

A Critical Analysis of Access to Justice in Bangladesh

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Abstract: Access to justice through litigation has become full of sufferings because of its length in scale of time along with many more procedural obligatory burdens in present time. As justice is inherent and inalienable right, it needs to be easily accessible for all the citizens of the state. The barriers for accessing the justice system should be identified and mitigated thereto in order to dispense proper justice towards the people. The existing legal framework within which people can enter the justice system for seeking justice has not gotten its present shape in a day. In this article I have identified the gateways through which an individual can access the system of justice for protecting his rights, illustrated the obstacles in the pathway of seeking justice, depicted the impact of being denied from getting justice and pointed out the most effective way to ensure the right to get justice. Any developing country like Bangladesh needs a strong law to protect the fundamental rights of the people to get justice with its entire means.

Keywords: Access to Justice, Administration of Justice, Equality, Right, Social Justice.

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I. INTRODUCTION

Access to justice is a core fundamental right and also a central concept in the broader field of justice. Generally “access to justice” means having a case heard in a court of law. In fact access to justice means access to formal adjudicative processes in the court system or access to litigation. The Universal Declaration of Human Rights (UDHR) has guaranteed ‘access to justice’ as an important right of a human being. The Constitution of Bangladesh guarantees the same under article 31. Different national and international research shows that access to justice is problematic in Bangladesh. This is because of some factors i.e., lack of awareness regarding rights, poor knowledge about the available procedure to access justice etc. It is necessary that people get their rights to be protected. The procedure laid down by existing legal system has been developed through hundreds of years. It is still seems hostile to the ordinary people and they don’t get interest of seeking justice through this procedure than otherwise. The procedure has made the justice delivery system lengthy in measure of time and very much costly to obtain the desired justice after facing a lot of burdens. Justice is desired to be absolute, impartial and free from all types of influences. Justice should to be easily accessed thereto and be gotten within reasonable period of time. As it is said that justice delayed is justice denied, nobody should be denied from getting justice. Moreover, justice needs not to be delivered within short time that may create injustice as it is also true that justice hurried is justice buried. The perfect justice without any defect and of easy accessibility is expected for ensuring good governance. The law enforcing authority and the judiciary are set for benefit of the people; they are for assisting the people to protect their rights– this have to be introduced.

II. MEANING OF JUSTICE AND ACCESS TO JUSTICE

Justice is the philosophical concept of the morally correct assignment of goods and evils.¹ In simple words, justice is getting what is fair. Justice to some people might or not be injustice to others. Justice is one of those things that can be relative to a person or situation. The word justice is a non-countable noun meaning the process or result of using laws to fairly judge and punish crimes and criminals. In Oxford Dictionary of Law, justice is defined as a moral ideal that the law seeks to uphold in the protection of rights and punishments of wrongs. Justice is not synonymous with law – it is possible for a law to be called unjust.² In general, “justice” is a concept of rightness morally based on ethics, rationality, law, natural law, religion, equity and fairness which takes into account the inalienable and inborn rights of all human beings and citizens, the right of all people and individuals to equal protection before the law of their civil rights, without discrimination on the basis of race, gender, sexual orientation, gender identity, national origin, colour, ethnicity, religion, disability, age, wealth, or other characteristics. The term ‘access to justice’ is not defined in international law and has been used in different ways in different contexts. Traditionally, the term refers to opening up the formal systems and

¹Justice (disambiguation). (n.d.) Retrieved on December 20, 2013 from http://en.wikipedia.org/wiki/Justice_%28disambiguation%29

² Jonathan Law and Elizabeth A. Martin, *A Dictionary of Law*, Seventh Edition, Oxford University Press, 2012, p 310.

structures of the law to disadvantaged groups in society. This includes removing legal and financial barriers, but also social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions. Access means a way of being able to use or get something. So, in an ordinary sense, access to justice means a way of being able to get justice. In other words, access to justice means access to a fair, respectful and efficient legal process resulting in a just and adequate outcome through either judicial or other processes.

III. COMPLICATIONS IN THE CORRIDOR FOR PURSUING JUSTICE

In a democratic country it is a prerequisite that all citizens get economic and social justice. The economically backward people need either free or statesponsored legal aid to get justice and fair trial. This will uphold human rights and equality. The citizens require empowerment through legal aid for fair trial and justice. This is a component of the rule of law for any society. It is not a charity but a civil right of the citizens. It ensures protection of law.³The United Nations Commission on Legal Empowerment of the Poor estimated in 2008 that four billion people were excluded from the rule of law.⁴ A more recent study estimates that an access to justice gap exists for a majority of the people in the world, perhaps even as many as two thirds. Every year, one in every eight people on earth runs into a serious conflict that is hard to avoid: at home, at work, regarding land, about essential assets they bought, or with local authorities. About half these people do not succeed in obtaining a fair, workable solution, although many of these problems could be addressed and solved with better access to justice. A study on small samples of vulnerable people in Azerbaijan, Mali, Rwanda, Egypt and Bangladesh shows that they were more likely (compared to people in more prosperous settings) to report serious problems in their vital relationships - family disputes, problems with employers, use and ownership of house/land and personal security problems.⁵The obligation to respect, protect and fulfill human rights, including through the provision of justice and legal remedies, extends to formal and informal systems alike. Both types of justice systems can violate human rights, reinforce discrimination, and neglect principles of procedural fairness.

1.1. Major Sources of Conflict:

Conflicts at the local level fall into three general categories. In the predominantly agricultural setting of rural Bangladesh, a disproportionately large number of cases center on land disputes. These may be boundary disputes or struggles over inheritance and the division of property. Land disputes have a tendency of rapidly descending into violence. The Acid Survivors Foundation estimates that in 2001, 20% of all acid burn cases resulted from disputes over property. Relatively minor disputes over territorial boundaries or precious resources (such as the cutting down of a neighbour's tree or the accidental killing of a farm animal), loan repayment or perceived slights, are also common sources of conflict. A major site of conflict and ensuing violence is the domestic sphere. The causes of domestic conflict vary, although dowry demands seem to be an increasingly significant factor. Disputes related to dowry payments are a relatively new phenomenon in Bangladesh but frequently result in domestic violence, in many cases leading to grievous injury or death. Conflicts also surface around questions of maintenance, divorce, multiple marriages, and child custody. In the prevailing political climate, women are also increasingly subject to harassment and violence by virtue of their association with male relatives involved in disputes.⁶

1.2. Obstacles in formal adjudicative processes:

Access to justice conventionally refers to the ability of individuals to appear before formal state courts or otherwise draw on the judicial and legal structures of the state. Theoretically, everyone is entitled to such access, which is a primary means of establishing human rights. 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. The geographical distribution of courts also tends to be uneven, with the balance tilted toward urban centers. Since people in poor countries like Bangladesh live overwhelmingly in rural areas, travel costs and logistics pose additional burdens. A formidable social distance also exists between most people and formal judicial institutions.⁷ Bangladesh is one of the poorest countries in the world, with around a third of the population living below the poverty line. The UN estimates that 45-50 million people are "extremely poor" that is, they live on less than a dollar a day.⁸ The immediate concerns

³ Siddiqui, M S, Legal Aid Act, 2000 and Justice Delivery System, Retrieved on 20 March, 2014 from <http://www.scribd.com/doc/56520373/Legal-Aid-Act-2000-and-Justice-Delivery-System>

⁴ Commission on Legal Empowerment of the Poor (CLEP), 2008, Volume I, p.1.

⁵ Hague Institute for the Internationalization of Law (HiIL), 2012, pp. 28-29.

⁶ Dina M. Siddiqui, Paving the Way to Justice, The Experience of Nagorik Uddyog, Bangladesh, One World Action, London, p - 9.

⁷ Ibid.

⁸ This was stated in a press briefing in Dhaka by UN Assistant Secretary General Hafiz Pasha on February 25, 2003. The Daily Star, Dhaka, February 26, 2003. p.12.

of most people center on the provision of adequate food, shelter and healthcare. Although the country has made great strides in providing free primary education, especially for girls, the quality and availability of education remain inadequate. At the same time, the average citizen has minimal knowledge of his or her legal rights or of how to exercise these rights.⁹ The obstacles that the most people face while seeking justice through formal adjudicative process are as follows:

- 1.2.1. Procedural complexities: Procedural complexities are difficult to master even for those who are familiar with the language of the law. Poor and marginalized populations are least likely to possess the self-confidence or knowledge required to navigate an inherently intimidating legal system. For many people the entire process, from beginning to end, becomes an exercise in alienation.
- 1.2.2. Outdated laws: Outdated laws cause more complexities in the justice delivery system. Most of the laws that are in force in Bangladesh are formed in the British Era. The British Raj had made those laws to make their colonial administration more secured rather than making more fruitful and friendly for the ordinary then Indian people. Some controversial provisions of existing laws need immediate amendment for providing equal treatment of both rich and poor litigants before laws. Because of the absence of such amendment, the whole justice delivery system is putted in a questioned position. Moreover, state laws themselves are in need of scrutiny; as they currently stand; many laws are geared primarily toward the needs of elite males. The system of bail, for instance, is blatantly anti-poor. It may not be possible for a poor man to furnish a bail bond while a wealthy man charged with a similar crime can 'buy' his way out of jail quite easily. By the same token, laws related to rape and other sexual offences, such as existing laws of evidence, are highly discriminatory toward women.¹⁰
- 1.2.3. Shortage of manpower: Shortage of manpower is one of the most alarming barriers to deliver proper justice. There is crisis of judges to deliver justify the matters placed before the court. This causes backlog of cases continuing for years. The judicial mechanism cannot function with its reasonable speed because of lack of its manpower. In most of the subordinate courts, there is less judges to decide a mountain of cases. Moreover, there is lack of police personnel all over the country. This lack causes the investigation for criminal cases more time consuming, which prolongs the length of the time period of the cases simultaneously the burden over the parties. Shortage of manpower in law enforcing agency more creates the agency as ineffective authority.
- 1.2.4. High legal cost: High legal cost like court fee, processing fee, solicitor's fee, and other incidental expenses are the main obstacles for poor people to access to 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. So, without giving any legal assistance they cannot ensure their rights.
- 1.2.5. Corruption: Corruption in judicial and other public employees is another major obstacle to seek justice. In Bangladesh, judicial system is still no way victim friendly. In the existing system, perpetrators having money and power are well protected. Corruption by responsible police (IO), medical Officers, Public prosecutors all together damages the merit of a case at its very outset within the system. It is an open secret that no file moves without under table transaction whether it is nominal or significant.
- 1.2.6. Politicization of the legal sector: Politicization of the legal sector is another important obstacle through the pathway for access to justice. Presence of political and power pressure on the victim, complainant and the witness outside of the court is the most common matter that obstacles the pathway to justice. Inequality of arms in the litigation process may also adversely affect the livelihoods of entire communities. This is the case, for example, when resource extraction activity threatens the livelihood and rights of poor rural communities, who are in an extremely disadvantageous position to resist and challenge the corporations involved due to the asymmetries of power.¹¹ President himself often misuses his prerogative power to mercy provided by article 49 of the Constitution in political consideration.
- 1.2.7. Gender discrimination: Gender discrimination imposes obstacles for female person to seek formal justice. Despite constitutional guarantees of equality and a plethora of laws designed to protect their human rights, women who seek formal justice in Bangladesh face numerous obstacles. Most legislation on the books is enforced selectively, if at all. Among other things, the activities of law enforcement agencies are hampered by political interference and influence peddling by those with powerful political connections and also by social elites. The Bangladesh Constitution ensures equal legal rights to men and women but simultaneously acknowledges the primacy of religious laws in matters of inheritance, marriage, divorce, maintenance, and child custody. In such matters, personal or religious laws tend to work against the

⁹ Illiteracy need not be a barrier to the acquisition of legal knowledge. However, formal schooling provides an obvious forum for learning about citizen's rights and duties.

¹⁰ United Nations Development Program, *Human Security in Bangladesh: In Search of Justice and Dignity*, Dhaka, UNDP, 2002. p. 23.

¹¹ Magdalena Sepulveda Carmona and Kate Donald, *Access to justice for persons living in poverty: a human rights approach*, Ministry for Foreign Affairs of Finland, 2014, pp 11-12.

- interests of women.¹² Even when they are aware of certain rights, women who depend on male social protection may be convinced it is not in their best interests to claim those rights. Muslim women in rural Bangladesh frequently give up their rights to inheritance of property in exchange for ‘social protection’ from male relatives.¹³
- 1.2.8. Delayed procedure and backlog of cases: Delayed procedure and backlog of cases have made our legal system an ineffective wing. Only higher courts these days are found to be busy with dealing with big political figures. No justice is for the poor and exploited people who really are in need of judicial protection.¹⁴ Speedy trial is of the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice.¹⁵ The colossal amount of private capital funds locked up in all these disputes that eventually impede our economic growth significantly.¹⁶
- 1.2.9. Absence of proper case management: Absence of proper case management is another major barrier on the pathway for accessing justice. Case management implies planning, accurate and complete data maintenance, bringing periodical management information to the notice of the judges and monitor compliance with the management goals, knowing about the concerns and impressions of the learned lawyers about case processing of different courts, reviewing periodically the workload of the judges, evaluating the improvements made and providing necessary remedial advices etc. Being unfamiliar with computer and internet is another obstacle with this regard for Judges, judicial administrative officers and court staffs creates the problem and also remaining the same.
- 1.2.10. Torture in police custody and extra-judicial killing: Torture in police custody and extra-judicial killing are great barriers that violate one’s right to have free and fair trial guaranteed by the Constitution, the UDHR and ICCPR. Role of Police is frequently questioned because of conducting torture in order to obtain confessional statement under section 164 of the CrPC. Some recent incidents have brought this issue in a critical question where minimal human rights are not being protected. The recommendations¹⁷ regarding remand, detention and arrest are not being followed by the police. A relative who saw his corpse said it was bruised in several places, suggesting he had been tortured. His wife told Human Rights Watch that he should have been put on trial and punished if found guilty. “I would even have accepted him being hanged after a proper trial. But what happened to him was murder and I seek justice from the Bangladeshi government,” she said.¹⁸
- 1.2.11. Irregularities in legal profession: Irregularities in legal profession are another barrier for ordinary people to access the justice system. Legal profession is highly prestigious and the professionals are considered as elite persons irrespective of their wealth. But, in this 21st century, when money has become the only measuring scale of being elite and aristocrat, there is no alternative of having money or wealth. Money is not everything, but it is the most important part of everything.
- 1.2.12. Separation of judiciary: Separation of judiciary is another major parameter which if not fixed properly it creates unwanted obstacle in the pathway of justice. Though article 22 of the Constitution provides the judiciary shall be separated from the executive organs of the state, it has been implemented after 36 years of our independence and 35 years of the adoption of our constitution. The judiciary has been separated and an independent Judicial Service Commission has been formed for appointment of the judges and judicial magistrates. In spite of its separation, the appointment and posting of judges are still now being influenced by political and other consideration.

1.3. Obstacles in informal dispute resolving processes:

The majority of the world’s impoverished people live in small face-to-face communities, many of which possess informal dispute resolution practices alongside formal judicial institutions. These parallel, community-based modes of dispute resolution have certain features in common: they generally incorporate measures that are ‘face-saving’ rather than adversarial, and to which both parties are in agreement. The larger interests of the community are usually taken into consideration in the pronouncement of sentences. The emphasis is on restitution or restorative justice rather than on punishment.¹⁹ As an informal institution, the *shalish* is dynamic and flexible, with few set procedures to be followed. Generally, village elders and respected personalities

¹² For a serious proposal to amend personal laws, see Faustina Pereira, *The Fractured Scales: The Search for a Uniform Personal Code*. UPL: Dhaka, 2002.

¹³ Dina M. Siddiqi, *Ibid*, pp – 8, 9.

¹⁴ S.M. Tofazzel Hossain, *Bangladesh- Judicial System, Encyclopedia of the Nations, Comments*, Retrieved on 20 March, 2014 from <http://www.nationsencyclopedia.com/Asia-and-Oceania/Bangladesh-JUDICIALSYSTEM.html>

¹⁵ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360, 1365.

¹⁶ Mahjabeen Quader and Md Mazedul Islam, *INSTITUTIONALISING ADR FOR COMMERCIAL AND TAX DISPUTES: Changing face of dispute resolution regime in Bangladesh*, New Age, The Outspoken Daily; 27 June, 2012.

¹⁷ Saifuzzaman v State, 56 DLR 324.

¹⁸ *Bangladesh: End Spate of Extra-judicial Killings*, Human Rights Watch, New York, News, 27 January, 2014.

¹⁹ Dina M. Siddiqi, *ibid*.

constitute the *shalishdars*²⁰, although the exact membership is fluid at any point in time. The *shalish* is a public event and participatory in nature. Any person who has been wronged can call for a public hearing; occasionally the elders themselves may call a *shalish* if they feel that community codes of conduct are in jeopardy. Among other things, this means that much of the violence to which Bangladeshi women are subjected – rape, acid-throwing, abduction – is outside the purview of the *shalish*. There are a number of problems in existing *shalish* systems like bias, corruption, and change in social structures which lead to declining status of authority and power of the *shalishkars*²¹. However, the most alarming barriers that obstruct the pathway of informal justice mechanism, are as follows:

- 1.3.1. Lack of legal awareness: Lack of legal awareness is a burning obstacle of informal justice mechanism. In contrast, formal judicial institutions operate on the basis of legal doctrines derived from philosophical traditions that are distinct from, and sometimes antithetical to, notions of justice embedded in many local communities. From the latter perspective, “western-style” justice systems appear to be culturally inappropriate and hostile to the interests of the community.
- 1.3.2. Bias: Bias is another barrier of being deprived of getting fair justice through informal justice delivery mechanism *i.e.*, *shalish*. *Shalish* does not work well in many cases because of the biasness of the *shalishkars*. Rather it inflames faction among the villagers. Various factors pushed to create factions among the elites and villagers. Normally there might have no problem if the accused is poor. The moderator (elite) of the *shalish* at any cost attempts to save his kin even he is a perpetrator. Political affiliation in such case also plays a major role.
- 1.3.3. Gender discrimination: Gender discrimination is another great obstacle and this is in practice whole over the country. The structure of the traditional *shalish* reflects the unequal class and gender hierarchy that characterize social relations in rural Bangladesh. By convention, village elders and others who sit on a *shalish* are drawn from the elite and powerful sections of society; they are almost always male. Women are not only prevented from making their voices heard in a traditional *shalish*, their presence even on the margins of a public hearing is strongly discouraged. Men from impoverished backgrounds also find it difficult to voice their opinions freely, let alone preside over the proceedings. The traditional *shalish*, then, reproduces existing social hierarchies and practices, and provides an effective tool for disciplining individuals and groups who dare to transgress established social rules.²² *Fatwas* and *hilla* marriages²³ are traditional tools for regulating women’s sexuality, mobility and autonomy. Justified as upholding tradition or custom, these practices rely on selective and patriarchal readings of religious texts and traditions.
- 1.3.4. Influence of money and power: Influence of money and power imposes the most of the barriers that injure the informal dispute resolution processes. The social, political and economic changes in society have weakened the *shalish* system and deprive the poor of getting justice. Disaffection with the judiciary is compounded by corrupt state practices and manipulation of the judicial system by political and social elites found in many countries. Not surprisingly, most poor people opt to, or have no choice but to, settle their disputes using traditional or informal conflict resolution mechanisms.
- 1.3.5. Political interference: Political interference is another reason that brings injustice towards the justice seekers. Leaders of political parties are often selected as presiding the traditional *shalish* or arbitration which leads them to bias if one of the justice seeking parties is of same or contradictory political view than such leader. Political interference in informal justice system leads the justice to be biased.
- 1.3.6. Social acceptance of delivered justice: Social acceptance of delivered justice is not always familiar. There is a traditional norm in families that as husband is salient person to earn and takes care of everybody his decision must be accepted by all. Specially wife must listen to and obey husband including her in-laws. Wife cannot circumvent the family values in particular. Besides, every family has its own status the members hold in the community. If anyone breaks this family values members of the family consider that they lose prestige they had. Moreover, community people pass bad comments towards the member who breaks the values. Most of them treat this as hampering the social relationship and this continues pressure on the justice seeker.
- 1.3.7. Absence of mandatory provision of ADR: Absence of mandatory provision of ADR in small cause’s acts like hurt, land disputes, inheritance, partition of properties etc. creates the backlog of cases in the formal courts. These matters can easily and mutually resolve through ADR. Though there are mandatory provisions of ADR in family matters, money loan matters and labour disputes, it is not sufficient for mitigating increasing number of disputes. The ADR in civil litigations is still not yet mandatory. There

²⁰Persons who preside over *shalish* hearings.

²¹Same as “Shalishdar”.

²²Dina M. Siddiqi, *Ibid*, p– 11.

²³ A *hilla* marriage is an intervening marriage that a Muslim woman must contract if she is to remarry a man from whom she has been divorced. Typically such divorces arise from casual and thoughtless verbal pronouncements of divorce made by husbands in a fit of anger. The law in Bangladesh does not recognize the legitimacy of casual verbal divorces although they have widespread social acceptability.

are some ADRs not widely practiced. The ADR is a matter of practice and adoption and regulated by CPC. Some arbitration in some laws is not satisfactory due to difficult and biased procedures.

- 1.3.8. Decision made through ADR having less binding force: Decision made through ADR having less binding force creates its importance and acceptance less popular. Local modes of conflict resolution also tend to encourage a high degree of direct community participation. The adjudicator or judge is selected from the community itself and known to both parties in any dispute. Rulings are non-binding, and enforcement depends on the ability of the community to exert social pressure on the individuals concerned.

IV. IMPACT OF INTERRUPTION OF ACCESS TO JUSTICE

Access to justice is inherent and inalienable right which creates respect to the Judiciary as well as constitution and the state from a person. If access is interrupted, it induces respective person towards apathy of following law and orders and may turn to be against the law as well as the constitution and the state. It makes the justice seekers fade up of seeking so and also creates social imbalance. The ethical speech of the law loses its accountability and peoples to ignore those. The lengthy procedure for justice delivery through formal court implies to justice being denied. Often, the justice seekers get justice when it has lost its importance or even after his life ends. This cannot be sustainable in a democratic country in this 21st century. If this culture remains to be continued, it imposes a negative impact upon the new and future generation to disobey the law and order and the purpose of the state becomes vague and redundant. “Mob justice is no justice at all, but we often hear about incidents of this aberration by mass people of taking law into their own hands that seriously spoil our desire to live a decent, civilized life. This time the incident took place when locals of Char Amanullah of Subarnaupazila of Noakhali district caught Zahid Hossain, one of a gang of robbers who entered a shop to rob. The people beat him to death on the spot. The rest of the gang managed to flee. The normal and expected course of action would have been people handing over Zahid to police who would then be expected to produce him before the court of law. But people did not have patience because they no longer seem to have trust on law enforcing agencies and the judicial system of the country. An event of lynching is indicative of the fact that law enforcing agencies’ performance is not up to the mark in curbing crimes. But precisely when people take up law in their own hands? There are two points that have to be reckoned with. On the other hand, crimes of stealing and robbery have increased in society and people have become desperate to get rid of the same and on the other hand there are serious flaws in the justice delivery system that take unusually long time in administration of justice. There are numerous allegations that police as well as people in the judiciary take bribe and let hard-core criminals go scot free. There is also the grave allegation of political influence. When people are well-nigh sure that the criminals whom they hand over to police will be among them after some days, then why the handing over at all, they may think. The events of people taking law into their own hands and the prevalence of extra-judicial killings by the law enforcers themselves are making the fabric of our society weak and insecure. But people want security both of their lives and their properties and the state will have to ensure that. The state again is governed by politicians, bureaucrats and other relevant people. But most of the burdens of governing lies with the politicians who need to realize they are there to guide people and guide them rightly. It is largely because of their failures our society has come to such a pass. They have to lead the various organs of the state in such a way that people again can put their trust on them as responsible citizens.”²⁴ Everyone desires a life free from all burdens. If someone is aggrieved of something, he must get it restored as soon as he is satisfied. It’s his right to get so. If this right is violated, the other rights are also interrupted accordingly, which hampers the motto of the legal system to be reached. So, it’s the call of the time that these shortcomings of formal and informal judicature to be overcome. Justice has to be delivered within reasonable period of time.

V. ON THE WAY TO A FAIR JUSTICE

A sound judicial system must have two basic elements: a well-planned, well-regulated system of courts following a simple and orderly procedure; and a definite, easily ascertainable and uniform body of law. Without a good system of law, the courts, howsoever well planned will administer justice according to the whims, discretion, notions of good and bad, entertained by the presiding judge.²⁵ The judicial system we have, it is a combination of Ancient Indian, Islamic and British Judicial system. Though, now the influence of religion is approximately limited within “Personal Laws”. The laws regarding procedure and remedy as well as punishment are codified in British Regime and we have inherited those. The laws should to be easily accessible for all and make the education system effective to create awareness of laws. However, it is important to keep in mind that informal modes are not a substitute for formal ones. Rather, the two systems are complementary.²⁶ Minor disputes tend to be resolved informally within the family or the community. As the former Law Minister Moudud Ahmed noted, “There are about 5 lakh civil cases pending with courts in

²⁴ *Restoring trust in police and judiciary*, Editorial, The Independent, 12 March, 2014.

²⁵ Prof. M P Jain, *Outlines of Indian Legal & Constitutional History*, LexisNexis Butterworths, Hariana : 2006, p 4.

²⁶ Dina M. Siddiqi, *Paving the Way to Justice, The Experience of Nagorik Uddyog, Bangladesh*, One World Action, London, p – 5.

the country now. Even if 20% of these cases are resolved through alternative dispute resolution, it will make a great difference in the justice delivery system in the country.²⁷ The relationship between the *shalish* and formal legal institutions is quite fluid in practice.²⁸ A related priority should be to strengthen networking and collaboration among the different NGOs working in this field.²⁹ A mixed method of both formal and informal mode for dispute resolving can be introduced in our legal system to resolve the disputes amicably in shortened period of time where the justice shall become easier to access for all of the citizens. In this manner, following pre-requisitions should be taken:

- a. Backlog of cases before the judiciary should be cleared. On the logjam of cases, the former Chief Justice, Muhammad Muzammel Hossain said, "although in the last few months we have tried to reduce the backlog in the High Court Division, the backlog increased in the Appellate Division for not being duly addressed. The court will now have to be more pragmatic in adjudicating cases, particularly in reducing the backlog and case management generally."³⁰ Unusual delay in case disposal ultimately leads to denial of justice. It not only leads to erosion of people's confidence in the justice delivery system but also brings financial hardships for many. Another social implication of prolonging of cases is prolonging of hostility; this again leads to anarchy and tension in society and multiplication of court cases. To come out of this unbearable situation, the number of courts and judges should be increased. In the existing situation of piling up of case files, Alternative Dispute Resolution (ADR) can be an effective means to reduce the pressure of litigations on the judiciary. This alternative method involving early neutral evaluation, mediation and negotiation, and ultimately to reconciliation can help bring down costs of litigation, time delay and social tension.
- b. Appointing more judges and other judicial administrative officers is necessary to provide justice smoothly to the population of 160 million. More forums to be composed for delivering justice within reasonable period of time. Judges and other judicial officers need to be trained as necessary for this 21st century. They should also be trained in using computer and IT instruments for better communication with central information system. The judiciary has to be digitalized for accelerating the disposal of justice and also for proper case management as it is started in Dhaka Judge Court in a short extent. They need adequate remuneration and other allowances in order to reduce bribe and being biased of it.
- c. Judiciary should be free from all influences from the government. Government's invisible control on the judiciary influences the justice for which it cannot work independently. The judiciary cannot perform its constitutional functions independently. After separation of the judiciary from the executive, the common people, especially lawyers, expected the lower and higher courts to function independently. Litigants were optimistic about free and fair justice. The judges cannot pass their decisions impartially because of the government's interference, which is harmful to the nation and democracy. The Chief Justice should look into the matter and take special measures to free the judiciary from the "government's grips".³¹ The Supreme Court has been digitised-justice seekers can now inquire about cases through the internet and SMS over cell phone.³²
- d. Reformation of outdated ancient laws is burning issue that to be settled for ensuring proper access to justice. Procedural as well as substantial laws which didn't face any amendment since they have formed, needs immediate reformation. Specific law regarding tortious liability should be enacted. Evidence Act needs some reformation regarding priority of physical evidences which can ensure proper justice both in civil and criminal justice.
- e. Establishing social and gender justice irrespective of gender and social status through mediation and legal aid support shall be able to ensure the proper access to justice for marginalized people.
- f. Recommendations regarding arrest, detention and remand should be properly followed in order to protecting rights of the arrested persons. The Division Bench in *Saifuzzaman vs. State*³³ case issued eleven guidelines to the police and magistrates as to arrest, detention and remand of suspects. However, these guidelines are not binding on the relevant authorities. This needs to make those recommendations mandatory or issue new guidelines based upon the judgment having binding force upon relevant authorities.
- g. Extra-judicial killing should have judicial inquiries to justify whether that was necessary or not. Even the offenders deserves right to life, the policemen also deserves so. The government should authorize an independent investigation into a recent spate of alleged extrajudicial killings by security forces and also publicly order law enforcement agencies to ensure the safety of all those taken into custody. The Police and

²⁷ Quoted in *The Daily Star*, Dhaka, February 26, 2003, p. 12.

²⁸ Dina M. Siddiqi, *The Shalish and Gender Justice Programs in Bangladesh: A Review*, prepared for Ain-o-Salish Kendro and Research Initiatives, Bangladesh.

²⁹ Dina M. Siddiqi, *Paving the Way to Justice*, The Experience of Nagorik Uddyog, Bangladesh, One World Action, London, pp 23 - 24.

³⁰ New CJ for separate judiciary secretariat, *The Daily Sun*, Dhaka, 19 May, 2011.

³¹ Zainul Abedin, Former President, Supreme Court Bar Association, Bangladesh, in a press conference at South Hall of the SCBA building on 17 May, 2012.

³² New CJ for separate judiciary secretariat, *The Daily Sun*, Dhaka, 19 May, 2011.

³³ 56 DLR 324

- other law enforcing agencies need to be trained according to international Human Rights Standard to mitigate this issue.
- h. Supporting the struggle of women at grassroots level is necessary to ensure their effective participation on a larger scale in the electoral process. Elected female representatives at the Union Parishad level are still marginalized politically and socially. Their position must be strengthened. In order to strengthen local level democracy, elected women representatives must establish greater social legitimacy as human rights activists and advocates. Trained female *shalishdar* often find that they have knowledge but lack the authority to make a substantial difference.
 - i. Reformation of the Gram Sarkar Act becomes compulsory for providing social justice in rural area. The Gram Sarkar system which is ineffective due to too much politicizing the formation of Gram Sarkar. This is considered as parallel of local government at village level.
 - j. The widespread use of the *shalishor* informal method of justice in rural Bangladesh should be increased. For poor villagers, especially women, the *shalish* offers many advantages. First, a *shalish* hearing does not require any serious expenditure. Second, it takes place locally, at a time that is convenient for all of the parties involved. Proceedings occur in a language and framework of justice that is comprehensible to the litigants. Third, disputes are resolved relatively quickly, usually in one to three sittings. Ideally, all parties should be able to voice their concerns and decisions should be reached on the basis of consensus. The enforcement of *shalish* sentences depends entirely on the degree of social pressure that can be exerted in any one case.³⁴
 - k. Increasing binding force of judgment from informal justice can play significant role to attract the justice seekers rather than going to formal court. Bangladesh has an Arbitration Act, 2001, derived largely from the UNCITRAL Model Law on Arbitration, which provides a sound platform for the future development of arbitration within commercial disputes. The passing of this Act has already had an impact on the level of interest in arbitration, particularly in matters involving government-controlled entities.
 - l. Ensuring Legal Aid Service for all the grassroots poor, distressed and other needy litigants is necessary so that they can get fair justice. To this end, judges, lawyers and others concerned should be more sincere and proactive as entire people irrespective of poor and rich are equal to the eye of law. All the victimised people should have to be brought under the legal aid coverage whatever and whenever they need. Besides, for reaching the legal aid activities to the grassroots alongside expediting the services towards the poor and distressed victims, public awareness program should be taken for protecting their fundamental human rights.³⁵
 - m. Conducting training programs on human rights for NGO workers, activists, and community members and creating an environment conducive for the exercise of democratic rights, establishing a network of national and international organizations in the field of human rights; and conducting research on various aspects of society, economy, human rights situation, and the polity of Bangladesh shall be able to find out the sensitive loopholes of laws and procedural inefficiency which can be solved for ensuring access to justice to uphold human rights in its implementation. So, for good governance, administration of proper justice according to updated laws is essential and the most people should be able to access it.

VI. CONCLUSION

Justice is the most significant as well as the most imperative fixation for a society. For good governance, there is no alternative of justice. Everyone of a society or a state possesses the right to enjoy fair equality of opportunity. Bangladesh is passing a very critical period of time in each and every sector with lawlessness, political and non-political crimes and violence, seething corruption, plunging morality, broken governance and self-serving politicking. It is possible to clean up such a gigantic mess if only we, the people of Bangladesh actually have the will to do so. To ensure proper law enforcement four essential ingredients should be fulfilled which is independence, resources, motivation, and efficient administration or management. Independence of the law enforcement agencies and the judiciary in all senses of the term prohibits the ruling regime of any given time to legislate and enforce laws intentionally against its opposition forces along with promoting the interests of allies. Absence of independence results judicial and law enforcement protection for the vast majority of citizens affected adversely and unjustly. The law enforcement force needs to be trained, equipped, inspired, directed, engaged and managed properly avoiding political interference and influence. To conclude, rule of law is of paramount importance to deliver the cherished land to the people of Bangladesh. Once rule of law is implemented, our people shall be able to access the justice system irrespective of race, sex, colour, society and locality. That is the day we dream of and for which we have devoted ourselves in our glorious War for Liberation in 1971 and the other previous movements. Failure of achieving which may lead our people into further movement if the access to justice is interrupted consequently that violates their constitutional right to access the justice system and being deprived of from thereto.

³⁴ Dina M. Siddiqi, *Ibid*, pp – 10 - 11.

³⁵ *Call to ensure access to justice for poor, distressed litigants*, The New Nation, 1 March, 2014.

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