

## EVALUATION OF THE ROLE OF THE GOVERNMENTAL ORGANIZATIONS IN ENSURING ACCESS TO JUSTICE IN BANGLADESH

*Muhammad Azizur Rahman*

Department of Law, ASA University, Bangladesh

*To ensure proper functioning of the society, peaceful atmosphere and balanced rhythm of life the notion of justice is of pivotal importance. To commit wrong is a natural tendency of human being and hence the necessity of justice is greatly felt. It is to be recognized, to ensure a balanced atmosphere throughout the society no wrong should be left unredressed. The right of the victim to just remedy should be placed on the top position in the list of essential requisites to form a balanced and just society. In this respect, it is to be noted that, only black letters of law and formal justice dispensation mechanism, without ensuring access to justice are bound to fail to procure expected outcome. Therefore, access to justice is of pivotal importance in each and every society. In absence of it victims get frustrated and the violators become arrogant. Having due regard to the importance of the notion of access to justice this thesis is intended to evaluate the actual state of this right in Bangladesh and the role of Governmental organization in this respect.*

### INTRODUCTION

Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with existing rules and principles. To build a peaceful and a balanced society, the necessity of the right to access to justice is beyond controversy. In a country like Bangladesh where corruption, nepotism, political interference in each and every field, lack of transparency and accountability are common phenomena there the necessity of such a right is greatly felt. Having due regard to all these factors, this thesis will endeavour to present the actual scenario of this right in Bangladesh and the role played by the Governmental organizations in ensuring this right.

### MEANING OF THE EXPRESSION 'ACCESS TO JUSTICE'

The expression access to justice is of diverse connotation. This expression is basically used to refer to distinct matter on the basis of distinct context. That means, the meaning of this expression varies from facts to facts. In view of J. McBride, the absence of specific definition of this expression has rendered this expression remarkably explicit on the basis of factors involved in a particular case<sup>1</sup>. In view of UNDP, access to justice can be defined as the

<sup>1</sup> J. McBride, 'Access to justice under International Human Rights Treaties', Parker School Journal of International Law, Vol. 5, 1998, Nos. 1-2.

‘ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievance in accordance with human rights principles and standards’<sup>2</sup>.

According to the United States Institute of Peace, ‘access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards’<sup>3</sup>. As per international and European human rights law, the concept of access to justice requires states to secure each individual’s right to move to the court– or, in some cases, an alternative dispute resolution mechanism – to obtain a remedy if it is found that the individual’s rights have been infringed. Thus it is also an enabling right that assists individuals to secure other rights<sup>4</sup>.

Thus, the expression access to justice indeed means removal of barriers including social, legal, financial etc. from the way of ensuring justice to someone who has taken resort to due course of law. In 1994, a committee named by the Access to Justice Advisory Committee was formed by the Commonwealth Government. In view of that committee, the notion of access to justice basically consists of three components<sup>5</sup>-

- Equality in securing access to legal services: As per the view of the Access to Justice Advisory Committee, equality will have to be ensured in securing access to legal services. It means, every person, irrespective of financial capability, will have to be given the access to standard legal services or prompt and effective dispute resolution mechanisms which are prerequisites for protecting the rights of a person.
- National equality: It will have to be ensured that all persons enjoy equal access, as far as practicable, to legal services and to legal markets.
- Equality before the existing law: It will have to be ensured that all persons are equal before law and are entitled to equal opportunities in cases like, employment, education etc.

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## RIGHTS ENCOMPASSED BY THE NOTION OF ‘ACCESS TO JUSTICE’

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The following rights are encompassed by the notion of access to justice<sup>6</sup>

- i. The right to a fair trial; and

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<sup>2</sup> R. Sudarsan, Rule of Law and access to justice: Perspectives from UNDP experience, UNDP Oslo Governance Centre, quoted by Dr. S.M. Hassan Talukder, Access to Justice: Bangladesh Perspective, Bangladesh Law Research Centre, Dhaka, 2010, p. 2.

<sup>3</sup> <http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-law/access-justice>

<sup>4</sup> Handbook on European Law relating to access to justice, Luxembourg: Publications Office of the European Union, 2016, p. 16.

<sup>5</sup> Access to Justice Advisory Committee, Access to Justice: An Action Plan, AGPS, Canberra, 1994, p. xxx, quoted by Dr. S.M. Hassan Talukder, Access to Justice: Bangladesh Perspective, Bangladesh Law Research Centre, Dhaka, 2010, p. 4.

<sup>6</sup> Ibid, p. 16.

ii. The right to an effective remedy.

### **Explanation of the right to a fair trial and of the right to an effective remedy**

It includes the right to hearing before an independent and impartial court of law. It covers the right to be advised, defended and represented by a lawyer. The basic philosophy behind this right is to provide for an opportunity to the parties to a particular suit to present his position and to defend them. On the other hand, the right to an effective remedy is an essential component of access to justice. This right empowers individuals to seek remedy for violations of their rights. Different types of remedies may redress different types of violations.

There are no requirements as regards the form of the remedy, and each and every state enjoys certain discretion in this regard. In determining what is effective, the aggregate of remedies will be considered<sup>7</sup>.

To determine effectiveness certain principles have been developed during the course of time. In the case of *Vuckovic and Others v. Serbia*<sup>8</sup>, the European Court of Human Rights viewed, in order to be treated as an effective remedy, a remedy is required to be accessible; capable of providing redress in respect of the applicant's allegation and to offer reasonable prospects of success.

In *Golder v. the United Kingdom*<sup>9</sup>, the applicant was a prisoner who wanted to bring libel proceedings against a prison officer who accused him of taking part in a prison riot. He was refused permission to consult a lawyer, which he claimed hindered him in bringing an action in the courts.

The European Court of Human Rights held that Article 6 sets out the procedural guarantees available to parties in litigation. This would be meaningless without access to court. Thus, the right of access to a court is implied in the right to a fair trial under Article 6 (1) of the European Convention on Human Rights.

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### **OBJECTIVE BEHIND THE CONCEPT OF ACCESS TO JUSTICE**

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The notion of access to justice intends to empower individuals to shield themselves against violation of their rights, to address civil wrongs, to render executive power accountable and to protect themselves in criminal proceedings. It is a pivotal element of the rule of law and cuts across civil, criminal and administrative law. Access to justice is both a process and a goal, and is essential for individuals seeking to take advantage from other procedural and substantive rights guaranteed for them<sup>10</sup>.

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<sup>7</sup> Handbook on European Law relating to access to justice, Luxembourg: Publications Office of the European Union, 2016, p. 93.

<sup>8</sup> No. 17153/11, 25 March 2014, Paras. 71 and 74.

<sup>9</sup> No. 4451/70, 21 February 1975.

<sup>10</sup> Ibid, p. 16.

Thus the concept of access to justice is basically intended to open up the legal ways and means to someone who will take resort to such ways and means. This concept aims at facilitating the way of securing remedy provided by law.

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## RIGHT TO ACCESS TO JUSTICE: PERSPECTIVE BANGLADESH

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Bangladesh is a densely populated country with 1063 people in each square kilo miter. Factors like corruption, inefficiency of the persons involved in dispensation of justice including the lawyers, judges, persons employed in court, absence of fairness have rendered justice delivery system in Bangladesh to be plausible and dilatory. Because of factors like delay, muscle power, nepotism and corruption people become reluctant to take legal action in case of violation or deprivation of their right. Thus, having due regard to the factors of this nature, the expression of access to justice can be defined as removing of barriers, substantive or procedural, from the way of dispensation of justice with a view to making it easily accessible to the poor people.

### **Assessing the importance of access to justice in Bangladesh:**

It is an established truth that for ensuring proper development in a country, rule of law and access to justice should be ensured. Development should consist of both material and abstract elements. Material development can't sustain without abstract development. Material development refers to development basically in case of infrastructure. On the other hand, abstract development refers to development in case of standard of democracy, rule of law, access to justice etc. Material and abstract development are supplementary to each other. While material development ensures smooth living, abstract development ensures peaceful environment, law and order situation in society.

It has already been mentioned, Bangladesh is a densely populated country with 1063 people in each square kilo miter. Now-a-days, by dint of remittance and contribution of the RMG sector, Bangladesh has witnessed massive development. But, it must be remembered that after independence, Bangladesh has witnessed oligarchic form of government, martial law regimes and emergency situations for several times. Because of these historical realities, abstract development could not have been achieved up to the mark. All these historical realities have rendered abstract development i.e. development in the standard of democracy, rule of law, human rights a high demand of time. Besides, factors like corruption, nepotism, muscle power which are common characteristics of our country have rendered abstract development an unavoidable necessity.

Poverty which is another reality of our country reiterates the necessity of access to justice in Bangladesh. Since, because of poverty, poor people can't take legal action in case of deprivation/violation of their rights. Besides, on account of dilatory justice delivery system, such people become reluctant to initiate/ continue their legal fight with a view to establishing their rights. In most of the cases, they do not have the capacity to maintain the cost involved in a particular suit i.e., Court fees, fees of advocate, fees involved in serving process, etc. All such factors have rendered the concept of access to justice very important

and in this respect, initiatives taken in the name of legal aid deserves a remarkable appreciation.

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## SCOPE OF ACCESS TO JUSTICE UNDER THE DOMESTIC LAWS OF BANGLADESH

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### Scope provided under the Constitution of the People's Republic of Bangladesh:

The Constitution of the People's Republic of Bangladesh, as per Article 7 of it, is as the solemn expression of the will of the people, the supreme law of the land and any law which is found to be inconsistent with the provisions of this Constitution will be void to the extent of its inconsistency. The Constitution in providing scope of access to justice lays down the following provisions-

Article 27 provides, 'all citizens are equal before law and are entitled to equal protection of law'. It is to be noted, this article provides for provisions as regards two matters i.e. equality before law and entitlement to equal protection of law. In order to ensure equal protection of law, access to justice will have to be ensured at first and the notion of equality before law requires that, each and every person will be treated equal in all cases including the case of securing access to justice.

In providing scope of access to justice, Article 31 of the Constitution of the People's Republic of Bangladesh provides, 'to enjoy the protection of the law and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever 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'. This Article unambiguously deals with the right of every citizen of Bangladesh and of every other person for the time being within the territory of Bangladesh to be treated only in accordance with law. The expression treatment in accordance with law requires that no action can be taken in respect of a particular person in violation of existing law. If anything is done in respect of a person in violation of provisions of existing law, then the person aggrieved will have the right to access to justice. Thus the expression treatment of law inherently encompasses the right to access to justice.

Article 32 of the Constitution of the People's Republic of Bangladesh in providing scope of access to justice provides, 'no person shall be deprived of life or personal liberty save in accordance with law'. This Article is basically intended to grant protection of right to life and personal liberty. In doing that, this Article provides, derogation of these two rights can be maintained only in cases where the derogation is made in accordance with law. Thus, this article provides for scope to question the legality of any action taken in derogation of the right to life and liberty of any particular person. By empowering the person aggrieved to raise question of this nature, this Article has indeed secured his right to access to justice.

Article 44(1) of the Constitution of the People's Republic of Bangladesh in providing scope of access to justice provides, 'the right to move the High Court Division in accordance with Clause (1) of Article 102, for the enforcement of the rights conferred by this Part is guaranteed'. It is to be noted, Part-III of the Constitution of the People's Republic of Bangladesh lays down provision as regards fundamental rights guaranteed for the citizens and for every person residing in Bangladesh for the time being. If any of the rights granted under this chapter is violated, then the person aggrieved has been conferred with the right under this Article to move to the High Court Division to secure his remedy under Article 102 of the Constitution. Thus, this Article provides for provisions as regards proper forum where a suit is to be instituted to secure remedy for violation of any fundamental right granted to a person under Chapter-III of the Constitution of the People's Republic of Bangladesh. In doing this, this article indeed has secured the right to access to justice.

#### **Scope of access to justice under other enactments:**

Besides the Constitution of the People's Republic of Bangladesh, certain other laws have laid down provisions with a view to secure the right to access to justice. For instance-

- **The Code of Criminal Procedure, 1898 [Act No. V of 1898]:** This is indeed a procedural law. This law provides for provisions as regards procedure to file and continue a criminal case. Offences under the Penal Code, 1860 [Act No. XLV of 1860] and certain other laws are required to be investigated, enquired into and tried under this Law. This Code is intended to substantiate the presumption of innocence, the right to a fair trial and hearing before an impartial and independent body. Under this enactment, Court of Sessions Judge, Court of Additional Sessions Judge, Court of Joint Sessions Judge and Court of Judicial Magistrates have been established to secure access to justice in case of criminal offence.
- **The Code of Civil Procedure, 1908 [Act No. V of 1908]:** This is another procedural law. This law provides for provisions as regards procedure to file and continue a civil case. As per section 9 of this Code, the courts shall have jurisdiction to hear and settle all suits of civil nature. Thus, all suits of civil nature are required to be investigated, enquired into and tried under this Law. This Code is intended to substantiate the right to a fair trial and hearing before an impartial and independent body. Under the Civil Courts Act, 1887 to hear and settle suits of civil nature the Court of District Judge, the Court of Additional District Judge, Court of Joint District Judge, the Court of Senior Assistant Judge and the Court of Assistant Judge have been established.
- **The Administrative Tribunals Act, 1980 [Act No. VII of 1981]:** Article 117 of the Constitution of the People's Republic of Bangladesh lays down provisions as regards establishment of Administrative Tribunal to hear and settle applications made by any person employed in any service of the Republic or any statutory public authority. As per section 4 of the Administrative Tribunals Act, 1980 such an application can be made as regards the terms and conditions of the service of such a person. The philosophy behind the establishment of such tribunal is to provide for scope of access

to justice for persons employed in any service of the Republic or of any statutory public authority.

- **The Bangladesh Labour Act, 2006 [Act No. XLII of 2006]:** Section 214 of the Bangladesh Labour Act, 2006 has established the Labour Court with a view to settle disputes arising out of employment of labour and industrial disputes. Section 210 of the Bangladesh Labour Act, 2006 has provided for scope to resolve industrial disputes through Alternative Dispute Resolution (ADR) Mechanism. The intention behind the enactment of such provision is to ensure the right of Labour to access to justice.
- **The Family Courts Ordinance, 1985 [Ordinance No. XVIII of 1985]:** This Ordinance has laid down provisions as regards establishment of Family Court to settle family matters. As per Section 5 of this Ordinance a family court is empowered to deal with matters like dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children. In order to ensure prompt solution, the Ordinance in its sections 10, 13 and 23 has provided for scope to resolve family disputes through Alternative Dispute Resolution (ADR) Mechanism.

Besides the laws mentioned above, there are certain other laws which have laid down provisions providing for scope of access to justice and these are as follows-

- To recover the loans of financial institutions, the Artha Rin Adalat Ain, 2003 [Act No. VIII of 2003] has laid down provisions as regards establishment of Artha Rin Adalat.
- To deal with environmental matters the Environment Court has been established under Section 4 of the Environment Court Act, 2000.
- To ensure prompt disposal of disputes of small amount, S. 25 of the Small Causes Courts Act, 1887 [Act No. IX of 1887] has empowered the Joint District Judge, Senior Assistant Judge and Assistant Judge to deal with the cases under this Act.
- To deal with the offences under the Nari O Shishu Nirjatan Daman Ain, 2000 [Act No. VIII of 2000] the Nari O Shishu Nirjatan Daman Tribunal has been established under Section 26 of the Act.
- To deal with cases under the Special Powers Act, 1974 [Act No. XIV of 1974] a Special Tribunal has been established under the Act.

The Courts and Tribunals mentioned above are some of the remarkable instances of the mechanism intended to secure access to justice under domestic laws of Bangladesh. Thus, diverse courts and tribunals having diverse jurisdictions have been established under distinct laws mentioned above with a view to resolve disputes promptly and to ensure the right to access to justice effectively.

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## EVALUATION OF THE ROLE OF THE GOVERNMENTAL ORGANIZATIONS IN ENSURING ACCESS TO JUSTICE

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In Bangladesh, there are diverse Government organizations which have been conferred with the duty to ensure access to justice. Among these some of the most remarkable organizations are as follows-

- Ministry of Law, Justice and Parliamentary Affairs;
- Human Rights Commission;
- The Judiciary;
- Office of the Attorney General;
- Office of the Ombudsman;
- Law Reforms Commission;
- Police Forces.

Among the institutions mentioned above, the role to be played by the Ministry of Law, Justice and Parliamentary Affairs and Human Rights Commission will be evaluated briefly in the following paragraphs-

#### **Role of the Ministry of Law, Justice and Parliamentary Affairs:**

In case of performing the legislative task of the government, the Ministry of Law, Justice and Parliamentary Affairs is responsible to play a great role. This Ministry consists of two wings i.e. the Law and Justice Wing and the Legislative Drafting Wing. Among the duties and tasks of this Ministry the most remarkable are as follows<sup>11</sup>-

- This Ministry is conferred with the duty to render advice on all legal questions to interested Ministries, divisions and offices of the government;
- This Ministry has also been conferred with the duty to prepare/draft and to publish any legal instrument;
- This Ministry has been placed under the duty to prepare all contracts and deeds of the government;
- This Ministry has also been conferred with the duty to translate laws and other legal instruments.

#### **Role of the Human Rights Commission:**

Under the National Human Rights Commission Ordinance, 2007 [Ordinance No. XL of 2007] in the year of 2008 a Human Rights Commission was established in Bangladesh. The objective behind the establishment of this Commission is to monitor the state of human rights throughout the country and to help the poor and disadvantaged in case of ensuring access to justice<sup>12</sup>.

#### **Role of the Judiciary:**

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<sup>11</sup> Dr. S.M. Hassan Talukder, Access to Justice: Bangladesh Perspective, Bangladesh Law Research Centre, Dhaka, 2010, p. 31.

<sup>12</sup> Ibid, p. 32

The judiciary is said to be the protector and guardian of the rights granted to the citizen of a particular country. If any right is granted to the citizens of Bangladesh, such citizens have the right to move to the proper court to prevent the violation or to enforce their right. Art. 112 of the Constitution of the People's Republic of Bangladesh lays down, all authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court of Bangladesh. If a person is deprived of any fundamental right, then the High Court has been invested with the power to issue suo motu rule.

Thus, in Bangladesh the above mentioned institutions have been established with a view to securing the right to access to justice. But, these institutions can't play their role properly because of insufficiency in funding and of staff, corruption, political pressure, lack of accountability and transparency, lack of cooperation from other departments of the government etc.

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## MAJOR PROBLEMS

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Major problems that hinder people's access to justice in Bangladesh are as follows-

**Problems involved with the Court and with concerned Ministry:** In Bangladesh, a case takes an unreasonable time to get its final verdict. Because of this dilatory procedure, the parties of a particular case need to spend more money. Besides, the question of inadequacy in the number of competent judges and lawyers can't be negated. On account of insufficient funding training program can't be carried out for the judges and other persons employed in court. Besides, the Ministry of Law, Justice and Parliamentary Affairs which is conferred with the duty to supervise the Court is beset with the similar problems including the inadequacy of funding, staff, infrastructure etc. On account of all such shortcomings, prompt and effective remedy can't be ensured in our country. This reality ultimately discourages people to take legal action in case of violation or deprivation of their right<sup>13</sup>.

**Problems which are institutional in nature:** In Bangladesh, there are lots of legal provisions having ambiguous expression. The judges are reluctant to apply international norms. Besides, there exists a mentionable lack of co-operation among diverse government institutions conferred with the duty to ensure access to justice of the people. All these realities ultimately hinder people's right to access to justice<sup>14</sup>.

**Problems attributable to the society and culture:** In Bangladeshi society as the personal experience of our daily life witnesses because of the existence of discriminatory and unfair social and cultural norms access to justice can't be ensured effectively. Besides, on account of hostile societal attitudes towards disadvantaged groups access to justice can't be secured. In addition to these, lack of legal awareness in our society, the habit of hiding the fact of

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<sup>13</sup> Dr. S.M. Hassan Talukder, Access to Justice: Bangladesh Perspective, Bangladesh Law Research Centre, Dhaka, 2010, p. 55.

<sup>14</sup> Ibid, p. 54.

an occurrence particularly when the victim belongs to the feminine gender are the impediments that are hindering the right to access to justice<sup>15</sup>.

Besides there are certain other problems that are hindering the right to access to justice in Bangladesh are as follows<sup>16</sup>-

- Absence of a human rights approach in the justice dispensation system;
- Lack of transparency and accountability in the discharge of duties of concerned officials;
- Absence of sufficiently resourced legal aid system;
- Absence of prompt and effective enforcement of decision of courts;
- Corruption, politicization of legal sector, nepotism etc.

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### STEPS TAKEN SO FAR TO ENSURE ACCESS TO JUSTICE

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In order to ensure access to justice in Bangladesh, the following steps have been taken-

- Under the National Human Rights Commission (NHRC) Act, 2009 the National Human Rights Commission has been established in Bangladesh which is supposed to play a mentionable role to ensure access to justice.
- The Legal Education Training Institute, Bangladesh is conducting training program for the persons involved in the justice dispensation system including the judges, lawyers and other administrative officers of court.
- In order to increase awareness among the public and to secure access to existing legal edifice of Bangladesh, the ICT Cell of the Ministry of Law, Justice and Parliamentary Affairs has been established which is supposed to play a great role in ensuring access to justice.
- In the famous case of *Dr. Mohiuddin Farooque v. Bangladesh*<sup>17</sup> popularly known as the FAP-20 case the notion of 'locus standi' was interpreted broadly by the Appellate Division of the Supreme Court of Bangladesh. After that the number of cases instituted in Public Interest has increased significantly. Through Public Interest Litigation mechanism, disadvantaged people's right to access to justice is getting ensured.

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### STEPS RECOMMENDED TO ENSURE ACCESS TO JUSTICE IN BANGLADESH

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In order to ensure access to justice in Bangladesh, the following steps can be taken-

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<sup>15</sup> Ibid, p. 55.

<sup>16</sup> Ibid, p. 47.

<sup>17</sup> 49 DLR (AD) para 71, pp. 1-26 Quoted by Dr. S.M. Hassan Talukder, *Access to Justice: Bangladesh Perspective*, Bangladesh Law Research Centre, Dhaka, 2010, p. 18.

- Co-operation among different departments and offices of the government is to be ensured;
- Speedy and less expensive justice delivery system should be ensured;
- Prompt and effective enforcement of decrees and orders of the court should be ensured;
- Independence in fact of the judiciary should be ensured;
- Sufficient funding, enough staff should be ensured in relevant departments and offices;
- To appoint qualified and efficient persons to the concerned departments and offices through fair process;
- To ensure proper and expected functioning of these organizations through uninterrupted surveillance and inspection;
- To run these organizations independently and to ensure their independence from any political influence, nepotism, corruption etc.
- To ensure that the fund allocated to any particular organization is being used solely for authorized purpose.
- To ensure sufficient legal aid for the poor and disadvantaged groups and
- To strengthen the oversight mechanism etc.

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## CONCLUDING REMARKS

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It is an undisputed truth that, in absence of effective access to justice victims get frustrated and violators become arrogant and the society gets collapsed. In a country like Bangladesh because of factors like corruption, nepotism, lack of transparency and accountability and political influence the necessity of the right to access to justice is greatly felt. Diverse Government organizations and institutions including The Judiciary, the Ministry of Law, Justice and Parliamentary Affairs, the office of the Attorney General for Bangladesh should play vital role in ensuring the right to access to justice. The development of a sympathetic and humane attitude among different persons involved with the mechanism of dispensation of justice including the judges, lawyers, police officers, administrative staff of the Court is a sine qua non in the way of establishing this right. The contribution rendered in this respect by the notion of 'Pro bono legal services', 'Alternative Dispute Resolution' (ADR) mechanism and the Legal Aid Scheme should be highly appreciated.