

The Village Courts in Bangladesh: Review and Analysis

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Abstract

Access to justice paves pathways for overcoming human poverty. Three important studies – baseline survey for the Village Courts in 2010, review of social barrier and limitation of Village Courts in 2012 and mid-term review of Village Courts project in 2013 – reveal that poor people in Bangladesh have very limited access to state courts which has made them interested in local justice systems for resolving their disputes, but the local informal justice system shalish becomes de facto, to a great extent, with corruption, biasness and imposition of decisions including fatwa. NGO-led alternative dispute resolution (ADR) – another non-state rural justice system – is a good one, but new in Bangladesh and yet to be scaled-up everywhere. The state-led local justice systems are ‘Arbitration Council’ and ‘Village Courts’. The former one deals with family matters in both urban and rural areas under the ‘Muslim Family Laws Ordinance 1961’, while the later one was originally established under the ‘Village Courts Ordinance 1976’ so as to deal with petty criminal and civil disputes in rural Bangladesh but in practice such court was not active. In 2006, Village Courts were constituted again with the provisions of the ‘Village Courts Act 2006’, which has now subsequently adopted with the ‘Village Courts (Revision) Act, 2013’. The Government takes phase by phase implementation strategy with the Act to activate village courts. Initially at the first phase 500 out of 4,500 Union Parishads (UPs) were selected by the Government through ‘Activating Village Courts in Bangladesh (AVCB)’ project so as to activate Village Courts, the number of which was then reduced to 350 UPs. The lens of the study includes approach, outcomes and challenges of the Village Courts system and policy recommendations thereafter. The study follows Focused Synthesis and Participant Observation methods.

Keywords: Access, justice, system, poor, Bangladesh, village, court, arbitration, council, shalish, ADR

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law to follow and therefore these are known as informal justice systems. These basically pass decisions based upon circumstances, and follow traditional norms, local customs and/or religious dicta. Participants' observation, however, supports that ADR, the NGO led *Shalish* is less likely to be dominated by norms, customs or religious dicta, and typically follows fair judgments.

While the State-led rural justice system Village Court is constituted under specific laws. Rahman *et al.* (2010) notes that, during the Pakistan period, two ordinances were promulgated, namely the Muslim Family Laws Ordinance, 1961 (MFLO) and the Conciliation Courts Ordinance, 1961 (Ordinance No. XLIV of 1961), among which the later now stands repealed. The Muslim Family Laws Ordinance made provisions for the constitution of the Arbitration Council, a dispute resolution body which works in both urban and rural areas, deals with the matters related to family disputes as per the ordinance. The Conciliation Courts Ordinance dealt with minor criminal offences and civil disputes. After the independence of Bangladesh in 1971, the Government decided to continue with the systems of both the Arbitration Council and the Conciliation Court, but in 1976 repealed the Conciliation Courts Ordinance. It promulgated a new legislation named the Village Courts Ordinance, 1976, by which the village courts were established to deal with petty criminal and civil disputes in rural Bangladesh. In 2006, the Government repealed the Village Courts Ordinance, 1976 and the parliament enacted new legislation called 'The Village Courts Act, 2006' to deal with affairs of the village courts.¹ Thus, the present architecture of the village courts is based on the provisions of the Village Courts Act, 2006 and its subsequent revision – the Village Courts (Revision) Act, 2013. The current study is a qualitative one by nature. It follows Focused Synthesis² and Participant Observation³ methods in an opportune fashion. Table 1

¹ Baseline survey report 2010, AVCB

² Focused Synthesis allows collecting and documenting information as well as data from a range of sources as diverse literature review, researchers' personal experience, web and media evidence, legislative hearing, court verdict, staff memorandum, unpublished project or study document, anecdotal evidence and story, citation or in-depth discussion with experts, practitioners and stakeholders (Talukdar 2012 and 2013).

³ Such research involves a range of well-defined, though variable techniques: Informal interviews, direct observation, participation in the life of the group, collective discussions, analysis of personal documents produced within the group, self-analysis,

below shows the methods and techniques along with the sampling note at a glance.

Table 1: Methods, techniques and sampling note

Qualitative Methods	Techniques	Sampling note
Focused synthesis	Literature review	Three important studies (baseline survey for the Village Courts in 2010, review of social barrier and limitation of Village Courts in 2012 and mid-term review of Village Courts project in 2013) and other relevant pieces.
	Discussion with practitioners and experts	AVCB Project Manager, concerned Programme Manager of UNDP-Bangladesh, Executive Director of Ain-o-Shalish Kendro and Head of Politics, Democracy and Governance cluster of BIGD, BRAC University.
Participant observation	Past experience	Evidence from past consultancy and research engagement of the author.

Source: The Author

The research questions here are: Whether the approach of the village court is operationally manageable? Is it pro-poor? Whether it has legal and legislative basis? Does it count traditional norms and customs or is it bound by rules? Are village courts in a better position to provide a fair trial? To what extent the pilot project ‘Activating Village Courts in Bangladesh (AVCB)’ has gained acceptance both by the government and community? What are the visible outcomes of the pilot exercise? Is the government ready for scaling up and replication of best practices now? Whether the cost associated with village courts’ functioning is a burden for a UP? Are UPs adequately funded or do they have staff resources to try cases at village courts? To what extent village courts are capable to try cases which are transferred by the magistrate court? Are jurors legally/technically capable to try cases? Is there any conflict with state structure: Judiciary vs. Executive? What are the key policy concerns?

The focus of the study includes approach, outcomes and challenges of the Village Court system and policy recommendations thereafter. There are five sections of the paper. Following the introduction, section two discusses approach of village courts, presents architecture,

results from activities undertaken off or online, and life histories (DeWalt, DeWalt and Wayland, 1998).

scope, process and legislation of the village courts. Section three: Outcome of Village Courts, identifies and analyses the facts related to ensuring local justice, evidence based success, rights based service delivery, while section four: Challenges Ahead and Overcoming Barriers, reveals the key challenges regarding scaling up, Union *Parishads*' capacity, social barriers as well as legal concern, and prescribes how to overcome those challenges. Finally, the fifth section concludes the paper and deliberates what policy makers need to do.

Approach of Village Courts

Architecture, scope and process

A village court functions under the institutional framework of a Union *Parishad* (Council), while a Union *Parishad* (UP) is the lowest unit of local government bodies, which “shall be consisted of a chairman and twelve members including three members exclusively reserved for women.⁴ The Chairman and the members shall be elected by direct election on the basis of adult franchise in accordance with the Local Government (Union *Parishad*) Act, 2009 and subsequent other rules” (Talukdar, 2013a).

Union *Parishads* must assume the responsibility of functioning village courts under the Acts mentioned in section 2.2: Legislation. Thus, the village courts formally exist in all UPs in Bangladesh despite the fact that these are predominantly dysfunctional in most of the cases. Importantly, Government takes phase by phase implementation strategy with the Village Courts Act (2006 and its revision in 2013)⁵ to activate village courts across the country. Initially at the first phase 500 out of 4,500 UPs were selected by the Government through Activating Village Courts in Bangladesh (AVCB) project so as to activate village courts, the number of which was then reduced to 350 UPs.⁶ As per

⁴ There shall be reserved three seats exclusively for women members in each Union *Parishad*, who shall be elected by direct election on the basis of adult franchise in accordance to the provision of the Local Government (Union *Parishad*) Act, 2009, and subsequent other rules, provided that these shall not prevent a woman from being elected to any of the nine general seats, or even to compete for the chairmanship.

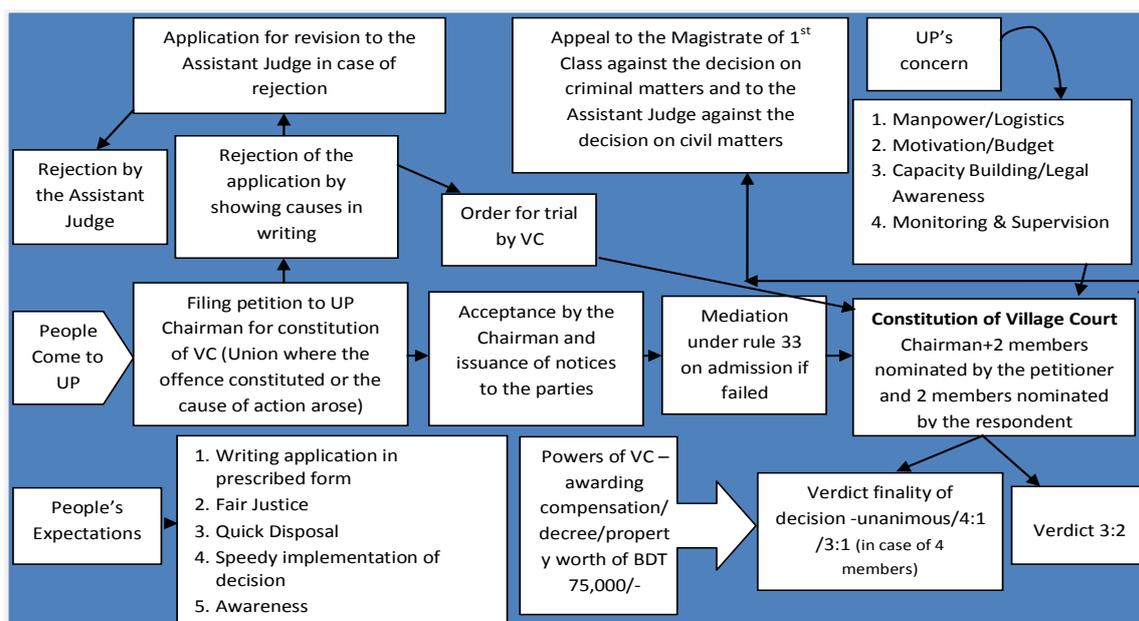
⁵ Despite the fact that the provision of village courts was originally established under the Village Courts Ordinance, 1976 so as to deal with petty criminal and civil disputes in rural Bangladesh, in practice such court did not get activated.

⁶ Nevertheless, participant observation given in a consultancy assignment - review of governance programmes in 2012 funded by *Manusher Jonno* Foundation (MJF), supports that it does not limit any other initiative to help UPs to make the village courts effectively functional following the Village Courts Act, 2006 and the Village Courts (Revision) Act, 2013. *Sabalambay Unnayan Samity* (SUS), for instance, is helping the UPs in 5 Upazilas of Netrakona district – outside the AVCB project coverage area – in ensuring access to justice by activating the village courts.

prodoc the project AVCB started in January 2009, but it became operational in 2011 and no-cost extension is in place up till December 2014. This pilot project took on board both the state and civil society groups and sketched based heavily on lessons of the work initiated in 2002 by the Madaripur Legal Aid Association. The mid-term review of the same in 2013 reveals the fact that the AVCB has succeeded in activating 338 of the 350 targeted village courts. The mid-term review also shows promising indications of being a highly effective model for scaling up across the country. According to the Act, the number of judges in a village court would be five: four equally nominated by conflicting groups, out of which usually two from UP members, while chairman shall be the chief of the jurors. Figure 2 below shows the architecture of the Village Courts.

The figure 2 below demonstrates the architecture of the village courts with link to the Assistant Judge of the concerned civil court and first class Magistrate of the criminal court. It also reveals people’s expectation from the Village Courts and UP’s concern on the same. The revision of the law in September 2013 has strengthened the provision of mediation for compromise under the Village Courts Rules, 1976 (see revision section 6B of the law). The revised Act also empowers the village courts with power of awarding compensation/decree/property worth of BDT 75,000.

Figure 2: Architecture of the village courts

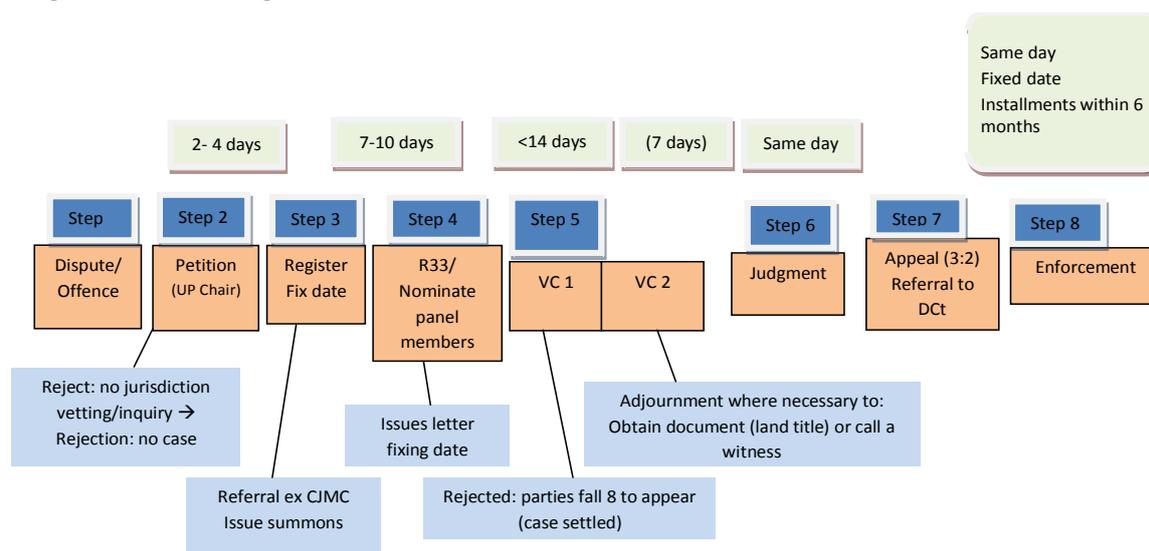


Source: Adapted from Baseline survey report 2010, AVCB

Discussions with practitioners, for instance, AVCB Project Manager and concerned Programme Manager of UNDP-Bangladesh, suggest that the approach – architecture, scope, process and legal framework – of village courts requires extensive training and support to make these

operationally manageable by UPs. These practitioners also opine that theoretically village courts are pro-poor and the purpose of activating these courts is to strengthen rural justice system and ensure access to justice and fair trial to the rural community, particularly of its vulnerable group. They also state that these courts have retrospective as well as current legal basis - the Village Courts Ordinance, 1976, the Village Courts Act, 2006 and the Village Courts (Revision) Act, 2013; and thus these must run with the rule bound process. They further argue that there is no significant cost associated with filing and running cases in the Village Courts. The AVCB Project Manager, in particular, opines that village courts in the project UPs usually follow speedy as well as relatively fair trials and judgments, which of course is the result of project support to the capacity building of those UPs to make the village courts efficiently and effectively functional. However, Rahman *et al.* (2010) reveals that *there are some formalities like filing application for constitution of VC, application fees and case registration, notice to the parties for nomination of members of the VC, issuance of summons, recording decision, and implementation of the decision.*⁷ The process of the village court is documented at figure 3 below.

Figure 3: Village Court Process



Source: Mid-term Review 2013, AVCB

The figure 3 above shows the process of a Village Court functioning and number of days or period required at each stage within the eight steps. The process starts with a victim petition or court referral to a UP Chair and ends with three possible options: rejection of the case, or

⁷ Baseline survey report 2010, AVCB

through mediation for compromise, or through constitution of a full-fledged court which is then followed by judgment and enforcement, or judgment and appeal to the Assistant Judge of a concerned civil court /first class Magistrate of a criminal court and enforcement of the final judgment.

Legislation

The present form of village court is constituted under the provisions of the Village Courts Act of 2006 and its subsequent revision of 2013—despite the fact that the provision of village courts was originally established under the Village Courts Ordinance, 1976. The village court as a state-led rural justice system which has jurisdictions to try specific nature of disputes either civil or criminal (see Annex-1), for instance, civil clash, dispute with movable or immovable properties, theft, damaging of crops, harming cattle, breach of monetary deal, poisoning fish in pond or canal. Despite of its legal bindings it is in fact required to follow less formal procedure for adjudication of disputes. The revision of the law in September 2013 has made it more effective with the provision of compromise under pre judgment (revision section 6B).

According to the revised Act, jurisdiction of the village courts for fining a guilty party or the value of the disputed property would be BDT 75,000 (USD 974) instead of the previous limit of BDT 25,000 (USD 325). The revision has, in addition, a built-in mandatory provision of inclusion of a woman member by the parties in forming five members judges panel, given the fact of resolving matters related to the interest of minors and/or women. The revised Act can tackle counterfeit attempts, for example, filing a false case in a village court would land the guilty party with fines up to BDT 5,000 (USD 65), while for contempt of village court or non-compliance of its order, the respective party can be fined up to BDT 1,000 (USD 13). It also has a provision to dispose of any revision petition against any village court verdict within 30 working days (revision section 4).

Outcome of Village Courts

Ensuring local justice

The EU study on the criminal justice system in the country⁸ acknowledged that, for years, the poor have been *priced out* of the justice system.⁹ Jahan and Stapleton (2013) cited Jahan (2007) in the mid-term review of Activating Village Courts in Bangladesh project –

⁸ Activating the criminal justice system in Bangladesh, Balenger *et al.*, EU, 2005

⁹ UNDP, 'Human Security in Bangladesh: In search of Justice and Dignity', 2002

“The problems of access to justice in the state courts had become a daunting task for the poor and the legal complexities, cost, delayed justice, corruption, too much emphasis on the normative aspect of law have caused the poor to rely heavily on the informal sector.”

Three important studies which were reviewed for this paper (see table 1) – baseline survey for the Village Courts in 2010, review of social barrier and limitation of Village Courts in 2012 and mid-term review of Village Courts project in 2013 – reveal that here poor people have very limited access to state courts, which makes them interested in local justice systems for resolving their disputes. But the local informal justice system *shalish* becomes de-facto, to a great extent, infested with corruption, biasness and imposition of illegitimate decisions including *fatwa*. In a recent interview¹⁰ Advocate Sultana Kamal, Executive Director of Ain-o-Shalish Kendro, opines that *shalish* has been traditionally used to contain ‘anti-social’ behaviour of rural women with some conservative influences. Participants’ observation, however, reveals that NGO-led alternative dispute resolution (ADR) – another non-state rural justice system¹¹ – is a good one, but new in Bangladesh. Therefore, the state-led rural justice system the Village Court, which is a quasi-judicial system, might have an opportune position for ensuring access to justice to the rural community under the legal framework and rule bound process, as long as the challenges ahead to UPs – towards adeptly as well as usefully activating such courts - shall be properly addressed, acknowledged and facilitated to mitigate those by the state, civil society and development actors.

Evidence based success

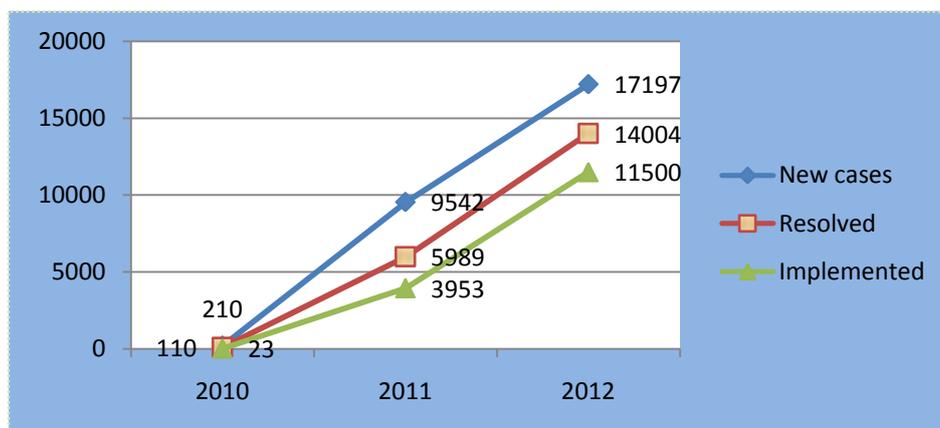
According to the mid-term review of AVCB in 2013, the village court system has gained acceptance both with the government and the community given the facts: its legal structure is simple, the courts are local (most are within a 3km radius of people’s homes), income is no bar to accessing the courts, the enforcement rate is high because of the restorative nature of the proceedings and relatively low compensation awards made, cases are processed speedily – lasting between 23-28 days from filing of petition to judgment, and filing fees are very low

¹⁰ The interview was conducted in April 2014 by Jens Stanislawski and Nabila Zaman from BRAC Institute of Governance and Development (BIGD), BRAC University.

¹¹ The ADR is increasingly standing between formal and informal justice systems and becoming integral part of judicial and/or sub-judicial process.

while transaction costs (such as transport costs or survey fees) are deemed affordable. The report also reveals that the numbers of cases filed in village courts and resolved and implemented by the same between 2010 and 2012 show a sheer rise.

Figure 4: A sheer rise of cases in village courts



Source: *Mid-Term Review of AVCB, 2013*

Figure 4 above shows that number of cases filed, resolved and decisions of those implemented in 2010 were respectively 210, 110 and 23, whereas in 2011 the trend sharply rose and extended at respectively 9542, 5989 and 3953, and in 2012 it continued to rise and reached at respectively 17197, 14004 and 11500.

Rights based service delivery

Similar to Walker (2012) the write-up argues if lack of access to justice is considered to be a central characteristic of human poverty, addressing the issue requires creation of an enabling institutional environment, where village courts could be practical as well as rights based legal solution centres providing the proper nurturing of the system.

Walker in the Village Courts conference 2012 specifically opined that the justice should be treated as an essential public service, and thus state must provide the mechanism to effectively remedy the grievances of citizens, especially the poor and vulnerable groups who often have no resource or knowledge to access justice. He further argued that the Village Courts project might be one such mechanism of the Government that brought justice to the doorstep of the people at low cost and in a reasonable timeframe. Furthermore, scaling up the lessons of this pilot project throughout the country would allow the village courts to help substantially reduce backlogged cases¹² of the formal

¹² According to Walker, as of April 2012 total 906 cases have been referred to village courts by district courts. This indicates a positive link in reducing case backlogs in the upper courts.

courts and ensure responsiveness of citizens and local government institutions and tailor pro-poor local governance.

Challenges ahead and overcoming barriers

Scaling up

AVCB project, started in 2009 in partnership with the Local Government Division (LGD), United Nations Development Programme (UNDP) and the European Union (EU), has covered 338 Union *Parishads* (UPs) out of the finally targeted 350 UPs of 56 upazilas, in 14 districts of 6 divisions.¹³ The outcome mentioned in the previous chapter suggests a significant improvement has been made in the project operational area. This, however, remains to-date only at 7.5% Union *Parishads* (UPs) in the country in spite of the fact that eight years have passed since the Village Courts Act was adopted in 2006. The challenge now is to scale up the successes of the pilot village courts across the country. A discussion with concerned Programme Manager of UNDP-Bangladesh indicates that development partners are strongly interested in supporting the nationwide coverage of the local justice services through effectively activating village courts in particular, but this will require the Government's further commitment. This study, however, could not check with the Government views concerning the issue given the time constraint, while the development partners' impression is evident at 2012 conference.¹⁴ The Mid Term Review (MTR 2013) of AVCB project reveals that evidence of effective commitment of Government – associated with adequate financial resource allocation through the national budget – is still missing. MTR 2013 specifically points out that the Finance Ministry needs to be assisted in seeing the delivery of basic justice services, such as the village courts, less as a cost and more as an investment in a public cause.

Furthermore, Walker in the 2012 conference opined that it is important for village courts to be gender-friendly and sensitive to the needs of vulnerable and poor people including women and children for their access to justice. Broader human rights principles and a human rights framework should be upheld while justice service is rendered

¹³ Case data and project reports from NGOs and Project Management Team (PMT) suggest that the project has achieved its principal objective of activating the Village Courts (VCs) in 338 UPs, but it is yet to complete direct project implementation in the 12 UPs under the current phase target of the project. (AVCB MTR, 2013).

¹⁴ Village Courts conference at Dhaka on 9 June 2012.

through village courts. And village courts services should be considered comprehensively as a part of services delivered by UPs.

UPs capacity

While discussing with the AVCB Project Manager, the queries mentioned were – whether cost associated with village courts functioning is a burden for UPs or are they adequately funded and whether they have staff resources to try cases at village courts. Acknowledging these as critical concerns, he opined that generally UPs have neither additional funds nor support staff to make the village courts functional. According to Sultana Kamal, village courts are not commonly functioning well considering the fact that there is a lack of genuine interest among councillors and chairmen of UPs, and in many cases they still do prefer conducting *shalish*. The AVCB Project Manager, however, argues that is why pilot project exists. He cited the Walker (2012) observation: The project provides technical and financial support to building the institutional capacity of UPs through tailored trainings, installation of court benches, provision of Village Court forms and formats for efficient case management together with supporting staff to Village Courts in target areas.

The basic challenge now, as discussed in the previous sub-section 4.1: Scaling up, is to replicate this pilot exercise throughout the country. Importantly, UPs capacity building throughout the country requires huge budget and strong pledge of the Government and donors. Importantly, considering the fact of UPs capacity, the AVCB Project Manager appreciates the importance of total coverage of the project throughout the country. If the new phase of the project covers total population – all 4500 UPs in the country – the challenge would be bestowed with exit strategy of the same. Once the project gets completed, how the UPs would survive in terms of resource support that needs to be proactively dealt, building a framework under the new phase of the project.

Social Barriers and Legal Concerns

Statistics from the study 'Review of social barriers and limitations of Village Courts' support that, weak socio-economic background has been viewed as the most crucial social barrier for seeking justice for the poor and marginalised people. According to the report, nearly 64% of the respondents have mentioned this as a barrier. A 62% of the respondents believe that women's concern about family reputation/social dignity is a crucial barrier for them to seek justice.

Lack of awareness of the mass people about village courts and its jurisdiction is the major limitation of village courts to work actively. A 55.7% of the respondents have mentioned this as the main limitation of village courts. More than 62% of the survey respondents demanded ensuring fair justice while 55% have suggested increasing awareness of the people as well. Another 26% of the respondents have viewed that power (authority and jurisdiction) of village courts should be increased. The other opinions are: proper monitoring of village court activities by higher authority (17.2%); adequate staffing for managing the activities of the village courts (7.5%); and infrastructure and logistic development of village courts (5.3%). 61% of the respondents have viewed that the UP chairmen and members should ensure justice in the village courts. Nearly 55% of the respondents have reported that UP representatives should make people aware about village courts. Another 68% per cent of the respondents have opined that the mass media should increase awareness of the people about village courts through increased publicity. A 26% of the respondents have also viewed that the media could broadcast drama/serial on village courts to enhance people's awareness.

Three legal concerns here are: 1) Are jurors legally/technically capable to try cases? 2) To what extent village courts are capable to try cases which are transferred by the magistrate court? 3) Is there any conflict with state structure - Judiciary vs. Executive? The Project Manager's responses to the first two research questions were: Jurors are legally authorised to endow with verdict in village courts by the Village Courts Act, 2006 and the Village Courts (Revision) Act, 2013. Their social technical capability is inbuilt in their social obligations, while legal technical competence is being tailored through capacity building initiatives of the project, which allow them, even to try confidently the cases transferred to them by the Assistant Judge or Magistrate courts. But again the project is currently targeting only 350 UPs at this pilot phase. So, nation-wide replication of the pilot experiences is a must and very urgent.

Regarding the last concern, it seems that divergence is evident here given the state structure: Judiciary Vs Executive. Union *Parishads* fall under executive organ of the state while village court affairs are judicial matters. In a recent interview,¹⁵Tofail Ahmed, Head of Politics,

¹⁵ The interview/short discussion was conducted in August 2014 at BIGD, BRAC University.

Democracy and Governance cluster of BIGD, BRAC University, argues that the Village Courts Act, 2006 as well as its successive amendment contradicts with the spirit of the Article 22 of the Constitution of the People's Republic of Bangladesh.¹⁶ Furthermore, Ahmed (2012) points out that establishment of courts and operating judicial activities under the Village Courts Act are not acceptable. Given the fact of separation of judiciary on Article 22 of the constitution, dealing of judicial matters by political persons could not be legitimate. Moreover, the jurors here are neither educated on judicial matters nor well trained or efficient on legal affairs. Even they do not have any professional oath of impartiality.

Conclusion

The State-led rural justice system village court is a de facto one considering the spirit of separation of judiciary despite the fact that the system is developed under specific laws legislated by the legislature. Anyhow, the reality of the formal justice system in Bangladesh is to be acknowledged. A note on Activating Village Courts in Bangladesh (AVCB) Project in the project website addresses that the formal justice system in Bangladesh is under tremendous pressure with much workload and inadequate number of officials and staff to dispose the cases. As a result, the case backlogs add up to the existing pending cases and at present it stands at about half a million cases. It creates a negative impact for the rural poor and vulnerable group of people who cannot afford the expenses of cases and do not have clear understanding of how to get access to justice in the upper courts on some issues that could be easily resolved at the local level.¹⁷

Importantly, Jahan and Stapleton (2013) acknowledge the fact that village court as a system has gained acceptance both with the government and the community,¹⁸ while Barkat *et al.* (2012) identifies that lack of awareness of the mass people about village courts and its jurisdiction is the major limitation of this court to work actively. Furthermore, the participants' observation, practitioners' opinion and literature review support that the pilot AVCB project has tested and gained number of lessons and outputs which are now strongly sought after to be replicated country-wide. Certainly, the country-wide replication or scaling up the lessons learned from the pilot areas will

¹⁶ Article 22 of the constitution prescribes - "The State shall ensure the separation of the judiciary from the executive organs of the State."

¹⁷ From website: <http://villagecourts.org>

¹⁸ Mid Term Review of AVCB in 2013

have faced several challenges with different magnitudes of complexity. The policy recommendations set forth underneath and the analysis of challenges ahead as well as overcoming barriers in the previous chapter are likely to help the Government to determine obligations and to develop a comprehensive approach in accord with its own as well as donor commitments and resources so as to ensure an effective as well as efficient justice service delivery for the rural poor in Bangladesh.

The key policy recommendations of the study include:

- Urgently scaling up the pilot exercises of village courts across the country
- Framework building for the village courts to make it more gender-friendly
- Tailoring human rights based and service delivery approach of Union *Parishads* to development

The study, however, acknowledges the fact that further research is required to frame the last two policy recommendations more sensibly and to sketch their implementation strategy.

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