

# Legal Aid for Ensuring Access to Justice in Bangladesh: A Paradox?

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## Abstract

This article examines the government-funded legal aid system of Bangladesh. It indicates that the Bangladeshi legal aid system is lacking in terms of both legal provisions and the actual performance of the Legal Aid Services Act. The inadequacies in the implementation of the Act even raise the concern of whether the government has any intention to use the legal system to improve the condition of the poor or whether it intends to establish a legal aid system that is directed to providing mere lip service to the poor. The Bangladeshi legal aid system is therefore in a paradox; the state has established an institution that exposes its drawbacks and is not able to meet the needs of the beneficiaries. The article finally makes recommendations in order to redress the deficiencies of the system and thus to ensure effective access to justice for those who are in need of the service.

**Keywords:** access to justice, legal aid, legal aid beneficiaries, legal aid lawyers, service delivery

## 1. INTRODUCTION

Access to justice, narrowly put, means providing legal aid for the needy in order to enable them to have judicial remedies on a par with those who possess the financial resources to meet the cost of lawyers and other incidental expenses of the administration of justice.<sup>1</sup> According to Cappelletti and Garth, access to justice seeks to remove the barriers that prevent the poor from utilizing the legal system in the form of three “waves.”<sup>2</sup> The first wave introduced the system of legal aid in the developed countries after the Second World War.<sup>3</sup> Legal aid sought to provide legal services to economically disadvantaged persons involved in the justice system.<sup>4</sup> The United Nations Special Rapporteur on the Independence of Judges

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1. Francioni (2007), p. 1.

2. Cappelletti & Garth (1978), pp. 184, 196–209.

3. *Ibid.*, pp. 197–209.

4. Parker (1999), pp. 32–3. It should be noted that the second wave was targeted to overcome the “organizational obstacles” in the assertion of collective rights. This entails the representation of collective interests particularly in the areas of consumer and environmental protection and multi-party actions. The third wave extends further and eliminates the “procedural obstacles” for the effective enforcement of rights. It stimulates legal representation and involves alternative dispute-resolution procedures applicable outside courts. Moreover, this wave calls for changes in substantive laws and structure of the courts. It also involves the use of laypersons and paraprofessionals in the process. Cappelletti & Garth, *supra* note 2, pp. 209–92.

and Lawyers states that the purpose of legal aid is to eradicate the barriers which impede access to justice by providing assistance to those who would not otherwise have been able to afford legal representation and access to the court system.<sup>5</sup> In other words, access to legal aid is a right and an essential guarantee for the effective exercise of other human rights including the right to an effective remedy, the right to equality before the courts and tribunals, the right to counsel, and the right to a fair trial.<sup>6</sup>

In Bangladesh, Article 27 of the Constitution bestows on all citizens a fundamental right of equality before the law and equal protection of the law.<sup>7</sup> The Constitution has also guaranteed the right to a fair trial.<sup>8</sup> However, the formal legal system of Bangladesh is inaccessible to the poor due to a variety of factors involving the excessive costs of lawyers, complexity of the law and legal institutions, inability to recognize a claim to pursue or defend, and corruption in the judiciary.<sup>9</sup> This prevents the poor from making use of the system to claim their rights and entitlements. As a result, the need for the establishment of a national legal aid system has intensified in Bangladesh.<sup>10</sup> The government enacted the Legal Aid Services Act<sup>11</sup> in 2000 to carry out legal aid activities in an organized manner. Within this context, this article examines the government-funded legal aid system of Bangladesh to find out whether or not the system ensures meaningful access to justice and, if not, what factors are responsible for that failure. It is necessary to begin with a historical background of the system. The article then analyses the system and finally makes recommendations in order to ensure effective access to justice for those who are in need of the service.

## 2. HISTORICAL BACKGROUND OF THE LEGAL AID SYSTEM IN BANGLADESH

In Bangladesh, organized state intervention towards legal aid does not have an ancient origin.<sup>12</sup> The government took the first initiative with the introduction of a legal aid fund in 1994.<sup>13</sup> In the fiscal year 1996–97, it allocated a fixed amount to be distributed through the District and Sessions Judge of each district.<sup>14</sup> In 1997, the government established a National Legal Aid Committee pursuant to a Resolution of the Ministry of Law, Justice and Parliamentary Affairs.<sup>15</sup> The Minister of Law, Justice and Parliamentary Affairs chaired the committee. The Resolution also established district committees that were chaired by the District and Sessions Judges. However, official records of the activities of this mechanism are lacking.<sup>16</sup> One study reveals that, with the exception of one or two districts, legal aid

5. Knaul (2013), para. 27.

6. *Ibid.*, at para. 28.

7. The Constitution of Bangladesh was adopted on 4 November 1972 and it came into force on 16 December 1972.

8. Art. 33, Constitution of Bangladesh.

9. Khair (2008), pp. 41–52.

10. *Ibid.*, p. 212.

11. Act No. VI of 2000.

12. Muralidhar (2004), p. 357.

13. Chowdhury & Malik (2002), p. 42.

14. *Ibid.*

15. S.R.O. No. 74-Law/1997.

16. Chowdhury & Malik, *supra* note 13, pp. 43–4.

activities were practically ineffectual.<sup>17</sup> As a result, when referring legal aid cases, judges often preferred to use non-governmental organizations (NGOs) rather than the official legal aid committee.<sup>18</sup> Within two years of the programme starting, 70 cases received legal aid throughout Bangladesh. Seven district committees (out of 64 districts) took specific initiatives to provide legal aid, and two districts provided legal aid in more than ten cases.<sup>19</sup>

It should also be noted that the fund allocated by the government for legal aid activities remained unutilized.<sup>20</sup> According to Chowdhury and Malik, several factors are responsible for this.<sup>21</sup> First, the scheme imposed responsibility on the District and Sessions Judge to administer the fund. Being the highest trial and appellate judge of the district, a District Judge is required to perform various administrative and related functions and, as a result, is usually overloaded with work. The responsibility to administer the legal aid fund created an added task for him. Second, the District Legal Aid Committee included the highest government officials of the district, such as the District Commissioner and Superintendent of Police. Such a committee does not allow for a “client-friendly” body and, as a result, the potential recipients of legal aid who live in poverty are too afraid to seek assistance from the committee. Third, the formalities required for the functioning of a district legal aid committee made it more difficult for the committees to provide services to the target groups.<sup>22</sup>

The 1997 Resolution was clearly incomplete and the government took steps to adopt specific legislation on legal aid. The Law Ministry arranged several meetings to draft the legislation by 1998.<sup>23</sup> Through various advocacy activities of the Asia Foundation partner NGOs, several workshops were also organized in 1998 and 1999 involving representation from 51 districts.<sup>24</sup> They discussed the draft Bill on legal aid that was placed before Parliament.<sup>25</sup> Finally, in 2000, the government passed the Legal Aid Services Act (hereinafter LASA) which entered into force on 28 April 2000.<sup>26</sup> The government adopted the Legal Aid Services Policies in 2001<sup>27</sup> in order to determine the eligibility of legal aid recipients. In 2014, the Policies were amended to update the list of eligible recipients.<sup>28</sup> The resulting policies are called the Legal Aid Services Policies, 2014. The government also adopted the Legal Aid Services Regulation 2001 for processing legal aid applications, nomination of legal aid lawyers and panel lawyers’ fees and the like. The Regulation was amended in 2015 and is now called the Legal Aid Services Regulation 2015.<sup>29</sup>

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17. *Ibid.*

18. *Ibid.*, p. 43.

19. *Ibid.*

20. It should be noted that the unused balance in 48 district committees at the end of 1997 amounted to almost nine million taka (the currency of Bangladesh). *Ibid.*

21. *Ibid.*, pp. 43–4.

22. *Ibid.*

23. Ameen (2004), p. 63.

24. *Ibid.*

25. *Ibid.*

26. S.R.O. No. 119/Law/2000.

27. S.R.O. No. 130-Law/2001.

28. S.R.O. No. 194-Law/2014.

29. S.R.O. No.166-Law/2015.

The government has established the National Legal Aid Services Organisation (hereinafter NLASO) to put in place the legal aid activities.<sup>30</sup> The NLASO works under the Ministry of Law, Justice and Parliamentary Affairs to adopt policies and principles under the Act. The management authority of the NLASO is vested in a National Legal Aid Board (hereinafter the Board) that operates at the national level. At district level, there are District Legal Aid Committees (hereinafter DLACs); Upazilla (sub-district) Legal Aid Committees (UPLACs) work in the Upazilla or Thana level and there are provisions for Union Legal Aid Committees (UNLACs) at the Union level. The recent amendment of the LASA involves further provisions for the Supreme Court Legal Aid Committee and the Special Legal Aid Committee in Labour<sup>31</sup> and Chouki Courts.<sup>32</sup>

### 3. CURRENT STANDARD OF THE BANGLADESHI GOVERNMENT LEGAL AID SYSTEM: PROBLEMS AND PROSPECTS OF REFORM

Although organized efforts to run the government programme started in 1994, the Bangladeshi legal aid system, as Uddin states, had no impetus before 2009; this is evident from the lack of adequate institutional and logistical support. Uddin clarifies that the government functions were limited to only adopting laws and rules during this period.<sup>33</sup> Therefore, the system was not institutionalized even after adopting the Resolutions in 1994 and 1997, and it was completely unsuccessful.<sup>34</sup> Lack of government sincerity and commitment also came to the fore as adequate official figures on the extent of actual coverage of the mechanism are absent. Lack of efficient strategy coupled with indifference on the part of the government functionaries also became apparent as the allocated grant remained unutilized. Therefore, it can be said that the government merely took steps to demonstrate its willingness to serve the poor of the country but, in essence, the system was not able to produce any tangible outcome.

However, recent statistics suggest that the demand for and activities of government-sponsored legal aid in Bangladesh have increased over the years. In 2009, the total number of legal aid recipients was 9,160, and it had increased to 15,450 in 2012.<sup>35</sup> This increase has also been commented on by Morrison, who observes that the government legal aid programme has developed and accelerated faster than anyone could have predicted even a few years before.<sup>36</sup> Yet it has been opined that the quality of the government's legal aid programme with a view to promoting access to justice remains unsatisfactory.<sup>37</sup> In this context, it is relevant to examine the quality of the government-funded legal aid system of Bangladesh to find out whether or not it is able to ensure effective access to justice for those living

30. S.R.O. No.146-Law/2000.

31. S.R.O. No.41-Law/2016.

32. S.R.O. No.33-Law/2016. Chouki Courts are situated in remote areas far away from the district headquarters to facilitate access to justice for those living in these areas.

33. Uddin (2013).

34. *Ibid.*

35. In 2009, a total of 3,571 cases were disposed of through the Bangladeshi government-funded legal aid and the number of decided cases has grown in the following years. According to the NLASO statistics, the figures were 5,627, 5,376, and 4,436 in the three following years (the file is in the author's collection; it is also available at [http://www.lawjusticediv.gov.bd/static/legal\\_aid.phpac](http://www.lawjusticediv.gov.bd/static/legal_aid.phpac) (accessed 24 March 2016).

36. Morrison (2011).

37. Chowdhury (2012), p. 11.

in poverty. In analyzing the system, this paper considers the provisions of the LASA as well as the implementation of the Act.

### 3.1 *Restricted Eligibility Criteria*

According to the Legal Aid Services Policies of 2014, persons who are financially insolvent are eligible for legal aid in Bangladesh and such insolvency is determined by the annual average income limit of the applicants.<sup>38</sup> However, there are some specific categories of persons who become automatically entitled to legal aid under the LASA, such as women and children who are victims of human trafficking, women and children who are attacked with acid, homeless people or vagrants, physically or mentally handicapped persons, poor widows, deserted wives, and destitute women.

It is necessary to analyze whether the current eligibility threshold of the annual income limit of below 100,000 taka (approximately 8,300 taka a month) is commensurate with the current socioeconomic situation of the country. The Legal Aid Services Policies indicate that the Bangladeshi legal aid system follows the financial eligibility test or “means test” in order to determine the beneficiaries of the scheme and the test is exclusively based on the annual income of the applicants. This means the standard is fixed and does not take the inflation rate, living expenses, and other financial realities of the country into account. In addition, the financial burdens on the applicants such as dependent family members or other affairs are not considered under the eligibility test.<sup>39</sup> It is necessary to note that Bangladesh has achieved significant success in the reduction of poverty since 1990.<sup>40</sup> According to the Bangladesh Poverty Assessment, poverty reduction was closely linked to the growth in labour income and changes in demographics during the period 2000–10. Labour income was the leading factor in determining higher incomes and lower poverty rates.<sup>41</sup> Given these developments, the average monthly household income rate is useful in determining whether the current legal aid eligibility test reflects the actual financial realities of the country.

The Household Income and Expenditure Survey 2010 shows that the average monthly national household income of Bangladesh increased from 7,203 taka to 11,479 taka (approximately 137,800 a year) in 2010. Nonetheless, the achievement of poverty reduction has been considerably eroded because of the acute rises in the prices of food and other essential goods which keep the poor where they are.<sup>42</sup> According to the above-mentioned survey, at the national level, the estimated average monthly cost of living rose from 6,134 taka to 11,200 taka (approximately 134,500 a year) in 2010.<sup>43</sup> One can find that the gap between the national average annual income (137,800 taka and 11,479 taka monthly) and

38. The Legal Services Policies, 2014 state that the financial eligibility threshold for the legal aid applicants is below 150,000 Bangladeshi taka (approximately 1,935 USD) for the matters placed before the Supreme Court and the limit is below 100,000 taka (approximately 1,290 USD) for matters before other courts. The limit varies for freedom fighters (150,000 taka) and labourers (100,000 taka). It should be noted that freedom fighters are members of a guerrilla force and they fought against the Pakistan Army during the Bangladesh War of Independence in 1971.

39. Akter (2015), p. 231.

40. International Monetary Fund (2013), p. 143.

41. World Bank (2013).

42. International Monetary Fund (2012). According to the Consumer Price Index, the inflation rate for Bangladesh in the financial year 2011–12 was 10.62% at the national level, which was 8.80% in the financial year 2010–11. See *Bangladesh Economic Review* (2012).

43. Bangladesh Bureau of Statistics (2010), pp. 33–4.

cost of living (134,500 taka and 11,200 taka monthly) is minimal. The increased income is thus struggling to meet the living expenses consisting of house rent, transport costs, and the like.<sup>44</sup> Another factor that relates to the living expenses in Bangladesh is the average number of family members. According to the Household Income and Expenditure Survey 2010, about 65% of families comprise three to five members.<sup>45</sup> However, in most cases, there is only one member of the household who is earning.<sup>46</sup> As a result, the burden is higher on the average income of the earning members.

The above expositions indicate that the eligibility threshold for legal aid applicants should take into account the income level and the cost of living of the applicants. It should also consider other financial burdens of the applicants. However, the national average annual income and cost of living of 2010 clearly show that the eligibility threshold of below 100,000 taka (approximately 8,300 taka a month) is not commensurate with the annual income level (137,800 taka and 11,479 taka monthly) and the cost of living (134,500 taka and 11,200 taka monthly) of the country and it is evidently low and impractical. In addition, the eligibility standard does not consider other financial burdens of the applicants, such as the number of earning members in the family and the distribution of the income in the household. The present financial eligibility limit, therefore, is not commensurate with the present socio-economic realities of the country and rejects many people who are in need of legal aid in order to access the justice system.

The issue of the restricted eligibility criterion has been prevalent in the Bangladeshi legal aid system since the LASA has been in effect. The Legal Aid Services Policies in 2001 initially allowed 3,000 taka<sup>47</sup> as the eligibility threshold, which was considered exceedingly low and impractical.<sup>48</sup> The Legal Aid Services Policies had undergone two amendments<sup>49</sup> with regard to the financial eligibility standard before the adoption of the 2014 Policy, but the issue has not been resolved by successive governments<sup>50</sup> and the apparent justice gap is still maintained by the LASA through its current means test.

The impractical eligibility criterion of the Bangladeshi legal aid system contradicts the very purpose of the legal aid scheme. The legal system suffers from a fundamental contradiction—law promises to administer fair judgments in disputes between parties who have disparities in respects of money, power, and status.<sup>51</sup> Despite the fact that equal access to courts is guaranteed, a rich or strong party still enjoys privileged and favourable access.<sup>52</sup> According to Maru, legal aid is a “classic corrective” to this fundamental contradiction in the legal system and brings the poor into contact with it.<sup>53</sup> However, the imposition of impractical ceilings for legal aid again prevents them from accessing the services and the LASA is

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44. Zahid (2013).

45. Bangladesh Bureau of Statistics, *supra* note 43, p. 10.

46. Aaman et al. (2014), p. 10.

47. S.R.O. No. 130-Law/2001.

48. Khair, *supra* note 9, p. 224.

49. On 29 October 2009, the limit was increased to 30,000 taka by an official gazette notification of S.R.O. No. 191-Law/2009. The limit of below 50,000 taka became effective in 2011 by an official gazette notification of S.R.O. No. 193-Law/2011.

50. Akter, *supra* note 39, p. 235.

51. Maru (2010), p. 84.

52. *Ibid.*

53. *Ibid.*

clearly not an exception to this. It has adopted a restrictive eligibility criterion that deprives many individuals of access to legal aid to enforce their rights and entitlements.

The state tends to be the dominant actor in legal aid programmes, as it establishes, operates, and can even abolish legal aid.<sup>54</sup> The state operates the scheme in various ways influenced by different goals or considerations, fiscal, political or social, and then seeks to justify its methods. Thus, legal aid is a complex field where aid is granted for different kinds of motives, subject to different legal systems and following different models.<sup>55</sup> It is noted that legal aid is an object of class struggle<sup>56</sup> and can be used to legitimize the privileges enjoyed by wealthy and powerful groups.<sup>57</sup> This is because legal services follow a market-based approach and a particular fraction of services are provided to the poor under the fabric of the legal aid programme. The state is required to make a political decision to pursue such a cause.<sup>58</sup> At the operational level, the fixing of eligibility criteria for legal aid recipients demonstrates states' approaches to the system and the unrealistic eligibility criterion is a reflection of the state's political consideration.<sup>59</sup> The government promises to ensure equality before the law for all but the restricted eligibility only allows a tiny section to enjoy the benefit. The restricted eligibility also preserves the market-based situation in the legal system and protects the interests of private consumers who can afford to pay the fees of lawyers and other ancillary costs of legal proceedings.

Thus, the Bangladeshi government has established a mechanism to ensure access to justice for the poor but, as a result of its impractical means test, the LASA merely serves to pay lip service to a tiny section of those deprived of access to the formal legal system. In other words, the LASA is not able to mitigate the justice gap between the rich and poor of the country; rather, it is a political gesture by the government to demonstrate its intention to enable the poor to use the legal system in order to improve their conditions.

### 3.2 *Lack of Adequate Publicity*

A comprehensive legal aid programme needs to have extensive publicity to notify the potential beneficiaries who might utilize the service according to their need. Therefore, the government is required to make widespread publicity of the programme, including what the service offers and how to access such services, and to provide other relevant information to the general public through print and electronic media or other appropriate means. In Bangladesh, the LASA obligates the NLASO to ensure adequate publicity of the programme.<sup>60</sup> As noted earlier, the NLASO statistics show that the number of legal aid recipients has grown in recent years. The growing number of recipients is indicative of the growing awareness about the programme. However, Dutt and Khair opine that most people, particularly the poor, who could be beneficiaries of the programme are ignorant about it.<sup>61</sup> A household survey of 2015 indicates that 97% of respondents are unaware of any

54. Abel (1985), p. 524.

55. Regan (1999), p. 199.

56. Abel (1986), p. 383.

57. *Ibid.*, p. 388.

58. *Ibid.*, p. 386.

59. Greene et al. (1976), pp. 775–6.

60. LASA, s. 7.

61. Dutt (2011); Khair, *supra* note 9, p. 232.



government legal aid office or committee.<sup>62</sup> Thus it becomes clear that there is a lack of adequate publicity about the government-operated legal aid programme in Bangladesh and even those who have heard about the programme have no specific knowledge about its role and activities.<sup>63</sup>

The reasons for such lack of adequate publicity were identified in a 2015 study.<sup>64</sup> The study found that the DLACs were not able to create adequate publicity because the LASA had imposed a budget limit for this activity. The LASA previously allowed the district committees to spend 7% of the allocated budget for the purpose of publicity.<sup>65</sup> This amount was considered disproportionate compared to the extent of required activities and arrangements and costs involved.<sup>66</sup> Moreover, as the above-mentioned study suggests, publicity about government legal aid is not made at the grass-roots level at all<sup>67</sup> and, even when publicity is made, such publicity is scattered.<sup>68</sup> In Bangladesh, electronic broadcast media can be effective in reaching a large audience within a relatively short period of time.<sup>69</sup> However, the government legal aid scheme does not have adequate coverage in such media.<sup>70</sup> This indicates the lack of commitment of the government authorities on the one hand and the lack of efficient strategy to use the available resources on the other.

In short, even if the statistics of the NLASO show a growing trend of awareness, the publicity of the programme is not adequate and the legal aid institutions hardly impact on the attitudes of those who might use it should they need to.

### 3.3 *Inadequate Financial and Human Resources*

In Bangladesh, the government-funded legal aid programme provides the lawyers' fees as well as some other costs of the proceedings, such as providing free *vakalatnama*,<sup>71</sup> supplying certified copies of orders and the cost of paper advertisements in complaint registrar cases.<sup>72</sup> There are nevertheless other matters that involve a large amount of money for the legal aid recipients but they are not provided by the government; for example, an *ad valorem* court fee<sup>73</sup>—an unavoidable concern for litigants—is not covered under the LASA.<sup>74</sup> The LASA only allows for a fixed court fee in legal aid cases. In case of suits requiring an *ad valorem* court fee, it very often happens that this fee involves a large amount, which becomes a huge burden for the party. But the government does not provide for this fee in legal aid matters.

62. Moran (2015), p. 25. According to a survey supported by the National Human Rights Commission of Bangladesh, high numbers (10.9%) of respondents have not heard of the NLASO and more than half (54.6%) were not able to provide an opinion. Moran et al. (2011), p. 65.

63. Moran, *supra* note 62, p. 25.

64. Akter, *supra* note 39, p. 248.

65. The Legal Aid Services Policy 2001, s. 7.

66. Akter, *supra* note 39, p. 248.

67. *Ibid.*, pp. 247–8; Moran, *supra* note 62, p. 25.

68. Akter, *supra* note 39, pp. 247–8.

69. Khair, *supra* note 9, p. 69.

70. Akter, *supra* note 39, pp. 248–9.

71. *Vakalatnama* refers to the document which confers power on the lawyer to plead on behalf of his or her client.

72. nlaso.gov.bd (2014).

73. *Ad valorem* court fees are opposite to fixed court fees and are determined according to the value of the property in question.

74. The Legal Aid Services Regulation, 2015 (S.R.O. No.166-Law/2015); Government Legal Aid (2012), p. 23.



There are other associated costs that are also not covered by the LASA, such as the purchasing fee of the document to prepare a power of attorney and bail bond<sup>75</sup> as well as the travel expenses of the parties. Clients seeking the service can initiate the proceedings but it becomes problematic to follow them through due to the cost involved. Thus, even if the LASA defines legal aid as assistance that includes legal advice, lawyers' fees, litigation costs, and other incidental expenses,<sup>76</sup> the above expositions make it obvious that the Bangladeshi government does not allocate sufficient funding to make the service inclusive and comprehensive.

The inadequacy of the allocated funding becomes clear from another perspective. Statistics of the NLASO indicate that, during three financial years from 2009 to 2012, the government granted an amount of 10,000,000 taka to 64 districts of the country.<sup>77</sup> However, data show the increasing trend in the number of cases as well as the recipients for each year during the same period.<sup>78</sup> It is relevant to note that, according to the statistics compiled by the Ministry of Finance of Bangladesh, the inflation rate in the country was not fixed during these periods; the inflation rate for Bangladesh in 2011–12 was 10.62% but was 8.80% in 2010–11.<sup>79</sup> It is clear that the same amount of budget cannot be adequate to satisfy the needs of an increasing number of recipients while the inflation rate follows an upward spiral. As a result, the government budget allocation is not reflective of the growing need of recipients. It further fails to allow for the country's inflation rate.

There is also no provision under the LASA to allocate funds to the Upazilla and Union Committees. The above-mentioned 2015 study shows that the UPLACs and UNLACs are unable to carry out awareness-raising activities about the scheme due to a lack of financial resources.<sup>80</sup> The said study further indicates that not only the UPLACs and UNLACs, but also the DLACs are not granted funds in order to visit and monitor the activities of the UPLACs and UNLACs.<sup>81</sup> All these situations make it clear that the legal aid sector of Bangladesh is suffering from inadequate financial resources and this has adverse repercussions on the successful running of the scheme.

Now it is relevant to examine how the allocated grant is utilized by the respective legal aid authorities. It was noted before that, during three financial years from 2009 to 2012, the government granted an amount of 10,000,000 taka. According to the statistics of the NLASO, an amount of 6,327,594 taka was spent through legal aid offices in 2009–10, meaning 63.27% of the allocated fund was used.<sup>82</sup> That percentage rose to a great extent during the following year, becoming almost 92% of the allocated fund.<sup>83</sup> Statistics indicate that the full amount was used in 2011–12.<sup>84</sup>

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75. Akter, *supra* note 39, p. 304.

76. Section 2(a).

77. Documents collected from the NLASO are in the author's collection.

78. *Supra* note 35.

79. Bangladesh Economic Review, *supra* note 42.

80. Akter, *supra* note 39, p. 256.

81. *Ibid.*

82. *Supra* note 77. Also see Islam (2013).

83. *Ibid.*

84. Islam, *supra* note 82.

Under the LASA, funds are not allocated every year; this is done according to the need of the DLACs.<sup>85</sup> For example, 300,000 taka was granted to Dhaka DLAC in 2010–11, while the amount went up to 330,000 taka in the next financial year.<sup>86</sup> On the other hand, Gazipur district was allocated 200,000 taka in 2010–11 but the amount went down steeply to 30,000 taka in the next financial year. Statistics indicate the same trend for other DLACs.<sup>87</sup> The allocation was nil in 2010–11 for Satkhira DLAC but it increased enormously to 230,000 taka in the following year. A similar picture is found in other DLACs.<sup>88</sup>

If we want to analyze the trend of the above budgetary allocation, the provision of the LASA becomes significant. The provision of the Act is accepted in the sense that the needs of the DLACs are different and therefore fluctuation of the allocated grant is very likely. However, it requires scrutiny when the allocated grant changes to zero immediately in the subsequent financial year and when the reverse is true. It is also noticeable that the grant becomes exceedingly low or high in different years. All of this might lead to two kinds of assumptions—first, the programme is not running effectively and, second, the money remains unutilized. Dutt reports that a large percentage of legal aid funding remains unspent and is returned to the government treasury.<sup>89</sup> The above-mentioned 2015 study also notes that the allocated grant cannot be used effectively and it also remains unutilized.<sup>90</sup> One reason identified for such non-utilization is that a significant portion of potential clients are not aware of the government legal aid programme due to inadequate publicity and therefore do not apply for the service.<sup>91</sup>

However, there are other reasons that are responsible for the non-utilization of the government fund, such as lack of sustainability in the government plan, which is critical in the Bangladeshi legal aid system. Change in the government prevents the effective utilization of the allocated budget.<sup>92</sup> In addition, the management of the scheme involves the participation of a sizeable number of bureaucrats at the district level and it requires the programme to follow more formalities.<sup>93</sup> Muralidhar notes that the legal aid system is not well accepted by the subordinate judges and lawyers,<sup>94</sup> which is another reason for the non-utilization of the allocated grant in Bangladesh. Khair's finding has been more critical in this respect. She states that the government allocates funds to the legal aid sector not to serve the interests of the poor, but with a view to gaining donor approval.<sup>95</sup> The government received financial and other assistance from different organizations, like the World Bank and the Canadian Development Agency on different occasions for the purpose of enhancing access to justice in Bangladesh and the legal aid programme was a component of those projects.<sup>96</sup>

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85. Section 13(4).

86. *Supra* note 77.

87. The DLACs are Gazipur, Comilla, Khulna, Sunamganj, Bagerhat, and Magura DLACs. The documents are in the author's collection.

88. They are Jaypurhat, Rangpur, Narshingdi, Kishoreganj, Panchgar, Meherpur, Pirojpur, Sylhet, Rangamati, and Khagrachari DLACs. The documents are in the author's collection.

89. Dutt, *supra* note 61.

90. Akter, *supra* note 39, p. 259.

91. *Ibid.*

92. Ameen (2012).

93. Muralidhar, *supra* note 12, p. 359.

94. *Ibid.*

95. Khair, *supra* note 9, p. 232.

96. *Ibid.*, pp. 225–6.

The lack of effective oversight is pronounced across the legal aid budget in the country. One study of 2004 reveals that the amount granted to one district was not only unutilized; some of it was misused in the sense that the money was only spent on arranging two meetings and on the refreshments at those meetings.<sup>97</sup> However, the government has not published any detailed report to provide adequate analysis and explanation of the budget allocation and its use in respective years. The existing published materials indicate how much money is allocated and how much of it is used, but they do not provide detailed particulars and analysis concerning the areas and purpose of expenditure in respective financial years.

Furthermore, it is not possible to utilize the legal aid fund efficiently due to the lack of government commitment and this becomes evident through inadequate allocation of essential infrastructure. The lack of infrastructure like a separate office, or office equipment including furniture, computers, and printers impedes the right to access the service.<sup>98</sup> Despite the LASA requiring all districts to have a permanent legal aid office,<sup>99</sup> the 2015 study demonstrates that all districts do not have separate legal aid offices.<sup>100</sup> And, even where a separate legal aid office is declared to be established, the office is not well equipped with adequate furniture and logistical support, and therefore is not functional.<sup>101</sup> Furthermore, there is no waiting room for the clients. There is inadequate provision of rooms for lawyer–client meetings where privacy and professional conversations could be guaranteed.<sup>102</sup>

In addition, not all districts have the UNLACs and UPLACs.<sup>103</sup> The UNLACs and UPLACs are required to forward the legal aid applications to the DLACs under the Legal Aid Services Regulation 2011. However, forwarding of the applications by the committees that have been established in respective districts is not high. According to the 2015 study, forwarding of applications by the UNLACs and UPLACs is very low or is non-existent. In Chittagong, during three months from January to March 2013, only one application was forwarded by these committees.<sup>104</sup> Similarly, no application was forwarded during these three months in some other districts, such as Sylhet, Khulna, and Rangpur.<sup>105</sup> As mentioned earlier, there is no provision to allocate a budget to the Union and Upazilla Committees and therefore they do not carry out awareness-raising activities about the legal aid programme due to the lack of financial resources. So the Union and Upazilla Committees are ineffective and exist only as theoretical institutions.

The Bangladeshi legal aid system is also suffering from inadequate human resources. As mentioned in Section 2, the activities of the District Legal Aid Committees under the 1997 Resolution were ineffectual mainly because the District and Sessions Judges were responsible for administering the programme. This led to the 2013 amendment of the LASA to officially incorporate the provision of a Legal Aid Officer.<sup>106</sup> The Legal Aid Officer

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97. Ameen, *supra* note 23, p. 72.

98. Khair, *supra* note 9, p. 232.

99. LASA, s. 9.

100. Akter, *supra* note 39, pp. 261–2. Also see, *nlaso.gov.bd*, *supra* note 72.

101. Akter, *supra* note 39, pp. 261–2.

102. *Ibid.*, p. 262.

103. Resolution of the 63rd monthly meeting of Sylhet DLAC (2013), miscellaneous agenda 4.

104. Akter, *supra* note 39, p. 262.

105. *Ibid.*, pp. 262–3.

106. Section 21A.

coordinates the activities of the DLACs. He also provides legal advice to those seeking legal aid. In addition, he is authorized to take all measures for settling disputes through mediation between the legal aid recipient and the opposite party in appropriate cases.<sup>107</sup> However, the provision concerning the Legal Aid Officer came at a comparatively later stage. The LASA did not contain such provision when it was adopted in 2000. This indicates that successive governments have not been sincere in identifying the factors responsible for the ineffective service delivery.

The 2015 study indicates that a Legal Aid Officer is not appointed in all the DLACs of Bangladesh.<sup>108</sup> The legal aid programme in other districts is co-ordinated by a judicial officer who discharges the functions in addition to his or her judicial responsibility. As a result, the workload of these officers is doubled and it is difficult to maintain an appropriate balance between the two roles with regard to time and skill. Moreover, there is no incentive from the government for this additional work in terms of financial gain or professional achievement.<sup>109</sup> Therefore, the unpaid workload has an adverse influence on the professional dedication of the Legal Aid Officers-in-Charge. They are likely to deliver the service in an ineffective and cursory manner.<sup>110</sup> Furthermore, the Bangladeshi legal aid system is lacking adequate human resources in other respects too; for instance, the DLACs do not have the office staff to run the programmes and provide meaningful services to the target groups.<sup>111</sup> The lack of adequate human resources is thus clearly manifest across the legal aid system of Bangladesh.

In short, the current government legal aid system of Bangladesh is not on the list of the successive governments' priorities and thus suffers from inadequate funding, human resources, and logistical support. This can be construed from another perspective too. The Bangladeshi legal aid programme loiters in the political competition of budget allocation by the government.<sup>112</sup> In other words, the lack of government commitment to the legal aid sector becomes evident in the administration and operation of the system through the allocation of inadequate financial and human resources. There is also no effective oversight by the government as to whether the allocated fund is appropriately utilized. As a result, scarce legal aid funding and inefficient management of available funds have failed to resolve the problem of unequal access to the formal courts in Bangladesh. Government funding of legal services creates an illusion of justice and the perception that the state does not truly wish to rectify inequality through more substantive means. This has serious adverse repercussions on ensuring substantial service delivery of the programme and bringing it to the people.

### 3.4 *Ineffective Assistance from Lawyers*

The right to counsel is not meaningful if it does not encompass the right to effective counsel.<sup>113</sup> However, effective counsel is not limited to the mere appointment of a lawyer; it

107. The Legal Advice and Alternative Dispute Resolution Policies, 2015, s. 3, S.R.O. No. 25-Law (2015).

108. Akter, *supra* note 39, pp. 264–5.

109. *Ibid.*

110. *Ibid.*

111. *Ibid.*, p. 265.

112. Moorhead states: "Scarcity of resources is a political fact which legal aid policy must address. Yet the *purpose* of any legal aid scheme requires careful and detailed analysis and explanation if efficiency and effectiveness are to achieve any meaningful end beyond minimal cost," Moorhead (1998), p. 366, emphasis in original.

113. Human Rights Committee, General Comment 32, para. 38.

also includes appropriate qualification, competence, professional diligence, accountability, and transparency of the appointed lawyer.<sup>114</sup> According to Tull, the achievement of high-quality work on behalf of clients is of great concern in the state's legal aid programme. The programmes usually focus on the development and implementation of systems for supervision and training of lawyers so that high-quality work can be ensured.<sup>115</sup> In Bangladesh, the LASA states that panel lawyers or legal aid providers are required to possess five years' experience for matters both before the Supreme Court and the District Courts.<sup>116</sup> The same qualification is also applicable to lawyers appearing before the Labour Court and the Chouki Court.<sup>117</sup> As regards the selection of the panel lawyers, three lawyers are initially nominated to deal with the case of a legal aid recipient. Finally one lawyer is appointed with the consent of the recipient.<sup>118</sup> The panel lawyers are not appointed on a full-time basis; they are compensated by the government for their services on a case-by-case basis. In this way, Bangladesh follows the *judicare model*<sup>119</sup> for the regulation and administration of legal aid providers.

However, one study demonstrates that the selection procedure of the panel lawyers is not accurate. The lawyers are not required to face any interview or other procedure for their empanelment and other criteria, like specialization, are not taken into account while empanelling them.<sup>120</sup> The NLASO Guidelines concerning district panel lawyers' duties and responsibilities suggest that every DLAC is required to have a special committee in order to deal with the matters of lawyers' empanelment, updating the list of panel lawyers, determining their eligibility criteria, appointment, and other related matters.<sup>121</sup> However, the above-mentioned study has found that the special committee does not exist in any of the researched districts.<sup>122</sup> All this indicates that the legal aid institutions are not diligent in ensuring an accurate selection procedure for legal aid lawyers.

There are many factors that influence lawyers to become a legal aid lawyer in Bangladesh.<sup>123</sup> For instance, lawyers who have not established good rapport in the profession and suffer from unstable economic conditions are engaged as legal aid lawyers.<sup>124</sup> In other words, incompetent lawyers deliver legal aid services for their survival in the profession. There is another factor that influences legal aid lawyers in the country. Lawyers are likely to place more emphasis on their personal gains rather than the ultimate objective to ensure justice for those living in poverty. It has even been stated that lawyers do not enlist themselves on the panel with a view to serving the beneficiaries; they enlist to earn social prestige or popularity, as the society has a sense of honour and respect for those who serve

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114. Akter, *supra* note 39, pp. 116–20.

115. Tull (1994), p. 211.

116. Section 15.

117. *Ibid.*

118. The Legal Aid Services Regulation 2001, s. 4 (amended by S.R.O. No. 131-Law/2001).

119. In the *judicare model*, the state compensates private lawyers who provide the service. Wise (1994), pp. 48–9.

120. The only consideration is five years' experience of the enlisting lawyers. Akter, *supra* note 39, p. 296.

121. Government Legal Aid, *supra* note 74, p. 9.

122. Akter, *supra* note 39, p. 296.

123. *Ibid.*, pp. 296–7.

124. *Ibid.*

the poor and disadvantaged.<sup>125</sup> Lawyers also enlist to obtain membership of different social and voluntary organizations.<sup>126</sup>

Moreover, political influence plays a role in the empanelling of lawyers. Lawyers are able to become empanelled because they are influential and known for their political affiliation.<sup>127</sup> Even the list of panel lawyers is subject to amendment with the change of government.<sup>128</sup> This consideration of lawyers' political affiliation in the legal aid sector is frustrating, since it compromises the qualification and competence of lawyers. It also places emphasis on the personal gains of lawyers.

The above-mentioned study has pointed out another difficulty in selecting panel lawyers. Despite the LASA asking for five years' experience, junior lawyers having experience of two to three years show their interest to be on the panel and thus to deliver legal aid services.<sup>129</sup> Junior lawyers are likely to invest more time in legal aid cases compared to their experienced and busy senior colleagues. Moreover, they are likely to be more regulated at the early stage of their profession. However, the embargo of five years' experience under the LASA debarbs many promising young lawyers from being engaged in the legal aid service. Therefore, in light of the above-mentioned factors, it can be said that the current legal aid system cannot ensure that the best talents of the legal profession serve the beneficiaries of legal aid.

The assigned lawyer is under an obligation to act in the best interests of the client and to represent the client in accordance with recognized professional duties, standards, and ethics. However, as Khair notes, clients suffer from insincerity of the Bangladeshi legal aid lawyers<sup>130</sup> and do not get the relevant lawyers' services according to their need.<sup>131</sup> Also, lawyers' visits to clients in jail are infrequent.<sup>132</sup> Allegations have been reported by the Ministry of Law, Justice and Parliamentary Affairs,<sup>133</sup> but there is an absence of substantial effort on the part of the government to prevent this.

Cost involved in the form of lawyers' payment is crucial in the legal aid sector. According to Paterson, the quality of service is partly dependent on the payment offered to lawyers.<sup>134</sup> Vandekoolwyk also states that a lawyer takes decisions concerning what measures to take, preparation of the case, and other related matters based on the payment made to him.<sup>135</sup> The *judicare model* in Bangladesh allows a fixed rate for panel lawyers depending on the particular proceedings. However, there is a strong allegation that the payment offered to the

125. Akter, *supra* note 39, pp. 296–7. In the words of Goriely, “public service was fashionable,” Goriely (1994), p. 557.

126. Akter, *supra* note 39, pp. 296–7.

127. *Ibid.*, pp. 297–8.

128. *Ibid.*

129. *Ibid.*, pp. 298–9.

130. Khair, *supra* note 9, pp. 235–6.

131. The report states: “[I]t has been expressed by many respondents that often the lawyer is found to be absent on the date of hearing .... Many of the prisoners stated that they never met the lawyers assigned to them even when legal aid had been provided for about a year. Legal and Judicial Capacity Building Project, Final Report: Improving Mechanism for Delivering Legal Aid (Unpublished report, Ministry of Law, Justice and Parliamentary Affairs, Dhaka) (2004), p. 42,” cited in Chowdhury, *supra* note 37, p. 12.

132. Resolution of the monthly meeting of the Jessore DLAC for the month of January (2013), agenda 5.

133. Chowdhury, *supra* note 37, p. 12.

134. Paterson (1996), p. 155.

135. Vandekoolwyk (2010), p. 191.

Bangladeshi legal aid lawyers is considerably low<sup>136</sup> and such allegations have been made since the beginning of the legal aid scheme.<sup>137</sup> The poor payment structure discourages the best talents of the bar from becoming panel lawyers in Bangladesh. In particular, low payment distracts senior and experienced lawyers from representing the parties.<sup>138</sup> It has been stated therefore that

[t]he scheme uses lawyers in private practice who are paid for their services according to stipulated and fairly low tariffs, which inevitably means that only the less experienced or less successful lawyers are available and willing to work for these rates.<sup>139</sup>

To be more specific, lawyers who are empanelled have serious dissatisfaction and grievances; they sometimes even call it humiliating.<sup>140</sup> It should be mentioned here that the government has increased the payment structure for lawyers engaged in the Supreme Court. But no substantial change has been made for the payment structure of lawyers in the lower judiciary, the courts of first instance.<sup>141</sup> As a result, it is unlikely that the new structure will be effective in changing the attitude of lawyers towards their service delivery.

States need to ensure the effectiveness of lawyers' services through strong institutionalization with a view to evaluating, organizing, and monitoring their activities. However, the government-funded legal aid system of Bangladesh lacks a mechanism to ensure accountability of legal aid lawyers. More specifically, the LASA does not provide a mechanism to take disciplinary action against lawyers for adopting unfair means or for disregarding established professional codes of conduct and standards. One might question the role of the Bangladesh Bar Council in this regard. The Bangladesh Bar Council provides mechanisms for taking disciplinary action when a complaint is made against a lawyer.<sup>142</sup> However, legal aid clients are not only poor, but often illiterate and they do not have the money, skill, or confidence to approach the Bar Council. Therefore, an internal arrangement is required, but the lack of a mechanism under the LASA disables the DLACs from taking action when an allegation is made against an assigned lawyer. For instance, Khulna DLAC reports the violation of professional conduct by assigned lawyers in some specific cases but the resolution of the meeting does not report what kind of disciplinary action was taken against them.<sup>143</sup>

Again, the quality of the service remains within the domain of the legal aid lawyers in Bangladesh. Despite the provision that requires the appointed lawyer to submit a follow-up report to the DLAC every three months,<sup>144</sup> one study demonstrates that, after a lawyer is assigned to any matter, there is no regular system of updating the committees on the progress of the case.<sup>145</sup> However, in 2012, the NLASO introduced various forms<sup>146</sup> to ensure the

136. Chowdhury, *supra* note 37, p. 11; Akter, *supra* note 39, pp. 300–3.

137. Dutt, *supra* note 61.

138. Khair, *supra* note 9, p. 235; Akter, *supra* note 39, pp. 300–3.

139. Moran, *supra* note 62, p. 24.

140. Akter, *supra* note 39, p. 302.

141. S.R.O. No. 166-Law/2015, r. 6.

142. The Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972, ch. IV.

143. Resolution of the monthly meeting of the Khulna DLAC for the month of February (2013).

144. The Legal Aid Services Regulation 2001, s. 5 (amended by S.R.O. No. 131-Law/2001); Government Legal Aid, *supra* note 74, p. 18.

145. Akter, *supra* note 39, pp. 307–8.

146. Circular nos. NLASO/06/2011–524, dated 15/09/2011 and NLASO/06/2011–563, dated 26/10/2011.



regular follow-up of cases under section 5 of the Legal Aid Services Regulation of 2001.<sup>147</sup> Yet it is found that lawyers show their reluctance and do not submit the follow-up reports within the scheduled time. They are indifferent and do not submit the reports even after they have received reminder letters from the legal aid office.<sup>148</sup> Thus, the DLACs do not have effective oversight of the lawyers to evaluate and organize their activities with a view to making them transparent and accountable. In addition, panel lawyers are not adequately motivated to meet performance standards and behave appropriately, knowing that there is no performance indicator in the system.

Furthermore, the LASA does not contain any provision that allows the clients to make formal complaints if they are dissatisfied with the service of assigned lawyers. The lack of such a grievance mechanism prevents the lawyers from being accountable. It also impinges on the fairness of the legal aid system as well as depriving clients of effective legal assistance.

The interplay of all these factors is critical and impacts adversely on the quality of the service from panel lawyers. In other words, provisions of the LASA and the lack of an integrated approach to legal aid have guaranteed that the best lawyers are disassociated from the legal aid services, that these programmes remain ineffective, and that long-term efforts to deal with problems of the poor and of poverty cannot be addressed. Therefore, the Bangladeshi legal aid system as a whole is suffering from poor quality and is not able to ensure substantial and effective legal assistance for the recipients. Despite this, not all the interviewed clients in a 2015 study were completely dissatisfied with their lawyers' service delivery. But they have suggestions that might improve the quality of the system; for instance, ancillary costs should be covered, and lawyers should engage adequate time and dedication when handling their matters.<sup>149</sup>

#### 4. CONCLUSION

In conclusion, the Bangladeshi legal aid system is lacking in terms of both legal provisions as well as the actual performance of the LASA. The inadequacies in the implementation of the LASA even raise the concern of whether the government has any intention to use the legal system to improve the condition of the poor or whether it intends to establish a legal aid system that is directed to providing mere lip service to the poor. The Bangladeshi legal aid system is therefore in a paradox; the state has established an institution that exposes its drawbacks and is not able to meet the needs of the beneficiaries. However, the recent amendments of the LASA, the gradual increase in the financial and human resources, and the establishment of the related bodies are positive advancements in the sector. Therefore, the legal aid system of Bangladesh suggests a combination of scepticism and optimism on the part of the government.

It can be said that the government legal aid institution is not able to function effectively to adequately address the unmet legal needs of the poor and ensure their access to justice

147. The Legal Aid Services Regulation 2001, s. 5 (amended by S.R.O. No. 131-Law/2001); Government Legal Aid, *supra* note 74, p. 18.

148. Resolution of the workshop of the Barishal DLAC (2013).

149. Akter, *supra* note 39, p. 310.

through the establishment of a comprehensive legal aid programme. As a result, willingness of the government in the form of strong commitment and an efficient strategy is imperative to foster the development of the Bangladeshi legal aid scheme to allow the poor access both to legal services and ultimately to a substantial degree of social justice. The LASA should also be amended and clarified with regard to different provisions that are restrictive or non-exhaustive in nature.

It should be noted that the legal aid system follows a continuous process of change<sup>150</sup> and gradual transformation, and development of the scheme has become inevitable.<sup>151</sup> The author therefore recommends the following measures to redress the inefficiencies of the legal aid system of Bangladesh: the eligibility threshold for legal aid recipients should be enhanced to enable more people who are in need to use the service to claim their rights and entitlements. The government should undertake regular periodic reviews of this with regard to the growth of the economic standards of the country. Furthermore, other factors including total family income, dependent members in the family, and the burden of legal aid applicants all need to be considered when assessing the eligibility of applicants.<sup>152</sup>

The legal aid programme has to be well publicized through print and electronic media and other appropriate means. Moreover, the government should allocate more funding to the legal aid sector. During the allocation of the budget, it should consider the growing need of the recipients as well as the inflation rate of the country. However, giving money alone is not enough; it is equally important to monitor whether the fund is utilized in an appropriate and efficient way at respective levels. The government should provide adequate infrastructural and logistical support and human resources to the legal aid committees.

With regard to the legal aid lawyers, the selection procedure of the lawyers needs more serious scrutiny. The payment to the legal aid lawyers is the main incentive to attract them; it affects their commitment and professional dedication. Therefore, the payment scale has to be restructured to make it reasonable and satisfactory.<sup>153</sup> Furthermore, introduction of some other incentives might be useful in attracting lawyers to the legal aid services like tax exemption and offering various fellowships.<sup>154</sup>

Another important factor is that the monitoring system for lawyers has to be strongly institutionalized. It is essential to monitor whether the assigned lawyers conduct the cases in accordance with the recognized professional standards, whether they allocate adequate time to the clients, update them on the developments of the case, and submit follow-up reports. Furthermore, the LASA must adopt an appropriate mechanism for taking disciplinary action against lawyers for the adoption of unfair means or violating the professional code of conduct. Above all, continuous follow-up and periodic review of the system are recommended to achieve the goal of ensuring fairer access to justice for the poor in Bangladesh.

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150. Regan et al. (1999), p. 1.

151. Johnsen (2006), p. 19.

152. Akter, *supra* note 39, p. 317.

153. *Ibid.*, p. 323.

154. The United Nations Principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems, General Assembly Resolution A/RES/67/187(28 March 2013), Guideline 11.

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