



ACCESS TO JUSTICE THROUGH VILLAGE COURT FOR RURAL POOR: THE CASE OF BANGLADESH



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ABSTRACT

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Ensuring justice for all is a long cherished dream yet hangs on hope in the most developing countries like Bangladesh. Majority of the people are living at villages in Bangladesh. They are not in great touch with formal justice system because of their poor economic and social condition. The objective of the introducing of the Village Courts in Bangladesh was to ensure justice locally without having undue deferrals and inflated costs of the formal court processes. At present, village court is the only legal institution which exists to the doorstep of the rural poor people for the privilege of justice. This study focuses on recognizing the problems and prospects of Village Court in Bangladesh and provides a comprehensive way out to strengthen Village Court. Numerous problems severely circumscribed the Village Court system from realism such as lack of proper training and manpower, corruption, biasness, interruption of local politicians etc. This study has been prepared with the help of secondary data. Besides this, different academic views have been combined for a comprehensive reform approach that will be provided remedies of the current problems of Village Court.

Contribution/ Originality: This study contributes to the related literature of informal judiciary system chiefly to 'Village Court' which is the only doorway option of access to justice for the rural poorer in Bangladesh by determining the strengths, prospects and by offering a comprehensive way out of existing weaknesses.

1. INTRODUCTION

Access to justice and the protection of law on the basis of equality are the two fundamental rights guaranteed by the supreme law of the land, the constitution of the people's republic of Bangladesh in the listed articles 31, 33(1), 35(3) respectively¹. UNDP has defined access to justice as the "ability of people from disadvantaged groups to

¹Article 31 states "To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Article 33(1) No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievance in accordance with human rights principles and standards” (Sudarshan, 2003). Moreover, these two rights are also regarded as the prerequisite mechanism of ensuring good governance and of course, have decent link to democracy. Bangladesh, a country of South Asia achieved its independence from the exploitative rule of Pakistan by a war with bloodshed in December 1971, has many success stories in the field like GDP growth, per capita income, child and mother care and so many more, but apart from the many achievements, there are some areas where the country is still fighting to find the right feet; for example, the dream state of 3 million martyred is still searching for a comprehensive and effective solution to deliver equal access to justice for the all citizen from urban to local in ensuring rule of law. With around 3, 65,059 and 24, 95,944 cases pending for hearing in supreme and district courts, it is needless to say that the formal justice system in Bangladesh is under pressure with massive workload and the backlog of cases. On the other hand, because of inadequate number of officials and staffs, things like quick and quality services became more complicated. Moreover, recourse to the formal legal system is costly, time consuming and difficult to access because of urban centric, particularly to the poor and the disadvantaged village people. So, the above mentioned present features of state run formal judiciary system has been producing negative impacts on the establishment of a proper and equal justice system especially for the rural poor who cannot afford the expenses of cases and do not have clear understanding of how to get access to justice in the courts (United Nations Development Programme, 2005; Alam, 2014; Sinha, 2015). Consequently, once worthwhile non-state justice system, Shalish² is now become a less effective ADR³ than earlier due to corruption, biasness and acceptance, also proclaiming for an effective rural based justice system to addresses the small and pretty disputes. In order to fill up that vacuum and of targeting to create an opportunity for easy access to justice for the poor rural people, Government of Bangladesh under the Ministry of Local Government Division (LGD) through Village Court Act 2006, has launched a pilot project titled ‘Activating Village Courts in Bangladesh’ (AVCB) in 350 selected Union Parishad⁴ (UP) in 2009 with the financial assistance of UNDP⁵ and the European commission⁶. It can be noted that, the above stated programme was the result of series of failed attempts undertaken by the government to establish strong Village Court system for ensuring access to justice for the vulnerable and marginalized people. After observing the preliminary success of the programme, 2nd phase of AVCB project (2016-2019) has been inaugurated in 2016 targeting 21 million people of 1080 union. An amendment of ‘Village Courts Act 2006’ was made in 2013 (Village Courts amendment Act 2013) for incorporating several new clauses. Theoretically, the Village Court (VC) is statutory court and is composed with local government (Union Parishad) representatives and members nominated by the disputant parties. People at rural level are the main stakeholders of this court. Government has taken several initiatives to strengthen village court (Islam and Alam, 2017). There are number of significant studies available that tried to identify the shortcomings of the village courts with their possible solutions. So, for a strong and sound formal village judiciary system, these failings are required to be solved. It is evidently clear that a comprehensive solution must be needed to eradicate the weaknesses of Village Court; And this study is a small effort on the way to find a solution.

Article 35(3) shapes that, every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law. (<http://bdlaws.minlaw.gov.bd>).

² shalish is a non-state dispute resolution forum working in the rural areas.

³ Alternative resolution of dispute is considered as effective mechanism to the court process to reduce the work load or pressure on the court (Alam,2014).

⁴ Union Parishad(UP) is the lowest tier of rural local government in Bangladesh.

⁵ The United Nations Development Programme is the United Nations' global development network. Headquartered in New York City, UNDP advocates for change and connects countries to knowledge, experience and resources to help people build a better life.(<http://www.undp.org/content/undp/en/home.html>).

⁶ The European Commission is an institution of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties and managing the day-to-day business of the EU. (https://ec.europa.eu/commission/index_en).

2. OBJECTIVES OF THE STUDY

The main objective of the study is to focus on overview of the Village Court system to remove the weakness within it. The other specific objectives of the study are:

1. To identify the existing problems and the prospects of Village Court.
2. To provide an all-inclusive solution towards strengthening the Village Court in Bangladesh.

3. METHODS AND MATERIALS

This study is explanatory in nature and has been conducted on the basis of secondary sources. The secondary data have been collected from the various books, journals, websites, and newspaper discussions on Village courts. The dependent variable of the study is measured as Village Court and there are a set of independent variables such as- rural power structure, judgment, government support, leadership pattern etc. In this study, qualitative method has been followed to explicate the various issues of Village Court and to catch up the comprehensive solution for strengthening VC as an alternative dispute resolution mechanism.

4. VILLAGE COURTS IN BANGLADESH: A SHORT ETYMOLOGY

4.1. Historical Evolution

Bangladesh has a long history of informal dispute resolution mechanisms, practicing through mainly in three forms: the traditional *Shalish*, NGO organized modern shalish and Village Court in the rural level [Table 1](#). The current legal and judicial system (both central and local) of Bangladesh is well indebted to British rule in India that furnished the legal judiciary, although there was the existence of an old local government institution, the Village Panchayat, in the era of ancient India ruled by the different monarch. But before the introduction of local government bodies by the British government, these mechanisms were not in legal form of formal judicial judgment. The first suggestion for creation of village level judiciary courts on a legal format came into light by the Fraser Commission Report (1902-03). Afterwards, the Hobhouse Commission of 1907-09 and Levinge Committee of 1913 both again argued for the creation of village-level courts to handle the petty disputes of rural people. The actual journey of legal rural judiciary system in Indo-Pak sub-continent started when the British government in India passed the Bengal Village Self-Government Act-1919. The act established a 'Union Board' like today's Union Parishad and vested some judicial authority to mitigate the petty criminal cases. Under the Basic Democracies order 1959 (P.O no. 18 of 1959), the Conciliation Courts Ordinance (Ordinance No. XLIV of 1961) was promulgated. This ordinance empowered the 'Union Council' to deal with minor offences. The local government level adjudication system established by the 1961 ordinance continued until the promulgation of the village courts ordinance, 1976 (ordinance No. LXI of 1961), later, the Village courts ordinance of 1976 was repealed by the village Courts Act, 2006 ([Islam and Alam, 2017](#)). Finally, the village Courts Act, 2006 was amended in 2013 and takes the present shape by the name of Village court (Amendment) act, 2013.

Table-1. Historical Evolution of Rural Judicial System

Ancient India	British period	Pakistan Period	Bangladesh Period
<p>Administer Institution: Village Panchayet</p> <p>An assembly of five or more persons nominated by the king / elected by the village people.</p>	<p>Administer Institution: Union Board</p> <p>A body of at least six members but not more than nine members. Among the members, two third was elected and one third was nominated.</p> <p>Judicial Body : Union Court</p> <p>Two and more members, and were nominated from the body of union board by the approval of Provincial Government.</p> <p>Law or Ordinance: The Bengal Village Self-Government Act,1919 (Bengal Act V of 1919)</p>	<p>Administer Institution: Union Council</p> <p>Total members : Ten Two-Thirds elected, One-Thirds nominated by the government.</p> <p>Judicial Body : Conciliation Court</p> <p>Chairman (1): union council chairman or ward member if unable to act as chairman or his impartiality is challenged by any party to the dispute. Members (4) : two representatives nominated by the each of parties to the dispute</p> <p>Law or Ordinance: The Conciliation Courts Ordinance,1961 (Ordinance No. XLIV Of 1961)</p>	<p>Administer Institution : Union Parishad</p> <p>Chairman (01) General members (09) Reserved seats for women (03) All are elected by the citizens of each Union Parishad</p> <p>Judicial Body : Village Court</p> <p>Chairman (1) Chairman of the UP will be chairman of VC. Members (4): Four members to be chosen, by each of the parties to the dispute seeker. *One of the two members to be nominated by each party shall be a member of the Union Parishad concerned. *A women member inclusion as a member of VC body is must.</p> <p>Law or Ordinance: The Village Courts Ordinance, 1976(Ordinance No. LXI of 1976) The Village Courts Ordinance 2006 (Ordinance No. LXI of 2006), The Village Court (Amendment)Act, 2013</p>

*Special Clause.

4.2. Power and Functions

According to Part -1 of the Village Court Act-2006, a village court can deal with more or less 35 criminal offences like unlawful assembly, riot, Committing mischief, criminal trespass, criminal intimidation, theft in dwelling house etc. Part II of act gives a list of the civil suits, where a village court can make decision.

Followings are the list of Suits:

- Recovery of money due on contracts, receipts or other documents.
- Recovery of movable property, or for the value there of.
- Recovery of possession of immovable property within one year of dispossession.
- Compensation for wrongly taking or damaging movable property.
- Damages by cattle trespass
- Recovery of wages and compensation payable to an agricultural laborer (Islam and Alam, 2017).

The only judgment option open for village courts is to order compensation of an amount not exceeding taka, Seventy Five Thousand, payable to an aggrieved person (section 7(1). Some other powers that the village court can perform in accordance with law are - fine up to five hundred taka for contempt to decision of the Court. (Sec11), recuperate the compensation by applying the Public Demands Recovery Act, 1913 [Sec.9 (3)], recover fine and deposit in the account of the Union Parishad (Sec.12). If the decision of a village court is unanimous or by a majority of 4:1 (or 3:1 if the decision is reached in the presence of only four members of the court), the decision is binding on

the parties (section 8(1)). But, if the decision is by a majority of 3:2, any party to the dispute may, within thirty days of the decision, appeal to any judicial magistrate of the first class having jurisdiction over the case (section 8(2)(a)).

4.3. How does it Work?

According to Village Court Act, VC has to maintain certain formal procedure like trial or dispute settlement, by this means that the application of code of civil procedure, code of criminal procedure and evidence. The procedures started with the receipt of the application and ended up by the execution of the judgment as shown in the Figure 1.

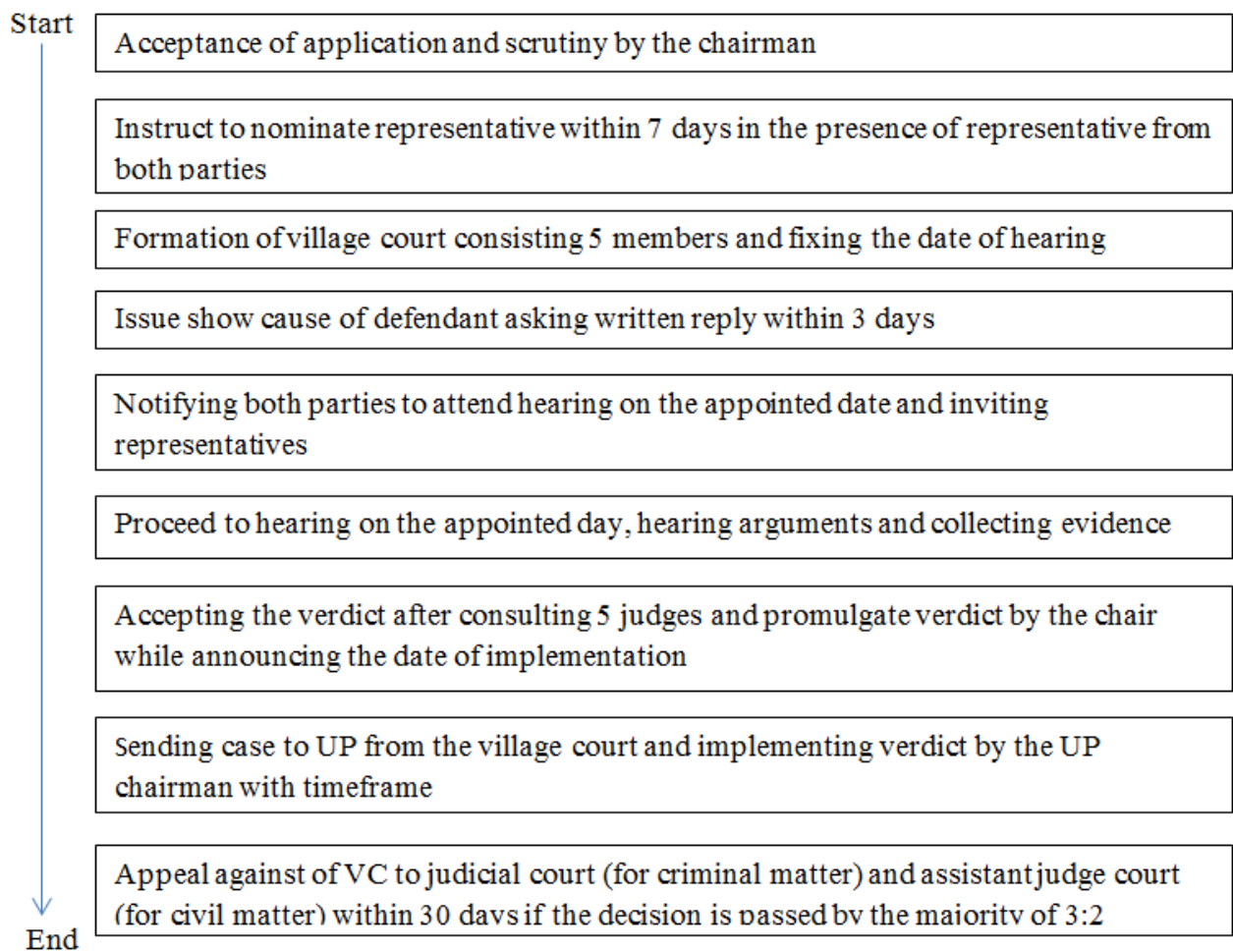


Figure-1. Village Court Flowchart (Hossain, 2012).

5. EXISTING PROBLEMS IN VILLAGE COURT

5.1. Lack of Awareness among the Rural People Regarding Village Court

Number of studies conducted on village court efficacy revealed that the people of rural areas still have not that much awareness about the functional aspects of VC; And because of their lack of awareness, founding purpose of the village court remains out of its greater success. The main objective of VC is to ensure justice locally but VCs do not seem to function properly due to lack awareness among the rural people, although the people project areas are more aware than the non-project areas (Hossain, 2012; Sarker, 2013).

5.2. Lack of Fund, Logistic, Infrastructural Supports, and Inadequate Man Power

For right functioning of any institution or organization, there should have been appropriate manpower to regulate the functions, otherwise there are very much chances of slow performance. The secretaries of UPs have to

perform the secretarial duties of VC that shows the scarcity of personnel. Logistic supports are also essential for continuation to better and fast services. Various studies indicated that the VCs are running with inadequate personnel system. It also had the absence of logistic supports such as " Trial Room", Computer for VC works, separate building which are crafting hindrance on its attainment (Islam and Alam, 2017).

5.3. Chairman, the Leviathan of Village Court

Chairmen exercise excessive control over the court decision and on body members. As chairmen are elected with party nominations, most of the time they cannot hold impartial role because of their biasness to party men and non-supportive to non-party men. There is a tendency found in every court where chairmen have an attitude to control other members by various methods and they usually do not consider the other members opinion.

5.4. Lack of Training

Training is the vital requirement to accomplish any job accurately. The study has found that But VC officials did not get proper training so far, although in project areas government made some tremendous efforts in this regard (Hossain, 2012) even people representatives of UPs (VC related personnel) do not have the basic knowledge about the rules and regulations of VC. Many chairmen and member do not have the basic knowledge concerning rules and regulations of VC. Kundu et al. said that VC procedures is sometimes gets crippled for weak procedure, lack of training and resources (Khundu et al., 2007).

5.5. Corruption

Corruption is a major obstacle to growth and development for any institution. Like other organization, village court in Bangladesh is not also out of corruption. Many studies have revealed that VC Chairmen and members are corrupted, and they take decisions in favor of their interest persons (Islam and Alam, 2017).

5.6. Absence of Proper Monitoring and Accountability System

The major prevailing problems of Village Court recognized in many studies are the non-existence of a proper monitoring and accountability system. Ahmed and Islam in their Study remarked that due to lack of proper monitoring and institutionalizing, VCs are not working properly (Ahmed and Islam, 2013). Chairmen and members are almost unaccountable for their judgment and there is no proper monitoring mechanism for monitoring the works of judges.

5.7. Pressure of Local Political Leader

With section 19A of Local Government (Union Parishad) Act, 2009, a provision newly added in 2015(Amendment) Act, to become a UP Chairman, candidates now must have to be nominated from the political parties or otherwise have to contest as independent candidate. The dilemma here, can an executive officer with a political agenda ever be a nearly suitable option for carrying out such tasks of a judge? The answer would obviously be negative (Skider, 2016). Local leaders of government party by nature of the political culture of Bangladesh influence the arbitration of village court thorough their elected party men. Not only the chairmen, most of the local representatives of UPs are elected or nominated by the political parties, so party elected members actually don't have that much courage to say no to their party person (Saadi et al., 2014).

5.8. Not Women Friendly

Studies on effectiveness ness of village court exposed that the women are still showing less interests on village court because of male domination, although, by amendment in 2013, presence of at least one woman in court adopted to mitigate the non-friendly environment for the women dispute seeker. The low percentages of cases filed

by the women compare to men indicate the above notion regarding women unfriendly village court. Moreover, usually village courts try to ignore the women cases because they think these cases are sensitive. Other issues that acknowledged as the barrier of effective Village Court are-

- i. Poor support from law enforcement agency, especially when the summoned of VC is discounted by the dispute party.
- ii. VC sometimes gets crippled for feeble process.
- iii. Sometimes, interest of member's makes them involved in conflicts and creates unfinished decision.

6. PROSPECTS OF VILLAGE COURT

After successfully accomplishment of first pilot project (AVCB program, 2009-2015), 2nd phase of AVCB program (2016-2019) already kicked off in 2016 which displaying the prospects of the village court in Bangladesh. Here are some figures of first phase that evidently shows village court's rationale as a fruitful rural judicial device.

- A total of 87,200 cases submitted to village courts. Of these 69,200 were resolved to take on average 28 days per case. Of these 61,200 decisions were implemented.
- 6,218 cases were referred from the district to village courts assisting to reduce the burden on the formal justice system.
- Access for women to justice increased. In total 21,720 women obtained justice through village courts. Representation of women in the village court decision-making process has increased from 8 percent in 2012 to 16 percent in 2015.
- A total of USD 3.79 million was recovered as compensation since 2010(AVCB II, www.bd.undp.org)

Despite some constrains that already discussed about VC, studies found several prospects such as-

- i. Most service receivers of VCs are satisfied with the service and they said that they have confidence on VC.
- ii. In the matter of cost of service and time, majority of research respondents agreed that the cost of VC is much lower than the formal judicial court and the same notion of answer came up regard to the verdict time.
- iii. People who are poor and have little education showing their greater interest on village court.
- iv. Women are coming to village court as service seeker, although the amount is still shorter compare to men.
- v. A compulsory presence of a woman as court member expected to be become a milestone footstep on women's participation in rural judiciary process.
- vi. Currently, the government and other related agencies relating to VC are more focused and trying level best to provide priority basis support to them.
- vii. With the help of financial partner UNDP and European Commission, Government now offers a lot training programs which will definitely going to be strong tool to develop the knowledge of judge panel for conduct the village court.
- viii. Most of the verdicts are enforced.

After the brief discussion about the problems and prospects of VC depending mostly on different research findings, we can indicate in [Table 2](#) SWOT analysis for the better understanding of whole issues in short mode.

Table-2. SWOT analysis of Village Court.

Strengths	Weaknesses	Opportunities	Threats
Specific rules and procedures	Inexperience Judge panel	Easy access to justice especially for rural poor	Corruption
Well defined jurisdiction	Poor logistic supports	Speedy trial and verdict	Biasness in judgment
Elected and well accepted body	Lack of proper monitoring mechanism	Lees costly compare to urban centric formal judicial access	Political influence and affiliation
State patronization	Inadequate work force	Reduce the pressure of formal justice system	Abuse of power and authority
Have a relatively active and permanent local level paternal institution: Union Parishad.	Less supportive to women	Effective role on maintaining social peace	Conflict among the body member
financial assistance at least in project areas	Male domination	Leadership development in the field of dispute resolution	Pending cases and unfinished decision

7. COMPREHENSIVE SOLUTION FOR EFFECTIVE VILLAGE COURT IN BANGLADESH

To make VC dynamic and handy, the below recommendations suggested by the Islam and Alam could be the better way to fixed the existing problems.

- The government and NGOs should allocate or support to establish 'Court Room' and other logistic support for all the UPs.
- An additional honorarium should be fixed for the chairmen and the members of the VC for successful disposal of each case.
- Monitoring authority should provide technical assistance and do qualitative evaluation of the work of VC.
- Capacity building of UP as well as the efficiency and competency of the UP officials is also very crucial for dispensing justice through UP.
- Policies should be adopted to develop awareness of all stakeholders concerned with VC.
- Mass campaign should be launched to aware the people on VC (Islam and Alam, 2017).

Above and beyond, the study recommends the following explicit solutions for strengthening Village Court in Bangladesh.

7. 1. Reform in Village Court Act

It is now almost need of hour to review and amend some rules of village court to be become more effective and efficient as one and only active judicial system in rural areas. In this regard, the study demands below reforms –

- i. Number of judge panel should be increased from 5 to 10 and the composition would be one chairman (UP chairman), one vice chairman (Women member of UP, 1 year rotating basis), 3 members nominated by the each service seeker parties (at least one them from each party will be the member of UP), a permanent member (appointed as civil service employer by the state) and a local school teacher (nominated by the UNO). This composition could be a policy to lessen the biasness and the excessive control of chairman on VCs.
- ii. Adjudication jurisdiction of village court should be increased especially in Pecuniary, from 75,000 to 1, 00000.
- iii. A review system for the animus judgments, a review board for verdict should be established within the informal settings alongside with VC. The review board will work like a high court division on VC's judgments and the structure of the review board could be like that, two NGO men working in the Concern

Upazila Parishad(Nominated by the UNO), two members from Upazila Parishad⁷ (Nominated by the Upazila Chairman) and two retired public service officers (selected by the UNO⁸). The contract of the review board will be for 3 years and will send their report to UNO and Upazila Parishad chairman. In the case of unconvinced judgment by review board, party can go for the appeal as prescribed in Sec.8 (2 and 3) of Village court ordinance-2006.

7. 2. Sufficient Manpower and Logistics Supports

For the better and expected outcome, government should provide all types of logistic supports to the VC. In every VC's, there should be a separated Court room with other facilities like computer for storing information with internet facility. A common training module (on and off job training) can be introduced for the all stakeholders to provide sufficient legal education on the legal procedure of VC. Government can develop a detached permanent personnel system for the VC where a secretary along with a court assistant could have been appointed to maintain the official works of the VC. A separate budget system should be provided for Village Court to maintain all those things.

7. 3. A Proper and Systematic Monitoring System

To ensure transparency and accountability, VC must have a proper and systematic monitoring system which is now not in appropriate shape and character. A monitoring cell under Upazila Administration can be made who will hold the sole authority for a three months periodic review meeting on the affairs in the presence of all VC body of that concern area. This cell will work as the local overseer of VC. Furthermore, the mentioned cell will send the intervallic report relating to the all issues concerning VC directly the ministry. If the cell found anything wide of the mark, it should have been the power to take immediate action with the prompt consultation to ministry.

7. 4. A system of Co-operation between Village Court and Law Enforcement Agencies

The law enforcement agencies of Bangladesh, especially police are not much helpful to Village Court. Actually, VC has no authority to force the parties to take their summoned into account and because of that sometimes parties are showing reluctant attitude to attend the court. Here, the collaboration between Village court and law enforcement authority come into a badly required form. If any party refuses the court summon, Court will make a note on it and send to police station. After receiving the note, police will take their measures to help the court in this regard.

8. CONCLUDING REMARKS

Access to justice especially for rural poor still remains a challenge for the developing countries like Bangladesh. Equal access to justice is the key to ensure good governance. The purpose of the creation of village court was to ensure justice locally for the rural poor people who do not have much contact to the urban centric formal judiciary system due to enormous cost associated with it. The other reason beyond the establishment of this rural judicial system was to reduce the work load of formal courts. This study reveals that despite some magical performances in promoting access to justice for rural people with low-priced and expedient way, the state sponsored rural judicial system; Village Court is still far-off from its uttermost destination due to some barriers. Undoubtedly, VC has

⁷ The Upazila Parishad is the 2nd lower tier of rural local government in sub-district level in Bangladesh composed with an elected chairman, two elected vice chairman (one of them a woman), chairmen of the all Union Parishad under the Upazila concerned.

⁸ UNO-Upazila Nirbahi Officer is the chief executive of an Upazila(sub-district), normally posted from among the senior scale officer of the administration cadre of the Bangladesh Civil Service and act also as the staff officer to the elected Chairman of Upazial Parishad.

already showed its credibility as an effective arrangement of rural justice system. Therefore, the village court should be strengthened by the proper addressing of the existing problems.

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