



e-ISSN: 2319-8753 | p-ISSN: 2347-6710

# IJRSET

International Journal of Innovative Research in  
**SCIENCE | ENGINEERING | TECHNOLOGY**



# INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH

IN SCIENCE | ENGINEERING | TECHNOLOGY

Volume 13, Issue 10, October 2024

**ISSN** INTERNATIONAL  
STANDARD  
SERIAL  
NUMBER  
INDIA

**Impact Factor: 8.524**

9940 572 462

6381 907 438

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# Impediments that Make the Government Legal Aid Service Slow and Ineffectual in Khulna: An Analysis

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**ABSTRACT:** Limitations are inherent to every project or activity. With tremendous success, the government legal aid organisation (GLAO) of Khulna has some limitations also. Causes and grounds of those limitations are different and multidimensional in nature. Some limitations are structural; some are procedural, statutory etc. For the government legal aid service of Khulna, main problems are structural and procedural. Such as, the legal aid office is not in a suitable place, man power is inadequate, the application and legal aid receiving procedure is very complex, monitoring to the lawyers and clients is not so regular and efficient, various statutory limitations etc. It is very tough to remove the government legal aid's limitations in our country because official procedure of the government service in our country is very lengthy and multifarious. No doubt, these limitations hassles or create barriers in smooth delivery of legal aid to the poor and indigents in Khulna. Except some limitations, most of the above mentioned are created by negligence and inefficiency. If the government legal aid authority and its staffs become proactive and devoted, hardly any limitations will be found.

**KEY WORDS:** Legal Aid, Limitations, Manpower, Funding, Monitoring, complexity etc.

## I. INTRODUCTION

Khulna is a divisional city and positioned in the South-West corner of Bangladesh. Article 27 of the Bangladesh Constitution ensures 'Equality before law and Equal protection of law' in Bangladesh. It means that every citizen of Bangladesh should access to court for receiving justice if he needs. Due to poverty and other weaknesses, most of the citizen of our country cannot move to court for justice. Moreover, people pay tax to the government so that they can enjoy a better and hustle free life. Through the legal aid service, government has created the opportunity and hopes for the poor and penniless people to access and defend themselves in the court and retribute their legal rights. Government Legal Aid Office (GLAO) is an initiative of the Bangladesh government for providing legal aid to the poor and vulnerable people in Khulna. Like the other government services of our country, limitations or defects are also available in the government legal aid service in Khulna. One of the causes of creation of such limitations is that government legal aid service was initiated a few years ago. It could not be possible on the part of the government to fix all the necessities and demands which are relevant in this region for a better legal aid service. For this reason, some limitations have been created in this area. Some defects are created from the Legal Aid and Services Act (LASA) 2000 and some are procedural in nature. While trying to increase and expand the area and category of legal aid service, the government is also trying its best to decrease the various limitations of it. The existing problems of the government legal aid service of Khulna are discussed below:

## II. LATE FUNDING

Like the NGOs, the government legal aid service doesn't face the problem regarding shortage of funds. In every fiscal year, government allocates an annual budget for the NLASO for legal aid service. NLASO<sup>1</sup> distributes this money among the sixty four District Legal Aid Offices across the whole country as per the demand. The same money also reaches Khulna in due time like the other districts at the beginning of the every fiscal year. Problem is, after a few months this money is spent and the legal aid account turns empty. Again money is sought from the NLASO Head Office, Dhaka. Such requests are sent two or three times in every year from Khulna to Dhaka and the amounts are also

<sup>1</sup> National Legal Aid and Services Organisation

provided. But this requisition and receiving the amount takes a huge time which actually creates the problem. A very nominal fee is provided to the enlisted lawyers of the government legal aid service. When it takes too much time to have money from Dhaka, the lawyers become impatient and loses their enthusiasm in dealing the cases under government legal aid scheme. Sometime it is found that lawyers demand money from those poor litigants which is strictly prohibited for the enlisted advocates. The poor legal aid clients also lose their trust and hope from the government when they have to pay money to the advocates. So, NLASO and other relevant authority should take necessary steps so that every District Legal Aid Office gets its necessary fund in due time. Otherwise, the justice for the poor and object of the government legal aid service will take place in the darkness.

### III. LESS MANPOWER

The Government has established permanent legal aid offices in sixty four districts of the country for making the legal aid service more effective, fast and service oriented. These offices are located in the District Judges Court premises of every district of our country. The administration of those offices has been formed comprising an officer and two other staffs. District Legal Aid Officer is the chief executive of that office. A senior Assistant Judge or an Assistant Judge has been appointed as the District legal Aid Officer. As usual Khulna District Legal Aid Office also possesses the same administration. Problem is that, man power is very much inadequate for a busy legal aid office like Khulna. Khulna is a crowded divisional city. The government legal aid office faces a huge pressure of poor legal aid seekers, free counseling seekers, enlisted lawyers etc. They come to this office for their relevant purposes. Sometime it becomes impossible to maintain the office activities with only three staffs. It is found that due to this weak manpower, poor aid seekers cannot access to his need on the right time. Such type of weaknesses makes the entire arrangement of government legal aid service failure in Khulna. A person who cannot get this solution in right time loses his hope and faith over the government initiatives. The administration of the District Legal Aid Office should be reformed and arranged as per the requirement of that concerned district. It should not be common for all the districts. For Khulna, at least two or three more staffs should be appointed for a smooth functioning and service to the poor and indigent legal aid seekers of Khulna.

### IV. WEAK MONITORING SYSTEM

The word 'monitoring' means to observe and check the progress or quality of something over a period of time; keep under systematic review<sup>2</sup>. In Khulna, the District Legal Aid Office does not monitor its lawyers, clients and the cases properly. A strong monitoring system could not be built up due to their negligence. The duties and responsibilities of the District Legal Aid Officer/Coordinator should be clearly defined and his responsibility to report regularly to the District Judge should be made mandatory<sup>3</sup>. There is also a problem with follow up measures. After allocating a case to a panel lawyer, what is he doing? Is he doing his job with proper responsibility? Thus proper follow-up measures in the form of timely review of progress of the panel lawyers by the District Legal Aid Committee as to the responsibility of the legal aid funded cases should be regularly maintained. Lawyers appointed become disinterested because of the absence of proper follow-up measures. If a lawyer appointed for dealing legal aid cases is found irresponsible, he should be removed from the lawyer's panel. In Khulna, sometime a claim comes from the poor vulnerable litigants under the government legal aid scheme that lawyers demand extra money from them. No such effective action is taken so far by the local legal aid authority that these incidents can be stopped. Most of the legal aid clients are from the village and remote areas. They are not well educated, aware and concerned about the date and other issues of their cases under the government legal aid service of Khulna. It's very much important to inform them about their due date of the case, relevant documents, witnesses etc. Otherwise their merit of the case will be weak and they may lose their justice. Such types of pro-active initiatives are also unavailable in Khulna District Legal Aid Office. The above mentioned activities are very common and easy to perform by any organisation but negligence in performing them may result in deeply negative one. In fact, creating a strong monitoring activity merely depends upon the local office of District legal Aid in Khulna. It does not require any prior authorization or influence from the central authority of Dhaka.

<sup>2</sup> [https://www.google.com/search?source=hp&ei=vLzBWs2iLYyBvQSVy47AAg&q=meaning+of+monitoring&oq=meaning+of+monitoring&gs\\_l=psyab..1.0.0i203k118j0i22i30k112.3755.16555.0.19359.27.26.0.0.0.0.298.3067.0j10j5.15.0....0...1.1.64.psyab..12.15.3059.0..0j0i19k1j35i39k1j0i131k1j0i30k1j0i10i203k1j0i13i10i30k1j0i13i30k1.0.Mfr0wv2bkE8](https://www.google.com/search?source=hp&ei=vLzBWs2iLYyBvQSVy47AAg&q=meaning+of+monitoring&oq=meaning+of+monitoring&gs_l=psyab..1.0.0i203k118j0i22i30k112.3755.16555.0.19359.27.26.0.0.0.0.298.3067.0j10j5.15.0....0...1.1.64.psyab..12.15.3059.0..0j0i19k1j35i39k1j0i131k1j0i30k1j0i10i203k1j0i13i10i30k1j0i13i30k1.0.Mfr0wv2bkE8) accessed on 02.10.2024

<sup>3</sup> Halim, Md. Abdul, 'The Legal System of Bangladesh', (CCB Foundation, Dhaka, 2017), 12<sup>th</sup> Edition, p 324



#### **V. THE KHULNA OFFICE SHOULD BE IN A SUITABLE PLACE**

As mentioned above, all the government legal aid offices in every district of the country are located in the District and Judges Court premises. In Khulna the location is also the same and the office was in the ground floor at the beginning. But the problem was created later when the office was shifted to the south corner of the fourth floor of the newly built court building which causes some unusual problem for all the concerned with government legal aid service in Khulna. Firstly, problem is faced by a new comer for legal aid from the government office of legal aid. It becomes a great problem for him to find out the office quickly because the building is also very big and large. The second problem is that the lift facility of the District and Judges court is not available all the time. Most of the time clients, advocates and other people have to reach the office on feet through stairs of four separate floors. Sometime concerned advocates and clients have to visit and meet the staffs of the legal aid office two or three times in a day. It is proved as a real pain for the advocates and clients in those cases. A good number of old people also found among them. Just think about their pain. On the other hand, the offices of the NGOs which are providing legal aid service in Khulna are located in such a place where anyone can access very easily. Advocates and clients are claiming about this issue. If it is possible to shift the District Legal Aid Office in the ground floor again or make the lift facility available, the government legal aid service would have been more effective in Khulna.

#### **VI. AWARENESS PROGRAM SHOULD BE MORE EFFECTIVE**

In Khulna, the lack of awareness about the government legal aid scheme and its purposes among the indigent people and also among the lawyers and judges in general is one of the main obstacles to achieve the objectives of the scheme of legal aid. As per the LASA<sup>4</sup> 2000, one of the important responsibilities of the District, Upazilla and Union Legal Aid Committee is to create awareness among the mass people regarding legal rights and duties. Except this, another duty of the District Legal Aid Committee is to supervise the activities of the Upazilla and Union Legal Aid Committee. But, as per the Legal Aid Principles, the District Committee can spend only 7% of the total allotment in a fiscal year for creating awareness<sup>5</sup> and other related programs. This is a very nominal sum indeed. Moreover, no amount is allotted for the District Legal Aid Committee for supervising the Upazilla and Union Committee's legal aid activities. Due to this low budget, District Legal Aid Office of Khulna cannot arrange awareness programs in a befitting manner. Here awareness programs are held in a very small scale as per the budget. The legal aid office mainly distributes leaflets among the mass people of different areas and pastes some posters on government legal aid service in some conspicuous places. Very few signboards are seen in the remote areas. An advertisement in local cable TV channels are given after a fixed period in a month. Sometime, the District Legal Aid Office arranges Seminars and Legal Aid Fair with the help of the local legal aid NGOs. But all these activities are so small and less in number than the necessity that they cannot be taken in consideration at all. Moreover, the majority of these awareness initiatives are held in the urban areas and a huge rural population is still in dark about the government legal aid scheme. The question is, if the mass people don't know about such an initiative of the government, how can this program be a successful one? In fact, NGOs are leading in creating awareness among the mass people in Khulna. They are going from door to door for informing people about their free legal assistance. Now the government should come forward with a handsome budget through all over the country and reach the legal aid service from Capital to every village people.

#### **VII. PROCEDURAL COMPLEXITY**

Not only in Khulna but also in the whole country there is no uniform printed form for application for government legal aid service. The available form is very cumbersome and difficult for the indigent litigants to fill up<sup>6</sup>. As the procedural limitation, the first one is the 'Acceptance Procedure' of the application of seeking legal aid. As per the provision of the LASA 2000, the District Legal Aid Committee will grant the qualified applications submitted before it seeking legal aid by the poor and vulnerable litigants. But, as per the law, the meeting of the District Legal Aid Committee held only one time in a month. As a result an applicant has to wait for a long time for receiving legal aid. The poor justice seekers became demotivated due to such long time consuming. For this reason, NLASO several times requested to the District Committees for accepting the applications on the very day of receiving it. Recently, NLASO has also requested to the

<sup>4</sup> Legal Aid and Services Act 2000

<sup>5</sup> Uddin, Md. Jasim, 'Aingoto Shohayota Babostha : Bangladesh O Antorjatik Prekhhit', Manusher Jonno Foundation, Dhaka, 2015, p 87

<sup>6</sup> Halim, Md. Abdul, 'The Legal System of Bangladesh', CCB Foundation, Dhaka, 2017, 12<sup>th</sup> Edition, p 326

Chairmen of the District Committee to authorise the power of accepting applications to the District Legal Aid Officer<sup>7</sup>. Due to above mentioned instructions, District and Session Judge accepts the qualified applications on the very day of receiving it. But, the issue is presented and discussed in the monthly meeting. Now the entire matter of receiving and accepting the applications for legal aid is in an advanced stage. After all these, it can be said that everyone would work more faster in case of receiving and accepting applications of legal aid if a direct instruction is inserted in the concerned law. Another problem is 'Non-incorporation of provisions regarding relevant costs' in the law. Though the issue of 'Relevant Cost' for a case is incorporated in the definition of the 'Legal Aid' under the act but no such issue is mentioned in the list of the payment of fees under the act. As a result, poor and destitute litigants are not getting ad valorem court fees, cost for the witness, travel allowance etc. from the government fund and they are not having the proper remedy in their cases. So, proper definition of 'Relevant Cost' should be finalised at first and those heads should be inserted in the list of the 'Payment of Fees' of Legal Aid Principles. The third procedural limitation concerns about the 'Provisions for Appeal'. If any application for legal aid is rejected by the District or any Special Committee, the applicant can appeal to the National Board of Administration for legal aid within sixty days from the date of rejection for reconsideration. It is too much tough for the poor and vulnerable people to apply to such high level. Such appeal is rarely found in the history of legal aid so far in Khulna. So, this type of appeal provisions should be made easier so that a poor litigant can have access to such appeal.

#### **VIII. STATUTORY LIMITATIONS**

Statutory limitations mean those limitations which are emerged due to various loopholes in any act. The concept of legal aid is something new in Bangladesh. So, Legal Aid and Services Act 2000 contains some gaps within its structure. The government legal aid service was initiated in 1994 in Bangladesh but it took more than twelve years to inform about this law in the whole country. Though a separate law was passed on legal aid in the parliament in 2000 but government took initiatives in 2009 to implement that law in the country. While implementing the LASA 2000, various limitations came out and the government legal aid service was little bit hampered. In the LASA 2000, the term 'Legal Aid' has been incorporated in a narrow sense. Section 2(a) of that act has revealed three distinct meaning of legal aid. By the word 'Legal Aid' it means, firstly, to provide legal advice and aid in a case which is under trial, triable or filled in a court of law. Secondly, it means to provide honorarium to the arbiter or conciliator and thirdly, to provide any type of help with relevant costs of the case. Ad valorem court fees, all costs for advertisement in the newspapers, medical allowance, public interest litigation cost, travel allowance for the litigants, cost for the conveyance of the witnesses etc. are not included in this definition. As a result, the poor and indigent people are not getting legal aid in all the stages of a case. On the other hand, they cannot file some very important cases under the government legal aid scheme. Government has finalised the qualifications to be eligible for receiving government legal aid after the preparation of the 'Legal Aid Principles 2014'. For the general people the average income limit is 100000/- BDT and for the freedom fighters the limit is 150000/- BDT. If we consider the average income of the mass people of the present time, that amount will be small. For this provision, a good number of poor and vulnerable people are deprived of the rights to access to justice. Section 15 of the LASA 2000 has stipulated about the qualifications of the panel lawyers of the government legal aid service. It has confirmed that a lawyer must have a five years practicing experience to be enlisted as a panel lawyer under the Supreme Court Committee, District or any Special Committee. Lot of interested advocates cannot be enlisted as a panel lawyer due to this time limitation. On the other hand, a huge number of advocates who are passionate to the poor masses and the society cannot be enlisted a panel lawyer because there is no apparent provision or instruction in LASA 2000 regarding this. In the district level, District and Session Judge is the Ex Officio chairman of the District Legal Aid Committee. He maintains the responsibility of the chairman in addition of his regular duty. As a judge he administers the regular activities of the court. Moreover, he is to administer and supervise the regular administrative functions of the local judiciary as he is the chief of it. It becomes tough for him to carry out any responsibility after performing the above mentioned huge responsibilities. So, he cannot carry out the legal aid responsibilities for a long time. For this reason, a permanent chairman is required for establishing a strong government legal aid service in the district level. As the above mentioned limitations are statutory, these are available in all the legal aid providing districts of our country as well as in Khulna also. There is no alternative for amending those above mentioned provisions on the basis of the present requirement of the society if a strong and service oriented government legal aid scheme is desired in our country.

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<sup>7</sup>Uddin, Md. Jasim, 'Aingoto Shohayota Babostha : Bangladesh O Antorjatik Prekhhit', Manusher Jonno Foundation, Dhaka, 2015, p 86

## IX. LIMITATIONS RELATING TO THE PAYMENTS TO THE LAWYERS

While talking to the lawyers regarding their feelings on government legal aid service in Khulna, both negative and positive expressions came from them. The reason behind this is practically the ceiling of legal fees determined by the government to be paid to the panel lawyers from the very beginning of legal proceeding either in the civil courts or in the criminal courts till it's coming to a close is felt to be rather inadequate and poor in consideration of the hardship they require to undergo. This aspect makes them less interested to receive cases offered to them by the committee with enthusiasm and professional devotion. In criminal cases fees have been fixed in the 'Legal Aid Regulations 2015'. However TK. 200 is allocated for preparing a GD; TK. 700 for hearing and disposal of appeal and incident cost has been fixed at TK. 100. This amount is so negligible and unexpected that a newly enrolled lawyer would not be encouraged with this amount of fees. Although the fees for panel lawyers have been raised in 2015 by amending the 'Legal Aid Regulations 2015', there is no specific provision regarding the fees for senior advocates. In Khulna most of the senior and expert advocates usually do not accept any brief without a handsome amount. In case of complicated cases provision should be made so that senior or expert advocates may be engaged under government legal aid scheme with satisfactory payment. From the information of the present panel lawyers of the Khulna District Legal Aid Office, another limitation arises regarding the advance payment for a trial proceeding. The problem in relation to the procurement of document necessary to start a case is fundamental. The court naturally grants vokalatnama properly executed by the party concerned and verified by the jail concerned. The plight of the panel lawyer starts from that stage. There is no provision payment for vokalatnama in the present regulations. A lawyer needs some documents to start a proceeding in the court and he cannot procure those documents without cost which he naturally needs in advance. Problem becomes grave when the case is a civil suit between two individuals and the appointed lawyer is unable to collect relevant documents from the lawyer of the other side. Then the lawyer has to approach the bench clerk for necessary help and it is an open secret that no bench clerk provides any documents without money (illegal gratification). In this case, the government should come forward to make provision regarding advance payment for procurement of necessary documents for smooth conduct of cases by the panel lawyers to ensure maximum utilization of the aid money. It is a fact that incidental legal expenses are quite high when compared with the lawyers regular fees under the government legal aid scheme.

## X. CONCLUSION

Khulna is a divisional city and a big district comprised of nine Upazillas. The size of population is also big. Legal aid activities are social and humanitarian activities too. So participation of the mass people of all the spheres of the society is necessary in this program. It is not possible on the part of the NLASO to administer this scheme solely. The NGOs can play a pro-active role in this case and jointly the above mentioned limitations can be overcome. That's why; a plan should be made to involve the NGOs, voluntary organisations and paralegals in the government legal aid service here in Khulna. In our country, the main impediments in receiving government services are the corruptions and negligence of the concerned government officers and sub-ordinates. It can also happen in case of government legal aid service. There is no provision or rule in the 'Legal Aid Regulations 2015' that where and how to make claim for getting remedy if such corruption, negligence or dishonesty occurred. There should be a specialized cell for the protection of the poor legal aid seekers in Khulna as well as in all the legal aid providing districts of Bangladesh.

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