

Access to State-led Rural Justice in Bangladesh: The Kansat Experience

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Introduction

Bangladesh has two state-led rural justice systems, namely the Village Court System and the Arbitration Council System, to provide access to justice for the rural population of the country. The Village Court System deals with some specified civil and criminal cases, while the Arbitration Council System deals with some specific family affairs. The systems were introduced to provide the rural people with the alternatives to the traditional informal and court-based formal justice systems, which were proved unable to render justice to the large number of rural people due to various reasons including the delay in disposal of cases and the huge transaction cost in formal courts.¹ The Arbitration Council System has been working for almost six decades, and the Village Court System for three decades.² However, none of the rural justice systems has achieved a considerable success until now, let alone gaining popularity. I have not found any specific research on the Arbitration Council System. However, the few researches on the Village Court System that I found and reviewed present a very frustrating map of the success of the system. A United Nations Development Programme (UNDP) report reveals that while still two third of the rural disputes do not enter the formal court process³ the

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¹ On the one hand, there were claims that the traditional *shalish* systems were largely unfair, biased and anti-poor. On the other hand, majority of village people were averse to formal courts of law. This aversion was a cumulative effect of various issues such as mistrust of the law, fear, unfamiliarity of formal procedures and court atmosphere, low legal literacy, unequal power relations, physical and financial inaccessibility, culturally 'uncomfortable', corruption within formal court system, delay in disposal, and huge transaction costs. For details, see: Khair, Sumaiya et al. 2002. *Access to Justice: Best Practices under the Democracy Partnership*. Dhaka: The Asia Foundation; Huq, Fazlul. 1998. "Towards a Local Justice System for the Poor", Vol.4, no.1 (1998) *Grameen Poverty Research*, at pp.7-8; Wojkowska, Ewa. 2006. *Doing Justice: How Informal Justice Systems Can Contribute*. UNDP: Oslo Governance Centre.

The Arbitration Council has been functioning since 1961 and the Village Court since 1976.

United Nations Development Programme. 2002. "Informal Systems and Village Courts: Poor People's Preference" in *Human Security in Bangladesh: In search of Justice and Dignity*. Dhaka: UNDP Bangladesh, pp. 91-100, at p. 91.

traditional *shalish* system is used to resolve 60-70 percent of local disputes.⁴ The same report shows that only one person out of 47 randomly selected village people, i.e., only two percent, referred to the Village Court System as the justice mechanism of their first preference.⁵ Other researches suggest that the performance of the Arbitration Council System and the Village Court System is very poor and unsatisfactory.⁶ Why have the systems failed to be the better alternatives to others? What is the scope for the access to justice under the existing legal and institutional arrangements for the state-led rural justice systems? This article seeks to answer these questions by analysing the legal and institutional arrangements for the state-led justice systems from the 'access to justice' perspective. Based on a case study, the article then depicts the access to justice scenario in a Union.⁷

Conceptual Framework

Before entering into the main discussion, it is necessary to clarify the conceptual framework of 'access to justice.' The notion 'access to justice' refers to and incorporates into it two broader concepts: the concepts of 'accessibility' and 'justice.' These two constituent concepts are the two dynamics which make the concept of access to justice a dynamic one, easy to understand but tough to define. They encapsulate a broad range of conceptions, issues and concerns. The concept of 'access' invokes a constant debate about access to where, how, and for whom and how much. Similarly, the concept of 'justice' invokes the debate about how much and what kind of justice should result.⁸ On the one hand, the

⁴ *Ibid.*, at 92.

⁵ *Id.*

⁶ See, for instance, (i) Qader, Md. Abdul. 1995. *The Functioning of Village Courts in Bangladesh*. Comilla: Bangladesh Academy for Rural Development; (ii) Khan, Md. Aftabuddin. 1992. *Working of the Village Courts in Four Union Parishad in Bangladesh – A Case Study*. Dhaka: National Institute of Local Government; and (iii) UNDP. 2002. "Informal Systems and Village Courts: Poor People's Preference" in *Human Security in Bangladesh: In search of Justice and Dignity*. Dhaka: UNDP Bangladesh, pp. 91-100; UNDP. 2011. *Baseline Survey Report on Village Courts in Bangladesh*. Dhaka: UNDP Bangladesh.

⁷ A 'Union' is a rural administrative unit. A union incorporates fifteen to twenty villages on an average under its territorial jurisdiction and covers average 30 sq. km. land area. The average population under a Union is about 30,000 (source: The Population Statistics, 2007, available at Bangladesh Bureau of Statistics). The geographical area of a union is determined by a Deputy Commissioner in a district as the law. The present law that governs the Union-related issues is the Local Government (*Union Parishads*) Act, 2009.

⁸ Cappelletti, M. and Garth, B. 1979. "Access to Justice and Welfare State: An Introduction", in *Access to Justice and the Welfare State*, Leiden: BRILL, pp. 1-24, M. Cappelletti. (ed.). at 2.

continuous access to justice movement across the world is giving birth to new techniques or modifying old techniques of access. On the other hand, new conceptions⁹ of justice are evolving. As a result various conceptions of 'access' and 'justice' are developing, making the concept of 'access to justice' dynamic and indefinable. However, the definition of 'access to justice' by UNDP is widely accepted and used in the discourse of access to justice of the day. UNDP defines it as: '[t]he ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards'¹⁰. However, when we speak about ensuring access to justice, we generally mean to access to a legal process that 'enables people to claim and obtain justice remedies, whenever conflicts of interests or particular grievances put their well-being at risk.'¹¹

Access to justice is also seen as a process. The access to justice process can be divided into different stages, starting from the moment a grievance occurs or a dispute arises to the moment the grievance is redressed, or the dispute is settled or resolved. These different stages involve a variety of strengths or capacities the people needs as a justice seeker and the system as justice provider. The UNDP has divided the process into five stages. These are: (1) legal protection, (2) legal awareness, (3) legal aid and counsel, (4) adjudication, and (5) enforcement and oversight.

Legal protection means the provision of legal standing in formal or in traditional law, or both. It ensures that people's rights are recognized within the scope of justice systems, thus giving entitlement to remedies either through formal or traditional mechanisms. Legal protection determines the legal basis for all other stages in the access to the justice process. Legal awareness refers to the degree of people's knowledge of the possibility of seeking redress through the justice system, whom to demand it from, and how to start a formal or traditional justice process. After legal protection, it is most crucial, because even if there is legal protection and people do not know about it, it is useless.

⁹ By concept, I mean 'a general idea' of something, and by conception 'a specific and defined idea' of something. For understanding a clearer difference between concept and conception, one can consult the work such as John Rawls. 1999. *A Theory of Justice* (Revised edition). Cambridge, Massachusetts: Belknap Press; Ronald Dworkin. 1988. *Law's Empire*. Cambridge: Harvard University Press; W. B. Gallie. 1956. *Essentially Contested Concepts*, 56 Proceedings of the Aristotelian Society 167 (1956).

¹⁰ United Nations Development Programme. 2005. *Programming for Justice: Access for All*. New York: UNDP, at 5 [hereinafter UNDP].

¹¹ *Ibid.*

Legal aid and counsel includes capacities (from technical expertise to representation) that people need to initiate and pursue justice procedures. Legal aid and counsel can involve professional lawyers (such as in the case of public defence systems and pro bono layering), laypersons with legal knowledge, who are often members of the community they serve (paralegals) or both. Adjudication describes the process of determining the most adequate type of redress or compensation. Means of adjudication can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal systems. The process of adjudication may include a series of stages such as (i) investigation, (ii) prosecution, and (iii) decision.

Enforcement relates to the implementation of orders, decisions, and settlements emerging from formal or traditional adjudication. Enforcement systems are keys to ensure accountability and minimize impunity, thus preventing further injustices. Oversight includes watchdog and monitoring functions that ensure overall accountability within the systems.

The meaning of 'access to justice' for the purposes of the present study is the ability of the common people to demand justice, and the ability of state-led rural justice system to provide the same. Hence, to interrogate the scope for access to justice means to assess the capacities of both the system and the people. Accordingly, at first I examine the capacity of the state-led rural justice systems, i.e., the legal and institutional arrangements for the systems. Here I discuss three important aspects of access to justice in the light of the legal frameworks for the state-led rural justice systems. These three aspects are (a) the legal protection or legal remedies available through the systems, (b) the adjudication process, and (c) the arrangements for enforcement and oversight. In the later part, I make an endeavour to assess the capacities of the people, where I examine two things: first, whether those arrangements are adequate to meet the demand of justice in rural Bangladesh, and second, whether the common people are capable to utilize the existing systems.

Legal and Institutional Arrangements

Both the Village Court System and the Arbitration Council System function under the aegis of the Union Parishad, which is the lowest level of elected administrative body for rural 'administrative unit' called Union.¹² A union is divided in 9 wards; each of such wards may include one big or several small villages.¹³ A Union Parishad is consisted of a Chairman and twelve members including three members elected for the

¹² Section 8 of the Local Government (*Union Parishads*) Act, 2009.

¹³ Section 11, *Ibid*.

seats exclusively reserved for women. All of them are elected by direct election on the basis of adult franchise.¹⁴ While the Chairman represents all the people of a Union, 9 members represent the people of 9 wards, and each women member in reserved seats represents the people of 3 wards.

As a local government administrative unit, a Union Parishad has numerous civic functions, police and defence functions, revenue and general administrative functions, and development functions.¹⁵ Along with all these functions, the Union Parishads have been entrusted with the responsibilities to run the Village Courts and the Arbitration Councils by the Village Courts Act, 2006 and the Muslim Family Laws Ordinance, 1961 respectively. Following are the legal and institutional arrangements for the Village Court System and Arbitration Council System.

The Village Court System

The basic legal framework for the Village Court System is the Village Courts Act, 2006.¹⁶ Up to 2006, the basic legal framework for these courts was the Village Courts Ordinance, 1976.¹⁷ The Ordinance was repealed in 2006 to replace the Village Courts Act, 2006. However, the Village Courts Rule, 1976, which was made under the 1976 Ordinance, is still applicable to the Village Courts today.¹⁸

The legal arrangements for the Village Court System show that a Village Court is neither a formal nor an informal court. It has the characteristics of both the formal and informal courts. Hence, it can be called a semiformal court and a quasi-judicial body. Again, a Village Court is both a civil and criminal court as it can deal with both criminal cases and civil disputes. However, there is no permanent seat of a Village Court. Usually, a Village Court takes place in the Union Parishad Building or premises, but it can hold its sessions in any suitable places. Following are the access to justice provisions in the Village Court System.

¹⁴ Section 10, *Ibid.*

¹⁵ See, the Schedules of the Local Government (*Union Parishads*) Act, 2009. The present legal framework replaces the earlier legal framework called Local Government (*Union Parishads*) Ordinance, 1983.

¹⁶ Act No. XIX of 2006.

¹⁷ Ordinance No. LXI of 1976.

¹⁸ The other legal frameworks include the Code of Criminal Procedure, 1898 (Act V of 1898), the Code of Civil Procedure, 1908 (Act V of 1908), the Evidence Act, 1872 (Act I of 1872), the Oaths Act, 1873 (Act X of 1873), the Cattle Trespass Act, 1871 (I of 1871), the Agricultural Labour (Minimum Wages) Ordinance, 1984 (XVII of 1984), and the Penal Code, 1860 (Act XLV of 1860).

Legal Remedies Available in the Village Court System

The Village Courts Act, 2006 contains a Schedule, two parts of which say about the cases and disputes in which legal remedies are available through a Village Court. Part I makes a list of the criminal cases and part II makes the same of the civil disputes. Accordingly, the offences that a Village Court can try are: the offences related to unlawful assembly, riot, voluntarily causing hurt, committing mischief, criminal trespass, committing an affray, voluntarily causing hurt on provocation, wrongful restraints and confinement, assault, criminal force, intentional insult with intent to provoke breach of the peace, criminal intimidation, insulting the modesty of a woman, misconduct in public by a drunken person, theft in different manner, misappropriation of property, criminal breach of trust, cheating, mischief by killing or maiming animal, and offences as to cattle trespass.¹⁹

The suits that a Village Court can entertain are the ones for the recovery of money due on contracts, receipts or other documents, for the recovery of movable property and possession of immovable property within one year of dispossession, for compensation for wrongfully taking or damaging movable property, for compensation for damage by cattle trespass, and for recovery of wages and compensation payable to an agricultural labourer.²⁰ All these suits are maintainable in the Village Court only when the amount claim or the price of the moveable property involved in a suit does not exceed twenty five thousand taka.²¹

It is to be noted that all these abovementioned cases and suits, with a few exceptions, are triable by only the Village Courts and no civil or criminal court shall have jurisdiction to try any such case or suit.²²

The Arrangements for Adjudication

Adjudication process in the Village Court System is largely informal. The provisions, except a few, of the Evidence Act, the Code of Criminal Procedure, and the Code of Civil Procedure, do not apply to the

¹⁹ Part I of the Schedule in fact does not make any list of criminal cases; rather it makes a list of some sections of the Penal Code and other laws, and tells that the offences under these sections will come under the jurisdiction of a Village Court. The list of offences given here is according to the analysis of the contents of the sections. All these offences are defined and explained with illustrations in the Penal Code of 1860, in the Cattle Trespass Act, 1871 (I of 1871), and in the Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance XVII of 1984).

²⁰ As per Part II of the Schedule to the Village Court Act, 2006 [hereinafter VC Act].

²¹ *Ibid.*

²² Section 3, *Id.*

proceedings before any Village Court.²³ In addition, the engagement of any lawyer to conduct a case in the Village Court has been restricted in order to ensure informal atmosphere in the Village Courts proceedings.²⁴ However, a complete set of rules to guide the proceedings before the Village Courts has been laid down in the Village Courts Rules, 1976. Moreover, sections 8, 9, 10 and 11 of the Oaths Act, 1873²⁵ are applicable to all proceedings before the Village Courts.²⁶ These sections, which relate to a court's power to tender certain oaths and administration of oaths, are very much part of the adjudication in the formal courts.

The process of adjudication starts with the application by a petitioner to the Chairman of a Union Parishad for constitution of a Village Court. Like the court fees in formal courts, there is application fee for such an application. Application fee is Taka two for a criminal case and Taka four for a civil suit.²⁷ After receiving the application, the Chairman of the Union Parishad scrutinizes the application to see whether the case to be dealt with falls under the legal or financial jurisdiction of the Village Court. Then the Chairman accepts and registers the application if the case falls under the jurisdiction of the Village Court.

After registration of the application, a date and time is fixed and the respondent is summoned to be present on the specified day and time. With the summons, the parties are asked to nominate their representatives to constitute the Village Court. A Village Court consists of a Chairman and two Members to be nominated in the prescribed manner, by each of the parties to the dispute and amongst the two members to be nominated by each party, one should be a member of the concerned Union Parishad.

A properly constituted Village Court then issues summons to the concerned persons to appear and give evidence, or to produce or cause the production of necessary documents if any. Thus a Village Court tries the case on the day so fixed, hears both the parties, and may hold local inquiry if needed to dispose off the case.

After the hearing and examination of the case, the Chairman pronounces the decision in 'open court', and the decision of the Village Court is recorded by the Chairman of the Court in the register. This record should indicate whether such decision is unanimous, and if not, the ratio of the

²³ Section 13, subsection (1), *Id.*

²⁴ Section 14, *Ibid.*

²⁵ Act X of 1873.

²⁶ Section 13, subsection (2) of the VC Act, 2006.

²⁷ Rule 3, sub-rule (3) of the VC Rules, 1976.

majority by which it has been arrived at. If the decision of a Village Court is unanimous or by a majority of four to one (4:1), or by a majority of three to one (3:1) in presence of four members, the decision becomes binding on the parties. And when the decision of a Village Court is taken by a majority of three to two (3:2) any party aggrieved may prefer an appeal.²⁸ Such an appeal should be made within thirty days of the decision. In civil matter, appeal goes to the Assistant Judge Court, and in criminal matters, appeal goes to the court of the first class Judicial Magistrate having jurisdiction to hear such cases.²⁹

It is to be noted that a Village Court has power only to pass order to pay compensation of taka not exceeding twenty five thousand in respect of the criminal offences specified in Part I of the Schedule. Also, in a civil suit specified in Part II of the Schedule it has power to order payment of money up to an amount of twenty five thousand taka.³⁰

There is also provision for transfer of certain cases and investigation of cases by police. To ensure the best public interest and the ends of justice, a case may be forward to Criminal Court from a Village Court, and vice versa, for trial and disposal.³¹ Again, the police cannot be prevented from investigating a cognisable case by reason of the fact that the cases relates to an offence specified in Part I of the Schedule. However, if any such case is taken to a Criminal Court, such court may direct that it be referred to a Village Court.³²

Enforcement and Oversight Mechanism

A Village Court may decide to award compensation to a person or to order the delivery of property or possession, and if any money is paid or any property or possession is delivered in the presence of the Village Court in satisfaction of the decree, it shall record the same in the specified register.³³ The unpaid decretal amount is also recoverable in the manner the arrear tax of the Union Parishad is recovered.³⁴ Where the satisfaction of a decree can be had otherwise than by payment of

²⁸ Section 8 of the VC Act, 2006.

²⁹ Section 8 of the VC Act, 2006 says that in criminal cases an appeal will go to the Magistrate, first class having jurisdiction. However, the Code of Criminal Procedure, 1898 was amended in 2009 by the Code of Criminal Procedure (Amendment) Act, 2009, by which the magistrates are classified as judicial and executive magistrates. Hence, the said Magistrate, first class, should be a first class judicial magistrate.

³⁰ Section 7 of the VC Act, 2006.

³¹ Section 16, subsection (2), *Ibid.*

³² Section 17, *Id.*

³³ Section 9, *Id.*

³⁴ Subsection (3), *Id.*

compensation, the decree shall be executed by the Court of the Assistant Judge having jurisdiction as if it were a decree passed by it.³⁵

A Village Court may also impose a fine for non-compliance with the summons and for its contempt. If such a fine is not immediately paid, it becomes recoverable by the Magistrate [which] having jurisdiction.³⁶ In such a case, the Village Court shall record an order stating the amount of fine imposed and the fact that it has not been paid, and shall forward the same to the Magistrate with the request for recovery. Upon receipt of the request, the Magistrate shall proceed to recover the same under the provision of the Code of Criminal Procedure as if such fine were imposed by him and in default of payment of such fine he may award sentence to the person concerned to imprisonment.³⁷

About oversight and monitor, there is no specific provision in the Village Courts Act, 2006 or in the relevant frameworks. However, there is a Rule, which can be treated as part of monitoring mechanism. As the rule 30 suggests, the Chairman of the Union Parishad shall, before the first day of February and the first day of August in each year, send to the *Upazila Nirbahi Officer* (the chief executive officer for an Upazila/sub-district)³⁸ a return in a prescribed form of the work of the Village Courts during the preceding half-year ending on the 31st December and the 30th June, respectively. Thus, the *Upazila Nirbahi officer* can act as monitoring authority by asking regular return.

The Arbitration Council System

Like a Village Court, an Arbitration Council is also a semi-formal justice body, but unlike the Village Court, the Arbitration Council deals only with some specified family matters. An Arbitration Council, hence, resembles a Family Court. The basic legal frameworks for the Arbitration Council System are the Muslim Family Laws Ordinance, 1961, and the Rules³⁹ made under the Ordinance. Notably, the Ordinance is applicable only for the Muslim citizens of the country.⁴⁰ It, therefore, does not deal with these family affairs of the people from other religious communities like Hindus who are the second largest population in Bangladesh. It is,

³⁵ Subsection (4). *Ibid.*

³⁶ Subsection (1) of Section 12, *Id.*

³⁷ Subsection (2), *Id.*

³⁸ In the VC Rules, 1976, the designation is mentioned as 'Sub-divisional Officer'. However, there is no position of 'Sub-divisional Officer' at present due to the changed administrative arrangements. The Chairman of Kansat Union clarified that presently the *Upazila Nirbahi Officer* performs the functions of the 'Sub-divisional Officer' in this regard.

³⁹ The Muslim Family Laws Rules, 1976.

⁴⁰ Subsection (2) of section 1 of the Muslim Family Laws Ordinance, 1961.

however, not like *Shariah* courts as found in some Muslim countries. The Arbitration Council System was introduced to achieve the goal of the Muslim Family Laws Ordinance, 1961, a body of special laws that addresses, among others, an unsatisfactory provision as to succession based on *Shariah* law⁴¹ and the issues of polygamy⁴² and 'triple talaq'⁴³ allegedly based on misconceptions about *Shariah* laws. The law was promulgated to give effect to certain recommendation of the Commission on Marriage and Family Laws formed in 1955.⁴⁴ Section 3 of the Ordinance clearly states that 'the provisions of this Ordinance shall effect notwithstanding any law, custom or usage.'

The Arbitration Council System functions both in urban and rural areas in Bangladesh. In rural areas, it functions under the aegis of the Union Parishads, and in urban areas under the *paurashavas* and city corporations. Now I will examine the legal and institutional arrangements for the Arbitration Councils System in rural Bangladesh.

Remedies Available in the Arbitration Council System

The Arbitration Council System can give legal protection in matters relating to (a) polygamy, (b) dissolution of marriage, (c) maintenance, and (d) dower. The legal provisions are as follows.

⁴¹ According to the orthodox Islamic law of inheritance, in case of the death of any son or daughter of the *propositus* before the opening of succession, the children of such son or daughter do not inherit the property of the *propositus*, a provision that causes much suffering for the grandchildren of the *propositus*, and also nurtures a sense of deprivation. The MFLO 1961 addresses this issue. In section 4, it makes a provision that: 'In the event of the death of any son or daughter of the *propositus* before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stirpes receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.'

⁴² Based on the widely accepted misconception that Islam has permitted to have more than one and upto four wives without reservation, there was, and is, a practice of polygamy among the Muslims in the Country. This law makes provisions to regulate the issue of polygamy and puts restriction on the practice of polygamy. See, the discourse on the polygamy in Islam available in: Abd al-Āti, Hammūdah. 2003. *Islam in Focus*, 4th Ed. Cairo: Al-Falah Foundation. pp. 321-350.

⁴³ 'Triple *Talaq*' refers to verbal pronouncement of *talaq* (divorce) three times at once. There is a conception that a Muslim male enjoys unrestricted power to divorce his wife, and if he pronounces the word '*talaq*' three times instantaneously, the divorce becomes effective. And this type of *talaq* was, and is, prevalent in Bangladesh. But the Islamic scholars say, 'Triple, instantaneous, verbal *talaq*, in any event, is repugnant to the spirit of Islam'. It has been called *talaq-e-bidat* which means '*talaq* of the wrong innovation.' See, a whole book devoted to the issue of 'triple talaq': Ahmad, Furqan. 1994. *Triple Talaq: An Analytical Study with Emphasis on Socio-Legal Aspects*. New Delhi: Regency Publications.

⁴⁴ The Preamble of the MFLO 1961.

A Muslim man, according to section 6 of the Ordinance, may contract another marriage only with the permission of the Arbitration Council; otherwise, the man shall be punishable with imprisonment which may extend to one year, or with fine which may extend to ten thousand taka, or with both. In addition, he shall be liable to pay immediately the entire amount of the dower due to the existing wife or wives.⁴⁵

In Bangladesh a Muslim marriage can be dissolved both by *talaq* and otherwise than *talaq*. In both cases, the right of a person to divorce his wife or her husband has to be exercised through the Arbitration Council System. Thus, it gives legal protection to the victims of 'triple *talaq*' among others. Any person who contravenes the provision shall be punishable with simple imprisonment of maximum one year, or with fine of maximum ten thousand taka or with both.⁴⁶

An eligible wife can claim maintenance through the Arbitration Council System. The Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.⁴⁷ Hence, an Arbitration Council can give legal remedies to the wives of polygamous man, or to the abandoned wives, among others.

The Arbitration Council System can also deal with the issue of dower. Dower is one of the basic legal rights of a Muslim wife. In Islamic law dower is a sum of money or other property to be paid to the wife in consideration of the marriage.⁴⁸ Dower may be either specified or unspecified. Usually an entry mentioning the amount and mode of payment of dower is made in the Register of marriage by the Nikah Registrar (Kazi).⁴⁹ The failure, however, to fix the amount before or during the marriage ceremony does no way relieve the husband from his obligation to pay dower. He remains liable for payment and if no amount is agreed upon by the parties, the Court will do the task.⁵⁰ In addition, where no details about the mode of payment of dower are specified in the *mikah nama*, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand.⁵¹ The Arbitration Council enjoys all discretionary powers to decide on the issue of dower in a case.

⁴⁵ Section 6, *Ibid.*

⁴⁶ Section 7(1), *Id.*

⁴⁷ Section 8 (1), *Id.*

⁴⁸ To explain the nature of dower, David Pearl writes that though Muslim marriage is in the nature of a civil contract and dower is consideration on the part of the husband, it is not understood to mean the same thing as in the law of contract. Rather, it symbolizes husband's respect to the wife. See, Pearl, David. 1978. *A Textbook on Muslim Personal Law*, 2nd Ed. Kent: Croom Helm Ltd, pp. 60-68.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Section 10 of the MFLO 1961.

Arrangements for the Adjudication

The Arbitration Council enjoys the decision making power like a formal family court in the country, but the arrangements for adjudication in the Arbitration Council System are very informal. The law clearly directs that all proceedings before an Arbitration Council shall be held *in camera* unless the Chairman otherwise directs.⁵² It also clarifies that the provisions of the Arbitration Act, 2001,⁵³ the Code of Civil Procedure, 1908 and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.⁵⁴ The Arbitration Council System, however, is to comply with the provisions for adjudication given in the Muslim Family Laws Ordinance, 1961 and the Rules made under it.

Adjudication process in the Arbitration Council System starts with making an application or serving a notice regarding any of the above-mentioned family matters. In the case of permission for polygamy and maintenance, the application has to be made to the Chairman of the Union Parishad.⁵⁵ In case of a divorce, a written notice of such divorce has to be given to the Chairman and a copy of the notice to the concerned husband or wife.⁵⁶

Within seven days of receiving of such an application seeking permission for polygamy or for maintenance or a notice of divorce, the Chairman shall call upon each of the parties to nominate his or her representative. After receiving the nomination of the representatives, the Chairman shall constitute the Arbitration Council and commence the proceedings as soon as possible.⁵⁷

Parties in a case may reside in different Unions. In such a case the Arbitration Council of which union will deal a case has been clarified in section 3 of the Muslim Family Laws Rules, 1961. An application to form an Arbitration Council for permission for contracting another marriage

⁵² Rule 17 of the Muslim Family Laws Rules, 1961.

⁵³ Act I of 2001. In 2001, the law replaced the previous law named the Arbitration Act, 1940.

⁵⁴ Section 3 of the MFLO 1961.

⁵⁵ Sections 6 and 9, *Ibid*.

⁵⁶ Subsection (1) of section 7, and section 8, *Id*.

⁵⁷ The proceedings shall not be vitiated by reasons of vacancy in the Arbitration Council, whether because of failure of any person to nominate a representative or otherwise. Where a vacancy arises otherwise than through failure to make a nomination, the Chairman shall require a fresh nomination. In no way, a party to proceedings before an Arbitration Council shall be a member of the Arbitration Council. See, Rule 5 of the Muslim Family Laws Rules, 1961.

(polygamy) has to be made to the Chairman of the Union in which the existing wife resides.⁵⁸

In case of a notice of divorce or *talaq* by the husband it shall be the Union Parishad, in which the wife to be divorced resides at the time of the pronouncement of the *talaq*.⁵⁹ It is, however, not clearly said that which union shall deal with a case of a divorce given by wife. However, section 8 provides that in exercise of the right to divorce by wife, the provisions of section 7 that deal with the divorce by husband shall be followed as much as possible. In the case of an application for maintenance, it shall be the Union, in which the wife is residing at the time of her making the application.

As to decision making, the law clearly says that all decisions of the Arbitration Council shall be taken by majority. However, where no decision can be so taken, the decision of the Chairman shall be the decision of the Arbitration Council.⁶⁰

Along with this general procedure, there are specific procedures for permission for a polygamous marriage and dissolution of marriage. An application for permission to contract a polygamous marriage shall state the reasons for the proposed marriage. It shall also state whether the consent of the existing wife or wives has been obtained to the proposed marriage. Such an application shall be accompanied by a fee of Taka twenty-five.⁶¹ The Arbitration Council after considering circumstances such as sterility, physical infirmity, and physical unfitness for the conjugal relation, willful avoidance of a decree for restitution of conjugal rights, or insanity, on the part of an existing wife shall decide whether the proposed marriage is necessary and just.⁶² Any party may prefer an application for revision of the decision to the Assistant District Judge whose decision shall be final.⁶³

In the case of dissolution of marriage, the Chairman shall, within thirty days of the receipt of the notice of divorce or *talaq*, constitute an Arbitration Council to bring about reconciliation between the parties.⁶⁴ If the wife is pregnant at the time when the *talaq* is pronounced, *talaq* shall

⁵⁸ Rule 3, *ibid*.

⁵⁹ *Id*.

⁶⁰ Sub-Rule 5, *id*.

⁶¹ Rule 15, *id*.

⁶² Rule 14, *id*.

⁶³ Subsection (4) of Section 6 of the MFLO, 1961.

⁶⁴ Subsection (4) of Section 7, *ibid*.

not be effective until the period of ninety days or the pregnancy, whichever is later, ends.⁶⁵

Enforcement and Oversight Mechanisms

There is no specific mechanism for the enforcement of a decision by an Arbitration Council. However, if in a case of polygamy, divorce, or maintenance, the husband becomes liable for payment of certain amount of money to the wife or wives, and such an amount is not paid immediately, it shall be recoverable by the Union Parishad as arrears of land revenue. Hence, the Union Parishad acts as an enforcement agency for the Arbitration Council System. However, there is no specific body to monitor the functions of the Arbitration Council System.

Access to State-led Rural Justice: The Kansat Experience

In assessing the scope for access to state-led rural justice, I have mostly relied on the data obtained from a case study. The case study was carried out in the historic Kansat Union.⁶⁶ The Union was chosen for study after visiting several unions and talking to the people about the functioning of the state-led rural justice systems. In this preliminary inquiry, I found Kansat Union in a comparatively good position in terms of the functioning of the Village Court System. Kansat Union is situated in the Shibganj Upazilla under the District of Chapainawabganj, a northern district of Bangladesh. The Kansat Union, like any other local government administrative unit, is divided into 9 wards. These wards are not equal in geographical area. While some wards cover only a big village, other wards include four to six small villages. On an average, each ward covers three villages. The average population under a ward is around 5000.

For the assessment of the capacities of the state-led rural justice system, I examined the functioning of the Village Court and the Arbitration Council systems in the Union. In doing so, several methodologies were used. Eight sessions of the Village Court and the Arbitration Council were observed. Two in-depth interviews of the Secretary and the Chairman of the Union Parishad were taken. A group interview of all the male and female members as well as the secretary and Chairman of the union Parishad was taken. An opinion exchange meeting were arranged in the Union Parishad office, where all the members, the Chairman and other officials of the Union Parishad were present. Alongside, the records of the Village Court System were examined.

⁶⁵ Subsection (5) of Section 7, *Id.*

⁶⁶ Kansat is a well known area in Bangladesh because of its connection with some historic movements, the latest being the *Kansat Bidyut Bidroho* (Kansat Electricity Movement: September 2005 - April 2006).

For the assessment of the people's ability to demand justice under the existing legal and institutional arrangements, eight focus group discussions (FGDs) were conducted. These eight FGDs were held in eight wards of the Union Parishad. Around 15 people participated in each FGD. They included cross section of people namely the peasants, the shopkeepers, the teachers, political leaders, *imams* (religious leaders), former members and Chairman of the Union Parishad, the businesspeople, and the people in disputes. The participants included both the male and female.

The study was carried out during February – April 2009. Expectedly, the study brought a clear picture of each of the different areas of access to state-led rural justice process, namely the state of legal awareness, legal protection, the adjudication, the enforcement and oversight, and the state of legal aid and counsel. Following are the access to justice scenarios in Kansat Union.

Legal Awareness

In assessing the level of awareness, people were not directly asked about the state-led rural justice systems. In the preliminary inquiry, it was clear that the phrase 'state-led rural justice system,' even the 'Village Court,' or the 'Arbitration Council' was not known to them. Therefore, in the focus group discussions people were invited to discuss the general rural justice scenario of the Union.

The participants discussed that when any crime occurs or any dispute arises the people first try to settle the matter through village *shalish*.⁶⁷ The majority of the village disputes, which the participants counted as 70–80 per cent of the total disputes, are settled through such village *shalish*. After the village *shalish*, the *shalish* by Union Parishad or by the Union Parishad Chairman is second popular forum, which settles the second largest part of the village disputes. Only a few numbers of cases go to the formal courts of law.

The participants were asked whether there is any state-led rural justice system for them where they can get easy access. They told that as per their knowledge, there is no state-led justice forum in the village level. Then they were asked directly whether they had heard about the Village Court or Arbitration Council. Almost all the participants responded in the chorus that they have heard about it, but they do not know clearly about it. They have seen the Chairman to arrange *shalish* in the Union Parishad to deal with different cases. In their words, 'sometimes we hear people to call this *shalish* system as the Village Court, but we have never

⁶⁷ *Shalish* is a practice of gathering village elders and concerned parties to settle any local or family disputes.

seen anything like the court in the Union Parishad.⁶⁸ According to them, these Union Parishad conducted *shalish* system or Village Court does not have any power like the same of the formal courts.

It was explained to them that what they are calling 'shalish in the Union Parishad' is actually the session of a Village Court or an Arbitration Council. The jurisdiction, power and adjudication process of the Village Court and the Arbitration Council were also explained. All the participants became very surprised at this. Because, they thought that the Village Court or the Arbitration Council is like an informal *shalish* occurred in the villages. Only difference is that the 'new mode of *shalish*' takes place in the Union Parishad premises.

Conversely, some former and the existing members of the Union Parishad informed that they know that there are some rules and regulations to deal with the cases in a Village Court and Arbitration Council. They, however, do not have clear idea about those rules and regulation. They have never felt it necessary to learn those rules and regulations. As they explained:

On the one hand, there is no monitoring or pressure from higher authority that those rules and regulations have to be conformed with; on the other hand, the people are ignorant about those rules and regulations. Hence, we [the Union Parishad members] do not feel any urge to apply those rules and regulations. We settle the disputes in the traditional way [i.e., through *shalish* system].⁶⁹

About this ignorance of the existing members of the Union Parishad about the legal provisions as to the Village Court System and Arbitration Council System, the Chairman of Kansat Union Parishad observed that the situation is very natural. By law, the Union Parishad Chairman and members are the judges of the Village Courts and the arbitrators of the Arbitration Councils. They, however, have not been made well aware of their responsibility, let alone imparting any training on how to carry out the responsibility. Even the Chairman of the Union Parishad, who is the key person in both the Village Court System and the Arbitration Council System, is not given adequate training. After being elected, the Chairmen of the Union Parishads are given a three days training on the functions of the Union Parishad, where only a single session of half a day is allotted to train them about their responsibilities in connection with the Village Court System and the Arbitration Council System. This half-day training

⁶⁸ This is English translation of the direct speech of a participant in a FGD in ward no. 3. However, in all the FGDs, participants told this way only.

⁶⁹ This is verbatim production of the speech by Mr. Kawser Alam, member of ward no.8. While he was speaking this, other members sitting beside him supported him by nodding their heads.

for the Chairmen is in no way adequate. The worse thing, however, is that there is no such arrangement for at least half day training for the members of the Union Parishads. Therefore, it is impractical to expect that the members and Chairman will work according to the rules and regulation.⁷⁰

Then the Chairman pointed out to the fact that during conduction of the proceedings of the Village Courts and Arbitration Councils, they face many difficulties as to rules and process, but they do not get any legal guidelines in their need.⁷¹ The Chairman explained that people's unawareness is a great problem in functioning of the Village Courts and the Arbitration Councils. As the people do not know about the legal provisions as to constitution of the court and the power of the court, after being directed by the Chairman, the parties in a case do not follow the rules and regulations. For example, some parties do not present themselves in the Village Court in due date and time, even after serving notice and summons. They absent themselves on due date and time, and later on show very trivial or lame excuses for their absence. They do not understand the legality and importance of such a notice or summons. They are not aware of the power of a Village Court that it can fine a party for dishonouring such a notice or summon. So, when the Chairman of the Union Parishad takes a legal action against them for their absence, they think that the Chairman is exercising undue power, or becoming harsh to the absentee party and favouring another party. Hence, the Chairman cannot take legal action for just absence. He has to fix new date and time again and again, which takes longer time to dispose of a case. Thus, it becomes very tough for the Chairman to follow the exact legal provisions in the different stage of proceedings of the Village Courts and the Arbitration Councils.

The concerned judicial bodies and law enforcing agencies are also found to be not much attentive to comply with the legal provisions given in the Village Courts Act, 2006. According to law, the Village Courts have, with few exceptions, exclusive jurisdiction to try the criminal cases and civil suits mentioned in the Schedule to the Act. It was, however, revealed in the FGDs and the group interviews with the members and the Chairman

⁷⁰ In an in-depth interview in the evening of 24th March 2009.

⁷¹ That the members and chairmen were not updated about the law was proved once earlier when this researcher discovered that even the Chairman of the Union Parishad was not aware of the fact that the legal framework for the Village Court has been changed in 2006. He was totally in the dark about the new legal framework namely the VC Act, 2006. He did not know that in 2006 the pecuniary jurisdiction of the Village Courts has been increased from 5,000 to 25,000 Taka. Until April 2008, when this researcher met the Chairman for the first time, he was refusing to entertain the case valued over Taka 5,000, as he knew that he had no such jurisdiction.

of the Kansat Union Parishad that this legal provision is not taken care of by the concerned civil and criminal courts. These courts entertain many cases and suits, which fall under the jurisdiction of the Village Courts. There is another example. Section 17 of the Act states that though a cognisable case falls under the jurisdiction of the Village Courts the police can investigate the case. However, if any such case is taken to a Criminal Court, the court may refer the case to a Village Court if it thinks fit. According to the Chairman and members of Kansat Union Parishad, there was no record in the recent past that the concerned criminal courts had referred any criminal case to the Village Court for trial, though there were many cases pending in those criminal courts, which should have come in the Village Courts.⁷²

It is noteworthy that this case study did not cover the study of the roles of the *thana* administration and the formal civil and criminal courts regarding the Village Courts. Hence, it did not investigate any court or *thana* (police station) records to examine whether and how many cases and suits were there which fell under the jurisdiction of the Village Court or the Arbitration Council. It did not interview any concerned judge, or magistrate, or police officer for any explanation regarding this. For the above reasons, it was not clear whether this entertaining of cases and suits beyond their jurisdiction was because of the unawareness of the concerned civil and criminal courts and *thana* administration about the legal provisions, or because of negligence.

Legal Protection

To learn that whether the legal protections/remedies to be given by the state-led rural justice bodies are adequate, the participants in the FGDs were asked to mention the names of the offences and disputes that occur frequently in the locality. It revealed that most of the offences and disputes fall under the legal jurisdiction of either the Village Court System or the Arbitration Council System. However, the Chairman and the members of the Union Parishad opined that the legal protection is neither adequate nor inadequate. They explained that there are exceptional cases like murder, rape, acid throwing and eave teasing which neither the Village Courts or nor the Arbitration Councils can deal with. Again, the financial or pecuniary jurisdiction of the Village Courts, which is 25,000 Taka, is also not adequate. They face many cases, which are beyond the jurisdictions of the Village Courts or Arbitration Councils.

⁷² In the focus group discussions (FGD) there were some participants who are involved in some criminal cases pending in the criminal courts. Some of these cases fall under the jurisdiction of the Village Courts. Also, in the group interviews the members and the Chairman confirmed that there are many such cases in the criminal courts which the Village Courts could try and there was no forwarding of any cases to the Village Court of the Union recently.

Consequently, they are to arrange the traditional *shalish* very often to meet people's demand.⁷³

At this point, I referred to a finding from an earlier study.⁷⁴ The study found that public were confused as to giving more power to the Village Courts because they thought the members and Chairman of the Union Parishads would abuse this power through the Village Courts. In this regard, the Chairman of the Kansat Union Parishad opined that the fear and confusion is groundless. He explained that presently the Chairman and members are to deal with many cases beyond their jurisdiction. Hence, the scope for abuse is there at present. If, however, the Village Courts are given more power and more jurisdictions, they will have to work under the legal guidance. In that case, the scope for abuse will be slimmer than the existing one.⁷⁵

The Chairman of the Union Parishad, therefore, suggested that if the government or the legislature is afraid of conferring more jurisdictions to the Village Courts, there should be a legal provision giving an extraordinary power to the Village Courts. Such a provision may provide that if the parties in a case or disputes voluntarily agree to try their case in a Village Court, or to settle their financial dispute involving an amount more than 25,000 Taka, the Village Court can deal with it.

Adjudication

Only the legal provisions as to fair and impartial decision making cannot make an adjudication process efficient and effective. The different actors involved in adjudication process need different legal, judicial, administrative, and technical and operational capacities and skills to make the adjudication system efficient and effective. In absence of these capacities and skills, the adjudication process is bound to suffer. In this regard, the Chairman of the Kansat Union Parishad opined that operational arrangements for the Village Court System and the Arbitration Council System are inadequate. He informed that until now only 20-25 per cent of the cases and disputes come to the Union Parishad to be tried in the Village Courts or to be settled in the Arbitration Councils. In every week 10 to 12 cases and disputes come to the Chairman, thus a Chairman has to deal with around 50 cases and disputes each month through the Village Courts and Arbitration Councils. Nevertheless, there is no clerk or administrative officer for the

⁷³ In an in-depth interview in the evening of 24 March 2009.

⁷⁴ UNDP Bangladesh. 2002. "Informal Systems and Village Courts: Poor People's Preference" in *Human Security in Bangladesh: In search of Justice and Dignity*. Dhaka: UNDP Bangladesh, pp. 91-100.

⁷⁵ See above note 73.

purpose of the Village Courts and Arbitration Councils. The Chairman himself is to do the documentation and clerical jobs like registering the cases, giving the number to cases, issuing notice and summons, recording the evidence, decisions, and the history of enforcement and sending reports to the higher authority. The Chairman of the Kansat Union said:

...dealing with the functions of the Village Courts and the Arbitration Councils is not the only duty of the Chairman... As the administrative head of the local government body, I am to perform and look after numerous civic functions, police and defence functions, revenue and general administrative functions, and development functions etc of Union Parishad. ...We are told to carry out 38 regular functions. After carrying out so many responsibilities, it is simply impossible for the Chairman to give time to conduct the functions of the Village Courts and Arbitration Councils efficiently.⁷⁶

At the time of the study, the sessions of the Village Courts and Arbitration Councils in Kansat Union Parishad used to hold on Sunday and Wednesday of every week. The secretary of the Union Parishad assisted the Chairman in conducting the sessions of the courts. The secretary is the only administrative officer appointed by the government for the purposes of the Union Parishad. However, according to the secretary of the Kansat Union Parishad, 'the Secretary of a Union Parishad is not responsible to work for the Village Courts or the Arbitration Councils.'⁷⁷

A pertinent question here is how the Village Court System and the Arbitration Council System are running without any designated officer, when both of the systems have some documentation and managerial functions. In case of Kansat Union, the answer to the question is simple. As the Chairman and members of the Kansat Union estimated, usually 20-25 per cent of the total cases and disputes that occurred in the union came to the Village Courts and Arbitration Councils. In the last ten years, this percentage was more or less same. Therefore, they were somehow managing this amount of cases in the Village Courts and Arbitration Councils. But they opined that 'if government wants to activate the Village Court System and Arbitration Council System in full

⁷⁶ I asked this question while the Chairman was conducting a session of the Village Court on 18 March 2009. Along with conducting the proceedings, he was taking notes and putting those on the specific register. Interested reader can see sections 30, 31, 32 and 33 of the Local Government (*Union Parishads*) Ordinance, 1983 to learn the functions of a Union Parishad.

⁷⁷ In an interview on 28 April 2009.

swing, then around 400 cases and disputes will come to the Union Parishad in each month. In that case, the state-led rural justice systems with the existing institutional arrangements and operational capacities will never be able function properly.⁷⁸ The systems are also deficient in terms of financial capacity. There is no special allocation of budget for the running the Village Courts and Arbitration Councils. There is no legal provision that Union Parishad can appoint any person as part-timer on contractual arrangement to help the administrative functions of the Village Courts and Arbitration Councils.

An effective adjudication requires well-trained and educated human resources. It concerns different legal, judicial, technical, and operational trainings for the people who are concerned with the adjudication. However, as the members and the Chairman of Kansat Union informed, there are no institutional arrangements for training or other knowledge sharing programmes such as workshops and seminars to make them aware of law and relevant judicial decisions from the higher courts.

About the judicial arrangements, the Chairman opined that the legal frameworks for the Village Court System and Arbitration Council System provide enough safeguards against different biases based on gender, religion, or class. However, during the observation of the proceedings of the Village Courts and Arbitration Councils I noticed the clear presence of the gender preference, patriarchal domination, and religious malpractice. In almost 100 per cent cases, the five-member judge's panels of the Village Courts were composed of male only. The role of women members of the Union Parishad as adjudicators in the Village Courts or in the Arbitration Council was not noticeable. In a divorce case, the prohibited '*triple talaq*' was accepted by the parties. The Chairman repeatedly reminded them that the '*triple talaq*' is unlawful in Bangladesh. However, the senior male members did not listen to the Chairman. They were stubborn that they wanted to settle the case in accordance with the provisions of the *Quran and Sunnah*.

The independence of the adjudicative body from the executive lies at the heart of a well functioning adjudication system. The paradox in the state-led rural justice systems is that the decision-makers of the systems - the members and Chairman of the Union Parishad - themselves are executive officers of the local government and social actors in the area. Their actions, therefore, can be a reason for a case or dispute. One can

⁷⁸ It was the opinion of the Chairman of the Kansat Union Parishad in the opinion exchange meeting in the Kansat Union Parishad office on 24 February 2009. I treated this as common opinion of all the members and Chairman because of two reasons. First, when the Chairman was expressing this opinion, other members were nodding their heads, a sign of their support to the chairman. Second, there was no counter opinion by any member present in the meeting.

argue that when an offender or disputant becomes a judge, justice can never be done.

The Chairman of the Kansat Union Parishad opined that this argument does not work very much in the case of the Village Courts or Arbitration Councils. As per legal provisions, both a Village Court and an Arbitration Council is consisted of a panel of judges, where a decision is taken by the majority of the judges. Hence, there remains little scope to take any arbitrary decision. Moreover, there are always options to change the biased or corrupt judges or representatives, to appeal against a decision of a Village Court, or to apply for revision of the decision of an Arbitration Council by the higher authorities. The Chairman, however, informed that there was no record of any appeal against any decision of the Village Courts or application for revision of an Arbitration Councils' decision in Kansat Union in the past ten years.

Regarding accessibility, the justice seekers opined that both the Village Courts System and the Arbitration Council System are geographically and financially accessible to the common people. Because, both the Village Court and the Arbitration Council usually take their seats in the Union Parishad, which is in term of distance nearer than any other formal courts. The court fees (application fees) are minimal. There is no need to appoint any lawyer to represent the case before the justice forums; parties themselves can present there case. However, they suggested that accessibility may be challenged by other phenomena such as weaker party may not take the case in the Village Court System against a stronger party, or a family may not willing to take their case in the Arbitration Council System in the name of maintaining privacy or family reputation or for any kind of pressure.

As to the level of transparency, the members and the Chairman of the Kansat Union claimed that their adjudication in the Village Courts and Arbitration Councils is 100 per cent transparent and unbiased.⁷⁹ They explained that though there is no formal investigation mechanism for the Village Courts and the Arbitration Councils, whenever they feel it necessary to investigate any incident or fact, they form an investigation committee. Such an investigation committee is constituted with the members of the Union Parishad as well as the respected locals. Such a committee has some unique informal techniques, which help them dig out the truth. Again, the parties can present their case in an informal way before the judges (decision-makers) of the Village Courts or Arbitration Councils. There is no rule of evidence. Parties can detail their story as it happened. The judges and the concerned people usually know

⁷⁹ A claim that came from all the members and Chairman with a bold voice in the opinion exchange meeting on 24 February 2009.

each other, a fact that prevents them from lying. Hence, the total adjudication environment becomes transparent, and parties can reach a decision by way of discussion and by consensus.

During my observation of the proceedings of the Village Courts and the Arbitration Councils in Kansat Union, I noticed that the whole proceedings of a case was like a discussion forum, where the parties were provided with enough scope to present their cases and related stories in detail. There were no legal guidelines. Some parties even took more than one hour to narrate their cases. The parties to the cases were also given adequate opportunity and time to refute the claims by the opposite parties and to defend their cases. The panel of the judges were always free to ask or interrogate any of the parties whenever they needed to make any point clear. Thus, after such discussion in one session or in several sessions, when the judges thought that the fact of the case was clear to them, then only they proceeded to take a decision. In case of taking decision, they did not consult any law⁸⁰, they used their existing knowledge on law and justice, and sometimes they prompted the parties to come to a decision by themselves only. In some monetary cases the parties were found to be engaged in bargaining also. After such a discussion or a bargain when the parties came to a decision by themselves, the judges of the Village Courts endorsed the decision. Otherwise, the judges of the Village Courts decided the issues for them.

It was noticeable that in most of the monetary cases, the aggrieved parties or the victims always got the less amounts than they claimed in the application to the Village Courts. While the offender parties always show some grounds defying or curtailing the claimed amount, the victim parties were made convinced to accept a compromised amount. In the majority cases, the victims were told that if he or she did not accept the compromised amount, then the Village Courts would not be able to take any decision, and in that cases the case would be dismissed or referred to the formal court, where she or he might get no remedy. In almost 100 per cent cases, the victim parties ultimately accepted the Village Courts' decisions.

I used to talk to the parties informally before as well as after the sessions of a Village Court or Arbitration Council proceedings. After finalisation of some decisions as to some offences and disputes, I asked the parties to express their feelings, whether they had been pressurised in any way, whether they were happy with the decision. No party complained of any influence, pressure, or bias. In commenting on their level of satisfaction with the decision, they were perfectly calculative.

⁸⁰ That is, the laws of the country defining various offences and the punishments, the case laws, and the like.

After considering many negative and positive sides, they thought they were more or less satisfied.

The issue of salary or honorarium for the members and chairmen for their judicial service in the Village Courts and Arbitration Councils was also discussed with the members and Chairmen. They informed this researcher that there is no provision for any honorarium or salary for their service as adjudicators in the Village Courts and Arbitration Councils. Even the honorarium that they get as the members and chairmen of the Union Parishad is so small that they feel ashamed to mention that. They opined that it is too inconsistent with the responsibilities imposed on them. They expressed their grievances this way:

....you came here to see how we are running the Village Courts and the Arbitration Councils. Do you know how many responsibilities the members and chairmen of the Union Parishads are to perform? We do all the administrative and public services jobs. The people above our heads just dictate and want reports. What more the government wants from us? We dispose of 5 to 6 cases in each session of the Village Court a day. These are not some trivial cases. These are the similar cases what the magistrates and judges adjudicate. How many cases they dispose of in a day? How much salary they get? How much facilities they get? Compare their salaries and facilities and their performances with the same of ours. Then you ask for more from us. ...⁸¹

Later on, in an in-depth interview, the secretary of the Kansat Union Parishad informed me that the members and chairmen of the Union Parishads get a monthly honorarium, the amount of which is around Taka 1500 (fifteen hundred).⁸²

Enforcement and Oversight

As to the enforcement of the decrees of the Village Courts, the Chairman and members of the Kansat Union Parishad said that they found no major problem in enforcing the decrees or decisions of the Village Courts. According to their explanation, the Village Court decides to give an award of compensation in most of the cases. Only in a small number of cases, the Village Court passes an order to deliver the property or possession of any property. Usually most of the decisions are reached by consensus

⁸¹ A group interview of the Chairman and members of the Kansat Union Parishad was taken on 24 March 2009 at the Kansat Union Parishad office. I can remember that when I asked them about their salary, they responded in chorus, 'please don't ask this thing'. Then a member started speaking about their situation and grievances and the others lent support to him.

⁸² The interview was taken on 28 April 2009.

and the parties comply with the decisions of the Village Courts.⁸³ Moreover, the option for payment of compensation in installation comes to help when the amount of compensation money is big.

The Chairman of the Village Court of the Kansat Union, however, opined that the legal provision as to recovery of fine is not satisfactory. If a fine imposed by a Village Court for non-compliance with the summons or for contempt of court is not paid immediately, the Village Court has to forward the order of fine to the concerned Judicial Magistrate with the request for recovery. The Magistrate upon such request shall proceed to recover the fine in accordance with law. The Chairman said that it is seemingly a good provision but rarely implementable. He explained that the amount of such fine is only Taka 500. This is a very small amount today. A Chairman has to spend more amount of money than the amount of fine to present such a case of recovery of fine to the Magistrate. It is time consuming, and sometimes ridiculous. When a Magistrate deals with so many grave crimes, a case for recovery of Taka 500 will get little importance to him, and hence it will not be taken care of seriously. The Chairman, therefore, opined that the legal provision should be changed so that the Village Court itself can recover the fine easily. It may be recoverable by the Union Parishad as an arrear tax. In addition, the amount of fine should be increased. Nowadays, even the common people have the ability to pay 500 taka as fine. Such small amount of fine does not prevent the wicked parties to disobey the summons or orders of the Village Courts. However, in response the question that whether he had issued any contempt of Village Court notice, or fined anyone for that purpose, the Chairman said that he had not dealt with any such case in his time (of ten years).

When asked about the enforcement of the decision as to the polygamy, the Chairman said he had not dealt with any case seeking permission for polygamy in his ten years life as a Chairman of the Union Parishad. The Chairman, however, informed that the practice of polygamy is not very rare in the area. Some people have taken second wife without any permission from the Arbitration Council System. However, the trend of divorce and taking another wife after divorcing first wife is increasing. More than 50 per cent of the cases in the Arbitration Council of the Union involve divorce.

⁸³ According to law, where the decretal amount is not paid within the prescribed time, the Union Parishad concerned can recover it in the same manner as arrear tax of the Union Parishad is collected. In case of a decree for delivery of possession, the Chairman may present the decree to the Court of the Assistant Judge having jurisdiction for execution. The Chairman of the Kansat Union Parishad did not take such a step so far against anyone.

In response to a query as to the oversight mechanism, the Chairman informed that virtually there is no monitoring or oversight authority to see whether the Village Courts or the Arbitration Councils are functioning impartially and lawfully. At this point, I mentioned section 16, subsection (1) of the Village Court Act 2006, which says that where the Chief Judicial Magistrate of the District⁸⁴ is of opinion that the circumstances of a case pending before a Village Court are such that the public interest and the ends of justice demand its trial in a Criminal Court he may withdraw the same from the Village Court and sent it to the Criminal Court for trial and disposal. I asked whether anything is done according this provision. The Chairman said that there is no requirement that the Village Court has to inform the said Magistrate about an ongoing criminal case in the Village Court. Then, '[h]ow does the Magistrate will understand that there is case pending before a Village Court which needs to be tried in the formal criminal court?'⁸⁵ This question of the Chairman exposes ineffectiveness of the legal provision as an oversight mechanism of the Village Courts System.

The Chairman of the Union Parishad, however, has to send two half yearly returns of the work of the Village Courts to the *Upazila Nirbahi Officer*.⁸⁶ About this return, the Chairman of Kansat Union Parishad told that the return is just a form where there are columns where the chairmen are to mention the numbers of the cases instituted, disposed of, pending and decided, and the fees realized, fine imposed and realized. After examining the form and discussing the related things with the Chairman, it seemed to me that this statistical accountability did not work as safeguard for the malpractice in the Village Courts or the Arbitration Councils, hence did not work as a monitoring system.

Legal Aid and the Right to Counsel

Legal aid and counsel is very crucial for the poor and disadvantaged to access to the formal justice system. In most of the cases, the poor people cannot afford the court fees, lawyer's fees, and other litigation. However, the court fees to take a case to the Village Courts are minimal. An application to the Chairman of the Union Parishad to form a Village Court is to accompanied by a fee of Taka two, if the case relates to Part I

⁸⁴ In the VC Act 2006, the nomenclature is 'District Magistrate'. However, the Code of Criminal Procedure, 1898 that provides for the constitution of criminal courts and offices has been amended by the Code of Criminal Procedure, 2009 (Act No. XXXII of 2009). It reconstituted the courts of the Magistrates, and classified the Magistrates as Executive and Judicial Magistrates. In this new system, the 'District Magistrate' for the present purpose should read as the 'Chief Judicial Magistrate.'

⁸⁵ In an in-depth interview in the evening of 24th March 2009.

⁸⁶ Rule 30 of the VC Rules, 1976.

and by a fee of Taka four if it relates to Part II of the Schedule.⁸⁷ There are no fees for dealing with a case in the Arbitration Council System, except in the case of application for permission for contracting another marriage, where the application should accompany a fee of Taka 25. In addition, for revision of a decision of an Arbitration Council, an application is required to accompany a fee of Taka 2. Moreover, both in the Village Courts and Arbitration Councils, there is no scope to present a case through a lawyer. Hence, except these fees there is no other litigation cost. Considering the small court fees (application fees) and other litigation cost, the union Parishad Chairman and members and the participants in the focus groups discussions were of the opinion that both of the Village Court and the Arbitration Council systems are financially accessible and that there is no need for any financial legal aid.

The participants in the FGDs, however, stressed on the necessity of providing free legal counsel to people in disputes so that they could successfully deal with their problems in the state-led rural justice systems. Almost hundred percent of the common villagers were unaware of the adjudication process in the Village Court and Arbitration Council systems. Nevertheless, there was no government arrangement to make them aware of the systems. There was no awareness programme in television, radio or in print media. There was no local initiative. In such a situation, some participants felt that if there were an office or a help desk in the Union Parishad to provide information about the Village Court and Arbitration Council systems that would be a great help.

Findings and a Brief Analysis

This examination of the scope for access to justice under the existing arrangements in the state-led rural justice systems reveals some of the grave incapacities and weaknesses that are plaguing the access to justice process in rural Bangladesh, but it also reveals some of the strengths that can be used to expedite the said process.

As the study reveals, the existing legal protection is not adequate. For the offences and crimes such as murder, rape, acid throwing, eave-teasing, dowry, and domestic violence, there is no remedy in the Village Court System or in the Arbitration Council System, when these are common in the rural areas. In addition, there is no such state-led justice body like the Arbitration Council for the people from non-Muslim communities, especially for Hindus who form second largest population in rural area.

The adjudication process of the Village Courts and Arbitration Councils has deficiency in certain areas such as lack in human resources and financial support, but has strengths in certain areas like the provisions for composition of the justice bodies and the decision-making, which can ensure impartiality and fairness in the process.

⁸⁷ Sub-rule (3) of Rule 3, *Ibid.*

The capacity of the systems as to enforcement of its decision is more or less strong, but the monitor and oversight mechanisms are miserably weak. With no effective oversight mechanism, the systems are bound to collapse.

There is no legal aid and counselling arrangements in the Union Parishads level to help people access to the state-led rural justice systems. However, it seems that financial legal aid has little role to play in the access to justice through the state-led rural justice systems, but legal counsel for the victim is necessary.

Importantly, both the common people- the justice seekers- and the people with the systems – the justice providers- are not well aware of the scope for getting justice through the state-led rural justice system. As a result, people cannot utilise the systems largely.

Under the above arrangements, as the study finds, only 20-25 per cent of the total offences and disputes come in the Village Court System and the Arbitration Council System, while more than 70 per cent of the offences and disputes are dealt with in the village *shalishes*. In other words, the state-led rural justice systems provide 'access' to justice only to the 20-25 per cent of the rural population in disputes in the Kansat Union.

Concluding Remarks

The article examined the scope for access to justice under the existing state-led rural justice systems, and portrayed the access to justice scenario of a union only. Though there are around 4,500 Unions in Bangladesh,⁸⁸ this scenario of a union should not be taken as a separate one or an unrepresentative of the overall access to rural justice scenario in Bangladesh. Because the state-led rural justice systems work under the same legal and institutional arrangements throughout the country and the rural communities of the country share more or less the same economic conditions and observe almost similar socio-cultural norms. As this study reveals, despite some plaguing incapacities, the state-led rural justice systems have much strength. A thoughtful and careful dealing with the weaknesses exposed in this study can strengthen the state-led rural justice systems, broaden the scope of justice for the poor and disadvantaged, and thus change the overall justice scenario of the country positively. Hence, an immediate state intervention in the field of rural justice is a crying need.

⁸⁸ There were 4466 Unions according to Census 2001 (Source: Bangladesh Bureau of Statistics). However, according to a news report in the Daily Star, the number of unions at present (May 2010) are 4598 (source: 'Need for reactivating village court underscored', The Daily Star, 17 May 2010).