

**Dispensing Justice Locally: A Study of Two Village Courts in  
Bangladesh**

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## Abstract

The formal judicial system of Bangladesh is very expensive and follows a lengthy procedure. Poor people living in rural area are rarely able to use this formal legal system to get justice remedies. The costs of engaging a lawyer, the time and the related cost spent in court, the level of skill, education and expertise required to litigate serves as barriers in access to justice. Poor people therefore prefer or rather have no choice but to use the traditional justice mechanisms like Shalish. But it is evident that Shalish is a very informal form of local judicial practice which is very much influenced by the people who belong to the power structure in rural society. With the passage of time people with vested interest, even in some cases musclemen dominate in the village level informal justice system. Village courts had emerged in mid-seventies with a view to improving the situation of “Village Shalish”. Village Court works under the aegis of a Union Parishad, the lowest level of elected administrative body for rural administrative unit called Union. This state-led rural justice system like village court is playing an important role in resolving rural litigation of petty nature for the last thirty-five years but in a slow pace and informal manner. In the changing scenario of rural political power structure this age old court is facing challenges in dispensing justice to the rural people.

The research examined the prevailing rural informal and formal justice system specially the Union Parishad-led Village Court in Bangladesh and argued that this justice system, if adequately activated and reformed, could be a desirable alternative to the formal system of justice for the people living in rural area. The research was aimed to identify the challenges which have direct or indirect effect in dispensing justice by the Union Parishad (UP) through the Village Court (VC). In doing so, the related Policies, Procedures, Acts and Rules, Monitoring/oversight mechanism of the supervising authority, Legal Awareness of the UP Officials and Rural People, Competencies of the UP officials, Resources of the UPs, Support Mechanism/ Legal Aid from the NGOs, Socio-cultural and Legal Norms of the community members were examined and finally suggested a number of policy implications by which the performance of Village Court could be improved.

Village court was established with the objective of enabling rural people to settle their disputes and to offer them justice within a relatively short period of time with a minimum cost. In this study of the two village courts in Gopalganj and Jamalpur district, it was observed that village court is functional in Gopalganj district but is heavily dependent on the local NGOs/ government supported activating village court project. Again village court is almost dysfunctional or inactive in Jamalpur which is outside the project area. From the present study it was also revealed that the most important impediment in dispensing justice is the relative ignorance and lack of confidence among the public of both the law and opportunities that exist for redressing injustices. The lack of legal awareness (capacity to understand the legal rights, remedies and responsibilities) of both the service seekers and providers, limited jurisdiction of Village Court, lack of financial and human resources of the Union Parishad and lack of proper monitoring and supervision of the higher authority acts as a formidable barrier in dispensing justice locally. It was also suggested that, the necessary amendments of the village court act/ rules, proper monitoring and supervision of the government, resources and preparedness of the Union Parishad as well as the accountability, integrity, competency of both the UP Chairman, members and above all the awareness of all stakeholders can make village courts functional and can play a very vital role to ensure justice needs in rural Bangladesh.

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## **Acronyms and Abbreviations**

<b>ADR</b>	Alternative Disputes Resolution
<b>AVCB</b>	Activating Village Court Program
<b>CPI</b>	Corruption Perception Index
<b>DC</b>	Deputy Commissioner
<b>DDLG</b>	Deputy Director of Local Government
<b>EU</b>	European Union
<b>IDI</b>	In Depth Interview
<b>KII</b>	Key Informant Interview
<b>FGD</b>	Focus Group Discussion
<b>LGED</b>	Local Government Engineering Division
<b>MLAA</b>	Madaripur Legal Aid Association
<b>MoLGRD&amp;C</b>	Ministry of Local Government, Rural Development and Cooperatives
<b>NILG</b>	National Institute of Local Government
<b>NGO</b>	Non-Government Organization
<b>OC</b>	Officer in Charge of Police Station
<b>UNDP</b>	United Nations Development Program
<b>UNO</b>	Upazila Nirbahi Officer
<b>UP</b>	Union Parishad
<b>VAW</b>	Violence Against Women
<b>VC</b>	Village Court

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## CHAPTER ONE: INTRODUCTION

### 1.1 Background

'Access to Justice' is recognized as one of the fundamental preconditions for development and good governance. According to the article 1 of United Nations Universal Declaration of Human Rights (1948), "All human beings are born free and equal in dignity and rights." Therefore all human beings should have equal access to justice when their dignity or their rights are infringed upon. However, deficient or discriminatory justice systems can undermine the basic human rights principle. When such system cannot ensure equal access to justice by all, the vulnerable and marginalized, and their human dignity is placed at risk. Ensuring access to justice for the people is always a big challenge for Bangladesh because, about 80% of total population lives in villages and around 40% lives below the poverty line. Article 31 of The constitution of the People's Republic of Bangladesh provides that, "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". Again Article 35(3) states 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".

There are many obstacles to achieving the benefits of access to justice. Barriers may be actively or passively created or sustained and may be (a) legal, (b) institutional, (c) political or (d) social/cultural. Among the obstacles, the complexity of justice system is one of the major obstacles for poor people to access to justice and service provider to dispense justice. A large number of people of the country don't have financial and other logistic support to get the appropriate service from the judicial system.

The access to the formal court is extremely limited for the rural poor people because 8 out of 10 Bangladeshis live in villages and most of the formal courts are situated in urban centers. As the lowest formal court is at the district level, the rural poor have to bear travel and logistics costs that pose additional burdens (Siddiqi 2003). Therefore, large segments of the population who

lack information or means to surmount the significant substantive and procedural barriers seek informal mechanisms (Shalish<sup>1</sup>) to redress their grievances.

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 (*Gram Adalat*<sup>2</sup>) or they remain unsettled (Golub 2003).

It is unfortunate and frustrating that though Village Courts ordinance was promulgated more than three decades before, it has not yet achieved a considerable success till now.

## 1.2 A brief sketch of Village Court

In 1976 the Government of Bangladesh promulgated the Local Government Ordinance. Through this Ordinance the Union Parishad was entrusted with forty functions including limited judicial duties. The Village Court Ordinance provided each Union with basic authority to try cases by the village courts. Accordingly, the village courts were set to deal with petty cases. The objectives of establishing the village courts were to settle disputes, both criminal and civil, to which villagers are the parties.

**Table 1.1: Characteristics of Village Courts**

<b>Established by</b>	The Village Court Act, 2006 (previously The Village Court Ordinance 1976).
<b>Location of VC</b>	Union Parishad Complex.
<b>Offence types</b>	Both Civil and Criminal.
<b>Jurisdiction</b>	Fine up to 25,000/- Taka.
<b>Panel members of VC</b>	UP chairman, two UP members, two persons from both parties.
<b>Appellate authority</b>	Magistrate 1 <sup>st</sup> class/ Assistant Judge.
This court is legally required to follow informal procedure of trial or dispute settlement, meaning thereby that the application of Code of Civil Procedure, Code of Criminal Procedure and Evidence Act has been barred. It has barred the appointment of lawyers. However, decisions of these courts are as binding as those of any other formal courts of the country.	

<sup>1</sup> Shalish is an informal non-state justice system where rural elderly people/community leader resolve disputes.

<sup>2</sup> Grma adalat or village court is a state led rural quasi-formal justice system

### 1.3 Statement of the Problem

Theoretically, everyone is entitled to access to justice but unfortunately, the gap between formal entitlements and actual access can be immense. Typically, justice within the formal state system is beyond the means of most poor people in the South. 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 (Siddiqi 2003).

In early nineties the *Magistrate Courts*<sup>3</sup> and *Munsif Courts*<sup>4</sup> were shifted from Upazila/ Thana headquarters to the districts. Average expense of a case in the court of a Thana magistrate was estimated to be a minimum of Tk. 16,511 while the maximum was Tk. 176000 (Arafunnesa 1988: 27). As these figures were estimated more than two decades back, the current expense in the absence of Upazila courts would be much higher. Such expense is beyond the capacity of the village people.

The lack of faith in the formal justice system in Bangladesh is immense. A survey conducted by Transparency International– Bangladesh found that 79.7% of the households interviewed agreed with the assertion that it was almost impossible to get help from the law-enforcing agency (police) without money or influence. 88% expressed a similar disillusionment with respect to the judiciary and stated that they had to bribe court officials (TIB – CPI 2010).

In Bangladesh, one of the major problems of the justice sector is delayed dispensation of justice due to huge backlog of cases. Sometimes it takes 20 to 25 years for a case to be resolved. According to average rate of disposal of civil cases in the last five years, it would take two years and nine months to dispose of all pending cases if there are no new cases during this period. On the other hand, according to average rate of disposal of criminal cases in the last five years, it would take one year and ten months to dispose of all pending cases if there are no new cases (IGS 2010).

Bangladesh has one of the lowest ratios of police officers to heads of population anywhere in the world. Police are characterized by low levels of training, education and also reported to be a high level of corruption:

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<sup>3</sup> A court of criminal affairs

<sup>4</sup> A court of civil affairs

... for poor people who lack the necessary resources, it is almost impossible to initiate or pursue a case. As a result, a large amount of criminal activity goes unreported, with certain powerful interests in rural society able to act with impunity in pursuing their interests at the direct expense of the weak and poor.... (Bode and Howes, 2002: xiii).

Informal justice delivery system Shalish is prevalent in Bangladesh from time immemorial. However, its traditional working has been changed over the years on various socio-economic and religious grounds. In the absence of specified law, process and accountability, Shalish has become a vehicle for imposing subjective justice by the socially, economically or religiously powerful. In addition, Shalish has sometimes acted as an instrument for carrying out the perverse 'fatwas'<sup>5</sup> issued and propagated by some local religious leaders. So, from traditional informal justice, people sometime get no justice or sometimes injustice.

Though the state mandated village courts are headed and operated by personnel in local governance, have backing of the government and have the necessary structures and functionaries in place, these systems are almost non-functional. Village courts are also blamed for its excessive formalities and delays. Again, the village court also is susceptible to manipulation by touts and local musclemen who sometimes guide the pace and direction of the process by intimidation.

The *Union Parishad*<sup>6</sup> has as we have seen existed as a local institution since the British colonial period and currently has thirteen members, including three seats which are specifically reserved for women. The Union Parishad is the most matured local government institution. But, nearly 40 percent of respondents in rural areas are either completely or somewhat dissatisfied with the performance of UP representatives (Governance barometer survey Bangladesh 2010). As a local government administrative unit, a Union Parishad has numerous duties and responsibilities. The Local Government (Union Parishad) Act, 2009 has specified 39 functions which include civic functions, police and defense functions, revenue and general administrative functions, and development functions. Again, the UP chairmen are aligned with political parties and exercise both executive and judicial authority. So, for what degree of empowerment/authority of village court will be consistent with the principle/spirit of the separation of the judiciary? Therefore, local government bodies are fast losing their credibility in providing justice to local communities despite having clear sanctions of the law.

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<sup>5</sup> Misinterpretation of religion that mostly directed against women

<sup>6</sup> Lowest tier of local government institution in Bangladesh

Many of the minor criminal and civil cases can be resolved through VCs. Active and full functioning VCs in every union can reduce the filing of cases in minor local disputes and insure quick justice in rural area. At the same time it can help to reduce the backlog of cases in the formal courts.

#### **1.4 Rationale/ Significance of the research:**

Though the UP has been assigned with many functions (mandatory and optional) of various kinds vide the Local Government (Union Parishad) Act 2009, it is playing insignificant role in local level administration at present. Most of the UPs are rendering some infrastructural services, conducting 'Village Court' for settlement of local arbitrations under limited capacity, compiling birth registration, issuing citizen certificate, and overseeing health, education, and agricultural services. Village Court Ordinance was promulgated 35 years ago, but it has not been reformed so far in line with the economic and social changes. Though a long time has passed after introducing this village justice mechanism, the government of the country has not undertaken any research to assess the performance of this judicial institution, or to assess whether the institution is being able to fulfill the aims they were introduced to meet.

In 2009, Government of Bangladesh with the help of UNDP & European Union has conducted a baseline survey on VCs and launched a project named 'Activating Village Courts in Bangladesh'. But, no study has been done to assess their performance. Some non-government organizations and some private individuals in the recent years have conducted some researches on the village courts that show that the performance of the village courts is very poor and unsatisfactory. Most of the researches were sponsored either by NGOs or by Donor agencies that were inclined/ biased to their own form of arbitration methods.

So, an in-depth study to dig out the problems of the rural justice system is required to address the problems.

#### **1.5 Objectives of the Research:**

The primary objective of the research is to analyze how much the access to justice needs is fulfilled by the existing rural formal justice system (Village Court). The specific objective is to identify the challenges associated with the Village Court Act & Actors (both service provider & service seekers) in dispensing justice locally through village court.

## 1.6 Research Questions

In line with the statement of the problems, the research paper aims to address the following research questions.

- ❖ What are the challenges associated with village courts in dispensing justice locally?
  - a) Are the challenges associated with village court act/rules?
  - b) Are the challenges associated with service providing institution (Union Parishad) & service providers (UP Chairman, Member and secretary)?
  - c) Are the challenges associated with service seekers (rural people)?

## 1.7 Operational Definitions:

The concept of justice means different things to different people. There is a difference between access to the formal justice system and access to social justice. Social justice requires more input and deals with complex social issues. Legal justice focuses primarily on sentencing.

For the present study **Justice** covers only the restorative view of justice which focuses on the need to rebuild or restore relationships and/or socio-economic status. This form of justice includes scope for compensation as a way of correcting wrongdoing and achieving justice.

For the purposes of the present study, **dispensing justice locally** means mainly the dispensation of restorative justice remedies through the lowest tier of the local government institute (Union Parishad) of Bangladesh and **Village Court** is a statutory formal court formed under the provision of Village Court Act 2006.

## 1.8 Limitations of the research

Though Bangladesh has a homogeneous society but still the local socioeconomic parameters, culture and perceptions towards justice system varies from place to place. The qualitative methods like FGDs, interviews, Case Studies and the Content analysis were followed to collect information about the justice dispensing scenario in rural Bangladesh. Observing the Village Court proceedings might be a very useful tool to collect more information but it was also time consuming. Hence, this method was not used in this research. Again, the lacks of awareness of

the common people/ service seekers as well as the Union Parishad officials have given such information that might seem apparently contradictory. For example, many rural people used the 'Village Courts' and Shalish' interchangeably. Some of the rural people call it 'Union Parishad-led Shalish'. Case records and registers were not properly preserved. This created problems to collect and analyze much of the data/ information regarding various aspects of rural justice system.

## **1.9 Structure of the thesis**

The thesis is composed of six chapters. **Chapter One** gives an overview of the discussion that deals with background, statement of the problem, significance of the study, research questions, research objectives, scope of the study, limitation of the study and structure of the thesis. **Chapter Two** has dealt with research methodology, research location and distribution of respondents. **Chapter Three** deals with the review of the existing literature of the rural formal and informal justice system, rural power structure, justice seeking behavior, conceptual framework in access to justice and analytical framework in dispensing justice. **Chapter Four** has dealt with the overall justice system in Bangladesh followed by strengths and weaknesses of the justice system. **Chapter Five** deals with the findings and analysis covering issues like legal awareness, institutional efficiency, legal framework and attitudes and perceptions of both the service seekers and providers. **Chapter Six** concludes with the overall assessment of the rural justice dispensing scenario and some policy implications.

## CHAPTER TWO: RESEACH METHODOLOGY

This chapter presents an overview of methodology and procedures applied in this study. It describes the process that was employed to collect and analyze data/ information in order to measure the access to justice scenario of rural Bangladesh and to explore the capacity of the Union Parishad/ Village Courts and its officials in dispensing justice.

### 2.1 Research Methods

Research methods usually depend upon the nature of the research as well the research questions. The present study has covered only qualitative approach of information/data collection. The use of one single method in social research is not always enough to respond to the research need rather a combination of methods is more useful to bring desired level of methodological sophistication (Aminuzzaman, 1991). So, for better understanding the nature of the problem, several techniques will be used. The techniques like in-depth interview with semi-structured questionnaire, focus group discussion, case study and content analysis methods have been practiced. Interview is a systematic method by which a person enters deeply into the life of even a stranger and can bring out needed information and data for research proposal (Aminuzzaman, 1991). For the focus group discussion, people from all segments of rural community (like peasants, shopkeepers, women, ex. member/chairman, religious leader etc) were covered. To analyze the relevancy/drawbacks of Village Courts, contents (like books, journals, relevant laws and rules) were reviewed.

### 2.2 Research Location

Relevant qualitative information was collected from two unions of two separate districts with different socio-political and legal cultures. One union was Kashiani Sadar under Gopalganj and other was Jhawgara under Jamalpur district. The reason for choosing Gopalganj district was because several NGO-interventions on village courts were underway in this district since last couple of decades and various studies stated that village courts are relatively operational there. On the other hand, Jamalpur is a poverty stricken area where people has little access to the formal justice system and they generally rely upon informal justice systems like Shalish in solving local disputes.

### **2.3 Data Collection Methods and Respondents**

The following methods were used to gather qualitative data/information:

**Content Analysis:** Relevant circulars/ reports and meeting minutes were collected throughout the research. These documents were used to understand the justice scenario at local level.

**Interviews:** For the purpose of present study, 18 peoples were interviewed. Relevant information was collected from the UP chairmen, members, secretaries, UNOs, Officer in Charge (OC) of local police station, local elite, NGOs representatives who plays an important role in shaping the legal as well as social discourse. These interviews were of informal nature though an interview guide was prepared for the purpose. During the interview, some relevant questions were also asked to all the respondents to identify and understand access to justice scenario of Bangladesh.

**Focus Group Discussion:** The focus groups consisted of 10 individuals who had used, not used, or were in the process of using, the services of the village court. Where possible, members of the UP were not present during the focus group discussion. In these focus group discussions, the experiences of the clients in relation to legal needs and also methods of addressing these legal needs were explored. In order to capture as much information as possible, each of these events were tape-recorded; photographs and notes were taken by the researcher with the permission from the participants.

**Case Study:** Case study in this research has played a vital role in unearthing the challenges associated in dispensing justice through village court. Four case studies were purposively selected to identify and understand the level of awareness of both the service seekers and providers, their attitudes towards legal institutions and the rural power structure of Bangladesh.

Fieldwork was conducted in between 15<sup>th</sup> March 2012 to 29<sup>th</sup> March 2012.

**Table 2.1: Data Collection Methods and Respondents**

Type of respondents		Information collection method	No. of respondents
Service Providers	1. UP Chairman	In depth interview	1*2=2
	2. UP Secretary	In -depth interview	1*2=2
	1. UP Members	Group interview	3*2=6
Service seekers	Rural people	Focus Group Discussion	10*2=20
Service supervisor	UNO	Key Informant Interview	1*2=2
Others	1. NGO activist	Key Informant Interview	1*2=2
	2. Community Leader		1*2=2
	3. Officer in Charge of the Police Station		1*2=2
Case study			2*2=4
Documents of case procedure			2*2=4
Total			(38+8)=46

## **CHAPTER THREE: LITERATURE REVIEW, CONCEPTUAL AND ANALYTICAL FRAMEWORK**

The purpose of this chapter is to present review of existing literature, conceptual dimension of the dispensation of justice and relationship between dependent and independent variables. A conceptual framework for this study is developed based on the study of literature on theoretical perspectives of access to justice and international good practices. It also formulated an analytical framework based on the relationship of dependent and independent variables.

### **3.1 Review of Literature:**

A good number of researchers and scholars of Bangladesh and the west have dealt with the working of the state-led formal courts and non-state informal courts. Again some international organizations like UNDP, World Bank and DFID have developed different models in dispensing justice. Justice dispensation process is interlinked with various issues like the justice seeking behavior of the community, power structure of the rural society, capacity, competency, strengths and weakness of the justice dispensing organs and the people involved with the whole process. For better understanding of the justice dispensation scenario, the whole literature review has been divided into the following clusters.

#### **Defining Access to Justice:**

UNDP has defined access to justice as the “ability of people from disadvantaged groups to 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). Access to justice can be divided into different stages; starting from the moment a grievance occurs (causing a dispute) to the moment redress is provided. Full access is ensured when the process is completed (UNDP 2005). Access to justice requires more than being able to present a grievance in front of a court but includes an effective remedy whereby your right is translated into reality (Anderson 2003). Thus, access to justice is associated with the ability to bring a grievance before court, including the right to a fair hearing and an effective remedy.

Again, access to justice is essential for human development, establishing democratic governance, reducing poverty and conflict prevention for the following reasons: a) democratic governance is undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent ;b) the poor and disadvantaged, due to their vulnerability are more likely

to be victims of criminal and illegal acts, including human rights violations; c) crime and illegality are likely to have a greater impact on poor and disadvantaged people's lives as it is harder for them to obtain redress. As a result, they may fall further into poverty. Justice systems can provide remedies which will minimize or redress the impact of this (UNDP 2005).

Access to justice by the poor can empower them and that is what the capitalism may not always be able to provide. The ideas and institutions brought by capitalism may not ensure access to justice. Instead, it may be "...a myth, factually false, politically conservative and deliberately fostered by the most visible embodiments of law" (Abel 1990: 686, cited in Jahan n.d.)

### **Barriers in dispensing justice:**

Anderson (2003) identifies some common barriers in dispensing justice. The barriers are

- the existence of anti-poor laws, including laws that discriminate against people on the basis of income or wealth;
- negative attitudes to the poor among people working with law enforcement (including lawyers, judges and police);
- excessive bureaucracy and inefficiency in the judicial system, contributing to non-transparency and delay in the legal process;
- corruption among law enforcing personnel, contributing to increasing transaction costs and greater uncertainty about the outcome;
- lack of judicial independence and abuse of political authority vis-à-vis law enforcing agencies, undermining the surety of a fair hearing.

Again, from a human rights perspective, poverty is not only associated with denial of rights – but also the denial of the right to rights, as promoted and protected through an effective legal system. Legal systems around the world discriminate against people who cannot afford legal representation, are illiterate and lack the power to influence legislative processes (Anderson 2003).

## **Rural power structure:**

Rural power structure plays a very vital role in dispensing justice or seeking justice either through formal legal systems or informal systems like Shalish or quasi-formal system like village courts. The rural power structure has changed a lot in last twenty years. Land ownership alone is no longer the main determinant of rural power (Lewis 1991; Wood 1999). Bode's (2002) study reveals more of the changing composition of rural elites that has taken place from the 1980s onwards, as new rural wealth accumulation based on the privatized introduction of new agricultural technologies has taken root, bringing new non-traditional rural business households into the local power structure at village level. Both new and older elites are exploring new and diversified strategies of livelihood expansion and consolidation, including diversified economic activities, involvement in party political networks, engagement in forms of philanthropy and 'civil society' action, and setting up NGOs.

Evidence suggests that the influence of party politics is becoming stronger at union level (Bode 2002). The party affiliation of a union chairman can help determine the level of influence he can achieve with the local MP, which in turn has a strong bearing on the share of available resources he can bring into the union from the centre. Local party activists help mediate these relationships through the union and its activities.

Again, Hossain, A and Lewis, D (2008) identifies that the traditional *samaj*<sup>7</sup> system has become weakened, as a result of a growth of inter-generational tensions, the post-1991 growth of party politics, and the increasing scale of households' external linkages. They also identifies that, even in the remote villages, social institutions are far from static. The village leaders (matbars) were once powerful landowners in what was a predominantly agriculture-based community. They could command respect through their landlord-tenant relationships. But as villagers have become ever more mobile, and less dependent on land and farming, their power is slowly diminishing. The growth of contracting work opportunities beyond the village has brought new perspectives in from beyond the village, even for the poorest people. A new middle class has formed in every villages is making political connections beyond the village, and there is a better-educated

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<sup>7</sup> Literally "*samaj*" means society which reflects the dominant cultural and societal norms and values accepted and agreed upon by a majority of citizens. *Samaj* in Bangladesh incorporates social values that shape interpersonal relationships such as between father and son, wife and husband, or in general between men and women, rich and poor, landowners and landless, or between senior and junior.

younger generation emerging from the local high schools. For the next generation of informal village leader families, life is already very different to that of their parents.

Hashmi describes a “*member*<sup>8</sup> -*matbar*<sup>9</sup> -*mulla*<sup>10</sup> ” triumvirate that controls village affairs, including Shalish.

The members of the Union Parishad (the lowest electoral unit) are elected officials, in charge of the disbursement of public goods and relief materials among the poor villagers, are the most powerful in the triumvirate. They are often connected with the ruling political party of other influential power-brokers in the neighboring towns or groups of villages. The matbars (matabbars) or village elders, who also sit on the Shalish (village court), are next in the hierarchy, having vested interests in the village economy as rentiers and moneylenders. They often get shares in misappropriated relief goods along with government officials and members-chairmen of the Union Parishads. The mulla, associated with the local mosques and maktabas (elementary religious schools), are sometimes quite influential as they endorse the activities of village elders albeit in the name of Islamic or Sharia law. The often sit on the Shalish and issue fatwas<sup>11</sup> in support of their patrons, the village elders. The rural poor, often women, are victims of these fatwas (Hashmi 2000: 137).

### Justice seeking behavior of rural Bangladesh:

Justice seeking behavior determines the preference of one justice system over others. Justice seeking behavior depends on the perceptions, availability, accessibility effectiveness and efficiency of the justice systems. A common saying captures the general perception towards the courts as well: “*He who gets trapped by the law falls into the mouth of a tiger*” (Siddiqi 2003). It was observed that for many years, Shalish is the first preference of the people living in rural Bangladesh.

**Table-3.1: Justice Seeking Behavior in rural Bangladesh**

Type	1 <sup>st</sup> preference	2 <sup>nd</sup> preference	3 <sup>rd</sup> preference	4 <sup>th</sup> preference	Mean
Shalish	46	1	-	-	4.0
Village Court	1	41	2	3	2.8
Police	-	4	20	16	1.7
Court	1	-	19	24	1.5

\*Source: A small-scale survey of UP villagers (UNDP Human Security Report, 2002)

<sup>8</sup> Member of the Union Parishad

<sup>9</sup> Local Community Leader

<sup>10</sup> Religious leader like Imam of the local mosque

<sup>11</sup> Religious dicta

### **Problems of Informal Justice System (Shalish):**

In the past, traditional Shalish had been considered as the most effective means to resolve disputes, in recent times, the significance, importance and effectiveness of Shalish are declining. The reasons behind this lowered status of Shalish are a) biasness, b) corruption, c) gender discrimination, d) lack of legal awareness, e) influence of money and power, f) changing social norms (Jahan, n.d.). The actual Shalish is often a loud and passionate event in which disputants, relatives, [Shalish panel] members and even uninvited community members congregate to express their thoughts and feelings. Additional observers — adults and children alike — gather in the room's doorway and outside. More than one exchange of opinions may occur simultaneously. Calm discussions explode into bursts of shouting and even laughter or tears. All of this typically takes place in a crowded school room or other public space, sweltering most of the year, often with the noise of other community activities filtering in from outside. The number of participants and observers may range from a few dozen to well over one hundred. (Golub 2000: 137-138)

Bode and Howes (2002: xiii) writes

“Like their formal counterparts, Shalish are characterised by a range of deficiencies. Bench members exhibit widespread ignorance of the law, and may decree harsh and inhumane punishment. They are also rich, powerful and male, and normally rule in favour of their peers. Once again, there is frequent recourse to bribery. But despite these difficulties, the institution continues to be valued, providing the only forum in which poorer people in general, and women in particular, are able to present their grievances and obtain at least limited redress.”

Traditional Shalish emphasizes heavily on the existing social structure and this unequal power structure creates an impediment to ensure justice for the poor. People who belong to the upper strata of the society can easily exercise their economic influence in traditional Shalish and if their confronting side is poor, justice may be easily denied. Besides, many a times, the Shalishkers help the rich or the elites to receive something in return. Political consideration is also reflected in Shalish. Political affiliation of the person seeking justice has become an important point of consideration and the just resolution is not delivered as the Shalishkers have started to consider the consequence of their resolution on their vote bank (Ali and Alim 2005).

Siddiqi, D (2004) in her studies says that, money and muscle are key assets that influence the outcomes of present day Shalish rulings, undermining its integrity and respect among common people. Aminuzzaman, S. M. (2000) also found high levels of corruption in the Shalish system.

### **Problems of the Village Court:**

Quader, A. (1995) also conducted a case study of the functioning of two village courts in the early nineties. This case study involved interviewing the UP chairman and UP members, some observers, selected village court clients, and a cross-section of people in the area. He identifies that, in terms of decisions 54% of cases were resolved through negotiation between the parties—mirroring the traditional negotiation practices of the Shalish. The political situation influenced whether the village court functioned or not – with the number of cases filed with the court ranging from zero to 48 per year for the years 1987-92. Both dealt mostly with criminal, civil, and family cases in that order. Criminal cases mainly originated in disputes, civil cases were mainly ownership disputes, and family cases were mainly cases of wife abuse. Roughly 20% of cases filed with the village courts over five years were left unresolved. The majority of these cases were unresolved due to the absence of the accused.

The United Nations Development Program (UNDP) conducted a study on the functioning of Union Parishad village courts in Bangladesh which was published in 2002 as part of its report titled Human Security in Bangladesh. The study reveals that, sixty-three percent of the respondents felt that the village court verdicts were only moderately enforced and fifty percent of the village court officials felt that the village court was affected by outside influences. The main sources of influence are local political leaders, community leaders, wealthy people and other influential individuals in the villages.

Das, M. B. and Maru, V. (2011) have conducted a phone interviews with 40 UP chairpersons from all six divisions and thirty different districts. Every chairperson interviewed reported conducting village courts; 30 out of the 40 chairpersons reported holding court one time per week or more. Common case types included family disputes, land disputes, physical conflict, minor theft, forgery, and loan recovery. All chairpersons reported deploying the UP secretary to maintain a registry of cases. Also, all chairpersons explained, when asked—who makes the decisions, which the UP Chairperson sits on a panel with other panelists chosen in equal number by either party.

The UNDP and European Union with the assistance of the Ministry of Local Government, Rural Development & Cooperatives conducted a baseline survey on Village court in 2009. The survey findings was a. the UP chairmen and members have confused knowledge and understanding of the legal jurisdiction of VCs; b. as per The Village Courts Act, 2006, cases of violence against

women do not fall under the jurisdiction of Village Courts, yet the findings indicate that in many places 'violence against women' and 'dowry related subjugation' is being settled by Village Courts quite regularly; c. most rural people still depend on informal 'Shalish' which is regulated by local "Matbar" (community leaders) and influential persons in the locality; d. there is no training program for the Union Parishad Chairman and Members for orientation on Village Courts; e. there is lack of proper monitoring of the activities of Village Courts.

### **Inferences from Literature Review:**

Access to justice is one of the preconditions of good governance but there have some barriers in dispensing justice through formal and informal justice systems. Access to justice for most citizens in rural Bangladesh remains very difficult either from formal judicial institutions such as the village courts, or from less formal ones such as the Shalish. The accessibility and complexity of formal legal services are embedded in slow, costly and long-term procedure, aggrieved people sometimes are not interested to go to court for seeking justice. Though Shalish hardly provides any guarantee to legal equality, equity and rights to man and women, rich and poor but the complexity of the formal justice system and dysfunctional or inactive Village Court have opened the scope for informal justice systems like Shalish to address some cases out of the court and village court has failed to bridge the gap between formal and informal justice system.

Again, land-based patron-client relations have begun to fade in rural Bangladesh and the foundations for power and respect are more multi-dimensional, and perhaps, more open. Now, the rural power holders are a. Matbars (village headmen) controlling the informal institutions like Samaj (society), Shalish and owning most of the land; b. Union Parishad leaders controlling formal administrative institutions at local level; c. Rural political elites representing different political parties at the grassroots level. In this complex situation it is a great challenge for the UPs to dispense justice through the VC. Rural political elites and community leaders still plays a dominant role in rural justice systems. Politicization of the local government institutions like UPs has declined the acceptance of the UPs to the rural people.

### 3.2 Conceptual and Analytical Framework in dispensing justice:

Dispensing justice is complex process where a range of different inter-related factors combines together to enable citizens to obtain a satisfactory remedy for a grievance. Such factors include an adequate legal framework, legal awareness and well functioning institutions of justice that are physically and economically accessible to all the stakeholders. UNDP (2005) has developed a conceptual framework of Access to Justice illustrates this process in simple terms. The five stages of the access to justice process are:

- Legal protection
- Legal awareness
- Legal aid and counsel
- adjudication
- Enforcement and oversight

Again, International Consortium for Court Excellence (2008:12) identifies Seven Areas of Court Excellence. The areas are *1. Court management and Leadership; 2. Court Policies; 3. Human, Material and Financial resources; 4. Court proceedings; 5. Client needs and Satisfaction; 6. Affordable and Accessible Court services; 7. Public Trust and Confidence.*

They also have identifies several Court Values which are also essential in dispensing quality justice. The values are *Equality (before the law), Fairness, Impartiality, Independence of decision-making, Competence, Integrity, Transparency, Accessibility, Timeliness, Certainty.*

From the above three models the important issues related in dispensing justice are as follows:

**Legal protection** is the first stage in the access to justice process, which determines the legal basis for all other stages in the process. It involves the legal capacities of a justice system to ensure that people's rights are recognized within the scope of justice systems, thus giving entitlement to remedies either through formal or traditional mechanisms. If a grievance, no matter how grave it is, is not recognized in law, formal or informal, no legal remedy or justice remedy is possible (UNDP 2005).

**Legal awareness** is another most crucial stage in the access to justice process. Even if there are provisions for full or adequate legal protection in a justice system, and people don't know about

what the available legal remedies are, from whom to demand it, and how to start a formal or traditional justice process, the system can help little to achieve the goal, the justice (UNDP 2005).

**Adjudication** generally refers to a process of decision making that involves a neutral third party with the authority to determine a binding resolution through some form of judgment or award. The primary functionary involved in a formal adjudication system is the judiciary. The judiciary consists of judges and magistrates as well as administrative staff etc. The actors involved in adjudication in the semi-formal or traditional informal justice systems may be community leaders, local government representatives, local government officials or community based informal authority, like village panchayat or village council etc. (UNDP 2005).

**Enforcement** is the final, hence, vital stage of access to justice process. The stage relates to the implementation of orders, decisions, and settlements emerging from formal or traditional adjudication. Without enforcement, a decision is valueless, no matter how good or well-argued decision that may be (UNDP 2005).

**Support Mechanism** is another crucial stage in the legal process of access to justice. While legal awareness can help people understand their right and remedies, mere this awareness can not lead them to justice. People need to reach these remedies for which they may require professional help to make informed decisions and choices.

**Monitoring and oversight** mechanisms are crucial for access to justice process. Even after having adequate legal and institutional arrangements for access to justice, the ultimate justice outcomes from a justice system may be unsatisfactory because of absence of accountability. Oversight mechanisms ensure the accountability of the system. There may be oversight mechanism within the justice system itself. Outside actors such as National Human Rights Institutions, Ombudsman offices also work as oversight mechanisms.

**Operational efficiency and Competency** is a must in dispensing justice. Operational efficiency involves the capacity of adjudication system to try cases and deliver judgments timely. It concerns an array of issues like efficient court room management, case management, efficient prosecution, investigation process, efficient rule and procedures for analysis and interpretation of fact, law and evidence and decision making.

Again, a good outcome from judicial system is very much dependent on the **integrity and accountability of the people with the system**. While it depends to a great extent on the personal integrity of the judges and prosecutors as well as on the other supporting agencies, it largely depends on the overall mechanism for accountability in the system. Integrity and accountability involve various issues like judicial independence, political will, monitoring and performance evaluation, level of legal knowledge and expertise of the service providers (UNDP 2005).

**Resources** are very important in dispensing justice. It involves the human resources like adequate number of judges, judicial officers, judicial support staffs and prosecutors, financial resources such as sufficient budget, standard and satisfactory salary scale of the duty bearers, material resources like offices, office furniture, stationary, paper and forms, legal resources such as laws, legal information, law reports, law gazettes and other publications or reference materials.

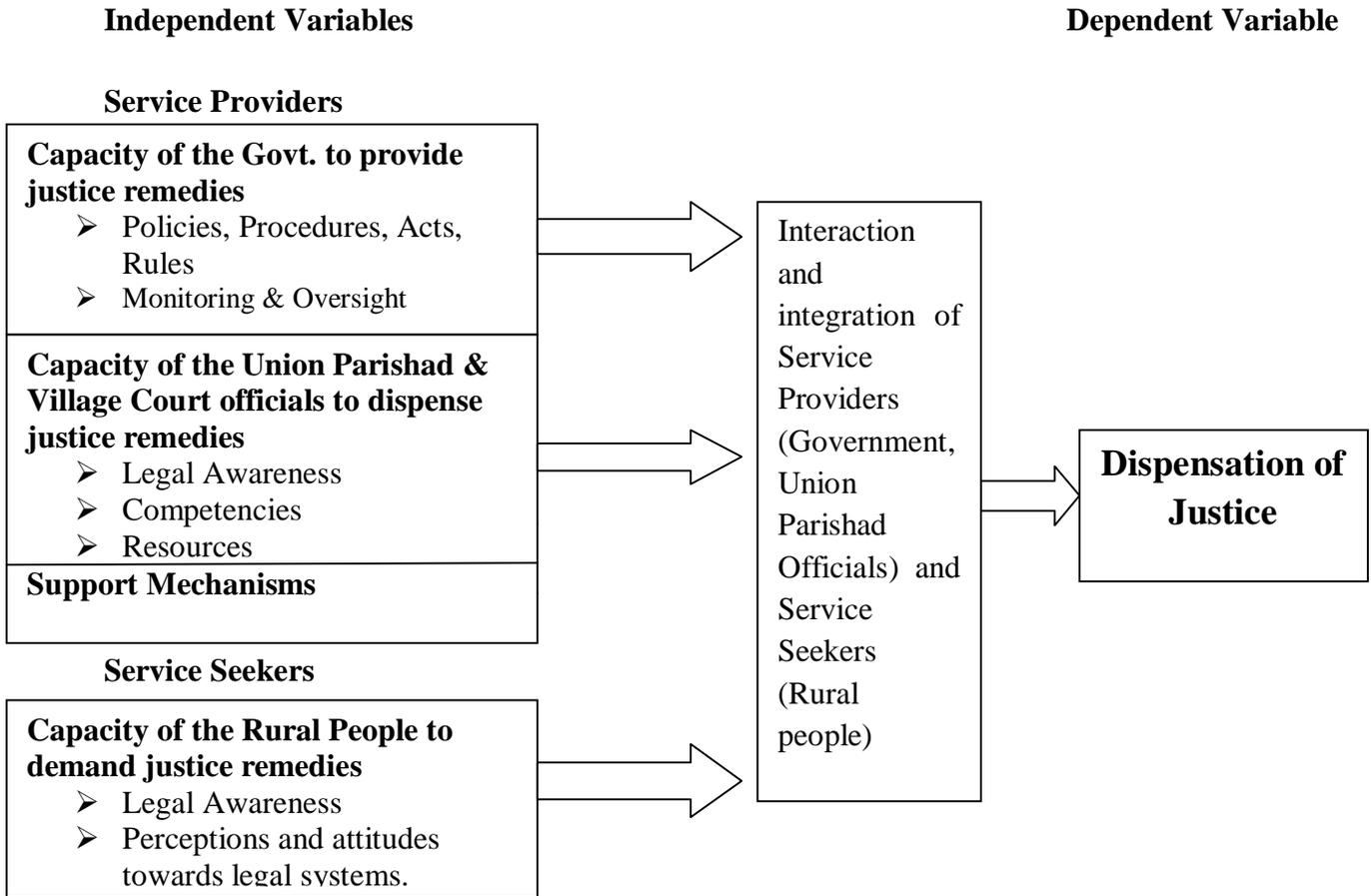
**Attitudes and perceptions towards legal systems** is also a very crucial in dispensing justice. If people have little or no confidence towards the legal system they will not approach to the legal system and legal system will not be able to satisfy the service seekers.

From the discussion it is clear that dispensing justice involves various interlinked capacities of both the service seekers and service providers. These are:

- a. Capacities of the central government to provide justice remedies.
- b. Capacities of the service providers/local government (UP) to dispense justice.
- c. Capacities of the service seekers (Rural People) to demand justice.

For assessing the existing legal framework of Village Court and the capacities of the Government, the existing Laws/Rules and monitoring/oversight mechanism will be examined. To assess the institutional capacity of the Village Court/UP and the competency of the UP officials, the institutional framework of the UPs (resources, awareness and competencies of the UP officials) will be examined. To assess the capacities of the people to demand justice, the level of awareness and their perceptions towards the rural formal justice system (village Court) and informal justice system (Shalish) will be examined.

**Figure-1: Analytical framework for Dispensing Justice through village court**



In brief, the analytical framework argues that dispensation of justice through the village court is dependent on several sets of capacities of both the service seekers and providers and the presence of adequate support mechanisms. Dispensation of justice could be ensured when the grievances of the rural people are recognized by the laws and rules, justice dispensing body like Union Parishad has adequate resources to run the Village Court and court officials have adequate legal awareness and competencies in dispensing justice. Legal awareness of the service seekers and their perceptions towards legal system are equally important in dispensing justice. So, the inclusion and participation of the service seekers to the rural justice system (VC), the capacity building of the UPs and its officials as well as the adequate legal framework and monitoring /supervision can ensure dispensation of justice through Village Court.

From the analytical framework of dispensation of justice through village court, some independent variables were identified. For the clarity of the variables, some indicators were also identified in line with the research objectives, research questions and research methodology.

**Table 3.2: List of Variables and Indicators**

<b>Variables</b>	<b>Indicators</b>	<b>Source of Information Collection</b>
Policies, Procedures, Acts, Rules	Effectiveness of the related laws, rules and circulars.	Reviewing the existing laws, rules and procedures
Monitoring/oversight	Monitoring functions of VCs by the UNO/DC and the local NGOs	Interviewing the UNOs
Legal Awareness of the UP Officials and Rural People	Knowledge about the functions, composition, powers and authority of the village court by the UP officials and the community members.	FGDs Interviewing the UP officials
Competencies	Capability (Education, training and orientation) of the UP officials over resolving local disputes	Interviewing the UNO Analyzing the case records
Resources	Availability of resources (Man and materials) of the UP	Interviewing the UP officials
Support Mechanism	Availability, accessibility and adequacy of legal aid provided by GOs & NGOs.	FGDs Interviewing the NGO Activists
Attitudes and perceptions towards legal systems	Attitudes and perceptions towards formal court, village court and Shalish.	FGDs Interviewing the local OC, NGO Activists

## CHAPTER FOUR: JUSTICE SYSTEM IN BANGLADESH

This chapter is intended to introduce the evolution of the rural formal and informal justice system. The researcher also felt it necessary to give a clear idea of the overall justice system of Bangladesh, their problems and prospects in the light of research objectives and research questions. This chapter also discussed the origin, power, functions, jurisdictions and working procedure of village court in a very brief way.

### **4.1 Formal Justice System in Bangladesh:**

The Judicial system in Bangladesh is operated by two-tier system of courts-- district court (subordinate court) at the district level and Supreme Court at the centre.

Above all the courts, there is the High Court Division of the Supreme Court of Bangladesh, which enjoys appellate, revisional and original jurisdiction in criminal matters against orders of all subordinate criminal courts and tribunals of the country. The Supreme Court has two divisions—High Court Division and Appellate Division. The High Court Division is a creature of both the Code of Criminal Procedure of 1898 and the Constitution of Bangladesh. The High Court Division enjoys habeas corpus writ jurisdiction under which it can examine the legality of the detention of persons, and can pass the necessary order to set the person free in appropriate cases. Every death sentence, before execution, has to be approved by the High Court Division. The highest court of the country, the Appellate Division of the Supreme Court of Bangladesh, enjoys appellate, revisional and review jurisdiction of orders passed by all other courts and by itself.

The district court is headed by the District and Sessions Judge who is assisted by Additional District Judges, Subordinate Judges and Assistant Judges. Major offences like murder, dacoity (armed robbery), rape, etc. are tried by Courts of Sessions which are superior to all courts of Magistrates. Courts of Session enjoy appellate and revisional jurisdictions against orders of Magistrates. Some Courts of Sessions function as tribunals for the speedy trial of certain grave offences under some special statutes. These courts dispose of cases relating to offences of gruesome murder, offences against women and children, offences under the Arms Act 1878, the Narcotics Control Act 1990, the Control of Acid Act 2002, and the Acid Offences Act 2002. Court of Sessions can pass death sentences, sentences of imprisonment up to any duration, including imprisonment for life, and also impose a fine.

Then there are Courts of Judicial Magistrates of different classes and types. Generally, there are the Courts of Magistrate of the First, Second and Third class. In metropolitan cities of the country, there is a special type of Magistracy in which Metropolitan Magistrates perform judicial works assigned to them by the Code of Criminal Procedure 1898. Courts of Judicial Magistrates of the First Class and Metropolitan Magistrates can ordinarily pass sentences of imprisonment up to five years and a fine. Magistrates can try offences which are relatively minor.

Executive magistrates also conduct summary trial through mobile courts under the supervision of District Magistrate. Earlier with the introduction of Upazila system, courts of magistrates and Munsifs were established in each Upazila. In early nineties Upazila court system has been abolished.

At the lowest level there is the Village Court in rural areas operating in accordance with the Village Court Act of 2006. Some small matters like cattle lifting, larceny of property up to Taka 25,000/- (US\$ 313) value, offences of minor hurt, trespass, etc. are tried by the Village Court. This court can impose a fine only; it cannot pass a sentence of imprisonment. The village court has no jurisdiction in municipal areas. The Conciliation of Disputes (Municipal Areas) Ordinance, 1979 is the city-edition of the Village Court Act of 2006. Legal jurisdiction is almost the same. This court can pass an order imposing a fine only; it cannot pass a sentence of imprisonment.

Though there are various types of courts and tribunals working hard to dispense justice but around 20 lacs cases are still pending in various types of courts.

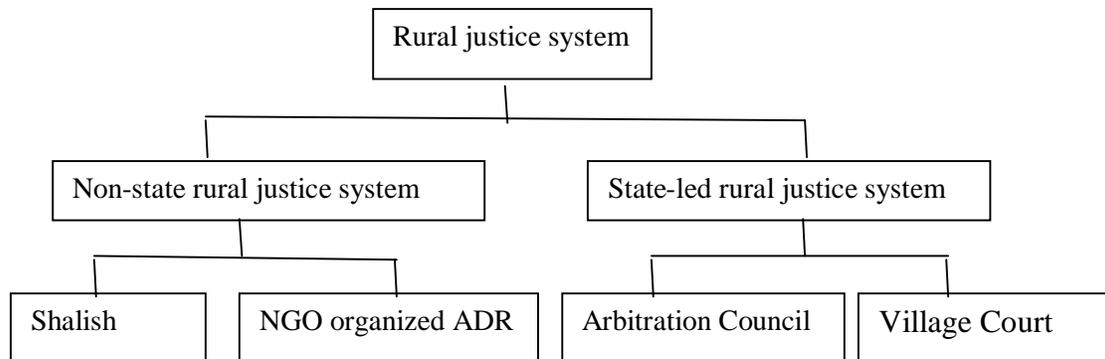
**Table-4.1: Number of pending cases in Bangladesh Judiciary**

<b>Court</b>	<b>Civil</b>	<b>Criminal</b>	<b>Others</b>	<b>Total</b>
Supreme Court (App. Div)	6922	2169	50	9141
Supreme Court (High Court Div)	77,859	1,81,926	53,950	3,13,735
District Session Judges & Tribunals	5,19,585	3,28,837	00	848422
Magistrate Court (Metropolitan Magistrate & Chief Judicial Magistrate)	00	7,70,865	00	7,70,865
<b>Total</b>	<b>6,04,366</b>	<b>12,83,797</b>	<b>54,000</b>	<b>19,42,163</b>
On January 1, 2011 there are 19,42,163 cases pending in Bangladesh				
Source: Annual Report on The Judiciary, 2010, Supreme Court of Bangladesh				

#### 4.2 Rural Justice System in Bangladesh:

The adjudication systems in rural Bangladesh are broadly divided into two categories: state supported rural justice systems like village courts and arbitration council and non-state rural justice systems like ‘Shalish’. This division is based on the legal status of the forums. State supported rural justice systems do have the specific body of laws, rules and procedures to follow. The laws emanate from the legislature. On the other hand, the non-state rural justice systems commonly referred as traditional ‘Shalish’ system, which is active in rural Bangladesh from time immemorial don’t have any specific laws and procedures. Sometime they follow local customs, traditions or religious dicta. Sometime they may follow neither, but may decide upon the circumstances. However, there is also a practice of clan (gusthi) based dispute settlement. In the recent years, Rural Bangladesh has also experienced the NGO-organised modern Shalish/ADR (alternative dispute resolution) systems. All these forums come under the non-state rural justice systems (Biswas. Z. I 2009). Among the four non-state and state-led rural justice systems Shalish is very informal but village court is a formal court with informal characteristics.

Figure-2: Rural justice system in Bangladesh



#### 4.3 Differences between Shalish and Village Court:

Most of the service seekers and service providers as well as the policy makers are unaware about the village court and easily confused it with the traditional Shalish. There are clear differences between Shalish and Village court.

**Table-4.2: Difference between Shalish and Village Court:**

Characteristics	Shalish	Village Court
Nature & Legal Basis	Shalish is informal	Village Court is formal
	Shalish has no legal basis and is not recognized by the government	Village Court has legal basis and is recognized by the Government
	Shalish is conducted by village 'Matbar' (Community Leader)	Village Court is conducted by UP Chairman and Members
	There is no specific rules and regulation in Shalish	There is specific rules and regulation in Village Court
	No fee is needed in Shalish	Complainant and accused have to pay a small amount of fee in Village Court
Record management	Shalish does not keep any written document about the case and does not give written notice to the accused and the complainant	Village Court have to keep written document about the procedure of the case and give written notice to the accused and the complainant
Jurisdiction	There is no fixed financial jurisdiction in Shalish	Financial jurisdiction of Village Court is Tk 25000 only
	Shalish can settle all types of dispute	Village Court has some limitations
Location	Shalish can sit anywhere in the village	Village Court sits at Union Parishad office

Source: Village Courts in Bangladesh Baseline Survey, 2009

#### 4.4 Origin, Functions and Authority of Village Courts:

**Origin:** The Village Chaukidari Act, 1870 (Bengal Act 6 of 1870) was the first Act to introduce a local institution at the village level in Bengal. The Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919) was the first law to empower a local government body to adjudicate criminal cases. The Act established a 'union bench', corresponding to the present day village court, with concurrent jurisdiction with formal criminal courts for trying petty criminal cases. The Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919) was repealed by the Basic Democracies Order, 1959 (P.O. No. 18 of 1959). In 1961, the Conciliation Courts Ordinance (Ordinance No. XLIV of 1961) was promulgated. This Ordinance empowered the 'union council' (local government) to deal with minor cognizable 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 1976), Later, the Village Courts Ordinance of 1976 was repealed and replaced by the Village Courts Act, 2006 (Act No. 19 of 2006).

**Functions:** Village Courts function under the institutional control of the Union Parishad which is the lowest tier local government's administrative body constituted through direct voting of the people of the Union. A village court is a statutory court composed of the chairman of the union parishad and four representatives – two from each party, one of them being a member of the parishad (section 5(1)). Ordinarily, the chairman of the union parishad acts as the chairman of the court, but where he is, for any reason, unable to act or his impartiality is questioned by any party to the dispute, any member of the parishad can act as chairman (section 5(2)). The only adjudication option open for village courts is to order compensation of an amount not exceeding 25,000 taka, payable to an aggrieved person (section 7(1). 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 shall be 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 or assistant judge having jurisdiction over the case .

**Authority and Jurisdiction:** According to Part-1 of the Village Court Act, 2006 schedule, a Village Court can try around thirty types of criminal offences like Unlawful assembly, Riot, Voluntarily causing of hurt , Committing mischief , Criminal trespass , Committing an affray, Voluntarily causing hurt on provocation, Wrongful restraints, Wrongful confinement, Intentional insult with intent to provoke breach of the peace, Criminal intimidation, Word, gesture or act intended to insult the modesty of a woman, Misconduct in public by a drunken person, Theft in dwelling house, etc, Criminal breach of trust, Cheating, Cheating and dishonestly inducing delivery of property, Mischief causing damage to the amount of twenty five thousand taka, Mischief by killing or maiming animal of the value of twenty five thousand taka, Cattle trespass related offences such as forcibly opposing the seizure of cattle or rescuing the same, Penalty for damage caused to land or crops or public roads by pigs , Failure of the pound-keeper to perform duties under the Cattle Trespass Act 1871 etc.

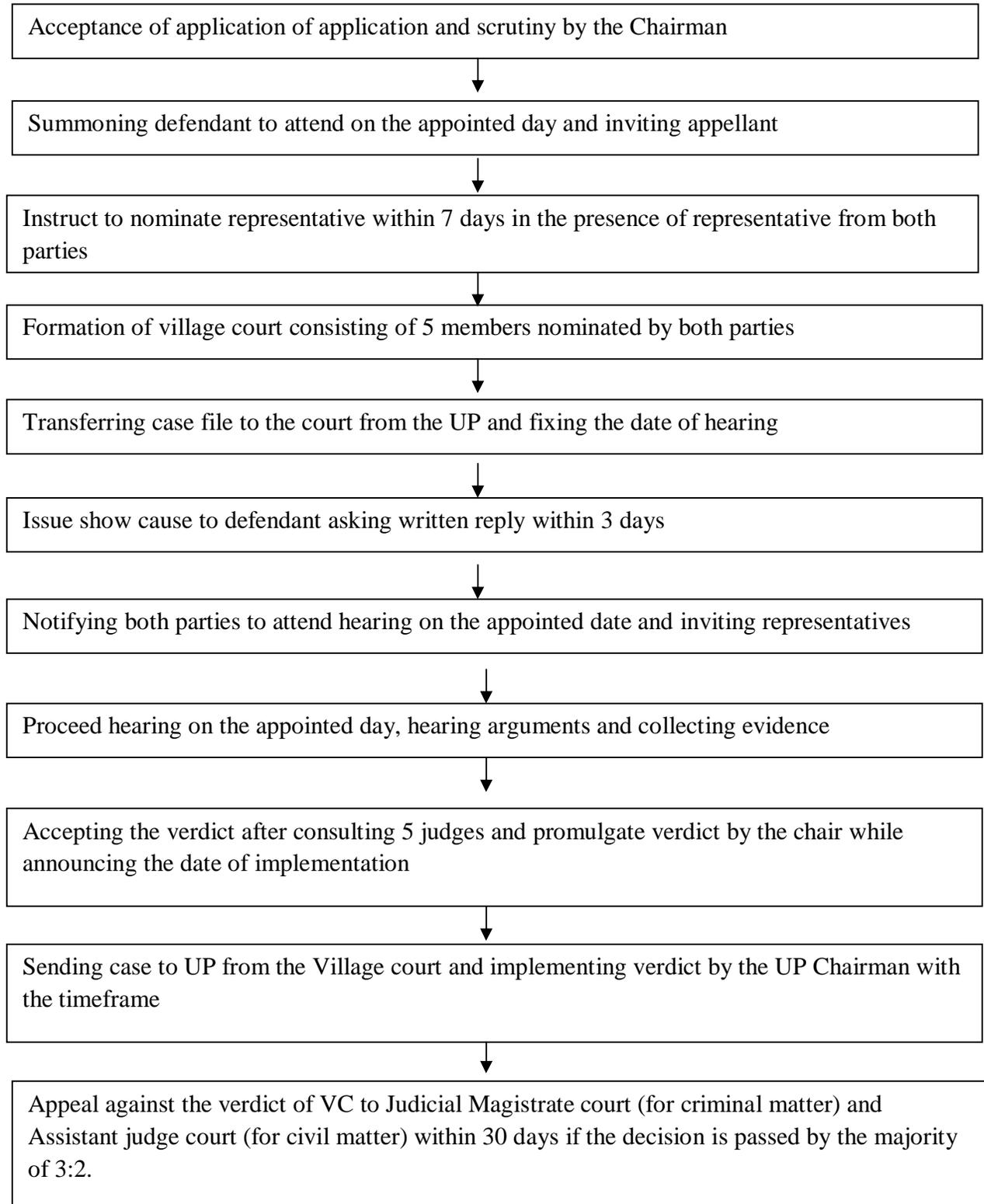
Part II of the Schedule provides for a list of the civil suits, which a Village Court can deal with. Followings are the list of suits:

1. Recovery of money due on contracts, receipts or other documents.
2. Recovery of movable property, or for the value thereof.
3. Recovery of possession of immovable property within one year of dispossession.
4. Compensation for wrongfully taking or damaging movable property.
5. Damages by cattle trespass.
6. Recovery of wages and compensation payable to an agricultural labourer.

This court is legally required to follow informal procedure of trial or dispute settlement, meaning thereby that the application of Code of Civil Procedure, Code of Criminal Procedure and Evidence Act has been barred. It has barred the appointment of lawyers. However, decisions of these courts are as binding as those of any other formal courts of the country.

According to the Village Courts Act 2006, there is a process of trial to be followed. It starts with the acceptance of the application while ends up with the implementation of the verdict as shown in the flowchart.

**Figure-3: Village Court flowchart**



## CHAPTER FIVE: DATA ANALYSIS AND FINDINGS

The research was aimed to identify the challenges which have direct or indirect effect in dispensing justice by the Union Parishad (UP) through the Village Court (VC). To do so, data/information about the relevant policies, procedures, acts and rules related to village court; monitoring/oversight mechanism of the supervising authority; legal awareness of the UP officials and rural people; competencies and resources of the UP; support mechanism/ legal aid from the NGOs and finally perceptions and attitudes towards the legal systems were collected and examined.

### **5.1: Major characteristics of two Unions under study:**

It has already been mentioned earlier that for the better understanding, two UPs from two different district of Bangladesh (5 no. Kashiani sadar union under Gopalganj District and 10 no. Jhawgara under Melandaha Upazila of Jamalpur distict) have been purposively selected. One distinct advantage of choosing these two UPs, one from northern poverty-stricken district and one from south-west district where some NGOs are working for years to activate village court is to examine challenges in dispensing justice through village court considering the existing economic and educational diversities among the people of these two zones. Jhawgara union is extremely rural whereas Ksahiani is semi-urban. Moreover, a combination of the rural and semi-urban area may add value and quality of the research.

Kashiani union has relatively good road communication with the Gopalganj town and also with the Dhaka-Gopalganj highway. Because of its high literacy rate, people of this area are aware, economically well off and more or less conscious about village court. Moreover, Madaripur Legal Aid Association (MLAA) a leading NGO is implementing a project named ‘Activating Village Court in Bangladesh’ under the supervision of Ministry of Local Government, Rural Development & Cooperatives and financed by UNDP and European Union in this union.

On the other hand, Jhawgara union under Jamalpur distict is a poverty-stricken backward district where more than 61% people are poor and literacy rate is below the national level has little access to formal justice system and heavily dependent on informal systems like Shalish. This union is outside the ‘Activating village Court in Bangladesh’ project.

The key features of the study union parishads are reflected in the Table 5.1

**Table 5.1: Key Information of the two unions under study**

<b>Feature</b>	<b>Jhawgara Union Parishad</b>	<b>Kashiani Union Parishad</b>
<b>Area</b>	10.85 sq. km	21.34 sq. km
<b>Population</b>	31,100	26,377
<b>Educational Institutions</b>	17	14
• College	1	-
• High School	3	4
• Govt. Primary School	9	8
• Madrasha	4	2
<b>Literacy rate</b>	37%	53%
<b>Occupation</b>	Agriculture, Small scale Business	Agriculture, Small scale Business, Overseas worker, Service
<b>*Percentage of the population poor</b>	61% or greater	21% -36%
<b>Distance from district headquarter</b>	34 km	35 km

Source: Compiled with the information collected from Jhawgara and Kashiani Union Parishad complex

\*BBS and WB in collaboration with WFP completed Poverty Map in 2009.

## **5.2: Socio-economic characteristics of the service providers (UP Chairman, Members and secretary)**

The Union Parishad (UP) chairman and members are mainly responsible in dispensing justice at local level. Usually the chairman of the UP acts as chairman of the Village Court (VC). He is assisted by other elected members. As per the VC Act 2006, two members from outside the parishad are nominated by both the parties related to the case. In the following paragraphs, attempt to analyze some of the socio-economic characteristics of the UP officials who acts panel members and support staff in the village court in two UPs under study.

**Table 5.2: Age of the chairman and members of the village court**

<b>Age in years</b>	<b>Jhawgara, Jamalpur (n=14)</b>	<b>Kashiani, Gopalganj (n=14)</b>	<b>Total (n=28)</b>
31-40	50 %	42.86%	46.43%
41-50	42.86%	42.86%	42.86%
51-60	7.14%	14.29%	10.71%

The above table reveals that the highest percentage of the chairman and members belong to the age group between 31-40 years (46.43%) indicates the dominance of a relatively younger age group. The traditional rural leader (matbors) in the rural areas of Bangladesh who usually settles local disputes in the form of ‘Shalish’ are supposed to be quite elderly people, i.e. belonging the age group of 50 and above. But in case of VC, the picture shows the dominance of younger people in leadership. From the point of making judicial decision it may has an impact on the acceptance of such decision in rural areas.

**Table 5.3: Educational level of the UP officials of Jhawgara and Kashiani union village court**

<b>Education</b>	<b>Jhawgara, Jamalpur (n=14)</b>	<b>Kashiani, Gopalganj (n=14)</b>	<b>Total (n=28)</b>
I-V	35.71%	7.14%	21.43%
VI-X	35.71%	64.29%	50%
SSC	7.14%	14.29%	10.71%
HSC	14.29%	14.29%	14.29%
Graduation	7.14%	-	3.57%

In the case of education the highest percentage of the chairman and members of VC belongs to the educational level between VI-X (50%). It is interesting to note that in both cases the UP chairman who acts as chairman of the VC and UP secretary who acts as support staff of VC has HSC or above level of education. So, the level of education of the service providers is not quite adequate which may has a connection with the legal awareness of the service providers.

**Table 5.4: Occupation of the chairman and members of the village court**

<b>Occupation</b>	<b>Jhawgara, Jamalpur (n=14)</b>	<b>Kashiani, Gopalganj (n=14)</b>	<b>Total (n=28)</b>
Agriculture	42.86%	28.57%	35.71%
Business	14.29%	14.29%	14.29%
Agriculture & Business	14.29%	21.43%	17.89%
Housewife	21.43%	21.43%	21.43%
Others	7.14%	14.29%	10.71%

The above table gives some picture of the economic characteristics of the members of VC under study. Though as single occupation agriculture scores the highest, the next highest percentage goes to agriculture and business. All the female UP members are housewives. In both of the UPs

the UP chairman is a businessman and has a relatively better economic background. This situation in some extent favorable in dispensing justice locally because judgment which comes from a person who is economically better off in society may has more social acceptability.

### **5.3: Legal awareness and typology of disputes in rural Bangladesh**

This section of the study made an attempt to explore the level awareness of the both the rural people and the service providers (chairmen, members and secretaries of the UPs) on village court, various aspects related to its functioning and the type of disputes they face in day to day life.. In this regard, the respondents had been asked to share whether they had heard of village court and can differentiate between village court and Shalish. The study also explored the awareness and knowledge of all the stakeholders (i.e the local officer in charge (OC) of police station, local elites, NGO activists and UNOs of the concerned Upazila) about the functioning status of the village courts.

In response to the question about the type of offences occurred in the local level, most of the service seekers and providers in both the unions stated that land related dispute is the most common problem in rural areas. There are some other common offences and disputes such as quarrel (scuffle), realization of money, damage of other's crops, breach of contract, demarcation of land, barrier on others movement, killing or capture of other's animals, cutting of other's trees. In recent time eve teasing, dowry, and domestic violence/ violence against women (VAW) is also a common problem in both the areas. Both the UP Officials and common people stated that, sometimes some of these offences and even some major offences and disputes are settled by the village elders, UP Chairman and members by the name of Shalish. But still many of the offences, like dowry, domestic violence/ violence against women remain unsettled or sometimes approached to the local police station and district court.

In a case study (Case study-1), participants described how petty disputes turn into larger conflicts bringing serious consequences to the affected persons. The following illustrations present a better understanding of such spiraling of disputes.

### **Case Study-1: Spiraling of local conflicts**

Atiar Rahman is a poor farmer and Saiful Islam is a well-off farmer of Kashiani. They are neighbors. Cow of Atiar destroyed the crops of Saiful. They caught the cow and kept it confined. On hearing the news, father of Atiar went to Saiful's home. They said that either they will kill the cow & eat the meat or will keep it in the 'Khoar'. Saiful's wife abused the old father of Atiar. His father requested him not to quarrel. Then Atiar's sister Rahima came there and also requested not to abuse and to give the cow in 'khoar' or confinement for cows. Then Saiful and his wife abused her like anything and started beating her. Hearing the sound of Rahima crying, Atiar's mother came and protested. Then they beat his mother and sister also. Then Atiar took his sister and mother to the Kashiani General Hospital. They returned home from hospital after 3 days. After three days of the occurrence, Atiar came to know that Saiful filed a case against Atiar and his brother. Police came to Atiar's house and advised to settle the issue through Village Court. Atiar then went to Village Court. But it could not settle the case in VC. All the members of Village Court supported Saiful, because he has money and he is also engaged in local politics. Then Atiar went to the Officer -in-Charge of Police Station and sought justice from him. OC called both the parties in dispute. But Saiful's wife said that she would not accept the decision of the Officer-in-Charge. After some days, the local UP chairman, member and distinguished persons assembled to settle the issue. A board constituted by seven members was set up to bring an end to this problem. Before the hearing, they took the signature of both the parties on the condition that they will accept the decision of the court. After passionate hearing from both the parties, the Board decided that Saiful will give Atiar Tk 5,000 as fine and they must seek apology to Atiar publicly for their misbehavior to his family. Saiful refused to accept this decision and Atiar demanded more money as compensation. Chairman and members tore the paper which was signed by them. The case ended in this stage without any decision and enforcement of the judgment.

\*Pseudo names have been used to hide the identity of the disputants.

This case had not followed the real procedure of Village Court. The composition of Village Court was also not as per the Village Courts Act, 2006. Instead of Village Court, they have conducted Shalish. Chairman being the head of the Village Court sided in favor of the accused. It indicates that Chairman can be influenced by power and money. Analyzing the case study, it may be ascertained that lack of tolerance, vindictive mind-set, conflicting attitude of individuals and lack of appropriate legal knowledge of the community are often responsible spiraling local petty disputes into larger conflict. The disputing parties often, under influences of vested quarters fall into the trap of touts who provoke them to lodge false and/or manipulated allegations in either the police stations or the higher court.

**Table 5.5: Crimes/cases filed in the Kashiani Police Station**

Crime Head	Major offences	Minor offences	Theft	VAW <sup>12</sup>	Total
2008	36 (SPA <sup>13</sup> -17)	84	20	38	178
2009	77 (SPA-38)	71	6	33	187
2010	37 (SPA-2)	85	6	24	152
2011	56 (SPA-10)	73	8	24	161

Source: Annual crime report of Kashiani Police station.

**Table 5.6: Crimes/cases filed in the Melandaha Police Station**

Crime Head	Major offences	Minor offences	Theft	VAW	Total
2008	20	230	20	36	306
2009	28	184	9	21	242
2010	18	203	14	70	305
2011	48	191	14	88	341

Source: Annual crime reports of Melandaha police Station.

The Major offences stated above includes Murder, Robbery, Motor Accident, Narcotics/ Drug, Speedy trial, Kidnapping, Acid Throwing, Smuggling, Violence against Women Extortion, Arms Act, Special Power Act etc and Minor Offences covers offences like Assault, Criminal Intimidation, Cheating, Affray, Unlawful Assembly, Criminal Trespass, Mischief etc.

It is interesting to note that number of offences is higher in Melandaha (table 5.6) compared to Kashiani Upazila (table 5.5) though both the upazila has similar no. of population. Again, violence against women is a common in both the Upazilas but it has sharply increased in 2010 and 2011 in Melandaha Upazila but a decreasing trend has been observed in Kashiani where Activating Village Court Program is making people aware about their legal rights and responsibilities. There may have different explanation. People of Kashiani are well-off compared to Melandaha and literacy rate is higher in Kashiani compared to Melandaha. So, poverty, illiteracy and absence of legal aid have a positive link with increasing the crime of the society.

<sup>12</sup> Violence Against Women

<sup>13</sup> Special Power Act 1974 is a special type of act which is practiced to handle any emergency situation. This law gives ample power to the police to arrest any person without any warrant. This law is blamed for harassing the political opponent. The practice of this law is rare but in Kashiani Upazila the local police frequently practice this law. In last few years there was no such type of case filed in Melandaha Upazila. The reason for filing this case may have different explanation which was not linked with the present study and was not discussed here.

Officer in charge of both the police station stated that, some sections of the minor offences/ cases filed in both the police stations are triable by the village court but other sections of the cases are not triable by the village court. It makes the whole process complicated.

A Village Court enjoys exclusive jurisdiction to try the cases and disputes that falls under its jurisdiction. No other formal civil or criminal court can try those offences and disputes. But in reality it was found that the local police sometimes accept cases which fall under the jurisdiction of VC (table 5.5 and 5.6) and sometimes these cases returned to the VC from the magistrate court. It indicates the ignorance and a skeptic tendency of the local law enforcing agency. Though the OC of the project area is skeptic about the performance of the VC, there is a decline in the cases in the project area which reflects the effectiveness of VC at the same time indicates the lack of awareness of the local police. Outside the project area the total number of cases is relatively high than that of the project area. Table 5.5 and 5.6 also indicates that violence against women (VAW) is a very common problem in rural Bangladesh.

The level of awareness about Village Court among the service seekers and providers in the project area (Kashiani Union) is relatively high. In addition to basic training about UP, the Chairman, members, secretary and even village police have attended several training programs on village court organized by the local NGO (MLAA). As a re-elected UP Chairman, he is aware about the jurisdiction and composition of VC. The male UP members are also in some extent aware about the VC but they don't know in details. Female UP members are also in some extent aware about VC but their rate of participation in the court activities is very small. At present people in the project area (Kashiani Union) regularly comes to these justice forum and common people have some idea about the jurisdiction, power and functions of village court.

But, the awareness level of the Chairman and members of the Union Parishad at the control area (Jhawgara Union), who act as decision makers, are very poor. The female UP members are totally unaware about village court. They have never attended any VC proceedings. The level of awareness about Village Court among the most service seekers/ common villagers outside the project area (Jhawgara Union) is almost zero. The case study stated below describes the awareness of both the service seekers and providers in Jhawgara union.

### **Case Study-2: Dispute over land**

Abdul Khaleq of Jhawgara, Melandaha, Jamalpur complained against his nephews named Aminul, Saiful and others of the same village on 7<sup>th</sup> January 2008 that his nephews have illegally damaged his crops and sold 15/16 medium size trees from his garden (a disputed land) to other peoples without his permission. The price of the trees is around 10000 taka. They also have threatened him to do more harm to his family members. He had approached to the local community leaders but they have failed to give him any justice. After seven sittings, VC has failed to provide any justice or amicable solution to the petitioner or the respondents. Both the petitioner and respondents were irregular during the court time. Both parties have filed application to give them more time to produce relevant papers and documents regarding the ownership of the disputed land.

\*Pseudo names have been used to hide the identity of the disputants.

The above case study and records indicated that the court was formed in a very non-formal way, not as per the guidelines of VC act and had not used any prescribed forms and registers. In reality there was no active participation of the UP member. The UP chairman had only signed the order sheet (a scrap paper) and the secretary had completed all relevant tasks in addition to his regular work. It was revealed that, local people outside the project area usually approaches to VC as a last resort to get justice where Shalish and all other local alternatives have failed to provide any remedy. Again, when both the parties are powerful and unwilling than VC and Shalish has little to do in dispensing justice.

Only the secretaries of both the UPs have sound knowledge and the re-elected chairman/members have little knowledge about the power and authority of village court. The UP chairman and members has attended a three day long basic training arranged by the Local Government Engineering Division (LGED) and they have heard something about the Village Court in a one hour session.

In responding about the jurisdiction of VC, most of the service seekers and providers (Chairman, member, secretary) of Kashiani Union said that the existing legal jurisdictions are not adequate. The financial jurisdiction of the Village Court is only 25,000 Taka which has been increased from 5,000 Taka just few years ago in 2006, the people and the concerned Village Court officials (the chairman and members of Union Parishad, NGO officials, UNOs) opined that it is not adequate. Majority of the cases which comes in the Village Court exceeds this limit.

In terms of court fee in the village court, all service seekers in the project area said that it is affordable and they usually spend taka 2 and taka 5 for criminal and civil cases respectively and collect money receipts. In terms of cost of litigation and other expenses, most of the service providers of both unions are in favour to increase the court fees up to one hundred taka. They said that the court fee is very nominal. Both the UP chairmen said that they sometimes spend money from their own pocket. Outside the project area the service seekers sometimes spend no money and sometimes taka fifty to one hundred. Though a UP Chairman is not in favour to take any money from the service seekers but the UP secretary admits that this money is required to serve summons through village police and to type notice.

**Table 5.7: Distribution of the cases according to the decision of the Jhawgara Union Village Court**

Year	Total case filed	Total case trialed	No. of cases settled	No. of cases unsettled	Plaintiff		Disposal	Compromise	Dismiss	Appeal
					Male	Female				
2008	17	17	17	-	15	2	6	11	-	-
2009	11	11	11	-	8	0	-	11	-	-
2010	9	9	9	-	7	2	2	7	-	-
2011	22	13	13	9	18	4	4	9	1	-
<ul style="list-style-type: none"> <li>8 cases of 2011-12 are under trial.</li> </ul>										

**Table 5.8: Distribution of the cases according to the decision of the Kashiani Sadar Union Village Court**

Year	Total case filed	Total case trialed	No. of cases settled	No. of cases unsettled	Plaintiff		Disposal	Compromise	Dismiss	Appeal
					Male	Female				
2008	4	4	4	-	3	1	2	1	1	-
2009	2	2	2	-	1	1	-	1	1	-
2010	7	7	7	-	2	5	-	6	1	-
January 2011 to February 2012	60	55	55	5	42	18	44	5	6	-
<ul style="list-style-type: none"> <li>5 cases of 2011-12 are under trial.</li> </ul>										

From table 5.7 and 5.8, it is clear that Village courts are active in both the unions but not fully functional outside the project area (Jhawgara Union). Most of the cases were resolved in Jhawgara Union through negotiation/compromise between the parties– mirroring the traditional negotiation practices of the Shalish. In both the unions the UP officials have not maintained any register and any money receipts (except Kashiana in 2011 to onwards) indicates the basic ignorance of VC act. No. of cases filed in Kashiani union has dramatically increased in 2011-12 when government of Bangladesh launched the Activating Village Court Program in Bangladesh (AVCB) and Kashiani was under this pilot project. The scenario was almost unchanged in Jhawgara which was outside the AVCB project area.

There are provisions for appeal against a decision of a Village Court. It provides an option to the party to move against an unsatisfactory decision. In practice, no one appealed against any decision of the Village Court in both the Unions which signifies the acceptance of judgement or the ignorance about this provision among the service seekers.

There has legal provision to impose fine for the contempt of court. This power of court indirectly empowers a poor and disadvantage party against a powerful and influential party who might avoid the village court to have its offence tried or disputes settled through a VC. This study, however, did not find any case of contempt of court, or any fine imposed by the village court. It also indicates that rural people are law abiding or the UP officials are not aware about this provision.

About the accessibility of the women to the VC, it was observed that both men and women have approached to the VC, but the numbers of female plaintiffs are relatively low. It indicates the lack of legal awareness of the women in rural Bangladesh and women may face more social barriers in access to justice than men.

#### **5.4. Competencies of the UP officials**

In both the unions, UP Chairmen and secretaries have HSC or above level of education. All the UP members have up to SSC level of education which is quite sufficient to run VC (Table-5.2). But in reality, it was also observed that outside the project area, in many cases the UP chairman has passed an order but he has not even signed the order sheet indicates the ignorance about the court procedure. In most of the cases the application was not filed accordingly, the amount was

not specified which has to be within 25000 Taka and no adequate information of the incident was mentioned. It was felt that, the UP officials have conducted Shalish instead of VC (Case study-2). Outside the project area, there has no arrangement for training and other knowledge sharing programmes for the chairmen and members and other authorities concerned with the Village Court. In response to a question whether the chairmen and members of the UPs feel it necessary to have training on the rules and techniques of holding and managing trials in a VC, all of the respondents (Chairmen, Members and Secretary of the UP) replied in the positive.

On the other hand, all case procedures and records were properly maintained in the project area. UP officials have attended several training programs on village court organized by the local NGO (MLAA) and the UP Chairman and members are confident enough to run Village Court.

### **5.5. Resources**

It was observed that, the operational arrangement for the Village Court is inconsistent with its responsibilities. At present in a UP, the chairman, nine members, three female members are supported by ten village police (Gram Police). One UP secretary assists the UP in day to day work. The respondents from the service provider identifies two distinct but interrelated challenges to describe their views on dispensing justice locally and the challenges are – lack of skills and/or abilities and resource deficiencies. Both the UP chairmen have said that, the secretary is responsible for all case filing, budgetary, and recordkeeping duties, which eventually slowed the overall performance of the UP. UP secretary stated that schedule two of the Local Government (Union Parishad) Act, 2009 describes 39 functions of the UPs. He admitted that, the additional judicial tasks compels him to work longer hours which, when combined with his low salary finally demotivates him. There is no specific staff for serving the notice and summons issued by the Village Courts and to do other formalities. Again, there is no budget allocation for running the Village Court and to print necessary forms and registers. Both the UP Chairmen and members stated that, the salary/ honorarium of the chairman and members are too small compared to their responsibility. There is no extra salary or honorarium for the Chairman or the members of the Union Parishad for giving their time and efforts in the Village Courts.

About the human resource, all the UP Chairmen, Members and secretaries stated that a court clerk is indispensable to a properly functioning village court. They opined that, for dispensing justice locally, all Village Courts required to employ at least a part-time court clerk-cum

computer operator to assist the village court with administrative, recordkeeping, and other tasks necessary to the smooth functioning of the courts as well as the smooth functioning of UP. In this regard, both the UNOs said that lack of resources is not a problem. They can take project and spend money for the required forms, registers and infrastructures. There has no provision to appoint any extra staff for this purpose without changing the present organogram. He stated that, according to section 54 (C) of the Local Government (Union Parishad) Act 2009, UP can spend money to perform any duty delegated by any law.

The research also focused on the adequacy of court facilities and found a tremendous variety among the Village Courts. The project funded Village Court is virtually indistinguishable from our formal courts. Proceedings are conducted in a multipurpose room (usually hall room) with necessary forms and registers, paralegals/ court assistant and with all of the other attributes necessary to a fully functioning court. The courtroom furnishings consisted of a table located in the center of the room, surrounded by five chairs.

On the other hand, outside the project area, Village Court is unrecognizable as courts at all. This court has no court-related resources, operate without clerks or other staff; without appropriate space for litigants and defendants runs without court decorum.

## **5.6. Support Mechanism**

The UP chairman of Kashiani has said that before MLAA's initiative, VC worked earlier without any proper documentation in most cases. This shows the ignorance of the chairman regarding the legality of VC. He acknowledges the assistance of MLAA for bringing the clients to the court. He stated that, within the present structure it is not possible for him or his secretary to do this additional job. The chairman also admitted that before the involvement of MLAA, only few cases were entertained. He added that, MLAA has a social acceptability and sound image in the area and has a considerable amount of committed field workers. MLAA has appointed two staffs in each union who works as bench clerk and field supervisor respectively. The chairman is pretty dependent on the MLAA assistant who has a sound legal knowledge about VC. He has expressed his concern that, they will face difficulties in conducting VC according to law after the completion of the project.

### **Case Study-3: Violence against women**

Zahanara of Kashiani, Gopalganj complained against her former husband named Iar Ali of the same village on 14<sup>th</sup> February 2012 that her former husband has assaulted her on her way to home. He regularly disturbs and threatened her to do more harm. Zahanara has communicated with the NGO officials in her locality. The NGO officials has directed her to the village court. After seven sittings the court unanimously passed an order in favour of the petitioner to compensate her by giving taka 6000. The court also passed an order that, if the respondent has failed to give the money within 30 days, it will be recovered by using the procedures of the PDR Act. Both the petitioner and respondents were regular during the court time.

\*Pseudo names have been used to hide the identity of the disputants.

The case study indicates that the court was formed as per the guidelines of VC act and had used all prescribed forms and registers. The UP chairman has only signed the order sheet and the court clerk of MLAA has completed all relevant tasks and filled up all the 8 types of forms and several types of registers provided by the Activating Village Court Project. The application form of the petitioner was also written by the MLAA staffs. The UP Secretary has no responsibility in keeping records and to submit the progress report about VC.

The above scenario indicates the heavy dependency on the NGOs (MLAA) which has a good number of field workers to guide and assist the service seekers and providers in dispensing justice.

All the service providers (chairman, member and secretary) interviewed in both the union have expressed the necessity of legal assistance either from government or from the NGOs. In their word, they have the power to dispense justice through VC but local body can not perform it by themselves without proper technical and financial assistance.

From the relevant contents and the interview of the UNO, chairman, member and secretary it was found that the working of the VC is absolutely dependent on NGO assistance in the project area. It indicates that a GO-NGO collaboration is effective in dispensing justice through village court. But this absolute dependency on NGOs undermines the positions of the UPs and ultimately weakens the local government institute. This dependency should be gradually decreased in a way that UP can run Village Court independently without any assistance of the NGOs.

## **5.7. Monitoring and Supervision:**

Upazila Nirbahi Officer (UNO) at the Upazila level, Deputy Director of Local Government (DDLG) and Deputy Commissioner (DC) at the district level are responsible for the monitoring and supervision of the local government institutes like Union Parishad. Both the UNOs have stated some challenges in monitoring the functions VC. The bottlenecks that hampered the normal functioning and monitoring of the VCs are the lack of legal knowledge and awareness of the service providers, lack of interests of the UP chairman and finally the complexity of the system. In responding the question about reports and returns, the UNO of the project area (Kashiani Upazila) stated that the UP regularly submits the progress report through the NGO (MLAA) and he regularly visits and monitors the activity of the VC. He admits that the activating village court program has improved the overall law and order situation of his Jurisdiction. He has directed the UP chairman to conduct VC twice in every week.

But the UNO of Melandaha, Jamalpur (outside the project area) stated that they he had never received any report and returns from any union of his jurisdiction. But he claimed that the performance of VC is satisfactory. He had not inspected the VC but regularly discusses this issue in the Upazila Law and Order meeting. Both of the UNOs said that they have directed the UP Chairmen, Members to activate VC and not to take part in Shalish.

Again, the Cabinet Division has given direction to the Deputy Commissioner to inspect at least one UP in every month. The DCs usually submits the prescribed inspection report to the Cabinet Division. But they have little time to look after all the activities of the UP including VC. Analyzing the inspection report of the deputy commissioner it was observed that, they have only evaluated the number of cases not the quality of judgment.

At the district level Deputy Director of Local Government (DDLG) who is a Senior Assistant Commissioner level officer is designated to look after the local government institutes. He is assigned to inspect at least four UPs and to attend five general meetings of the UPs in every month. But in practice it rarely happens because he has not the sufficient logistic support as well as time to inspect and attend the meeting of UP. It is one of the major impediments in dispensing justice through VC as well as effective functioning of UPs.

There has a provision to evaluate the performance of the Union Parishad once in every year and to submit the report to the Local Government Division through the Deputy Commissioner. To do

that there has a prescribed performance evaluation form. Serial 6 of the evaluation form deals with the performance of the village court. If the village Court follows all the govt. rules and regulations and performance is satisfactory it will get 3-5 points and if the court is inactive the UP will get zero points. But in both cases it was observed that both the union have scored 5 points indicates the weak and biased monitoring mechanism of the Upazila/ District Administration. So, the weak/ poor monitoring mechanism of both the Upazila and District administration coupled with lack of interest of the service providers have decreased the overall performances of the Village Courts and ultimately creates challenges in dispensing justice through the UP.

### **5.8. Perceptions and Attitudes towards legal systems:**

According to the view of most of the respondents and FGD participants, Shalish is still the first preference of the people living in rural areas. Whatever occurrence takes place, the victim, at first, knocks the door of the matbors/community leaders for its settlement. If the Shalish fails to settle the dispute only then the petitioner/respondent goes to the relatively bigger and stronger forum- the Village Court of Union Parishad (UP). Due to procedural requirements and limitations, the UP also arranges Shalish. Again, the subject matter of the dispute is also an important consideration for deciding the means of settlement. If the matter is about family dispute, conjugal maladjustment, elopement etc. where the prestige of the family/kin is related- the settlement process must take place at the Shalish. Rural people do not prefer their family matters reaching out of their community. There is a pressure from both the petitioner/respondent and the village to settle their disputes within the respective village. However, if the dispute is about money or other tangible assets, the UP or its representatives get involved in the conflict resolution process.

Again, in both the areas the respondents stated that, under the ill motivations provided by the touts, the victims become violent for taking revenge. On many occasions, either of the involved parties is provoked to teach the other party a lesson. Moreover, a conflicting attitude over minor issues commonly seen among some of the community members has been acting as promoter of larger conflicts spiraling from petty disputes.

Some “touts” are very active in rural areas and act as agent of the advocates and involved in various malpractices at courts. They also maintain a nexus with the local police. They motivate the villagers to seek justice in higher courts with the help of police and advocates. By doing these they are gaining monetary benefit both from the parties. (Opinion expressed by a NGO activist in Kashiani, Gopalganj).

There are some touts near every police station. They also misguide rural people in writing application or filing a case. In many cases, they intentionally guide the rural people to increase the amount of money and number of people involved with the incident. By doing this they are destroying the merit of the case though the case was actually triable by the village court. (Opinion expressed by local elite of Jhawgara, Jamalpur).

In both the areas, the most common believe among the service seekers are that “money buys justice”. In both the union, respondents noted that the rich have easier access to legal recourse and can affect the outcome of trials. In Jhawgara Union one respondent went as far as saying that connections determine everything!

Most of the service seekers in both the area said that, Village Court is accessible to the poor and disadvantaged but sometimes women are reluctant to seek service from this court because they feel discomfort to disclose their private matters in front of known faces. The female respondents reported that domestic violence and issues of Dower (money to be paid by a husband to his wife) and Dowry (an illegal payment from the wife, or wife’s family, to the husband) is frequent. The overall impression given by the women was that in most cases both the formal and informal justice system works against them.

The chairman and members of the project area said that, in most of the cases the decisions of the Village Court is enforced. The enforcement of decision becomes easier when a decision is reached by consensus (Case Study-4). Most of the service providers in both the areas agreed that, usually the poor and disadvantaged people comply with the decision of the Village Court. But sometime the powerful or influential party does not comply with the decision. In that case, the formal procedure of the Village Court comes with little help for the poor and disadvantaged party. Both the UP Chairmen opined that, when any party disobey the Village Courts, virtually it can do nothing in this regard. Though there are legal provisions as to a fine for non-compliance with the summons and for contempt of court, they have never practised it.

#### **Case Study-4: Recovery of money**

Abul Kashem (petitioner) is a poor farmer owning only 20 decimals of land, living in Zhaugora village under the district of Jamalpur. The petitioner gave the respondent (Abdul Mazid of same village) Tk.1,60,000 (one lac sixty thousand) on promise that he will send his (petitioner) son abroad within two months. Two years passed, but the respondent neither kept his promise nor returned the money to the petitioner. Then the petitioner tried to get back the money by negotiations, but the respondent paid no heed to it. Then in consultation with the local members the petitioner moved to VC. The VC after hearing both the parties decided the matter in favour of the petitioner and accordingly the respondent returned the whole amount of money to the petitioner.

\*Pseudo names have been used to hide the identity of the disputants.

According to the Village Court Act and Rules VC has pecuniary jurisdiction up to Tk.25000. In this case the value of the dispute was Tk. 1,60,000 which was beyond the jurisdiction of the VC. Though the dispute was resolved by VC intervention but it proves unawareness of the Village Court Chairman and other members. They need to be trained to equip with VC jurisdiction and their power and duties.

The Officer in Charge (OC) of both the Police Station is sceptical about the VC and says that it can not offer justice as most of the UP chairmen are politically biased. Both the OC have described a variety of errors and abuses based on their own experiences in the Village court.

“It’s our experience that the current Village Court system, with its high reliance on lay judges, does not provide the same level of legal protections of the people residing in the rural areas compared to that of the district level formal courts.”

In response to a question about political pressure, the UP chairman of both the unions feels that the decision of the VC has nothing to do with local politics. As a re-elected UP chairman, Chairman of Kashiani Union thinks that involvement in VC activities has a direct link to his being reelected. He sits as judge and if the party belongs to him, he logically makes them understand the situation. Moreover, if the verdict is impartial, the party in default also fears to raise any question as he would not be backed by the local people. So, the cultural and political reality plays a very important role in dispensing justice through Village Court. Though the patron-client relations have begun to fade in rural Bangladesh and the foundations for power and respect are more multi-dimensional and open but dispensation of justice through Village Court is still possible when the chairman and members are men of position, prestige and integrity.

### **5.9. Analysis of the relevant laws, rules and circulars:**

The language of the law is very difficult and makes it unintelligible even to the literate or educated person. The VC act 2006 states different sections of criminal cases triable by the VC act under the Penal Code (Act XVI of 1860) and the Cattle Trespass Act, 1871. The sections of the Penal Code and the Cattle Trespass Act have been mentioned in figure only (Appendix-A). The meanings of those figures are to be found in separate law books which are not available in the office of the UP. Thus the village court act does not clearly state the types of cases that can be tried by the VCs. This creates a lot of confusions among the service seekers, providers and common people. Again under the VC rules, a Village court is to preserve and use eleven kinds of forms for use as register of cases, summons to respondent and witness, decrees and orders, receipt and register of fines and also half yearly report return which makes the whole process complicated. Again, there has a provision in the village court act that, if any decision is passed by the majority of 4:1 or 3:1, the aggrieved person can not appeal against this decision. It creates fears to the rural people and they sometimes bypass village court.

### **5.10. How to make VC more effective?**

Finally, in response to a question on how to make VC more effective in dispensing justice, one respondent (Local elite, a retired police officer) stated that necessity of appointing knowledgeable persons.

“Nothing could improve the efficiency of village courts more than appointing knowledgeable and experienced persons who have demonstrated both courage and common sense in their past lives.”

He also suggested the separation of judicial matter of VC from the normal local government activities of the UP. He has said that the UP Chairmen and members are actively engaged in development activities and active member of political parties. He opined that, if government 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.

UNO of Kashiani upazila stated that, for constituting the village court, certain formal procedure has to be followed. From filing complaint to the stage of decision- everything must be done in

accordance with the law. On the other hand, Shalish has no formal procedure and no legal framework. So, in most cases chairman and members are not interested in Village Court. Rather they send the matter to Shalish or settle the matter out of the court to avoid the procedure. So, the village court act/rules should be amended in such a way that the court procedure should be simple and it can reflect the reality and needs of society today.

Service seekers of both the union noted that though village court takes seat in the Union Parishad building, which is within easy reach of the villagers and geographically accessible but the major problem is to find out the UP chairman and member of the UP because there is no specific office hour for them. There should be specific time for the service seekers to resolve the local minor disputes.

#### **5.11. Inferences from the observations, findings and analysis:**

The research was aimed to identify the challenges associated with village court in dispensing justice. To assess the capacity of both the service seekers and providers and the effectiveness of the village court act, an analytical framework was also developed in line with the research questions. The most important impediment in dispensing justice is the relative ignorance and lack of confidence among the public of both the law and opportunities that exist for redressing injustices. Again, it was also observed that the lack of awareness of the masses coupled with their unfavorable economic condition, the backwardness of women and the existence of narrow party politics is a great handicap in the working of village courts.

The lack of awareness and capacity to understand the legal rights, remedies and responsibilities among common people and the service providers acts as a formidable barrier in dispensing justice locally. The chairman and members of the village courts of both the area do not often fully understand the various clauses, sections and procedures of village court. Most of the chairmen and members are fresh face of the Union Parishad and they have been working with the UP since August, 2011. They have not received proper training and orientation about the VC. It was also observed that the evidence/case recorded by the village courts has not followed the prescribed format. The evidence and decisions was not recorded at all. VC runs without proper monitoring and supervision of the higher authority and UP has not adequate resources to run the VC. Though the village court of the project area (Kashiani) is now practicing/ using the entire rules and regulations, but they are heavily dependent on the assistant of the local NGO (MLAA).

The success of the VCs depends on the leadership, competency, status and positions of the chairman and members of the village court. It was revealed that the party alliances of the chairmen and members sometimes acted against doing justice. The chairman and members sometimes hesitates to take appropriate and strong action against the influential persons for losing votes in the next election. If the accused belonged to the party of the chairman or members and if this relationship could not be detected before selecting the chairman and members, there is little chance of getting justice from the Village Court.

Negative perceptions of both the service seekers and providers towards the legal institutes are also a great challenge is dispensing justice through village court. Local police is also skeptic about the performance and efficiency of this court. Limited jurisdiction of VC and complexity of the process is also a challenge in effective functioning of village court.

In brief, rural justice systems sometimes do not work well in the context of extreme power imbalance between parties. A more powerful or wealthy party may press the weaker into accepting an unfair result, so that the settlement may appear consensual, but in fact result from coercion. Rural justice systems are sometimes tools of equity rather than tools of law. They seek to resolve individual disputes on a case-by-case basis, and may resolve similar cases in different ways if the surrounding conditions suggest that different results are fair or reasonable according to local norms.

## CHAPTER SIX: CONCLUSION AND POLICY IMPLICATIONS

Village court was established with the objective of enabling rural people to settle their disputes and to offer them justice within a relatively short period of time with a minimum cost. The research, conducted in two unions located in different regions of Bangladesh. The study was aimed to identify the challenges associated with the village court act and to assess the capacity of the service seekers to demand justice and capacity of the service providers to provide the same. During the study, respondents (community people, UP officials, NGO activists, OCs of the police stations and UNOs) were asked to mention the factors affecting the dispensation of justice through the village court. The respondents mentioned a series of factors which acts as barriers in dispensing justice through the UP.

### **6.1 Major findings/ Observations:**

#### ***Lack of legal awareness of the service seekers and providers***

According to the respondents, lack of awareness of the mass people about village court is the major limitation of village court to work actively. Outside the project area, both the service seekers and providers have little or no knowledge about VC. During the time of the study, visibly there was no awareness programme or local initiatives at the local/national level to make people aware about village court. Also no NGO initiatives were observed there to help this institution. The scenario is completely opposite in the project area. The other concerned authorities such as the local police, UNOs who are legally designated and closely work with the UPs are also not well aware about the village court. In most of the cases the court decorum was not maintained. It was observed that, disputes related to land and property is the source of most of the conflicts in rural area. Violence against women and family dispute is also a major problem.

#### ***Complexity and Lack of clarity of the Act, rules and procedures***

For both the service providers and seekers the existing Village Court Act, 2006 is difficult to understand. Again, under the VC rules 1976, a Village court has to preserve and use eleven kinds of forms for use as register of cases, summons to respondent and witness, decrees and orders, receipt and register of fines and also half yearly report return which makes the whole process complicated. Narrow jurisdiction of VC allows and encourages both the service seekers and

providers to take resort to Shalish or to go to police and formal court. Financial jurisdiction of VC is limited and most of the case approaches to the VC are beyond its jurisdiction. Though the offences like dowry and violence against women is very common in rural Bangladesh but VC has no jurisdiction to trial cases related to domestic violence or dowry.

### ***Lack of Competencies of the UP officials***

The UP Chairman, secretary and UP members have a considerable level of education which is favorable in dispensing justice. The UP officials have the lack of training, lack of the machinery, and more than anything else, for lack of the understanding of what it means to make a full and complete record. The record management of the village courts is woefully poor.

### ***Village Court – An unfunded mandates on local governments***

Village Court outside the project area has not received any fund from Local Government Ministry or from Upazila Parishad. It was also observed that outside the project area all VC runs without a fulltime court assistant and the UP secretary usually performs this task who thinks that it is beyond their ordinary job descriptions. The members and chairman of a Union Parishad serve in the Village Court as a part of their functions in the Union Parishad. But considering their overall responsibilities as members and chairmen of the Union Parishads, their salary or honorarium is too poor. It was also observed that, the resources and facilities in the project aided courts have positive affect on the quality of justice dispensed. The UP chairmen and members are interested to perform judicial activities which by law have vested on them but at the same time in the absence of the government sponsored project intervention or NGO initiatives they can not perform it.

### ***Lack of monitoring and supervision of the court activities***

Monitoring and supervision mechanism is very weak in both the areas. UP chairman don't send the reports and returns to the concerned authority regularly. After the separation of judiciary from the executive in 2007, UNOs and DCs/ District Magistrate have little or no control over the judicial activities of the village court. Judicial magistrates, judges and police are also unaware about the village court and local police regularly entertains cases that fall under the jurisdiction of village court.

### *Absence of legal aid and support mechanism of the NGOs*

It was observed that when government starts the activating village court program and MLAA stepped in as facilitator this court started functioning in the project area (Kashiani). The scenario is completely opposite outside the project area (Jhawgara). But it was also observed that the UP of the project area (Kashiani) is heavily dependent on NGO assistance. Though NGO assistance is essential to make people aware about their rights and privileges but too much dependency is also a vital impediment for the institutionalization and successful working of VC.

### *Negative attitudes and perceptions towards legal institutes*

It was also observed that, victim's first preference for seeking justice is Shalish; and Shalish is still the most powerful means for dispute resolution in rural Bangladesh. If settlement of disputes fails at Shalish, the victims involve the Union Parishad or go to the police or formal courts. Again, village politics is also an important factor that impedes functioning and/or constituting of the village courts. Most of the service seekers and providers agreed noted that due to the complex socio-economic and political realities, they sometimes do not get justice. It was also observed that the people's confidence has to be restored on the chairman and members for the functioning of VC.

**6.2. Conclusion:** Laws and the legal systems are major tools that may be used to promote justice and these play a vital role in the well being of any society. But the legal system sometimes may act like a double-edged sword. Just as fair laws can dispense justice, unfair laws can lead to infringement of rights and violations of principles of justice. Similarly, even if laws are fair and impartial, but implementation of laws is carried out in unfair manner, it may act as a barrier to achieve the goal of justice. Village Courts were first established in 1976 by an ordinance and at present the Village Court Act 2006 had replaced the old law. The purpose of the establishment of the village courts was to ensure justice locally without having to suffer the inordinate delays and exorbitant costs of the formal court processes. The perceived benefit from village courts also includes the reduction of the enormous transaction costs in terms of lawyer's fees, court expenses and bribes associated with the formal judicial system. The study reveals that the VCs do not seem to function properly in all areas of the country due to lack of awareness among the rural people, inexperience of the chairman, members and secretaries of UPs who are not

sufficiently conversant with the system. Moreover, as a court, this institution does not appear to have received proper attention from the concerned authorities at the field level. Although the present scenario in the project area is highly effective compared to the courts outside the project area but the program is not self-sustaining. To ensure sustainability of the village court in both the area necessary amendment of the act ( increasing the jurisdiction, user fee), constant monitoring and coordination between UP officials, Police, UNOs, Judiciary and above all the awareness of the service seekers is a must. Governments cannot simply outsourcing the justice to communities without providing resources in a variety of forms. It is not possible to promote better access to justice without resources and better accountability. It is the role of the government to set standards and give necessary resources. Most disputes are not resolved by judicial adjudication, yet most resources are directed to courts. So, it is necessary to strengthen and promote the village court/ local government institutes and to allocate more resources for the prevention and resolution of local minor disputes. Making the court more effective through development of necessary instruments is a must as it is a vital tool in helping the rural women and the poor. Again, strengthening the village court is linked to strengthening the local government, but there is a lack of political commitment in this regard.

Undoubtedly, the village court should continue to function not only to make justice available at minimum cost and trouble but to maintain peace and harmony. The rural society is becoming increasingly complex and rate of crime is showing upward trend. Village Court is the only legal institute closer to the rural people for the dispensation of justice. Therefore, the Village Court as an institution should be strengthened. So, the legal awareness of both the service seekers and providers and proper monitoring and supervision mechanism should be developed in curbing the misuse/ abuse of power and authority mentioned in the Village Court Act.

**6.3. Policy Implications:** Justice is an essential public service. The state must provide the mechanism to effectively address the grievances of citizens, especially the poor and vulnerable groups who often have no resource or knowledge to access to justice. Therefore, the village court is one such mechanism of the state that brings justice to the doorstep of the people at low cost and in a reasonable timeframe. To make VC active and functional some areas of policy concern may be considered by the government:

- Policies should be adopted to develop awareness of all the stakeholders concerned with VC. When people experience legal issues, they often do not know where to go. Rural people often approach services or advisers like police/ lawyer/ court, the assistance they receive and the method used to resolve their dispute sometimes lacks appropriateness. So, timely access to good information can provide significant benefits in allowing people to resolve disputes early and effectively. In both the areas, people are not always accessing the information they need. Disseminating information about VC through the media can play a significant role in changing dispute resolution landscape.
- Capacity building of the Union Parishad as well as the efficiency and competency of the UP officials is also very crucial for dispensing justice through UP. In many cases, the village court members' educational qualification is not up to the mark. Because the Chairmen and members of the UPs are public representatives, there is no automatic way to ensure their educational qualification. So, proper training should be given to the UP chairmen, members and secretaries on legal and procedural aspects of village court. They should also be provided with necessary resources, books and materials.
- To strengthen the local government, government of Bangladesh has promulgated the Local Government (Union Parishad) Act 2009 and initiated a nationwide program named Local Governance Support Program (LGSP). Village Courts services should be considered comprehensively as a part of services delivered by UPs under the Local Government (Union Parishad) Act 2009 and should be linked with the LGSP.
- A comprehensive review should be taken to assess and amend the bottlenecks of the existing laws, rules in dispensing justice through VC. The existing VC Act does not cover the offences and disputes such as dowry, eve teasing and domestic violence. Hence, according to both the service seekers and providers, the legal jurisdiction is inadequate. It should be increased.
- At present, the UNO is the supervisory authority of the village courts. In addition to UNO, Deputy Director of Local Government and Chief Judicial Magistrate should be involved for monitoring of Village Court. Monitoring authority should provide technical assistance and do qualitative and not only quantitative evaluation of the work of VC to ensure that cases have been chosen according to law and also that the procedures of the court have been followed according to law.

- Local police stations regularly entertain cases that fall under the jurisdiction of the Village Courts. This problem does not only create unnecessary backlog of cases in formal courts, but also creates problems for the Village Courts to run their function. Directions should be given from the higher authority of the police and the judiciary to stop this practise immediately.
- Government-NGO collaboration can play a vital role in making people aware about their legal rights and responsibilities. NGOs can bridge the information gap.

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Village Courts in Bangladesh Baseline Survey, 2009

## THE VILLAGE COURT ACT, 2006

### Act No. XIV of 2006

*An act to provide for the constitution of Village Courts in areas within the jurisdiction of every union with a view to providing easy and speedy settlements of some disputes.*

WHEREAS it is expedient to provide for the constitution of Village Courts for settlement of certain disputes in easier and speedier way in areas within the jurisdiction of every union, and for matters connected herewith;

The following Act is hereby enacted:

**1. Short title, commencement and application.-** (1) This Act may be called the Village Courts Act, 2006.

(2) It shall come into force at once.

(3) It shall be applicable to only areas within the limits of a Union Parishad.

**2. Definitions.-**In this Act, unless there is anything repugnant in the subject or context,

(a) “**Cognizable offence**” means a cognizable offence as defined in the Code of Criminal Procedure, 1898 (Act V of 1898);

(b) “**Union**” means union as defined in clause (26) of section 2 of The Local Government (Union Parishad) ordinance, 1983;

(c) “**Union Parishad**” means Union Parishad as defined in clause (27) of section 2 of the Bangladesh Local Government (Union Parishad) ordinance 1983.

(d) “**Assistant Judge Having jurisdiction**” means an Assistant Judge within the limits of whose territorial jurisdiction the union concerned is situated, and where more Assistant Judges than one have such jurisdiction, the most junior of such Assistant Judges;

(e) “**Village Court**” means a court constituted under section 5 of this act;

- (f) **“Chairman”** means the chairman of the Union Parishad;
- (g) **“Schedule”** means the schedule of this Act;
- (h) **“Penal”** Code means the penal Code, 1860 (Act No. XLV of 1860);
- (i) **“Code of Civil Procedure”** means the Code of Civil Procedure, 1908 (Act No. V of 1908);
- (j) **“Fixed”** means fixed by rules;
- (k) **“Party”** shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Village Court adds as a party to such dispute;
- (l) **“Code of Criminal Procedure”** means the Code of Criminal Procedure, 1898 (Act no. V of 1898);
- (m) **“Rules”** means rule framed under this Act;
- (n) **“Decision”** means decision of the Village Court;

**3. Cases triable by village courts.-** (1) Notwithstanding anything contained in the Code of Criminal procedure, 1898 (Act V of 1898), or in the code of Civil Procedure, 1908 (Act V of 1908), all cases relating to offences specified in Part I of the Schedule and all civil matters specified in Part II thereof shall, save as otherwise provided hereinafter, be triable by Village Courts, and no Civil or Criminal Court shall have jurisdiction to try any such case or suit.

(2) A Village Court shall not try a case relating to an offence specified in part I of the schedule if the accused had previously been convicted of a cognizable offence or a matter relating to any matter specified in part II of the schedule if-

- (a) the interest of a minor is involved in the suit;
- (b) provision for arbitration has been made in a contract between the parties to the dispute;
- (c) the Government or a local authority or a public servant acting in the discharge of his duty is a party to the dispute.

(3) The provisions of sub-section (1) shall not apply to a suit or proceeding to establish a title to any immovable property in respect of which an order for delivery of possession has been made by a Village Court or to recover possession thereof.

**4. Application for constitution of a Village Court.**-(1) Where a case is, under this act, triable by a Village Court, any party to the dispute may, in the prescribed manner and on payment of the prescribed fee, apply to the chairman of the Union Parishad concerned for the constitution of a village court for the trial of the case, and the chairman shall, unless for reasons to be recorded in writing, he rejects the application, proceed to constitute, in the prescribed manner, a village court for purpose.

(2) Any person aggrieved by an order of rejection under sub-section may, prefer, in the prescribed manner and within the prescribed time, an application for revision to the Assistant Judge having jurisdiction.

**5. Village Courts, their composition, etc.**- (1) A village court shall consist of a chairman and two members to be nominated, in the prescribed manner, by each of the parties to the dispute:

Provided that one of the two members to be nominated by each party shall be a member of the Union Parishad concerned.

(2) The chairman of the Union Parishad shall be the chairman of the village court, by where he is, for any reason, unable to act as chairman or his impartiality is challenged by any party to dispute, any other member except any member specified in sub- section (1) shall, in the prescribed manner, be the chairman of the court.

(3) If either party to the dispute consists of more than one person, the chairman shall call upon the persons constituting that party to nominate the two members on their behalf, and if they fail to submit, shall authorize any one of such persons to do so, and thereupon the persons so authorized shall alone have the right to nominate such members.

(4) Notwithstanding anything contained in sub-section (1) any party to the dispute may with the permission of the chairman, nominate any other person to be a member of the court in place of the member of the Union Parishad;

(5) Notwithstanding anything contained in this section, if a member is not nominated within the prescribed time, the Village Court shall without such members, be deemed to have been validly constituted for the purposes of this Act, and trial shall proceed accordingly.

**6. Jurisdiction of Village Court, etc.-** (1) Subject to the provisions in sub-section (1) a Village Court shall be constituted and shall have jurisdiction to try a case only when the parties to the dispute ordinarily reside within the limits of the union in which the offence has been committed or the cause of action has arisen.

(2) When one party to the dispute resides in the union where the offence has been committed or where the cause of action has arisen and the other party resides in another union, the village court shall be constituted in that where the offence has been committed or cause of action has arisen: Provided that the parties may nominate representative from their own Union.

**7. Powers of Village Court.-** (1) Save or otherwise provided in this Act, if a Village Court holds a person guilty of an offence specified in part I of the schedule, it may order the accused the accused to pay the aggrieved person compensation of an amount not exceeding twenty five thousand taka.

(2) In a suit relating to a matter specified in part II of the schedule in the village court shall have power to order payment of money up to the amount mentioned therein in respect of such matter or delivery of property or possession to the person entitled thereto.

**8. Finality of the decisions of Village Courts and appeal.-** (1) If the decision of the village court is unanimous or by a majority of four to one, or by a majority of three to one in presence of four members the decisions shall be binding on the parties and shall be enforceable in accordance with the provisions of this Act.

(2) If the decision of a Village Court is by a majority of three to two any party aggrieved may, within thirty days of the decision, apply, in the prescribed manner,-

(a) if the case relates to an offence specified in Part I of the Schedule of the Act, to the Magistrate, first class having jurisdiction; and

(b) if the case relates to a matter specified in Part II of the Schedule of the Act, to the Assistant Judge having jurisdiction.

(3) In the case of appeal under sub-section (2) , the first class magistrate court, or as the case may be , the assistant judge's court, if satisfied that the village court has failed to give justice, may set aside or modify the decision, or direct that the dispute be referred back to the Village Court for reconsideration.

(4) Notwithstanding anything contained in any other law for the time being in force, any matter decided by a court in accordance with the provisions of this act shall not be tried in any court, including a village court.

**9. Enforcement of decisions of Village Court.-** (1) Where a village court decides to award compensation to a person or to order the delivery of property or possession, it shall pass a decree in such form and in such manner as may be prescribed, and shall enter the particulars thereof in the prescribed register.

(2) If any money paid or any property or possession is delivered in the presence of the village court in satisfaction of the decree, it shall enter the fact of the payment or delivery, as the case may be, in the aforesaid register.

(3) Where a decree relates to payment of compensation and the decretal amount is not paid within the prescribed time, the same shall if the chairman of the village court so directs, be recovered as arrears of land revenue under the Public Demand Recovery Act, 1913 (Act No. III of 1913), and, on recovery, shall be paid to the decree-holder.

(4) Where the satisfaction of a decree can be had otherwise than by payment of compensation, the decree may be presented for execution to the court of the Assistant Judge having jurisdiction and such court shall thereupon proceed to execute the decree as if it were a decree passed by itself.

(5) A village court may, if it thinks fit, direct that the amount of compensation be paid in such installments as it may fix.

**10. Power of Village Court to summon witness, etc.**-(1) A village court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document:

Provided that-

- (a) No person who is exempt from personal appearance in court under sub-section (1) of section 133 of the Code of Civil procedure, 1908 (Act V of 1908) shall be required to appear in person;
- (b) A village court may refuse to summon a witness or to enforce a summons already issued against a witness when in the opinion of the court the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable.
- (c) A village court shall not require any person living beyond its jurisdiction to give evidence or to produce or cause the production of a document unless such sum of money is deposited for payment to him as the court would think sufficient for defraying his travelling and other expenses.
- (d) A village court shall not require any person to produce any secret document or unpublished official record relating to any affair of the state, or permit any person to give evidence derived from such secret document or unpublished official records except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

(2) If any person to whom a village court has issued summons to appear and give evidence or to produce or cause the production of any document before it willfully disobeys such summons, the court may take cognizance of such disobedience, and, after giving such person an opportunity to explain, sentence him to a fine not exceeding five hundred taka.

**11. Contempt of Village Courts.**- If a person, without lawful excuse,-

- (a) offers any insult or hatred or uses any abusive words to any member thereof while the court is functioning as such; or
- (b) causes any interruption in the work of the court; or

- (c) fails to produce or deliver a document when ordered by the court to do so; or
- (d) refuses to answer any question of the court which he is bound to answer; or
- (e) refuses to take oath to state the truth or to sign any statement made by him when required by the court to do so; he shall be guilty to contempt of a village court.

(2) In the case of an offence under sub-section (1) the court may, without any complaint having been made to it, forthwith try such person for such contempt and sentence him to fine not exceeding five hundred taka.

**12. Recovery of fine.-** (1) Where a village court imposes a fine under section 10 or section 11 and such fine is not immediately paid, it shall record and stating the amount of fine imposed and the fact that it has not been paid, and shall recommended the same to the nearest Magistrate having jurisdiction for recovery;

(2) After receiving recommendation under sub-section (1) the Magistrate concerned shall proceeded to recover it in accordance with the provisions of the Code of Criminal Procedure, 1898, as if it were a fine imposed by himself, and such magistrate may also be sentence the accused to imprisonment in default of payment of such fine.

(3) All fines paid to a village court under sections 10 and 11, or collected on behalf of a village court under this section, shall form part of the funds of the Union parishad.

**13. Procedure.-** (1) Save as otherwise expressly provided by or under this act, the provisions of the Evidence Act, 1872 (Act No. I of 1872), the Code of Criminal Procedure, 1898 (Act V of 1898), and the Code of Civil Procedure, 1908 (Act V of 1908), shall not apply to proceeding before any village court.

(2) Sections 8 to 11 of the Oaths Act, 1873 (Act X of 1873), shall apply to all proceedings before village court.

(3) For the prosecution of a public servant for an offence triable under this act, previous sanction of the appointing authority shall be required if the public servant raises plea that the offence alleged to have been committed by him was committed while acting or purporting to act in the discharge of his official duties.

**14. No appearance through counsel.-** Notwithstanding anything contained in any other law, no legal practitioner shall be permitted on behalf of any party to a dispute before any village court.

**15. Representation of Government employee, *Purdanashin* old lady, persons with physical inability.-** (1) If a government employee required under this act to appear before a village court makes a complain that his presence in the court will hamper his public duty, the court may permit him to be represented by a duly authorized agent.

(2) If a person required under this act to appear before a village court is a *purdanashin* lady, old lady or an old person with physical inability, the court may permit her/ him to be represented by a duly authorized agent.

(3) No representative appointed under sub-section (1) or (2) shall be entitled to any salary.

**16. Transfer of certain cases.-**(1) Where the District Magistrate is in opinion that the circumstances of a case relating to a matter falling under part I of the schedule and 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, notwithstanding anything contained in this act, withdraw the same from the village court and forward it to the criminal court for trial and disposal.

(2) A village court may, if it is of the opinion that in a case relating to a matter as aforesaid and pending before it the ends of justice demand a punishment for accused, forward the case to the Criminal Court for trial and disposal.

**17. Investigation by police.-** Nothing in this act shall prevent the police from investigating a cognizable case by reason of the fact that the case relates to an offence specified in part I of the schedule, but if any such case is taken to a criminal court, such court may, if it thinks fit, direct that it be referred to a village court under this act.

**18. Pending cases.-** This act shall not apply to cases triable under this act which, immediately before the coming into force of this act, are pending in any civil court or criminal court, and such cases shall be disposed of by such court as if this act had not been promulgated.

**19. Power to exempt.-** The Government may, by notification in the official Gazette, exempt any area or areas, or any case or class of cases, or any community from the operation of all or any of the provisions of this act.

**20. Power to make rules.-** The Government may, by notification in the official gazette, make rules to carry into effect the provisions of this act.

**21. Repeal and Saving.-** (1) The Village Court Ordinance 1976 (Ordinance No LXI of 1976), hereinafter referred to as repealed Ordinance is hereby repealed.

(2) Notwithstanding the repeal as above, under the repealed ordinance-

(a) all proceeding pending, the enforcement of decision and their disposal shall be deemed to have been completed or undertaken so that this act has not been enacted; and

(b) all rules framed and issued shall, subject to their consistency with the provisions of this act and until they are repealed or amended remain in force.

## **Schedule**

### **Part-I (Criminal Cases)**

1. Sections 143 and 147 of the Penal Code (Act XLV of 1860), read with the third and fourth clauses of section 141 of the said code, when the common subject of the unlawful assembly is to commit an offence under section 323 or 426 or 447 of the code, and when not more than ten persons are involved in the unlawful assembly.
2. Sections 160, 334, 341, 342, 352, 358, 504, 506 (first part), 508, 509 and 510 of the Penal Code (Act XLV of 1860).
3. Sections 379, 380 and 381 of the Penal Code (Act XLV of 1860), when the offence committed is in respect of cattle.
4. Sections 379, 380 and 381 of the Penal Code (Act XLV of 1860), when the offence committed is in respect of any property other than cattle, and the value of such property does not exceed twenty five thousand taka.
5. Sections 403, 406, 417 and 420 of the Penal Code (Act XLV of 1860), when the amount in respect of which the offence is committed does not exceed twenty five thousand taka.

6. Sections 427 of the Penal Code (Act XLV of 1860), when the value of the property involved does not exceed twenty five thousand taka.
7. Sections 428 and 429 of the Penal Code (Act XLV of 1860), when the value of the animal does not exceed twenty five thousand taka.
8. Sections 24, 26 and 27 of the Cattle- Trespass Act, 1871 (Act I of 1871).
9. Attempts to commit or abetment of the commission of any of the above offences.

**Part-II (Civil Suits)**

<ol style="list-style-type: none"> <li>1. Suit for the recovery of money due on contracts, receipts or other documents.</li> <li>2. Suit for the recovery of movable property, or for the value thereof.</li> <li>3. Suit for the recovery of possession of immovable property within one year of dispossession.</li> <li>4. Suit for compensation for wrongfully taking or damaging movable property.</li> <li>5. Suit for damages by cattle trespass.</li> <li>6. Suit for recovery of wages and compensation payable to an agricultural labourer.</li> </ol>	<p>When the amount claimed or the price of movable or immovable property involved does not exceed twenty five thousand taka.</p>
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**Checklist for the Focus Group Discussion (FGD)****Information of the participants**

<b>Sl. No.</b>	<b>Name and Address</b>	<b>Age</b>	<b>Sex</b>	<b>Educational Qualification</b>	<b>Signature of the respondents</b>

1. What type of disputes both civil and criminal in nature usually occurs in your locality and where do you usually approach to resolve the minor disputes?
2. Have you heard about village court and do you know the differences between village court and Shalish?
3. Do you face any difficulties to get justice from village court? If yes, what are those?
4. Do you have any legal aid mechanism/ NGOs in your locality to give legal suggestions about the remedy?
5. Do you feel any pressure from the UP Chairman/ rural elites to accept the verdict passed by the VC?
6. Can you remember any successful/ failed case handled by the village court? What was that?
7. Do you think that VC is accessible for the women and poor? If no, then what are the barriers?
8. What are the advantages and disadvantages of village court over the traditional Shalish?
9. What is your overall opinion about the performance of village court in your locality?

**Thank you for your cooperation.**

## **Checklist for the In-depth interview of the UP Chairman, Member and UP Secretary**

**a) Name of the respondent:**

**b) Designation:**

**c) Age:**

**d) Sex:**

**e) Educational Qualification:**

**f) Address:**

1. Are you aware about the composition, jurisdiction and authority of the village court?
2. Do you run village court in your union? If no, then why?
3. If yes, then how many cases usually filed in your UP in every month and how much time is required to settle the disputes?
4. Do you think the power and authority of village court is sufficient to dispense justice?
5. Do you collect fees from the compliant? If yes, then what's the amount and where do you deposit it?
6. Do you have all the necessary forms, registers and manpower required to run village court?
7. Have you received any training about Village court?
8. Do you have any budget to run village court?
9. What type of problem do you face in running village court?
10. UP is engaged with various development activities. Do you think that the UP chairman and members has enough time to perform the judicial activities?
11. Do you consult with the female UP members in dispensing judicial activities and consider them as panel member in village court?
12. Do you get required support from the higher authority (Upazila/District Administration) and local police station to run village court?
13. Do you submit the progress report to the Upazila Administration/ UNO?
14. Does UNO regularly monitor your village court? If yes, then what he/she does?
15. Do you have any separate court room/ ejlash to run court activities?
16. Do you think people have confidence about village court? If no, then why?
17. If someone is aggrieved about the decision of the village court, what they usually do?
18. What are the advantages and disadvantages of village court over Shalish?

19. Do you think the personal image of the chairman and members of village court has an influence in smooth functioning of village court?
20. Do you feel any pressure from the political parties (party in power and opposition) to give verdict in favour of someone?

**Thank you for your cooperation.**

**Checklist in interviewing the Upazila Nirbahi Officer (UNO)**

**a) Name of the respondent:**

**b) Designation:**

**c) Age:**

**d) Sex:**

**e) Educational Qualification:**

**f) Address:**

1. What is your opinion about the functioning of village court in your jurisdiction?
2. Do you think that UP has the preparation and ability to run VC effectively? If no, then what can they do in activating village court?
3. Do you regularly monitor the activities of village court?
4. Do the UP chairmen regularly submit the progress report of the activities of village court?
5. Do you regularly discuss this issue in the Upazila law and order meeting?
6. Is there any training program for the UP officials about smooth functioning of village court?
7. Have you ever received any directions and guidance from the higher authority (District administration and Ministry) about activating village court?
8. What are the barriers/ challenges in functioning the village court and what are your suggestions in ensuring justice through village court?

**Thank you for your cooperation.**

**Checklist in interviewing the Officer in Charge (OC) of the Police Station.**

**a) Name of the respondent:**

**b) Designation:**

**c) Age:**

**d) Sex:**

**e) Educational Qualification:**

**f) Address:**

1. What type of disputes both civil and criminal in nature usually occurs in your jurisdiction?
2. Is it possible for you to address all the disputes with your existing resources?
3. Are you aware about the functions and authority of village court in your jurisdiction?
4. Do you suggest people to resolve the minor dispute through village court?
5. Do you take cognizance of the offences which falls under the jurisdiction of village court?
6. Do you feel any pressure from the local elites/ political leaders/ complaints/ advocates to receive cases which falls under the jurisdiction of village court and easily disposable through village court?
7. What are the barriers/ challenges in functioning the village court and what are your suggestions in ensuring justice through village court?

**Thank you for your cooperation.**

Appendix-C

Maps of the Upazilas under study, Kashiani and Melandaha

**Kashiani Upazila**



Source: Banglapeedia

## Melandaha Upazial



Source: Banglapedia