

## Administration of State Sponsored Local Justice System: An Appraisal on the Legal Framework of Village Courts in Bangladesh

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### Abstract

Access to justice is one of the significant pre-requisites for sustainable human development and it has been made available in the form of both the formal and informal systems stretching from the very top of the judiciary to the local justice system in Bangladesh. The formal justice system, even though it plays the most pivotal role, has been facing huge pressure from case backlogs, which ultimately hampers the true spirit of justice. On the other hand, most people's perception towards informal justice system is also fairly poor with lack of trust due to partisan political interference, corruption, religious dogmas, and social elitism, which have made this system almost ineffective. Consequently, state-sponsored local justice system has come forward with a view to combining the both streams in a single channel in the form of restorative justice and a quorum of quasi-formal justice system aimed at ensuring and dispensing justice to the people in rural areas in an affordable and convenient manner. In line with this view, village courts have been established to redress petty civil and criminal issues. This article attempts to examine the feasibility of the present legal framework of village courts to deliver justice efficiently at the grassroots level.

### INTRODUCTION

The modern history of administration of local justice system in Bangladesh traces its origin back to the legal system prevailing in ancient and medieval India. In ancient Hindu civilization, the local village councils or *Kulani*, similar to modern *Panchayats* consisted of a board of five or more members to dispense justice to villagers.<sup>1</sup> On the other hand, after the decline of Hindu regime, the Muslim rulers introduced the *Panchayat* system so as to resolve minor civil and criminal issues at the village level.<sup>2</sup> Though the decrees given by the *Panchayats* were based on local customs and were not strictly according to the law of the kingdom, still there was no interference in the working of the *Panchayats*. As a general rule, the decision of the *Panchayat* was binding upon the parties and no appeal was allowed from its decision.<sup>3</sup> The blend of two distinct civilizations i.e. the Hindu civilization of the ancient India and the Muslim dominated Sultanate regime has streamed into a single channel in the context of extending the horizon, albeit in an informal manner, of the administration of local justice system. The whole experience of ensuring access to justice at local level in an affordable and convenient manner has consequently been evolved with the

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<sup>1</sup> S. Varadachariar, 'The Hindu judicial system,' Radha Kumud Mookerjee endowment lecture series, 1945, Lucknow University, 1946, p. 88.

<sup>2</sup> In the Sultanate regime, each district was divided into several sub-districts or Parganah. A Parganah was usually divided into a group of villages. For each group of village, village assembly or Panchayat was established so as to dispense justice in a convenient manner. Etymologically it refers to a group of five influential older men acknowledged by the community as its governing body.

<sup>3</sup> Kulshrestha, V.D., 'Landmarks in Indian Legal and Constitutional History,' Eastern Book Company, 7<sup>th</sup> edition, at p.20.

marking of different phases of historical events with the ultimate emergence of Bangladesh as a sovereign nation.<sup>4</sup> The concept of access to justice has been playing the pivotal role in the field of legal and judicial reforms to achieve the demands of substantive justice over the last half a century.<sup>5</sup> Thus, from the very first day of Bangladesh as an independent nation, local justice system has always been considered as one of the monumental issues in ensuring access to justice for the peoples at grassroots level. The Constitution of Bangladesh also vies to achieve the ultimate freedom with the effective participation of common people through their elected representatives in administration at all levels.<sup>6</sup> Unfortunately, with the course of time the existing mechanism has been facing huge complexities due to an increasing number of cases in both higher and lower judiciary within the periphery of both civil and criminal jurisdiction. There's a huge backlog of pending cases, which is around 2.8 million in number.<sup>7</sup> The backlog is placing considerable pressure on the court system and is hampering access to justice.<sup>8</sup> Despite having taken various measures to combat the problem in an efficient manner, it is still considered as the principal obstacle towards administration of justice.<sup>9</sup> Against this backdrop, it is essential to take recourse to a formal local justice system with a view to alleviating the mounting pressure on the judiciary and to ensure access to justice for people at the grassroot level as regards petty civil and criminal issues. The aim of this article is to critically analyze the application and enforcement of the existing theoretical framework for the establishment and effective functioning of the village courts. In doing so, the article shall particularly focus on the feasibility of the amended provisions of the Village Courts (Amendment) Act of 2013 in ensuring and dispensing justice at a local level.

#### IN THE QUEST FOR A STATE-SPONSORED FORMAL LOCAL JUSTICE SYSTEM: EVOLUTION OF THE VILLAGE COURTS

A local informal dispute resolution system, such as the *Salish*, was the base for administering rural justice in the Indian subcontinent in ancient times.<sup>10</sup> The informal local justice system as prevailing in the Hindu and Muslim period in Ancient India was needed to go through modifications in the changing socio-economic as well as political dynamism of the nineteenth century. Even though the Panchayat system was never extinguished under the British regime, the lack in institutionalized form of local justice system led the British colonial authority to establish village-based courts and union benches under the provisions of the Village Self Government Act, 1919.<sup>11</sup> The courts established under this Act were empowered to try petty civil and criminal cases and the Chairman of Union Board was entrusted with the function of the Union Court. One of the most striking aspects of Bengali society that captured the attention of the colonial government and European observers was the lack of corporate institutions, in contrast to other regions of South Asia. They saw it as an atomized society or, more correctly, an example of 'institutional atomization' (Tepper, 1976)—a structural deficiency that accounted for a broad range of negative societal characteristics such as lack of public spirit, factionalism, etc.<sup>12</sup> In 1961 Conciliation Courts were provided by the Conciliation Courts Ordinance, 1961 under the auspicious of the Union Council with almost the same jurisdiction of the

<sup>4</sup> The term 'access to justice' has been defined by UNDP as the "Ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards." (Sudarshan, Ramaswamy, Rule of Law and Access to Justice: Perspectives from UNDP Experience)

<sup>5</sup> Parker, Christina (1999) *Just Lawyers: Regulation and Access to Justice*, Oxford University Press, p. 30.

<sup>6</sup> Article 11, Constitution of the Peoples Republic of Bangladesh.

<sup>7</sup> Annual Results Reporting 2014, Judicial Strengthening Project (JUST), UNDP Bangladesh, Democratic Governance Cluster, at p.02 available online <http://www.bd.undp.org/content/dam/bangladesh/docs/Projects/JUST/JUST%20RR%202014%20final.pdf>, last accessed August 19, 2015.

<sup>8</sup> Judicial Strengthening Project (JUST) Annual Report, 2013, at p. 5, available online [http://www.undp.org/content/dam/undp/documents/projects/BGD/JUST\\_Annual\\_%20Report\\_2013.doc](http://www.undp.org/content/dam/undp/documents/projects/BGD/JUST_Annual_%20Report_2013.doc), last accessed August 20, 2015.

<sup>9</sup> Under the Judicial Strengthening (JUST) project, the Supreme Court has formed seven Case Management Committees (CMCs) so as to reduce the backlog of cases both in higher and lower judiciary. (See, Tahura, Ummey Sharaban, 'Case Management: A Magic Lamp in Reducing Case Backlogs,' *Bangladesh Journal of Law*, Vol. 13 (1 & 2), 2013).

<sup>10</sup> Ahmed, Bashir and Islam, Mohammad Tarikul, 'The Role of Union Parishad in Rural Dispute Resolution in Bangladesh: an Evaluation in the Light of People's Perception,' *Journal of Studies on Asia*, Series IV, Volume 3, No. 1, March 2013, p. 192.

<sup>11</sup> Panchayat system was formally recognized under the Village Choukidari Act of 1870 under which District Magistrates were authorized to appoint the members of the Panchayat for a particular village.

<sup>12</sup> Islam, S. Aminul, 'The Informal Institutional Framework in Rural Bangladesh' in *Hands Not Land: How Livelihoods are Changing in Rural Bangladesh*, edited by Kazi Ali Toufique & Cate Turton, DFID, 2002, p. 97.

Union Court putting emphasis on conciliation rather inflicting sentence or penalizing the offender.<sup>13</sup> After the independence of Bangladesh, administration of the local justice system was formalized through the introduction of the Village Courts Ordinance, 1976 authorizing Union Council authority to try petty criminal and civil matters that occurred in the rural areas.<sup>14</sup> Up to this point, State-led local justice system was broadly categorized under two divisions, namely, the village court system and Arbitration Council System. Like a Village Court, an Arbitration Council is also a semi-formal justice body, but unlike a Village Court, an Arbitration Council deals only with some specified family matters. Hence, an Arbitration Council resembles a Family Court. The basic legal frameworks for the Arbitration Council are the Muslim Family Laws Ordinance 1961, and the Rules made under the Ordinance.<sup>15</sup> The modern structure of the village courts prevailing in Bangladesh got started on its formal journey with this piece of legislation to smooth the path of access to justice at the rural level. Unfortunately however, lack of clear ideas, corrupt practices, non-cooperation among the local government functionaries and the lack of adequate powers in the hands of the local bodies continued to hinder the working of the village courts and benches from its inception.<sup>16</sup> Later on, Government passed Gram Sharker Ain, 2003 (Village Government Act of 2003) and its legality was subsequently challenged in the apex court.<sup>17</sup> The High Court Division declared the Gram Sharker Ain, 2003 as unconstitutional and void.<sup>18</sup> In this backdrop, it was decided to advance forward with a more improvised version of the Village Courts Ordinance of 1976 and The Village Courts Act of 2006 was introduced with a view to increasing the capacity of delivering justice at local level through increasing the pecuniary jurisdiction, but keeping untouched the rules made under the ordinance of 1976. However, it has been argued that the lack of legal awareness (capacity to understand the legal rights, remedies, and responsibilities) of both the service seekers and providers, limited jurisdiction of Village Court, lack of financial and human resources of the Union Council, and lack of proper monitoring and supervision of the higher authority acts as a formidable barrier in dispensing justice locally.<sup>19</sup> The aforesaid Act of 2006 started having significant impact on effective disposal of minor disputes and petty offences across rural areas. This state-led quasi-informal local justice system has been proved to be an effective mechanism in reducing delay in delivering justice in terms of a saying that to delay justice is an injustice.<sup>20</sup> As has been observed [...] vast majority of the people of the country is still outside the net of 'access' to justice, let alone access to 'justice.' However, a simple reading of the Village Court Ordinance implies that almost all major aspects of an effective justice system have been addressed in the law.<sup>21</sup> Subsequently, The Village Courts (Amendment) Act of 2013 has been introduced to stay in conformity with the changing socio-economic dynamism. Changes brought about by this amending Act regarding village courts include, but are not limited to, increase in the pecuniary jurisdiction, facilitation of Alternative Dispute Resolution (ADR) mechanisms, changes in the process of constitution of the court, and establishing gender-friendly atmosphere in the village courts.<sup>22</sup>

<sup>13</sup> Review Report of Village Courts Legal Framework (2012), Activating Village Courts in Bangladesh (AVCB) Project, p. 13.

<sup>14</sup> Ordinance No. LXI of 1976, subsequently modified through The Village Courts (Amendment) Ordinance of 1978

<sup>15</sup> Islam, Zahidul (2015) *Strengthening State-led Rural Justice in Bangladesh: Views From the Bottom*, CCB Foundation, 2<sup>nd</sup> edition, p. 142.

<sup>16</sup> Rahman, Md. Bazlur, 'Justice for poor through village courts,' at p. 3.

<sup>17</sup> BLAST V. Bangladesh and Others, Writ Petition No. 4502 of 2003, 60 DLR (2008) 234.

<sup>18</sup> The Village Government Act of 2003 was finally scrapped in 2007 by the then Non-Party Interim Government as per the order given by the High Court Division.

<sup>19</sup> See, Hossain, Sheikh Mohammad Belayet, 'Dispensing Justice Locally: A Study of Two Village Courts in Bangladesh,' North South University, 2012.

<sup>20</sup> Penn, William (1905) 'Some Fruits of Solitude', Headley Brothers, at p. 86, available online <https://archive.org/stream/somefruitssolit00penngoog#page/n91/mode/1up>, last accessed August 21, 2015.

<sup>21</sup> Biswas, Zahidul Islam, 'The Village Court: A neglected but potential justice forum,' in Law and Our Rights Section, *The Daily Star*, Bangladesh, Issue No. 79, August 1, 2008.

<sup>22</sup> The amended Act of 2013 is the outcome of the project titled 'Activating Village Courts in Bangladesh' (AVCB), which is jointly conducted by The Ministry of Local Government, Bangladesh, European Union (EU) and UNDP, Bangladesh.

### TOWARDS A PEOPLE'S FRIENDLY DISPUTE SETTLEMENT PROCESS: THE PRE-TRIAL STAGE:

The volume of backlog, the loopholes, and complexity in the procedural law and case management system and widespread corruption and malpractices are among a number of factors that delay and deny access to justice for many.<sup>23</sup> In this context, The Village Courts (Amendment) Act of 2013 has set the pecuniary jurisdiction of the village courts at 75,000 tk instead of the previous limit of 25,000 tk.<sup>24</sup> The increase in pecuniary jurisdiction in consonance with the socio-economic changes means more power for the village courts to redress disputes on a considerable scale and a reduction in the number of case backlogs in lower judiciary. The composition process of the village court has also been modified with an obligatory provision to nominate a female member out of the two selected members from each contesting parties, where a minor is a party in a criminal case or a woman is a party either to a civil or criminal case.<sup>25</sup> As in a study it has been observed that access to justice for most rural women remains very limited, particularly in relation to formal institutions.<sup>26</sup> This particular provision has been considered with the view of establishing a gender friendly justice system and providing a convenient system for the minors and women to settle down their disputes as this group is considered as the most underprivileged one when it comes to the issue of access to justice at the root level. Moreover, failure in nominating members by each contesting party in any case shall make the village not competent to try the same within the amended provisions of 2013, whereas under the Act of 2006, village courts could proceed with the case in a particular situation that did suffer from the arbitrariness of the chairman and ultimate denial of demand of justice.<sup>27</sup> As can be seen, legal empowerment of the poor can be understood as the process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors.<sup>28</sup> In this perspective, a specific time limit of 30 and 60 days has also been provided, distinctly for criminal and civil cases, to file in the village courts, but the amending Act of 2013 seems to be unreasonably silent where the time limit has elapsed due to one party's mistake out of good faith or unavoidable circumstances.<sup>29</sup> There's also a lack of awareness among the common people regarding this newly introduced time limit and in certain respects it seems to hinder the true spirit of justice. In Bangladesh, many people who lack the information or the means to overcome the substantive and procedural frameworks resort to the ADR or informal mechanisms to redress their grievances.<sup>30</sup> Insertion of the provisions relating to ADR is another uniqueness of the amending Act of 2013 that was absent in the Village Courts Act, 2006.<sup>31</sup> The whole process of ADR must be concluded within 30 days from the date of taking the initiatives, the failing of which the court shall then proceed with the formal hearing.<sup>32</sup>

This inclusion, in the form of either mediation or conciliation, serves three purposes, firstly, amicable settlement of dispute by the concerning parties with the help of the concerned village court, secondly, implied recognition to the informal dispute settlement mechanism i.e. the *Salish* System, which is not judicially enforceable and, lastly, but not the least, to lessen the pressure of cases upon the shoulder of village courts. Due to its administrative structure and effectiveness in delivering justice at the local level, it has been stated in a study that the village courts are more local and less legal.<sup>33</sup>

<sup>23</sup> Hossain, Muhammad Sazzad and Hossain, Mohammad Hossain, 'Causes of Delay in the Administration of Civil Justice: A Look for Way Out in Bangladesh Perspective', *ASA University Review*, Vol. 6 No. 2, July–December, 2012, p.104.

<sup>24</sup> Section 7, The Village Courts (Amendment) Act, 2013 (Act no. 36 of 2013).

<sup>25</sup> Section 5, *ibid.*

<sup>26</sup> Lewis, David and Hossain, Abul, 'Understanding the Local Power Structure in Rural Bangladesh', *Sida (Swedish International Development Cooperation Agency) Studies No. 22*, p. 54.

<sup>27</sup> Section 5(5), *ibid.*

<sup>28</sup> UN Secretary General Report on Legal empowerment of the poor and eradication of poverty, UNGA (A/64/133), 13 July 2009, p. 3, available online <http://www.unrol.org/files/N0940207.pdf>, last accessed September 3, 2015.

<sup>29</sup> Section 6A, The Village Courts (Amendment) Act, 2013.

<sup>30</sup> Faruque, Dr. Abdullah Al and Khaled, Md. Mohiuddin, 'Local Level Justice System in Bangladesh: Success, Challenges and Best Practices,' *The Chittagong University Journal of Law*, Vol. XV, 2010, p. 6.

<sup>31</sup> Section 6B, The Village Courts (Amendment) Act, 2013.

<sup>32</sup> Section 6B(2) & 6C(1), *ibid.*

<sup>33</sup> Das, Maitreyi Bordia and Maru, Vivek, 'Framing Local Conflict and Justice in Bangladesh', *Policy Research Working Paper 5781*, The World Bank, Social Development Department, August 2011, p. 16, available online <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-5781>, last accessed September 10, 2015.

## REJUVENATION OF THE AGE OLD TRIAL AND ENFORCEMENT SYSTEM

The trial stage in the village courts has undergone some significant move by the amending Act of 2013. A strict time-limit has been imposed upon the village courts so as to finally dispose of any suits filed in that particular court. If the alternative settlement process fails, the court shall dispose of the suit within 90 days from the date of starting the hearing, provided that the court can avail 30 more days with sufficient causes being shown. In this process, village courts are getting 120 days for final disposal of a suit, failing which the court shall be dissolved automatically and the concerned parties shall be entitled to file their concerned suit in a competent court to try it.<sup>34</sup> It is said that justice delayed, justice denied, and the legislative authority is quite uninterested in experiencing and repeating the bitter experience in resolving present complexities of case backlogs in judiciary. The insertion of a specific time limit has been done with a view to eliminate, even in least, the possibility of case backlog in the quasi-formal local justice system. A closer look at Part I and Part II of the Schedule of the Village Courts legal framework would reveal that the particular civil and criminal issues that can be redressed by a village court is actually either in the nature of Civil wrong or Tortious liability for which strict mechanism of fines is required. The village courts enjoy exclusive jurisdiction to try the cases and disputes that come under their domain. No other formal civil or criminal courts can try those offences and disputes.<sup>35</sup> The village courts are now authorized to impose a fine of up to tk. 75,000 as compensation for the offences described under Part 1 of the Schedule.<sup>36</sup> The process of recovering any fine relating to payment of compensation from the liable person had to follow the Public Demands Recovery Act of 1913 under the Village Courts Act, 2006, whereas the amending Act of 2013 provides that the fine shall be collected under the authority of the Local Government (Union Council) Act of 2009.<sup>37</sup> This has been provided with a view to eliminate the bureaucratic red-band tape complexities in the enforcement process and to ensure that the justice be served at the quickest possible time righteously at the victim's door through the hand of the authority which has dispensed such order.<sup>38</sup> An increased number of false cases, in recent days, has triggered alarm among the legislators and this has, so far as the authority is concerned, played an impediment in delivering appropriate justice through overburdening the courts. In this context, the Village Courts (Amendment) Act of 2013 has entertained a new provision, which imposes fine up to tk. 5,000 for filing frivolous or vexatious cases and such amount shall be handed over to the defendant as compensation.<sup>39</sup> This has provided a landmark in establishing the very first cornerstone of a compensatory justice system in the state-led local justice system in line with the existing provision of the Criminal Procedure Code.<sup>40</sup> Moreover, there's an increase in the rate of fine at tk.1000 for the contempt or non-compliance to the orders of village courts.<sup>41</sup> The fact that there exists a provision for compensation for the victims of crimes implies that the concept of restorative justice has been taken note of.<sup>42</sup> Thus, the age-old trial and enforcement process of village courts has undergone a revolutionary transformation by the Village Courts (Amendment) Act of 2013, which seeks to make itself a one-stop solution for ensuring access to justice for people in rural areas and to alleviate the persistently mounting pressure of case backlogs from the shoulders of judiciary of Bangladesh. It has been remarked that although the institution of the village court has yet to live up to the expectations of the people, it has managed to make important contributions to maintaining law and order in rural communities by intervening in local conflicts and disputes.<sup>43</sup>

<sup>34</sup> Section 6C, The Village Courts (Amendment) Act, 2013.

<sup>35</sup> *Supra* note 15, p. 194.

<sup>36</sup> Section 7, The Village Courts (Amendment) Act, 2013.

<sup>37</sup> Section 9(3) and 12(1), *ibid*.

<sup>38</sup> Section 68, Local Government (Union Council) Act, 2009 (Act No. 61 of 2009).

<sup>39</sup> Section 9A, The Village Courts (Amendment) Act, 2013.

<sup>40</sup> Section 250, The Code of Criminal Procedure, 1898 (Act No. V of 1898).

<sup>41</sup> Section 11(2), The Village Courts (Amendment) Act, 2013.

<sup>42</sup> Mahbub, Saqeb, "Village Courts: An Assessment of the Loopholes," available online [http://www.thefinancialexpress-bd.com/old/more.php?news\\_id=110766&date=2010-09-01](http://www.thefinancialexpress-bd.com/old/more.php?news_id=110766&date=2010-09-01), last accessed September 20, 2015.

<sup>43</sup> 'Informal Systems and Village Courts: Poor people's preference,' Chapter 6, "Human Security in Bangladesh: In Search of Justice and Dignity" (2002) UNDP, Bangladesh, p. 98, available online <http://www.un-bd.org/Docs/Publication/UNDP/hsr/index.htm>, last accessed September 15, 2015.

## CONCLUSION

The renovated legal framework of the age-old village courts has been introduced to act as a self-sufficient instrument in paving the access to justice for the common people at grassroots level who are lacking an understanding of the complex procedural process of the century-old formal judicial system and tends to seek justice through more informal channels rather than being thrown into the complex web of formal justice system. In this context, The Village Courts (Amendment) Act of 2013 is a milestone in the history of state-led local justice system in Bangladesh and paves the way to state-sponsored justice in a convenient, affordable, and reasonable manner, which is fairly compatible with the demanding evolution of the socio-economic. The changes brought up at the pre-trial stage, i.e. to say inclusion of ADR mechanisms, change in the composition formation, and putting a specific time limit for the disposal of suit has brought a groundbreaking transformation in the state-sponsored local justice system. On the other hand, amending provisions regarding trial and enforcement steps have been excelled with a view to delivering justice in the quickest possible time to the concerned claimants. As access to justice is one of the essentials of good governance and precondition for sustainable human development, the amending Act of 2013 has, so far, been proved to be an effective mechanism for dispensing justice in the rural areas. However, negative impact factors such as, lacking in awareness, inadequate financial scheme, political intervention, executive biasness, nepotism, malpractices, and corruptions are still considered as the widely recognized impediments at the local level blocking the way to justice. Those issues may lead to the possibility of losing credibility and gaining a lower trust level among the people claiming relief from such courts and consequently, failing the true purposes under which this piece of legislation has been enacted. Moreover, limited types of suits to be redressed by the village courts under Part I and Part II of the schedule have curtailed the working periphery of the village courts in certain respects. The Village Courts (Amendment) Act of 2013 may turn into a futile effort and another toothless paper tiger if these issues are not curbed within a reasonable period of time. Considering that there's always a demarcation line between the theoretical framework of a particular law and its practical implication in a given situation, the stature brought about by the amending Act of 2013 has significantly contributed to the access to justice for the common people at the grassroots level. This enactment has proved to be an effective mechanism in introducing a restorative justice system within the traditional framework of law. Despite having constraints, the changes brought about by the Village Courts (Amendment) Act of 2013 has put the administration of state-sponsored local justice onto a considerable level in establishing a viable regime of justice in the rural areas and aiding towards lessening the overburden of cases within the precincts of formal judicial system of Bangladesh. Nevertheless, we should not expect this device to work instantly. A significant proportion of labor and time from the local authority, along with the active assistance from the government, should be availed to yield a much better result from this legislation.