

DISPENSING JUSTICE TO THE POOR: THE VILLAGE COURT, ARBITRATION COUNCIL VIS-A-VIS NGO MEDIATION

Dr. Nusrat Ameen

Poor people are rarely able to use the formal legal systems to pursue their claims. The costs of engaging a lawyer, the time and the related cost spent in court, the level of skill and education required to litigate, all serve as deterrents. Poor people therefore, prefer, or rather have no choice but, to use the traditional and customary systems. NGOs' play an important role here.

NGOs' like Bangladesh Legal Aid Services Trust (BLAST) and Madaripur Legal Aid Association (MLAA) works with people whose lives are handicapped by extreme poverty, illiteracy, lack of knowledge regarding their rights. Women are more vulnerable especially in the rural areas where the husbands are unable to support the family in the face of increasing landlessness, unemployment and illiteracy. The resultant tensions and frustrations are often vented in assaults on wives, the most accessible victims. With multifaceted activities these NGOs' strives to bring about a positive change in the quality of life of the poor and disadvantaged people of Bangladesh. For example, like providing legal aid to poor litigants to safeguard their fundamental rights through judicial system, conducting mediation, or protecting women workers' economic rights, NGOs' plays a significant role in empowering women.

This article shows how the NGOs' are making a positive impact on the lives of the rural mass by providing legal aid and mediation. And it will show how they are benefiting women in particular through economic empowerment. Likewise, the Village Court and the Arbitration Council are also capable of imparting justice to the doorstep of the rural people and thus making a positive impact on their lives. Keeping this in mind the article recalls the importance of Village Court and Arbitration Council and how they can benefit the rural mass in the whole of Bangladesh even in the absence of NGO's. In this regard the effort of MLAA will be considered. MLAA strives to reactivate the concept of Village Court and Arbitration Council to the benefit of the rural mass. The field experience of the researcher is gathered much from her interaction with BLAST and MLAA while working for them.¹

1. Research in appraisal mission of Bangladesh Legal Aid and Services Trust (2002) and Madaripur Legal Aid Association (2004).

In an NGO, the legal aid activity starts as soon as a client comes to the office with a complaint. The complaint is registered in a specific form and counselling begins. A notice is sent to the opposite party to appear before the committee for mediation. The very usual case of this is family disputes. Disputing parties along with their guardians, relatives or local elites appear before the mediation sessions. The committee tries to mediate the dispute in a fair and impartial manner after the parties present their grievances. Mediators discuss the conflicting issue with the parties and assist them in bringing about a solution which is acceptable to each party. Finally, the parties agree to the grounds set out by the NGO. The grounds may differ according to the issue of dispute. For example, the grounds for divorce, or in case of re-union the grounds are not alike.

If the mediation fails either the matter ends in a divorce or a case is instituted. However, in case of divorce the committee plays a significant part in the settlement. The client is made aware of all legal and social consequences before she takes a decision. Nevertheless, the decision is taken by herself. The committee also entertains cases instituted by the husband; if it ends in a divorce, the committee plays an impartial role. One pertinent point in all cases is that NGOs' does not put pressure on the parties but leaves it on them to decide. And it is a win-win situation that NGO ensures. It ensures that the status and capability of the parties should be taken into consideration while mediating.

Activities Of Bangladesh Legal Aid and Services Trust (BLAST)

The case studies of Gopibagh Clinic shows how women are getting economic empowerment through the service of BLAST. For example, Rashida who suffered abuse by husband for dowry demand got redress from the clinic through mediation. She received taka 53, 000 on 23rd August, 2002 from her husband by mutual consent as dower and maintenance before divorce was complete. She had deposited the money in the bank in her name and is now working at a boutique. She sounded determined to establish herself as an independent business woman in the long run with the experience from the boutique.

Again, Rina Akhter also benefitted from the mediation of the BLAST clinic. The case in short is that the husband preferred a complaint against Rina to bring her home as she was staying at her parents. When the parties were summoned it was actually found from the local people who accompanied the parties that Rina was a victim of physical and mental abuse as the husband kept demanding dowry off and on after marriage.

He is a daily labourer and has little income. However, the abuse increased gradually and his sister also took part in the abuse. Therefore, Rina was reluctant to go back but agreed to go back only if they stayed separately. The husband was not ready to leave his sister. The disagreement finally resulted in mutual divorce. The dower money of 50,000 taka was too huge a sum for the husband to pay and he agreed to pay 8,000 taka in three instalments and Rina consented. Rina is now working in a handicrafts and earning 1000 taka per month. She invested some of her earning with the 8,000 taka and bought three cows. She is also getting money from selling milk from one cow. She is pursuing her studies and is determined to be independent.

Lakhini Bibi, 38 years of age was married to Golam Mustafa in 1988. They have a daughter aged 13 and a son aged 9. Her husband has rickshaw business. According to Lakhini her husband is of bad character and had married twice after marrying her. Both the times she filed cases against the husband. But he persuaded her each time to withdraw the cases against him and then came back to Lakhini. However, he also left the other wives. This time when he wanted to marry again, Lakhini along with a female chairman of the local body tried to reconcile the matter. However, she was recommended to contact BLAST.

On July 31st, 2002 she came to BLAST and registered a complaint against her husband. On 11th August mediation was complete and the couple agreed to certain conditions, namely, they would live as husband and wife fulfilling all marital obligations. They would continue to live on Lakhini's house, which Mustafa built on Lakhini's father's land inherited by her. The Commissioner of their Ward would monitor them from time to time. However, BLAST would initiate another proceeding if any one of them starts a fight. On 6th September, BLAST officials visited Lakhini and found them happy. Lakhini on 23rd October 2002 informed that after so many legal battles and local *Shalish*, finally BLAST could make a positive impact on her husband. She opined that her husband thought that BLAST has the ultimate power because it has convinced the local Commissioners and members to monitor the mediation. Moreover, the fingerprint that he has given in the mediation proceeding also works as a fear, although, like Lakhini and Mustafa, most ignorant people fear the mediation paper as a legal document.

Noorjahan, aged 35, came to BLAST on 30th June, 2002 with land dispute. She was married in 1985. Unfortunately, her husband is a vagabond and left her after seven days of marriage. She never married since then and thinks that he will return one day. She inherited a piece of land from her brothers. However, her nephews forcefully evicted her from the land.

She came to BLAST for help. There was a mediation and ultimately BLAST could mediate the matter. She has regained the land and has settled there.

Shilpi Akhter, aged 22, came to register a complaint against her husband at BLAST office in Comilla on 17th July 2001. They were married on 8th January 2001. After a few months of their marriage, Ishaq, her husband started demanding dowry from her. The office mediated the matter on 30th July 2001. The mediation stated that the couple should stay in maternal home of Shilpi until the husband becomes solvent to live on own. The husband should pay 500 taka to Shilpi and the money would be spent on living expenses and not for Shilpi's personal spending. If Ishaq demanded dowry the office would initiate legal proceedings against him.

After the mediation they were living happily and had a son. Her husband is now active and struggling to get established. The reason for asking dowry could be gathered from the conversation. They married on their own without the consent of elders and the mother of the groom did not accept Shilpi and started to abuse her soon after marriage. And so for Ishaq dowry was just an issue to fight. There were also several local *Shalish* which failed to settle the matter between the two families. Finally on hearing about BLAST activities the mother of shilpi took her to BLAST.

Julia Akhter, aged 18 was married on 10th March, 2002. She was given gold necklace, earring by her parents and 35,000 taka was also given to the groom for business. However, after one month of marriage the husband started to abuse her for more dowry. Learning about BLAST from her uncle who is a lawyer, she came for help. She registered a complaint on 3rd September, 2002 and mediation was done on 16th October, 2002. The mediation failed as she refused to go back to husband. So instead BLAST mediated and got back her belongings that was given to her on marriage including the gold necklace, earrings. The cash 35,000 taka was agreed to be given back to Julia by the husband at the BLAST office. Julia said she had to come to BLAST office on 12th December, 2002 to get the first instalment. She wishes to pursue her studies and become independent.

The above case studies reflect the fact that women are being benefited by NGOs' like BLAST. For Lakhini, Shilpi and Noorjahan the social and economic empowerment was essential for survival. For Julia, along with economic empowerment she also got the social empowerment by convincing the society that she endured enough torture and had a right to come out of marriage and choose her own life.

Therefore, to reduce poverty as well as social injustice (like wife abuse and other discriminations) it is essential to economically empower women. This is possible through NGOs' like BLAST which is playing a significant role in providing legal aid and rural mediation and by doing so making an impact on the promotion of women's rights and economic interests. Therefore, alternate dispute resolution does benefit women to ventilate their grievance and promote their rights. This is also possible through the government initiative by reactivating the Village Court and Arbitration Council. This forum gives opportunities to the poor people, especially the women to come forward and establish their rights through a formal body but in an informal manner. For example, a woman who wins a maintenance case may cause other men to think of providing maintenance to their wives rather than going to court for not providing. Likewise, the working of MLAA in mediation and or alternate dispute resolution shows the strength of its success in bringing a change in poor people's lives.

Activities Of Madaripur Legal Aid Association (MLAA)

The mediation cell of MLAA in Madaripur, Shariatpur and Gopalganj also shows successful mediation through their office. Monitoring the mediation for a certain period, for example, three to six months is also done by the committee to watch whether the mediation really benefits the couple. For example, in case of maintenance, the money is first given to the committee by the husband and then taken by the wife officially for some time until she gains confidence in her husband. This is done where the parties unite. However, in case of divorce the husband usually agree to pay a certain amount to the office either in one instalment or several instalments depending on capability of the man. The office then hands over the money to the wife.

Rumi Begum had received a portion of land from her husband before he died. She lives with her in-laws. But after the death of her husband, Badshah, her broth-in-law started to abuse her and denied her possession to the land and destroyed the trees she planted on it. Rumi came to MLAA for mediation on 25/10/03. On 29/01/04 a settlement was reached between the parties. They agreed to stay together in the same house by mutual agreement and the brother-in-law agreed to give her possession of the land. Thus, the land was demarcated according to the agreement and was witnessed by the mediation worker. The family is now living together.

Jharna and Shiraz got married eight years ago. They have a son aged two years. They were living happily when on the advise of the parents of the

in-laws Shiraz started to abuse her demanding 30,000 Taka as dowry and on 19/04/04 physically abused her for not meeting the demand. Jharna came to MLAA on 21/04/04 to complain against her husbands illegal dowry demand and abuse. The office mediated the matter and parties reached an agreement on 29/04/04 to live together and the husband agreed not to demand dowry or abuse her.

Aleya was married to Jahangir 14 years earlier. They have a daughter who is now 12. They had some differences which resulted in divorce after 6/7 years of their marriage. Soon they realized they had committed a mistake and went to MLAA for advice. MLAA mediated their differences and married them again. The couple were reunited by MLAA about six years back. They are happy and they have a son who is 5 years and a daughter who is one and a half years old now.

There are cases in the legal cell also which are ultimately settled through mediation by MLAA. For example, in the cases of Lylee of Shariatpur, who came to seek redress against her husband for not maintaining her and her daughter had to file a case against her husband, Motahar. A Family Suit was filed by the Shariatpur Sadar Thana Family Court on 19/08/98. The court ordered to pay 45,000 Taka as maintenance and dower to Lylee and 1,500 Taka as monthly maintenance for the daughter. The defendant did not comply with the court order and MLAA filed an execution case in favour of Lylee to realise the money. The defendant realising the danger came to MLAA for an out of the court settlement. At last Lylee received 15,000 Taka and got divorced. She has kept the money in postal savings.

Same happened to Ratna of Gopalganj, where failing mediation a dowry case was filed in the Magistrates Court. When the Magistrate sent the husband, Jitu Munshi to jail and fixed a date for fixing the charge, the family of Jitu came and persuaded Ratna to settle the matter through mediation. The dispute was finally settled and Ratna was paid 50,000 taka which she kept in the postal savings.

Thus, MLAA has been working in the field of providing free legal aid to the poor and marginalized people since 25 years. MLAA has a mediation and legal aid committee in the three districts of Madaripur, Shariatpur, Gopalganj. They are run either by co-ordinator or Senior Assistant or Assistant Co-ordinator. There are advocates in this committee but their number is not fixed because the panel lawyers are engaged to institute cases in situations where it is required. The number of panel lawyers also differs from place to place. MLAA currently has 75 panel lawyers in the three districts. Initially the organisation provided legal assistance to those who are incapable of having any access to the state legal machinery

due to lack of awareness regarding their rights coupled with poverty which acts as hindrance to surface their grievances.

However, in doing so the organisation felt the limit of litigation on the impact of the poor in their actual lives. Traditional shalish has its origin in history throughout the Indian Subcontinent. Nevertheless, the present day shalish that is applied in the rural areas has its limitation for being prejudicial and biased as the shalishkars often imposes the shalish arbitrarily on the weaker party. Moreover, the shalish hardly follow any uniform principle of equity and justice. In recognition of such limitation MLAA developed an alternative forum for dispute resolution for the rural poor through the reformed shalish, popularly known as the Madaripur Model of Mediation (MMM). The object obviously is to introduce a free, equitable and effective alternative to a large number of commonly occurring litigation. The most significant role of MLAA is to introduce the community members in the mediation process. There is a committee known as Community Based Organisation (CBO) that is mandatory in the UP and Ward level. The participation of CBO members enhances the confidence of the disputing parties.

Apart from traditional mediation there are options for the rural people to resolve disputes at the local level. Thus, in Bangladesh, by law, there is a council or parishad established in every union, called the Union Parishad (UP). Each UP consists of a Chairman and members of the Parishad amongst whom three are elected women representatives. The Muslim Family Law Ordinance, 1961 obliges the UP Chairman to convene a Council to handle certain family matters, for example, divorce, polygamy, dower, maintenance. It is only applicable to Muslims. In an effort to encourage and effectuate the already existing but non-functioning forum, since March 2000 MLAA under its access to justice programme is imparting basic training to the UP Chairmen and members of the Parishad. Through the intervention of MLAA programme 80 arbitration assistants are working with dedication directly with the UP Chairmen and members and providing them technical assistance regarding methodological, legal, documentation and follow-up issues of equitable mediation, a responsibility that the local bodies in Bangladesh were vested with decades ago.

However, research in this field shows that functioning of Village Court was not as regular or in a concerted way as should have been. After the withdrawal of the Magistrate Courts and Munsif Courts from thana level in the early 1990 legal services and the judiciary in the rural areas seem to be facing a crisis. The vacuum can be filled by the Village Court which can play a significant role at the village level. Moreover, as the formal judicial system is expensive, complicated and lengthy, it puts the poor at

mercy and beyond their capacity to avail any redress. For obvious reasons it is difficult often for the poor to come to city to pursue the litigation. MLAA at this point makes a difference in the lives of the poor by re-activating the Village Court through their support and thus ensuring safety, security and justice to the rural poor. It is more than two years since 2003 that MLAA is imparting this responsibility. The task that MLAA has taken is definitely noble as NGO's cannot alone take the burden of imparting justice to the door of the poor in the whole of Bangladesh, whereas, the Village Court and Arbitration Council can do it through government initiative.

Therefore, the article finds that it is time to recall and re-establish the formal 'rural justice system' in a coordinated manner to serve the poor for whom these laws were enacted. Thus, the question of working of the Village Court (VC) and the Arbitration Council (AC) arises. Nevertheless, in order to make a quality impact assessment it is necessary to undertake a comprehensive analysis spread over a considerable time schedule. However, in the present circumstances within a very short span of time, there was very little scope for a more in-depth evaluation of the different models applied in the relevant fields. Nevertheless, the value of the study rests less on methodologies and much more on the qualitative assessment of the impact on the capacity and future plans. Thus, keeping in mind the time constraint it was not possible for the researcher to go into detail of the Village Court Act and its impact on local justice. However, it could only predict or assess the importance of VC/AC through other researches and the role of MLAA in relation to the working of VC/AC.

Village Court and Arbitration Council

From time immemorial and before the arrival of the British, judicial functions have been performed informally or through prevalent customs by the village elders. The village Panchayet also performed some judicial functions. There were provisions for the formation of courts in the union level. The presidents of the then Union Boards discharged informal judicial functions. After the introduction of the Basic Democracy system, the chairman of the union councils were authorised to act as conciliation court in the rural areas as provided in the Conciliation Court Ordinance, 1961.

During the British Rule, the first proposal for establishment of village level court on legal basis, was given by the Fraser Commission Report, 1902-03. Later on, the Hobhouse Commission of 1907-09 and Levinge Committee of 1913 proposed creation of the village level courts to solve the trivial cases of the village people. On the basis of the reports of the

above committee/commission, the Bengal Village Self-Government Act, 1919 was passed. The Act empowered the Union Board with judicial powers by creating the Union Bench and the Union Court. The former tried petty-cases of criminal nature and the latter of the civil nature.²

In 1961 two Ordinances were promulgated, namely, The Muslim Family Law Ordinance (MFLO) and the Conciliation Courts Ordinance (CCO). The MFLO provided regulatory measures and procedures of marriage, divorce, maintenance, polygamy, child marriage, inheritance, and empowered the Union Council at village level to deal with the provisions of the Muslim Family Laws. Likewise the CCO empowered Union Council to deal with minor cognisable offences or disputes relating to criminal or civil cases for which no criminal or civil court had 'jurisdiction to try any such cases'.³

Thus, Village Court, one of the forgotten rural institutions, has been playing an important role in resolving rural litigation of petty nature for many years but in a very slow pace and informal manner. Village Courts had emerged in the early 1960's with a view to improve the traditional shalish system existing in the rural areas. During the post liberation of Bangladesh the concept of Village Court operation was suspended for a few years but was restored by an ordinance, namely, Village Court Ordinance, 1976. By the same ordinance the Conciliation Courts Ordinance, 1961 was repealed.

The Village Court (VC) was established in every union of the country for disposal of some civil and criminal cases locally with the help of nominated representatives of the parties to the dispute. The intention of the Ordinance was to settle petty disputes and cases of trivial nature locally without going to the district courts and thus saving the poor people from unnecessary cost and trouble. Nevertheless the idea of Village Court has its root in ancient history where villages were under the control and administration of the Village Panchayets. The Village Panchayet was chaired by the village headman. His responsibility was to ensure peace and security in his village areas. Each village, thus, had its own local court of Panchayet, composed of a headman and village

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2. Rahman, Md. Moksudur: A Study of Two Village Courts. In *The Journal of Local Government*. Vol.XIV. No. 2. July- December 1985. p175. [quoted from Khan, Md. Aftabuddin: *Working of the Village Courts in Four Union Parishads in Bangladesh- A case Study*. Seminar paper submitted to BPATC of Sixteenth Senior Staff Course. October 7-December 20, 1992.]
 3. Qadir, Dr. S.A.: *Modernization of an Agrarian Society*. Dhaka; National Institute of Local Government. 1981. pp 1-8.

elders. The Panchayet dealt with minor disputes, that is, civil, criminal, religious and social.⁴ An appeal could be made to the ascending hierarchy of the judicial officers of the government. The head of the ascending hierarchy was the Emperor, the highest court of appeal.⁵

In 1976, the Government of Bangladesh constituted village courts in all the unions and repealed the CCO to settle minor disputes of criminal and civil nature. The Village Court shall have jurisdiction to try cases within the local limits of the union where the offence has been committed or cause of action arisen. Its decision is compensatory in nature to seek amicable conciliation of the dispute. The Act of 1976 did not repeal the provisions under Muslim Family Law Rules that deal with the Constitution of Arbitration Council for the matters mentioned. As a result, both the Village Court and the Arbitration Council exist in practice in the rural Bangladesh till date.

Nevertheless, all these exist in paper and not in practice due to several reasons, for example, lack of initiative, awareness, training and skill on the part of the village functionaries, technical support and incentive from the government. With a view to strengthening and implementing the statutory provisions as regards constitution of Union Parishad Arbitration Council the MLAA undertook the task. The object was to ensure enforcement of women's legal rights through this inexpensive and less formal court for dispute resolution.

Structure, Power and Finality of a Village Court

According to section 5 of the Village Court Ordinance, 1976, the VC consists of a chairman and two members who are nominated by each of the parties to the dispute. One of the members nominated by each party shall be a member of the Union Parishad (UP) concerned. The Chairman of the UP shall be the Chairman of the Village Court, but where he is, for any reason, unable to act as Chairman or his impartiality is challenged by any party to the dispute, any member of the UP appointed in the prescribed manner shall be the Chairman of the Village Court. Likewise, in case of a disputed member, any party with the permission of the Chairman may nominate any other person of the UP to be a member of the court.

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4. Khosla, G.D.: *Our Judicial System*. Allahabad. The University Book Agency. 1949. pp 16-17; Siddiqui, Dr. Kamal (ed.): *Local Government in Bangladesh*. Dhaka, National Institute of Local Government. 1984. pp 5-7.
 5. For detail please see Matthai, John: *The Village Government in British India*. New Delhi. Niraj Publishers. 1983.

On the basis of the petition the chairman calls both the parties to nominate their members within a period of seven days, and then constitute the court. After the formation of the Village Court, the respondent is asked to submit a written objection within a period of three days and fix the day of hearing and the production of documents by the parties. The court has power to hold inquiry if the petitioner fails to appear, and if the Chairman finds negligence, the application shall be dismissed for default.

All cases relating to offences specified in Part I of the schedule and matters specified in part II thereof shall be triable by the Village Courts and no civil and criminal court shall have the jurisdiction to try any such case or suit.⁶ The Village Court has power to award compensation to the aggrieved party of an amount not exceeding five thousand taka under part I of the schedule. But it does not have power to convict a guilty person of any sentence of imprisonment or fine. In a suit relating to Part II of the schedule, the court has power to order payment of money up to the amount mentioned there in respect of such matter or delivery of property or possession to the person entitled thereto.

If the decision of a VC is binding on the parties, it shall be enforceable in accordance with the provisions of the Ordinance. If the decision of the VC is by a majority of three to two, any party may, within thirty days of the decision, apply in the prescribed manner either to the Thana Magistrate or Assistant Judge as the case may be.⁷ The VC has the power to enforce its decrees according to the manner prescribed under the Ordinance.⁸

Structure, Power and Finality of Arbitration Council

In Bangladesh, the Union is the focal point of all governmental administrative activities.⁹ By law, there is a Council or Parishad established in every Union called the Union Parishad (UP). Each UP consists of, among others, a Chairman and three women members. Local Government Act, 1983 as amended in 1997, which provides for the direct election of women members in the three seats previously kept reserved for them.

6. See for detail Village Court Ordinance, 1976, section 7.

7. Ibid, section 8.

8. Ibid, section 9.

9. Sattar, Rana P: A Study on the Overall Impact of Madaripur Legal Aid Association's Mediation Activities and the Monitoring and Evaluation Capacity of the Organisation. Conducted by Social Development Consultants, Dhaka. September, 2000.

This is a positive step for ensuring women's empowerment in the local administration.

The Muslim Family Laws Ordinance, 1961 obliges the UP Chairman to convene a Council to handle certain family law matters mentioned above. For example, section 7 of the Ordinance gives a man the absolute right to dissolve his marriage extra-judicially, but the UP chairman must take all possible steps necessary to bring about a reconciliation. While the objective of this section is to prevent hasty dissolution of marriages without any attempt being made at reconciliation on the part of the parties and the UP chairman, the percentage of such reconciliation in Bangladesh is very low, particularly in rural areas.¹⁰ A study shows that the reason for the low percentage of reconciliation is the lack of initiative by the UP to reconcile.¹¹

In case of polygamy the UP Chairman is obliged to convene a council under section 6. This section requires that a man seeking to contract a marriage during the subsistence of an existing marriage must obtain permission of the Council. While the rules framed under the Ordinance make it plain that the Council may take into consideration such circumstances as sterility, physical infirmity and insanity on the part of an existing wife, the law makes no clear provision to control the discretionary power of the Council. However, the Council on their part is hardly seen to take all these into consideration and found to permit second marriages on insignificant excuse.¹²

Nevertheless, MLAA by providing training has imparted to shoulder the responsibility of educating the UP Chairmen, secretaries and members regarding their statutory duties. It was observed that the rural people even the local government representatives are hardly aware of the forum for family dispute, namely the Arbitration Council.

If the UP Chairman is a non-Muslim or if he himself is a party, then the Council requires a Muslim UP member to be nominated by the Parishad by a resolution. The decision of the Council is determined by majority. Where it is not by majority then the Chairman's decision will be final. If any party is dissatisfied with the decision it may apply to the Court of

10. Huq, Naima: The Muslim Family Law Ordinance, 1961 and a Wife's Safeguard. CLEP Bulletin August 1996.

11. *Supra* 1 and 9

12. Serajuddin A.M: Sharia Law and Society, Tradition and Change in the Indian Subcontinent. Asiatic Society of Bangladesh. 1999, 109.

Assistant Judge within thirty days for reconsidering it. The party, however, must furnish reasons for such consideration. The judgement of the court will be final.

Observation on Village Court and Arbitration Council

In a case study of VC in two UP's of Dhaka, Solaiman found that the VC is not functioning due to several reasons: i) lack of knowledge among the people and the UP functionaries in the VCs', ii) corrupt practices by the UP functionaries; and iii) lack of enough power in the VCs' to summon the accused and to compel the people to carry out its verdict.¹³ The success of VC depends on the ability, status and position of the UP Chairman and members. But instances are not few where it is found that there are allegations of corruption against the functionaries of the VC which might affect the function of the VC.¹⁴

Similarly, taking two Unions under Paba Thana of Rajshahi regarding the working of VCs', Rahman found that the VCs' with limited power and jurisdiction settled disputes on marriage, divorce, property, monetary affairs and cattle trespass at minimum cost and trouble.¹⁵ These two case studies dealt only with the general functioning of VCs'.

On the working of VCs' in four Union Parishad's Khan¹⁶ found that, there was no clear answers regarding the issue of the constitution of VC, sending of reports by the UP's to the Thana Magistrates, maintenance of registers of cases, transfer of cases to the courts of Thana Magistrates. Therefore, it was assumed that i) the VC's functionaries are not serious about the working of the VC, ii) there is lack of interest on the part of higher authority, iii) lack of knowledge among the UP Chairmen and secretaries; and iv) complexity in the system.

Nevertheless, the functionaries however, stressed the need for continuation of the VC on the grounds that, people are not required to go to the court for petty disputes as VC settles these at minimum cost and

13. Solaiman, M: *The Village Courts- A Case Study of Two Union Parisad's*. Local Government Quarterly, Vol. 10, No. 1-2, (March-June, 1981). pp 31-42.

14. *Ibid*, pp31-42.

15. Rahman, Md. Moksudur: *A Study of Two Village Courts*. The Journal of Local Government. Vol. XIV, No. 2 (July-December, 1985). pp 174-188.

16. Khan, Md. Aftabuddin: *Working of the Village Courts in Four Union Parishads in Bangladesh- A case Study*. Seminar paper submitted to BPATC of Sixteenth Senior Staff Course. October 7-December 20, 1992.

trouble. The parties are known to the Chairmen and members which makes it easier to hold local inspection and solve their disputes. Moreover, the VC saves the people from harassment by the 'touts' and cost of legal practitioners.¹⁷

Moreover, Khan observes the reasons for the continuation of VC as felt by the respondents are numerous. For example, the people, particularly the poor get an opportunity to settle disputes at their door step, which saves them from journey and also huge expenditure. Moreover, the persons delivering judgement are known to them and are aware of their situation than any outsider in a formal court. Therefore, they are better equipped to decide a dispute on the basis of investigation. The VC settles disputes amicably or on conciliation which are pre-requisites to restore harmony and cohesion in the rural society and thereby maintain law and order in the rural areas.¹⁸

The observation in Madaripur of two VC and AC proceedings shows that AC and VC were not functioning or functioning in a non-formal way.¹⁹ However, it was observed that when MLAA stepped in as facilitator these courts started functioning. This is the strength of MLAA and the general acceptance of MLAA in the area of justice delivery. MLAA is a service oriented organisation. MLAA has a social acceptability and sound image in the area of VC and has a considerable amount of committed workers in this field.

MLAA is providing vital services to the poor of Bangladesh by providing mediation, legal aid and assistance in reactivating and effective running of AC/VC and alternate dispute resolution (ADR) in rural areas of the local government level. This is essential for a systematic change and was felt that by concerted advocacy MLAA can make a substantial improvement to the justice system.

MLAA has 80 field workers for AC, 95 VC workers and 30 mediation workers. The chairmen are pretty dependant on the MLAA assistants. However, in VC/AC the court decorum is not maintained and ignorance about law make the chairman's role questionable in court and reflection of his judgement in court may have serious consequence. A parallel

17. Ibid, p25.

18. Ibid, p28-29.

19. Research carried by Ameen, Nusrat in the three districts of Madaripur, Shariatpur and Gopalganj for MLAA in 2004.

system may cause confusion in the minds of the people at this stage. The people in general including the chairman has little credibility to differentiate between VC/AC/ADR.

Therefore, people's confidence has to be restored on the chairman for conducting the cases under VC/AC observed District Commissioner of Shariatpur. Here MLAA can play a role by bringing a change in the mindset of the people regarding the fair trial in the local body which would save them money. He said VC/AC can really help people of Shariatpur as they are poorer owing to flood each year than other districts. The DC also observed that MLAA is quite visible in this respect as they are helping to activate the concept of local justice. Nevertheless, the government should be more active to implement rather than depend on NGO assistance.

In some cases owing to the ignorance of the AC/VC cases are being instituted beyond jurisdiction. It was also observed in a court that the secretary of the UP was conducting the session in the absence of the chairman, which is a gross violation of law. In the absence of the chairman the law clearly states that a member of the UP appointed in a prescribed manner [under section 5(2) and rule 12 of the Ordinance and Rules, 1976] should conduct the case. Moreover, where a case is filed for lack of legal knowledge beyond jurisdiction, it is too late to rectify the wrong.

Moreover, it was observed that mostly the court decorum is not followed. The chaos of the parties and the presence of members and relative of the parties place the VC/AC in an informal platform. It was observed in a VC that the application was not filed accordingly, the amount was not specified which has to be within 5000 Taka and no adequate information of the incident was mentioned. In one court there were two separate cases instituted by the husband and wife on the same issue. It was felt that the casual nature of shalish which had been followed for years is still being practised. Moreover, if the verdict is disobeyed, the Chairman sometimes refer it to the local NGO. Again this shows the incapacity of the Chairman regarding the legality of VC which specifically states the forum in case of non compliance.

Thus, owing to ignorance it is beyond the understanding of the Chairman that legal errors being committed. This is dangerous for the sustainability of VC. In the long run if legal procedures are not strictly adhered to, the whole institution will fall apart. Therefore, it is suggested that the chairman should be well versed regarding the issue and procedural laws and cases should be scrutinized before it is actually sent to the court. The functionaries should do qualitative and not only quantitative evaluation

of the work of AC/VC to ensure that cases have been chosen according to law and also that the procedure of the court have been followed according to law.

From the interviews of the District Judges it was found that the working of the VC is absolutely dependent on MLAA assistance. District Judge of Madaripur said that he is aware of MLAA's function of re-activating the VC which is successful but what about the other districts where it is not working? Joint District Judge is however, sceptical about VC and says that it cannot offer justice as most of the chairmen are politically biased.

In this regard, the study of VC in Kalirbazar, 1995 shows that, there was a decline in the cases which reflected the lack of interest by the Chairman and his members. Settlement of cases at the villages by the Chairman becomes important as it provides him and his members opportunities to demonstrate their capacity, efficiency and sense of justice which will be reflected in the next election. Thus, with the fall of Ershad government, in Barapara, 1990-91 saw not a single case filed in the court as the Chairman was disinterested for obvious reasons.²⁰

However, regarding political bias, the reaction of the chairmen differed. Ten chairmen were interviewed. Shirajul Islam, chairman of Jhawdi, Madaripur, said that he sits twice a week in the VC/AC and also mediation. He feels that the decision of chairman has nothing to do with politics. He sits as a judge and if the party belongs to him, he logically makes them understand the situation. Moreover, if the verdict is impartial, the party in default also fears to raise any question as he would not be backed by the local people. Nevertheless, Islam said, in respect of popularity, if the chairman is doubtful about the outcome, he may send the case for mediation to NGO. Thus, it shows the ignorance of the Chairman about the legal implication of VC. If a case is within the jurisdiction of VC and is sent for mediation by the chairman- it shows the incapacity of the local body in the context of justice delivery. Moreover, this also shows that as there is a parallel system, the confusion is quite apparent.

Chairman of Ghatmajhi Union has rented a place where he regularly holds the AC/VC and mediation. In his opinion the personality and social status of the chairman is required to effectuate the verdict whether AC/VC or mediation. In Naria, chairman of Bhojeswar UP, sits once a

20. Quader, Md. Abdul: *The Functioning of Village Courts in Bangladesh*. Bangladesh Academy for Rural Development (BARD). Comilla. July 1995.

week. He said that before MLAA's initiative, the VC worked earlier without any documentation. This shows the ignorance of the chairman regarding the legality of VC.

The Chairman of Haridaspur, Md. Zahidur Rahman also sits for VC/AC every Friday. He is re-elected four times as Chairman. He thinks his involvement in the VC/AC and mediation has a direct link to his being re-elected. However, he also acknowledges the assistance of MLAA for bringing the clients to the court. It is not possible for him or his secretary to do this additional job. Haridaspur has a proper court room to conduct the AC and VC cases. Rahman feels that if verdict is neutral, it has a long term effect on the credibility of the office of the chairman.

In Patgathi UP the same observation was made regarding the dependency on MLAA. The chairman here also admitted that before the involvement of MLAA only few cases were entertained. However, after MLAA stepped in the cases have gone up to three times. It was observed that in Rajbari union the concept of VC was already existing but was not being done in a structured way. After the MLAA's initiation it is being done according to law.

Few female members of the UP were also interviewed. Some are found vocal and can voice their rights. They take part in the VC when the case is from their constituency. Sometimes they are ignored by some chairmen who are guided by patriarchal norms. But if it so happens, a few female members do question the chairman to account. These members also found that MLAA has made a difference in their pursuit as a member as they are aware of their rights through the trainings of MLAA and attending workshops and seminars.

All the chairman interviewed opted for the assistance of MLAA assistants. In their word they have the power to dispense justice through AC/VC but local body cannot perform it by themselves. When asked whether the secretary can help in this regard, all said that the secretary has other work. Thus it was found a double opinion amongst the chairman when they were asked, which do they prioritise – development or justice delivery? All said the justice! However, if that is so, then their word and action is contradictory. In the one hand they are keen to work the judicial process which by law is vested on them, on the other hand, in the absence of MLAA they cannot function it. It prompts that the local bodies are too dependent on NGO assistance. It is a vital impediment for successful working of VC/AC. Moreover, the chairmen's own submission on NGO's dependency calls for a question on independent working of the VC/AC.

Regarding the remedial and conciliatory nature of the verdict of the VC the functionaries feel that sometimes it does not serve the interest of the party affected. Because in most cases when a plaintiff files a case against an accused, he expects something more in his favour. At least some physical punishment or punishment in the form of financial loss like payment of fines by the accused is the minimum expectation of a plaintiff. This is obviously a limitation on the jurisdiction of the VC.²¹

Conclusion

In conclusion, it is noted that, the article shows the impact and importance of local justice; be it non-legal mediation by NGOs' or legally binding Arbitration Council or Village Court. The article clearly shows how the mediation by NGOs' become binding on parties who respect the local justice. Likewise, in discussing the impact of local justice through the AC and VC, it emphasises the need of these forums for dispensing justice to the door step of the village people. The need of Government of Bangladesh to reactivate the AC and VC is therefore imminent. GOB needs to play a role in the enforcement of VC verdict and policy. In the experience of the researcher it is seen that the summons are sent by MLAA assistants to most places. But again, the question regarding the rest of the districts where there is no NGO assistance remains unanswered. Moreover, the reluctance of chawkidar is clear and the reasons may also be related to the payment of their salary which is paid by union parishad and government by 50% each. The union parishad because of fund constraints seldom pay the 50%. Therefore, local government should be equipped to provide fund if VC is to function.

From the article it is also observed that for re-activating Village Court and Arbitration Council MLAA has proved its manifest commitment for upholding local justice. However, the question remains - ? How about the local justice in the whole of Bangladesh? Moreover, from the article it is also observed that NGOs' like MLAA and BLAST are providing mediation (ADR) to the poor and grass-root people. However, mediation cannot replace the courts and can never be considered as a substitute for the formal justice system. As the objective is to secure equal access to rule of law, mediation must serve as auxiliary to the formal justice system and should not be promoted as a substitute system for the poor and

21. Ibid, p 32.

marginalized who have an equal right to have access to the formal system.²² Thus, it is time to look into the proper implementation of the already existing but non-operative system of local justice, that is the Village Court and the Arbitration Council. Therefore the following suggestions have been made:

1. The power of chawkidar should be re-introduced, so that it becomes easy to serve summons. As UP incurs additional expenses to run the VC, the UP should be allowed to impose fees, for example taka 100 for each case. From the study it is observed that VC should be given power to sentence short term imprisonment. In order to implement such decree, there should be arrangement of 'Hajat' at the union level. To make VC effective and powerful, it is necessary to organise a security force at the union level.²³
2. GOB should hold series of meetings, seminars with DC, UNO and chairmen/secretaries at the same platform to voice for the effective functioning of VC/AC. It should provide extensive training to the local bodies to make them aware of their duties to dispense justice at the door step of village people which is their legal right.
3. GOB should then hold meetings and seminars in the national level with like minded NGOs' and government bodies and provide training on local justice delivery.
4. Presently, there is a national forum of UP. The forum feels that secretaries have other job and are not accountable to the local people being a government employee. they are reluctant to function in the VC. NGOs' can make a difference by involving this forum in their advocacy towards the GOB for re-activating the VC. The accountability of the office of the chairman is mandatory to sustain the VC/AC. NGOs' should advocate for the accountability of chairman and secretary for the functioning of AC/VC by the GOB.
5. NGOs' ADR/AC/VC work is helping to create a culture of rights and through their programme to promote a system change. By linking its work and its policy NGO's can promote reform. The situation can be improved, if NGOs' like MLAA take reform within

22. *Alternate Dispute Resolution: Community-based mediation as an auxiliary to formal justice in Bangladesh; the Madaripur Model of Mediation (MMM)*. Penal Reform International. Paris. November, 2003.

23. *Ibid*, p37.

and advocacy from outside. While state provision of AC/VC is critical, it is not a substitute for the independent advocacy done by any particular NGO or NGOs. In this respect NGOs' should be more organised in the local level through their advocacy. NGOs' should develop a broader formal network with each other for effective and sustainable change.

6. The pecuniary jurisdiction of the VC should be enhanced to 50,000 taka and amount of compensation from taka 5,000 to 20,000 taka to meet the present day context.
7. It is necessary to amend the ordinance according to the need of the day. There should be a specific legal procedure against disobedience of the verdict.
8. Most of all the government should hold the local government accountable for the working of VC and AC.

In conclusion it is noteworthy to say that by re-activating the Village Court and the Arbitration Council not only the rural people will benefit by amicable settlement of dispute locally, it will also empower them socially and economically. The Arbitration Council and the Village Court give opportunity to the people to locally settle their grievances without going to the formal court. This saves them from harassment, unnecessary economic expenditure and waste of time. The advice given by a country lawyer, Abe Lyncoln, in 1850, 145 years ago is worth mentioning,

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser: in fees, expenses and waste of time. As peacemaker the lawyer has a superior opportunity of being a good person."²⁴

24. Lincoln, Abraham: "Notes for A Law Lecture", July 1, 1850, from Bruce Bohle, *The Home Book of American Quotations*, Dodd, Mead, New York. 1967, 226.