



BOOSTING UP SUSTAINABLE DEVELOPMENT BY HYPNOTIZING VILLAGE COURT IN BANGLADESH

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Abstract

Bangladesh is a developing country. It has remarkable progress in achieving the target of the Millennium Development Goals (MDGs). So next target is to fulfill the goals of Sustainable Development Goals (SDGs). Of the 17 SDGs, the SDG-16 ask for promoting peaceful and inclusive societies, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Development of many countries is hampered as a result of weak institutions and the lack of access to justice and other fundamental freedoms. Access to justice can be ensured and effective through ADR mechanism. On the other hand Village court is only an effective system of ADR which is in out of the formal court. This article endeavors to find out the role of village court as a tool of ADR in ensuring access to justice for the rural poor and vulnerable group of people who cannot bear the expenses of suits/cases and do not have clear idea of how to get access to justice in the formal courts and accordingly to provide some recommendations for the improvement of village court. Because by setting up a strong institution sustainable development and justice for all will be ensured.

Keywords: *ADR, Access to Justice, Sustainable Development.*

Introduction

Judicial system of Bangladesh is grasped in a vicious circle of slow down and backlogs. We know slow and delayed judicial system creates huge backlogs which also puts vast pressure on running case and vice versa. This is alarming for justice, rule of law and economic development as well as sustainable development of the country. In Bangladesh as a tool of ADR, village court may play vital role for ensuring access to justice which is one of the goals of SDGs, The cogency of Village Court as a mode of resolving disputes among other dispute resolution mechanisms is magnificent. Considering the common advantages of village court as a speedy, cheaper and part of ADR, It should therefore, be much more functional to fortify and intensify access to justice as well as sustainable development in Bangladesh. By removing defects of village court it would be possible to ensure the just and quick dispensation of justice. The paper aims to discuss ways to improve ADR system in Bangladesh with particular attention on Village court. As such, the utility of village court in terms of its advantages is highlighted specially in case of Access to justice. The benefit of village court and the recent developments of ADR in Bangladesh have been discussed. Suggestion is made for a functional Village court which will be able to keep up the justice for the people of rural area by which access to justice could be ensured.

Methodology

This is a socio-legal research. This article is qualitative and suggestive in nature. This study is based on both primary and secondary data collected from UP chairmen and other stakeholders of village courts, law reports, text-books, journals, newspapers and websites. In the survey face to face interview method was used to collect data by a previously formed questionnaire containing; open-ended, close-ended questions. In order to apply these collected data, analytical approach has been taken as methodology and such data have been presented through percentage.



Limitation

The paper is not free from limitations; rather, the quality of the paper would have been upgraded if the following limitations could be overcome:

1. Time constraints for data collection and preparation of the article;
2. Small number of respondents which hardly provides scope to make authentic decision;
3. Some respondent are not interested to disclose their identity;
4. Lack of cooperation attitude of the respondent.

Objectives

The main objective of the research is to explore the role of village court for ensuring access to justice to achieve SDGs. However research will attempt to achieve the following objectives:

1. To explore the way how can functional village court be made contribution to ensure Access to justice for achieving Sustainable Development Goals (SDGs);
2. To analyze the weakness and flaws of village court so that it can make a fruitful contribution in getting and ensuring justice.

ADR: What it is?

An efficient, fair, independent and accessible judicial system is very essential for ensuring rule of law in a country. In the perspective of access to justice, ADR can be superior tool for ensuring speedy and fruitful justice for all. ADR means “Alternative Dispute Resolution”. It refers to any modes of settling disputes out of the formal judicial system. It usually includes negotiation, arbitration, mediation, early neutral evaluation, and conciliation.

According to Black Law Dictionary (2009) ‘Alternative dispute resolution or ADR refers to a "procedure for settling a dispute by means other than litigation, such as arbitration or mediation.’[1]

Professor Thomas J Stipanowich (2004) mentioned that the name ADR is an outmoded acronym that survives as a matter of convenience only.[2] Prof. Jean R. Sternlight (2000) has preferred the phrase ADR as “Appropriate Dispute Resolution”[3].

So, ADR is a dispute settlement mechanism by which any conflict can be easily and smoothly resolved. It helps to uphold the rights of the citizen in getting worthwhile justice.

Alternative Dispute Resolution (ADR) in Bangladesh: an overview

ADR is not a new concept of our contemporary world. It may be considered as quasi judicial system. Different forms of ADR have been in existence a long period of times. In Bangladesh history of ADR may be traced from two different viewpoints: informal (out of court) and quasi formal (court annexed). Informal dispute resolution system refers to the traditional shalis a traditional process in the village area. Afterwards reformed version of shalish is being managed as village court under statutory law from 2006. “The concept of ADR was first inserted in Section, 10(3) and 13(1) of the Family Court Ordinance of 1985, wherein there is provision for compromise or reconciliation even before pronouncement of judgment. However, there was no implementation of these provisions until a special pilot project was taken on "Mediation as a measure of ADR" in June, 2000, under the supervision of the then chief justice of Bangladesh. Under that project, three assistant judge's courts of Dhaka were specified as exclusive Family Courts for the purpose of mediation. The great success in realization of dower money and amicable, peaceful and quick settlement of disputes through mediation in the Family Courts inspired the government and the policy makers as well to widen the scope of ADR through other legislation. Accordingly, ADR mechanism was introduced for the first time in general civil litigation in 2003 by the



Code of Civil Procedure, (Amendment) Act, 2003 and by the Artha Rin Adalat Ain, 2003, with effect from July 1, 2003 and May 1, 2003, respectively. The Code of Civil Procedure (Amendment) Act, 2003 embodied two new sections (89A, 89B) designed for ADR mechanism in all civil suits and cases.”[4]

In 2006 another section 89(C) has also been incorporated to conduct Mediation during appeal. And furthermore after the amendment of 2012 taking the mediation step is mandatory for Appellate civil court. In Bangladesh usually encompasses some common modes or mechanism of ADR e.g.-negotiation, conciliation, mediation and arbitration and these types of mechanism are executed by Freestanding ADR mechanism and Court annexed ADR mechanism. These mechanisms have been

Incorporated into various kinds of law e.g.-

1. The Code of Civil Procedure, 1908.
2. The Muslim Family Laws Ordinance, 1961.
3. The Income Tax Ordinance, 1984.
4. The Value Added Tax Act, 1991.
5. The Customs Act, 1969.
6. The Family Courts Ordinance, 1985.
7. The Legal Aid (Legal Advice and Alternative Dispute Resolution) Rules, 2015 under the Legal Aid Act, 2000.
8. The Arbitration Act, 2001.
9. The Artha Rin Adalat Ain, 2003.
10. The Conciliation of Disputes (Municipal Areas) Board Act, 2004.
11. The Village Courts Act, 2006.
12. The Labour Act, 2006.

Sustainable development Goals: Role of ADR

The modern concept of sustainable development is derived mostly from the World Commission on Environment and Development (Brundtland Commission) which runs as the "development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”[5].

In September 2015, the United Nations General Assembly formally adopted the "universal, integrated and transformative" 2030 Agenda for Sustainable Development, a set of 17 Sustainable Development Goals (SDGs). The goals are to be implemented and achieved in every country from the year 2016 to 2030[6].

These 17 goals specially focused on economic development, social development and environmental protection for future generations. The SDG-16 reads “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” (UN-SDG, 2015).[7].

The UN General Assembly adopted that “sustainable development cannot be realized without peace and security, and peace and security will be at risk without sustainable development” (UNGA, 2015). [8] The SDG-16 sets 10 targets and two additional targets for attaining the goal. Of the targets, the sixth asks for “develop effective, accountable and transparent institutions at all levels” and seventh to “ensure responsive, inclusive, participatory and representative decision-making at all levels” (UN-SDG, 2015) [9].



ADR is much more convenient to achieve the goals of Access to justice. It can also help accomplish other development objectives, as briefly mentioned as follows:

1. ADR program can prepare community leaders, increase civic engagement, and create public processes to facilitate economic restructuring and other social change.
2. ADR programs can reduce the level of tension and prevent conflict in a community.
3. ADR programs can help manage conflicts that may directly impair development initiatives.[10].

ADR in present world is a vastly accepted. Many developed and developing countries have gained massive success in reducing backlog by adopting ADR. "ADR has been hailed by various international organizations as an "empowering option" for providing justice and ultimately aiding in the processes of good governance, poverty reduction, and sustainable development."[11].

This mechanism is able to ensure the quality of social justice and thereby contribute to the up gradation of harmony and peace in society specially in the rural area. Moreover both of these are pre-conditions for meaningful development in social, cultural economic and other spheres of the country.

Village court in Bangladesh

By considering the grave demand of protecting the majority of rural population through law, a distinct court system had been introduced in 2006 as the Village Court Act, 2006. This Act instituted courts for rural areas, sitting in the local government institutions named 'unionsparishad', working autonomously from both the ministry of law and parliamentary affairs and the national judiciary. In pursuance of the Village Courts Act, 2006 It is material to allude or explain here that, though the term 'Village Court' has been mentioned in the Village Court Act, the settlement under the Act is not performed by any judge or justice. The Village Court has been formed upon an application by one of the parties to a dispute. The Union Parishad (UP) or any of the members of the UP where the chairman is incapable of presiding over or his impartiality is in question shall be the chair of the Village Court. Each Party shall select two members of which one must be a member of the UP.

The Village Court has absolute jurisdiction over slight civil and criminal matters specified in the schedule (1st part –Criminal matter 2nd part- Civil matter) of the Act except where the accused is found guilty of another cognizable offence mentioned in first part of the schedule, and if there is a question of a minor's interest, or a previous agreement in any arbitration between the parties exists, or a government or its employee is a party to it. The Village Court cannot impose imprisonment. It can only pass order of compensation for damages up to a maximum of TK. 75,000/- (As per Village Court (amendment) act, 2013) and restitution of property. However, the procedures as mentioned in the Evidence Act, 1872, the Civil Procedure Code and the Code of Criminal Procedure, 1898 (CrPC) are not applicable to the Village Court. On the other hand even no lawyers can be engaged by either party before the Village Court to represent themselves.

The Efficacy of Village Court & Sustainable Development

In the present world it has been come to the view that access to justice is much more essential for removing poverty from the state. Access to justice help the mass people to be self defendant and moreover it qualify and empowers people to get back their homes, inherit their asset, secure protection from domestic violence, install their legal recognition and citizenship and allow for getting benefits from the state. So as a village-oriented country, in Bangladesh village court may play vital role in ensuring access to justice for folks of villages. Because formal Judicial hierarchy of Bangladesh is under vast pressure with much more backlogs .There are some reasons have already been identified for creating



Backlogs. e.g. huge workload and inadequacy of judges, staff and insufficiency of infrastructural development of courthouse. As a result, newly filled cases and pending cases simultaneously expand the problem seriously. It also generate a negative impact for the rural needy and helpless folks who cannot afford the costs of cases and do not know how to be ensured their access to justice. However some dispute could be easily resolved at the local level. On the other hand it has been observed that lowest formal court is at the district level and rural poor justice seeker have to bear travel and logistics costs which are really additional burdens for them. As a result maximum disputant do not come to the formal court. Sometimes they Condon this without getting any remedies and sometimes they settle by community leader. That's why for ensuring access to justice village courts Act was passed in 2006 and recently Village Court has a great gravity in case of Alternative Dispute Resolution (ADR). Actually development of the state is closely related with the development of rural area. As per report "Approximately 68000 villages are existed in Bangladesh. 80% of the country's total population of about 120 million to live in the rural areas." [12] For this huge population and their development Village court can play a vital role. 'Annual Report (2013) of activating village courts Program stated that, Village courts have recovered BDT 97,726,018 (US\$ 1,265,061) in compensation since 2010. A study conducted in 2013 shows complainants use this money for meeting family needs, business and farming, medical expenses, paying back their loans or buying assets.' [13].

SO for this huge population of the rural area, Village court may be able to contribute in ensuring access to justice as a part of ADR system. For the various reason e.g.-win win solution, cost effective, less time, smooth and speedy process, Indigenous style, reconciliation between disputants etc. ADR system gets popularity in the rural area. But because of some defects till now village court has not able to performed properly and not able to enter its final destination in terms of ensuring access to justice for all. So by removing all defects of village court, sustainable development could be ensured.

Findings and Analysis

Type of Cases at Village Court: It is found by questionnaire that 68% of cases are civil and 32% are criminals are instituting at village court. Where civil offences like; Divorce related (20.4%), family matter (23%), land dispute (27.6%), Trespass in the Property (13%), Extra marital relation (6.1%). Moreover some criminal offences like; theft (32.5%), eve teasing (16.5%), rape (9.0%), cheating (5%), coalition (3%), mischief (5%). From the Interview it has been revealed that mainly Village Court deals some civil and criminal matters e.g.-family matter, extra marital relationship, land dispute, divorce, theft, eve teasing, rape, some property related dispute roads, water distribution. Some other criminal offences related to Voluntarily causing hurt, Mischief, Criminal Trespass, Unlawful assembly and rioting, Affray, Wrongful restraint and/or confinement of person and property, Assault, Criminal intimidation, Wrong and gesture to insult modesty of women, Cheating etc.

Causes to appear at the Village court: People go to village court because of low cost, minimum distance, easy access to seek justice, speedy disposal. But about half of them (62%) go to the village court for its smoothness to enter to the local justice.

Public Satisfaction to the court process: From questionnaire survey it has been found 48% of the respondents are not satisfied with its process and judgment. On the other hand 52% are satisfied and some of the respondents made allegation about political pressure by the local Politian of ruling government.

Training of the Chairman:In the targeted area 96% chairmen conveyed that they need constructive training on the village court for developing their capability because they didn't get any training yet.



Infrastructural Insufficiency: Approximately 82% chairmen demanded that they need more infrastructural development relating to the village court because furniture and well accommodated court room are not available in the village courts.

Need more manpower: Generally secretary, Gram Police of village courts are overloaded by various activities of Union Parishad . Approximately 98% chairmen express their opinion to increase manpower e.g.- computer operator, Peon and Gram police to bring smoothness in the procedure of village court.

Panel Lawyer: some aggrieved party expressed their opinion to have panel lawyer to prepare report relating to disputed property. Even 56% chairman of union Parishad provided their opinion on same matter.

Jurisdiction: 98% chairman even demanded to increase jurisdiction of village court because 75000 taka is not enough to have and solve the complaints. Moreover jurisdiction of the civil court has already been extended.

Recommendations

For ensuring access to justice it is very important to strengthen all tools of ADR along with village court. Study found some fruitful functions of village court as also some drawbacks. This study also found that its satisfactory level is below average. So to evolve its satisfactory level and work fruitfully study got some suggestions from experts, key professionals and the respondents, as bellow;

1. appropriate knowledgeable and experienced eligible person are much more important for the potency of Village Court;
2. Govt. should immediately arrange the training by rotation for all chairmen of village courts of the country;
3. Setting up Minimum educational qualification (Tertiary level) to be elected as chairman in the Union Parishad;
4. Village Court award/judgment should be free from partiality. so has to take effective measure for setting up proper monitoring and evaluation tools;
5. Power of the chairman should be reformed and expanded;
6. Pecuniary Jurisdiction of village court should be expanded from present;
7. Govt. should allocate a remarkable portion of budget for the Village Court to make more stronger its activities;
8. Govt. has to take measure to eliminate the political pressure on the village court which has been made by local political leader;
9. An experienced and knowledgeable person should be appointed as registrar of the Village Court;
10. For the smoothness of activities of village court, a secretary should be appointed who will do act only for the village court because secretary of the Union Parishad are really over burdened by the different kinds of activities;
11. As a part of admiration Govt. may arrange reward for all chairmen who will be able to resolve the dispute successfully in their union parishad;
12. Chairman of village court may be immune from any claim regarding their activities and negligence during the resolving process, unless a mala fide intention is proved against him.
13. For giving advice in case of controversy and making report regarding property related dispute Panel Lawyer or Legal Expert should be appointed;



Moreover to implement all recommendations the Village Court Act, 2006 should be reviewed and necessary amendments should be taken into consideration.

Conclusion

Ensuring access to justice is the key to guarantee good governance and eventual poverty reduction .So as a part of SDGs, 'Access to justice' is much more important to reduce the poverty in a country like Bangladesh. It capacitate and facilitate people to retain and inherit their property, secure them from domestic violence, install their legal identity, obtain and retain medical care and capable for getting government facilities etc. On the other hand access to justice can be ensured effectively and fruitfully by strengthening Village courts to promote social harmony and social justice. Because of low cost, speedy disposal and smooth process rural people go to Village Court (VC). as we know that Access to justice strengthen and capable mass people to retain and preserve their homes, succeed property, secure safety from domestic violence, install legal recognition and citizenship, obtain and retain health care, and qualify for government benefits. So for ensuring swift justice for the people of remote area, government of Bangladesh has to take immediate necessary initiatives to remove drawbacks and flaws as well as to strengthen the village courts because by setting up a strong institution sustainable development and justice for all will be ensured.

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