



# The inexorableness and essence of informal justice system



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**T**HE euphoria of informal justice bears a great significance within the matrix of justice system especially to the poor or disadvantaged people. In general, informal justice systems are repeatedly complementary easily reached to poor and disadvantaged people and may boast the prospective to bequeath with fast, loathsome and culturally germane remedies. Furthermore, in post-conflict societies, people possibly will use traditional and informal justice systems not only for the reason that these systems go one better than formal ones but also because they often deal with issues that the formal justice system does not, or they find solutions and transport remedies in ways that are more

relevant, effective or acceptable in a social context. Informal justice systems are ubiquitous in right through the world, especially in developing countries. Typically they are the keystone of dispute resolution as well as access to justice intended for the majority of populations, especially the poor and disadvantaged in scores of developed and developing countries, where informal justice systems by and large resolve between 80 and 90 percent of disputes. In a study of formal and informal dispute resolution systems amongst poor segments of rural Colombia, the incidence of communities taking matters into their own

hands through vigilantism, mob justice or lynching is more than five times greater in communities where informal mechanisms are no longer running successfully and state attendance leftovers inadequate.

The idea of justice is an old concept which mostly derived from the primitive age when people thought for the first time to form a group to a society instead of the vagabond lives. Needless to say that, a society is the abridgment of a variety of social customs, norms and values which address the people in chain. More specifically the concept of justice is derived from the thought of Plato to Aquinas to Hobbes, ensuing the social contract theory of Lock's. If we sketch the history of the rituals adept in Greek, Roman, Arab, and Babylonian

civilizations, it will focus the existence of restorative justice. Braithwaite (1989) outlined an official theoretical model for restorative justice that was built on a tribal form of justice that existed for hundreds of years. It should be noted that this model is sometimes used in Western democracies, commonly called formalrational systems (Garland, 1990; Roth and Wittich, 1968; Whitman, 2003 cited in Morris and Trammell, 2011). According to Bernard Schwartz (1962) in England with a view to not having any written constitutional peg on which to hang the decisions of the judges enforcing at least ensuring the demands of fair procedure has instead had to rely upon the ethico-legal concept of natural justice. Moreover, there are further examples of the practice of restorative justice rituals or informal justice practice in Christianity, Hinduism, Buddhism as well as Islamism.

Needless to say that informal justice system is the corner stone of formal justice system. At present the formal system of justice is the outcomes of customary or traditional justice system. In other word the formal system has been originated from the moderation of traditional justice. It is imperative to say that in Malawi between 80 and 90% of all disputes are processed through customary justice forums; in Bangladesh an estimated 60-70% of local disputes are solved through the Salish, in Sierra Leone, approximately 85% of the population falls under the jurisdiction of customary law, defined under the Constitution as 'the rules of law, which, by custom, are applicable to particular communities in Sierra Leone'; Customary tenure covers 75% of land in most African countries, affecting 90% of land transactions in countries like Mozambique and Ghana; There are estimates claiming that up to 80%

of Burundians take their cases to the Bashingantahe institution as a first or sometimes only instance.

Moreover, there are diverse contours of informal justice system exist in the world such as Shalish in Bangladesh, Katarungang Pambarangay or Barangay justice system in Philippines, Uganda's Local Council Courts (LCCs), Gacaca-the traditional dispute resolution mechanism of Rwanda, East Timor's Commission for Reception, Truth and Reconciliation drew heavily on informal dispute resolution structures, The customary court system in Botswana, The Rondas Campesinas in Peru, in Tanzania's Serengeti region, representatives of sungusungu groups (local neighbourhood watches), in Nepal informal justice popular forms are Anjuman, Tamudhi, Majjish-e-Shura or Jirga in Afghanistan, Street committees which is called the neighborhood dispute resolution forums in the United States of America more specifically community boards in San Francisco, The People's mediation courts of China, lynching in a variety of countries in Latin America: Argentina, Brazil, Bolivia, Ecuador, Guatemala, Honduras and Mexico, The "Street Committees" And "People's Courts" in South Africa, Kastom in Vanuatu, religious courts of Kenya, The traditional authorities of Mozambique, traditional courts of Zambia and Ghana, the "Sabonesi Gari" Forums in Nigeria, and The traditional Panchayet systems and Lok adalat in India etc. Besides the Community courts of Mozambique, the local council courts of Uganda, the local courts of Zambia, Juntas Vecinales of Bolivia, justice of the peace courts of Guatemala where all these systems have been shaped or sanctioned by means of the state and are frequently incorporated into the formal justice system

but apply customary norms.

The bucolic and non-bucolic poor encompass a propensity to rotate to informal systems for the rationale that they are handier culturally, financially along with geographically than the formal justice system. That is why they knob issues of key concern such as land, property, and family matters. They be relevant procedures and outcomes based on reconciliation, restoration as well as reparation with the intention of being accustomed to local community norms and notions of fair dealing.

In Bangladesh there are three forms of shalish e.g. traditional shalish, government administered Shalish and Non Government Organisations (NGO) led shalish or mediation. It is imperative to say that numerous NGOs in Bangladesh vigorously working for the amelioration of gender justice as well as all over the world, specifically these organisations build on traditional, consensus-based mediation, legal awareness building programmes and adjusts human rights standards of fairness, equality and nondiscrimination to the realities of local communities. Functionally the paralegal as well as the other members who are betrothed in these activities are trained in law, human rights, mediation techniques and also concern about the customary law.

It is imperative to say that the inexorableness of informal justice can never be disregarded in the justice system of a country. In order to attain the meaningful spreading out of informal justice system that facilitates in revitalizing the justice system of the countries should be exercised in the light of modern methodology taking into account the state laws, social customs and traditions as well.

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## Bangladesh's response to piracy: A legal and policy perspective

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**A**LTHOUGH the majority of maritime crimes occurring in Bangladeshi waters falls within the category of 'armed robbery against ships' under international law, yet Bangladesh is affected directly or indirectly by 'piracy'. The country faces the challenge of its ships and seafarers becoming hostages in the hands of pirates. Bangladesh is a maritime nation and has a long tradition of supplying experienced seafarers to port of world fleets. In recent times, a large number of Bangladeshi seafarers are employed on board national foreign flagships. The demand for Bangladeshi seafarers is also increasing significantly in the global market. However due to the escalating trend of piracy worldwide, Bangladeshi seafarers have increasingly become victims of piracy. Quite a few numbers of Bangladeshi seafarers have been held hostages by pirates. Bangladesh also faced the shocking experience of its ships becoming hostages in the hands of pirates. For the first time on December 05 2010, a Bangladeshi-owned ship MV Jahan Moni, belonging to Brave Royal Ship Management, was hijacked in the Western Indian Ocean. The merchant ship was carrying 43, 150 tons of nickel ore and was sailing from Indonesia to Greece after refuelling at Singapore. The Bangladesh-flagged bulk carrier had 26 crew members all of whom were Bangladeshi. The vessel and her crewmembers were released after three months of captivity on March 14, 2010. The General Manager of the Brave Royal Shipping Management claimed that the ship and crew were freed as a result of intense diplomatic and private negotiations and declined to specify whether any ransom was paid to the pirates. However, according to media reports, the owners had to pay USD\$ 700,000 as ransom to secure the release of the vessel.

Following the hijacking and release of MV Jahan Moni, piracy has become a major concern for the ship owners and insurance companies of Bangladesh. However, it is unfortunate to note that Bangladesh does not have a law or policy of its own to protect the industry and the seafarers. As the piracy tragedy of MV Janahan Moni suggests that Bangladesh's seafarers and ships are vulnerable to pirate attacks, action on the part of the government is inevitable. Given the increasing incidence of piracy and armed robbery against ships, there is an urgent need for a domestic legislation on piracy that provides the necessary legal framework for prosecution of persons for piracy-related crimes. At the moment, Bangladesh does not have any laws governing piracy, since that has not been included as a crime in the Penal Code, 1860. The Code does not specifically define piracy. Instead, it provides for definition and punishment for murder, robbery, deprivation of liberty, physical injury etc. that share some common characteristics with piracy. This fragmented approach does not fully cover the definition of piracy as provided for in Article 101 and other related provisions of the United Nations Convention on the Law of the Sea (UNCLOS). Bangladesh has ratified the Convention in 2001, and thus has become committed to the provisions in the Convention concerning combating the crime of piracy. Bangladesh also acceded to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 1988 on June 09, 2005. The Convention obliges States Parties to establish jurisdiction over offences which are committed within the territory or territorial sea of the State Party and also over acts which occur beyond such area. Bangladesh should be seen as a responsible nation in this regard to adhere to the international obligations under the conventions.

Piracy poses real challenges for

Bangladesh. Bangladesh lags far behind from other South Asian countries in the fight against piracy. Bangladesh should demonstrate its strong commitment in countering maritime piracy in the international arena. The offer made by the Prime Minister of Bangladesh to the Secretary General of IMO to deploy a Bangladesh Navy Taskforce to counter piracy in and around Somalia is perceived by many as a manifestation of Bangladesh's willingness to take on a larger role on the global stage. Besides national efforts, regional or global cooperation is also necessary. No doubt, Bangladesh is actively engaged with different regional bodies, including the Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), and the South Asia and Africa Regional Port Stability Cooperative (SAARPSCO). However, the present political and social instability in Bangladesh may allow piracy to flourish as a business. Therefore there is no scope to remain complacent about the issue. Bangladesh's short and medium-term interest could be at risk if proper steps are not taken immediately.

Considering the gravity of the threat, Bangladesh should adopt a more cogent approach towards combating piracy. There are several steps that might be considered by the Government of Bangladesh to fight piracy more aggressively. Some of the possible measures that could be implemented to respond more effectively to the threat may be summarised as follows:

(a) Develop a national anti-piracy action plan to articulate its interests in combating maritime piracy. Such plan should include several national goals, including prevention of piracy, deterrence through maritime presence, working with industry and port facilities to reduce vulnerability to attack by pirates, ensuring that persons who commit piracy are prosecuted in court, preservation of freedom of the seas, and a commitment to broaden efforts to

combat piracy.

(b) Update the national legal framework against piracy and, in particular, its judicial component. In accordance with its international commitments, Bangladesh should criminalize maritime piracy under its domestic law, which should include penal and procedural provisions for the criminal prosecution of suspected pirates.

(c) Establish a central national organisation to deal with piracy. The organisation may be named 'National Maritime Commission' to co-ordinate all activities related to detection and prevention of security threats emanating from the sea. The purpose of such commission may be to promote cooperation amongst various maritime enforcement agencies so they can act together to fight threats to the maritime community and act as liaison between law enforcement agencies, maritime community and government.

(d) Set up on a permanent basis a state-of-the-art monitoring of piracy and a prevention unit in the Ministry of Shipping or in the Ministry of Defence. Early warning about possible acts of piracy must be put in place so that ship captains are aware of impending dangers.

(e) Enhance the capacity of Bangladesh Navy and the Coast Guard to protect Bangladesh's interests in the Bay. Bangladesh Navy must be able to coordinate with other maritime forces, which



include coast guards and other government agencies charged with sovereignty, security, law enforcement and constabulary functions at sea.

(f) Consider providing cover by the national insurance industry for Bangladeshi seafarers working under flags of other states so that the seafarers and their families can be provided with assistance in the case of piracy incidents.

(g) Adopt a united front with neighbouring coastal countries and intensify interaction with them. Mechanisms to enhance communication and coordination among the navies concerned should be encouraged. Bangladesh should consider signing protocol agreement with different countries such as the UAE, Bahrain and India, to protect Bangladesh's ships and crew.

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