



RAJSHAHI UNIVERSITY LAW JOURNAL

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Laws relating to Prosecution Service in Bangladesh: A Critical Analysis

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Guidelines for Contributors

Rajshahi University Law Journal is an official journal of the Faculty of Law, University of Rajshahi that publishes research articles. Contributions to the Journal may be in English or in Bangla and must be unpublished articles containing original research that have not been submitted for publication elsewhere. All submissions are subject to peer review and to edition by the Editorial Board. The decision of the Editorial Board regarding publication is final and the copyright of published articles rests with the Faculty of Law, University of Rajshahi.

Manuscripts submitted for publication must be in three copies, double-spaced typescript or electronic print-out on A4 size (8.5"×11") white sheets with margins of 1" on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The author's name or anything that may identify the author should not appear anywhere in the text paper. An abstract in English must be provided within 200-300 words at the beginning of the article. Submissions should be addressed to the Editor in Chief, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

Development of National Laws and Policies on Free Legal Aid: Welfare States Context

Armin Khatun*

Abstract: *The existence of the idea of free legal aid is not new. Chronological development of legal aid followed different arrangements and bodies based on socio-economic conditions of the state which diverges with time. Though the concept of legal aid varies from country to country reliant on socio-economic, political and legal background but some common features remain to be recognized in every system. It is important to make a transitory analysis about the development of legal aid laws and scheme of the world in welfare states perspective. This study is an attempt to present a glimpse on selected countries incorporated free legal aid provisions in their national laws. The objective of this research is to focus on the historical development and evolution process of free legal aid laws in the context of welfare states and also to observe the background of legal aid system in Bangladesh. The study therefore underscored the necessity of free legal aid for protecting and promoting the democratic values in a society and concludes that the notions of legal aid in welfare states are somehow similar, specially depends on state oriented legal structure.*

Keywords: Legal Development, Free Legal Aid, Laws and Policies, Welfare States

1. Introduction

A beautiful idea or concept can change a society. The concept of legal aid has attracted a worldwide attention. The first concept of legal aid was found in Roman Empire. Legal aid is emerged in the 20th Century, developed through generous and collective consciousness of justice, gratitude to the human rights, Universal Declarations of Human Rights, socio-economic-political justice, the worldwideresponsiveness and movement to confirm just human living with freedom, self-respect, equal prospect and prominence. The notion of legal aid is attached to the theory of rule of law. In welfare state context, rule of law is initiated on the principle of equality before law. At present, over the entire earth, democratic societies are stands on the pillar of rule of law and equality before law. "Providing equal justice to the poor means providing access to the courts and to mete out fair treatment within the judicial process. It is reported that provisions for providing legal aid to

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needy indigent persons, particularly in criminal trials, has been enacted in more than 132 nations.”¹As a public-spirited concept, legal aid is as deep-rooted with human civilization. It is found from a look upon history that percentage of poor people was never less. The historical movement of legal aid started from this basic realization that every people should have the same opportunity of accessing the legal remedies provided by the courts.² Developed countries like UK, USA, and Canada, developing countries like India, Sri Lanka and Bangladesh adopted indigent oriented legal aid provisions to their national laws and policies and has developed the provisions as per demand of the current welfare world context. The developed systems, having covered a longer journey, have more to provide and guide the developing concept of legal aid in Bangladesh.

Therefore, this paper aims to study the national laws and policies of free legal aid of England, USA, Canada, South Africa, Australia, Germany, Japan, Sri Lanka, India and Bangladesh. It explores a comparative analysis on the features of legal aid provisions among the states and concludes with the statement of effectiveness of the service in the welfare state context. This study is an arrangement of exploratory and analytical approach method, dependent on secondary sources of information which includes constitutions of selected welfare States, national and international statutes, statutory instruments, judicial decisions and pronouncements, books and journals, juristic writing, written opinion of the concerned experts in the relevant field.

2. Legal Aid in England

The English society is an ancient one and has been able to reach the apex of success and development. The modern concept of legal aid traces its origin in England. It is a tribute to the legal history of England that legal aid existed there since the year 813 A.D. The appropriate starting point for the inquiry of legal aid is *Magna Carta*. During the reign of Henry I, Henry II and Edward I some concession was given to the poor litigants and they were immune to pledge security before

¹ Mamta Rao, *Public Interest Litigation: Legal Aid and Lok Adalats*, Eastern Book Company, India, 2004, P. 343

² Md. Nazrul Islam, “Legal Aid Movement in the UK, USA and Bangladesh: A Comparative Study”, *The Dhaka University Studies*, Part. F, Vol.III (1), June 1992, pp. 119-132

filing a suit.³ After *Magna Carta*, under Henry III, the fees for the writs were not required to be paid by the unfortunate applicants. Common Law Courts had independent power to entertain gratuitously the complaints of the needy. The church had also shown sympathetic attitude while permitting the ecclesiastical lawyer to represent poor people. The Statute II of Henry VII, C-12 (1494), was the first statute dealing specifically with "forma pauperism" procedure. The poor man was allowed to have writ without paying anything and for consigning a solicitor for the needy. Later on, the Law Revision Act, 1883 has passed and court rules enclosed to regulate the *informa-pauperis* procedure in High Court. But the Rules of 1883 failed to improve the condition of the poor litigants.⁴ It brings the result of a new set of rules, named the Poor Person's Procedure, 1914. It meant a body of rules promulgated in 1914 by the High Court of Judicature, aimed at regulating the poor person's proceedings, with certain merits like it established office in Royal Court of Justice at London and its branches to serve as clearing houses for the poor men's causes; assigned lawyers for poor litigants.⁵ In 1926, the administrative control of legal aid was handed over to the Law Society. Until 1942, the whole of the High Court work for poor persons, apart from speculative litigation, was carried out by the organized charity of the legal profession. The Second World War brought a fresh and an overwhelming crisis in the affairs of the Poor Person's Committee. In the course of 1942, war offices were set up for giving advice to the needy persons. This scheme filled a part of the gap. After the war years, Lord Chancellor Simon appointed a committee called The Rushcliffe Committee in 1946 to study on legal aid.⁶ Having made an exhaustive study, the committee suggested a scheme providing a chain of legal advice bureaux of several forms. The Rushcliffe Committee marked that legal aid and legal advice are different

³ Sujan Sing, *Legal Aid: Human Right to Equality*, Deep and Deep Publications, India, 2011, p. 61

⁴ S.S. Sharma, *Legal Aid to the Poor: the Law and Indian Legal System*, Deep and Deep Publications, India, 1993, pp. 16-17.

⁵ *Supra* note 3, p. 62.

⁶ *Ibid*, p. 63.

dimensions. This Committee suggested a significant scheme which was adopted next.⁷

The Legal Aid and Advice Act, 1949 was the outcome of the recommendations of Rushcliffe Committee. Under the Act, the applicant, who qualified for legal aid was allowed to choose his lawyer freely from a panel of practitioners who announced their willingness to such cases. There was a requirement to qualify the means test which meant fulfilling the condition of the “disposable income” and “disposable capital” in the Act. But under the Act, a person receiving legal aid was not given financial assistance in respect of his opponent’s cost. In order to meet this hardship, the Legal Aid Act, 1964 was passed. This Act provided for the payment of costs incurred by the successful unassisted opponents out of the legal aid funds. Still there remained lacunas in the program, which made a way for the report of the Advisory Committee on Legal Aid and Advice, 1970, on the basis of its recommendations, the Legal Advice and Assistance Act was passed in 1972, which was further amended to embrace the entire statutory provisions of legal aid. The new legislation was the Legal Aid and Advice Act, 1974.⁸

In England, the provision of legal aid is now governed by the Access to Justice Act, 1999 and supplementary legislation, most recently the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), 2012.⁹ “The Act has exceptional funding provisions, which allow the Lord Chancellor to authorize legal aid funding in cases which are otherwise out of scope of the legal aid scheme. At present, Legal aid in England and Wales is administered by the Legal Aid Agency (until 31 March 2013 by the Legal Services Commission), and is available for most criminal cases, and many types of civil cases. Criminal legal aid is generally provided through private firms of solicitors and barristers in private practice. Civil legal aid is provided through solicitors and barristers in private practice but also by lawyers working in Law

⁷ *Ibid*, pp. 63-64.

⁸ *Ibid*

⁹ See https://en.wikipedia.org/wiki/Legal_aid, accessed on 6 March, 2021

Centers and not-for-profit advice agencies. Depending on the type of cases, legal aid may or may not be means tested and in some cases legal aid can be free to those on benefits, out of work and have no savings or assets.”¹⁰

3. Legal Aid in USA

The picture of legal aid history of USA is somewhat different from the UK and is not as old as in England. The organized attempt to provide legal assistance to the poor in USA was started at 1876. It was then that in New York city, a society was established to render legal aid and assistance gratuitously to those of German birth, who appeared to be worthy thereof but who from poverty were unable to secure.¹¹ The legal aid movement, as can name it in its true sense, was largely the creation of one man and one book. In 1914, Reginald Steber Smith, a 25 years graduate of Harvard Law School, accepted an offer to take over wheels of the newly formed Boston Legal Aid Society. In this, Smith became appalled by the miserable way the law treated his clients. This, in turn, aroused him to seek a grant from the Carnegie Foundation to write a book about the current legal system and what it meant to America's poor. His work was published in a book form in 1919, entitled 'Justice and the Poor', which caused a storm in the legal profession. At the 1920 American Bar Association meeting, a special committee on legal aid was created. A year later, the special committee was converted to a standing committee on legal aid and Reginald Steber Smith was made the chairman. In 1923, Smith's recommendation for the establishment of a national organization of agencies and persons interested in legal aid, a point he urged so strongly in Justice and the Poor, became a reality when the National Association of Legal Aid Organization (later, the National Legal Aid and Defender Association) was formed. Shortly thereafter, a number of state and local bar associations formed committees to promote legal assistance to poor people in their jurisdiction. Legal Aid in criminal

¹⁰ *Ibid*

¹¹ *Supra note 4*, pp.26-27

cases, however, was available in USA as a legal mandate under the American Constitution.¹²

In 1938 the American Supreme Court, in *Johnson vs Zerbes case*¹³ declared that VIth Amendment provided for the appointment of a counsel for the indigent defendant in federal criminal proceedings unless the accused waived his right. Later on, in *Gideon vs Wainwright case*¹⁴ declared by the Supreme Court that the right to counsel, under 6th Amendment, was available in state-trial proceedings also and was covered under the "due process clause". In 1964, the American Congress passed the Criminal Justice Act on the recommendations of the Attorney General Committee on Poverty and the Administration of Criminal justice to provide legal aid in criminal cases. In 1966, the Bail Reform Act was passed to minimize financial burden of the accused. In 1970, the Criminal Justice Act was amended to provide some compensation to private attorneys. In civil cases, no constitutional guarantee is provided in USA. The Gideon case actually left a gap between the right to counsel in criminal and civil cases. It was said to be clashing with the very language of the "due process clause. The statutory support to legal aid movement in USA was provided by the Economic Opportunity Act, 1964. It provided federal funds for national legal service. The Act was considered to be a victory for the American Bar Association, the National Bar Association and other organizations that struggled hard on behalf of legal services and for those persons who devoted their time and talents to serving the poor. The Office of Economic Opportunity started its poverty law program in 1965. In its informative period, the legal services in USA were provided as a part of the Office of Economic Opportunity but later on supervisory authority was delegated to National Legal Services Corporation by the Act of 1974.¹⁵ The National Legal Services Corporation (LSC) started its operation in October 1975. It was governed by a Board of Directors

¹² The VIth amendment to the American Constitution provided: "In all criminal prosecution, the accused shall enjoy the right to have the assistance of counsel for his defense."

¹³ 304 I.P.S. (1939) 458

¹⁴ 372 U.S. (1963) 335

¹⁵ *Supra* note 3, pp. 65-68

appointed by the President of United States, subject to the advice and the consent of the Senate. The National Legal Services Corporation provided local legal aid program for the poor throughout USA, funded by the Congress. It has also established "Neighborhood Law Offices" to provide legal advice at local level. The LSC is a publicly funded, a non-profit corporation, seeks to ensure equal access to justice under the law for all Americans by providing funding for civil legal aid to those who otherwise would be unable to afford it. The LSC has a board of eleven directors, appointed by the President of the United States and confirmed by the United States Senate that set LSC policy. By law the board is bipartisan; no more than six members can come from the same party. LSC has a president and other who implement those policies and oversee the corporation's operations.¹⁶

Later on, The Equal Access to Justice Act, 1980 was passed, it aimed at providing legal aid to small businessmen, as individuals burdened by the inordinate legal cost of challenging unjustified governmental actions. Since then, experiments have also been made in USA to popularize "Pre-paid group Legal Services." For Fiscal Year 2018, LSC had an appropriation of \$410 million in the federal budget to fund civil legal aid. LSC is the largest single funder of civil legal aid in the country, distributing more than 90 percent of its total funding to 132 independent nonprofit legal aid programs.¹⁷

4. Legal Aid in Canada

Up to 1951, legal aid in Canada was provided on ad hoc basis by members of legal profession but in 1951 it acquired the statutory sanction. In 1963, a joint committee on legal aid was set up to evaluate the existing plan. It suggested steps for the future. On its recommendations, an Act was passed in 1967.¹⁸ The modern system of legal aid developed after the federal government instituted a system of cost-sharing between the federal and provincial governments in the early 1970s. Established in 1998 through the Legal Aid Services Act and

¹⁶ See https://en.wikipedia.org/wiki/Legal_aid_in_the_United_States, accessed on 7 March, 2021.

¹⁷ See <https://www.lsc.gov/lsc-funding>, Accessed on 7 March, 2021.

¹⁸ S. Sing, *Op.cit*, pp. 69-70

successor to the Ontario Legal Aid Plan (OLAP), Legal Aid Ontario (LAO) provides legal aid services to low-income individuals in the province of Ontario through duty counsel, community legal clinics, public legal education, summary legal advice, alternative dispute resolution, self-help materials and legal representation under the Judi care model. The organization provides help with domestic violence, family law, child custody, refugee and immigration hearings, and poverty law issues. LAO also provides assistance in criminal cases where the accused is likely to go to jail if convicted.¹⁹

5. Legal Aid in France

In France, legal aid structure grounded on the British Legal Aid System, is provided to all persons who are eligible and where their cases are reasonable, the application has to be submitted to the local government officer. Financial ceilings are also provided for eligibility. The first changes occurred in France in 1851, with a statute designed to remove the economic constraints encountered by the poor in pursuing litigation. The process was further refined by an Amending Act of 1901, establishing a national system of bureaux to make determinations of eligibility. In 1914, the system was radically altered by abandoning the assignment of counsel by judges and eliminating the requirement for an applicant to present a solicitor's letter attesting the merits of his case. Instead, a Poor Person's Department was established which used the voluntary and gratuitous service of private lawyers for investigating applications and for representing applicants in court. In 1925, the government further refined this system by entrusting its administration to the law society, which established Poor Person's Committees.²⁰

At present, Legal aid committees within the French courts receive applications and determine eligibility for legal aid. Once an eligible person is approved for legal aid, the president of the local bar association appoints an attorney. One may also request a specific lawyer, and the bar association will attempt to procure the lawyer if he

¹⁹ See https://en.wikipedia.org/wiki/Legal_aid_Ontario, accessed on 7 March, 2021.

²⁰ Mauro Cappelletti (et al.), 'Studies in Comparative Law', New York, 1975, PP. 18-20.

is available. Legal aid includes two types of services. The first is *l'aidejuridictionnelle*, which provides for court proceedings as well as out of court settlements, for civil, criminal, and administrative matters. The second is *l'accès au droit*, which provides for legal consultations and assistance. Lawyers are remunerated for *l'aidejuridictionnelle* work but not for *l'accès au droit* work. The state provides funds for legal aid through the Ministry of Justice. In 2013, France eliminated its €35 tax on litigants, which caused a deficit of 60 million euros. France is in the process of determining new ways of financing legal aid, including lowering compensation for lawyers and recovering costs from awards paid to litigants. The proposals have been met with discontent, as most lawyers believe they are not paid adequately and there have been calls for at least a twofold increase.²¹

6. Legal Aid in South Africa

"By the Legal Aid Act of 1969, Legal Aid South Africa was established as an independent authority. During the 1990s, starting with the Office of the Public Defender, Legal Aid South Africa became involved in a number of pilot projects in which legal aid was provided by salaried legal practitioners. In the late 1990s, Legal Aid South Africa decided to move towards a system of salaried legal practitioners as the primary means by which legal aid would in future be provided. Legal Aid South Africa has since established 64 Legal Aid SA Local Offices and 64 Legal Aid SA Satellite Offices, which provide legal aid throughout the country.²² A new Act named the Legal Aid South Africa Act came into force in 2014,²³ Established Legal Aid SA Local Offices near courts. Through its Legal Aid SA Local Offices, Legal Aid South Africa provides legal aid to hundreds of thousands of people throughout the country each year.²⁴

²¹ See <https://www.justiceinitiative.org/uploads/bdad84af-53ad-4360-af03-b2bf167b3a3a/eu-legal-aid-france-20150427.pdf>, Accessed on 15 April, 2021.

²² See <https://legal-aid.co.za/legalaidsa/>, accessed on 2 May, 2021.

²³ Act No. 39 of 2014

²⁴ *Supra* Note 22

7. Legal Aid in Australia

The free legal aid service or reduced rate legal aid service in Australia is a recent development. The State Government of South Australia operate legal aid through the Poor Persons Legal Assistance Act, 1936. The professional bodies in all states provide legal assistance. The Federal Government provides legal aid through salaried service ALAO (Australian Legal Aid Office). Some of the states are also having legislation dealing with legal aid.²⁵ Legal aid for both Commonwealth and State matters is primarily delivered through State and territory legal aid commissions (LACs), which are independent statutory agencies established under State and territory legislation. The Australian Government funds the provision of legal aid for Commonwealth family, civil and criminal law matters under agreements with state and territory governments and LACs. The Australian Government established the Legal Services Bureaux in 1942 to develop a national system. In 1973 the Attorney-General in the Whitlam Labor government, Lionel Murphy, established the Australian Legal Aid Office, followed by the establishment of State-based Legal Aid Commissions, now provides the majority of free or low-cost legal assistance to those in need.²⁶

In 1977, the Australian Government enacted the Commonwealth Legal Aid Commission Act 1977 (LAC Act), which established cooperative arrangements between the Australian Government and State and territory governments, under which legal aid would be provided by independent legal aid commissions to be established under State and territory legislation. In July 1997, the Australian Government changed its arrangements to directly fund legal aid services for Commonwealth law matters. Under this arrangement, the States and territories fund assisted in respect of their own laws. In 2013, a murder trial in the

²⁵ Earlier at New South Wales: *The Legal Practitioners (Legal Aid) Act*, 1970; Queensland: *The Legal Assistance Act*, 1964-65; South Australia: *The Legal Practitioners (Amendment) Act*, 1969; Tasmania: *The Legal Assistance Act*, 1962; Victoria: *The Legal Act*, 1969; Western Australia: *The Legal Contribution Trust Act*, 1967; *The Legal Assistance Rules*, 1971.

²⁶ See, "The Facts - Access to Justice". Available at <http://www.legalaidmatters.org.au/>, accessed on 3 May, 2021.

Supreme Court of Victoria was delayed because legal aid was unavailable.²⁷ This has been cited as the effect of a reduction in government-funding for legal aid agencies in Australia and now led to an increase in popularity for online legal aid resources such as the Law Handbook²⁸ and Law Answers.²⁹

8. Legal Aid in Germany

Legal aid program in Germany was established by the Code of Civil Procedure of 1877. The lawyers in private practice are providing legal aid to the poor people since 1923. Under the Act of 1935 the German federation of labour unions is also able to provide free legal advice. Germany has also a scheme of legal insurance.³⁰ The German Civil Procedural Code allowed the judge to assign counsel and excuse expenses if the petitioner could prove his poverty and the seriousness of his case. In civil, administrative, labour, social welfare and even constitutional disputes before courts if a party is not in a position to pay court or counsel fees, then can get legal aid.³¹ The granting of legal aid by the court requires that the applicant proves that the claimant is (a) economically not able to bear the costs of the procedures; (b) his lawsuit has a reasonable prospects of success; and (c) the cause of action is not frivolous.³² In criminal procedures, the court assigns an accused with a defence counsel in necessary defence cases if the accused has not already retained a lawyer.³³

9. Legal Aid in Japan

The Constitution of Japan provides no person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed except

²⁷ "Trial on hold over Legal Aid row". available at <https://www.abc.net.au/>, accessed on 3 May, 2021.

²⁸ See "The Victorian Law Handbook - Fitzroy Legal Service", available at <https://www.lawhandbook.org.au/>, archived from the original on 3 March 2016, accessed on 4 May, 2021.

²⁹ "Australia's #1 Legal Aid & Legal Questions Forum", available at <https://www.lawanswers.com.au/>, accessed on 4 May, 2021.

³⁰ *Supra* note 20, p. 19.

³¹ Section 114, *The German Code of Civil Procedure*, 1877

³² *Ibid*, Section 114: Para 1

³³ Section 140(1), *The German Code of Criminal Procedure*, 1987

according to procedure established by law.³⁴ The Japan Legal Aid Association, established in 1952, is working well for the cause of poor persons in close co-operation with Japan Federation of Bar Association (JFBA) and Local Bar Associations. The Japan Legal Aid Association has laid down certain financial limits in order to qualify for legal aid. "The JFBA has overseen the legal aid system in Japan since 1952. The Japanese legal aid system has been subject to serious and chronic fiscal deficits and has been slow to develop in comparison with legal aid systems in other countries. The Civil Legal Aid Law, 2000 was enacted to remedy this situation by providing legal grounds for legal aid services in civil cases. While criminal cases are still not covered. The enactment of the Civil Legal Aid Law marked the beginning of drastic judicial reform. The Comprehensive Legal Support Law, 2004 was enacted as one of the key components in judicial reform with the aim of expanding access to legal services for the public, which enabled the establishment of the Japan Legal Support Center.³⁵ This Law articulates the principle that "realizing a society where the information and services require the resolution of legal disputes can be accessed throughout the country." "The Japan Legal Support Center (JLSC) established under the law started offering services in October 2006 as an independent administrative institution. The JLSC has opened offices in all areas where the district courts are located as well as in areas suffering from the shortage of attorneys, and it provides a wide range of legal services to citizens like information service, civil legal aid service, legal services for community's shortage of attorneys, victim support service etc."³⁶

10. Legal Aid in Sri Lanka

Sri Lanka has the most comprehensive legal aid program. The legal aid scheme in Sri Lanka is more or less similar to the legal aid scheme of England. There is an eligibility test and a person having income to a particular extent can get legal aid. "Legal aid was institutionalized in

³⁴ Article 31, *the Constitution of Japan*, 1947

³⁵ See https://www.nichibenren.or.jp/en/about/judicial_system/legal_aid_and_jlsc.html, accessed on 19 June, 2021.

³⁶ *Ibid*

Sri Lanka in 1978, with the passage of the Legal Aid Act, 1978 and the resulting formation of the Legal Aid Commission (LAC).³⁷ The LAC with over 120 permanent Legal Officers and over 1000 panel lawyers from the regional Bar Associations is the main institution dealing with access to equitable Justice in Sri Lanka.³⁸ Article 13(3) of the Constitution of Sri Lanka reads as: "Any person charged with an offence shall be entitled to be heard, in person or by an attorney-at-law, at a fair trial in a competent court." Sri Lanka's Code of Criminal Procedure³⁹ states that every person accused before any criminal court has the right to be defended by a lawyer, and every aggrieved person has the right to be represented in court by a lawyer.⁴⁰ The Code imposes a duty on a High Court judge to assign a lawyer to an accused person when indicted, which effectively gives the accused a right to legal aid.⁴¹ Similarly, the Court of Appeal may assign a lawyer to any appellant in a criminal case if it appears desirable, in the interests of justice, that the appellant have legal aid and that the appellant does not have sufficient means to obtain aid.⁴² However, there is no equivalent provision in the Code for legal aid in proceedings before the Magistrate's Court. A general right to legal aid in criminal cases at all levels of the court system was recently expressly legislated for in Sri Lanka through the ICCPR Act.⁴³ Under Section 4 of the Act, a person charged with a criminal offence is entitled to have legal assistance assigned to him in appropriate cases where the interest of justice so requires and without any payment by him, where he does not have sufficient means to pay for such assistance. The Act further states in Section 5 that every child shall have legal assistance provided by the State at State expense in criminal proceedings affecting the child, if substantial injustice would otherwise result. The Supreme Court

³⁷ Act No. 27 of 1978

³⁸ See <http://www.legalaid.gov.lk/index.php/2016-01-13-09-16-07/about-us>, accessed on 27 June, 2021.

³⁹ Act No. 15 of 1979

⁴⁰ Section 260, *The Code of Criminal Procedure*, 1898

⁴¹ Section 195, *Ibid*

⁴² Section 353, *Ibid*

⁴³ Act No. 56 of 2007

Rules⁴⁴ provide for the Supreme Court to act on a complaint alleging infringement or imminent infringement of a fundamental right, even if it is not in the form of a formal petition, where the complainant may not have the means to follow the usual procedures and may suffer substantial prejudice by such infringement. The LAC grants assistance in civil litigation and fundamental rights cases, and in obtaining bail for those in remand for over a year.⁴⁵

11. Legal Aid in India

Before 1946, there was no State oriented legal assistance to the poor of India. The legal aid movement in India has been influenced after the publication of Rushcliffe Committee Report in England. Before the Report of the Law Commission,⁴⁶ the credit for planting the seeds of legal aid movement in India goes to the Bombay Legal Aid Society (BLAS).⁴⁷ In 1945, BLAS invited the attention of British-India to the Report of Rushcliffe Committee in India to examine the problem of legal aid. Upon the demand, the Committee on Legal Aid and Legal Advice in the State of Bombay, for the first time made a detailed and significant study after independence of India. The Committee was constituted under the chairmanship of Mr. Justice N.H. Bhagwati, the then Judge of the Bombay High Court in 1949.⁴⁸ The Committee proposed⁴⁹ that "administrative machinery of legal aid should be constituted at four levels: (a) State level (b) High Court level (c) District level and (d) Taluka level." The Committee also suggested to eligibility tests. In 1957, there was a Law ministers Conference where it was

⁴⁴ Rule 44 (7), 1990

⁴⁵ See

<https://www.undp.org/content/dam/srilanka/docs/governance/Legal%20Aid%20Review2.pdf>, PP. 12-13, Accessed on 12 July, 2021.

⁴⁶ 14th Report (Appendix iv) about 'Reform of Judicial Administration' presented on 16 September, 1958 by the First Law Commission of India established in 1955 Chaired by Shri M. C. Setalvad

⁴⁷ Established in 1924 during British Regime in India

⁴⁸ The Report was submitted in 1950

⁴⁹ An outline of legal aid scheme as proposed by the Committee on Legal Aid and Advice in State of Bombay has been given in Appendix I in the XIV Report of the First Law Commission, Vol. 1, (1958)

emphasizes that State should formulate scheme for legal aid to the poor. The Law Commission in its Fourteenth Report devoted a complete chapter to legal aid. Legal aid will have next to be extended to really poor persons, and then gradually made available to persons of moderate means who are unable to bear the costs of litigation.⁵⁰ On March 13, 1970 the Free Legal Aid Act, 1970 was introduced into the Lok Sabha. This bill *inter alia* provided that the central government and the state governments shall, progressively enforce the provisions of this Act.⁵¹ In 1976, by the 42nd Amendment 1976 of the Indian Constitution, a new Article 39A was added to directive principles of state policy regarding free legal aid. Article 39A directs:

“The State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or 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.”

After the formal expression in Indian Constitution, the Government of India constituted a committee known as "the Committee for Implementing Legal Aid Scheme (CILAS)"⁵² for implementing legal aid scheme in India under the Chairmanship of Justice P. N. Bhagwati. This committee has done pioneering work in the field of legal aid. On account of vigorous efforts made by various committees, commissions, conferences, the legal aid movement was not only constitutionalized but expressly legalized in the form of enactment of a special law known as the Legal Services Authorities Act, 1987 enforced on November, 1995.⁵³ The aim of the Act is to "constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other

⁵⁰ XIV Report of the First Law Commission 1958, Vol. 1, PP. 597-598

⁵¹ Section 1(3), *The Free Legal Aid Bill*, 1970

⁵² Central Government Resolution No. 56 (19)/80-IC, dated 26th September, 1980

⁵³ Act No. 39 of 1987

disabilities, and to organize LokAdalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. Basic features of the Act are: a) The National Legal Service Authority; b) The State Legal Service Authority; c) The Supreme Court Legal Services Committee; d) the High Court Legal Services Committee; e) The District Legal Services Authority; d) Legal Aid Fund; e) Criteria for giving legal service; f) Lok Adalats.⁵⁴

12. Legal Aid in Bangladesh

Bangladesh has glorious history rich for sympathy and support of the underprivileged. The elements of legal aid were available from the very beginning of the independent Bangladesh and these find an express place in the statute of the day. The history of Bangladesh prior to 1947 is a history of India since Bangladesh was a part of it.⁵⁵ So, the history of the Indian legal aid system are considered as the history of Bangladeshi legal aid before 1947.⁵⁶ History of legal aid in India is a part of discussion of the Indian legal system.⁵⁷

12.1 Historical Background

The spirit of legal aid emerged from the retributive instinct of man and efforts of Indian society to dispense justice. It can be said that, the philosophy of legal aid was present even in the ancient Indian society. The Indian system embraced the formal concept of legal aid when the system of courts, the appearance of lawyers and the institution of court fees was adopted.⁵⁸ After the partition in 1947, several Law Reform Committees were formed to improve and make civil law reforms in

⁵⁴ Sections 3, 3A, 6; 8A, 9, 12, 15 and 19 respectively, *The Legal Services Authorities Act*, 1987

⁵⁵ Cynthia Farid, "New Paths to Justice: A Tale of Social Justice Lawyering in Bangladesh", *The Wisconsin International Law Journal*, Vol. 31(3), 2013, P. 424

⁵⁶ Dr. Farzana Akter, "From Charity to Right: An Overview of the Historical Development of the Legal Aid System in Bangladesh", *The Dhaka University Studies*, Part. F, Vol. 26, No. 1, June 2015, P. 102

⁵⁷ S. Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice*, Lexis Nexis Butterworth, New Delhi, 2004, P. 31

⁵⁸ *Ibid*, p. 74

Pakistan. The government in 1967 set up a committee of ten members headed by Justice Hamidur Rahman to ascertain the cases of delay in the disposal of cases and to recommend effectual measures for legal aid to poor litigants. The committee submitted a comprehensive report on the delays in civil and criminal litigation in 1970 but due to the Liberation War of 1971, the findings of the committee was hindered.⁵⁹ After independence, since its initiation in 1972, the Preamble of Bangladesh Constitution, sets-forth the objective of achieving equality and justice obviously with a conscious effort of applying legal aid as one of the instruments. Fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed⁶⁰ and has recognized equal access to law by all of its citizens in the Constitution of Bangladesh.⁶¹ In this connotation, government of Bangladesh has taken several initiatives and there were several committees to deal the matter before the Legal Aid Services Act, 2000⁶² has passed. The Government of Bangladesh took formal and specific initiative for enacting legal aid laws only in 1994. The government granted a legal aid fund in 1994 as the first initiative to the system, allotted the fund and the District and Sessions Judge of each District was responsible for the distribution of the amount. In 1997, the government established a National Legal Aid Committee by a Resolution⁶³ chaired by the Law Minister, established District Committees headed by District Judge and an amount of money was allocated. Nevertheless, Government's initiatives had achieved only minimum success. A very small number of candidates would have received assistance through such measures and allotted budget remained unused most of the time. It is observed that only seven district have taken precise steps to provide legal aid all over

⁵⁹ *Supra* note 56, pp.105-106

⁶⁰ See Part II and Part III, *The Constitution of the people's Republic of Bangladesh*

⁶¹ Article 27 runs as: "All citizens are equal before law and are entitled to equal protection of law".

⁶² Act No. VI of 2000

⁶³ S.R.O No. 74-Law/1997, dated 19 March 1997

Bangladesh.⁶⁴ Thus, the 1997 Resolution was not sufficient and there's a need to enact a particular law on legal aid. In this regard, the government continued discussions, several meetings held by 1998 and finally the Legal Aid Services Act, 2000 has enacted.⁶⁵

12.2 The Legal Aid Services Act 2000, Related Rules and Policies

In January, 2000, to serve the purpose, the Government has passed the Legal Aid Services Act 2000 (the LASA). This Act is a sincere endeavor of the Government to impart its support to the deprived. Along with other guidelines and rules, this Act is an inclusive, countrywide and state-funded legal aid scheme. The LASA includes the provisions of an organization named the National Legal Aid Services Organization (NLASO), established to provide legal aid across the country by establishing Supreme Court Legal Aid Committees (SCLAC), District Legal Aid Committees (DLACs) and certain special committees and cells. The overall direction and management of the activities of NLASO is vested in the National Governing Board. The Act later amended in 2006, 2011 and 2013. In 2001, by gazette notification, the Legal Aid Services Regulations of 2001 has enacted but later repealed by the Legal Aid Services Regulations, 2015.⁶⁶ In the same year, the Legal Aid Services Rules, 2001 has also published but repealed by the Legal Aid Services Rules, 2014.⁶⁷ In 2011, the National Legal Aid Services Organization (Establishment of Upazilla and Union Committees, Duties, Functions, etc.) Regulations, 2011⁶⁸ has enacted. However, in 2015, the Legal Aid Services (Legal Consultation and Alternative Dispute Resolution) Rules, 2015⁶⁹ has enacted. Moreover, in 2016, two separate regulations named the National Legal Aid Services Organization (Formation, Duties, Functions, etc. of Special Committee of Labor Court) Regulations, 2016⁷⁰ and the National Legal Aid

⁶⁴ Md. Jasim Uddin, *Aingoto Shohayota Babostha: Bangladesh O Antorjatik Prekkhit*, Manusher Jonno Foundation, Dhaka, 2015, pp.92-95.

⁶⁵ Dr. Farzana, *Ibid*, p.107

⁶⁶ S.R.O No 166, dated 15 June 2015

⁶⁷ S.R.O No. 194-Law/ dated 20 July 2014

⁶⁸ S.R.O No. 06-Law/ dated 9 January 2011

⁶⁹ S.R.O No. 25-Law/ 2015

⁷⁰ S.R.O No. 41-Law/ dated 15 February 2016

Services Organization (Formation, Duties, Functions, etc. of Special Committee of Outpost Court) Regulations, 2016⁷¹ were passed. A further study is needed and attempted by the researcher to discourse the existing provisions of legal aid laws, rules, regulations and policies. The Act provided a definition of 'Legal Aid' as: legal aid means, for the litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and for various socio-economic conditions.⁷²

12.3 Nature of Free Legal Aid Services Available in Bangladesh

There are a number of governmental and non-governmental organizations that provide variety of legal services. These services include the following: Government support legal advice and aid provided by different committees⁷³, Court representation for the eligible legal aid seekers⁷⁴, Government led Mediation by the Legal aid Officer⁷⁵, NGO led Shalish, Victim Support Service, Multi-Sector Program on Violence Against Women, Shelter Home/ Rehabilitation Center, Alternative Dispute Resolution (ADR), Paralegal Service, Referral of legal aid cases to GO/NGOs, Hotline services (National Helpline Call Center-16430) etc.

13. Legal Aid Provisions in Welfare States: A Comparative Analysis

In comparison it can be said that the above mentioned countries are the parties to the Covenants of Civil and Political Rights (ICCPR)⁷⁶ and each of these states provides free legal aid. The countries have own legislation and organization regarding free legal aid and the provisions are almost similar in terms of notions, dimensions and willingness of the state authorities. Capacities of service varies from country to country regarding resource and infrastructural availability. Schemes of

⁷¹ S.R.O No. 33-Law/ dated 15 February 2016

⁷² For full definition, see section 2(a), *The Legal Aid Services Act*, 2000

⁷³ Section(s) 8A; 9; 12; 12A, *The Legal Aid Services Act*, 2000

⁷⁴ Rule 2, *The Legal Aid Services Rules*, 2014.

⁷⁵ Section 21A, *The Legal Aid Services Act*, 2000.

⁷⁶ See https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Right, Accessed on 23 October 2023

the countries like the USA, UK and the countries like Bangladesh are not the same but people especially indigent can surely avail legal aid through state oriented schemes as much as it can. Through all these features the states fulfill the preconditions of ensuring access to justice for being serve as a welfare state. Here is a glimpse of provisions working on it:

Name of Country	Name of the Law	Government Institution
UK	Access to Justice Act, 1999	Legal Aid Agency
USA	The Legal Services Corporation Act, 1974	Legal Services Corporation
Canada	The Legal Aid Services Act, 1998	Legal Aid Ontario
France	Legislation is under Process	Legal Aid Committee under Ministry of Justice
Germany	The German Civil Procedure Code, 1877	The Board of Judicature
South Africa	The Legal Aid Act, 2014	Legal Aid Board
Australia	The Legal Aid Commission Act, 1977	Legal Aid Commission
Japan	The Comprehensive Legal Support Law, 2004	Japan Legal Support Center
Sri Lanka	The Legal Aid Act, 1978	Legal Aid Commission
India	The Legal Services Authorities Act, 1987	National Legal Services Authority
Bangladesh	The Legal Aid Services Act, 2000	Legal Aid Services Organization

It is to be observed that England, India and Bangladesh as a country of common legal system, follows British modelso far applicable mostly with the changing circumstances of the country. Above discussion

showed that legal system of India started working by following the British law and after that they enacted their own legislation to deal with legal aid service. Bangladesh has the same shadow of Indian legal aid legislation on its own legal aid laws and rules. But there are still several limitations exist in legal aid mechanism of Bangladesh. Indian Constitution expressly inserted provision on legal aid by an amendment as mentioned but there is no such provision in the Constitution of Bangladesh. Bangladesh constitution impliedly expresses right to equal access to justice and legal aid. An express provision to ensure legal aid is very much needed to include in its fundamental principles of state policy chapter or if possible in its fundamental rights chapter. Bangladesh establishes district legal aid committees and district legal aid offices⁷⁷ but like Indian Lok Adalats,⁷⁸ no Lok Adalats or separate mediation courts has established yet. In India Lok Adalats constitute with sitting or retired judicial officer and necessary number of representatives from legal experts and social workers. Lok Adalats can try "any cases pending before any court or settle any dispute which has not been brought before any court or is likely to be filed before the court, provided that it cannot try any matter relating to an offence not compoundable under the law." Decision of Lok Adalats are considering as decree of a civil court and is final and binding on parties and no appeal can be filed against the award of Lok Adalats before any court of law. Bangladesh can establish a court like this by using Indian model how far suitable for the country. It will help to get rid from the huge backlog of cases pending before formal courts of Bangladesh.

Though legal aid offices has established but the legal aid officer appointed for that office cannot try any cases, has no power to provide an award but only to conduct settlement conferences as per rules.⁷⁹ If that mediation process become successful it does not get the status of a decree. An immediate attempt need to be taken to declare the median agreement as a decree of court and should be executed under the CPC.⁸⁰ Emphasis should be given to the lawyers and they should get more priority when works as a panel advocate in legal aid cases. Legal aid laws and regulations does not introduce any coordination fees for

⁷⁷ *Supra Note*, p. 75

⁷⁸ For detail, see <https://nalsa.gov.in/lok-adalat#text>, accessed on 18 October 2023

⁷⁹ *Supra Note*, p. 69

⁸⁰ Act No. V of 1908

the panel lawyers.⁸¹ They only get the costs of litigation. Coordination fees should be given to them as they are the life-blood of legal aid service.

Like most of the country as discussed earlier, Bangladesh also follows a financial eligibility criteria⁸² to provide legal aid but with the changing socio-economic perspective the provided ceiling is too small. It needs to be revised and only social status or a certificate from the local authority can be considered enough as needy whatever be the monthly or annual income of a legal aid seeker. Thus, Bangladesh has favorable thoughts to provide legal aid to the indigent people but certain limitations also remain in legal aid laws and its implementation. If the suggestions provided can be considered by the policy makers, it would be very much helpful to improve the provisions, be effective for the poor and destitute of the country and establish social justice.

14. Conclusion

It can be understood by observing the above discussions that the issue of legal aid has become a socio-legal movement and its ultimate goal is to establish fair and equitable justice in the society by removing the suffering of the poor or distressed people. It is considered as a tool to ensure social justice among the poor. History teaches to take right decisions and shows the way forward. The lessons of history cannot be ignored, in the field of law too, as Justice Krishna Iyer cautions the tension between heritage and hersy will, if neglected for long, tear down the tower of justice. History is a merciless deity, as social scientists know.⁸³ Though there may be some variations on legal aid service in different legal systems of the world, the general trend is somehow similar. The strength and fuel for this movement undoubtedly is to be supplied and applied by the Government of concerned state. Finally, it can be said that, the legal aid programs in Bangladesh, have much to learn which demands further in-depth research especially based on comparative study between the legislations of different countries, though not to copy from the leaps of the developed society made in this direction to be rich more and it needs to make legal aid as a movement for the common people.

⁸¹ *Supra Note*, p. 66

⁸² Rule 2(a)(c), *The Legal Aid Services Rules*, 2014

⁸³ Justice V.R. Krishna Iyer, *A Constitutional Miscellany*, Eastern Book Company, Lucknow, 1986, P. 177