the law and legal system. They need some instruction and relevant help regarding the necessities of the case which is under trial on behalf of him. Here advocates are responsible to communicate them and inform about the settled dates of the case, seek relevant documents and witnesses etc. In this case, it is mentionable that the monitoring system under the government legal aid service is not very strong and active. Advocates have to fill this gap. Thus, the role of the advocates is very important in the government legal aid service. However, lawyers are not beyond the questions also. Sometime it is claimed that advocates take money in excess to their fixed fees from the legal aid office. But these are scattered issues, not a common or general practice.

VII. USE OF ICT IN LEGAL AID SERVICE

At present, the world is in the era of globalization. ICT, especially internet is playing the key role in connecting the whole world. Bangladesh is also getting digitalized day by day. Government is trying to use ICT in the regular functions of its different departments. NLASO has started using ICT also for rendering legal aid service with a view to bringing the entire country under its coverage. It has opened a hot line with the number of 16430 and designed an APP in the name of NLASO in the Google Play Store. Anyone can communicate with NLASO directly and talk to the legal aid personnel by using the hot line. He can inform his legal problem and get verbal suggestion or way of remedy at once from any corner of the country. This same facility can also be enjoyed by using the NLASO APP in the Google Play Store. Difference is, the legal aid seeker has to inform his legal problem by sending his query in written as prescribed in the NLASO APP and he receives his suggestion in a written format too. No doubt, this type of state initiatives extremely time worthy and like a blessing to us. Because, more than 50% of the mass people of our country use cell phones at present. It means that every cell phone user can access to government legal aid service. One thing must be mentioned here that a person who is not actually a poor or destitute and does not fulfill the criteria of a legal aid receiver under the LASA 2000 can get legal aid by using the Hot Line and APP facility. The problem is that, this facility is still unknown to a huge number of people due to weak awareness program of the government legal aid providing authority. Government should try its best to make the people aware about ICT facilities in receiving legal aid service from the government.

VIII. SOLVING DISPUTES EASILY THROUGH ADR

Alternative Dispute Resolution (ADR) is a newly invented but very effective tool to solve legal disputes outside of the court. The present court system of our country is very convoluted and demands a huge amount of money to access it. People want an easy solution of their problems and avoid any kind of complexity. ADR is evolved to meet these issues. There is no specific and separate law on ADR in our country. At present ADR is used by the civil courts in a wide range to solve the disputes in our country. ADR is also used in the legal aid services in our country by both the government and non-government organisations. Since 2015, the government has initiated Pre-case and Post-case ADR under its legal aid service which is also available in Khulna. The district legal aid officer is officially empowered for making ADR in the relevant cases. Generally the district legal aid officer uses every opportunity for applying ADR to solve the legal issue in the shortest and in the smartest way. When it is not possible to solve the case through ADR in any way then it is sent to the court for trial. In Khulna DLAO, there is no specific date for making ADR. It can be done

when necessary in the office of the district legal aid officer. It is proved that ADR is a very effective tool for providing legal aid to the poor mass of our country. Because it lessens cost, time and different personal and social hassle which highly concern to those poor people who come for legal aid. Use of ADR also helps decrease the backlog of cases which is one of the common problems for our judiciary for ensuring justice.

IX. STRENGTHENING PEOPLES FAITH ON LAW & LEGAL SYSTEM

Though we live in the era of globalization, mass people, especially the poor and destitute people of our country are still afraid of law and legal system. They still fear to go to the police and court for seeking help and establishing justice. Definitely there are some reasons behind such social misconception. The first reason is that the people are ignorant of their rights, law and legal system of the country. The second reason is the inherent complexity of our court system. Some malpractices of Police and other law enforcing agencies are also responsible for this situation. As mentioned earlier, the entire trial procedure, from the filing of a case to declaring the judgment is highly complex, lengthy and costly. Poor people who cannot arrange their daily livelihood properly don't dare to go to courts for ensuring justice on behalf of them. They accept those unfortunate issues as their fate. The state laws are not actually a strong barrier in this matter. In most of the cases law offers a very marginal time to complete a case. Problem lies in the trial procedure and huge backlog of cases. Every day a huge number of cases are filed in the whole country but the number of judges and courts are very small. The result of which is long length of promulgation of judgment.

For example, if a civil suit starts in our country no one can provide the guarantee when the final judgment will be declared. Moreover physical and mental stretch, social harassment are also attached with this procedure. Government legal aid service has done something revolutionary in decreasing the fear of the poor people on law and legal system. It has created an environment which makes those people to think that law and court systems have been arranged for their protection and ensuring justice, equality in the society. At least they have learned to think that Police is their friend, not their rival. Police will protect and preserve their rights from the antisocial. Moreover, government legal aid is provided completely free of cost which reduces the financial tension of the ultra-poor people to access to court. In most of the cases GLO tries to use ADR for a quick remedy and avoid rivalry which also charms the underprivileged mass. Another thing is that government has established its legal aid office in all the 64 districts of the country. Not only in the center of the district, government legal aid committees are also active in most of the Upazillas and Unions every district. So, the above mentioned facilities can easily be accessed by the legal aid seekers from any corner of the country. People who are aware about the government legal aid service find the law and legal system as a tool to establish their rights and ensure justice. People's faith on the government and other branches of a democratic country can be treated as one of the parameters of its success. In our country, democracy is found unhealthy and weak due to lack of confidence on the judiciary and other law enforcing agencies. Government has partially regained that confidence of the mass people through its country wide legal aid service.

X. EFFECTIVE LOCATION OF LEGAL AID OFFICE

Government has established all of its District Legal Aid Offices in the concerned District Judges Court premises and also appointed a senior judicial officer as the District Legal Aid Officer. In Khulna, government legal aid office is also located in the 3rd Floor of the District Judges Court premises. To me, it is an amazingly effective decision. Because, if anyone faces a legal problem he will go to either a police station or an advocate for his redress. Advocates are available in the court building or in their personal chambers. When a poor person is suggested by an advocate to seek help from the District Legal Aid office, it will be easier for him to access free legal assistance. As a government office the Khulna District Legal Aid office is open for all and a signboard is available in front of the Metropolitan Session Judges Court which indicates the location of the legal aid office. This office and the signboard create awareness among the daily visitors of the Khulna courts. Khulna is a divisional city and the District Court is larger than the other neighbor districts. Thousands of justice seekers come to this court every day. They are getting informed of the government legal aid service from that signboard and legal aid office. As they become aware of the government's free assistance, now they will inform other people who is in need of it. Such type of awareness and advertisement would not be possible if the office was not established in the court premises. Some office procedures are also very important which should be mentioned here. As per the government system, Khulna District Legal Aid Office has a panel of lawyers. They need a frequent communication with the office due to various paper works and collection of their fees. Moreover, District Judge is the head of the District Legal Aid Committee and a poor legal aid seeker is finally granted the aid when the committee accepts his petition. For this reason, the legal aid office has to maintain a close communication with the

District Judge. This communication has become very easy due to the location of the District Legal Aid Office in Khulna.

XI. ENSURE SOCIAL JUSTICE

Social justice is a concept of fair and just relations between the individual and society. It is such an impression that is used to describe the movement towards a socially just world. In this context, social justice is based on the concepts of human rights and equality, and can be defined as "the way in which human rights are manifested in the everyday lives of people at every level of society"³. While providing legal aid, the government is indirectly ensuring social justice in Bangladesh. But the question is that how is it being done? In a modern democratic country social justice is ensured when equality among the mass people are established. Article 27 of our constitution declares the 'equality before law and equal protection of law'. But due to poor socio-economic condition, corruption, old complex system of the courts, lack of knowledge and awareness of the mass people etc. that declaration could not be established in a true sense in our country. It is not possible to diminish these barriers in a day or in a short time. In such a situation, for establishing equality in the justice sector and ensuring access to justice for all government has initiated free legal aid service a few years ago. Before commencement of the government legal aid service it was a common concept that court is only for the rich people and justice is not easy and available for the poor masses. But in a democratic country courts are like the temples where not only justice is ensured but also rights are preserved and secured for all people irrespective of race, color, sex, religion etc. For these purposes court should be open and accessible for all. If the court goes beyond the reach of the poor and vulnerable people, the constitutional guarantee of equality before law will be meaningless and social justice will not be ensured. The government knows its weaknesses that it will not be possible on its part to solve those self-created problems at a time. So, it chose to overcome them on priority basis in which the law and justice system took a place in the first row. Among all the drawbacks of the present judiciary it was proved that poor masses cannot access to court due to huge cost, complex and lengthy process, ill treatment of some advocates etc. As a result they are losing their faith on the law and justice system. They are living with agony instead of going to court which hampers the concept of equal protection of law. Realising this issue government started providing legal aid to the poor and destitute people. When a poor man receives legal service in free of cost and also in a quick time under the direct supervision of the government, he finds himself in a righteous position and gets another chance to regain his faith over the law and legal system of the country. He finds himself in an equal position comparing with the elites of the society in case of accessing to courts and receiving justice in spite of his poverty and poor knowledge. Thus government legal aid service is helping in ensuring social justice in our country.

XII. SECURE HUMAN RIGHTS

Generally state driven legal aid service is treated as a state responsibility for its vulnerable people. But in an intrinsic sense it is a way of preserving greater human rights. Shumi Shaha⁴, a 21 years young girl of Rupsha Upazilla, Khulna, left by her husband. She was a garments worker and deposited a handsome amount in the bank in her bachelor life. But, after marriage her husband took away all her money and left her single. She came back to Khulna, her father's house leaving the job. Now Shumi has filed a suit in the Family Court of Khulna demanding restitution of her conjugal rights. In this case, DLAO provided all the necessary components in free of cost to file the suit against her husband. ADR was firstly tried by the DLAO to continue Shumi's family normally. But it was failed due to the non-cooperation of her husband. Though Shumi is now in a penniless situation, she can at least think of her justice to be regained. Another poor victim Md. Rahim Kazi⁵ of Terokhada Upazilla, Khulna, lost his three (3) Bighas of agricultural land. Someone very influential forcefully took possession of his land. It was not possible for him to get his possession back in his land in any way except filing suit. But it was also a great problem for a man like him to maintain the relevant costs of the courts. He applied to the Khulna DLAO for legal aid and had a full support in free of cost regarding filing his suit for getting back his possession in his land. Shumi and Mr. Rahim are assured that NLAO will continue the legal fight on behalf of them up to the Apex Court if necessary to make their rights available again. These are only two separate examples of Khulna. Now such examples are very common and frequently found all over the nine (9) Upazillas and in most of the Unions of Khulna because the government has made its legal aid service available there. Here the exception is that ultra-poor people become the examples of right holders. Due to their poverty and weak social condition those

³ 'Social Justice', at 'https://en.wikipedia.org/wiki/Social_justice' visited on 14.02.2018

⁴ Family Suit No: 153/2016, Family Court Khulna (the original name of the victim is changed)

⁵ Civil Suit No: 87/2016, Joint District Judges Court Khulna- 3 (the original name of the victim is changed)

people always face the risks to lose their rights. People who are financially strong or educated can secure their own rights. So when question of preserving human rights come before us, always those socially weak people become the claimant for it. People who are financially strong and not eligible to receive government legal can also take help from the Khulna DLAO office. The office provides them with free legal suggestions on the basis of their legal problems but not any type of legal aid. With this activity DLAO Khulna has reached beyond its nature. Now it has become the shelter of all those people who are in problems regarding enjoying or regaining their various rights. Within a few years, government legal aid service has been able to create such an environment throughout the whole Khulna that the proportions of those poor and destitute claimants have been decreased a lot. It could be able to establish a righteous society partially. Hope DLAO Khulna will be able to bring the entire vulnerable population of Khulna under the umbrella of free legal assistance in the near future. Thus the government legal aid service is securing human rights in Khulna.

XIII. CONCLUSION

The government legal aid service has some drawbacks. Such as, lack of sufficient manpower, pessimistic attitude, complex and lengthy procedure etc. But after all these inherent problems, it has become the sign of hope and rely to the poor and vulnerable people. Through the government legal aid service, fundamental constitutional guarantee of 'equality before law and equal protection of law⁶' has been ensured. So, in broader sense, it has ensured the social justice and human rights in Khulna. It has increased the faith of the mass people over the country and state administration which is the sign of a modern successful country.

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⁶ Article 27, Constitution of the People's Republic of Bangladesh



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