

**NATIONAL CONSULTATION IN  
BANGLADESH ON LEGAL  
EMPOWERMENT OF THE POOR:  
REFLECTIONS**

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## INTRODUCTION

The modern legal system of Bangladesh is fairly old and reasonably stable. It is old in the sense that most laws in operation have been codified in the second half of the nineteenth century and these codified laws regulate the major arenas of legal transactions. It is stable because formal courts have also been in place for more than a century, including the High Court with power of habeas corpus with a large legal community, which traces its origin from the first law courses in government colleges, again, from the mid-nineteenth century. Printed case laws of British court of colonial India were first published even much earlier, from 1795, and the legal landscape was proliferated by printed law reports from the late nineteenth century.

Lawyers had dominated the political landscape till late twentieth century and their commitment to the formal rule of law was reflected in the adoption and enactment of the Constitution – a fairly liberal document with guarantees of the most of the common civil-political rights – within just a year of independence of Bangladesh, in 1972.

This traditional longevity and stability, however, is also symptomatic of, first, the inadequate attention to the evolving social-welfare responsibilities of the state and, second, lack of concern for the plight of the deprived, marginalised and the unfortunate. The Constitution does not recognize ethnic minorities, leading perhaps to the recent political discourse of total denial of the existence of even minorities in the country.<sup>1</sup> The fundamental rights of the Constitution encompass only civil-political ones and the socio-economic rights have specifically been made judicially non-enforceable. The discourse of rights is overwhelming of civil-political nature and the plights of economically disadvantaged and marginalised ones are spectacularly missing.

The procedural laws, enacted more than a century ago, were clearly based on the late nineteenth century *laissez-faire* notions of legal rights and rigid avenues for redress of violations, whence every individual was left to fend for himself and the state only provided the forum for dispute resolution as a third-party umpire. This “adversarial” notion of justice, in the backdrop of a very limited role of a non-welfare-colonial-state still ‘proudly’ defies all attempts at reform; or rather this dominant mode of understanding about litigation and dispute resolution does not even admit of any alternate role for state, law and courts. As a result, there had hardly been any effort to accommodate the issues, rights and concerns of those who had and have been left behind the legally *laissez-faire* state.

Before delving further into this state of Bangladesh legal system and offering you a synopsis of the findings from our exercise in Dhaka, let me briefly inform you of the efforts undertaken to scrutinize the issues of legal empowerment of the poor in Bangladesh. The School of Law of BRAC University was given the responsibility to commission papers on the four thematic issues of the Commission and arrange the National Consultation Process. The initial steps were

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<sup>1</sup> The Hindu religious minority constitute close to 10% of the population – more than 10 million in absolute number – and other religious and ethnic minorities constitute another 2% of the population though their number is dwindling as millions of Hindus have been compelled to migrate to India and other ethnic minorities are forced to merge themselves into the dominant “Bengali” culture and identity.

undertaken from the late 2006, authors were identified by the beginning of the year and initial consultations among authors, other knowledgeable ones and stakeholders were held in January 2007. The drafts of the papers were ready by February and the National Consultation Process was held at the BRAC Centre on Saturday, 3<sup>rd</sup> March 2007. Dr. Naresh Singh, our Executive Director participated in the Process.

I am happy to report that a large number of eminent representatives of the legal and civil society of Bangladesh actively participated in the daylong discussion. Each of the papers was followed by comments of the designated discussants and then the floor was opened for general comments. While I chaired the inauguration session, subsequent sessions were chaired by Dr. Kamal Hossain, former Law Minister who also chaired the Constitution Drafting Committee in 1972; and Professor Rehman Sobhan, a pre-eminent economist of the country who is also an advisor of our Commission. I am happy to report that the students of the BRAC University Law School also made short presentations on their findings about the legal concerns of informal businesses in areas around the University.

## SUMMARY OF FINDINGS

As decided by the Commission, the National Consultation Process revolved around the four thematic issues and summaries of the papers and the discussions are briefly outlined below.

### **Paper One: *Access to Justice and Poverty***

The problem of and the solution to poverty has been a key feature of development strategies of the developing countries for many years. However, the universal recognition of poverty as top-most priority problem, so far, could not stop it from turning into an endemic one. Instead, it is showing the symptoms of becoming the root of socio-political unrest. In developing countries, one significant factor behind the expansion of poverty is the “exclusion” of sections of the population including poor, marginalized and minorities both by the state and other development actors. In reality, they are forced to live in a different world, where lack of access to justice, property rights and legal business has limited their boundary of existence. Therefore, the problems related with poverty may always remain a contentious topic, but may not be solved, unless and until, these marginalized groups are “included” in the whole poverty alleviation process.

If the fundamental rights of the poor are ensured, that does not necessarily mean that these rights will not be violated again. Thus, access to justice is very important in order to find a way out of poverty. For instance, let us consider a situation, in which, the poor, working in the informal sector, have been granted the essential legal tools. However, if they are still exploited, are still deprived, they need to go to the legal system and if the access is denied, the entire process will come to a halt. In Bangladesh, the legal system can be broadly categorized into two sectors- the formal and the informal. Access to justice in case of formal sector has become a daunting task for the poor. Legal complexities, cost, delayed justice, corruption, too much emphasis on the

normative aspect of law have caused the poor to rely heavily on informal sector. However, a number of problems in informal justice sector like bias, corruption, change in rural social structure, which is resulting in declining status of authority and power of the *shalishkars*, are depriving the poor from getting justice.

Anderson pointed out five stages of access to justice- naming, blaming, claiming, winning and enforcing.<sup>2</sup> In Bangladesh, the problem is, both in formal and informal legal system, in case of access to justice, the poor have to face a number of problems in almost all stages. Henceforth, an integrated approach, consisting both the formal and informal sectors, should be developed to ensure the access to justice of the poor.

Legal reform in formal sector is necessary, however, at the same time; the role of the informal sector should be structured and strengthened. A number of NGOs like BRAC, MLAA are providing legal help to the poor and also are playing their parts in arranging Alternate Dispute Resolutions. Through legal empowerment, it is possible to strengthen their role and thereby ensure access to justice.

We propose an integrated structure of justice institutions for legal empowerment of poor 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 Union Council. 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. Besides, NGOs will do certain other duties. They will keep a close look 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.

## **Paper Two: *Property Rights: Problems and Possibilities***

Poverty alleviation without ensuring property rights of the poor is not possible. Without property rights, it is not possible for the poor to have control of their life. Though the single concentration on land while defining property is always accused of narrowing down the definition, in the context of Bangladesh, it will not be inappropriate to emphasize on the narrower version, as "...the search for land as an economic and social goal is very much valid and pursued...by all classes".

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<sup>2</sup> M Anderson, 'Access to Justice and legal Process: making Legal Institutions Responsive to Poor People in LDCs', (2003) IDS Working Paper 178 at p 2.

Property rights, which can be defined as, "...the legal and social rules under which economic and social behavior takes place",<sup>3</sup> are being generated in Bangladesh in both direct and indirect way. The indirect way includes the supply of livelihood support through a system of loans or grants to the poor, which is done by the NGOs. However, in recent times, realization of the importance of land as an aspect of property has forced a number of NGOs to shift their focus and thereby began to get involved directly in handing over the assets to the ultra poor. The country's largest NGO-BRAC is the pioneer in this sector.

In 2002, BRAC has undertaken a project, named, "Challenging the Frontiers of Poverty-Targeting the Ultra Poor", which attempted to negotiate lease of land from the local landowners and give it to the poor. Later, when the landowners refused to re-lease the land, BRAC decided to buy available lands upright and then lease it to the project members.<sup>4</sup> Moreover, attempts of BRAC to ensure social protection of property rights of the poor by helping to set up village support groups has also achieved success. This success story of BRAC is quite noteworthy, as it "...has been the example of village elite often in collaboration with other middle and lesser poor helping the economic rights of the lesser ones."

On the other hand, the direct way includes the government handing over khas or their own land to the poor. The government, which is the largest landowner of the country, is constitutionally committed to transfer land to the landless poor, which comprises 57% of the total population.<sup>5</sup> However, the validity of this process has been questioned by the social workers and it has been noticed that in many cases, the genuine landless people are not getting benefit from it. There are number of reasons behind it. There is the allegation of manipulation of the method through which people are supposed to apply for the khas land. In this way, at least 25% of the eligible are denied directly.

The official preparation of list of landless is also faulty as unfair exclusion and inclusion take place. Many a times, the landless are not even informed about this distribution, which allows the landed class to have control over khas land. The complexity of legal procedures and presence of corruption also plays its part.<sup>6</sup> There is another dimension. Once deprived from their right on khas land, it is not possible for the poor to seek justice from the court. Land litigation is costly for the poor to afford. A recent study shows, "...to meet up the cost of land litigations including incidental cost amounting to an average of Tk. 89,424 per litigation, the affected one has to sell movable assets followed by immovable one".<sup>7</sup> Had distribution been fair, this transfer of property would have contributed a lot in case of reducing poverty.

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3 M Veseth, *The Economics of Property Rights and Human Rights*, American Journal of Economics and Sociology, Vol. 41.

4 BRAC documents on the CFPR-TUP, 2003.

5 M K Uddin, 'Needs for Land and Agrarian Reform in Bangladesh', paper presented at the Regional Workshop on Land Issues for Asia held on 4-6 June 2002, Phnom Penh, Cambodia.

6 A Barkat and P K Roy, *Political Economy of Land Litigation in Bangladesh: A Case of Colossal National Wastage* (Dhaka: ALRD and Nijera Kori, 2004) at 112-115.

7 A Barkat and P K Roy, *Political Economy of Land Litigation in Bangladesh: A Case of Colossal National Wastage* (Dhaka: ALRD and Nijera Kori, 2004) at 102.

Therefore, the concept of legal improvement can play its part in this regard. NGOs like BRAC have shown the success of leasing land to the ultra poor is quite noticeable. On the other hand, there is no doubt that fair distribution of khas land can also play a significant role. Legal empowerment demands the involvement of the civil society organizations in order to empower the poor with legal tools and also to make them aware about their rights. Activities of NGOs like “Nijera Kori” has also shown that consciousness-raising of the poor can play an important role in case of ensuring property rights.

It is, thus, only civil society actors such as a few NGOs that have engaged in the property right issues of the poor and the legal system has remained totally silent on the score. Besides land, the few assets that a poor person may have are not covered by any legal documentation process. In fact the legal system remains saddled with the archaic notion of property that does not provide for legal recognition of anything except for land and very valuable assets such as large-scale machines, tools, mechanized transport and such other high-value goods. Absence of legal recognition and documentation means that these are transacted or can be transacted only in the informal sector and there is no mechanism for redress of breaches in these transactions.

Also, river erosion, a frequent occurrence in certain parts of Bangladesh, results in loss of lands of peasants and others, leading to sudden improvisation. The recent abolition of claims to new lands of those who had lost their lands to river-erosion means that sufferers of these natural calamities are not even recognized by the legal system. Technically, those who have lost land due to these calamities have certain priorities in the distribution of government (khas) lands, but the absence of a sensitive redress mechanism means that these entitlements are confined to papers only.

Categorization of properties and assets, keeping in mind the typical small-value assets that a poor may possess. and legal documentation through a differentiated process would certainly offer some measure of legal protection to the poor. Legal documentation of small properties and assets is an arena of legal system and regulation, which needs urgent attention for legal empowerment of the poor.

### **Paper Three:           *Legal Mechanisms To Empower Informal Business***

Informal entrepreneurship and employment need to be understood in relation to the legal framework in any given country.<sup>8</sup> The informal sector is comprised of micro-entrepreneurs who choose to operate informally in order to avoid the costs, time and effort of formalization including incorporation, tax registration, obtaining licences and fulfilling other regulatory requirements or because of lack of literacy, skills and entrepreneurship education. Many informal

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<sup>8</sup> There is a distinction between illegal processes or arrangements and illegal goods and services. While production or employment arrangements in the informal economy are often semi-legal or illegal (e.g. because of absence of required licence, tax registration etc), most informal enterprises and workers produce and/or distribute legal goods and services. One part of the informal economy – the criminal economy – not only operates illegally but also deals in illegal goods and services. But it is only a small part of a larger whole.

entrepreneurs would be willing to shift to formality if the costs, time and effort of formalization are reduced. However, sometimes it is argued that informal sector should rather be seen as subordinated economic units/micro firms and workers that serve to reduce input and labour costs and, thereby, increase the competitiveness of larger firms.

There is a lack of adequate data and research regarding the informal sector in Bangladesh. To strengthen the voice of informal entrepreneurs and workers in the policy process, their contributions to the economy and the nature of their work need to be visible to policy-makers. The current business laws and regulations place a special strain on small businesses, and they are expensive and burdensome for tiny and micro businesses. The legal framework that applies to businesses in Bangladesh is burdensome, *inter alia*, because of lack of public information about relevant laws and regulations, the fragmentation of legal and regulatory requirements among different ministries and offices, and the delays and demands for informal payments that plague virtually every registration or certification requirement.

On the other side, operating outside the statutory legal framework has considerable costs. Most self-employed and wage workers in the informal sector of Bangladesh are deprived of secure work, social protection, workers' benefits and representation or voice. The self-employed have to take care of themselves and their enterprises as well as their employees or unpaid contributing family members. They often face competitive disadvantage vis-à-vis larger formal firms in capital and product markets. Informal wage-workers also have to take care of themselves as they receive few (if any) employer-sponsored benefits. In addition, both groups receive no legal protection from the Government. Limited access to formal credit is another major constraint on informal businesses. Lack of necessary utility services is a further disadvantage faced by informal business.

In the informal economy, women entrepreneurs are suffer the most. At the community level, traditional norms favoring women's seclusion from business (whether formal or informal) continue to dominate. They often experience bias and harassment in dealing with landlords, lenders/banks, regulatory authorities as well as clients, especially in rural areas. Discrimination in access to education and training, gender-stereotyped training and education that devalues women, lack of opportunities for women for apprenticeship in vocational work and other similar impediments, hinder women's ability to enter new areas of activity. Unequal inheritance laws results in male appropriation of household and family property.<sup>9</sup>

Some specific policy reforms to empower informal business in Bangladesh are suggested: (a) a new legal framework for informal entrepreneurs should be initiated;<sup>10</sup> (b) a National Policy on the Informal Sector (NPIS) should be adopted setting out a policy framework for the empowerment of the informal sector and for its gradual transition to the formal sector; (c) a

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9 Lack of ownership of land and property seriously impairs the ability of women to start, run or upscale any business, have access to financial system and credit. Male family members also often appropriate credit obtained by women.

10 This could be supplemented by parallel efforts to reduce the cost burden of and simplify the regulatory regime applicable to businesses including small businesses.

Commission on Informal Sector (CIS) should be established within the Government;<sup>11</sup> (d) adequate research, studies and compilation of data regarding informal businesses should be carried out; (e) a mechanism to register and issue identity cards in the informal sector should be adopted; (f) a social security scheme consisting of health benefit, unemployment benefit and/or provident fund, pension for old age and life insurance to cover natural and accidental death for the self-employed and the workers in the informal sector can be adopted; (g) appropriate measures need to be taken to improve the conditions of work and business security of those in the informal sector; (h) appropriate measures to ensure access of informal entrepreneurs to efficient training and skill development schemes, financial system and affordable credit facilities including extending micro credit outreach should be adopted etc.

#### **Paper Four: *Labor Rights in Informal Economy***

The informal economy of Bangladesh is varied. It represents a continuum in which, in one extreme, all production and exchange take place outside the reach of the law and, at the other, most activity occurs within the framework of a public regulatory order. Some informal operators are barely touched by laws and regulations, while others are partly inside the legal system.

Based on the statistics of the Bangladesh Bureau of Statistics (BBS) published in 2004, the approximate ratio of formal and informal sector in Bangladesh is 15:85.<sup>12</sup> The growth of informal economy in Bangladesh is higher than the growth of formal economy. Informal economic activities help millions of rural and urban poor in Bangladesh to sustain a livelihood marginally above the poverty line. Whatever growth the Bangladesh economy has achieved, informal economy is responsible for a substantial part of it.

Labour rights are recognized and made enforceable under the laws of Bangladesh. The law recognizes and makes enforceable, the workers' right to minimum wage, security of employment, compensation for termination, working hours, leave, trade union rights, maternity benefits, compensation for death or injury at work etc. There are also specialized tribunals for enforcement of these labour rights. In the area of international law, Bangladesh has ratified most of the major ILO Conventions. Moreover, Bangladesh has recently adopted a comprehensive labour code by consolidating all major labour legislations with certain amendments.

It may be stated that the above-mentioned labour rights and protections available in law are not always strictly observed or enforced. Nevertheless, the workers in the formal economy have the scope to pursue their rights under the law. Workers in the informal economy are deprived of adequate protection of law; primarily for the reason that the existing labour law of the country does not even recognize them as workers.<sup>13</sup>

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11 The CIS should act as a focal point in respect of policy initiatives regarding empowerment of informal businesses.

12 GoB, 2004, Statistical Yearbook of Bangladesh, Bangladesh Government Press.

13 In order to avail the rights and protection under the labour law a worker must be "employed in any establishment or industry either directly or through any contractor". If the industry or establishment employs less than 10 (ten) workers, its workers would not be entitled to be called workers with the

Workers engaged in informal economy in Bangladesh may be categorized in 3 (three) wide categories, namely (i) wage-employed;<sup>14</sup> (ii) self-employed;<sup>15</sup> and (iii) unpaid family labours.<sup>16</sup> This categorization has been made on the basis of nature of employment only. As informal economy is highly segmented within the country these categories may also be divided on the basis of social group and gender, sector of the economy, location of work, level of earnings etc.

Working in the informal economy often implies unsafe and unhealthy working conditions, long working hours with insufficient and unsteady compensation, low skill and productivity levels, and a general lack of access to information, markets, finance, training and technology. The government of Bangladesh, through the Ministry of Youth and Sports, Ministry of Tourism, and other agencies, provides vocational and other trainings to young people. Some of their training, e.g. training related to poultry, dairy, hatchery, farming etc., enable them to undertake activities in the informal economy. However, there is no coherent education policy commensurate with the overall economic policy of the country.

Informal workers and employers also tend to have difficulty gaining access to the judicial system to enforce contracts, leaving them without any means of seeking redress and thus more vulnerable to harassment, exploitation, abuse, corruption and bribery. A coherent legal and judicial framework is needed to ensure that the informal workers as well as the micro entrepreneurs are not deprived of justice only because the nature of economic activities in question is informal.

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meaning of the Act. Therefore by definition almost all workers employed in informal sector are beyond the scope of the legal protection.

14 Wage-employed workers in informal sector are generally associated with work in exchange of wages/salaries in cash and/or kind. Workers of this category include workers of small unregistered factories and workshops, workers of shops and commercial establishments employing less than five workers, hotel and restaurant workers, workers employed in small family operated cottage industries, janitors, security guards, day labourers in construction, domestic help, drivers of private vehicles, taxi drivers working on a monthly wage basis, This category also includes agricultural workers employed on daily wage basis or seasonal basis.

15 The term self-employment or own account operators is used to refer to subsistence cash-crop or non-cash crop agricultural activities such as rural industries, trade and commerce, transport and services one carries out on one's own to produce food grains and other commodities, goods and services for consumption by the members of the family or for the market. It also include owners of small (sometime street side) workshops that repair bicycles, motor cycles or rickshaws, recycle scrap metal; make furniture and accessories, stitch and repair shoes, weave, dye, and print cloth; make and embroider garments; sell cloth, paper, and metal waste etc. A large group of self employed workers are women who work from home, e.g. garment makers, embroiderers, pickle makers, cigarette rollers, paper bag makers, kite makers, and others.

16 Unpaid family labour is used to refer to those women, children and juvenile workers who assist the elder male family members in their economic work without remuneration. Sometimes they produce finished goods for sale to be marketed by the male members of the households without remuneration In the process, they become "invisible producers" without any financial or other benefits directly accruing to themselves.

There is also a gender discrimination issue involved in informal economy. The problems encountered by the women workers in informal sectors need to be addressed separately. Some of such gender specific problems include: lower wage rate, irregular and unstable income and work schedules, sexual harassment etc.

The policy goal suggested is to enhance the linkages between the informal and the formal economies, and to ensure that there is decent work conditions all along the continuum—where workers have rights, protection and a voice—and not necessarily focus on "formalizing the informal". Ideally, there should be movement upward along the continuum so that there is not only job growth but also improvements in the quality of jobs. Sincere efforts should be made to reduce the decent work derails in the informal economy. It is also imperative to ensure that informal laborers are adequately empowered and strongly protected so that 'poverty reduction strategies' achieve any real meaning.

## CONCLUSION

Our scrutiny of the legal system in terms of the empowerment of the poor in the four thematic areas revealed a lack of any meaningful provisions specifically targeted to the poor. It is only recently, in 2004, that a Legal Aid Act to provide assistance to the poor in accessing the formal legal system was enacted and some funds have been allocated. But the Act requires that an application be submitted to the District Judge – the highest judicial officer of a district – and a committee consisting mostly of the high and mighty that decides whether legal aid would be offered to the applicant. The procedure, clearly, reflects the adversarial foundations of the legal system.

Only NGOs and some other civil society organizations have been involved in sporadic attempts at the legal empowerment of the poor. Informal *shalish*; advocacy for the rights of the landless; and generating pressure for the transfer of government lands to the landless have been the notable arenas of effective interventions by these organizations. However, small business – except for micro-credit and skill-enhancing trainings – and the labour rights of workers of the informal sector has largely remained outside the discourse of rights. The legal system, needless to say, continues to deny even their very existence.

The absence of effective organizations for the poor – in all the sectors of concern for the Commission – is an important detriment in advancing the legal empowerment of the poor. The legal community remains insensitive to the plight of those who do not have legally recognized documents and, hence, also remains beyond the purview of this community. The problems, thus, in one view of the matter may seem insurmountable. Such a view, needless to say, is only a partial one.

The papers presented in the National Consultation Process highlighted many of these and other problems. We have, however, also seen arenas where interventions have empowered the poor. The hundreds of thousands of female garment workers, though not rigorously protected by laws, provisions and legal documents, have nevertheless carved out significant segments of rights for themselves. Poor peasants are increasingly becoming vociferous in their demands for adequate

and timely supply of seeds, fertilizers and other necessary implements for their agricultural work and the government machinery can no longer ignore these demands. Informal traders, in the wake of the recent spate of evictions from their temporary places of business have been able to carve out certain concessions from the government. These signs and indications of the poor embarking on the path of empowerment by and on their own are significant.

Our exercises and the National Consultation Process have put the issue of legal empowerment of the poor on the agenda, which may not yet be a national one but it certainly has become a significant one. From here, we can only go forward and it is my understanding that the papers and the proceedings of our National Process shall soon be put into a published form, further disseminating our agenda in Bangladesh.

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