

Access to Justice in Rural Bangladesh: A Review on Village Court and its Effectiveness

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Abstract: Village court is a hybrid of formal and informal dispute resolution mechanisms in rural Bangladesh. Bangladesh govt. has initiated various projects to make the village court more effective in order to meet the demand of access to justice for rural people. The main objective of the article is to review the weaknesses the court has and the challenges the court is facing in addition to its effectiveness. The study is based on secondary data, i.e. books, journals, newspapers and magazines. The study found that village court can save money and time as well as release the burden of formal judicial system but it faces some challenges like legal, institutional and logistics etc. as well.

Keywords: Access to Justice, Rural Bangladesh, Village Court.

Introduction

Rural justice system of Bangladesh has a long and eventful history. Village Court (VC) is a part of rural justice system in Bangladesh. There are three forms of alternative dispute resolution (ADR) in rural Bangladesh. These are- traditional *Shalish*, NGO-*Shalish* and Village Court. Village Courts are distinct form of *Shalish*, formalized by legislation. It is a different judicial and dispute resolution system apart from informal *Shalish* and formal judicial structure. Village Court can be explained as a hybrid form of formal and informal dispute resolution mechanisms. The Government of Bangladesh (GoB) enacted various laws, ordinances and rules relating to the Village Court system over the years. The Village Court has been constituted under the legal framework of the Village Courts Act of 2006, and administered by *Union Parishads* and local leaders. Though GoB has initiated various projects to make the Village Court more effective, it is found that the Village Court has still failed to meet the demand of access to justice adequately for rural people in a reasonable way and comfortable manner (Moran, 2015). There are some constraints that are impeding the implementation of the core objectives of Village Court.

Methodology

The study is mainly based on secondary data. Secondary data have been collected from relevant literature i.e. books, journals, periodicals, newspapers, online sources and websites. In addition, the authors reviewed various types of documents especially related to village court developed by UNDP and Bangladesh government. This study is a literature review of existing national and international literature (such as government

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reports, donor evaluation papers, research articles and NGO reports) on Village Court in Bangladesh.

Conceptual Framework: Access to Justice

Access to justice is one of the basic principal of the rule of law. It includes the whole range of laws, procedures and institutional arrangements through which justice can be delivered to the people in efficient and effective manner, and it also denotes the instrumentalities by which citizens can reach the courts, lawyers, legislatures, judges and administrative agencies for both substantive and procedural justice (Faruque & Saha, 2006). According to the access to justice advisory committee of the Commonwealth Government access to justice involves-i. equality of access to legal service; ii. national equity; and iii. equality before law (Islam, 2011).

Access to justice is the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standard (UNDP, 2005). This definition describes people's ability to solve disputes and reach adequate remedies for grievances, using formal or non-formal justice systems (UNDP, 2012). Access to justice requires more than being able to present a grievance in front of a court but includes an effective remedy whereby your right is translated into reality. Therefore, access to justice is associated with the ability to bring a grievance before court, including the right to a fair hearing and an effective remedy (Hossain, 2012).

In March 2012, the US Department of Justice established the Access to Justice Initiative (ATJ) "to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers" (US Department of Justice, 2010). This initiative was mainly guided by three principles such as:

- Promoting Accessibility — eliminating barriers that prevent people from understanding and exercising their rights.
- Ensuring Fairness — delivering fair and just outcomes for all parties, including those facing financial and other disadvantages.
- Increasing Efficiency — delivering fair and just outcomes effectively, without waste or duplication (US Department of Justice, 2010).

Article 27 of Bangladesh constitution recognizes access to justice as a fundamental right through its provision that all citizens are equal before law, equal protection of law and the right to fair trial is protected (GoB, 2015). Justice must be equal for both rich and poor, and every one must have the right to get justice through easy, quick and effective way. Though Bangladesh Constitution guarantees access to justice for all but existing judicial system partially failed to ensure justice for all equally.

Brief Background of Village Court

Traditionally there are two options for rural poor people to access justice. One is the formal state owned justice system which is related to national judicial system, and another

is informal justice system which is locally organized by local *matobbar* or *sarder* (leader). It is evident that formal state owned justice system is not easily accessible for the rural poor people due to different barriers. Formal justice system of Bangladesh is overburdened with pending cases. A total of 33,09,789 cases are pending in higher and lower courts across the country up to December 31, 2017 (New Age, 2018) which were 1,834,965 by the year end of 2008 (Saadi et. al, 2014). According to the court records, unsettled cases in the country increased by 75 per cent between 2008 and 2015 (Prothom Alo, 2018). This huge number of pending cases cause delay in getting justice and hinders the access to justice for all people of Bangladesh as well as for rural poor people as the common proverb says, “justice delayed, justice denied”. The access to the formal judiciary system is also extremely limited for the rural people as most of the formal courts *i.e.* lowest formal courts are at the district level. Therefore, the rural poor people have to bear transport and logistics costs to get judicial service that put extra burden on them (Siddiqi, 2003). There are some other elements which create a barrier access to justice, such as delaying in mitigation process, prohibitive cost of litigation, procedural complexity, backlogging of cases, corruption in judiciary, lack of efficient independent and dutiful judges and lawyers, lawyers’ economic interest in the litigation, non-availability of legal aid, non-existence of separate court for the separate subject matter, centralization of judiciary (Islam, 2011). All these drawbacks create an obstacle to easy access of judiciary to the mass people. Due to these difficulties of the formal judicial system, the rural people mostly depend on the traditional judicial system which is formally called *Shalish*.

The overall rural judicial system in Bangladesh can actually be classified into the following three categories. 1. Traditional *Shalish* - local leader; 2. NGO *Shalish* - local leaders, supported by NGOs; 3. Village Court - UP politicians according to law (Hasan, Rose and Khair, 2015).

Large segments of the population who lack information or means to surmount the significant substantive and procedural barriers seek informal mechanisms (*Shalish*) to redress their grievances (Sarker 2013). *Shalish* generally occurs at the village level, where the local leaders (*matobbar* or *sarder*) hold an informal meeting to resolve the dispute or address an offence. Being an informal system, *Shalish* can take on a number of forms ((Hasan, Rose and Khair, 2015). Traditional *Shalish* has some advantages such as general accessibility, low cost and quick disposal, as it resolves the conflicts in an amicable manner (Islam, 2011). Despite these advantages, the existing literature have shown that *Shalish* perpetuates in existing rural power structures. These are often undemocratic and not properly participatory. It is evident that rural women and girls, the most marginalized such as landless people are deprived from getting real justice form *Shalish* (Ahmed and Islam, 2013). Regarding extra and pre-marital relationship dispute resolution, *Shalish* tends to enforce traditional, extra-legal retrogressive norms (Ahmed and Islam, 2013). Even though in the past, traditional *Shalish* had been considered as the most effective means to resolve disputes, in recent times, the significance, importance and effectiveness of *Shalish* are declining. The main reasons behind this disgraceful status of *Shalish* are as a) biasness, b) corruption, c) gender discrimination, d) lack of legal awareness, e) influence of money and power, f) changing social norms (Jahan, n.d.).

There is another form of alternative dispute resolution in rural Bangladesh that is supported by NGOs called NGO-*Shalish*. In recent years, NGOs have played increasing role in initiating and facilitating *Shalish*. Though the approaches vary from organization to organization NGO-*Shalish* has developed the *Shalish* system through the training of *Shalish* panels, increasing participation of women, keeping the record of *Shalish* procedures and involving their staff to resolve dispute (Golub, 2013). It is seen that NGO-*Shalish* is more effective in delivering a degree of justice and equitable in treating of women than the traditional *Shalish* and UP *Shalish*-Village Court (Haque et al., 2002 cited in Golub, 2013). But this NGO-*Shalish* covers only a few regions of Bangladesh. Madaripur Legal Aid Association (MLAA) is one of the well-known NGOs that supports rural disputes resolution. Other organizations such as Gonoshahajjo Sangstha (GSS), Gender and Social Justice Programme of Ain O Shalish Kendra (ASK), Bangladesh National Women Lawyers Association (BNWLA), BRAC and Banchte Shekha have the practices of *Shalish* to provide legal aid service to the community people, especially women and helped to organize and train local committees to monitor *Shalish* (Kundu, Khan and Samadder, 2010). Besides them, another form of *Shalish* in rural Bangladesh that is formalized by the legislation is called Village Court.

Formation and Objective of Village Court

The history of Village Court is related to the enactment of the Bengal Village Self Government Act, 1919 that established union courts dealing with offences and disputes of relatively lower scale in the rural areas. After 1947 the Pakistan government enacted a new Conciliation Courts Ordinance, 1961 by replacing Bengal Village Self Government Act, 1919. This court dealt with the minor civil and criminal disputes. After independence, in order to ensure equality and justice to the rural and marginalized people, the Government of Bangladesh enacted Village Court Ordinance, 1976. Village Courts were basically established to provide villagers an alternative and less expensive means of dispute resolution near their homes (Sarker, 2013). But it became evident that the Village Court was failing to meet its objectives (Khan, 2006). Therefore, the ordinance was replaced by the enactment of the Village Courts Act, 2006. The Act was promulgated to settle petty disputes (both civil and criminal) in rural areas.

The Village Court is formed with five members, one chairman and four members. The Chairman of the *Union Parishad* (UP) shall be the Chairman of the Village Court, but where he is, for any reason, unable to act as Chairman or his impartiality is challenged by any party to the dispute, any member of the *Union Parishad* other than those mentioned under sub-section (1) of section 5 appointed in the prescribed manner, shall be the Chairman of the Village Court (GoB, 2006). Each member including the chairman has one vote and decision is taken by a vote of majority. It is an inexpensive and short process where litigants can get decision in normal cases within one month and that can be implemented within six months' maximum. There are a lot of civil and criminal offences which may be tried in the Village Court under the Village Court Act. According to Section 7, a Village Court shall have power only to pass order to pay compensation of

taka not exceeding seventy five thousand BDT in respect of the offences specified in Part I of the Schedule of the Act (GoB, 2013). Where any case falls under the jurisdiction of the Village Court, any party¹ of the case may apply to the Chairman of the *Union Parishad* with due process to establish the Village Court to try the case. Under sub-section 1 of Section 4, the Chairman of a Village Court may reject an initial complaint lodged by any party if deemed invalid. Sub-section 2 of Section 4 states that in case of such a rejection by the Chairman, an aggrieved party may apply for revision to the assistant judge². The Village Court, in any cases of crimes mentioned in the 2nd part of the schedule, may order to pay such amount of money mentioned for such crime or may order to transfer property to the real owner.

The Village Courts in Bangladesh are established with the objectives of i) providing poor villagers an easy access to justice without any cost, ii) freeing them from accepting unwanted decision given by the dominant or elite classes of village in the name of justice, and iii) enabling disputant parties to solve their problems by themselves with a little or necessary assistance from these dispute resolution forums. But as mentioned previously, the Village Court has not been that successful in achieving these broad objectives. Since the enactment of Village Court act, the actual frequency of formation and use of the VCs have been low. A study shows that the satisfaction level of its justice is under below standard that compels the parties to appeal to higher court or complain to police station (Saadi et al, 2014). Against this backdrop, to improve the functionality of the VCs, the Local Government Division (LGD), Ministry of Local Government, Rural Development and Cooperatives have initiated a project ‘Activating Village Courts Bangladesh’ (AVCB) in 351 unions with technical support from the UNDP and financial support from the European Union (EU). Now, LGD is implementing AVCB Phase-II project in 1,080 unions with the financial and technical support from the EU, UNDP.

Effectiveness of Village Court

Access to justice, and justice dispensation process are interlinked with various issues like justice seeking behaviors of the community, power structure of rural society, capacity, competency, strengths and weakness of the justice dispensing organs and the mindset of the involved with the whole process (Sarker, 2013). For measuring the effectiveness of the Village Court in ensuring access to justice, some existing data collected from secondary sources have been analysed on empirical ground are discussed below.

¹ Section 2(k) of the Act gives the definition of “Party” as any such person whose presence is to be considered necessary for the correct mediation and such other person who is attached by the Village Court for such purpose.

² Section 2(d) of the Act gives the definition of “assistant judge” as Assistant Judge having jurisdiction” means an Assistant Judge within the limits of whose jurisdiction the union concerned is situated, and where more Assistant Judges have such jurisdiction, the most junior of such Assistant Judges.

Reduction of the Load of Formal Courts

After implementing the Activating Village Court in Bangladesh (AVCB) Project a total of 45,297 cases have been reported/recorded since 2010 to 2013, of which 35,379 have been resolved and decisions of the 28,650 of the resolved disputes have been implemented (Local Government Division, 2013: Democratic Governance Cluster, 2013). Another report (Newsletter, 2013) shows that in the year of 2011, total number of new cases enrolment were 9542, whereas the number of resolved cases were 5989 and implementation of the decision of resolved case were 3953. Here percentage of the decision of the resolved cases were less than 50%. However, in 2012 the total number of new cases filed were 17197 of which 14004 cases were resolved and implementation of the decision of the resolved cases were 11500. Around 70 percent decision of the resolved cases were implemented (Newsletter 2013). At the same time Village Court paves the way for accessing to justice for the huge number of vulnerable communities. One report (LGD, 2013) shows that over 90,000 people, especially those from the vulnerable communities have extended direct access to localized justice through Village Courts. In 2013 a total of 18,348 cases were reported of which 15,276 were resolved and 13,174 of these decisions of resolved cases have been implemented in the 350 Village Courts. Since the formal court is overburden with huge number of cases, these activities of village court reduce the loads of formal court. From July 2017 to February 2018 District Courts has transferred of 2210 cases to the Village Court (GoB, 2018).

Settling dispute quickly

It was observed that Village courts are efficient, fast and accessible. Cases that filled to the Village Court are processed speedily lasting between 23-28 days from filling a petition to judgment (Smile, Issue 3, 2013: Local Government Division, 2013, Democratic Governance Cluster, 2013). On the other hand, an average time of resolving a case in the civil courts is five years (Local Government Division, 2013). The same report of LGD (2013) shows that Village Court resolved 83 percent of the 18348 cases in 2013 of which 86 percent of decision were implemented. According to the data of AVCB project Phase-II a total of 20560 cases were resolved (64% of total cases filed) of which decision of the 17405 (85%) cases were implemented thereby (GoB, 2018).

Low Cost

Observation shows that the fees of filling a case in the Village Court are very low and transaction costs (such as transport cost or survey fees) are considerably affordable. It needs only BDT 10 for filling a criminal case and BDT 20 for civil case. Usually, the nearest district court is situated long distances from village and the villagers (poor and disadvantaged) often are not affordable to travel such a long distance for travel cost and time. But Village Courts are usually situated at a short distance from the communities and not more than a few kilometers away. Therefore, the villagers can save their transport cost. A *Union Parishad* Chairperson describes “the *Union Parishad* is 2-3 km from a person’s home. They do not have any transport costs. The district court is 14 km

away and it will cost 50 takas (US\$0.65) for transport. The person has to file the case, find a lawyer and over the year the cost will run into thousands of taka” (Local Government Division, 2013).

Weakness of Village Courts

After reviewing existing literature on Village Court of Bangladesh, it is evident that though GoB has taken some initiatives to make Village Court effective, there are still some weaknesses within the system. The major weaknesses pointed out by available literature are discussed below.

- Lack of awareness and capacity to understand the legal rights, remedies and responsibilities among the people and the service providers acts as a formidable barrier in dispensing justice locally (Hossain, 2012; Sarker, 2013; Ahmed & Islam (2013). Both the members and the chairmen of the Village Court do not often understand the various clauses, sections and procedures of Village Court.
- Lack of proper training and orientation of the member of Village Court. In fact, members of Village Court have not received proper training and orientation about the Village Court (Hossain, 2012).
- Poor implementation capacities hamper the performance of the existing Village Courts (Sarker, 2013).
- Village Court runs without proper monitoring and supervision of the higher authority (Hossain, 2012).
- *Union Parishad* has not adequate resources to run the Village Court (Hossain, 2012). Village Court doesn't receive any separate budget allocation from the government.
- The UP officials *i.e.* UP Chairman, Secretary and UP members have the lack of competencies, lack of logistic support, etc (Sarker, 2013).
- Village Court is an unfunded mandate on local governments. In fact, outside of the AVCB project area Village Court has not received any fund from Local Government Ministry or from *Upazila Parishad* (Hossain, 2012).
- Financial jurisdiction is not adequate to run the court (Ahmed & Islam, 2013).
- Absence of third party to monitor its functioning resulting in bribery and corruption (Ahmed & Islam).

Strengths of the Village Court

Though Village Court has some weaknesses, it also has some strengths which if utilized properly can make it work more effectively. The major strengths are discussed below.

- Village Court has legal validity with an Act passed by Parliament but the traditional *Shalish* does not (Ahmed & Islam, 2013).
- As the petitioner and accused submit written petitions to the Chairman, they cannot change their submitted version of petitions in future (Ahmed & Islam, 2013).
- Implementation of the verdict of the Village Court is easy and feasible (Ahmed & Islam, 2013).
- The trial process of Village Court is fairer than that of the formal Court (Moran, 2015).
- Village Court is comparatively formal judicial system having strong basis of fair justice than the traditional *Shalish* (Moran, 2015; (Ahmed & Islam, 2013).
- Cases petitioned in the Village Court are settled easily as the procedure of Village Court is not complex like that of the formal state-owned court (Ahmed & Islam, 2013).
- There is less opportunity for corruption in the trial of Village Court (Moran, 2015).
- Settling a dispute using Village Court is usually much quicker than using the traditional court of low system (Moran, 2015).
- Decision-making authority is engaged by the parties in dispute; therefore, they retain the authority to decide, whereas in litigation a judge or arbitrator makes the decision.
- Village Court is far cheaper and inexpensive than taking a case to formal court (Moran, 2015).
- Every case resolved using Village Court saves the Government money and save the regular courts from being overburdened with cases.

Challenges of Village Court in Bangladesh

Though the Village Court has been introduced to dispense justice easily and accessible way for the rural poor people, it still faces many of the same challenges faced by the traditional *Shalish*, as well as new challenges that have emerged after introducing the Activating Village Court Project in Bangladesh. There are a number of common challenges which are described below.

- Ignorance and lack of confidence among the public about both the law and opportunities that exist for redressing injustices (Hossain, 2012).
- It was observed that lack of awareness of the masses (GoB, 2012) coupled with their unfavourable economic conditions, the backwardness of women and the

existence of narrow party politics is a great handicap in the working of Village Courts (Hossain, 2012).

- It was revealed from the literature review that the party alliances of the chairmen and members sometimes act against doing justice. The chairman and members sometimes hesitate to take appropriate and strong action against the influential person for fear of losing votes in the next election (Hossain, 2012). Most of the Village Court official felt that the Village Court was affected by outside influences *i.e.* local political leaders, community leaders, wealthy people and other influential individuals in the village (Harrold, 2007).
- Some research showed that Village Court often resemble the traditional form in terms of being biased as Hasmi says that “*member-matobbar-mulla*” triumvirate influences Village Court activities (Hasmi, 2000 cited in Golub, 2013).
- It was observed that if the accused belonged to the party of the chairman or members and if this relationship could not be detected before selecting the chairman and members, there is little chance of getting justice from the Village Courts (Hossain, 2012).
- Some research found that negative perceptions of both the service seekers and providers towards the legal institutes are also a great challenge is dispensing justice through Village Court (Hossain, 2012).
- Limited Jurisdiction of VC and complexity of the process is a challenge in effective functioning of Village Court (Hossain, 2012).
- Existence of extreme power imbalance between parties. A more powerful or wealthy party may press the weaker for accepting an unfair result, so that the settlement may appear consensual, but in fact result from coercion (Hossain, 2012).
- Lawyer community may be against the introduction of Village Court because they feel it will eat their share of pie. One of the main causes of delay in disposal of cases lies in dilatory tactics played by lawyer by way of seeking repeated time petitions. A successful mediation lawyer will always attract new clients wanting to try mediation who would otherwise have shunned the court (Hasan, 2008).
- The judicial process involved with Village Court sometimes seems to be prolonged. If the accused is absent during hearing, the case also gets delayed (Ahmed and Islam, 2013).

Recommendation to Make Village Courts More Effective

Village Court is a state owned rural justice system that brings justice to the doorstep of the people at low cost and in a reasonable timeframe. But the previous discussion proved that it has some constraint to ensure the access of justice for the rural poor people. Therefore, some necessary steps should be taken to make Village Court more active and functional. The available literature on Village Court shows that the following steps will make this particular institution more effective and functional.

1. *Union Parishad* should have a court room for trial of Village Courts cases. In addition, chairs, table, papers, pens, notice-board, *Ejlas*, lockers, etc. should be provided for maintaining minimum legal atmosphere.
2. The Village Court official *i.e.* UP chairman, UP members, secretaries should be provided with necessary resources, books and materials.
3. The government should organize proper training programs on Village Courts system to increase the capacity of UP chairmen, UP members, secretaries and local elites who are very often nominated as a representative of the Village Courts once in a year. In addition to this training courses the secretaries should be additionally trained up for the record management.
4. As the legal jurisdiction of Village Court is inadequate, a comprehensive review should be taken to assess and amend the bottlenecks of the existing laws, rules in dispensing justice through Village Court and legal jurisdiction of Village Court should be increased.
5. Legal power of the judges of Village Court should be reformed.
6. Village Court activities should be supervised and monitored by proper authority on regular basis. In addition to UNO, Deputy Director of Local government and Chief Judicial Magistrate should be involved in the monitoring of Village Court. Monitoring authority should provide technical assistance to Village Court Official.
7. Village Court should be supported and monitored by the Legal aid organizations for compliance.
8. NGOs should be supported and encouraged by the government to take awareness and advocacy program for the Village Courts all over the country.
9. Extensive publicity and advocacy program in both print and electronic media should be taken by the government for creating awareness among the people about Village Courts.
10. A panel of representative should be selected for a period of five years with approval of the formal courts for each Village Court. Their selection has to be renewed each year depending on their judicial capacity as well as honesty and integrity.
11. Retired government official like-retired police/army personnel of the locality or a retired teacher should be appointed as honorary magistrate in Village Court by the Government. Few other members should be nominated for three to five years with honorarium to make Village Court active and functional.
12. In order to reduce/eliminate bias and increase participation chairmanship of Village Court should be rotated among council members.
13. Appoint appropriate knowledgeable and experienced person in the Village Court. Post of Court Assistant should be created at each *Union Parishad* who must be

educated and properly trained up. An experienced person may be appointed as register of the Village Court.

14. Government should allocate separate and adequate monetary budget for Village Court.

15. Sessions of Village Court should be held in public on a regular basis.

Conclusion

Rural people in Bangladesh deprived from different basic needs so access in justice. Complexity and delaying in getting proper justice from formal judicial system and the influence of local hoodlums and *dalal*, rural people failed to get proper access to judicial system. Village Court has opened a new window for these vulnerable and deprived rural people in access to justice. Increasing access to justice by providing faster and cheaper means of dispute resolution mechanism, Village Courts can act as a deterrent to potential future disputes and hence can contribute to increasing communal harmony and community safety. Though there are some constraints in implementing the objectives of Village Court still it can be the hope for village people. If local disputes are resolved through Village Court, it can establish peace and unity at the locality. Similarly, the effective Village Courts can enhance societal cohesion to fight against local issues. By giving some logistic, financial and technical support from the government and concerned stakeholders can make a success story of access to justice through Village Court.

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