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Role of Bangladesh Legal Aid and Services Trust (BLAST) in the Field of Legal Aid: An Analysis

Dr. Md. Hashibul Alam Prodhan*

1. Introduction

In the present legal systems of most Asian and African States, justice is not so easily obtainable. The consumers of justice have to pay fees of advocates, bear costs incurred on witnesses and also other incidental charges. Indeed, especially in the developing and third world countries, poverty is a major barrier on the way of getting justice; and due to this reason the poor becomes sufferer of social prejudice.¹ Incoherent legal procedure, prohibitive costs of litigation and excessive delay are some prohibitive obstacles in the case of access to justice for the vulnerable section of society. Legal aid is a strong means of securing access to justice for all. Without providing legal aid to the vulnerable section of society, access to justice for all is completely meaningless. So legal aid as one of the significant policy of affording access to justice has now been widely recognized in many countries. Legal aid is really related to broader notion of social justice and its realization depends upon appropriate legal arrangement, sound institutional framework and coordinated efforts of state apparatus and civil society.² The role of our State in providing legal aid for litigation is, however, insufficient to the needs of the poor. In the situation of unfulfilling demand for indispensable legal aid, BLAST has taken upon itself the task, as far as possible, of making the judicial system accessible to the poor and the marginalized by delivering legal aid.³ The main objectives of this article are to analyze different definitions of legal aid, relation between human rights and legal aid, forms and procedure of BLAST's legal aid, success of BLAST's legal aid, and existing state of legal aid operated by Bangladeshi government and its relation with BLAST.

2. Concept of Legal Aid

It has been flourished as a real truth that legal aid is the need of all nations, societies and political systems. But the concept of legal aid and its definition are not fixed; these are also changeable as per the context of different society. In general, legal aid means to provide knowledge of law, justice, legal solution of problem, and legal

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¹ S.S. Sarma, *Legal Aid to the Poor* (New Delhi: Deep and Deep Publications, 1993), p. 52.

² Abdullah-al-Faruque and Md. Mohiuddin Khaled, "Legal Aid in Bangladesh: Goals and Strategies", *Chittagong University Journal of Law*, Vol. IV (Chittagong: 1999), pp. 131-150.

³ 'Preface', *Annual Report*, 1995, BLAST, Dhaka, p. iv.

consultation without any cost. Legal Aid, in its common sense, expresses the assistance provided by the society to its vulnerable members in their endeavor to protect their rights and liberties, bestowed upon them by the laws, and to make them get such benefits and rights back if these are grasped from them by the powerful and influenced members of the society.⁴ In the words of Justice P.N Bhagwati:

The legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law.⁵

To give a definition of legal aid, Justice V.R Krishna Iyer says:

The spiritual essence of a legal aid movement consists in inviting law with a human soul: its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order.⁶

The New Encyclopedia Britannica defines legal aid as, 'the professional legal assistance given, either free or for a nominal sum, to indigent persons in need of such help.'⁷

Dr. S.N. Dhyana writes

The term 'Legal Aid' is a modern phenomenon which commits legal community to the welfare of the poor in the society. In fact, it is a voluntary source mobilization of lawmen of their legal talent, efforts and the time in the service of the poor which affords them an opportunity to seek justice from the court with or without little costs. In the traditional sense of the term, legal aid is an assistance rendered by professional lawyers to those who need it and who are unable to exercise and enforce their human and other legal rights for want of money and social backwardness.⁸

Under different efforts and pressures from NGOs and civil society, Bangladesh government had been compelled to pass *Legal Aid Services Act, 2000*. On 26 January 2000, the Honorable President gave his consent to enforce this Act. According to section 2(A), the definition of legal aid is as follows:

⁴ Sujan Singh, *Legal Aid: Human Right to Equality* (New Delhi: Deep and Deep Publications, 1998), p. 2.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ The New Encyclopedia Britannica, Vol. Vi, 1974 (ed.), p. 122.

⁸ Sujan Singh, *op.cit.*, pp. 37-38.

Legal Aid means to provide legal advice, attorney's fees, process fees and other relevant cost to those persons, who are unable to access to justice due to their poverty, deprivation and other socio economic factors.⁹

So, the general meaning of the term legal aid is a social deal extending and providing special assistance or help to the inferior and weaker members to enable them enforce their legal rights through the legal process.¹⁰

From the above definitions of legal aid and discussion, it is clear that the legal aid has been accepted as an essential part of the administration of justice. There is no doubt that irrespective of the consideration whether one can afford or not, the rights of life, liberty and reputation and property have been considered as basic human rights for every individual and those should be protected by the system of juridical administration.¹¹ In the criminal trial, the accused person, who is unable to afford in the court procedure, has also absolute right to get the benefit of legal aid. So, it is the vital duty of any country to provide legal aid to the vulnerable section of the society, who cannot take the advantage of access to justice for his economical constraint. The developed countries of the world like USA, UK and Canada have already adopted the scheme of legal aid realizing its importance for establishing rule of law and good governance.

3. Human Rights and Legal Aid

The fundamental principle of natural justice is that no man should be condemned unheard, which means no order can be given against any person without giving the opportunity of self-defence to him/her. From this view, it is very much clear that access to justice and equality before law are fundamental components of human rights, through which only it is possible to establish the rule of law and real democracy. These components have been given utmost importance in the international human rights Conventions, Charters, regional Declarations and different Constitutions of different countries. But it is the reality that majority of population of different countries in the world is being deprived from access to justice for economic constraint and unawareness. Therefore, legal aid is a very essential matter for access to justice of oppressed people all over the world.

Access to justice and equality before law are recognized as basic human rights in the *Universal Declaration of Human Right (UDHR)*, 1948 and now neither is it possible nor is it proper to separate the right to legal aid from the assortment of human rights. These rights have been recognized by different provisions of this Declaration. According

⁹ The Legal Aid Act, 2000, Section 2(A).

¹⁰ Sujan Singh, *op.cit.*, p. 2.

¹¹ Sujan Singh, *op.cit.*, P. 15.

to Article 6 of UDHR, 'every one has the right to recognition every where as a person before law.' Article 7 of UDHR, 1948 also declares:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

In UDHR, it is clearly laid down that 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.'¹²

In the *International Covenant on Civil and Political Rights (ICCPR)*, 1966, it has been clearly expressed regarding right to access to justice and legal aid. Article 14 of the Covenant declares that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Then it further states that in the resolving of any criminal charge, everyone shall be entitled to defend himself in person or through legal assistance of his own choosing and to have legal assistance without payment where the interests of justice so require and if he does not have sufficient means to pay for it.

Right to access to justice and equality before law are reiterated by the different regional Declaration. *The American Declaration of the Rights and Duties of Man*, 1948, declares that all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed on other factor.¹³ *The European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950 extended the right of legal assistance to a person charged with criminal offence to defend himself. Sub clause (C) of Article 6 (3) of the Convention provided that every one charged with a criminal offence has right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. According to article 24 of *The American Convention on Human Rights*, 1969, all persons are equal before law and, consequently, they are entitled, without discrimination, to equal protection of the law. *The African Charter on Human and Peoples' rights*, 1981, declares that every individual shall be equal before the law and every individual shall be entitled to equal protection of the law.¹⁴

The Constitution of Bangladesh has also recognized access to justice and equality before law as fundamental rights in part III of the Constitution by mentioning it in different Articles. According to Article 27 of the Constitution 'all citizens are equal before law and are entitled to equal protection of law'. Article 31 also declares:

¹² The Universal Declaration of Human Rights (UDHR), 1948, Article 10.

¹³ Article 2, *The American Declaration of the Rights and Duties of Man*, 1948.

¹⁴ Article 3 (i) & (ii), *The African Charter on Human and People's Rights*, 1981.

To enjoy the protection of law, and to be treated in accordance with law, and only in accordance with law, is the alienable rights of every citizen, where ever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

It is an important provision of the Constitution that no person shall be deprived of life and personal liberty save in accordance with law.¹⁵ In Bangladesh any person who is arrested shall not be denied the right to consult and be defended by a legal practitioner of his choice.¹⁶

From the above discussion, it is very much clear that in the *Universal Declaration of Human Rights, 1948*, *International Covenant of Civil and Political Rights, 1966* and in the different regional human rights Declaration, and in the Constitution of Bangladesh, like other democratic countries, access to justice and equality before law have been recognized as basic human right. But without legal assistance to the weaker section of the society, nowhere it is possible to establish these basic human rights. For this reason, legal aid is treated as core component or extension of equality before law. This may be found in some Constitutions, such as in Indian Constitution, which expressly provide for legal aid as a directive principal of state policy. According to Article 39 -A of the Indian Constitution:

The state shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall, in particular, provide for legal aid, by suitable legislation on schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

For establishing access to justice and equality before law, some countries have enacted legislation recognizing legal aid as a human right. The legal aid is only the practical method of guarantee that no person shall be denied the equal protection of law because he is poor. Though according to article 39-A, legal aid is considered as a directive principle of state policy under Indian Constitution, in India, there was no any state legislation for providing legal aid to the poor till 1987. In 1979, after giving a courageous judgment by the Judges, P.N Bhagwati and D.A. Desai, of Supreme Court in the *Hussanara Khatun and others v. Home Secretary, State of Bihar, Patna*, case¹⁷, the necessity of enacting a law concerned legal aid had been arisen. In the judgment, it had been pronounced by the Judges that unless there is a nation wide legal service program to provide free legal service, it is not possible to reach the benefit of the legal process to the poor, to protect them against injustice and to secure

¹⁵ The Constitution of Bangladesh, Article 32.

¹⁶ *Ibid*, Article 33(1).

¹⁷ Writ petition No. 67 of 1979.

to them their constitutional and statutory rights.¹⁸ Referring to Article 39-A, Justice P.N Bhagwati observed:

Free legal service is an unalienable element of 'reasonable, fair and just' procedure for without it a person from economic and other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21.¹⁹

Finally, in the above mentioned case, the Judges declared

We would strongly recommend to the government of India and the State Governments that it is the high time that a comprehensive legal service program is introduced in the country. That is not only a mandate to equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39-A.²⁰

In 1986, in another leading case, *Suk Das v. Union Territory of Arunachal Pradesh*,²¹ Chief Justice P.N Bhagwati of the Indian Supreme Court has clearly expressed his views as follows:

"It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."²²

After the leading judgment in the case of *Hussanara Khatun and others v. Home Secretary, State of Bihar, Patna* and *Suk Das v. Union Territory of Arunachal Pradesh* and raising demands from the different corners, in 1987, the central government of India enacted *National Legal Services Authority Act, 1987* to enforce Article 39-A of Indian Constitution. This Act was enacted to constitute legal services authorities and to provide free and competent legal services to the weaker section of the society.

In Bangladesh, after creating strong pressure and lobbying from different NGOs and civil society, government passed *Legal Aid Services Act, 2000* to provide free legal aid to the poor. Before passing this Act, only order 33 of the Code of Civil Procedure, 1908 allows a person, who does not have property (except the wearing apparel and matters of case)

¹⁸ AIR 1979 S.C. 1373.

¹⁹ *Ibid.* p.1374.

²⁰ *Ibid.* p. 1376.

²¹ AIR 1986 SC 991.

²² *Ibid.* p. 992.

worth more than Tk 5000²³, to institute a civil suit as a *pauper* without court fees. Regarding criminal justice, claim of legal aid from the state is limited to convicts who face capital sentences and are unable to pay for legal costs for desiring appeal to the higher courts.²⁴ Access to justice and equality before law being recognized as fundamental component of human rights by different International human rights charter, regional Declaration and Constitutions of different countries, the comprehensiveness of legal aid has seriously increased in the different parts of the world.

4. Necessity of Legal Aid in Bangladesh

The concept of legal aid has been connected with other socio-legal doctrines and principles, viz., equality, rule of law, natural justice, and social justice. Without legal aid, these doctrines may become worthless and ineffective in real life. In the present day's legal system for securing justice, legal aid plays a significant role.²⁵ N.L Mittra presents a compelling argument for legal aid in common law system in the following words:

In an abstract situation men are equal but in an articulative non-neutral situation strength depends upon efficiency in articulative demonstrations and personal situations. That being so law should see for its own ends that both the parties are equally and capably represented by demonstration of skill failing which the whole structure of confrontational justice mechanism theoretically and perhaps, in most cases, practically fail miserably. Legal aid is therefore, an inherent need of our justice system for its own sake.²⁶

Underlining the importance of Legal Aid, the Fourteenth Report of the Law Commission of India emphasized that equality before law, a central part of rule of law, can not be achieved without legal Aid. The following words of the report are self-speaking:

Equality is the basis of all systems of jurisprudence and administration of justice ... In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court fees and lawyer's fees and other incidental cost of litigation, he is denied equality in the opportunity so seek justice.²⁷

²³ Amending the Order 33 of Code of Civil Procedure, 1908, the C.P.C (Amendment) Act, 2006 replaced Tk. 100 by Tk. 5000/-.

²⁴ *Annual Report*, BLAST, Dhaka, April 2003–March 2004, p. 3.

²⁵ S.S. Sarma, *op.cit.*, p. 10.

²⁶ Abdullah-al-Faruque and Md. Mohiuddin Khaled, *op.cit.*, pp. 131-150.

²⁷ The Law Commission of India, Fourteenth Report, 1958, p. 587.

In the Constitution of People Republic of Bangladesh, equality before law and right to protection of law have been declared as a fundamental right. But it is the reality that majority people are deprived from access to justice for their economical constraints. Deprivation from access to justice is a great human rights violation. The key tune of rule of law is to ensure the right to access justice for all citizens. So, in order to ensure social justice and meaningful human rights to the poor people in Bangladesh, legal aid is the leading way.

In Bangladesh, although our government has passed *Legal Aid Services Act, 2000* after creating strong lobbying and advocacy made by the different NGOS including BLAST, majority people of our country are still fully unaware in this regard. Those who are familiar with the government legal aid, they are not getting benefit for bureaucratic complexity. Besides government legal aid, different NGOs have been providing free legal support to the poor with great success for a long time; among these, BLAST, *Ain O Salish Kendra* (Law and Mediation Center), Madaripur Legal Aid Association (MLAA) and Bangladesh National Women Lawyers Association (BNWLA) are very much prominent. But in the field of free legal aid service, as pioneer, BLAST has been providing free legal aid in a large scale since its inception. Partly because of its Bar Council and Bar Association links, BLAST won quick acceptance in the legal community and established a nation wide network of offices.²⁸

The ultimate aim of legal aid movement is to establish a just social order in society by ameliorating legal disabilities and hardships of weaker sections. It is the part of a program to secure social justice to the poor, and indispensable for removing the defects of working of the present legal system.²⁹ It is explicit that rule of law is deficient, if the government and policy maker are not just, understandable and responsive to the need of the people and society. In Bangladesh, whereas millions of poor people who are denied of access to justice for their incapability to afford legal costs, it is immensely necessary to bring expected social change leading to ensure the justice of the poor and vulnerable section of the society. In this regard, legal aid is the best weapon.

In Bangladesh, though the government and voluntary organizations have initiated legal aid programs, it has not become a dynamic social movement to promote social justice in a wider sense. It has not attained sufficient maturity of thought and action. Much study, research and practical work have still to be done in order to make it

²⁸ Mary McClymont and Stephen Golub (ed.), *Many Roads to Justice*, The Law-Related Work of Ford Foundation Grantees Around the World (United States of America: The Ford Foundation, February, 2002) p. 142.

²⁹ P. D Mathew, *Free Legal Services to the Poor* (New Delhi: Indian Social institute, 1996), authors note.

more effective and dynamic movement to liberate the poor from socio-economic and political oppression.

5. Method of Providing Legal Aid through BLAST

It is the reality that no society can ensure the equal access to justice without providing free legal services through government machineries and other non-governmental efforts. *Legal Aid Services Act, 2000* has enabled the state to provide the poor with greater access to the formal justice system. But the state led initiatives regarding legal aid have been largely unsuccessful due to bureaucracy and lack of awareness of common people. Under the context of limited accessibility of the justice system and the failure of the state to provide adequate legal aid, BLAST's significant role has been widely recognized as a provider of legal services to the poor men and women for accessing to justice in Bangladesh.³⁰ BLAST is mainly providing legal aid in two ways, viz., mediation and litigation support. It is well known to all that BLAST's free legal aid is very much acceptable to depressed people than the government legal aid as the procedure of taking legal aid from BLAST is very simple and explicable to the poor. So, over the years, BLAST has emerged as foremost legal aid organization in the country with covering the widest geographical area.

BLAST is working for the poor people, especially women folk and those who are victims of some form of inherently social exclusion, and vulnerable segment of the society for fulfilling their constitutional guarantee by establishing rule of law based society. Women are particularly vulnerable, especially, in rural areas where they have little family support in the face of increasing landless, unemployment and illiteracy. In those areas, they are always victims of brutal physical torture and regular mental harassment.³¹ So, in the working process of BLAST, oppressed women living in rural areas are normally targeted for providing legal aid.

The process of providing legal aid of BLAST starts when someone files the complaint directly or someone contacts, through lawyers, other NGOs, local representatives, staff of Bar Associations, previous beneficiaries and judges, to BLAST's unit offices and Legal Aid Clinics for seeking legal aid.³²

As the first step during taking complaints, a printed form is filled up by the office assistant and junior staff lawyer to record personal details of the client including her/his monthly income and living address. It is a recognized rule of BLAST that whose monthly income is below 3000/- taka, he/she is considered as a poor for filing complaints to the BLAST's offices. The details of the opposite parties, to the extent possible, are also documented in the printed form. It is necessary to record an abstract

³⁰ *Annual Report, April 2003–March 2004, BLAST, Dhaka, pp. 1-2.*

³¹ *Annual Report, April 2003–March 2004, BLAST, Dhaka, p. 48.*

³² *Annual Report, April 2002–March 2003, BLAST, Dhaka, p. 25.*

of the complaint and expected remedy sought by the beneficiary or client in a fixed form, and papers or other relevant documents in support of the grievance, if any, are collected from complainants for security.³³

After taking complaints, as the next step, the staff lawyer or co-coordinator has to analyze the fact of a complaint through personal interview with the complainants, and to examine the documents and opinion of junior staff lawyer or other officials. After examining the complaints and documents, if the co-coordinator or staff lawyer is satisfied that the matter is mediatory, then the application is sent for arranging mediation. Non-mediatory matters, especially serious criminal matters, are directly sent for litigation. The disputes mediated by BLAST are of various types such as marriage, divorce, dower, dowry, maintenance, guardianship, lent money, small business and land etc.

Mediation is normally conducted by unit coordinator, unit co-coordinator, staff lawyer, junior staff lawyer, paralegal or other member of the staffs trained in mediation and relevant legal and constitutional standards. As the coordinator has to supervise the whole functions of the unit office or clinic, co-coordinator, staff lawyer, junior staff lawyer and paralegal are to play major role in the mediation process. Mediator is, in fact, a neutral person who can do nothing except making the parties sit face to face and help them in reaching an amicable settlement.³⁴

If the opponent party does not respond to mediation or parties of the dispute have failed to reach any decision through mediation sitting, the application is referred to litigation in both cases, and the cost of litigation for the applicant are fully carried out by BLAST. In some cases, the applicant is too poor to bear travel cost, in this situation; BLAST also provides the same to the clients. It has already been mentioned that BLAST is a non-profitable organization, so when any amount is recovered by BLAST through mediation, it does not take any share of it as a provider of legal aid.

BLAST's policy is to arrange mediation of disputes, if these are mediatory, prior to litigation. Mediation of disputes avoids court related costs and delay, and often helps the parties to reach an amicable solution regarding their problems. Mediation may provide a number of conclusions. In the case of future relationship, the parties involved in family disputes may reach a settlement by continuing their conjugal life or paying monetary compensation for dower and maintenance to dissolve the marriage.³⁵ In the case where mediation is settled, BLAST helps the parties to draft a written contract, which reflects the parties' agreement and expectations.³⁶

³³ *Ibid.*

³⁴ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p. 17.

³⁵ *Ibid.*, p. 26.

³⁶ *Ibid.*

From the above discussion, it is clear that after receiving any complaint, if there is no legal bar then this complaint is settled down through mediation. When mediation fails in any dispute, BLAST deals the case in court on behalf of applicant through its advocate at free of cost. In the case of non-mediatory matters, the organization directly files cases in the court in favor of applicant. BLAST usually deals the cases at free cost relating to family (dower, divorce, and maintenance), criminal (2nd marriage, dowry, injury etc.), bail, women repression, land, lent money, and miscellaneous matters in the lower court. In the High Court Division of the Supreme Court, the organization contracts the cases relating to PIL (Public Interest Litigation), detention, writ, civil and criminal revision and appeal at free of cost.

6. Forms of Legal Aid Provided by BLAST

Over the years, the demand for services of BLAST has rapidly increased due to the non-availability of free legal services to the overwhelming majority of the poor and disadvantaged population from government or any other sources, the organization has grown and flourished as one of the largest legal aid organizations in the country. It is one of the major objects of BLAST that nobody shall be deprived from legal assistance only for his/her economical constraints. BLAST provides legal aid to the persons who are deprived from access to justice for hardship after being victimized of serious oppression. It also ventures to offer legal representation for persons who have been accused of a crime since they cannot afford to pay for the costs of legal representation. As such accusation of an offence by itself does not exclude one from being defended by BLAST.³⁷ Rule 9 of chapter II of Bangladesh Bar Council cannons of professional conduct and Etiquette states as follows:

It is the right of an Advocate to undertake the defense of a person accused crime regardless of his personal opinion as distinguished from knowledge, as to the guilt of the accused, other wise innocent persons, victim merely of suspicious circumstances, might be denied proper defense. Having undertaken such defense, an advocate is bound, by all fair and honourable means to present every defense that the law of land permits, to the end that no person may be deprived of life or liberty except by due process of law.³⁸

Although BLAST's main focus is to provide free legal aid in different disputes, it also conducts public interest litigation, mediation training program, advocacy for legal reforms and legal awareness program. As day by day increasing the legal aid activities, Legal Cell of BLAST has been one of the main component and wings of this organization. Through 19 unit offices, five clinic offices³⁹ and head office, the legal cell wing of BLAST is providing legal support to the poor and oppressed male, female

³⁷ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p. 28.

³⁸ The Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972.

³⁹ In March 2009, the number of Clinics was reduced and now only one clinic is working.

and child for accessing to justice through litigation and mediation. BLAST primarily offers two forms of Legal Aid, e.g., Mediation and Litigation. These two forms of Legal aid are described below:

6.1 Mediation

Mediation is now very acceptable to the vulnerable section of the society to settle dispute by mutual agreement avoiding delay and complexity of court process. Apart from this, empowerment of women is also increasing through mediation. The definition of mediation is explained in different ways in different societies. Some common and general definitions and meanings of mediation are discussed as below:

Cristopher W. Moore has defined mediation as follows:

Mediation is the intervention into a dispute or negotiation by an acceptable, impartial and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute.⁴⁰

There are several procedures, which are responsible for amicable settlement of disputes, among those; mediation is most ancient. Professor Hazel, defined mediation in the following way:

Mediation is a voluntary process where a neutral mediator attempts to help the disputing parties to reach an agreement that is acceptable to both sides and that will bring the dispute to an early conclusion without having to go to court.⁴¹

According to Menon, mediation can be described as follows:

The Mediation Process is a learning exercise, a useful resource for future occasions of other conflicts. Not to know crisis management is to be functionally illiterate in this all-important function of living. So this skill is to be woven into the fabric of right to life, a basic human right.⁴²

In other words, mediation is a voluntary and flexible process of Alternative Dispute Resolution (ADR) mechanism, in which the parties to a dispute are assisted in reaching a settlement by a neutral third party or mediation team.⁴³ As with negotiation, mediation leaves the decision making power in the hands of the people in conflict. So, it is a process in which the participants must be willing to accept the

⁴⁰ MLAA, Mediation Manual, *op.cit.*, pp. 36-37.

⁴¹ Md. Akhteruzamman, *Bikolpa Birod Nispati Dharona O Ain Abong Aingota Shahata Prodan Ain* (Alternative Dispute Resoluton-Conceptional and Law Legal Services Act), (Dhaka: 2007), p. 49.

⁴² D. K. Sampath, *Mediation: Concept and Technique in Support of Resolution of Disputes* (Bangalore: National Law School of India University, 1991), foreword, p. ix.

⁴³ Madaripur Legal Aid Association (MLAA), Mediation Manual (Internet version), March 2004, p. 37, Retrieved on 30/3/08 at <http://www.blast.org.bd/otpublic.html>.

assistance of the intervener if the dispute is to be resolved.⁴⁴ From the above discussion, we simply can define mediation as a way of tackling dispute or disputes with the assistance of a neutral third party, which is charitable, casual, cost effective, participatory, concession-based, local and empowering.

The present legal system in Bangladesh is not friendly to the poor and illiterate population of the country. Despite providing legal aid through government and NGOs, representation in the court for poor is deeply complicated and time consuming due to unnecessary delay, corruption and complicated procedure of our court system. So, the poor and marginalized people cannot take the concession and benefits of present administration of justice system.⁴⁵ In such an environment, less formal and flexible process are necessary, by which it is possible to settle the dispute in a consensual manner for reducing both the time and cost of litigation. Among these processes mediation is more acceptable and favorable to the common people.

It can be said that existing justice system in Bangladesh may be broadly divided into two categories, which are formal justice system and informal justice system. The formal justice system refers to the application of formal rules and institutions to deliver justice, but informal justice system mainly refers to informal rules and traditional customs and social values, which are also used as ADR mechanisms in dispute resolution.⁴⁶ These mechanisms mainly known as traditional mediation or *salish* by village elders, *Panchayats*, and later mediation by union council still are popular among the people of rural area in Bangladesh. Although ADR mechanisms, e.g., mediation, arbitration and conciliation, backed by the law and court procedure have been incorporated in the formal and quasi-formal judicial system through the *Code of Civil procedure, 1908*, Under the *Muslim Family Laws Ordinance, 1961*, the *Arbitration Act, 2001*, *Artha Rin Adalat Ain, 2003*, *Dispute Resolution (Municipal Area) Board Act, 2004*, *Family Court Ordinance, 1985*, it is the reality that traditional mediation or *salish* remains the principal mechanism of informal justice system. In the present context, the mediation system outside the court can be categorized into two types, which are traditional mediation or *salish* and NGO sponsored mediation. The traditional *salish* which is deeply rooted in social and cultural traditions of Bangladesh and NGO sponsoring mediation is remodeled and modernized version of traditional mediation or *salish*.⁴⁷ *Salish* essentially carries the characteristics of arbitration in where the parties are bound by the decision of the

⁴⁴ *Ibid.*

⁴⁵ Abdullah-al-Faruque and Md. Mohiuddin Khaled, *op.cit.*, pp. 131-150.

⁴⁶ Dr. Abdullah Al Faruque, *Legal empowerment of the Poor: Role of Access to Justice and Freedom of Information, A Road to Know* published by Chittagong Unit Of BLAST on 15th March, 2008, pp. 22-32.

⁴⁷ Dr. Abdullah Al Faruque, *op.cit.*

shalishkars (officiating individuals), on the other hand, mediation is conducted by actively engaging both parties with the help of a neutral third person in arriving at a mutual solution.⁴⁸ By reforming and remodeling the traditional rural practice of *salish*, the NGO leading mediation is able to bring disputants, community members, and village elders together in a small local environment to mediate the dispute in a peaceful way within a very short time.⁴⁹ Over the years, NGOs have formalized mediation system significantly to overcome the biasness and gender discrimination in traditional *salish* system.⁵⁰

In Bangladesh, the Madaripur Legal Aid Association (MLAA), founded in 1978, was the first organization which identified mediation or *Salish* as an important foundation for a cost effective, expeditious and accessible venue of justice for the disadvantaged. MLAA introduced the bold step of incorporating elements of new trends of mediation into traditional '*salish*' by creating an ADR mechanism better known as Madaripur Model of Mediation (MMM).⁵¹ MMM has been able to reduce elements of malpractice, gender biasness and power inequality, which have plagued the *salish* systems in recent times. MLAA has achieved a great success in the field of mediation, and through MML this organization has so far mediated over 30,000 disputes successfully up to 2004 since its inception.⁵² In Bangladesh, mediation is now a very favorite process to mediate any dispute mutually. Not only MLAA, but also other human rights organizations, such as, BLAST, BNWLA, BRAC and AOSK are arranging mediation in the rural area for giving justice to the poor. In our country, mediation contributes toward the society in the following ways.⁵³

In 1993 when BLAST was formed, it included to promote the use of ADR mechanism, i.e., mediation and compromise as its main objective for amicable settlement of disputes. Since 1994, BLAST is providing legal aid through mediation and litigation by following the Madaripur Model of Mediation (MMM) developed by MLAA. Especially, the disputes relating to marriage and family matters and other problems relating to small business, labor and land etc. are mediated by BLAST. It is the reality that BLAST's mediation system reduces valuable time of court and the people, and also save the parties from their financial loss.⁵⁴

⁴⁸ Sumaiya Khair, *Alternative Approaches to Justice: A Review of ADR Initiatives under the Democracy Partnership*, Dhaka: Asia Foundation, May, 2001, p. 8.

⁴⁹ MLAA, *Mediation Manual*, *op.cit.*, p. IX.

⁵⁰ Dr. Abdullah Al Faruque, *op.cit.*, pp. 22-32.

⁵¹ MLAA, *Mediation Manual*, *op.cit.*, P. IX.

⁵² *Ibid.*

⁵³ MLAA, *Mediation Manual*, *op.cit.*, p. 33.

⁵⁴ *Annual Report*, April 2004–March 2005, BLAST, Dhaka, p. 17.

6.1.1 Mediation Process of BLAST

Mediation is the core program of BLAST. BLAST's mediation is a process in which contacting parties attempt to reach a consensual settlement of issues with the assistance of a neutral third party. The third party acts as a mediator. In the mediation process conducted by BLAST, a mediator systematically isolates points of agreement and disagreement, develops options and works toward a final agreement. In any kind of mediation, it is an acceptable rule that the mediator must assist the parties constantly fine-tuning the discussion, interpreting the needs and interests that lie behind each party's particular position, dealing with the complex psychological and emotional dynamics that go along with the conflict and performing a wide range of other interventions.⁵⁵

After hearing the complaint of the plaintiff, at first, it is the duty of BLAST officials to fill in an application form. If the complaints are mediatory, then the plaintiff is given a registration card and is asked to come at a particular time on a fixed date. On the other hand, the opposite party is also informed about the date and time of mediation and is asked to attend the mediation sitting. When the two parties gather at BLAST's office as per schedule, then mediation starts. The mediator identifies the roots of the problem through discussion between both parties involved and suggests solution.⁵⁶ In any case, one party misses the schedule date of mediation sitting for reasonable ground, they are given another date for mediation by letter officially. In this way, mediation is completed within 3-5 sittings and each sitting needs approximately 3-4 hours. If it seems to the mediator that the dispute is resolvable and the parties are positive, the number of sittings may be increased.⁵⁷

After receiving the first letter, when the opponent parties are failed to present on scheduled date, they are again informed at least 2 times by letter for attending mediation. In the failure of opponent party to respond to the third letter, a special letter of aiming to file suit is sent detailing the nature of complaint and applicable legal consequence which the party may have to face pursuant to the suit.⁵⁸ In this letter, the opponent party is again given the option of mediation. Naturally, after sending four letters for calling mediation if the opponent parties do not appear to the BLAST's offices, it is considered that opponent parties are not interested in mediation. Later on as a last option, the disputes are to be sent to the courts by filing a suit on behalf of the beneficiary or applicant.

⁵⁵ MLAA, Mediation Manual, *op.cit.*, p. 46.

⁵⁶ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p. 28.

⁵⁷ *Ibid.*

⁵⁸ *Annual Report*, April 2002–March 2003, BLAST, Dhaka, p. 25.

BLAST has introduced counseling as a vital part of mediation during the mediation process so that mediation becomes sustainable and acceptable. In the BLAST's mediation process, each of the parties involved in dispute is counseled separately during the mediation to bring out the hidden problem which may be the root cause of dispute between the parties. It has been seen that often plaintiffs and opposite party feel shy and vacillation to express their concealed problem in the mediation sitting, and in these cases counseling can help both parties to express their problems privately. After revealing the roots of the problems, it is quite easy for a mediator to take steps towards solution.⁵⁹ It has been proved that both parties are given a chance to understand the roots of the problem through counseling and encouraged to solve the problem through ADR i.e. mediation. So, BLAST's mediation is a helping intervention that is goal-directed and oriented towards problem solving.

Though the mediation process conducted by BLAST is acceptable and popular to the common people, this process has also some disadvantages or it is not beyond the flaws and defects. The major disadvantage of this process is that some mediators of BLAST are not skilled and well trained to the modern technique of mediation process. They are not properly aware about the various acts, specially relating to family laws and mediation. So, due to lack of trained and skilled mediator, in some cases, question is raised regarding the decision of settled mediation, as it does not reflect the spontaneous consensus of both parties. Another weakness of this process is the shortage of woman mediator during mediation process. Since BLAST deals with majority cases of women relating to family matters, the presence of woman mediators may be very helpful to remove the social myths for smoothly presenting the main root of the problem by women victims. Another flaw of this process is that some settled mediation relating to family matters, where husband and wife are agreed to live together again, does not exist long time due to lack of regular follow-up whether the parties are obeying the decision of the mediation.

6.1.2 BLAST's Success on Mediation

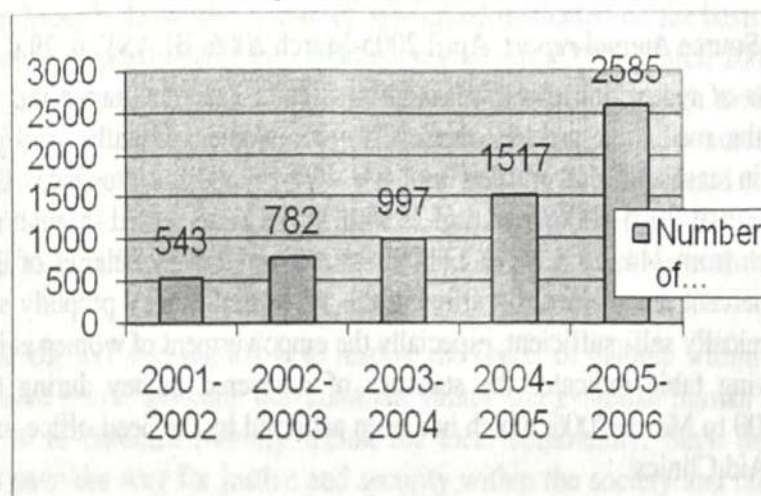
Like many other countries around the world, the legal system of Bangladesh is very formal, complex, urban-based, time consuming and financially draining. Consequently, many Bangladeshis, especially those who are living in the rural areas, have no ability to enforce their rights through the formal judicial system.⁶⁰ Since 1994, BLAST is providing legal aid through mediation and litigation to the rural poor and disadvantaged people who are otherwise unable to have access to the formal judicial system to enforce their rights for economical constraints. To provide legal aid for seeking a more sustainable and cost effective approach, the organization has given immense attention

⁵⁹ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p. 28.

⁶⁰ *Alternative Dispute Resolution–Community based mediation as an auxiliary to formal justice in Bangladesh: the Madaripur Model of Mediation (MLL)*, *op.cit.*, p. 5.

to the development of ADR mechanisms, especially mediation, that would assist the poor and vulnerable who are abused and exploited to secure justice for themselves. Today, BLAST is a well known organization at home and abroad for its great success on mediation. BLAST has paved the way to build vulnerable women as an independent by utilizing the money properly which has been recovered through mediation. By frequent participation and sharing of women in the mediation process along with the man, women's empowerment is increasing day by day. BLAST is now conducting mediation in the whole country through its head office, 19 unit offices and 5 clinics. From the following graph, it has been clear how the number of mediation is increasing through BLAST day by day:

Figure 1
The Increasing Trend of Number of Mediation



Source: *Annual report*, April 2005-March 2006, BLAST, p. 28.

From the above graph, it is seen that during the year of 2001-2002, the total number of conducted mediations was 543; on the other hand during the year of 2005-2006, the number of conducted mediations reached at 2585 after gradually increasing in the different years.

In every year, from the head office, different numbers of mediations have been as targets for the unit offices and clinics. It is seen that the achievement has crossed the target since a few years. The following table indicates the target and achievements in mediation during the year of April 2005-March 2006:

Target	2500
Achievement	2585

Table 1
Target and Achievement in Mediation (2005-06)

Office	Yearly target	Yearly achievement	Balance (3-2)
1	2	3	4
Head office	60	60	-
5 Legal Aid Clinics	500	557	+57
Labor cell	60	167	+107
19 Unit offices	1470	1791	+321
Total	2090	2575	+485

Source *Annual report*, April 2005-March 2006, BLAST, p. 29.s

The process of recovering money through mediation has encouraged the vulnerable people to the mediation process, especially poor women. Usually money is being recovered in cases of dower (den mohar), divorce and maintenance. During the reporting year of 2005-2006, a sum of 2585 disputes were settled through mediation, out of which from 744, Tk-1,36,71,428.00 was recovered. Beneficiaries of BLAST, of whom 90 percent are women, by utilizing this recovered money properly are turning into economically self-sufficient, especially the empowerment of women is increasing. The following table indicates the statistics of recovered money during the period January 2000 to March 2006, which had been achieved by the head office, unit offices and Legal Aid Clinics:

Table 2
Total Recovered Money of Different Years through Mediation

Sl No.	Period	Money recovered
1.	January 2000 to March 2001	19,19,808.00
2.	April 2001 to March 2002	26,14,364.00
3.	April 2002 to March 2003	87,15,176.00
4.	April 2003 to March 2004	1,86,27,319.00
5.	April 2004 to March 2005	1,29,01,461.00
6.	April 2005 to March 2006	1,36,71,428.00
Total taka =		5,84,49,556.00

Source: *Annual report*, April 2004-March 2005, BLAST, p. 6; *Annual report*, April 2005-March 2006, BLAST, p.29

After settling the mediation, BLAST's officials have to continue follow-up of resolved mediations in every six months though this duty is not regularly done in some working areas. This is usually done in two ways: one is conducted by correspondence and the other one is carried out by direct follow-up. In the process of direct follow-up, the conditions of beneficiaries are assessed by the direct visit of BLAST's staffs, which is usually done by following a checklist.⁶¹ Information about the condition of beneficiary before and after the mediation is thus evaluated. Moreover, additional information is also gathered to appraise what kind of socio-economic development has taken place in the life of beneficiary by using the money recovered through mediation. These activities are conducted by the head office as well as unit/clinic. From evaluation of settled mediation, it has been expressed that many beneficiaries are now better than before and many of them have been economically solvent. Through mediation, many couples are living in harmony. A sum of 385 settled mediation on the basis of random selection was evaluated during the reporting year of April 2005-March 2006.⁶² Out of these, 238 beneficiaries were provided assistance with money through mediation. 217 out of 238 beneficiaries utilized their funds properly for their socio-economic development.⁶³ The beneficiaries, who received amount for dower and maintenance through mediation, have used up their resources by purchasing *Rickshaw* (local transport), land, calf and sewing machine or depositing in bank or constructing new house.⁶⁴

The aim of BLAST's mediation is to resolve the issues of dispute within short time and to restore peace, generate humanitarian values and establish human rights, and above all to re-establish stability within the local community. Such initiatives of mediation pave the way for justice and security within the society and consequently reduce the pressure of cases within the court.⁶⁵

6.2 Litigation

The complaints which are non-mediatory, BLAST directly moves to the court. In the case of mediatable dispute if an attempt to compromise is failed, then the matter is forwarded to one of the BLAST's panel lawyers to start legal action. BLAST conducts its cases through a panel of lawyers selected by the unit management committees. These management committees are consisted of the elected and eminent lawyers of the local Bar Association who operate the BLAST unit offices very successfully. In the litigation process of BLAST, all expenses regarding cases are

⁶¹ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p. 29.

⁶² *Ibid.*, p. 30.

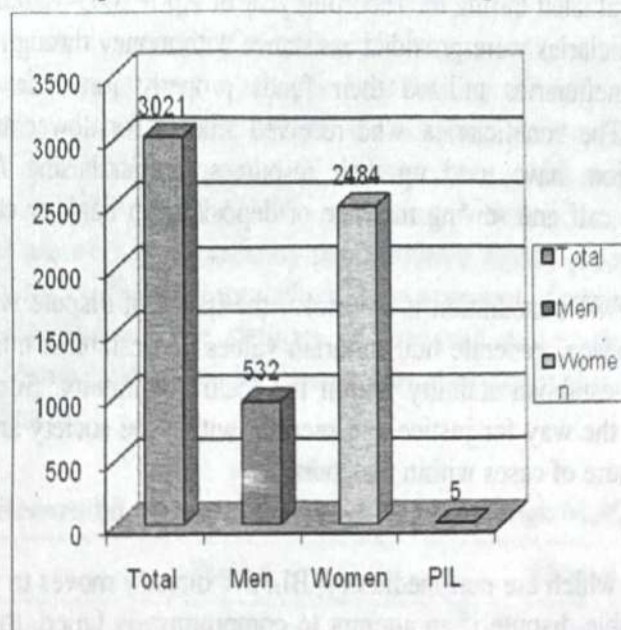
⁶³ *Ibid.*, p. 30.

⁶⁴ *Ibid.*, p. 15.

⁶⁵ *Ibid.*, p. 28.

paid by BLAST's head and unit offices. Here, it is noted that head office and unit offices are only empowered to deal the court cases. Legal Aid Clinics are not directly connected with litigation. When in different complaints, clinics are failed to reach a solution through mediation then these complaints are sent to unit offices for filling case. Otherwise, non- mediatory complaints are also directly sent to unit offices for court case. It is a general rule that BLAST takes up cases depending on the merit and the status of the applicant. As a result, the organization deals with a multifarious type of litigation. Those who are filing cases through BLAST, 83.39% of them are women. During the year of April 2005-March 2006, out of 6,418 litigations, BLAST filed 5,352 (85.39%) for women.⁶⁶ The following figure indicates men: women proportion of the clients of cases during the year of April 2002 -March 2003:

Figure 2
Men: Women Proportion of the Clients of Cases (April 2002 -March 2003)



Source: *Annul Report*, April 2002-March 2003, BLAST, Dhaka, p. 35.

From the above graph, it can be analyzed that BLAST filed total 3021 cases during the year of April 2002 -March 2003, out of which, 2484 cases were filed for women and the rest 532 were for men. From this graph, it can also be realized that the number of women clients for litigation support is higher than that of men.

Generally, in the District and Sub-ordinate courts, matters relating to family cases, family appeals, criminal, criminal appeals, bail, criminal motion and revisions, sessions trial, land, execution of decree and miscellaneous are dealt by BLAST. In

⁶⁶ *Annual Report*, April 2005-March 2006, BLAST, Dhaka, p. 13.

⁶⁶ *Ibid.*, p. 30.

the Labor Court, labor cases are also dealt by BLAST. On the other hand, in the Supreme Court of Bangladesh, jail appeals, detention cases, criminal revisions, criminal appeals, writ petitions (non-service), writ petitions (service), civil revisions, civil appeals, Administrative Appellate Tribunal related cases and leave to appeal are handled by BLAST.⁶⁷ A significant majority of the cases dealt by BLAST involves family disputes which are related to failure of paying dower money on divorce, maintenance and child custody. During the yearly report of April 2003-March 2004 of BLAST, it had been indicated that 4,218 cases, out of total 9,420, were filled in the family courts, of which 1,096 were execution of court decrees and 147 were family appeal cases.⁶⁸

It is needed to point out that BLAST is the only organization in Bangladesh which routinely files cases challenging the legality of preventive detention under the Special Powers Act, 1974. Most of the detainees under this Act are men. These cases can only be filled in the High Court Division of the Supreme Court. By instituting primarily *habeas corpus* writs, BLAST lawyers have uniformly been successful in getting the declarations of detentions as illegal by the court. The number of application for such *habeas corpus* writs received by head office from all over the country is increasing day by day. During the August 1994 to March 2003, BLAST filed 694 detention cases out of which 662 cases were disposed and detainees were released, and another 32 cases were pending for hearing.⁶⁹

6.2.1 BLAST's Success on Litigation

BLAST is providing free legal supports to the poor for filing case since 1994. Now the organization is providing legal support for litigation in the different parts of the country through its head office, 19 unit offices and 5 Legal Aid Clinics. In the case of litigation, BLAST's support is most widely known to the people of the country. It is a great success of BLAST that an ever-increasing number of poor women are seeking its legal services for litigation. Although it is well known that the poor and powerless are often unable to get legal redress through the courts for economic constraints and other social barriers, BLAST has been able to establish a good reputation for getting result for its poor clients.

During the year of April 2005-March 2006, 6,418 cases were instituted by BLAST in the various courts of the country including the Supreme Court of Bangladesh while another 10,393 cases were carried over from previous years. Consequently, during this year, total 16,811 cases were dealt with. In this period, 3,913 cases were settled. Among these settled cases, 2,727 (70%) cases were disposed positively in favour of

⁶⁷ *Annual Report*, April 2003–March 2004, BLAST, Dhaka, p. 53.

⁶⁸ *Ibid.*, p. 21.

⁶⁹ *Annual Report*, April 2002–March 2003, BLAST, Dhaka, p. 32.

the BLAST clients and court verdicts went against its clients in 296 cases, and 173 cases were defaulted due to non appearance of the clients in the courts and another 717 cases were evaded for non appearance of the clients as compromise had been made locally. In the same year, total 689 cases were dealt By BLAST with in the Supreme Court of Bangladesh, out of these cases, 76 cases were already settled and 613 cases remained pending.⁷⁰ It is a very positive side that in every year, the unit offices has crossed the targets in filing of cases. The following table indicates the target and achievement in the filing of cases during the period of April 2005-March 2006:

Table 3
Target and Achievement in Filing of Cases (April 2005-March 2006)

Offices	Yearly Target	Yearly achievement	Balance (3-2)
1	2	3	4
Head Office	190	165	-25
Judge Court	105	101	-04
Labor Court	165	271	+106
19 Unit Offices	4940	5881	+941
Total	5,400	6,418	+1,018

Source: *Annul Report*, April 2005-March 2006, BLAST, Dhaka, p. 15.

Money is recovered not only through mediation, but also it is recovered by the litigation in the courts with the assistance of BLAST. This money is very helpful for the clients to build them up economically independent and solvent. During the reporting period of April 2005-March 2006, 3, 913 cases were settled through courts. Out of these cases, 2, 599 (68%) conflicts were relating to family matters including maintenance, dower, dowry and 2nd marriages etc. and 108 (3%) cases were labor related matters. Out of 2599 family related conflicts, 483 (19%) clients of BLAST received Tk 1, 22, 72,931.00 through courts for dower and maintenance etc. Money was also significantly recovered through labor courts in labor related issues. During the above-mentioned period, 108 cases were successfully settled through Labor Courts, in which total Tk. 8, 67,589.00 was recovered and 22 workers were reinstated in their job.⁷¹

Money received specially by women through litigation services is being used for different livelihood purpose. During the period of April 2005-March 2006, 366 case

⁷⁰ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p.15.

⁷¹ *Annual Report*, April 2005–March 2006, BLAST, Dhaka, p.14.

disposed of earlier were followed up, from which 257 (70%) received money as their entitlement. Out of those who received money, 208 (81%) were using the money for the purpose of buying cattle, rickshaw, poultry, and land, and for depositing in the Bank.⁷² So, money recovered through court with the assistance of BLAST has paved the way for women's economic solvency and empowerment.

BLAST not only provides legal aid in the lower courts but also it provides legal aid at the High Court Division of the Supreme Court for enabling the poor litigants to enforce their rights. BLAST is also filing different writ and PIL cases in the above court for establishing human rights for individual and society. During the period of April 2004-March 2005, BLAST interfered 163 cases in both the High Court Division and Appellate Division of the Supreme Court. Out of the abovementioned cases, 28 were Jail Appeal cases, 30 were Criminal Revisions, 41 were Criminal Appeals, 29 were Writs, 31 were Civil Revisions, 1 was Civil Appeal and 3 were Administrative Tribunal cases.

The unit offices of BLAST play major role in achieving success in litigation support for the poor and disadvantaged. These offices deal with many cases every year, out of these, most verdicts go in favor of its beneficiaries. The above discussion discloses the successful picture on litigation support provided by BLAST. Government is also providing legal aid to the poor people under the *Legal Aid Services Act 2000*. But for the bureaucratic complexity, lack of knowledge and proper idea regarding the law, people are not encouraged to take legal aid support from Government Legal Aid Committee. On the other hand, BLAST's efficiency and mass knowledge of its activities has spontaneously encouraged the vulnerable people to pursue their litigation through BLAST's assistance. So, the number of complaints submitted to the BLAST offices is enormously increasing day by day. However, in some cases, the beneficiaries of BLAST are not treated well by some panel lawyers of BLAST, and sometimes such lawyers also demand extra money for the speedy disposal of case.

7. Efforts of BLAST for Strengthening Bangladesh Government's Legal Aid Program

On the frequent pressure and lobbying of NGO's along with BLAST, the government of Bangladesh enacted the *Legal Aid Services Act, 2000*⁷³ with a view to provide free legal aid to the poor and helpless people. This Act came into force on 28 April 2000 and then on 4 June 2000, the Government under section 3(1) of the Act formed 'National Legal Aid Services Association' for fulfilling the purpose of the Act. On 24 May 2001, under section 7(a) of the *Legal Aid Services Act-2000*, the National Legal Aid Services Association enacted the *Legal Aid Services Policy, 2001* to provide legal aid to the poor and vulnerable people. The people who are eligible to get legal

⁷² Ibid.

⁷³ Act No. 6 of 2000.

aid are ascertained by this Policy. On the same day, subject to prior approval of the Government, National Legal Aid Services Association being empowered by section 24 of the *Legal Aid Services Act-2000* made the *Legal Aid Services Rule-2001*. This Rule contains the regulations regarding the procedure of providing legal aid and selection of lawyers and the rules and proceedings to be followed by the lawyers with their payable fees etc.

Though the Government has already taken different initiatives to provide free legal aid, Government initiatives regarding legal aid have not been proved effective to provide free legal aid to the poor and vulnerable people because of its bureaucratic complexities, administrative motionless and complexities of its methods. The main purposes of the *Legal Aid Services Act-2000* are: (i) to establish a National Legal Aid Association, (ii) to ascertain the nature of the National Operative Board, (iii) to ascertain power and functions of the Association, and (iv) to ascertain the nature, power and functions for the district committees and the method of application for Legal Aid. It is clearly mentioned in section 6 of the *Legal Aid Services Act, 2000* that there will be a 'National Operative Board' consisting of 19 members to operate the National Legal Aid Association's function and administration. It will perform its functions following the rules and regulations which are made by the authority of the Government.⁷⁴ National Operative Board will be consisted of the following members:⁷⁵

- (a) The Minister of Law, Justice and Parliamentary Affairs, who will also be the chairman of this Board;
- (b) Two Parliament members nominated by the Speaker of whom one from ruling party and the other from opposition;
- (c) Attorney General of Bangladesh;
- (d) Secretaries of different Ministries, viz., Ministry of Law, Justice and Parliamentary Affairs, Ministry of Home Affairs and Ministry of Social Welfare;
- (e) Inspector General of Police;
- (f) Inspector General of Prison;
- (g) Vice-Chairman of Bangladesh Bar Council;
- (h) President of Bangladesh Supreme Court Lawyers' Association;
- (i) Chairman of National Women Association;

⁷⁴ *The Legal Aid Services Act, 2000*, s 5(2).

⁷⁵ *The Legal Aid Services Act, 2000*, s 6(1).

- (j) Three representatives nominated by the Government from the established non-governmental organizations which are related to law and human rights, and are functioning in each district;
- (k) Three representatives nominated by the government from women organizations functioning in each district of the country and
- (l) Director, who will also act as the Member Secretary of this Board.

The tenure of the members of National Operating Board, who are nominated by Government from human rights and women organizations, will be two years from the date of nomination provided that, the Government can remove any member before the expiry of their tenure without serving any show-cause notice. Moreover, they may resign from their position by submitting letter with signature to the Government.⁷⁶

To make the *Legal Aid Services Act, 2000* fruitful and to operate fairly the National Legal Aid Services Association, the role of the 'National Operative Board' is very important. But the pragmatic scenario is that the members of the Board are very busy with their own sphere and are not giving enough time for the functions of legal Aid. It is just a duty of 'amusing puzzle' to them. According to section 9 of the *Legal Aid Services Act-2000*, the district committees are also constituted in the almost same way by taking high officials in the district. Thus, it has also become fruitless and failed to give an explicit and positive impact on legal aid to the general people.

Section 13 of the *Legal Aid Services Act-2000* includes provisions relating to fund of the Board for legal aid. Under this section the fund depends upon the donation from various sources. The sustainability and success of the proceedings of the Board is a disputed matter since the fund of the Board basically depends upon the donation.

Every District Committee must have a fund and it will be created by the money allotted by the Board, by the donation receipt from any individual or any association and by any other sources.⁷⁷ It is evident from the *Legal Aid Services Act -2000* that there is no provision for allocating of money by the Government to the fund to the Board and district committee. So, very often uncertainty is seen in case of fund management of both the committees. In this regard, we can refer to the Indian *Legal Services Authority Act, 1987*, which provides that the financial matters of different authorities are conducted separately by 'The National Legal Aid Fund' and 'The State Legal Aid Fund'. Government approves financial grants for the establishment of a fund for each authority, viz., 'National Legal Aid Fund' for the Central Authority, 'The State Legal Aid Fund' for the State Authority and the 'District Legal

⁷⁶ *The Legal Aid Services Act, 2000*, s 6(2).

⁷⁷ *The Legal Aid Services Act, 2000*, s 14.

Aid Fund' for the District Authority.⁷⁸ It is clearly laid down in the Act that the grants, appropriated by parliament, made by the Central Government to the Central Authority,⁷⁹ percolate down to the state⁸⁰ and District Authorities.⁸¹ These have also been allowed to be supplemented by way of grants or donations⁸² and the amount received by orders of any court or from any other sources.⁸³ According to section 14 of the *Indian Legal Services Authorities Act, 1987*, the Central Government is bound to give fund, by way of grants, to the Central Authority for the purpose of giving legal services.⁸⁴

The Section 3 of the *Legal Aid Services Rule, 2001* made the application process very complex and rigid. That is why the poor and vulnerable people show their reluctance to receive legal aid from the Government. It is laid down in section 3(2) of this Regulation that if the question of fact for which legal aid sought is under the jurisdiction of Supreme Court, in that case application has to be submitted to the Chairman of the National Operative Board, and if it is under the jurisdiction of other courts, it has to be submitted to the Chairman of the district committee. The provisions relating to application to the Chairman of the Board is quite difficult for the general people because the Chairman is the Minister- in -charge of the Law, Justice and Parliamentary Affairs. But In India, the application procedure for seeking legal aid in the case of higher court is comparatively very easy. Under the section 3A and Section 8A of the *Legal Services Authorities Act, 1987*, there are provisions of constituting of Supreme Court Legal Services Committee and the High Court Legal Services Committee so that vulnerable people can easily be able to get govt. legal aid from higher courts.

The *Legal Aid Services Policy, 2001* has limited the number of legal aid seekers as it is stated that one whose annual income is not above Tk. 3000 will get legal aid. It also includes other pre conditions to get legal aid which are totally disfavorable to the financially disabled person. For these reasons, the scheme of Government legal aid has not succeeded as expected.

From the above discussion, though some flaws in the '*Legal Aid Services Act-2000*' and its subsequent rule and policy have been found, this Act was the utmost

⁷⁸ Sujan Singh, *op.cit.*, p. 152.

⁷⁹ *The Legal Services Authority Act, 1987*, s 14 and 15(1)(a).

⁸⁰ *The Legal Services Authority Act, 1987*, s 16(1)(a).

⁸¹ *The Legal Services Authority Act, 1987*, s 17(1)(a).

⁸² *The Legal Services Authority Act, 1987*, Clause (b) of sub-section (1) of sections 15, 16, 17.

⁸³ *Ibid.*, clause (c).

⁸⁴ P. D. Mathew, *Legal Services to the Poor* (New Delhi: Indian Social Institute, 1996), p. 24.

expectation of the poor, slum dwellers and vulnerable people. After the inauguration of BLAST journey, it has frequently advocated with the policy makers of the Government to enact such an Act for providing Government legal aid. Since 2003, BLAST has taken a lot of programs along with advocacy so that the government legal aid scheme can be scattered throughout the country. For this reason, BLAST is making campaign by publishing and distributing posters, leaflets, handbills and books, and also by training to the poor, slum dwellers and vulnerable people. As a part of Advocacy on government legal aid, in the 18 districts, advocacy cell of BLAST organized 18 Advocacy meetings along with lawyers, judges, police and jailors for strengthening the government legal aid program.⁸⁵ From these advocacy meetings, some of the inconsistencies of the '*The Legal Aid Services Act-2000*' have been identified, and the participants have recommended bringing some changes of it to make it effective. As a result, Bangladesh Government has made some changes in the *Legal Aid Services Act-2000* to enforce the existing Act widely and practically. BLAST has already made depth research by its PIL and Advocacy cell in 12 districts of its working area to bring effectiveness in Government legal aid scheme. So, it can be said that BLAST is working along with the government to make the Government legal aid services fruitful.

8. Conclusion

Access to Justice is one of the most fundamental rights of people recognized by the Constitution of Bangladesh. But, in reality, the poor and vulnerable section of the society is almost detached from the formal legal system due to their economic hardship and other social barriers. So, it is explicated that without providing legal aid, access to justice for all and equality before law, which are fundamental components of human rights, are completely meaningless. Bangladeshi Government has already passed the *Legal Aid Services Act, 2000*, but people are not much aware of this law. Besides, due to some flaws in the Act, people are not spontaneously seeking government legal aid. In these circumstances, BLAST's legal aid program is playing a momentous role at a large scale for the vulnerable people of the society to have access to justice. In the case of BLAST's legal aid, both mediation and litigation supports are provided. BLAST encourages people not to go to the court as a first measure to solve their problem. It discourages to blame each other and helps both parties settle the dispute through mediation by the help of a neutral and experienced mediator. The beneficiaries are given wider opportunity to be heard and their voice participation has been treated as an important feature of the legal aid scheme provided by BLAST. BLAST has also achieved a great success in different cases for the poor client, where mediation has failed to reach a peaceful solution. Thus though

⁸⁵ Research report on Govt. Legal aid Services Act, 2000 published by Advocacy and PIL Cell of BLAST, Dhaka.

BLAST has accomplished a significant success in the field of legal aid, some flaws have been found in its legal aid program. Firstly, due to absence of trained mediators, in some cases, question arises regarding the decision of mediation, as it is not made spontaneously according to the desire of both parties. Secondly, due to the shortage of female mediators during the mediation, in some cases, the female clients cannot express clearly their main problems. Thirdly, as a part of legal aid, BLAST is regularly arranging huge number of mediation; it is very difficult to observe the changes which have been introduced in the conjugal life of the beneficiaries after conducting mediation due to the lack of proper and regular mediation follow-up. Fourthly, in the cases of litigation support, some clients of BLAST are not treated friendly by the BLAST panel lawyers. Furthermore, many people are still deprived of BLAST's legal aid for the shortage of manpower and the non-availability of the unit offices in each district of the country. So, to overcome the above mentioned flows and strengthen the existing role of BLAST in the field of Legal Aid, some efforts can be taken by BLAST at an urgent basis. Firstly BLAST should build up female mediators as well as more trained mediators for settling different disputes through mediation at the community level as the majority of the disadvantaged population is women. Secondly, for increasing coverage of cost-free legal services and counseling, BLAST should constitute an independent unit in each district and a sub-unit in each *upazilla* to provide its support in a very wide scale. Thirdly, besides enhancing the legal aid activities of BLAST to the grassroot level, all sorts of legal aid activities conducted by the organization should be properly evaluated through a very effective way. Finally, as legal aid has been a crucial factor in the empowerment of the poor, BLAST ought to make more strong synergistic relation with the Government so that the poor may obtain wider legal Aid from BLAST and Government legal aid scheme.