

Effectiveness of Village Court in Bangladesh: A Study in Tangail District

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Abstract

The Village Court is a form of Alternative Dispute Resolution (ADR) administered by the Union Parishads and local leaders which is constituted under the legal framework named The Village Courts Act of 2006. The Key objectives of the project are to empower women, the poor and disadvantaged groups to seek remedies for injustices. The study was done was to measure the effectiveness of Village Court. It was an explorative study which was conducted in different areas of Tangail District. The sample was selected conveniently and collects information with a formed questionnaire. From the beginning it is unable to gain public satisfaction in justice process where several factors hinder the effectiveness of the Village Court process. These factors should be identified and necessary steps should be taken to improve the situation. Moreover the “Village Court Act” should be reviewed and necessary corrections should be taken. Then a bias free and effective village court will be established.

Keywords: Courts, Village Court Act, Judgment, Punishment.

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Introduction

The Constitution of Bangladesh provides for an independent judiciary; however under a longstanding temporary provision of the constitution, the lower court remain part of the executive and are subject to it influence. The court system has two levels: The Supreme Court and the Lower Court. Both hear civil and criminal cases. The lower courts consist of magistrates who are part of the executive branch of government and session and district judges, who belong to the judicial branch. The Supreme Court is divided into two sections, the High Court and the Appellate Court. The High court hears original cases and reviews cases from the lower court. The Appellate Court has jurisdiction to hear appeals of judgment decrees, order or sentences of the High Court. The Supreme Court, as of June 1988, had permanent branch called the High Court Division in Dhaka, Comilla, Rangpur, Barisal, Sylhet, Chittagong and Jessore. The president appoints the judges of both divisions. There are various judgment systems in Bangladesh.

Background of the study:

Our formal justice system is overburdened with pending cases. A statistics of the Supreme Court of Bangladesh revealed the fact that by the year end of 2008 total pending cases in all courts and tribunals were 1,834,965. Such a huge backlog of cases shattered the access to justice for common people substantially. In order to get rid of the situation activating village courts could be a very effective option. In viewing with this the village court system has been introduced in order to accelerate the justice system by correcting the Village Courts Ordinance, 1976.

Village court is a place of judgment where a dispute is submitted, by agreement of the parties, to one or more parties who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Village court' decisions can only take place if both parties have agreed to it. In the case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract. An existing dispute can be referred to arbitration by means of a submission agreement between the parties. In contrast to mediation, a party cannot unilaterally withdraw from village court. The main provision of constitutional base of village court is Article 9 of The Constitution of Bangladesh. The basic legal framework for the "Village Courts" is the Village Courts Act, 2006 (Act No. XIX of 2006). A Village Court can deal with both criminal cases and civil disputes. The Village Courts Act, 2006 contains a Schedule with two parts, which specifies the nature of cases and disputes a Village Court can deal with.

The Village Court is formed with five members, One Chairman and four members. The Chairman of the Union Parishad 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 Union Parishad other than those mentioned under sub-section (1) of section 5 appointed in the prescribed manner, shall be the Chairman of the Village Court. According to Section 7, a Village Court shall have power only to pass order to pay

compensation of taka not exceeding twenty five thousand in respect of the offences specified in Part I of the Schedule of the Act. In a suit relating to matter specified in Part II (civil disputes) of the Schedule of the Act; the Village Court shall have power to order payment of money up to the amount mentioned there in respect of such matter of delivery of property or possession to the actual owner thereof. Like a formal court, a Village Court does also have power to summon witnesses. When the decision of a Village Court is by a majority of three to two (3:2) any party aggrieved may, within thirty days of the decision, may prefer appeal.

Theoretically, everyone is entitled to such access and they seek justice from these institutions but unfortunately the gap between formal entitlements and actual access can be immense (Siddiqi 2003). Exorbitant costs, excessive delays and backlogs, and a lack of knowledge or resources are major obstacles to those who seek justice in formal legal settings. The excessive procedural formalities and administrative complexities block the filing and resolution of relatively simple cases or alimony cases brought by the segments of the population hamper the access and diminish the quality of justice (Buscaglia 1996). A study of TIB (1997) reveals that pending cases were reported by 85% households involved in the court cases. Regarding expected time for settlement of pending cases, 53.9% of the accused/plaintiffs reported that they were uncertain about the period when settlement would be reached. And about 79.8% of them reported that delays in reaching settlement were deliberate and due to (i) court's high handiness (43.1%), (ii) lawyers' business interest (42.4%) and (iii) opponent's ill motive and manipulation (53.5).

As, the lowest formal court is at the district level the overwhelmingly rural poor have to bear travel and logistics costs that pose additional burdens (Siddiqi 2003). For this, about two-thirds of the disputes do not enter the formal court process; instead, they are either settled this at the local level through informal process by local leaders or a village court or they remain unsettled (Golub 2003). But many studies also reveal the dark side of this system. It has developed serious functional complications owing to intense factional infighting and rivalries in the villages; localized petty disputes have increasingly been referred to the UP chairmen/members for mediation. These studies also indicate the pressure of the rich, influence of money or special favor, fear of the local terrorists, and domination of orthodox religious views are identified to be the main bottlenecks responsible for unfairness in *shalish* (Siddiqi 2003).

At the present time Village Court has great significances in case of Alternative Dispute Resolution (ADR). A project has been introduced named "Activating Village Courts in Bangladesh" is being implemented by Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, supported by UNDP and European Union (EU) which strives in strengthening the local justice system through activating Village Courts in selected 500 Union Parishads (UP) in Bangladesh. But now there are many events which create some violations of Village Court Act 2006 and many unwanted event occur which create the human rights violation, as a result suicide, social separation and so on are occurring. So it is high time to measure the effectiveness of Village Court and its procedures.

Objectives of the study

The main objective of this study was to measure the effectiveness of Village Court where it is widely used in rural area of Bangladesh to solve the maximum problem of the villagers. To fulfill the objective some partial objectives were selected as like; to identify the nature of crime practiced in village courts, to know about the nature of punishment that is given by the village court, to identify the problems of village courts in Bangladesh, to identify the consistencies between the Village Court Act and real practices.

Methodology of the study

It is quantitative in nature; some qualitative measures also have been taken with relevant to the research objectives. It was conducted in different rural areas of Tangail district. Three Unions Parishad have namely, Porabari Union Parishad, Katuli Union Parishad and Dainna Union Parishad have been selected as the study area where it is widely practiced to solve the problems of the villagers. All the persons both male and female who have faced Village Court selected as research population. A non-probability sampling methods had been used and 60 were collected conveniently. In that survey face to face interview method was used to collect data by a formed questionnaire containing; matrix, open-ended, close-ended questions. Different univariate and bivariate analysis tools were used to analysis the data though SPSS and Microsoft Excel.

Findings of the study:**Demographic Factors of the Study:**

Demographic factors show the strength of the data and also validity and reliability of the study. The table beside shows age, sex, religion, educational qualification, occupation and income level of the respondents. From the study it is found that from 35 to 65 aged people mostly faces the village court functionalities. It also shows 31.7% people between 45 and 55 aged group faces it, in maximum and 6.7% people from 65 to 75 aged groups faces it, in minimum. About two third of the individuals who faces the functionalities of the village court are male and rest around one third are female. The study was done in Muslim majority area and it also found that 76.7% Muslim, 20% Hindu, and 3.3% other religious valued were experience it. This table reveals that closely to half (46.7%) of the respondents who have practiced with village court having primary level education, then secondary level education (25%), and very few (3.3%) having postgraduate level education. It is remarkable that practicing with village court has negative relation with the education. Who has low level of education goes to the village court for justice and in accordance with the increasing of the education level the amount becomes smaller. This table (Table 1) also describes that 28.3% farmer, 23.3% businessman are mostly experienced with it but day labor (5%) and service holder (5%) have lest experience on it. It also be noted that farmer and businessman are the common client of village court. Another part of the table is evidence for that lower income people mostly go to the village court because they are not capable to maintain the cost and logistic support of a formal court. But higher income people are going to there a little.

Type of Cases at Village Court:

It is found that 62% of cases are civil and 38% are criminals are appearing at village court. (Fig:1). Where civil offences like; family matter (27%), land dispute (21.6%), Property crime (13.5), Extra marital relation (8.1%), Divorce related (18.9%). On the other hand criminal offences like; theft (30.4%), eve teasing (21.7%), rape (8.7%), cheating (4.3%), coalition (4.3%), mischief (4.3%). (Table 2). It divulges that mainly Village Court deals with civil cases where family matter, land dispute, extra marital relationship and divorce related cases are prominent. Besides this, Village Court also deals some criminal cases where theft, eve teasing, rape are prominent. In second schedule of the “Village Court Act 2006” it provides several civil offences related to property, roads, water distribution and also criminal offences related to Voluntarily causing hurt, Mischief, Criminal Trespass, Unlawful assembly and rioting, Affray, Wrongful restraint and/or confinement of person and property, Assault, Criminal intimidation, Wrong and gesture to insult modesty of women, Cheating etc.

Causes appearing to Village Court:

People go to village court for various reasons; lower distance, easy to access to the justice, village court members are known and speedy disposal. But about half of them (43.33%) go to the village court for its easiness to access to the local justice. (Fig: 2). According to the section 4 of the “Village Court Act 2006” any person can apply for forming village court and the Chairman can form a Court within a short specific time. Moreover the applicants have to pay only two or three taka.

Punishment by the Village Court:

At village court positive reinforcement is occurred more than reinforce an offender negatively. Study shows that 57% offenders are not getting punishment and rest 43% punished at the village court. (Fig: 3) It is clear violation of section 6 of “The Village Court Act 2006”. This would be a vital cause to increase crime and disorder in rural area of Bangladesh. To maintain law and order situation it is essential to implement the rule of law properly. It is also found some nature punishment provided by Village Court as like; Physical Punishment, Mental Harassment, Financial and Socially separation, where law gives them to punish only financial compensation not exceeding 25000tk. They are no able to practice any other form of punishment. It also found that 44.19% of the offenders who are punished by the village court have sentenced with different type of physical punishment. 25.58% of punishment is with financial compensation. (Table 3). At present social separation is hardly seen as a form of punishment. In term of financial punishment it is found that 46% is more than 25000Tk which is greater violation of “Village Court Act 2006.” (Fig: 4). Another observation that about one third cases it is paid the compensation to the defendants which is

punished for financial compensation and rest about one third are miss. It is common matter in case of village court that defendants never get the total compensation. Study found that only 13% defendants get 76 – 100% compensate money, 50% get 51 – 75% money, 25% get 26 – 50% of the compensation and 12% get 1 – 25% compensation of the case. (Fig: 5). In such cases “Public Demands Recovery Act, 1913 provides power the Union Parishod Chairman to recover the money. If he fails to recover he can file a case to the Assistant Judge Court. But still we see recovering rate of the compensation is low.

Appeal to District Court or Police Station:

It is a legal right to appeal to Higher Court if anybody does not satisfy with the judgment of lower court and it is commonly seen at legal practice. At village court we see 32% go to appeal to higher court or complain police station. There is another observation that 42.11% defendant go to higher court or complain at police station before the final judgment and 57.89% appeal after the judgment. (Fig: 7). Table 4 shows that about half of the defendants who appeal to the district court or complain police station quit from the system during medieval period of the village court process and rest about half go to the district court or police station after its final verdict. Study could find out some cause of quit from the system. Following table shows, 21.00% quit from the system when they see the judgment is going to against them, 39.6% claim about the biasness of the judges, 15.5% told that the court deny to accept the cases, in 5.4% cases opposite party absent from the court, and 18.5% claims about the contamination of evidences. It can be noted here that village court process should be done with a greater care. (Table 5). Final verdict would be acceptable or not by the parties but court process should not be in doubt. Another recommendation is that the participants of the village court are not well qualified. Some of them try to manipulate they system on their interest.

Final verdict of the cases which come from village court:

After appealing to the district court or complaining to the police station higher court take it to their account. It is found that in 48% decision of village court remain unchanged by the higher court, 36% decisions are changed and 16% cases resend to the village court. (Fig: 8).

Public Satisfaction to the court process:

As we have found some dysfunctions of the system and its satisfactory level is below average. 53% of the respondents are not satisfied with its process and judgment. (Fig: 9). Study takes step to measure the satisfaction of the respondents in to five levels, like; excellent, best, better, good, and bad. It is found that only 7.14% participants' satisfaction level is excellent, then best (17.85%), better (28.57%) and good (46.42%). Negative satisfaction level means bad satisfaction is not found in the study area. (Table 6).

Some important Suggestions for necessary reformation of village court in Bangladesh:

As it is an important way to reduce case load of the formal justice system it should be perfect. Study found some effective functions of it as also some dysfunctions. And finally, its satisfactory level is below average. To develop its satisfactory level and work effectively study got some suggestions from experts, key professionals and the respondents, as bellow;

- Necessity of appropriate knowledgeable and experienced person in Village Court.
- Government should appoint a retired government officials like; retired police/army personnel) of the locality or a retired teacher as honorary magistrate in village court and nominate few other members for three to five years with a honorarium can make VC active and functional
- Village Court judgment should be bias free,
- Legal power of the judges should be reformed,
- Monetary budget of Village Court should be adequate,
- Answer may be appointing along with law enforcing personnel.
- An experienced person may be appoint as register of the Village Court,
- Moreover this Village Court Act should be reviewed and necessary corrections should be taken.

Conclusion

The Village Court is one of the Alternative Dispute Resolution – ADR developed to reduce huge case load of the formal justice system. It is constitute with five members where one Chairman and four members. This court is formed on the Village Court Act 2006. Basically it deals with civil cases includes; family matter, land dispute, Property Crime, marriage and divorce etc. On the other hand some criminal cases like: theft, theft of cattle, eve teasing, rape, cheating, coalition, mischief, etc. are also solved here. Most of the clients of this court are male between 35 and 65 having primary level of education and level of income is Taka one thousand to five thousand. For its lower cost, speedy disposal and known person rendezvous with justice process rural people go to Village Court (VC). But the satisfaction level of its justice is under below standard which brings the parties to appeal to higher court or complain to police station. Here risk factors of bellow standard satisfaction are biasness of the judges, deny of accepting cases, absence of opposite party, contamination of evidence, etc. On the other way, The Village Court Act, 2006 provides power the court to compensate to guilt which has 25000Tk maximum limit but real experience is different, it exercises physical, mental, economical and other form of punishment. On the other sense, law empowers the local leaders (Chairman, Members of Union Parishad) as participant of the court but most of the local leaders are elected or nominated by the political parties. For this there have a greater chance to be biased contamination of evidence to manipulate the justice. So to observe a effective Village Court as Alternative Dispute Resolution (ADR) some necessity reformation should take place without any delay.



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Appendix

Table 1: Age of the respondent

Age	f	%
15-25	7	11.7%
25-35	5	8.3%
35-45	13	21.7%
45-55	19	31.7%
55-65	12	20.0%
65-75	4	6.7%
Total	60	100.0%
Sex	f	%
Male	38	63.3%
Female	22	36.7%
Total	60	100.0%
Religion	f	%
Muslim	46	76.7%
Hindu	12	20.0%
Others Religious value	2	3.3%
Total	60	100.0%
Education	f	%
Primary	28	46.7%
Secondary	15	25.0%
H. Secondary	11	18.3%
Graduate	4	6.7%
Postgraduate	2	3.3%
Total	60	100.0%
Occupation	f	%
Farmer	17	28.3%
Business	14	23.3%
Service	3	5.0%
Housewife	11	18.3%
Day Labor	3	5.0%
Unemployed	7	11.7%
Others	5	8.3%
Total	60	100.0%
Income (Yearly)	f	%
10000 - 60000	26	43.3%
60001 - 120000	15	25.0%
120001 - 180000	12	20.0%
180001 - 240000	6	10.0%
240001 - 300000	1	1.7%
Total	60	100.0%

Table 2: Nature of offence appearing at the Village Court

Nature of Civil offence	f	%	Nature of Criminal offence	f	%
Family matter	10	27.0%	Theft	10	43.5%
Land dispute	08	21.6%	Eve teasing	05	21.7%
Property Crime	05	13.5%	Rape	02	8.7%
Extra marital relation	03	8.1%	Cheating	01	4.3%
Divorce	07	18.9%	Coalition	03	13.0%
Others	04	10.8%	Mischief	01	4.3%
			Others	01	4.3%
Total	37	100.0%	Total	23	100.0%

Table 3: Nature of punishment given to the offender

Nature of punishment	f	%
Physical	19	44.19%
Mental	09	20.93%
Financial	11	25.58%
Socially separated	01	02.33%
All	02	04.65%
Total	43	100%

Table 4: Time of Appeal to the court or police station

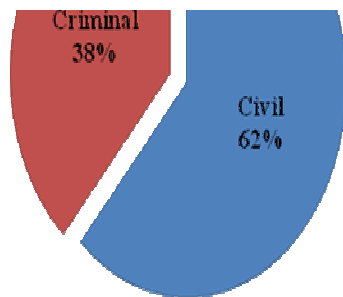
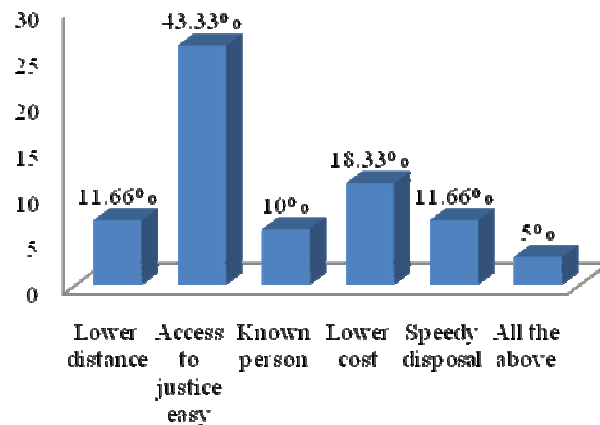
Time	f	%
Medieval period of village court process	08	42.11
After village court judgment	11	57.89
Total	19	100

Table 5: Causes of appeal to the Court or go to Police station

Causes	f	%
Judgment against the parties	4	21.00%
Biasness of the judges	6	39.60%
Deny of accepting cases	3	15.50%
Absence of Opposite party	1	5.40%
Evidence contamination	3	18.50%
Total	19	100.0%

Table 6: Level of satisfaction of the respondent

Satisfaction level	f	%
Excellent	2	7.14%
Best	5	17.85%
Better	8	28.57%
Good	13	46.42%
Total	28	100

**Figure 1: Type of cases at village court****Figure 2: Causes for going to the village court**

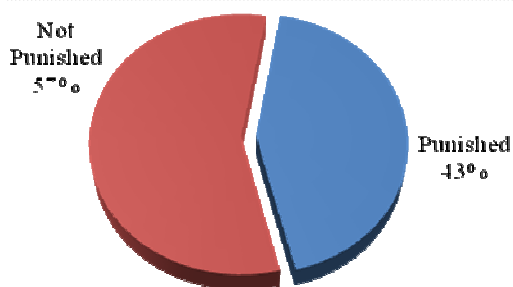


Figure 3: Punished the offender by the village court

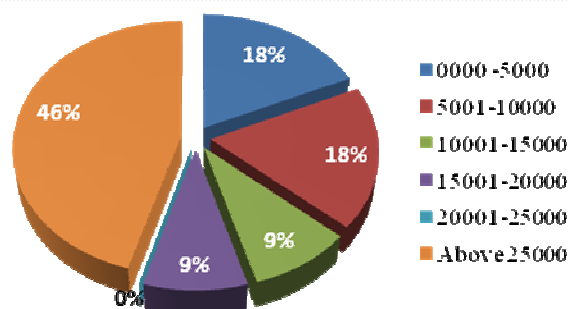


Figure 4: Amount of financial punishment

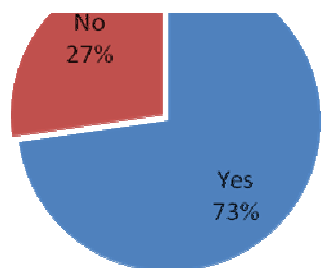


Figure 5: Compensation paid to the defendants

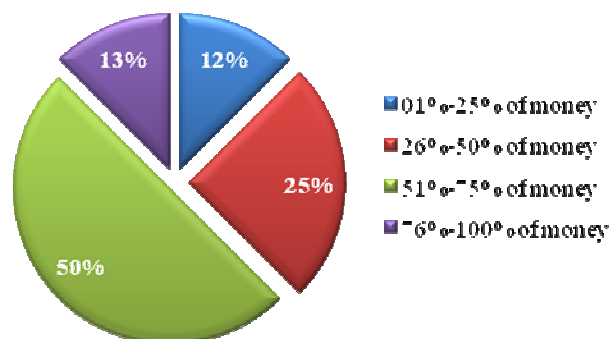


Figure 6: How much compensation paid to the defendants

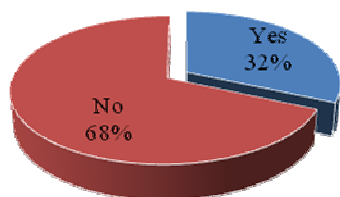


Figure 7: Appeal to District Court or Police Station

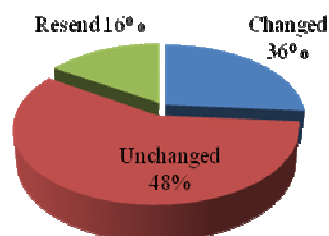


Figure 8: Final verdict of the cases which come from village court

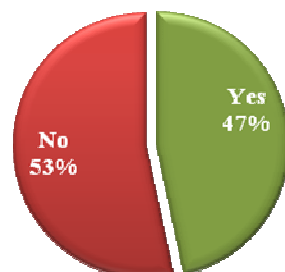


Figure 9: Public Satisfaction to the court process