The Role of Union Parishad in Rural Dispute Resolution in Bangladesh: an Evaluation in the Light of People's Perception

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Introduction

Dispute resolution refers to methods used by trained neutrals to help people to communicate more clearly, negotiate effectively, develop and evaluate solutions, or resolve conflicts. Neutrals do not take sides or represent the parties. In recent decades, dispute resolution, as an interdisciplinary field, has attracted individuals from backgrounds like human resources, law and social work.

In Bangladesh, local justice is located at the juncture of two of the streams of judicial processes. One of these is the rule of law: that is the supremacy of the formal power exercised by the government in accordance with well-established and clearly written rules, regulations, and legal principles through established court system. For any government, the highest aspiration is to establish the rule of law - as the fundamental structure of governance. The other stream of justice is the long-standing local traditions. In past decades, Bangladeshi political elites have pledged to provide local communities with a greater share of the responsibilities of governing. Different action plans or mission visions of the government testify to this pledge.¹ This is equally visible in efforts to involve local people in dispensing justice, especially in rural areas.

The formal setting of local dispute resolution in Bangladesh is rich: it includes the traditional process of shalish, impressive civil society efforts to improve the quality and mechanism of shalish, and a somewhat less-explored provision for gram adalat or village courts.² In addition to these two methods, Alternative Dispute Resolution (ADR), the alternative method of helping people resolve legal problems before going to court, has emerged as a potential means of resolving disputes. ADR involves an independent third person, called a "neutral" who tries to help resolve or narrow the areas of conflict. Negotiation, mediation and arbitration are the most common features of ADR techniques in Bangladesh.³ The growing importance of these local level dispute resolution also stems from the fact that the current trial system in formal court in in Bangladesh, as is in many other countries, is highly cumbersome and requires too much time to execute as demonstrated by the huge number of cases pending in the formal court. However, the ADR is not a complete alternative to the formal courts, because there are instances which

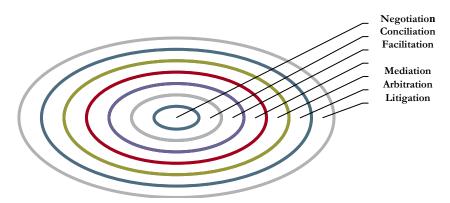
³ Asia Foundation, *Promoting Improved Access to Justice: Community Legal Service Delivery in Bangladesh* (The Asia Foundation: Dhaka, Bangladesh, 2007).



¹ Sara Hossein et al. Joint Assessment of Prospects for Harmonisation within the Justice Sector in Bangladesh (BRAC: Dhaka, Bangladesh, 2007).

² Dilruba Banu, BRAC-Ain o Salish Kendro Joint Legal Aid Programme: A Comprehensive Review (Research and Evaluation Division of BRAC: Dhaka, Bangladesh, 2003).

require intense interrogation and investigation as well as legal obligation. Such issues cannot be easily solved by the ADR process.⁴



Steps to be followed at an ideal dispute resolution process

The overall objective of the article is to assess the effectiveness of the prevailing local justice system in rural Bangladesh. It analyzes the survey data gathered from Birunia Union of Bhaluka Upazilla (Sub-District) of Mymensingh district of Bangladesh about the perceptions of the members of the community regarding the state of access to justice, and assesses the strengths and weaknesses of the legal framework for extant dispute resolution process in light of the community perception. The paper concludes that village courts may act as a useful bridge between Bangladesh's

⁴ Stephen Golub, *Non-state Justice Systems in Bangladesh and the Philippines* (DFID: Dhaka, Bangladesh, 2008).



informal and formal justice institutions in an attempt to provide justice to the rural communities.

The Dispute Resolution Process in Rural Bangladesh: Broad Argument

One can argue that the long-standing system of salish in rural areas comprises the intentions of 'arbitration (which, in this context, involves the parties agreeing to submit to the judgment of the shalish panel), mediation (in which the panel helps the disputants to try to devise a settlement themselves) or a blend of the two.⁵ But as observers of salish system have concluded, 'in extreme version of its traditional form, shalish as an alternative sets up an effective criminal court that inflicts trial and punishment on individuals who have not consented to its jurisdiction.²⁶ Besides, Bangladesh legal system does not recognize the jurisdiction of the salish in criminal matters.

Available literature has documented the tension between the shalish as a fast and cheap mechanism for resolution of local and family disputes and its character as the enforcer of often retrogressive norms. This kind of traditional dispute resolution system is not unique to Bangladesh and there is a strong body of literature that addresses the issue of informal justice systems, their uses and abuses in other countries as well.⁷

⁶ Ibid.

⁷ Debasish Kumar Kundu, Ashrafuzzaman Khan and Mrinmoy Samadder Understanding Alternative Dispute Resolution for the Rural Women in Bangladesh: Some Illustrations from BRAC HRLS Programme, (BRAC Research Report: Dhaka, Bangladesh, 2007).



⁵ Ibid.

Local informal dispute resolution system, such as the salish, was the base for administering rural justice in the Indian subcontinent from ancient times. There were no State-led rural justice institutions in rural Bengal under the British Raj (1757-1947) until 1919 when the Bengal Village Self Government Act was passed which established two rural justice institutions namely, the Union Bench and the Union Courts.

The Union Bench was a local Government body like the present day Union Parishad (UP) and also functioned as a Union Court to deal with petty criminal and civil cases. The Sub-Divisional Officer (SDO) or District Magistrate was the controlling authority, responsible for imparting training to the adjudicating officials, and also for supervising and monitoring their performance. During the Pakistan period (1947-1971), two ordinances were promulgated, namely the Muslim Family Laws Ordinance, 1961 (MFLO)⁸ and the Conciliation Courts Ordinance, 1961 (Ordinance No. XLIV of 1961). The Muslim Family Laws Ordinance, which is still in force, made provisions for the constitution of the Arbitration Council, a dispute resolution body which works in both urban and rural areas dealing with matters related to family disputes as per the Ordinance. The Conciliation Courts Ordinance dealt with minor criminal offences and civil disputes.

After the independence of Bangladesh in 1971, the Government decided to continue with the systems of both the

⁸ Muslim Family Law Ordinance, 1961 personal laws relating to Muslim inheritance, marriage registration, polygamy, divorce, dowry and maintenance of the wives and children. With an object of enacting the law a declaration to amend Muslim family law was made on 7 October 1958, and accordingly the President of Pakistan promulgated the Ordinance in 1961, which is better known as Ordinance No. VIII of 1961

Studies on Asia

Arbitration Council and the Conciliation Court, but in 1976 repealed the Conciliation Courts Ordinance.⁹ It promulgated new legislation named the Village Courts Ordinance, 1976 by which the Village Courts were established to deal with petty criminal and civil disputes in rural Bangladesh. In 2006, the Government repealed the Village Courts Ordinance, 1976 and the Parliament enacted new legislation called "The Village Courts Act, 2006'. The acceptance contains elements of both fatalism and the confidence that Shalish will look out for the best interests of both parties within the constraints. There is also the appreciation that in any system of mediation no party will be completely happy.

The importance of apology comes up repeatedly in the analysis of Shalish. Apology is a typical remedy in non-formal, community dispute resolution institutions, and fits with those institutions' emphasis on restoration and reconciliation. Women are not invited to the UP Shalish – only the women UP members are invited. But sometimes women are called in as witnesses. And elderly women sometimes attend the Shalish as complainants or accused.

Despite its general accessibility, low cost and quick disposal, the literature on Shalish has underscored its elitist character and the hazard that it perpetuates existing power structures. That traditional dispute resolution systems are often undemocratic and exclusionary and access by women and the most marginalized such as landless people is poor has been well-documented. Since the Shalish decide on cases of extra and pre marital relationships between men and women they are seen as corrupting influences on unmarried girls. Even without the discussion of these issues, younger women would

⁹ Haq, Fazlul, *State of Shalish in Bangladesh,* memo, (Madaripur Legal Aid Association: 1998).



likely have lower access to these as they do to other entitlements due to the intersection of age and gender.

A related criticism of the Shalish is that it has little appreciation of the rule of law and serves as an enforcer of often retrogressive norms. Such norms perpetuate the lower status of women and the poorest in relation to the richer and more powerful. It is noticeable that Shalish tended to enforce traditional, extra-legal norms, though it is debatable whether the norms in the cases we encountered were retrogressive. Longstanding efforts spearheaded by NGOs and supported by multiple international donors focus on strengthening and reforming these systems to make them more equitable for women and the poorest. Bangladesh civil society's innovation in community-level Alternative Dispute Resolution (ADR) is held up as an international example.

The reformed ADR forums include an equal number of women as shalishkars, and often address violations of women's rights such as violence, dowry demands, abandonment and maintenance. The NGOs also assist parties in accessing the formal system when Shalish is either not appropriate or not satisfactory.

The Village Courts Act of 2006, which replaced and updated the Village Courts Act of 1976, provides for the establishment of a village court in every Union Parishad.¹⁰ The village court is comprised of a panel of five: the UP chairperson; two other UP council members, one of whom is chosen by each party in the dispute; and then two additional citizens, who are also chosen by the parties respectively. The courts have jurisdiction over civil disputes valued up to 25,000 Taka. They also have jurisdiction over some crimes, including assault and theft, though they do not have the power to

¹⁰ Kamal Siddique, *Local Government in South Asia: A Comparative Study* (UPL: Dhaka, Bangladesh, 1992).

fine or imprison; rather they can grant simple injunctions and award compensation up to 25,000 Taka. The Muslim Family Ordinance of 1961 provides for arbitration councils to deal with family matters, including divorce, dowry, and maintenance.

Arbitration council panels are comprised of three members: the UP chairperson and two others, one of whom is chosen by each party. Like the village courts, arbitration councils also have the power to issue binding decisions, though the Muslim Family Ordinance does not set a limit on the size of judgments. Administratively, the nodal department in charge of UPs is the Local Government Division (LGD) within the Ministry of Rural Development and Local Government. Village courts and arbitration councils are also under the supervision of LGD, rather than of the Ministry of Law, Justice, and Parliamentary Affairs. This placement reflects the distinctiveness of the village courts and arbitration councils from the rest of the judicial system: Village courts and arbitration councils are more local and less legal.¹¹

Village courts are largely defunct and UP members have little knowledge of the Village Courts Act. A system of formal village courts located at the UP, which has rarely been effective, has now in most cases disappeared.¹² This leaves the traditional informal Shalish as the dominant means of adjudication for small-scale civil and criminal disputes.

¹¹ Local Government Division, Ministry of Local Government, Rural Development & Cooperatives, Government of the People's Republic of Bangladesh, *Baseline Survey Report on Village Court in Bangladesh* (Dhaka, Bangladesh, August 2010).

¹² David Lewis and Abul Hossain, An Analysis of the Local Power Structure in Bangladesh With An Emphasis On Faridpur And Rajbari Districts (Mimeo Publisher Ltd: Dhaka, Bangladesh, 2005).

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Strengths of the Village Court

- o It has legal validity
- As the complainant and accused submit written petitions to the Chairman, they can not change their version in future.
- o Implementation of the verdict is easy and feasible
- This is formal judicial course having strong basis for fair justice
- o Cases are settled easily
- Provision of minimum fund for enabling poor people to benefit.

Weaknesses of the Village Court

- Process involved seems to be prolonged
- If the accused is absent during hearing, the case also gets delayed
- When split decisions occur, justice falls flat
- Financial jurisdiction is not adequate to run the court
- There is no manpower for documentation of the cases
- Influential people can exert pressure
- Absence of third party to monitor its functioning resulting in bribery and corruption
- The lengthy process of judgment leads to wrong verdict
- Verdicts often go against poor and helpless people
- Village politics can exert a negative influence
- People are less inclined to pay the fine
- Partiality and absence of objective judgment Misuse of legal power is common
- Sometimes hooligans are present
- Lack of knowledge of the Chair and the members of the arbitration procedure results in procedural flaws

Alternative Dispute Resolution (ADR) is a modified form of traditional informal justice institution like *Shalish*. What we mean by institution in this context is 'an endurable status and role, sets of which collectively shape the behavior of a group of people.' They are akin to formal institutions, but they are not approved or codified via legal recognition, legal enforcement, or official access to power/policymaking. The term ADR is often used to describe a wide variety of dispute resolutions that are a sort of alternative to a full-scale court process. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look very much like a court room process.¹³

Negotiation systems create a structure where both parties negotiate directly with each other without the intervention of a third party. Whereas mediation and arbitration systems are similar in that they interject a third party between the disputants, they do not have the authority to settle a dispute. Moreover, arbitration systems authorize a third party to decide how a dispute should be resolved. Another popular format of ADR is mediation-arbitration particularly an example of multi-step ADR, where parties agree to mediate their dispute with the understanding that any issue not settled by mediation will be resolved by arbitration, using the same individual to act as both mediator and arbitrator.

By nature, ADR has two basic forms: binding and nonbinding. Among the systems negotiation, mediation, co-mediation,

¹³ World Bank, *Whispers to Voices: Gender and Social Transformation in Bangladesh* (World Bank Publication: Dhaka, Bangladesh, 2008).



and conciliation programmes are non-binding, and depend on initiatives of parties to reach a voluntary agreement. But an arbitration programme may be either binding or non-binding. Most often, binding arbitration produces a third party decision that the disputants must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the party may reject.¹⁴

In a mandatory process, parties must have contractual agreements. But in voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties. Moreover, ADR is practiced by different organizations throughout the world developing their own standard. The most common and widely accepted categories of ADR are: facilitative ADR process, advisory ADR process, and determinative ADR process.¹⁵ Facilitative process involves a third party providing assistance in management of the process of dispute resolution. Generally, the third party has no advisory and determinative role on the content of the disputes or the outcomes of its resolution. This category of ADR includes the processes of mediation, conciliation and facilitation.

Unlike the facilitative process, the advisory process involves a third party, who investigates the disputes and provides advice as to the facts of the dispute and in some cases advice on possible, probable, and desirable outcomes and the means whereby these may be achieved. This category includes the processes of investigation,

¹⁵ Faustina Pereira and Deena Nargis, *Courts Take Cognizance of Illegal Fatwa* (Ain-o-Salish Kendro: Dhaka, Bangladesh, 2000).



¹⁴ Fauzia Erfan Ahmed, Female Jurors Change an all-male Village Court: Autonomous Law-making and Domestic violence in Bangladesh (Harvard Center for Population and Development Studies: Cambridge, MA, 2004).

expert appraisal, case appraisal, case presentation, mini trial, and dispute counseling. The determinative process involves a third party investigating the dispute and making a determination, which is potentially enforceable, as to its resolution. This category of ADR includes the process of adjudication, arbitration, and expert determination, private judging, fact finding and early neutral evaluation. The process of ADR is highly associated with some terms like ADR practitioner, ADR service provider, party, ADR community and fact finding.

An ADR practitioner usually is an individual who resolves disputes using ADR tools. ADR service provider is usually an organization, which provides or refers the services of ADR practitioners to the public. Several terms can be used for those whose disputes are dealt with in ADR processes such as users, disputants, participants, parties and consumers (U.S. Agency for International Development, March 1998). But in Bangladesh, *Badi* (Claimant) and *Bibadi* (Defender) are widely used terms in ADR process. Following the traditional disputes resolution techniques, the ADR movement in developed world was launched in 1970s. It started as a social movement to resolve communitywide civil rights disputes through mediation; and as a legal movement to address increased delay and expanse in litigation arising from an over-crowded court system

Union Parishad in Dispute Resolution: Performance Evaluation through People's Perception of the Birunia Union, Bhaluka, Mymensingh, Bangladesh

The sampling procedure used for evaluation of the community perception of effectiveness of Shalish was convenience sampling. Convenience sampling is a technique wherein samples are selected on the basis of relevancy and easy reach that will contribute to answering the particular research question at hand. In this study both primary and secondary data have been used. The primary source of data was collected from the field through direct interviews from people across levels of the society. A total of 50 persons irrespective of caste, profession, religion, gender and political parties were interviewed from Birunia Union of Bhaluka Upazila of Mymensingh district. Findings, Analysis and interpretation of data are as follows:



Figure-I: Dispute resolution is observable

From the chart it can be seen that 70 % of respondents are of the opinion that the dispute resolution in the form of Shalish is observable while 30 % opined that, it is not visible at all except as a name on paper.

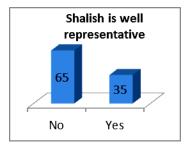


Figure-II: Dispute Resolution is well representative

From the chart it can be seen that 35 % of respondents are of the opinion that Shalish is found to be well representative irrespective of man, women, professional, local elite, religion, literate and illiterate while 65 % opined that, it is not well represented, rather it is an elite driven approach serving the interest of the vested interests.



Figure-III: Dispute resolution guarantees level playing ground

From the chart; it can be seen that 70 % of respondents are of the opinion that local dispute resolution process is unable to ensure a level playing ground for both parties involved in the judiciary process while 30 % opined that, it has a positive or strong role.

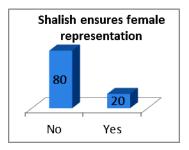


Figure-IV: Dispute resolution ensures female representation 201

From the chart it can be seen that 80 % of respondents are of the opinion that Shalish has completely failed to maintain gender based representation as Shalish only provides a space for the women member to the Union Parishad while only 20 % opined positively.



Figure-V: Dispute Resolution ensures fair play

From the chart it can be seen that 40 % of respondents are of the opinion that Shalish has positive efforts towards ensuring fair play through its arbitration process while 60 % opined that it has failed to act upon the standard procedure that leads to a fair verdict.

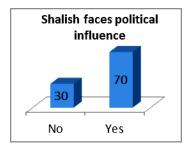


Figure-VI: Dispute Resolution has the influence of the ruling party

From the chart it can be seen that 70% of respondents are of the opinion that arbitration process under the purview of UP is mostly influenced by the political party in power while only 30 % opined in favor of bias less arbitration process of Shalish having no undue influence of the ruling party.

Rethinking dispute resolution process for the sake of fair play: Recommendations

Taking into account the prevailing impediments of Shalish in rural Bangladesh coupled with undue influence in the name of patronclient relations, political parties and social prejudice, the Village court could be the alternative option in order to facilitate local arbitration ensuing a level playing filed for contending parties.

In the rural context of Bangladesh, to recovery of the fine or any other financial penalty imposed on the defendant remains challenge. Presently, the Public Demands Recovery Act of 1913¹⁶ allows recovering fines and financial penalty. Under this Act the Union Parishad can recover only after obtaining a certificate of the judgment from a Collector, an Upazila Magistrate, or an Upazila Nirbahi Officer (Executive Officer of sub-district of Bangladesh). Training for UP members in this procedure would enable them to learn how to administer arbitration procedure. It is obvious that the formal justice system in Bangladesh is under tremendous pressure with an inadequate number of officials and staff to rightly deal with a heavy workload. As a result, the case backlogs add up. The half a

¹⁶ An Act to consolidate and amend the law relating to the recovery of public demands in Bangladesh



million pending cases in various courts is testimony to the ineffectiveness of current process.

It creates a negative impact on the rural poor and vulnerable groups who cannot afford the expenses of cases and do not have clear understanding of how to get access to justice in the upper courts on some issues that could be easily resolved at the local level. The necessity of the village court becomes evident when the question of cost and time barriers is considered. Often these preclude ordinary citizens from bringing cases to the formal courts in the first instance.

Following the Village Courts Act 2006, the practice of constituting village courts has increased and the local elected representatives' i.e. local government is much more supportive of and interested to activate village courts. The Ministry of Local Government Division (LGD), UNDP and the European Commission have jointly undertaken a programme titled 'Activating Village Courts in Bangladesh providing support to the justice system through this project in 500 selected Union Parishads (UP) of the country. It also intends to develop capacity of the village court members, elected representatives and support staff. A Motivation programme will be carried out in order to sensitize all concerned on the role and functions of village courts and their benefits for the overall justice system.

Against this backdrop, the Local Government Division (LGD), Ministry of Local Government, Rural Development and Cooperatives has initiated a 5-year long (2009-2013) project 'Activating Village Courts Project in Bangladesh¹⁷' with the

representatives and support staff. Motivation programme will be carried out in order to sensitize all concerned on the role and functions of village courts and their benefits on the overall justice system.



¹⁷ It intends to develop capacity of the village court members, elected

partnership of the European Commission (EC) and UNDP Bangladesh. Village Courts offer a local justice service with very minimal cost and time. If local disputes are resolved through village courts, it can establish peace and unity at the locality. Similarly, the effective village courts can enhance societal cohesion to fight against local issues including poverty reduction.

Apart from the government initiatives, the international community as well as non- government organizations (NGOs) have long lobbied their donors for just such types of funding. Human security initiatives, which offer relevant NGOs the opportunities to enjoy the kinds of flexible, multi-dimensional support which many of them have only dreamed about, will therefore attract a number of innovative and experienced NGOs.

In short, while NGOs are still likely to be most concerned with the essentials of improving human development, becoming involved in human security initiatives helps to strengthen them as organizations and to reinforce and extend the contribution that they are able to make to the people with whom they already work.

We recommend the following as way forward to reinforce rural justice system:

- Village court to be held in public on a regular basis.
- Elaborating rules for refusal when a chairperson of the village court has family or business relations with a party in the dispute.
- Rotating chairmanship of the village court among council members.
- Contents of Village Courts Act, including jurisdiction, contempt of court provisions, appeals procedure, power to summons.

- Substantive legal training regarding a core set of fundamental rights which village courts would be required to respect.
- Arbitration technique: Raise the jurisdictional limit on the value of village court cases, so as to avoid the present trend of higher-value cases landing in the less formal Shalish.
- Review the effectiveness of enforcement procedure.
- Ensure proper capacity building support to the UP members in the use of this procedure in order to establish proactive judicial supervision of village courts, for/in compliance with fundamental rights and with procedural requirements.
- Expand the scope of NGO-reformed Shalish.
- Ensure the independence of legal aid efforts which aspire to hold the state accountable.
- Legal aid organizations should support village courts and monitor them for compliance
- Engage in more action research into the demand for justice and the impact of the various justice institutions on the lives of Bangladeshis, and make use of this information in the design of policy
- Following standards are to be taken into account while examining the Shalish structure:
 - ✓ Rules of "fair play" for issues of social justice
 - ✓ Social justice requires both that the rules be fair, and also that people play by the rules.
 - ✓ Equity, Equality, Neutrality, Consistency, Fair Share, Fair Play and Trust.
 - ✓ Symbol of social harmony
 - ✓ Spirit of social coherence

- ✓ Ahead of undue influence
- ✓ Presence of third party to monitor the functioning of the arbitration
- ✓ Standard procedures of judgment leads to reasonable verdict
- ✓ Presence of judgment capacity of the judges

Conclusion

In Rural Bangladesh dispute resolution with the given local government structure is one of the core needs of rural citizens especially for the poor, who cannot access to formal courts. Transformation of the local justice system is central to the enhancement of equity and inclusion, within the context of broader local governance reform in Bangladesh. The village court can help to bridge between Bangladesh's informal and formal justice institutions in providing a fair arbitration process leading to delivering justice and human security.

With a view to enhancing the fairness of village courts, policy makers can deem limiting the authority of the UP chairperson, inclusion of refusal rules, requirements of public announcement of the sessions, and the right of parties to exclude a panelist. Insisting that village courts apply the general body of substantive formal law may be unworkable and imprudent. But fairness may be served by specifying a core set of fundamental rights with which village court decisions would be required to comply.

To improve the effectiveness of village courts, currently the government is implementing a village court pilot program. This program is imparting greater training to the UP members, increasing in the jurisdictional limit on village court cases, streamlining the process for enforcing decisions, creating a system for proactive

judicial supervision of the courts' compliance with fundamental rights and with village court procedure, and the providing administrative assistance for the running of the courts. The pilot phase of the village court program is to be scaled up in future to enable all UPs to activate village court under their jurisdictions.

Civil society's sincere endeavor in legal aid and alternative dispute resolution remains crucial. Civil society should come forward as in the past to consider expanding, and better coordinating, the provision of NGO-facilitated shalish as well as support for and monitoring of village courts. Legal aid based organizations should continue their efforts with the same spirit to ensure accountability at the local level. NGOs can employ legal action as well as broader advocacy to respond to corruption, abuse of authority, or failures in service delivery by the Union Parishads.

A truly informed strategy for strengthening local justice will require sophisticated quantitative and qualitative research into the demand for justice and the impact of the various justice institutions on the lives of Bangladeshis. And translating such information into action would depend on greater strategic coordination among branches of government and among civil society organizations.

The time has come to re-examine the movements for rule of law and for decentralization in order to avail of the opportunity to focus new energy and resources on improving justice at a local level. All stakeholders .i.e. government, civil society, NGO, United Nations and Donor Agencies should work shoulder to shoulder to activate the village court in each and every Union to ensure fair play in local dispute resolution and contribute towards protecting the human security of rural communities in Bangladesh.

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