

# The Human Rights-Based Approach to Legal Aid: Bangladeshi Legal Aid System in Context

Farzana Akter \*

**Abstract:** *The human-rights based approach (HRBA) aims to empower the rights-holders in a fashion that they become able to ask for their lawful demands and rights under the provisions of the law and policies concerned. It depends on five core principles commonly known as PANEL (participation, accountability, non-discrimination and equality, empowerment and legality). It also investigates the capability and functions of the duty holders to find out whether they can perform their obligations in line with those recognised principles. In this given context, the article analyses the Bangladeshi legal aid system and demonstrates that it has progressed substantially in terms of the adoption of relevant laws and policies. The government has also taken various positive initiatives to implement the programme at the national level. However, the system is suffering from various drawbacks that not only deny the principles of the HRBA but also hinder the poor's ability to obtain justice. The author, therefore, recommends some measures that might be useful in improving the system and bringing it into conformity with the principles of the HRBA.*

## Introduction

Access to justice is considered a pervasive feature in modern legal discourse.<sup>1</sup> It combines two fundamental components of the legal system- the system through which people establish their rights or seek to settle their disputes. Firstly, all must have equal access to this system regardless of social or financial condition or other incapability and then, individuals should receive an equitable and unbiased outcome from it.<sup>2</sup> In turn, access to justice can function both as a medium and a denouement. As a medium, it is considered an effective way to enable the deprived group or class to get assistance from the result, justice. As a denouement, access to justice can be understood as promoting one's right to justice by ensuring access to the system by adopting different mechanisms involving legal aid and partnership with volunteer organisations.<sup>3</sup> However, in practice, money plays a dominant role in achieving justice, and thus deprives those who are economically disadvantaged of approaching the system.<sup>4</sup> Legal aid serves as a 'classic corrective' to cure this deprivation.<sup>5</sup> It essentially expels the impediments which limit access to justice for those who are not able to pay for legal representation

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\* Associate Professor, Department of Law, University of Dhaka. The author can be reached at: [akter.farzana@du.ac.bd](mailto:akter.farzana@du.ac.bd).

<sup>1</sup> Ronald Sackville, 'Some Thoughts on Access to Justice' (2004) 2(1) New Zealand Journal of Public and International Law 85.

<sup>2</sup> Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27(2) Buffalo Law Review 181, 182.

<sup>3</sup> Hilary Sommerlad, 'Reflections on the reconfiguration of access to justice' (2008) 15(3) International Journal of the Legal Profession 179, 180.

<sup>4</sup> Deborah L Rhode, 'Access to Justice' (2001) 69 Fordham Law Review 1785, 1786.

<sup>5</sup> Vivek Maru, 'Allies Unknown: Social Accountability and Legal Empowerment' (2010) 12(1) Health and Human Rights in Practice 84.

before the court.<sup>6</sup> To put simply, legal aid serves two significant functions-it can be considered both as a right and a fundamental collateral for meaningfully exercising other human rights, involving the right to an efficacious relief, the right to enjoy equality before the courts and tribunals, the right to have defence by a lawyer and the right to a fair trial.”<sup>7</sup>

In 2012, the United Nations (UN) General Assembly approved a declaration in its High-level Meeting of the 67<sup>th</sup> session on the Rule of Law at the national and international levels.<sup>8</sup> The Declaration upheld the commitment of Member States to bring about crucial initiatives to furnish “fair, transparent, effective, non-discriminatory and accountable services” to guarantee “access to justice for all, including legal aid”.<sup>9</sup> Thus, legal aid has received an unequivocal recognition as a means to safeguard equal and meaningful justice for all. Moreover, legal aid propels the establishment of “peaceful and inclusive societies for sustainable development”; this is manifested in the UN Sustainable Development Goals of 2015.<sup>10</sup> According to Garahan, goal 16.3 highlights the pursuit of building a just and equitable society by advancing the supremacy of law and securing equal access to justice.<sup>11</sup> Being a Member State of the UN, Bangladesh is under an obligation to realise the goal by adopting real and effective measures at the domestic level. Its constitution contains various provisions for safeguarding the right of enjoying equality before the law and the right to a fair trial for the nationals of the state.<sup>12</sup> It has also established a nationwide legal aid system with the enactment of the Legal Aid Services Act, 2000.<sup>13</sup> In the given context, the article analyses the existing legal aid system of Bangladesh from a human rights-based approach and seeks to find out whether the system can satisfy the underlying principles of this approach. The article finally concludes by putting forward some recommendations.

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<sup>6</sup> Gabriela Knaut, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers’ (15 March 2013) UN Doc A/HRC/23/43 para 27 <<https://docs.un.org/en/A/HRC/23/43>> accessed 4 June 2025.

<sup>7</sup> *ibid* para 28.

<sup>8</sup> UNGA, ‘Declaration of the High-level Meeting of the 67th Session of the General Assembly on the rule of law at the national and international levels’ (30 November 2012) UN Doc A/RES/67/1 <<https://www.un.org/ruleoflaw/high-level-meeting-on-the-rule-of-law-2012/>> accessed 01 May 2025.

<sup>9</sup> *ibid* paras 12, 14.

<sup>10</sup> United Nations, ‘Goal 16’ (*United Nations Department of Economic and Social Affairs*) <<https://sdgs.un.org/goals>> accessed 01 June 2025.

<sup>11</sup> Sabiana Garahan, ‘Legal Aid: Promoting Sustainable Development through Greater Access to Justice’ in W Leal Filho and others (eds), *Peace, Justice and Strong Institutions. Encyclopedia of the UN Sustainable Development Goals* (Springer 2020) 1–2.

<sup>12</sup> Constitution of Bangladesh, 1972, arts 27, 33.

<sup>13</sup> Act No VI of 2000.

## The Human Rights-Based Approach (HRBA) and its principles

Rights that are essential for holding a fair trial become futile without the conducive application of the right to obtain legal assistance.<sup>14</sup> Legal assistance is, therefore, the initial step for the enforcement of human rights.<sup>15</sup> The Universal Declaration of Human Rights (1948) asserts the significance of legal assistance for those who are unable to manage it. This becomes evident from the procedural rights guaranteed under Article 10. However, the term ‘legal aid’ has not been categorically defined by prevailing human rights instruments before the approval of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (hereinafter the UNPG) in 2012.<sup>16</sup> They have restricted the term merely to the lawyers’ service delivered to the disadvantaged sections of the community. In 1966, the international community obligated States to guarantee legal aid by the adoption of the International Covenant on Civil and Political Rights (ICCPR).<sup>17</sup> This Convention acknowledged the liability of States to provide legal aid as a ‘minimum guarantee’ utilising the principle of equal standing before the courts. In particular, Article 14 of the ICCPR casts a duty on the State Party to preserve the right to receive legal assistance in criminal cases free of cost to those who cannot indemnify it or where the ‘interests of justice’ demand so.<sup>18</sup> The concept of legal aid, thus, has become a significant human right and makes States responsible for delivering the service to the recipients. As noted earlier, the UNPG was adopted in 2012, and it provided the most comprehensive and practical definition of legal aid. The UNPG has categorically recognised that legal aid upholds the rule of law and operates as a tool for ensuring other rights involving the right to a fair trial.<sup>19</sup> Legal aid, thus, secures impartiality and people’s reliance on the judicial system.<sup>20</sup>

However, the functioning of a legal aid system determines whether the system can ensure equitable access to justice for the target group. A human rights-based approach (HRBA) obliges States to make human rights effective and realistic at the national level.<sup>21</sup> In other words, the HRBA seeks to foster the growth of

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<sup>14</sup> *ibid.*

<sup>15</sup> Richard J Wilson, ‘Principles, Sources and Remedies for Violation of the Right to Legal Assistance in International Human Rights Law’ in *International Legal Aid and Defender System Development Manual* (National Legal Aid and Defender Association 2010) 17 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1028900](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1028900)> accessed 4 June 2025

<sup>16</sup> UNGA, ‘United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems’ (28 March 2013) UN Doc A/RES/67/187 <<https://digitallibrary.un.org/record/748365?v=pdf>> accessed 01 June 2025.

<sup>17</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>18</sup> *ibid* art 14(3).

<sup>19</sup> UNGA (n 16) principle 1.

<sup>20</sup> *ibid.*

<sup>21</sup> Australian Human Rights Commission, ‘Human rights-based approaches’ (*Australian Human Rights Commission*) <<https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches>> accessed 01 June 2025; Raoul Wallenberg Institute, ‘A Human Rights Based

human rights systematically in all government development programmes and projects.<sup>22</sup> This framework derives its authority from the Universal Declaration of Human Rights and other instruments of international human rights. It embraces two basic purposes— firstly, it aims to empower people or rights-holders, involving individuals or social groups in asserting their rights and secondly, to enhance the ability of duty- holders.<sup>23</sup> It should be noted here that duty-holders undertake a specific duty to preserve and uphold the rights of the poor and disadvantaged sections of the community.

The HRBA is regulated by five core principles commonly known as ‘PANEL’ principles. These principles advocate human rights as the focal points of all policies and programmes to establish a just and equitable society. The principles include participation, accountability, non-discrimination and equality, empowerment and legality.<sup>24</sup>

Participation suggests that everyone is entitled to take part in the process of making decisions that might impinge on their human rights.<sup>25</sup> However, such participation must satisfy some conditions, such as it ought to be effective, engaging and free from any kind of influence. The system should also be accessible and provide everyone with all relevant information. The language used in the process should be easily recognisable to the claimants of the service.<sup>26</sup>

Accountability entails effective supervision schemes to make it certain that those rights are guaranteed in line with standards of international human rights. It thus demands adequate and efficient remedies to satisfactorily deal with the deviation from human rights.<sup>27</sup> The government is further required to enact pertinent laws, policies and mechanisms in order to establish an effective monitoring system.<sup>28</sup> As regards non-discrimination and equality, the HRBA prohibits and averts any kind of discrimination in the way of enforcing human rights.<sup>29</sup> However, it gives particular attention to the urgencies of the deprived and vulnerable who face various barriers in accessing the justice system.<sup>30</sup> In explaining the principle of empowerment, the approach focuses on the right of

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Approach: What is a Human Rights Based Approach (HRBA)’ (*Raoul Wallenberg Institute*) <<https://rwi.lu.se/human-rights-based-approach-hrba/>> accessed on 02 June 2025.

<sup>22</sup> Anton Hausen and Annika Launiala, ‘Introduction to the Human Rights Based Approach: A Guide for Finnish NGOs and Their Partners’ (UNICEF Finland 2015) 8 <[https://unicef.studio.crasman.fi/pub/public/pdf/HRBA\\_manuaali\\_FINAL\\_pdf\\_small2.pdf](https://unicef.studio.crasman.fi/pub/public/pdf/HRBA_manuaali_FINAL_pdf_small2.pdf)> accessed on 02 June 2025.

<sup>23</sup> *ibid* 8.

<sup>24</sup> Australian Human Rights Commission (n 21).

<sup>25</sup> *ibid*.

<sup>26</sup> *ibid*.

<sup>27</sup> *ibid*.

<sup>28</sup> *ibid*.

<sup>29</sup> *ibid*.

<sup>30</sup> *ibid*.

everyone to ask for his/her rights and entitlements.<sup>31</sup> The claimants are eligible to assert their rights, comprehend them and finally are not deprived of participating in the development policies and programmes. In addition, the HRBA necessitates those legislations adopted by the government are legally enforceable and commensurate with laws of international human rights.<sup>32</sup>

In short, the HRBA is a scheme that is essentially established on international human rights norms and is applied for enhancing the capacity of the poor and marginalised segments of the community. It seeks to redress inequality and the justice gap by holding the government and its institutions, namely duty bearers, accountable for the practices, policies and programmes adopted by them. The application of the five principles empowers individuals as rights-holders to conceive, vindicate and eventually to enjoy their human rights.

### **The HRBA and the Legal Aid System of Bangladesh**

As Christine and Feng say, the State is under an obligation to maintain equality and fairness in the justice system.<sup>33</sup> The government of Bangladesh is duty-bound under relevant articles of the constitution to warrant that people get justice based on the principles of equal standing and getting protection from law regardless of any differences.<sup>34</sup> Yet, the poor are denied the right of accessing the formal justice system for various reasons, including the exorbitant cost of litigation.<sup>35</sup> Legal aid functions as a standard remedy in the way of mitigating this denial of justice.<sup>36</sup> The government formulated the Legal Aid Services Act (LASA), 2000 with a view to establishing a nationwide legal aid system. The government further approved the Legal Aid Services Policies 2001 to ascertain the qualifications or requirements of legal aid recipients. These Policy have been amended and are now substituted by Legal Aid Services Policies 2014.<sup>37</sup> In 2015, the government formulated the Legal Aid Services Regulation to handle matters relating to the procedure for applying to the committees of legal aid, assigning legal aid lawyers and their payment of fees.<sup>38</sup> The National Legal Aid Services Organisation (NLASO)<sup>39</sup> was set up which undertakes the responsibility of

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<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> Christine Sim and Tan Zhi Feng, 'The paradox of legal aid in Singapore: civil legal without criminal legal aid' (2012) 30 Singapore Law Review 165, 169.

<sup>34</sup> Constitution (n 12).

<sup>35</sup> Greg Moran and others, 'Perceptions, Attitudes and Understanding- A Baseline Survey on Human Rights in Bangladesh' (National Human Rights Commission of Bangladesh October 2011) 62 <<http://www.bodhi.net.au/pdfs/bdeshhumrightssurvey2011.pdf>> accessed 05 June 2025.

<sup>36</sup> Cappelletti and Garth (n 2).

<sup>37</sup> The Legal Aid Services Policies, 2014.

<sup>38</sup> The Legal Aid Services Regulations, 2015.

<sup>39</sup> The Ministry of Law, Justice and Parliamentary Affairs, 'SRO No 146-Law/2000' <[https://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/law/e91d0f08\\_0ee1\\_48e8\\_9d7d\\_682464e766f4/2024-11-18-17-29-9bf8e89fed01525b215efcf360345b5a.pdf](https://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/law/e91d0f08_0ee1_48e8_9d7d_682464e766f4/2024-11-18-17-29-9bf8e89fed01525b215efcf360345b5a.pdf)> accessed 05 June 2025.

administration and supervision of legal aid programmes across the country. It is supervised and controlled by the Ministry of Law, Justice and Parliamentary Affairs. The National Legal Aid Board is authorised to work at the national level as the operating authority of the NLASO. The LASA has also mandated the establishment of various committees at different layers of administrative units, including district, upazila and union. The LASA has undergone further amendments for the establishment of certain special committees before the Supreme Court, Chowki<sup>40</sup> and Labour Courts.<sup>41</sup>

As noted earlier, the ICCPR obligates States to ensure the right of an accused to obtain legal assistance in cases when it becomes essential for the interests of justice, or such right is to be guaranteed without cost to those who do not have adequate resources to reimburse it. The Human Rights Committee (HRC)<sup>42</sup> through its General Comment 32 has, therefore, reaffirmed that meaningful access to justice relies on the availability or absence of the right to receive legal assistance.<sup>43</sup> It should be noted that Bangladesh acceded to the ICCPR in 2000,<sup>44</sup> and accordingly enacted the LASA in the same year to provide legal aid in a systematic order. This demonstrates the government's commitment and positive attitude towards ensuring access to justice by considering the poor's inability to have access to the legal institutions. The subsequent amendments of the LASA and the adoption of other policies and regulations further add credit to the government's side. Thus, these legal provisions and related policies and the formation of various committees at respective levels of the country endorse the principles of equality and legality of the HRBA.

The Legal Aid Services Policies 2014 lay down the applicants' eligibility threshold for the service. The eligibility is determined based on their annual income limit (means test), which should be lower than BDT 100,000 (approximately USD 816). However, this ceiling is elevated for those applicants who should seek assistance from the Supreme Court legal aid committee; here, the limit is equivalent to BDT 150,000 (approximately USD 1224). The 2014 policies also allow the service to some specific kinds of applicants regardless of their annual income limit; they are -survivors of acid throwing and human

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<sup>40</sup> The National Legal Aid Services Organization (Formation, Duties, Functions, etc., of Special Committee of the Chowki Court) Rules, 2016: These courts are prevailing in areas quite distant from district headquarters to uphold access to justice.

<sup>41</sup> The National Legal Aid Services Organization (Formation, Duties, Functions, etc., of Special Committee of the Labour Court) Rules, 2016.

<sup>42</sup> The HRC is the body that monitors whether State Parties implement its obligations in compliance with the provisions of the ICCPR.

<sup>43</sup> HRC, 'General Comment No 32, Article 14: Right to equality before courts and tribunals and to a fair trial' (09–27 July 2007) UN Doc CCPR/C/GC/32 (2007) para 10 <<http://hrlibrary.umn.edu/gencomm/hrcom32.html>> accessed 02 June 2025

<sup>44</sup> See United Nations Human Rights Treaty Bodies Database, 'Ratification Status for Bangladesh' (UN Treaty Body Database) <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN)> accessed 02 June 2025.



trafficking; any child; street persons or homeless people; people who are physically or mentally challenged; widows who are poor; abandoned wives; victims of domestic violence; vulnerable women; people who receive old age honorarium; and those who are declared insolvent by the court or a jail authority. It becomes clear that the government has considered the unique needs of women and children while granting the legal aid service. In addition, it is taking concrete steps to further widen the coverage of the potential legal aid service recipients. For instance, the Legal Aid Services Regulation of 2016, which makes provisions for the establishment of Special Committees in Labour and Chowki Courts, have expanded the purview of legal aid recipients. These kinds of recipients were in an uncertain state before the adoption of the Regulation as regards their eligibility for the service.<sup>45</sup> All these imply that the government follows the principles of equal footing before the courts and non-discrimination, which are two core principles of the HRBA.

However, when the specific groups enjoy the right to legal aid based on their vulnerability (merit test), such eligibility criteria are not precisely outlined and therefore, have the opportunity of being abused in the form of the discretionary power of the legal aid administrators.<sup>46</sup> As regards the principal eligibility test or means test, this also raises a question as to whether it is realistic or not. As Akter opines, the financial eligibility test is not coextensive with the current socio-economic conditions of Bangladesh.<sup>47</sup> The cost of living in the country is following a commensurate inflation rate, and people are required to spend more for their subsistence. This increases the vulnerability of the poor, keeping them in the same poverty cycle. Akter has found another reason why the financial eligibility test is not coherent. About 65% of families in Bangladesh consist of three to five members.<sup>48</sup> Yet, the burden of earning for the household is mostly bestowed on one member of the family.<sup>49</sup> The eligibility test on the annual income limit, thus, does not reflect the financial realities of the applicants. Akter suggests that the eligibility standard should not be one-sided, as it fails to appropriately meet the needs of the large volume of disadvantaged people who might need the service.<sup>50</sup> This eventually frustrates the government's promise to uphold equality and deprives the disadvantaged groups of access to the justice system. It, in this way, operates to preserve the prevailing justice gap between the affluent and deprived segments of society. It also makes legal assistance available only to those who can pay for it. Therefore, the restricted eligibility test does not

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<sup>45</sup> Ummey Sharaban Tahura and Shawkat Alam, 'Looking ahead to legal aid services in Bangladesh: is access to justice an unattainable ideal?' (2025) 32(1) *International Journal of the Legal Profession* 1, 5–6.

<sup>46</sup> *ibid* 5.

<sup>47</sup> Farzana Akter 'Legal Aid for Ensuring Access to Justice in Bangladesh: A Paradox?' (2017) 4(1) *Asian Journal of Law and Society* 261.

<sup>48</sup> *ibid* 262.

<sup>49</sup> *ibid*.

<sup>50</sup> *ibid*.

essentially empower the rights- holders of legal aid- the recipients- to claim their rights and benefits under the government-operated scheme in Bangladesh.

Legal aid recipients have options to avail themselves of the service in either way-physically or digitally. The digital procedure includes services by dint of helpline, website, email and the BD Legal Aid app. Service recipients receive various advice and fundamental information through electronic platforms. Court-based services require the physical appearance of the applicant with relevant paperwork. However, service seekers find the physical application procedure more convenient, as many potential recipients are not aware of the online system and how to make an application using the platform. Not only are the service seekers, but lawyers are also unwilling to use the digital system.<sup>51</sup> The problem of inaccessibility generates another barrier for service seekers in claiming the service and, thus, confronts their capacity to participate in the legal process.

In accordance with the statistics of the NLASO, the number of legal aid recipients has been following an ascending trend. For example, the number of legal aid recipients is 1,55 038 in the financial year 2023-24, whereas the number was 92,585 in the financial year 2019-2020.<sup>52</sup> This can be explained in the way that the service receivers are becoming more aware of this mechanism and approaching respective authorities to make use of it. However, research discloses that steps taken by the government for the publicity of the programme are inadequate and, in some cases, sporadic and lack consistency.<sup>53</sup> Thus, the level of public awareness about the system is low, and most people are ignorant about it. According to Akter, inadequate publicity takes place primarily due to the budgetary restrictions of the government.<sup>54</sup> The programme is circulated largely in urban areas and hence, does not reach remote areas. It is also stated that those who have some knowledge about the programme are not manifestly confident about its scope and functions.<sup>55</sup> Even a significant number of lawyers, as Tahura and Alam state, are not aware of the government-operated legal aid system of Bangladesh.<sup>56</sup> The government, thus, is failing to ensure wide coverage of the service and to bring a positive attitude among the potential service recipients to become motivated and make use of the system. The limited budget allocation in the legal aid sector also raises another concern- service recipients do not receive full coverage of the cost of litigation. Rather, they are required to bear some costs by themselves.<sup>57</sup> It should be noted that LASA allows lawyers' fees as prescribed by the Regulation and other related expenses as part of the legal aid service. These include fees for vakalatnama, costs for the copy or order of the court and other

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<sup>51</sup> Tahura and Alam (n 45) 12.

<sup>52</sup> 'Annual Reports' (*National Legal Aid Services Organization*) <[https://nlaso.gov.bd/site/view/annual\\_reports/](https://nlaso.gov.bd/site/view/annual_reports/)> accessed 03 June 2025.

<sup>53</sup> Akter (n 47) 263–64.

<sup>54</sup> *ibid.*

<sup>55</sup> *ibid.*

<sup>56</sup> Tahura and Alam (n 45) 11.

<sup>57</sup> *ibid.* 10.



incidental expenses. However, some costs involving the cost for bail bond and power of attorney are not granted to legal aid seekers.<sup>58</sup> Also, they need to spend more on food and travel during the legal process. This causes hardship for the recipients and overburdens them in conducting the litigation. Moreover, the Bangladeshi legal aid system is not armed with necessary logistics, manpower and infrastructural facilities.<sup>59</sup> Akter has found that clients suffer awkwardly from the absence of waiting rooms. Even worse, there is no facility to ensure professional and confidential communication between lawyers and legal aid seekers.<sup>60</sup> The meaningful delivery of service is hindered in this way, and it manifests the government's want of commitment towards the premise of legal aid. In other words, it frustrates the goal of securing justice fairly.

The HRBA necessitates the government to ensure accountability by the establishment of effective supervision mechanisms in terms of the standards of international human rights. The violation of rights, therefore, calls for adequate remedial measures along with the adoption of relevant laws and policies on the part of the government. In Bangladesh, the LASA prescribes a specific eligibility criterion for legal aid lawyers. Lawyers who endure experience of five years are qualified to be legal aid providers. However, research identifies that the procedure of selecting lawyers is inappropriate and does not follow any standard procedure.<sup>61</sup> In addition, senior and skilled lawyers are not interested in becoming panel lawyers. Rather, inexperienced lawyers with a minimum number of clients show their interest in serving the legal aid clients. They are interested in delivering the service merely to survive in the legal profession.<sup>62</sup> Some lawyers also become panel lawyers for different considerations; they become panel lawyers only to draw reputation or to earn membership in various charitable or social organisations.<sup>63</sup> The legal aid system, thus, suffers from inefficiency and a lack of expertise among service providers.

The issue of high-quality service from legal aid lawyers has been a matter of serious concern in Bangladesh. Khair has noted that legal aid lawyers are insincere, lack requisite commitment, and, therefore, do not provide clients with service as is necessary.<sup>64</sup> Moreover, they are found absent on case dates comparatively more than privately engaged lawyers.<sup>65</sup> In other words, the quality of service from legal aid lawyers is ineffectual and does not meet the needs of the service seekers. The main reason for the general disinterest in legal aid services

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<sup>58</sup> Akter (n 47) 265.

<sup>59</sup> *ibid* 266–67.

<sup>60</sup> *ibid*.

<sup>61</sup> *ibid* 269.

<sup>62</sup> *ibid*.

<sup>63</sup> *ibid* 269–270.

<sup>64</sup> Sumaiya Khair, *Legal Empowerment for the Poor and the Disadvantaged: Strategies Achievements and Challenges. Experiences from Bangladesh* (UPL 2008) 235–236.

<sup>65</sup> Tahura and Alam (n 45) 12.

on the part of lawyers is the excessively low payment.<sup>66</sup> It is an accepted fact that the quality of lawyers' service and sincerity towards the proceedings are influenced by the payment made to them.<sup>67</sup> However, the fixed rate received by the Bangladeshi legal aid lawyers is unreasonably poor and generates dissatisfaction among the panel lawyers. This creates a general indifference among legal aid lawyers and ultimately leads to the delivery of service that is manifestly inept and deficient. Again, even if the government is under an obligation to ensure a robust monitoring mechanism to figure out and oversee lawyers' service, the Bangladeshi legal aid system has failed to establish such a mechanism. More specifically, LASA does not prescribe any provision that might be used to bring any punitive action against legal aid lawyers for violating the recognised professional codes of conduct. According to Tahura and Alam, there is only one remedy available to an aggrieved client. He/she can lodge a written allegation to the legal aid committee, and the committee merely changes the assigned lawyer without taking any action against him.<sup>68</sup> All these indicate that the government is not able to ensure the accountability of legal aid providers under the current legal aid system of Bangladesh.

## Conclusion

The HRBA aims to empower the rights-holders in a fashion that they become able to ask for their rights and entitlements per the provisions of the law and concerned policies. It depends on five core principles commonly known as PANEL. It also investigates the capacity and functions of the duty-bearers to find out whether they can perform their obligations in line with those recognised principles. In this given context, the article has investigated the legal aid system of Bangladesh and demonstrated that the system has progressed substantially in terms of the adoption of relevant laws and policies. The government has also taken various positive initiatives to implement the programme at the national level. However, the system is suffering from various drawbacks that not only deny the principles of the HRBA but also hinder the poor's ability to obtain justice. In particular, the restricted eligibility criterion limits the capacity of deserving recipients to ask for the service. This negates the principle of equality and thus creates a barrier for the impoverished to participate in the legal process. The eligibility test needs serious adjustment, considering the social and economic circumstances of the country and the prevailing exigencies of applicants. Moreover, the threshold should also incorporate a merit test in examining the eligibility of potential recipients. The use of digital technology should be made more user-friendly by making the process uncomplicated. Both lawyers and clients should also be given adequate training in its use and implications. Inadequate publicity can be counted as the principal factor for the limited use of

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<sup>66</sup> Akter (n 47) 270-1.

<sup>67</sup> *ibid* 271.

<sup>68</sup> Tahura and Alam (n 45) 14.

legal aid services. The government should take more organised and practical measures for the widespread publicity of the programme. It will motivate prospective beneficiaries in applying for the service and thus bring them on par with the affluent in the justice system. The accountability of lawyers should be ensured by adopting efficient oversight mechanisms. Clients should also be allowed to make formal complaints against lawyers for following any unfair means. The budget allocation in the legal aid sector should be increased to meet the needs of clients and lawyers and to cover all related expenses of the litigation process. Above all, the government should implement the mechanism considering the key principles of the HRBA in substance and practice.

