

LAW OPINION



Making village court gender-friendly: An indispensable pathway to governance

MUNIR UDDIN SHAMIM

'FOR me, seeking justice from the Union Parishad (UP) and Shalish committee is more useful even though the verdict is not made in favour of me, because they do not require much time and money' said a woman of a Hindu community from a remote village of Barguna district while she was talking in a focus group discussion (FGD) on women's access to justice. The sincere impression of this village woman is indeed a powerful evidence to pronounce the importance, uniqueness and beauty of our traditional dispute resolution system. Bangladesh, particularly the rural society has had a long tradition of informal dispute resolution involving primarily elder male members of community. This system is widely known as Shalish. Gram Adalot or Village Court at UP level is not a new phenomenon. It is rather a continuation of our long tradition of resolving trifles quickly in an informal manner at the local level. In fact, Gram Adalot was established with the spirit of formalizing and institutionalizing this traditional informal dispute resolution process. Although Shalish had existed here as the oldest form of dispute resolution, there was no formal state-led rural justice system under British Raj. The history of formal rural justice institution started its journey with enactment of the Bengal Village Self Government Act in 1919. This Act initiated a Union Court to deal with minor criminal and civil cases. During Pakistan period, conciliation courts were established through the Conciliation Courts Ordinance 1961 to deal with petty criminal activities and civil disputes. This system had continued its functions till it was replaced by the Village Court through promulgation of the Village Court Ordinance 1976. In the year of 2006, this Act was replaced by a new Act named 'the Village Court Act (VCA) 2006 by the parliament. Functions of the existing Village Court (VC) are operational under this Act. It works under the control of Union Parishad. As mentioned earlier, it deals with both minor criminal cases and civil disputes. In both cases, value of the property or amount claimed should not be more than twenty five thousand taka. The main purpose of VC is to provide a rapid restorative judicial service to the local people in a relatively informal atmosphere.

In the context of Bangladesh, having a functional Village Court system is very crucial for many reasons. Despite rapid and remarkable growth in urbanization, Bangladesh is even now rural in nature. According to a WB report 71.9% of the total population lives in rural areas. Existing sex ratio of the country (100.3 as per census 2011) clearly indicates that country's women folk shares 50% of the total population. As said by a UNDP report, 42.3% of rural population lives below the national poverty line. Among them, women are more vulnerable, marginalized and deprived due to patriarchal socio-economic structure. Therefore, this



is a great challenge for the state to provide a simple, low-cost, easily reachable and comfortable justice system to the majority of people, especially rural women and disadvantaged groups. As access to justice is a pre condition for sustainable development, country's target for development cannot be achieved unless an effective, less complicated judicial service is made available at the local levels. In this respect, a gender sensitive Village Court could be a vital option as it is the lowest level of formal justice institution in Bangladesh. It is easily accessible to the people because of its location and semi-formal character.

It is evident from a sample survey conducted by South Asia Partnership-Bangladesh, a national NGO, among 2000 grassroots women of coastal areas that more than three quarter of the respondents preferred Village Court and Shalish to other formal justice institutions. Among 2349 respondents in a study by an UNDP-run project, 97% expressed their opinion that VC was useful due to 'speeding settlement within the locality (65%), easily approachable (70%) and lesser cost (81%)'.

Huge numbers of pending cases in upper and lower judiciary have created a fertile land for demanding a functional Village Court system. A report by Law Commission revealed that as of 1, January 2010, there were 293,901 pending cases in the High Court division, 9,375 in the appellate division and 1,525,889 in the lower judiciary, which means that near about two million cases remain pending in country's formal justice institutions. In such an alarming situation, VC should be an alternative to reduce backlog of cases. In a recent speech in a gala event on VC the Prime

Minister has reemphasized on securing justice for poor and disadvantaged people through an efficient and effective village court system. She also expected that Village Court in Bangladesh would be a model for other countries in resolving disputes in a peaceful atmosphere (The Daily Star 9 June 12). LGED is implementing a pilot project on activating VC in 500 UPs of 77 Upazillas under 17 districts. Government's wholehearted eagerness for activation of VC is visible in its constant efforts over the years but it should be made clear that VC cannot guarantee justice if women, a half of total population, are kept away from meaningful participation in its process. 'Why' - let us illustrate it very briefly.

A UNDP report published in 2010 identified 26 types of incidences that frequently occurred in the village areas of Bangladesh, among them, at least 11 types of disputes including land litigation, family conflict, dispute between couples, quarrel with neighbours, divorce and dowry problems were directly related to women. Although it is observed that women preferred a settlement of dispute through shalish and VC, both institutions are still male-dominated, patriarchal and less sensitized towards women. As a result, women's participation in VC is very poor and insignificant. In most cases, their role is strictly limited to the role of passive service receivers without having perfect voice. My series of field visits in Satkhira, Madaripur, Bogra and Netrakona districts conducted under GIZ-MOWCA run project on Promotion of Legal and Social Empowerment of Women revealed the same picture of poor participation by women. Major reasons that I had observed behind women's poor participation were non-cooperative attitudes by male counterparts, unwillingness to accept women as leader, lack of confidence in women's leadership, lack of capacity among female UP members and shalishker, absence of social security and most commonly patriarchal practices across the society. 'Parties involved in dispute do not nominate female as their representative in VC because they thought woman could not be able to bring verdict in favour of them'. 'As women are traditionally considered weak, less knowledgeable and it is believed that issues like dispute resolution should not be dealt with by women, people do not choose women for VC panel. Therefore, we as Chairpersons of UP have nothing to do to include woman in the panel' said a Chairperson in FGD in Satkhira. Some other vital factors hindering women's participation are primarily related to patriarchal social structure, which include women's traditional gender roles like domestic and reproductive works, care giving activities for family members, low level of education and restricted social mobility imposed by religious and social norms. 'Time is also an important issue as conducting VC requires a long time that women cannot offer due to their roles in

family' said a male participant in FGD in Madaripur. 'If Bou (daughter in law) is involved in conducting VC, who then will cook for us, which is her prime responsibility' commented another participant in the same FGD.

Limitation of VCA 2006 is another cause of women's poor participation. It has not kept any specific provision to include women in its five-member panel even though the issues are directly related to women. It counts women simply as passive service receiver as opposed to see their active roles. As per VCA 2006, a VC consists of elected Chairperson of the respective UP and four members. Each party involved in dispute nominates two representatives, one of them should be a member of UP. Since it does not say anything about female representation, nobody in general wants women as their representative although women have been in UP as elected members since 1997. However, there is good news. The Government through its Activating Village Courts project has taken an initiative to amend VC Act, 2006 to make it more functional and effective. The proposed amendment has made women's representation in the panel of VC compulsory only when it involves the interest of woman or child. This is definitely a one step progress towards women empowerment, at the same time, it reflects on traditional idea of women's participation through restricting their roles only to the woman and child-related issues. It will reinforce existing patriarchal notion of gender roles. In this respect, the new Act should keep a mandatory provision for at least 2 women, one by each party, in a five-member VC panel, even though the issue is not directly related to the interest of women and children. It will contribute towards accelerating transformation of women's roles from passive service receivers to active service bearers, which will gradually change traditional mindset of society. In addition, initiatives need to be taken to make procedures of VC gender sensitive and women-friendly. It should be mentioned here that sometimes the issues of women-friendliness or gender sensitivity are misunderstood and misinterpreted. A gender-friendly justice system never refers to giving verdict in favour of women. It rather emphasizes on creating an enabling environment for both men and women considering particular context in which they live. It requires providing a congenial atmosphere so that service receivers irrespective of their sex could participate in the process with a perfect voice. There are some issues especially family matters that need to be kept in private. In some cases, woman may not want to express her issues in public. We all need to come forward to establish a gender-friendly VC, which will eventually lead to promote governance and justice not only for women but also for men at grassroots level.

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HUMAN RIGHTS WATCH

BANGLADESH

Online birth data to prevent child marriage

THE Bangladeshi government is attempting to register birth data online to combat high levels of child marriage. On 8 June in Bangladesh's western Khustia District, local media reported that 15-year-old Iva Parvin was to be married off by parents hiding her age, but local officials challenged the marriage and demanded proof that she had reached the legal marrying age of 18. When her parents could not provide documentation, the marriage was not approved.

"We feel the situation is improving but it is still not acceptable," said Amy Delneuve, a child protection specialist at the UN Children's Fund (UNICEF) in Bangladesh. "In visits by our staff to the field, we are still finding unacceptable numbers of girls being married with the approval of the kazi [a person who conducts the marriage] and parents."

Everyone should "soon" have a birth certificate. Limited birth registration data is already online, with a full roll-out expected by June 2013. "Once it is fully online it will be easy to stop child marriage when parents marry off their daughter hiding her age," said A K M Saiful Islam Chowdhury, director of the government's Birth and Death Registration Project, which is supported by UNICEF.

The government launched a campaign to reach the estimated 90 percent of the popula-



tion that did not have birth documentation in 2006. Today, an estimated 114 million of the country's 150 million inhabitants have birth certificates, according to officials.

Root causes

The 2007 Bangladesh Demographic and Health Survey recorded that 66 percent of women aged 20-24, mainly in rural areas, were married before they were 18 years old.

Zinnat Afroze, a social development adviser at Plan International, a child rights NGO working in Bangladesh, said it was impossible to end child marriage without addressing its root causes.

The Bangladesh National Women Lawyers' Association noted that almost 90 percent of girls aged 10-18 have experienced what is known locally as "eve-teasing", where boys

intercept girls on the street, shout obscenities, tease them and grab their clothing.

"Parents feel insecure... [they fear the] sexual harassment [of their girls] and marry off their girl child," Afroze said. Local human rights groups have reported girls committing suicide as a result of such harassment.

The dowry is another problem, Afroze said. "Many parents believe that they have to give high dowry money if they [wait and] do not marry off their girl at their early age," she said. The younger the bride, the lower the dowry.

Fighting back

Experts note that birth certificates are only one tool for preventing such marriages. Since 1982 the Female Secondary School Assistance

Programme has used cash incentives paid to families to keep girls in secondary school and out of marriage.

Guardians receive a stipend of up to \$9 per month, depending on which grade the girl is in at school, on condition that she attends at least 75 percent of her classes, and remains unmarried until she completes her exams. Tuition, books and public exam fees are also covered.

Afroze said some guardians have tried to collect the stipend without sending the girls to school. "The government stipend programme for female students should continue, and should be strongly monitored so that the right person gets it."

Source: Iriinnews.org



LAW WEEK

Judge embarrassed to hear petition

A High Court judge on Wednesday felt embarrassed to hear a writ petition challenging the legality of Speaker Abdul Hamid's June 18 ruling.

The Speaker had stated that an HC judge (Justice AHM Shamsuddin Choudhury Manik) violated the constitution by making derogatory remarks about parliament and the speaker.

Justice Naima Haider did not mention any reason for feeling embarrassed. The bench comprising Justice Naima and Justice Muhammad Khurshid Alam Sarkar also returned the petition to the petitioner.

A Supreme Court lawyer, Advocate AKM Shafiuddin, filed the petition, praying for an HC rule upon the Speaker and secretaries to the parliament and the law ministry to explain why the ruling should not be declared illegal. -The Daily Star online edition July 19, 2012.

Zia orphanage case: Court asks defence to submit SC order

A Dhaka court on Sunday directed counsels of BNP Chairperson Khaleda Zia to submit the June 12 order of the Appellate Division of Supreme Court in Zia Orphanage Trust corruption case before it within 20 working days.

Otherwise, the court will start charge hearing in the graft case.

Judge Mohammad Mozammel Hossain of Special Judge's Court-3 passed the order after Khaleda's lawyer Taherul Islam Touhid submitted a petition seeking an adjournment of the hearing.

In the petition, Taher told the court that they could not bring any order as the Appellate Division on June 12 adjourned the hearing on a petition, which was filed against an HC division order, till October 1. -The Daily Star online edition July 15, 2012.

HC extends Tarique's bail for six months

The High Court (HC) yesterday extended bail for six months to BNP leader Tarique Rahman in an extortion case filed during the regime of military-backed caretaker government.

The HC bench of Justice Salma Masud Chowdhury and Justice Md Mozibur Rahaman Miah passed the order following a petition filed by Tarique through his lawyers seeking the bail extension. -The Daily Star online edition July 19, 2012.

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