

FROM RULE OF LAW TO LEGAL EMPOWERMENT OF THE POOR IN BANGLADESH: TOWARDS AND AGENDA FOR CHANGE

INTRODUCTION

After discovering the route to America, Columbus felt that even the sky was not beyond his reach. An angry courtesan once asked him whether he truly believed that he was capable of doing anything. When Columbus gave him a positive nod, the courtesan dramatically presented an egg and told him, "Fine, then place this egg on the table but remember one thing, it must stand straight." Columbus took that egg, broke the lower part of the shell and with a smile he placed it.

The present legal system of most of the developing countries have become like this broken eggshell. Following Western models, we have established our legal system and our main emphasis is on maintaining the formal structure based on a top-down approach. However, if the eggshell is broken, the yolk is bound to come out and that, actually, is what is happening in Bangladesh at present. With too much formalism and too strenuous emphasis on the normative part of the law, the poor are left with virtually no access to formal justice and legal aid. Even the poor do not feel motivated to go to a formal court when they have the opportunity to do so to seek justice.

In last few decades, "Rule of Law", which is defined as equal treatment for every citizen under the law, equal legal protection and accessible justice has become an integral element of Good Governance (World Bank, 2002, p.1). The establishment of a society based on rule of law demands a set of strategies or ideas and in order to support these ideologies and strategies, the "rule of law orthodoxy" was introduced. It is an instrument, an institution, a tool "...geared toward bringing about the rule of law" (Golub, 2003, p. 7). However, in recent years, it has been seen that this concept is not working effectively.

The problems of the present Rule of Law orthodoxy are many folds. First, based on a top-down approach, it solely concentrates on state-dependent legal institutions-building or rebuilding courthouses, constituting legal reforms, training of judges, lawyers, etc. As a result, though the supply side is well equipped, the demand side is often not even touched. Second, it is based on the assumption that the eradication of poverty depends on smooth functioning of market mechanisms and legal reforms should be aimed at to create such an environment, which will help the smooth functioning of the market in a society. Thus poverty alleviation method may be compared with "trickle down", which has failed a long time ago (ibid, pp. 7-14). Thirdly, by emphasizing on foreign expertise and methods, developing countries are blindly following strategies without considering whether it would suit their context or not. This situation becomes worse when it accommodates too much formalism. De Soto noted that this situation actually forced most of the citizens to "...run into Fernand Brudel's bell jar, that invisible structure in the past of the West that reserved capitalism for a very small sector of the society" (De Soto, 2006, p. 153). Fourthly, the present legal system, every now and then, considers law according to its 'normative aspect' and thus

denies 'the real-world components and 'societal context' (Cappeeletti, 1993, p. 282). As a result, the present context of rule of law fails to ensure the access to justice for all, to consider a primary element –“the people, with all their cultural, economic and psychological features” (ibid, p. 283), to bring the judiciary to the people, to meet their needs.

Legal empowerment has come up as a response to these problems. It deals with the people who are left out of the Columbus' eggshell. It aims to arm them with legitimate instruments like legal aid or consciousness, to help them to take control of their life. It moves out of the usual domain of law (in its normative sense) and emphasizes on empowerment. Its primary focus is on eradication of poverty through steps taken by the government to "...give all citizens, especially the poor, a legitimate stake in the economy, thus making it the right of all citizens, and not the privilege of a few, to have access to user and property rights and other legal protections" (CLEP, 2006, p.). But an important issue to remember is, it is not contrary to rule of law rather it "...both advances and transcends the rule of law" (Golub, 2003, p.7). It demands a holistic approach to include the poor through both formal and informal legal systems (Harrold and Hasan, 2006, p. 1). Usually the formal system is trapped in the hand of the minorities, the majority of the population is not affected by it (Golub, 2003). Legal Empowerment, thus, is both a process and a goal to let the majority use the law to take control of their life (ADB, 2001). In other words, the goal of Legal Empowerment is "...to increase disadvantaged populations' control over their lives" and the process is- "the use of legal services and related development activities" (Golub, 2003). Metaphorically speaking, it is about rebuilding the Columbus' eggshell where the yolk would not come out of it. Legal empowerment advocates for increasing and effective participation of the civil society to ensure the participation of the poor in the legal procedure. Taking into consideration the need of the poor, issues and strategies depend on the necessity of the poor and the top-down approach is converted into a bottom-up one. Moreover, the informal justice sector is given due consideration (Golub, 2006, pp. 25-26).

Within this theoretical and empirical context, this article describes the state of both formal and informal justice systems in Bangladesh and their problems in ensuring access to justice for the poor. It then recommends an integrated and interconnected model of legal institutions working towards legally empowering the poor.

FROM LEGAL EMPOWERMENT TO ACCESS TO JUSTICE

People cannot be legally empowered unless legal services are accessible to them. 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, p. 686).

In other words, if a legal system depends only on the formal structure and ignores "...counseling, mediation, negotiation and other forms of non judicial representation" (Golub, 2003, p. 26), the door to justice may be locked for many. Formal system must work hand in hand with the informal sector in a comprehensive manner and to make it work a close look at both of them is necessary.

FORMAL AND INFORMAL LEGAL SYSTEMS IN BANGLADESH

Taking into consideration the informal ways of dispute resolutions, we can divide the overall justice sector into two parts- the formal justice sector and the informal one.

From the highest tier, i.e., the Supreme Court to the lowest one, i.e., the village court has been included in the formal justice sector. On the other hand, the informal sector includes *shalish* (informal justice conference) and NGO-organized mediation (EC, 2005).

Part VI of the constitution of the people's republic of Bangladesh deals with the formal justice sector. According to the constitution, the Supreme Court of Bangladesh is the highest court. It has two divisions- the high court division and the appellate division (GoB, 1972).

The district and session courts lie below the Supreme Court. Headed by a district judge (formally titled as District and Sessions Judge) a district court deals with both civil and criminal matters. Metropolitan cities now have separate criminal court as Metropolitan Courts of Sessions to deal with crimes committed within the metropolitan areas. Below the sessions court, the next lower tier is the magistrate's court, which deals with crimes punishable with imprisonments of upto 5 years.

In case of civil matter, the bottom most court is the court of an assistant judge. The village court lies beneath the magistrates court (criminal matter) and court of assistant judge (civil matter) (EC, 2005, p. 27-28). Except the magistracy, all other judges are members of the judicial service "which is controlled and supervised by the MLJPA and Supreme Court" (ibid, p. 28). The magistrates are the members of the administrative service and their control lies in the hand of the executive branch through Ministry of Establishment and the Cabinet Division.

Based on the types of crimes and issues dealt with, we have found two types of courts, namely civil and criminal. Section 9 of CPC allows the civil courts to have jurisdiction to try all suits of civil nature. However, the nature of jurisdiction varies for different civil courts. In total, four types of jurisdictions are known-

Territorial jurisdiction, which allows every court to have its own local or territorial limit; pecuniary jurisdiction, according to which "...a court will have jurisdiction only over those suits, the amount or value of which does not exceed the pecuniary limits of its jurisdiction." Section 6 of the Code of Civil Procedure, 1908 and section 18-21 of the Civil Courts Act, 1887, deals with pecuniary jurisdiction; jurisdiction as to subject matter which empowers different courts to decide different types of suits and original and appellate jurisdiction which allows a court to entertain and decide suits and appeals (Sec 9, CPC, Bangladesh, 1908).

Section 6 of the Code of Criminal Procedure, 1898 provides the foundation of five classes of criminal courts beside the Supreme Court. They are-

- i. courts of the session judge
- ii. courts of metropolitan magistrate/ District Judge (outside the metropolitan area)
- iii. court of 1st class magistrate
- iv. court of 2nd class magistrate
- v. Court of 3rd class magistrate (Section 6, Cr.PC, 1898).

Among these justice institutions, in courts of the session judge, on being conferred with the session power, the district judges and the additional district judges act as the sessions judges while joint district judge acts as assistant sessions judges, respectively. In both criminal and civil cases district and additional district judges are both courts of trial and appeal. For example, in criminal cases, these judges are trial courts for crimes which are punishable with imprisonment of more than 10 years, while they also hear appeals against conviction and sentences of upto 5 years of imprisonment passed by joint district judge or Magistrate, 1st Class The court of metropolitan magistrate is situated in metropolitan area and the other three classes of court are situated in district areas.

Besides this, there are also courts of – (a) district magistrate and (b) additional district magistrate. Appointed by the government, the deputy commissioner performs the duties of a district magistrate and additional deputy commissioner acts as an additional district magistrate. Following the Village Court Ordinance of 1976, the Union *Parishad* conducts the village court that deals with petty and non-compounding disputes.

In the informal sector, the two well known justice procedures are- *shalish* and NGO-sponsored mediation and justice conferences. *Shalish* actually means- “the practice of gathering village elders for the resolution of local dispute” (The Asia Foundation, 2002, p. 6). *Shalish* can be conducted in various forms- it can be arbitrary or mediatory or a blend of the two (Golub, 2003). *Shalish*- the arbitrarily one is known as traditional *shalish* conducted by the village elders. As they are considered as respected or powerful, their decisions always carry a great weight (Khair et al., pp.8-9). With a credible past, in a case of a dispute resolution, at present, this particular system either had “completely broken down” or had “become largely inoperative” (Siddiqui, 2000, p. 148).

Relying on the basic principles of *shalish*, i.e., being prompt in problem solution and providing equitable justice, NGOs are using it to ensure access to justice for the poor (ibid, p. 149). Developmental and legal NGOs in Bangladesh are contributing to modernize the *shalish* process to make it more acceptable and equitable. They “...have conducted training and offered advice and assistance to *shalish* members including

training in law, providing legal advisers and providing legal aid where recourse to the formal system was required (EC, 2005, p. 61).” Thus, the NGO-coordinated *shalish*, also known as Alternate Dispute Resolution (ADR), is actually a redefinition of the traditional *shalish* which adds “...specialized training, the appointment of women mediators or the convening of mediation panels with specialty knowledge of women’s rights or other issues” (ibid). Thus, the NGOs are trying to provide a high-breed justice to the poor that aims to utilize the ‘bests’ of both the formal and informal justice institutions.

BARRIERS TO ACCESS TO JUSTICE (FORMAL RULE OF LAW) FOR THE POOR

Despite the working of a fully structured formal justice systems, traditional informal systems and NGO-sponsored modified systems, there are numerous problems that impede access to justice for the poor. The problems related to access to justice in formal systems has two dimensions. The first one is to identify the hurdles that hinder the access to court (Hasle, p. 3). In this paper, we tried to identify these problems under the title ‘procedural and systematic problems of formal court’. The amount of literature about this particular dimension is quite huge as well as the number of identified problems. However, the second dimension is rarely touched. Anderson put it in this way-“access to justice required more than being able to present a grievance in front of a court, .. or before a mediation panel, crucially provided your claim is recognized as legitimate, access includes an effective remedy whereby your right is translated into reality” (Anderson, 2003, p. 2). Thus, the problem lies in “translating right into reality”. The formal system often fails to find the effective remedy or in other words, remedy to the court is many a times quite unacceptable to common people. The very word “justice’ has two different meanings- rather than going by the book, the poor often prefer justice to be either realistic or harmonistic. We have divided the discussion on this second dimension into two parts- the first part deals with the theoretical dilemma concerning the idea of justice and the second part deals with the mindset of the rural poor.

THEORETICAL DILEMMA

This section takes into account two different dichotomies. One of them is retributive versus restorative justice and the other one is distributive versus commutative justice.

Retributive versus Restorative Justice

In the formal legal system, justice follows the retributive principle where the liability is vested upon the State to “...fix the legal guilt, not the factual guilt.” Any crime is

considered against the state and the state, after being sure that the very person is legally guilty and liable under the law, takes necessary arrangement to ensure that "...the [legally] guilty must get just deserts" (Christie, 1977). This particular model emphasizes on the process and makes sure of causing the similar pain in return of pain. On the other hand, restorative justice emphasizes on restoration of the harmony that the particular crime had disturbed. According to Zehr, "It creates obligations to make things right. Justice involves the victim, the offender, and the community in the search for solutions which promote, repair, reconciliation and reassurance" (Zehr, 1990). So the basic difference between retributive and restorative justice is whereas the former demands the punishment of an offender and considers it as the only way of preventing further crime, the latter tries to heal the wound and bringing back the harmony by allowing the offender in taking part of the healing process (Jahan, 2005) .

For instance, let us consider a case. In a village, once an unmarried woman got pregnant. Later, the man who allegedly had a physical relationship with that woman admitted the guilt but refused to marry her. Now, the retributive justice would say, the court will take necessary action against the man once the guilt is proven. The action may include imprisonment, compensation etc. However, it could have created certain problems, which the formal system would fail to address. First, taking into account the social background, the girl might never get married. After getting out of jail, the man may take revenge etc. On the other hand, in this case, restorative justice would try to reestablish the harmony. Following a restorative principle, the man may be ordered to marry the mother of his child if the woman wishes or he can be fined with ample amount of money so that the woman will not face any trouble in future. Interestingly, our several field research projects have found that most people of the rural part of Bangladesh prefer the restorative justice and as the formal system does not allow it, they tend to depend more on the informal system like *shalish* (Jahan, 2005; Ali and Alim, 2005; World Bank-BRAC ongoing research, 2006).

Distributive versus Commutative Justice

According to this dichotomy, commutative justice tries to ensure restorative justice within legal bindings. At one end, it tends to follow the law and on the other hand, ensures equal exchange in all cases in order to restore the status quo. It means, "The party who has lost resources to another has a claim for the amount necessary to restore his original position" (Sadurski, 1984, p. 335). However, distributive justice is more radical than commutative justice. Pointing out that the legal bindings may often fail to ensure equal exchange, it emphasizes on defining what is just according to social standing of an individual. Based on the principle that profit or loss in case of seeking justice may depend on the relative power of an individual, it demands that while

delivering justice, it must take into consideration the impact it will create on an individual's life (Sadurski, 1984, p. 335-337).

For the case that has been mentioned in the previous section, commutative justice may as well fail like retributive one as due to legal bindings, it will not consider the impact of the justice imposed on the unmarried mother of a child. Distributive justice on the other hand will consider the social status and outcome of that particular incident on the individuals concerned. If both the man and woman share an equal responsibility in that particular relationship, justice should distribute the burden of restoration equally on both. Therefore, either they will marry each other or the father of the child will provide allowance for his unborn child until he/she becomes 18 years old.

The outcome of the analysis of these two dichotomies is as formal legal systems depend on legal bindings solely and emphasize on law in its normative sense, it always ignores the meaning of justice as reflected by the society or by the individuals living in the society. People have repeatedly expressed in our field level focus group discussions and in-depth interviews that this so called justice- be it retributive or commutative, does not reflect with their own understandings of justice. In case of getting justice, their primary concerns include not punishment but the restoration of harmony and compensation to the victims (World Bank-BRAC ongoing research on justice, 2006).

Psychological Barriers

The failure of the formal legal systems to understand the mismatch between the peoples' perception of justice and the justice as offered by the formal rule of law may well be forcing the poor to move towards the informal legal system. The poor may confront a psychological barrier to go the formal court. For further illustration of this point, let us consider a situation where the formal system is functioning smoothly. Systemic and procedural problems like bribes, corruption, years of backlog and delays have finally been eradicated. What will happen in terms of access to justice for the poor in this 'ideal' or 'perfect' rule-of-law situation? Will the disadvantaged or the poor people rely on the formal system more? We argue that the answer to the last question will be a "NO" because of formal systems' adherence to formalistic and retributive principles.

It is often argued that poor people tend to use informal systems in Bangladesh because the access to justice through formal legal system is troublesome and faulty. Several recent studies have also indicated that majority of rural people get access to justice through the non-formal systems (Siddqui 2004, Harrold and Hassan 2006). However, an ongoing research conducted by World Bank and BRAC revealed an interesting point. According to the preliminary findings of this research, even when the situation is ideal,

i.e., the formal legal system is working without any flaw and existence of any political or economic barrier, the majority of the rural people will still seek justice from the informal systems. To most people, this particular system is unfamiliar as it is not the “son of the soil”, but brought in and imposed by the foreign rulers mainly to serve their purposes and thus they act against the people of this country. Besides, the laws, their procedures, arrangements, and people associated with it are unknown to majority of the common people. This alien feature of the formal legal system make the formal courts as elitist institutions by the poor. In fact their perception is not all *only* ‘perceived’ as after the colonial period very little was done to make formal justice institutions people-oriented. The elites resumed the role of colonial rulers and retained the rigid nature of the system that *de jure* excludes marginalized people from it. This particular psychological barrier will be difficult to address even if the formal legal system promises a fair trial for the poor.

“People’s participation” (which can be defined as the people’s way of understanding about justice, crime, punishment etc.) in the legal system is what the rural people demand and that is exactly what the formal legal system defies. They do not have any say about how the problems are to be solved, who will solve it, and what will be the outcome. Instead, all formal court procedures are ordained in a manner that goes against their understandings. The point is, many of the procedures, (i.e., from addressing the problem of the rural people to deliver the verdict), followed by the court is either unacceptable or beyond understanding of the poor even when the procedures are followed with utmost fairness.

Thus, the gap in what is delivered and how the deliverables are perceived by the poor act as a psychological barrier for the poor to access to formal justice. This particular psychological barrier has two dimensions- (a) the mismatch between the way justice is served in formal legal systems and the way people think it should be done and (b) the lack of control they are able to exercise upon this system. Moreover, in Bangladeshi context, the systemic and procedural problems of the formal legal systems exacerbate the situation for the poor. For example, due to its rules and lack of resources, the court considers some problems while leaving the others out. The nature of the problems of rural people guarantee that majority of these will be left out by the court. So, at the very first step they are rejected from getting access to formal legal system because of the apparent pettiness of their problems, which create the notion that court is not for them and ultimately leads to the first step to keep a distance from the court (UNDP, 2002, p. 92). The next section describes the systemic and procedural problems that formal justice systems suffer from which in turn limit the access to justice for the poor.

SYSTEMIC AND PROCEDURAL BARRIERS RELATED TO FORMAL LEGAL SYSTEMS

Justice delayed, justice denied

In any literature on the legal system of Bangladesh, delay in dispensing justice is considered as the number one problem that hinders the access to justice. "There are some civil cases which were filed during the Pakistani regime and are still under trial," lamented one bureaucrat in an interview. Too much time often results into too much money. There are many reasons for this delay. First, leakage of civil and criminal procedure codes allows the cases to be lengthy. Lawyers in some cases also play their part in delay because more delay will ensure more earning for them (Osman, 2006). Second, the lack of a sufficient number of judges and courts force a judge to deal with five to six thousand cases in a year. Thirdly, even after justice is delivered, it cannot be enforced until the confrontational parties receive a written copy of the judgment. A researcher found out, "in some cases, the judges ordered immediate issuance of the court order and signed it at once but in most cases, this whole process took a lot of time" (ibid). Fourthly, criminal cases are delayed due to two reasons: the delay in submission of police report and the delay in court. Police takes long to submit an investigation report due to shortage of manpower and excessive workload as well as corruption in a police station. When a final charge sheet is submitted to the court, it becomes the place where justice is stuck. "In one year, 40% to 60% of the cases are charge sheeted but only 25% of these cases are put on trial. Following this rate every year cases are accumulated causing a huge backlog", informed a police official (Jahan and Kashem, 2006). Fifthly, dissolution of a bench stops the procedure of the cases of that bench. Later, when that particular bench gains its jurisdiction again, the suspended cases are re-opened from the very first stage. As a result, justice is not delivered in time and a backlog is created. Up to 2003, 3,500 petitions for leave to appeal and 700 appeals were pending at the appellate division (EC, 2005). In high court division, 150,000 cases are pending (ADB, 2001). The situation is even more severe in lower courts. Everyday, a judge has to deal with 100 to 150 bail prayers. The result is, in civil courts the number of pending cases are 473,000 (EC, 2005) whereas in criminal courts the number is even greater- 569,017 (GoB, 2003 **to be inserted in reference**).

Outdated Laws:

In the case of criminal court, some of the primary legislations are almost 150 years old (Kamal, **year**, p. 112). The British heritage still plays an important role and the judiciary still follows some penal statute "...the sole purpose of which is to restrict the movement of the poor" (Hoque, 2003, p. 81)". Ignoring the dynamicity of law is placing it in a static position where laws are not keeping pace with the changing pattern of crime.

Politicization of the Legal Sector

Legal sector has usually been considered as the utmost source of accountability. However, in recent years, the particular phenomenon- politicization has touched this very sector. There is little doubt in the fact that the lower courts are often politicized (Osman, 2006). "I know a magistrate who sits in court only once a week and the rest of the week, he stays in Dhaka," commented a lawyer. Lack of accountability is paying its price. Bribery is quite common, even certain documents can be "lost", if proper amount of money is spent. Also, the High Court and the Appellate Divisions are not beyond its reach. In its "State of Governance Report 2006", Center for Governance Studies has described the recent incident in which the decision taken by the chief justice regarding writ petitions filed challenging the president's assumption of the head of caretaker government and resulting violence as "unnecessary entanglement of the judiciary in political controversy". It seems that the very concept of the Caretaker Government has opened a floodgate for politicization where the ruling parties are playing their part to ensure that the last retired chief justice is someone who can be termed as politically employed (CGS, BRAC University and RED, BRAC, 2006).

Case Management

In Bangladesh, a judge has to perform both the administrative duties and the normal work of justice (Osman, 2006). Lack of a systematic delegation of authority in court management makes the judges overburdened. There is no database about the number and status of cases dealt by a court. Though IRIS prepared a central database to monitor the number of pending cases/function of judges in five districts, it has not yet been implemented.

Low Quality of Judges and Court Staff

For adversarial system to work, efficient and qualified lawyers are an essential precondition. During the British period, there was a provision that to practice law, a person had to be on one-year probation in court and in the chamber of a senior lawyer. To enroll in the high court, a lawyer had to practice five years in lower courts. However, in 1962, President Ayub Khan simplified this provision that after two years of practicing in lower courts, a lawyer could enroll in high court. Besides, we have observed that judges are sometimes appointed on political consideration without considering their educational background and training received. However, "political appointments of public prosecutors are unavoidable, but such appointment will not work if the appointees don't know the law," opined a public prosecutor (Osman, 2006; EC, 2005). In addition, renowned lawyers are reluctant in taking up the job of judges, as it would limit their income.

Shortage of Manpower

With the increase of the population of the country, the number of litigations has increased as well. However, the number of courts and judges and other personnel involved in the system has not been increased sufficiently. It is found that almost about 10,000 cases are filed everyday. Under the circumstance, it necessitates to enhance the number of court and judges for speedy disposal of the cases filed everyday.

Ineffective Law Enforcement Authority

There are many flaws in the law enforcement mechanism of both criminal and civil justice system. In the criminal cases, police reports are the foundation of criminal justice. The police arrests, frames the case, investigates and submits charge sheet to the court inspector. Police does all the preliminary work of justice, based on which judgment is delivered from the court. As the police are the framer, investigator and reporter of the case, there is huge scope for manipulation (EC, 2005). In some cases, charge sheet depends on the amount of the bribe. Sometimes they even manipulate the murder case by tampering evidence. "Justice is affected due to corrupt practices of police. They make weak charge sheets with an attempt to weaken the case they get bribes from the offenders", a journalist added (Jahan and Kashem, 2006). Moreover, police personnel are often used by the ruling political party. The ruling party also appoints police personnel from the party cadre. As such, police normally cannot work independently. Corruption in police seriously affects criminal justice (Hasle, p. 7-8).

Police is not accountable to any immediate authority for their deeds. The Superintendent of Police (SP) is not accountable to the District Commissioner as it was before. In terms of capacity, police has many limitations too. Geographical area of a police station/*thana* is too big compared to its manpower. "...the average police people ratio is 1:1400. In suburban areas, it is far greater like 1:14000 while in Singapore it is 1:250", informed a police officer (Jahan and Kashem, 2006).

Separation of Judiciary

Judiciary suffers from a lack of operational independence as the appointment, posting, promotion to the higher court remains under the control of the executive (EC, 2005). Failing to separate the judiciary from the executive forces a judge, while dealing with a case, consciously or unconsciously to think about his appointing authority, which ultimately affect the judgment.

Corruption

After securing the first position as being the most corrupt country of the world, finally this year Bangladesh moved to the third position. The judicial sector, the hope for

combating corruption, most ironically "...comes second only to the police as the most corrupt institution in the country" (EC, 2005).

Lack of Indigenization

We have so far failed to indigenize the judiciary. Instead, it is still operating on the basis of British laws and systems. For instance, given the huge backlogs of cases mainly due to shortage of judges, three months vacation in the high court is quite ridiculous. "In fact, during the colonial days, judges coming from European countries needed three months' yearly holiday to visit home, but in the present scenario these long holidays are quite unnecessary and it only undercuts the performance of justice sector further", observed a politician. During these three months vacation witnesses may forget the case, evidence may be distorted, judges may die or many other unpredictable things may happen (Osman, 2006).

The philosophical, psychological, systemic and procedural barriers together create a negative attitude and reservations towards formal courts for the poor. The suspicion and distrust about the formal legal system is colossal. This negative attitude has been translated through the cultural system, and it is now a matter of disgrace to go to court. As a saying goes, only those people go to court who are bad and dangerous. Another says, in *shalish* you have no other way but truth, and in court you have no other way but to tell lies. Therefore, it is a matter of shame and dishonor, which a few are prepared to embrace. In some extreme cases, the same attitude goes even further and to protect the honor of the village, all the villagers are prohibited or even barred from going to court.

DEPENDENCE OF THE POOR ON INFORMAL JUSTICE SYSTEMS

We have observed that the poor face problems in accessing formal justice systems and tend to use informal systems. Apart from serious crimes like murder, rape and acid violence, which are less frequent, majority of the problems that the poor experience consist of family matters, petty disputes, petty theft, sexual abuse etc. Usually a formal court does not consider these cases because of the insignificance of their nature and the enormity of their amount of more serious cases. Often, these petty cases, if filed in a formal court, are redirected to the Village Court (VC). However, a particular characteristic of these apparently insignificant problems is that from being insignificant they can gain significance and may potentially cause probable injury to the people involved. If resolved earlier through village court or informal systems then the bigger problems (severe injury, violence etc.) could have been averted if they were nipped in the bud. The opinion of the rural people is unanimous here- problems should be forestalled at the first sign of it, not after the damage is done. According to them, court only considers problems when they reach the extreme, whereas the extreme stage can

be prevented if addressed properly in the primary stages through local level institutions (Ali and Alim, 2005; World Bank-BRAC ongoing research on justice, 2006). However, the local level informal justice institutions and processes are not free of problems. The next section describes the constraints that the poor face when they try to access justice through informal institutions.

Problems of Informal Justice Sector

As stated earlier, the informal legal system consists of mainly two institutions-traditional *shalish* and NGO-sponsored mediation and *shalish*. Whereas 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. There are many reasons behind this lowered status of *shalish*. The problems faced by the informal systems are:

Bias: 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). *Shalish* is also a subject to manipulation by corrupt touts and local musclemen who are hired to intimidate the entire process (Golub, 2003). Hashmi, in this case presented a model of “member-matbar-mulla’ triumvirate that takes control over the traditional *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* 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 Parishad. 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. They often sit on the *shalish* and issue fatwa in support of their patrons, the village elders (Hashmi, 2000, p. 137)

NGOs are trying hard to ensure access to justice for the poor and people generally tend to rely more on NGO-organized mediation. To one villager- “justice can be ensured only through NGOs as biasness is completely absent there. However, in some cases, they failed to stand beside the poor. (World Bank-BRAC Ongoing Research, 2006).

Corruption

The wide spread corruption has found its place even in the traditional *shalish* system (Golub, 2003). Until the '80s, *shalish* was conducted by the elders or people who were accepted by all. However, the late '80s witnessed a change in rural power structure and the authority to conduct *shalish* was transferred to the UP Chairman. Often, the UP elected representatives adopt unfair means and align with the rich and justice is denied to the poor.

In case of combating corruption, NGOs are playing a significant role. In a number of cases, they have succeeded to force the shalishkers to make a just judgment. In a particular case, when the shalishkers took Tk. 10,000 out of 15,000 as compensation for conducting shalish saying that “I have spent the whole night ensuring that you will get justice, now give me my share”, the NGOs stood beside the poor and for their constant pressure; the shalishkers were forced to give back the money (Ibid).

Gender Discrimination

One of the main reasons behind the success of traditional shalish is its support towards traditional values, customs and power structure. On the other hand, this traditional outlook supports patriarchy and thus prevents women from getting justice (Haque et al., 2002, p. 22). Women cannot enjoy the opportunity to participate or express opinion in a traditional shalish. The women are not considered even as witnesses (Halim, p. 6-7).

For instance, an Asia Foundation report describes a case in which a victim's husband's dowry demands led to beating her and casting out of the home. She asked for help from shalish but it was quite fruitless as “...I could not speak up...I didn't have the chance to say anything” (Haque et al., 2002, p. 22)

Lack of Legal Awareness

Still today, most people of rural Bangladesh are unaware of their legal rights. Dowry is a common phenomenon in village and the villagers just do not know that giving or receiving dowry is prohibited by the law. Every now and then, the women come to the

NGO legal aid offices to file charge against her husband for battering. In almost all cases, the reason is, failure to pay dowry (World Bank-BRAC Ongoing Research, 2006). The actual meaning of “*Denmohor*” (dower) is not yet understood by women and most of them failed to collect it in time (ibid). For its patriarchal nature, traditional shalish fails to provide justice in these cases and NGOs cannot provide legal help in case of dowry related incidents until they renamed it as “*Bhoronposhon*” (maintenance) (ibid). Thus, with a case of different nature, legal aid is provided but the problem of dowry does not end.

Social Acceptance of Justice Delivered

The acceptance of the outcome of shalish is declining as we observe a declining trend in terms of social values which is ultimately loosening the social fabric. The social norms, customs and context that helped to endure *shalish* as an effective dispute resolution mechanism for long, has started to fall apart. In the past, one of the main reasons behind the effectiveness of *shalish* was the social importance the elders/*shalish*kers carried and the overwhelming acceptability of them. (World Bank-BRAC ongoing research, 2006). However, this norm is becoming non-functional day by day. Time has changed and many citizens now belong to a new generation. Unlike their predecessors, they do not show the same respect or obedience towards elderly and the social acceptance of shalish is thus declining.

Influence of Money and Power

In this era of capitalism, money has become the most important instrument to consider when it comes to justice. Those who have this particular instrument consider themselves above any *shalish*. Moreover, money brings power and moneyed citizens conduct shalish in many instances. In most cases these shalishes are biased.

Declining Status and authority of Shalish

There was a time when the word ‘*shalish*’ was almost synonymous to “law” and everyone was bound to follow it. But, at present, the formal law of the country has made a distinction between “*shalishable*” and “*nonshalishable*” crimes and disputes. As a result, unlike the past, people are reluctant to seek the help of shalish. ‘Boycott’ was an effective instrument of *shalish* but now the strictest penalty that a *shalish* can offer is a fine of certain amount of money (ibid). So, at present the traditional shalish has to deal with petty cases. In major cases like murder or rape, people have to go to the formal legal systems. With the present status of the legal system, they fail to get proper justice there.

Changing Social Norms

The social norms that regulated *shalish* as a dispute resolution mechanism have been changed. In the past, shalishkers were selected according to their reputation, age, personality, status and lineage. Now political leaders and influential persons conduct *shalish* where their age, personality or character is less important than their money and political influence. Besides, the practice of taking money did not exist in past. Those who conducted *shalish* did not do it for themselves; rather they did it for people. Now *shalish* is conducted by political leaders for whom earning money is more important than serving people. Moreover, when political leaders are taking control of the *shalish*, before giving their verdict they tend to consider the effect of this particular decision on his vote banks. In a number of cases, these political leaders took decisions only to make sure that they can get vote of a particular group of people (ibid). Finally, the spread of education is creating an impact on the quality of shalishkers. In the past, when the number of educated people was quite limited, their judgment was accepted by all. However, in recent days, the light of education has put everyone in the same height and no one is likely to consider another one as a well-educated person who can be trusted in case of shalish. The common comment is, “you think he is learned, so what are we *Mofij* (Fool) (ibid)?”. Also in a number of cases, the UP Chairman and members fail to provide justice and creates impediment in case of going to the NGO to seek legal aid. They motivate poor and say, “Why we should go to BRAC with our home affair?” (ibid).

However, the last two problems mentioned above about declining status of traditional shalish and changing social norms are to us the key to legal empowerment and access to justice for the poor. In the past, shalish was the only institution and people did not have any alternatives to choose from. But, at present, formal law and legal system, which in the previous era was somewhat alien to the rural people, is not beyond their reach now. Even the rural Bangladesh is not keeping itself away from the flow of information. The formal laws, which were unknown to most of the villagers in the past, are now known to most of them. Besides, a number of organizations are working in the villages to provide legal aid to the people. Access to media has also been a positive phenomenon for the poor. As a result, *shalish* is losing its importance. But, this low status of traditional shalish does not necessarily legally empower the poor as formal systems have numerous problems.

Despite, problems with shalish, a large number of rural people still consider *shalish* as the most effective way of getting justice. According to rural people, justice can only be delivered by people who live in that particular village. “How can someone who does not know us deliver justice? A judge should be some one whom both the confronting parties know. As he lives with us, he can realize what actually happened” (World Bank-BRAC ongoing research on justice, 2006). This idea goes directly against the idea of justice present in the formal legal system, where to ensure objectivity and fair trial the

judge should be an anonymous person to both the parties. But according to rural people it is impossible to give a fair verdict by an anonymous person based only on the narratives of the incident and without knowing the personalities of the parties involved, and who is telling lies and who is not.

When asked about the biasness of the adjudicator if he/she knows the parties, the rural poor suggest that there is a very little possibility of being biased in a village *shalish* because the status of the shalishkers (mediators/adjudicators) in the present context is unlike the past. Now, their status as good shalishkers has to be achieved not to be ascribed as happened in the past. Being biased will not help them in the long run to maintain it. Therefore, not only do they have to gain the faith of the villagers but also have to maintain their objectivity throughout their lives because villagers have the liberty to choose shalishkers. Therefore, villagers feel that they have more control here in comparison with the formal court where they have to obey the orders of a judge whom they did not have the right to choose. But, as mentioned above, the existing literature and our field-level research do not exactly depict this all-so-good picture of the shalish.

Another reason responsible for people not being at ease with the formal legal system is the lack of control they have on the procedures and processes of the court. In Bangladesh, the legal system is adversarial, i.e., it requires victims to prove the offence with all evidence instead of offenders. A victim has to present the witnesses in front of court, which is arduous and expensive (Osman, 2006). On the other hand, in a *shalish*, a complainant has no such pressure.

One of the main issues that create an impediment in case of engagement of the people with the formal legal system is the amount of time needed to deliver justice. People believe that the first and foremost concern of trial should be to finish it immediately. To them that is the key sign of justice (Khair et al., 2002, pp. 8-9). Another area of the processes of court that shove people's mind away from it is in court they do not have the opportunity to speak for themselves rather lawyers will represent them in court. But rural people consider speaking as the most important means to settle a dispute, because through speaking up their minds, their anger will be subdued. However, according to them the procedures in court block this vent.

Witness plays an important part in the formal legal system. In formal legal systems, a witness is under the oath to speak the truth and perjured him or herself when truth is not spoken. But the very idea of taking an oath is quite meaningless to the rural people as they do not consider it as effective. To them, the setting or arrangements in a traditional *shalish* is far more efficient because they think that it is not possible for one to lie in front of all villagers. Moreover, in most of the cases those who are present in

shalish are themselves eyewitnesses of the disputed incident (World Bank-BRAC ongoing research on justice, 2006). These types of differences coupled with the problems of language, settings and norms led people to drift further away from the formal legal systems.

Moreover, when a verdict is delivered in a formal court, there is no scope to take the opinions of the parties about the solution to be given. But in the local system, parties are generally asked about the best possible solution according to their views. The very idea of “justice” is similar with “mutual understanding” to most rural people. One male mediator puts it this way- “justice means to deliver a resolution after taking consent of both the confronting parties” (ibid). To them, it should be a participatory process where everyone involved will reach into a consensus.

In the eye of the law or to be specific, the formal legal system, all citizens are equal. But living in a stratified society, where social status plays an important role, this concept of ‘equality’ is unacceptable to the rural people. Therefore, whereas in a formal court the degree of punishment will depend on only the crime itself, in *shalish* the resolution will be different for different people based on their social background or status. For instance- “if a problem arises between a father and a son and if it turns out that the fault lies with the father, still, the *shalish* will rebuke the son for his misconduct. Behind the scene, the father will be told, ‘look, its your fault don’t let it happen again.’ Thus, both parties will go home happily” (ibid).

These particular issues are beyond the understanding of the formal court. Undoubtedly, for its elitist outlook and negligence to the norms or values deeply rooted in rural areas, in distant future, even if it is possible to eradicate other barriers such as the economic or political ones, these psychological barriers will remain as significant obstacles, keeping the access to justice through formal system as an elusive dream. All in all, these common problems regarding formal justice sector, getting mixed with the inertia or apathy on the part of the rural poor have started to withdraw them towards the informal system, where too, they have to face a lot of problems but at least the meaning of justice at informal system does not contradict their idea.

The NGOs have come forward to solve the problems that a traditional *shalish* faces. The role of NGOs in this case is quite praiseworthy. They have effectively campaigned for women’s empowerment. However, their success is limited but they are achieving success in a slow but steady pace. So far, their success is two folds. First of all, through providing financial aid, they are giving the women a voice and in NGO-sponsored *shalish*, they are allowing participation of women (Ongoing Research, BRAC). However, what they lack is the acceptability of their action. In a particular case, after getting legal aid from BRAC, a woman was named “BRACer Beti” (*BRAC’s daughter*). In

some cases, getting legal aid from NGOs is considered rather insulting (Ali and Alim, 2005).

The next section specifically pinpoints the problems of formal justice systems as well as the informal shalish based on five stages provided by Anderson. It then recommends an integrated approach to access to justice for the poor.

CONSEQUENCES OF THE BARRIERS IN JUSTICE AND SOCIAL SYSTEMS AND ACCESS TO JUSTICE

As defined earlier, access to justice includes certain stages, which starts with the right to bring the grievances before the court and end up with enforcement of the remedy achieved. Anderson (2003) suggests five stages of access to justice and they are- naming, blaming, claiming, winning and enforcing.

Table 1: Stages of access to justice (Anderson, 2003, p. 2)

Naming	Identifying a grievance as a legal problem
Blaming	Identifying a culprit
Claiming	Staking a formal legal claim
Winning	Getting rights and legitimate interests recognized
Enforcing	Translating rights into reality

The barriers of the formal legal system that have been identified before play its part to make sure that access to justice is denied at every stage. As shown in Table 1, stage 1 demands the identification of a grievance and the filing of it as a legal problem. Two things create problem in Bangladesh in doing so. First, certain grievances of rural poor are not even recognized by the court. For instance, laws related to marital rape, domestic violence are non-existent. The Children and Women Repression (Prevention) Act is also faulty. In most cases, instead of favoring women, it is abused by the husband's families. Second, technicality of law is another problem. Language of law is not understandable and thus access to justice is denied.

Even when the problems related to the first stage is overcome; it only paves the way to the problems related to the second stage. It demands the identification of the criminal. The ineffectiveness of law enforcement bodies and unbridled corruption create hindrance in this stage and thus to access to justice.

If fortunately, someone becomes successful to overcome this hurdle, he has to deal with staking a legal claim. However, the anti-poor laws in the formal legal systems, negative

attitude to the poor among many engaged in legal process and excessive bureaucracy create unwanted delay in processing a legal claim (Hasle, p. 7)

Conquering those particular problems does not always present a success story. In case of the next step, which demands the recognition of legitimate interest, problems like delayed and derailed justice procedure, failure of the poor in countering the fake witnesses often does not bring the desired outcome.

The luckiest of the poor can reach up to final stage, which requires translating his/her right into a reality. However, barriers like corruption, lack of judicial independence and 'abuse of political authority vis-à-vis law enforcing agencies' can undermine the surety of implementation of justice delivered (ibid).

Thus, following Anderson's stages, the access to justice for the poor is denied in Bangladesh as mentioned below:

Table 2: Access to Justice through Formal Legal System: Bangladesh Scenario

Stages	Problems faced in Bangladesh
Identifying a grievance as a legal problem	Inadequate laws, too much technicality
Identifying a culprit	Ineffective law enforcement bodies, corruption
Staking a formal legal claim	Ant-poor laws, negative attitude, excessive bureaucracy
Getting rights and legitimate interests recognized	Delayed justice procedure, corruption
Translating rights into reality	Corruption, abuse of political power

For rural poor, the formal legal systems, from 100-meter sprint, turns into a 100 meter hurdles. The poor are not expected to finish the race without injuring themselves. This injury or fear of injury denies access to justice and forces them to move to the informal legal system.

Until pretty recently and in some cases, still today, to the rural poor, in informal legal system, the most important dispute resolution center is the Traditional Shalish (TS). However, the aforementioned barriers concerning informal legal system are basically due to change in mode of production. The control over TS has changed hand and so has its acceptability. In the past, a council of elders played the role of moral arbiters and settled dispute through shalish (Westergaard et al., 2002, p. 212). As land was the only

source of production, until some thirty years ago, the landowners were the most powerful and influential people and they constituted this council of elders. Societal relationships were patron-client based, in which, enjoying the higher socio-economic status; the landowners provided general support and assistance to people of lower socio-economic status (Khan, 2002, p. 386). They were few in number and enjoyed landslide respect and command. The class structure was simpler and land based, consisting of only four- rich peasants, middle peasants, small peasants and landless (Khan et al., 1996, p. 16).

However, the post-80's villages of Bangladesh had to go through changes. The upgrading of Thana resulted in an "...emergent service sector, including trade and transportation" (Westergaard et al., 2002, pp. 212-213). By the 90s, due to capitalist investment, land has become more insignificant as a means of production. The number and nature of both the patrons and the clients have changed. The new power lords, now in one way or another, are involved in either local legislation or trade (Umar, 1998, p. 152). Now, the rural power holders are:

- "1. Matbars (village headmen) controlling the informal institutions like *Samaj* (society), *Salish* and owning most of the land.
2. Union Parishad leaders controlling formal administrative institutions at local level.
3. Rural political elites representing different political parties at the grassroots level.
4. Government employees at the rural levels.
5. Economic elites controlling economic organizations like cooperatives, deep tube-well management committees, shallow tube-wells, ration shops, fertilizer shops, etc." (Rahman, 2002, p.42)

As a result, vested interests of both patron and client have changed. The "post" of shalishkers now can be achieved through money, political affiliation or involvement with the government. This trend has increased the factionalism between the villagers and decreased the acceptability of the patrons. Westergaard and Hussain in an analysis of rural power structure pointed out that in a particular village, whereas pre-independence period saw only one "Samaj" and one acceptable leader, the number of "Samaj" and leaders have increased to ten in the 90s (Westergaard et al., 2002, p. 214). This is affecting the access to justice through TS in two ways. First, as the number of influential person is increasing, the universal acceptability that they enjoyed previously is declining. Second, each influential person or a patron now has certain groups to

please and certain interests to preserve- be it political or economic. The stages of access to justice can look like this:

Table 3: Access to Justice through TS: Bangladesh Scenario

Stages	Problems faced in Bangladesh
Identifying a grievance	None
Identifying a culprit	None
Staking a formal claim	None
Getting rights and legitimate interests recognized	Biasness, corruption, declining acceptability of the patrons
Translating rights into reality	Acceptability of decision taken

Here informality plays its part in first three stages but last two stages again are locking the door to justice for the poor.

In this situation, we argue that if we can develop an integrated approach to access to justice many of the problems mentioned above may be eradicated or at least may be minimized.

RECOMMENDATION AND CONCLUDING REMARKS

We have started our discussion with Columbus’s broken eggshell and how it deprives the poor from access to justice. In our overall discussions, we have pointed out a number of institutions that should, can or may glue up this broken eggshell. The formal legal system should do this job but they are the one that is keeping the poor outside the eggshell. For its mostly Westernized individualistic outlook and emphasis on legal guilt, it remains far from the reach of the people. For poor, the ‘glue’ could be the traditional shalish which has an entirely Eastern outlook but at the same time, their importance and effectiveness are declining. If the informal system fails to fill in the gap created by the formal system, the situation may become quite dire. However, the positive indication is that the NGOs have come into existence to build a bridge between these formal and informal systems.

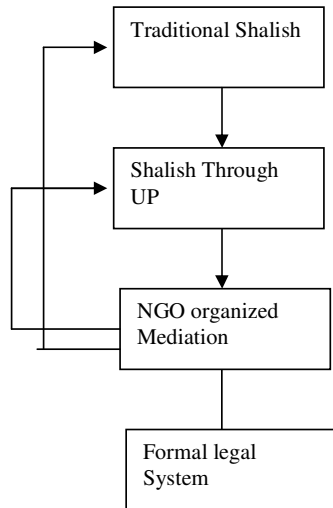
In order to ensure the effective functioning of the legal sector, no one can deny the importance of formal sector. Some reform efforts have already been taken place and they should be accelerated. Thus, if the bridge is built, the formal sector should assure access for the people living on the other side. For this, first of all, laws should be modernized. To reform criminal justice, Code of Criminal Procedure should be revised, to streamline criminal justice; separate Criminal Investigation Department like FBI could be established. Second, the ridiculous three months winter vacation in higher

courts should be shortened. Thirdly, introduction of modern technology is needed in areas of case management. Tape recording machines for recording, computer and photocopier for composing and photocopying documents are essential. Fourthly, it must be ensured that once justice is delivered the copy of that is issued immediately. Fifthly, the salary benefit of the judges should be increased, as the bright, young lawyers are interested in joining the judicial service. Sixthly, separation of judiciary is necessary. In order to free the judicial service from the executive control and to let it remain above the domain of political domination, it is a must.

In order to ensure access to justice, the primary emphasis should be on the informal sector and this sector needs to be strengthened. Now the basic question is how is that possible without compromising the basic human rights of the poor?

So far, the main problems of the informal sector are: it is not structured; it is biased and; it lacks accountability. People actually do not know where to go in case of seeking justice. They either go to the UP chairman and as the village court is not functioning, the very best a UP chairman can provide is a traditional shalish which for many reasons may fail to deliver justice. People, on the other hand, can seek legal aid from NGOs and shalish is also arranged/conducted by them and its outcome may either be accepted or not. Within this context, we propose an integrated structure of justice institutions which will start with the traditional shalish. It will be the lower most tier of the informal sector. The justice system will be restorative and mediation will take place of arbitration. The shalishkers will be the respected or accepted persons and they will receive legal training through NGOs and/or local government. If they fail to resolve a dispute, parties may seek justice from the UP. The UP chairman can follow the Village Court Ordinance, 1976 in case of a dispute resolution or can appoint someone as mediator. If a person fails to get justice here too, he will move to the next level. In this level, the mediation and/or shalish will be conducted by the NGOs. As they are already providing a parallel system of mediation that refines the basic shalish model, it is only the recognition that they need. The mediators in this case may be the trained mediators or the women mediators or the NGOs can convene a panel of mediators, which will consist of people with knowledge of women's rights or other areas (EC, 2005). Besides, NGOs will do certain other duties. They will keep a close watch on the two tiers situated below them; they will provide legal assistance to these tiers. Besides, they will also provide the link between the informal and formal system.

It may look like this:



Ideas are not raw materials that after importation they can be used in setting up various institutions. Every idea, strategy or issue taken to implement rule of law must be in line with the political, social or economic context of a certain country. That is the basic principle of legal empowerment and that is what can glue up the eggshell with the yolk inside. The basic idea of access to justice for the poor in this case will depend on how the Eastern values and systems (traditional system) integrate with the modern Western individual human rights based systems (formal legal System). Reforms and innovations are required in formal systems by recognizing and entertaining the rights of the poor. The formal systems have to see disputes from a restorative perspective, not a monarchical or colonial retributive perspective. The objective of the justice systems should not be inflicting pain, rather to restore and harmonize the society. By, introducing the above mentioned integrated approach to access to justice, the egg can stand straight. And NGOs must play the role of the glue here. And then the access to justice may be translated into reality from rights for the poor.

References:

- Abel, Richard L., 1990, *Capitalism and the Rule of Law: Precondition or Contradiction?*, Law and Social Inquiry, Vol. 15 No. 4, pp. 685-697.
- Ali, T., & M. Alim, 2005, *A Study on Traditional and BRAC Legal Aid Shalish*, mimeo, Dhaka: BRAC Research and Evaluation Division
- Anderson, M., 2003, *Access to Justice and legal Process: making Legal Institutions Responsive to Poor People in LDCs*, IDS Working Paper 178.
- Asian Development bank, 2001, *Law and Policy Reform at the Asian Development Bank*, Manila.
- BRAC, 2004, *Gender and Good Governance in Local Governance of Bangladesh: A Baseline Report of Extension Phase*, Dhaka: BRAC Research and Evaluation Division.
- British Council, 2004, *Regional Workshop on ADR*.
- Centre for Governance Studies, BRAC University and the Research and Evaluation Division, BRAC, 2006, *State of Governance in Bangladesh 2006: Knowledge, Perceptions, Reality*, Centre for Governance Studies, BRAC University and the Research and Evaluation Division, BRAC.
- Commission on Legal Empowerment of the Poor, *Economic Development, Poverty Reduction and the Rule of Law, Lessons from East Asia: Successes and Failures*.
- Criminal Procedure Code, 1898.
- Civil Procedure Code, 1908.
- Christie, N, 1977 "Conflicts as Property." *The British Journal of Criminology*, Vol. 17, January 1977(No. 1): 1-15.
- EC, 2005, *Activating the Justice System in Bangladesh*.
- GoB, Constitution of the People's Republic of Bangladesh, Bangladesh Government Press.
- Golub, Stephen, 2003, *Non-State Judicial Systems in Bangladesh and the Philippines*, Paper presented for the United Kingdom Department for International Development.
- Golub, Stephen, 2003, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, In Carnegie Endowment for International Peace: Working Papers Rule of Law Series: Democracy and Rule of Law, Project Number 41.
- Halim, Sadeka, 2006, *Access to Justice: Situation of Rural Women and Urban Rural Migrant Workers in Bangladesh*. Paper presented in a regional conference on ADR, Mediation and Third Party Arbitration, Kiev, Ukraine.

- Haque, Tatjana, Casper, Karen L., Turello, Dan, Jahan, and Riffat, 2002, *In Search of Justice: Women's Encounters with Alternate dispute Resolution*, Dhaka, The Asia Foundation.
- Harold, Daphnie K. and Hassan, Mirza, 2006, *Legal Empowerment Strategies in Bangladesh, Empowering Women and Poor People Through Legal Matters*.
- Hasle, Lena, 2003/2004, *Too Poor for Rights? Access to Justice for Poor Women in Bangladesh: A Case Study*, MSC Human Rights.
- Hashmi, Taj, 2000, *Women and Islam in Bangladesh: Beyond Subjection and Tyranny*, London, Macmillan.
- Hobbes, Thomas, *Leviathan*, cited in Sadurski, Wojciech, 1984, *Social Justice and Legal Justice*, Law and Philosophy, Vol. 3 No. 3, pp. 329-354.ed.
- Hoque, Kazi Ebadul, 2003, *Plea Bargaining and Criminal Work Load*, Bangladesh journal of Law, Vol. 7 No. 1&2.
- Khan, Niaz Ahmed, 2002, *Rural Development in Transition: An Institutional Perspective, in Bangladesh, On the Threshold of the Twenty-First Century*, Dhaka, Asiatic Society of Bangladesh.
- Khan, Shamsul I., Islam, S. Aminul and Haque, M. Imdaul, 1996, *Political Culture, Political Parties and the Democratic Transition in Bangladesh*, Dhaka, Academic Publishers.
- Jahan, Ferdous, 2005, *Gender, Violence and Power: Retributive versus Restorative Justice in South Asia*, Unpublished PhD dissertation.
- Jahan, Ferdous and Kashem, Mohhamed (2005), *Law and Order Administration in Bangladesh*, working paper, Dhaka: Centre for Governance Studies, BRAC University
- Kamal, Mustafa, *ADR in Bangladesh*, Article Collected from www.lawcommissionbangladesh.org
- Khair, Sumayia, Casper, Karen L., Chen, Julia, Ingram, Debbie and Jahan, Riffat, 2002, *Access to Justice: Best Practices under the Democracy Partnership*, Dhaka, The Asia Foundation.
- World Bank-BRAC, 2006, *Ongoing Research on Justice Sector in Bangladesh*
- Osman, F, 2006, *Problems of Formal Justice Systems in Bangladesh* mimeo, Dhaka: BRAC Research and Evaluation Division
- Rahman, Atiur and Kabir, Mahfuz, *Microfinance, rural power structure and empowerment, A look into changing realities in Bangladesh*, The Daily Star, February 15, 2004.
- Sadurski, Wojciech, 1984, *Social Justice and Legal Justice*, Law and Philosophy, Vol. 3 No. 3, pp. 329-354.

Siddiqui, Kamal, 2000, *Local Governance in Bangladesh: Leading Issues and Challenges*, Dhaka, UPL.

Umar, Badruddin, 1985, *Bangladesher Krishok o Krishok Andolon (In Bangla)*, Dhaka, Jatio Grontho Prokashon.

Westergaard, Kirsten and Hossain, Abul, 2002, *Local Institutions in Bangladesh: An Analysis of Civil Society of Local Elections*, in *In the Name of the Poor, Contesting Political Space for Poverty Reduction*, London, Zed Books.

World bank, 2002, *Legal and Judicial Reform: Observations, Experiences and Approach of the Legal Vice Presidency*, Washington D.C.

Zehr, H. (1990), *Changing lenses: a new focus for crime and justice*. Scottdale, Pa., Herald Press.

INTRODUCTION	1
FROM LEGAL EMPOWERMENT TO ACCESS TO JUSTICE.....	2
FORMAL AND INFORMAL LEGAL SYSTEMS IN BANGLADESH.....	3
BARRIERS TO ACCESS TO JUSTICE (FORMAL RULE OF LAW) FOR THE POOR	5
THEORETICAL DILEMMA	5
Retributive versus Restorative Justice	5
Distributive versus Commutative Justice.....	6
Psychological Barriers	7
SYSTEMIC AND PROCEDURAL BARRIERS RELATED TO FORMAL LEGAL SYSTEMS	9
Justice delayed, justice denied	9
Outdated Laws	9
Politicization of the Legal Sector.....	10
Case Management.....	10
Low Quality of Judges and Court Staff	10
Shortage of Manpower.....	10
Ineffective Law Enforcement Authority.....	11
Separation of Judiciary	11
Corruption	11
Lack of Indigenization	12
DEPENDENCE OF THE POOR ON INFORMAL JUSTICE SYSTEMS	12
Problems of Informal Justice Sector	13
Corruption	14
Gender Discrimination.....	14
Lack of Legal Awareness.....	14
Social Acceptance of Justice Delivered.....	15
Influence of Money and Power.....	15
Declining Status and authority of Shalish.....	15
Changing Social Norms	16
CONSEQUENCES OF THE BARRIERS IN JUSTICE AND SOCIAL SYSTEMS AND ACCESS TO JUSTICE.....	19
RECOMMENDATION AND CONCLUDING REMARKS.....	22

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Normal, Tabs: Not at 6.49"

Deleted: 6

Deleted: 11

Deleted: 12

Deleted: 15