

Women's Access to Justice in Bangladesh: Constraints and Way Forward

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Abstract

Bangladesh's prevailing justice system is viewed by many as gender biased, anti-poor and exclusionary. Accessibility to the justice system is one of the most important strategies for legal empowerment for women. Legal, social, institutional, economic constraints such as inadequate legal framework, institutional barriers, lack of legal awareness, gender discrimination and poverty are the main barriers that women in Bangladesh face in obtaining access to justice. Securing access to justice for women requires comprehensive strategies and action plans to address the constraints mentioned above. It also involves a complex combination of legal and institutional reforms so that justice system can reach women in rural areas. In order to make the Bangladeshi justice system more accessible for women and legal empowerment for women operational, collaboration and coordinated efforts are needed by a host of legal actors from pro bono lawyers, activist judiciary, to NGOs.

Keywords: Access to justice, Women, Bangladesh, Empowerment of women, NGOs

I. INTRODUCTION

Access to justice is now widely recognised as a human right and it has been enshrined in the international human rights instruments.¹ Access to justice is not only central to the realisation of constitutionally guaranteed rights, but also to the broader goals of development and poverty reduction. While realisation of access to justice remains a great challenge in Bangladesh, women in particular face problem in securing access to justice because of gender discrimination.² Ensuring equal access to justice for women is vital for their legal empowerment.

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¹ Article 7 of the UDHR states that: "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". See also, Article 14(3)(d) of the ICCPR affirms the right of individuals facing criminal charges to have legal assistance assigned to them and, "where the interests of justice so require," that such assistance be provided "without payment by him [or her] ... if he [or she] does not have sufficient means to pay for it".

² Greg Moran, "Access to Justice in Bangladesh: Situation Analysis Summary Report 2015" Justice Sector Facility Project, UNDP, Dhaka.

In Bangladesh, women living in poverty, in both rural and urban areas, face access to justice issues due to various constraints such as a discriminatory attitude, legal and institutional barriers, social stereotyping, cultural norms and the lack of financial capacity. The justice chain- the series of steps that a woman has to take to access the formal justice system, often breaks down due to poverty, lack of legal awareness and discriminatory attitudes of service providers, including the police and judiciary. The ability of women to effectively utilise the legal and judicial procedure is circumscribed by a wide array of other factors, such as lower literacy, lack of family support and lack of access to information about legal services. Women's access to informal justice administered largely in rural areas of Bangladesh is also limited by gender bias, religious norms and practices and ignorance. In Bangladesh, many legal and development related NGOs are currently involved actively in facilitating women's access to justice and they have developed their own strategies and programmes to deliver legal services to poor women. However, few attempts have been made to assess the sustainability of their activities and programmes in terms of real and long-term impact on women's access to justice.

In addressing the issues of women's access to justice, the following questions arise - what are the constraints on women's access to both formal and informal justice in Bangladesh? How is women's access to justice related to their legal empowerment? What are the state-sponsored measures for access to justice in Bangladesh and to what extent are these successful? How is NGOs' role in facilitating women's access to justice in Bangladesh evaluated? What recommendations can be made to enhance women's access to justice in Bangladesh?

The main objective of this article is to conduct critical assessment of the constraints faced by women justice seekers in Bangladesh in both formal and informal justice systems and rural and urban areas; to analyse results of awareness campaigns and other similar efforts by various stakeholders engaged in improving access to justice for women and to make policy recommendations for ensuring women's access to justice in Bangladesh.

The article takes an analytical approach as it analyses existing laws, and practices pertaining to access to justice in Bangladesh. The article is divided into five parts. The first part deals with conceptual framework on access to justice in general and women's constraints to access to justice, while the second part examines the barriers to access to informal justice in Bangladesh. It also deals with the relationship between access to justice and legal empowerment of women. The third part addresses success and failure of State sponsored legal aid scheme in Bangladesh. The fourth part discusses and evaluates the NGOs intervention for legal empowerment and access to justice in Bangladesh and the fifth part deals with suggestions for improving women's access to justice in Bangladesh.

II. CONCEPTUAL FRAMEWORK

Access to justice is considered a synonym of judicial protection of individuals' rights and an entitlement to remedy before a court of law or tribunal which is constituted by

law and which can guarantee independence and impartiality in the application of law.³ The notion of access to justice is essentially based on the universal concept of equality which requires necessary institutional arrangement through which every person have access to legal system on equal footing. In Bangladesh, many economically and socially disadvantaged people do not have access to justice to vindicate their rights and are often deprived of basic legal services, which itself constitutes a violation of human rights. Generally, there are three main barriers in access to justice: (i) inadequate legal protection, including gaps in the legal framework, and institutional barriers; (ii) the lack of capacity to provide just remedies, barriers within court systems and informal justice systems, and lack of enforcement; and (iii) the lack of capacity to demand remedies, which includes lack of legal awareness.⁴

The concept of access to justice is premised on the fundamental principle of *ubi jus ibi remedium* which means that every right when it is violated must be provided with a right to a remedy.⁵ It encompasses the whole range of laws, procedures, institutional arrangements through which justice can be delivered to the people in an efficient and effective manner. It denotes the instrumentalities by which citizens can approach the courts, lawyers, legislature, judges, and the administrative agencies to address both substantive and procedural justice. Access to justice also requires a just procedure, timeliness and affordability in the judicial system.⁶ Access to justice has several aspects: social, economic, geographical, legal and psychological. The social aspect refers to making individual and group of individuals aware of their legal rights and thus enabling them to assert their legal rights and obtain legal services. The economic aspect of access to justice refers to capability approach which means that affordability of the justice system by common people.⁷ Geographical aspects denote that judicial institutions should be distributed in such a way that they are not beyond the reach of common people. Thus, a fair degree of decentralisation of the court system is essential for accessible judicial system. The legal aspect of access to justice refers to the nature of the legal system itself. If legal norms are anti-poor, suffer from gender bias, and are unintelligible, people can hardly get remedy from legal institutions. In order to facilitate an accessible legal system, legal texts and procedure should be intelligible to and understandable by the common people.⁸ In this sense, access to justice systems depends on the nature of the legal system

³ Francesco Francioni, "The Rights of Access to Justice under Customary International Law" in; Francesco Francioni (ed.), *Access to Justice as a Human Right*, Oxford University Press, Oxford (2007), p. 3.

⁴ World Bank, "Barriers to Access to Justice" (2008). Michael Anderson, "Access to Justice and Legal Process Making Legal Institutions Responsive to Poor People in LDCs", Paper for discussion at WDR Meeting 16-17 August 1999, Access to Justice Practice Note, UNDP, 9/3/2004, available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/ACCESSTOJUSTICEUNDPRACTICENOTE.pdf>. Site accessed on 14 April, 2017.

⁵ See, on philosophical account of access to justice, Peter Fitzpatrick, "Access as Justice", *Windsor Yearbook on Access to Justice*, Vol. 23, (2005), pp. 3-27.

⁶ See, generally for discussion on access to justice in comparative perspective, Mauro Cappelletti, (ed.), *Access to Justice: A World Survey*, Sijthoff and Noordhoff, Amsterdam, (1978).

⁷ Ross Cranston, "Access to Justice in South and South East Asia", in: Julio Faundez (ed.), *Good Government and Law*, Macmillan Press, London, (1997), pp. 233-34.

⁸ Report of the Commission on Legal Empowerment of the Poor, "Making the Law Work for Everyone", New York, (2008).

itself. Psychological aspect refers to poor people's fear and distrust of the courts due to a perception of biasness, lack of legitimacy of the legal system, and excessive formalism in legal rules.⁹

Access to justice is an important derivative of the right to equality before the law which has been guaranteed under Article 27 of the Constitution of Bangladesh 1972. Article 27 provides that all citizens are equal before law and are entitled to equal protection of law. Similarly, Article 31 provides that to enjoy the protection of the law and to be treated in accordance with law is the inalienable right of every citizen. Despite these constitutional provisions, ensuring equality in access to justice system remains a far cry in Bangladesh due to the economic inability of litigants to obtain a skilled lawyer, and the time consuming and expensive procedures and investigation processes.¹⁰ In such a situation, the equalisation of resources becomes absolutely necessary to having equal protection of law. This necessitates that legal aid should be granted to the poor litigants as a matter of right, not a matter of charity.¹¹

Prohibitive cost of litigation, inordinate delay in the courts, corruption in the justice delivery spheres, backlog of cases, and complex procedural rules are few, if not exhaustive causes, remain as obstacles to access to justice in Bangladesh.¹² Access to justice can be hindered if the courts are inaccessible and procedures are incomprehensible.

A. Constraints on Women's Access to Justice in Bangladesh

The legal system of Bangladesh continues to be inaccessible to economically and socially disadvantaged segments of society including women as they cannot afford to pay lawyers to vindicate their rights, which itself constitutes a violation of human rights. Many poor women also live far away from centers providing legal services and have very few legal resources and facilities in their communities.¹³ Access to justice and effective legal remedy and reparation in case of a violation of a given right are crucial for women to be able to achieve true equality in access to resources and services, to decent employment and

⁹ Siri Gloppen, "Courts and Social Transformation: An Analytical Framework", in: Roberto Gargarella, Pilar Domingo and Theunis Roux (eds.), *Courts and Social Transformations in New Democracies: An Institutional Voice for the Poor?*, Ashgate, Aldershot, (2006), p. 46.

¹⁰ Dr. Abdullah Al Faruque and Nirmal Kumar Saha, "Access to Justice for Legal Empowerment: A Conceptual Framework", *The Chittagong University Journal of Law*, Vol. XI, (2006) (pp.33 - 57).

¹¹ See, Abdullah Al Faruque and Md. Mohiuddin Khaled, "Legal Aid in Bangladesh: Goals and Strategies", *Chittagong University Journal of Law*, Vol. IV, (1999), pp. 131-150.

¹² Procedural causes of backlog and delay include: (i) free access for civil claimants to the courts with incentives for frivolous, party-controlled litigation processes (including initiation of without cause, extension without excuse, motions without merit); (ii) discontinuity, repetition, and fragmentation of the legal processes, without early or accountable judicial interventions such as court administration and case management mechanisms; (iii) limited opportunity or incentives (especially early in the process) for consensual settlements, including limited venues for alternative dispute resolution processes such as mediation. See, Hiram E. Chodos, Stephen A. Mayo, A.M. Ahmadi, and Abhishek M. Singvi, "Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process," *New York University Journal of International Law and Politics*, Vol. 30, Numbers 1-2, (1998), pp. 25-26.

¹³ Shahdeen Malik, "Access to Justice: A Truncated View from Bangladesh", in: Rudolf V. Van Puymbroeck (ed.) *Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century*, Washington D.C., World Bank, (2001).

work conditions, to social protection, in civil and family matters and in decision-making processes at all levels.¹⁴ Constraints of women's access to justice are discussed below.

(i) Legal Constraints

Securing women's access to justice requires gender-sensitive engineering of the entire chain of justice in a way that guarantees not only formal but also substantive equality.¹⁵ The ability of women to claim their rights and seek a remedy is influenced first and foremost by the contents of the laws that establish these rights and regulate the processes for claiming their protection. The Constitution of Bangladesh guarantees equal protection of law, which is critically important in securing gender equality in access to justice. However, constitutional guarantees of equality do not necessarily guarantee that equality will be available to women in practice.¹⁶ The prevalence of unclear, inconsistent and outdated laws that may be a century older or more and no longer relevant to the present circumstances of women is a vital constraint towards that.¹⁷ The legal system of Bangladesh is a curious mix of colonial law, personal law and parliamentary enactments. Merely having a legal framework is inadequate to protect women. Besides, the contents of the law by their very nature and substance are not suited to the needs of the poor and the ordinary women.¹⁸ The lack of updated laws, complex procedures, and frequent adjournments compels litigants to abandon their cases to avoid physical, mental and financial devastation.¹⁹

In many contexts laws simply discriminate against women, affording them fewer or lesser rights than men. The most common example of legal discrimination remains within family laws, on issues related to marriage and divorce, where women are accorded fewer rights than men.²⁰ Also, women do not have the same rights to property or inheritance as men. For instance, in the field of land rights, discriminatory legal provisions remain with respect to access, ownership, and control of land, houses, and business premises. Limited and insecure rights over land and property make women vulnerable to losing their land – the main source of their livelihood and welfare.²¹

¹⁴ "Rural Women and Access to Justice", FAO's contribution to a Committee on the Elimination of Discrimination against Women (CEDAW) half-day general discussion on access to justice (Geneva, 18 February 2013), available at www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/FAO.pdf. Site accessed on 19 August 2017.

¹⁵ UN Women, *In Pursuit of Justice: Progress of the World's Women*, 2011 for an additional detailed analysis of the entire justice chain and gender considerations in access to justice.

¹⁶ Available at www.ohchr.org/.../Issues/Women/.../PresentationWomenAccessJustice.doc. Site accessed on 11 May 2017.

¹⁷ Shiffat Sharmin, "Women's Access to Justice in Bangladesh: Obstacles and Remedial Measures", *The Chittagong University Journal of Law*, Vol. XVIII, 2013, pp. 79-104, at p. 94.

¹⁸ Sumaya Khair, *Legal Empowerment of the Poor and the Disadvantaged: Strategies, Achievements and Challenges*, CIDA, Dhaka, 2007.

¹⁹ Shiffat Sharmin, *Supra* n 17.

²⁰ "Report on Legislative Initiatives and Reforms in the Family Laws", available at https://www.blast.org.bd/content/publications/Legislative_Initiatives_Family_Law.pdf, see also "Will I Get My Dues ... Before I Die?" Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce, September, 2012, Human Rights Watch, available at <https://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>

²¹ Abdullah Al Faruque and Md. Mohiuddin Khaled, *Supra* n 11.

The existence of a parallel legal system of justice – formal court, personal law systems, alternative dispute procedures and informal systems of community justice, which are not officially sanctioned by the state, affect in varying degrees women's access to justice.²² The co-existence of plural or parallel systems of traditional justice, which are usually patriarchal both institutionally and in its substantive norms, poses a challenge to women's access to justice. Existing legal pluralism creates complex legal frameworks characterised by overlapping rights, multiple and competing levels of authority (including state, non-state/customary and hybrid institutions) and often contradictory rules.²³ For women, navigating the different systems can be particularly difficult.

Secondly, women also face the problem of access to justice due to a lack of knowledge of their rights and the justice system. A lack of legal knowledge means that individuals are more vulnerable to abuse or exploitation in the judicial system, and are less likely to receive a fair trial.²⁴ Enforcement of rights is dependent on both an awareness of the existence of such rights and of avenues of redress. Poor women who are less likely to be familiar with their rights and less likely to use the formal system do not realise that their problem may be regulated by law and that a remedy can be obtained through the legal system. Even if they know of such information, inadequate understanding of the laws and the rights and obligations that those laws confer pose a constraint on women's access in justice.²⁵

Ratification of the human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 provides an essential link in the chain of access to justice. It should be noted that the Constitution of Bangladesh 1972 guarantees women the right to equality before the law.²⁶ Bangladesh is also a signatory of CEDAW²⁷ which guarantees equal and effective protection of woman's legal rights in Articles 2²⁸ and 15²⁹ which requires State Parties to take positive action in order to guarantee the availability of remedies for women subject to gender-related discrimination, as well as ensuring that women have equal rights to conclude contracts and to administer property. These two provisions confer on women equality with men before the law. In terms of accessing tribunals systems of administration of justice requires states to ensure women can access justice. In order to comply with CEDAW's guarantees, all³⁰ gender

²² Frances Raday, "Access to Justice", HRC Mandate Holder, WG Discrimination against Women in Law and Practice.

²³ *Supra* n 14.

²⁴ *Supra* n 22.

²⁵ *Supra* n 22.

²⁶ Article 27 of the Constitution of Bangladesh 1972.

²⁷ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

²⁸ In particularly Articles 2(b) and 2(c) which state: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

²⁹ Article 15(1) states: States Parties shall accord to women equality with men before the law.

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related discriminatory provisions, including a prohibition on gender stereotypes must be removed from both written laws and practice,³¹ and all judges, lawyers and court staff must be trained in the gender-sensitive application of laws.³² Gender-insensitive court procedures, long delays and inefficient or arduous administrative procedures have all been recognised as barriers to access to justice and interim orders have been recognised as essential to allow women to effectively claim their rights.³³

The legal aspect of women's access to justice can be illustrated through the lenses of three important pieces of legislations which provide favourable provisions to facilitate their access to justice system such as the Family Court Ordinance 1985, the Prevention of Repression of Women and Children Act 2000 and the Domestic Violence (Prevention and Protection) Act 2010. In case of the Family Court, women who seek legal remedies in the courts to secure financial relief after separation or divorce can face prolonged delays. These delays occur at every stage of the legal process and can take anywhere from a few months to twenty years.

- At the pre-trial stage, delays in the service of summons³⁴ and lack of case management means cases have dragged on for up to ten years;
- At the trial stage, delays may be caused by witnesses failing to attend on scheduled dates, or counter-claims being filed by husbands, and needing disposal;
- After a judgment, even if it is in a woman's favour, further delays will result from the process of execution of the decree and then, possibly, from appeals.

The Prevention of Repression of Women and Children Act 2000 provides for camera trial for women, speedy investigation and special tribunal for facilitating access to justice for women.³⁵ The Domestic Violence (Protection and Prevention) Act 2010 specifically deals with the issue of domestic violence against women and children. The Act mandates the police to ensure treatment of victims and the right to get legal assistance.³⁶ Women who have experienced domestic violence can submit complaints to the courts or to local protection officers. But very few cases are instituted under the Act and the rate of disposal of the cases are not satisfactory due to a lack of awareness of this law among women and the lack of gender sensitivity among the judges.

Procedural complexities is another problem in access to justice as in the majority of cases poor women are unaware that they will be required to produce written documents and even where they do, they have no clue where to find them. The compulsion to produce proper documents and witnesses frequently puts women litigants in a quandary.

³¹ Convention on the Elimination of Discrimination Against Women Committee, 'Communication No. 18/2008' (CEDAW Committee) (22 September 2010) UN Doc CEDAW/C/46/D/18/2008.

³² CEDAW Committee, "Access to Justice – Concept Note for Half Day General Discussion" <<http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>> Site accessed on 18 March 2015, p. 6. Convention on the Elimination of Discrimination Against Women Committee, 'Communication No. 18/2008' (CEDAW Committee) (22 September 2010) UN Doc CEDAW/C/46/D/18/2008.

³³ *Ibid.*

³⁴ Procedure is defined by Family Courts Ordinance 1985, section 7 and the Code of Civil Procedure 1908, Order V.

³⁵ S. 20 of the Act.

³⁶ S. 4 of the Act.

The Village Courts established under the Village Court Act 2006 remain an important avenue for access to justice at the local level in Bangladesh. But limited jurisdiction, corruption, lack of legal aid facility and political influence often impair judgment by the Village Court. Gender discrimination is widely viewed as a problem in the Village Court formation.³⁷ Poor and marginalised women want to avoid expensive and complicated formal legal systems of the country, and they also have low confidence on the existing justice delivery systems. Therefore, apart from the formal justice delivery systems, the Village Court and informal justice system should be strengthened.

(ii) Institutional Constraints

The physical environment of the courts, which are mainly male dominated, may produce an atmosphere of exclusion, alienation or disempowerment for women. Court facilities and processes are not conducive to making women feel comfortable with the process. In Bangladesh, most of the judges, lawyers, magistrates, police prosecutors and clerical staff (that women encounter) are men. This has adverse effects on women's access to justice in two ways: there are fewer people in the system sensitive to women's needs and, the institutions are arguably less likely to actively uphold women's interests, as only a few women have had any role in the making and enforcing of national laws. It is sometimes alleged that women litigants face gender biased attitudes and behaviour by male lawyers during hearings. Questions attacking a woman's character, especially her 'loyalty' or 'chastity', are common.³⁸ This sort of questioning in public can be extremely humiliating for a woman. Women often find themselves unable to reach formal justice systems as a result of discrimination from filing complaints at the police station.³⁹

Women's limited participation in judicial systems and decision-making forums can also severely limit their access to justice. Furthermore, under-representation of women amongst those dispensing justice, such as judges, lawyers can also affect negatively their access to the formal justice system.

Language poses another problem which is deeply embedded in the legal system. In Bangladesh, most of the laws, legal policies and legal judgments being English are incomprehensible to the rural people who are largely illiterate. Majority of the people find it very difficult to understand the legal system. Women are more likely to be intimidated by proceedings of formal institutions or face linguistic challenges. Sometimes individuals may not understand what the law requires of them and how they can enforce their rights.

Lack of available and clean washrooms, the absence of security to protect women from harassment and intimidation, the unavailability of safe transportation to bring them

³⁷ *Baseline Survey Report on Village Courts in Bangladesh*, Activating Village Courts in Bangladesh Project Local Government Division Ministry of Local Government, Rural Development & Cooperatives Government of the People's Republic of Bangladesh, Dhaka, 2010, pp. 73-74. The report is available at <http://www.villagecourts.org/Publication/Baseline%20Survey%20Report.pdf> Site accessed on 17 December 2016.

³⁸ Sub-section 4 of section 12 of the Family Court Ordinance 1985 provides: 'The Court may forbid any question which it regards as indecent, scandalous or frivolous or which appears to it to be intended to insult or annoy or be needlessly offensive in form.'

³⁹ UN Women, Women's collectives foster access to justice in India, <http://www.unwomen.org/en/news/stories/2013/2/womens-collectives-foster-access-to-justice-in-india#sthash.X4lsItAt.Bpb5jC3M.dpuf>. Site accessed on 8 January 2017.

to-and-from the courts to their residences, not enough seating in (male-dominated) court room or waiting areas are also important constraints in access to justice.

Geographical barriers such as the physical distance of the courts from the rural women are a major challenge in a country like Bangladesh where majority of people are living in rural areas. Physical access to the courts is extremely limited. Although the Village Courts are working at the Union Parishad (UP) level, these Courts have the jurisdiction to deal with limited petty disputes. Therefore, poor women have to travel to districts to file a suit. Furthermore, the Village Court is not operational in most of the areas across the country. Inadequate pecuniary jurisdiction, lack of arrangement for regular training for the UP Chairmen and its members, inadequate budget provision and lack of logistic support and manpower are responsible for ineffectiveness of the Village Courts.⁴⁰

Furthermore, the formal court system is not accessible to the women as they have little information about government sponsored legal aid. The actual mind set of lawyers seems to be a real problem in Bangladesh. There is also lack of gender-sensitive lawyers and therefore, they cannot properly handle cases that are in relation to women. There are not enough female lawyers, so in sensitive cases such as domestic violence, or rape the cross examination process can be painful and insensitive.

(iii) Economic Constraints

Lack of economic independence of women is another major barrier to access to justice. The legal system of Bangladesh is resource-based and entails considerable financial involvement in terms of travel costs, processing costs, lawyer's fees, production of witnesses, procurement of documents, and other associated expenses. High costs related to the justice system, including for services, fines, and transportation, make the formal justice system inaccessible for the majority of Bangladeshi people, let alone women. These high costs are exasperated by corruption, as corruption within the judicial branch and police can further limit access for women who do not have the means to pay bribes in order to gain access to the justice system. One of the major constraints that women face is the cost of initiating a legal process and to continue it. Although the government has set up 'Legal Aid Fund' to be handled by District legal Aid Committees, the utilisation of this fund is hampered because of lack of publicity about its existence and the difficulties in accessing the assistance. The accessibility of government legal aid services to poor women is very limited as these legal services are mainly based in the city. Thus, even where all other factors are supportive, poverty may ultimately determine the way in which women experience justice and resources allocation, as well as the leverage that they can exert in pursuing their interests.⁴¹

Prolonged delays in the disposal of cases causes hardship and results in too much costs. Delays also involve continued lawyer's fees and time taken off from work. It is common for some lawyers to defer or change dates of cases frequently in collusion with court officials to charge a fee every time they appear.⁴² Loopholes in civil and criminal procedure codes, inadequacy of judges and courts, lack of skilled judicial officers,

⁴⁰ *Supra* n 37.

⁴¹ *Supra* n17.

⁴² *Ibid.*

corruption among court officials, poor performance of the professionals and inefficiencies in the system have often been cited as the principle causes of delay in the disposal of cases.⁴³ Also, limited budget, inadequate infrastructure and lack of logistic support make the courts overloaded and overburdened with long case backlogs.

(iv) Social Constraints

Bangladesh is characterised as a patriarchal society, where institutionalised gender inequalities are exacerbated by discriminatory customs, particularly with regards to property rights, marriage, and sexual offences. Social, cultural, economic, and legal inequalities have entrenched women's subordination and dependence on men. Moreover, relatives often interfere with the justice process and push for out-of-court settlements, which further compromise a woman's ability to seek justice. Specific barriers include gender-based discrimination in society.

Dependence on male relatives for assistance and resources, and the threat of sanction or stigma for resorting to the formal judicial system are some of the social barriers that women face in accessing the formal justice system. In rural communities, most women are unable to approach the judiciary without the assistance of a male relative. A woman's reliance on male relatives can be a particular barrier, since in cases related to violence, family laws or inheritance, the case is likely to be taken against a family member, who she may rely upon financially.

Traditional religious or cultural norms and values have little regard to any formal rights and entitlements that the law may prescribe. In the rural areas, due to patriarchal nature of society and inequitable power relations, marginalised women face a barrage of pressure, threats, violence, and intimidation by family. As a result, women are not only less aware of their rights, but also largely reluctant to claim them.

In many cases, social norms act as barriers in the implementation of laws relating to protection and welfare of women. For example, despite the Child Marriage Restraint Act 1929 which is now replaced by the Child Marriage Restraint Act 2017, child marriage continues in Bangladesh because the social understanding and practice regarding the age of marrying off a female differs in accordance to religion, socio-economic status, and geographical location. Similarly, the Dowry Prohibition Act 1980 remains largely unimplemented due to social acceptability of dowry till now predominantly in rural areas.

III. BARRIERS IN ACCESS TO INFORMAL JUSTICE SYSTEM

Like many other countries, the prevailing justice system in Bangladesh can be broadly divided into two categories: formal justice system and informal justice system. While the formal justice system refers to the application of formal rules and institutions in dispute resolution to deliver justice, informal justice system mainly refers to informal rules and unwritten customs and social values which are used as mechanisms in dispute resolution.⁴⁴

⁴³ *Ibid.*

⁴⁴ "Informal Justice Systems: Charting a Course for Human Rights-based Engagement," UN Women, UNICEF and UNDP, 2009, available at https://www.unicef.org/protection/files/INFORMAL_JUSTICE_SYSTEMS.pdf. Site accessed on 20 August 2017.

The prevailing practices of access to justice, according to Khair, can be divided into two sets of activities⁴⁵: State-centric activities which attempt to improve the effectiveness of justice delivery mechanisms of the state, namely the courts, the legislature, the police and other relevant agencies of the government; and people-centric activities, which concentrates on vulnerable segments of society by way of providing legal services that include legal literacy, legal aid, public interest litigation and alternative dispute resolution. An integrated approach is needed for achieving the holistic purpose of access to justice.⁴⁶

The informal dispute resolution process is relatively more accessible to the poorest members of the community and is also relatively less expensive. In particular, poor people who are often denied access to justice due to their poverty, need alternative dispute resolution more desperately than others as “it enables the poor to meet the better-off opponent on a level of equality to negotiate a settlement.”⁴⁷ In Bangladesh, many people who lack the information or the means to overcome the substantive and procedural frameworks resort to the Alternative Dispute Resolution (ADR) or informal mechanisms to redress their grievances.

Informal dispute resolution or mediation system can be categorised into two types: traditional *shalish* system, which is deeply rooted in social and cultural traditions of Bangladesh and NGO-sponsored mediation which is a re-modeled and modernised version of traditional *shalish* system.⁴⁸ The importance of informal justice systems for women's access to justice is crucial in Bangladesh as many women living in rural areas are dependent on it. However, access to informal justice system presents a challenge for women, as informal justice systems are male dominated, inclined to embody inequalities and patriarchal interpretations of culture, producing patriarchal outcomes. Informal systems have often been criticised for failure to uphold international human rights standards, in particular those relating to women.⁴⁹ The CEDAW Committee has expressed concern about the growing integration of informal laws into the state hierarchy.

The traditional *shalish* system often lacks impartiality, independence and accountability. The pressure of the rich, influence of money or special favour, fear of the local elites, and domination of orthodox religious views in traditional *shalish* are identified as crucial constraints in access to justice for women.⁵⁰ The traditional *shalish* is imbued with the social norms and traditional values of the dominant patriarchal culture which perpetuates discrimination against poor women. The structure of the traditional *shalish* reflects the unequal class and gender hierarchy that characterise social relations in rural Bangladesh.⁵¹ By convention, village elders and others who sit on a *shalish* are drawn from the elite and powerful sections of society and they are almost always male.

⁴⁵ Sumaiya Khair, *Legal Empowerment for the Poor and the Disadvantaged: Strategies, Achievements and Challenges*, The University Press Limited, Dhaka, (2008), p. 58.

⁴⁶ *Ibid.*

⁴⁷ D.K. Sampath, *Mediation*, National Law School of India University, Bangalore, (1991), pp.3- 4.

⁴⁸ See, D. M. Siddiqi, “*Shalish* and the Quest for Gender Justice: An Assessment of Strategic Interventions in Bangladesh”, report prepared for Research Initiatives, Bangladesh, p. 11 (Mar. 17, 2004).

⁴⁹ *Supra* n. 22.

⁵⁰ S. Khair et al., “Access to Justice: Best Practices under the Democracy Partnership” 8- 9 (Asia Foundation, Apr. 2002).

⁵¹ *Ibid.*

Women are not only prevented from making their voices heard in a traditional *shalish*, their presence even on the margins of a public hearing is strongly discouraged. In addition, the roles and procedures of the informal system are ill defined with little consistency from one place to another.

A. Access to Justice and Legal Empowerment of Women

Legal empowerment of the poor including women is often seen as the effective strategy to overcome oppression, exploitation, injustice and inequality they suffer in society. It also seeks to attain social transformation through dismantling of all forms of inequality and embedded hierarchy in society. The central tenet of legal empowerment is that laws and the legal system should be available to the poor, disadvantaged and marginalised segments of society in order to enable them to realise their full potential.⁵² According to Golub and McQuay, legal empowerment is “the use of any of a diverse array of legal services for the poor.”⁵³ In her seminal book, Khair succinctly defines legal empowerment as a critical consciousness amongst poor and marginalised populations that they are entitled to an unhindered and meaningful exercise of their rights and support services for the realization of the same, irrespective of gender, age, religion, ethnicity, social class or any other criterion that may be utilised to restrict their participation as citizens of the state.⁵⁴ According to her, legal empowerment is a complex process of raising individual and collective consciousness of rights for desired social transformation⁵⁵. According to the UN High Commission on Legal Empowerment, the legal empowerment is the process through which the poor become protected and are enabled to use the law to advance their rights and their interests, vis-a-vis the State and the market.⁵⁶

The Commission has identified four fundamental barriers to legal empowerment: (i) lack of legal identity; (ii) ignorance of legal rights and obligations; (iii) unavailability of legal services; and (iv) the lack of accountability of legal system.⁵⁷ First, lack of legal identify may exclude people from the opportunities and protections of the legal system. Second, ignorance of legal rights and obligations may result from inadequate dissemination of information or deliberate obfuscation. Third, legal services may not be affordable to the poor due to costs associated with it. Finally, unaccountable legal system can effectively prohibit access to remedies. In order to address these barriers, the Commission has envisaged a comprehensive framework with four pillars for legal empowerment: access to justice, property rights, labour rights and business rights.⁵⁸ The Commission has rightly emphasised that the formal judicial system, land administrations

⁵² The UN Commission on the Legal Empowerment of the Poor, Progress Report on Access to Justice and Rule of Law, by Dr. Lloyd Axworthy.

⁵³ Stephen Golub and Kim McQuay, “Legal Empowerment: Advancing Good Governance and Poverty Reduction” in Law and Policy Reform at the Asian Development Bank, 2001 Edition. Manila: Asian Development Bank, p. 76.

⁵⁴ *Supra* n 45, p. 25.

⁵⁵ *Ibid.*

⁵⁶ Report of the Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone”, New York, 2008, p. 27.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

and relevant public institutions should be more accessible by recognising and integrating customary and informal procedures with which the poor are already familiar. The core part of the legal empowerment agenda is to reform the existing formal institutions to make them open, accessible and legitimate.⁵⁹ The legal empowerment also requires repealing or modifying laws and regulations that are biased against the rights, interests, and livelihoods of poor people.

Access to justice is an important element of operational framework of legal empowerment. Access to justice is also the precondition for legal empowerment of the poor. Legal empowerment requires legal and institutional reform. Laws should be designed in a way so that they can respond to people's needs. Rights enhancement, legal reform, reforming the process of law making, rights awareness, accessible laws and procedures, institutional and individual capacity building are core components of legal empowerment of the poor including women.⁶⁰ Legal empowerment requires a bottom-up approach where the poor can actively participate in the law-making process.⁶¹

In Bangladesh, strategies and activities on legal empowerment are discernible at three levels - State-centric, NGOs-based and donor led programme on legal and non-legal intervention for the poor and women.

IV. STATE SPONSORED LEGAL AID SCHEME: SUCCESS AND FAILURE

State sponsored legal aid schemes was initiated in Bangladesh through the Legal Aid Act, 2004 which enables the State to provide legal aid to the poor with a view to giving them a greater access to the formal justice system. This Act also established the National Legal Aid

Service Organisation (NLASO) and further policies and regulations followed to establish the legal aid system, including the latest Legal Aid Services Regulations in 2015. To date, NLASO has established legal aid offices within the court premises in 41 districts and has 64 district legal aid committees. These offices provide legal advice, mediation and dispute resolution services, maintain the roster of panel lawyers who are appointed to cases by the District Legal Aid Committees, and monitor the quality of legal aid services provided by the panel lawyers. NLASO is a statutory body under the Ministry of Law, Justice and Parliamentary Affairs. It is governed by a Board consisting of representatives of Ministries, Members of Parliament, the Bangladesh Bar Council, the Supreme Court Bar Association, and members of civil society.⁶² While Bangladesh has achieved important results in the provision of legal aid services through a fully formed legislative and regulatory framework with specific provisions on various aspects of legal aid, including a range of services, the management and responsibilities of stakeholders

⁵⁹ *Ibid.*

⁶⁰ Stephen Golub, "Beyond Rule of Law Orthodoxy: The Legal Empowerment Imperative", Working Paper No. 41, Carnegie Endowment, Washington D.C., 2003.

⁶¹ *Ibid.*

⁶² Government of the people's Republic of Bangladesh, Law and Justice Division, "National Legal Aid Services Organisation", available at http://www.lawjusticediv.gov.bd/static/legal_aid.php. Site accessed on 23 June, 2017.

and monitoring⁶³, the State sponsored legal aid programmes are not fully utilised due to lack of awareness of people about the availability of legal aid services. National Legal Aid system also does not have specialised and targeted legal aid provisions for women.

V. EVALUATION OF NGOS' INTERVENTION FOR LEGAL EMPOWERMENT AND ACCESS TO JUSTICE

Many NGOs and civil society organisations are actively involved in promoting women's access to justice and have developed specific strategies and programmes for this purpose. Bangladesh Mohila Parishad, Bangladesh National Women Lawyers Association, *Ain-O-Shalish Kendra*, Steps Towards Development, *Naripakkha*, *Bangladesh Nari Progoti Sangstha*, *Nijera Kori* and PRIP Trust are some of the leading women's organisations in Bangladesh. However, NGOs working for women's rights can broadly be categorised into two types, national and local. While national level NGOs are mainly Dhaka-based, local NGOs are working in rural areas. For example, Madaripur Legal Aid Association is a prominent local NGO working at the local level for access to justice for marginalised community.

NGOs are also providing legal aid mainly through informal means of dispute resolution and financial assistance in obtaining legal representation for the poor under donors led legal aid programmes. NGOs like BLAST, *Ain-o-Shalish Kendra*, BNWLA have panel lawyers to conduct cases on free of charges if mediation fails. Many NGOs are running different kinds of programmes such as mediation of legal disputes, legal aid to the distressed women, Public Interest Litigation (PIL), court yard meeting and legal awareness and legal literacy programmes for women's legal empowerment and ensuring women's access to justice. Some NGOs organise rally, distribute leaflet, protest campaign and carry out networking. Legal and human rights NGOs have programs on advocacy for legal reform and networking with other organisations. NGOs' activities also include monitoring of enforcement of existing laws, documentation of violation of women's rights and discrimination. NGO's advocacy programmes aims for ensuring that laws and policies meant to benefit women and other marginalised people are enforced properly. NGOs intervention in the field of legal empowerment is carried out through both legal and non-legal means. Legal means include providing legal aid, filing PIL, providing legal advice and settlement of disputes through mediation. Non-legal strategies include legal awareness and legal literacy programme, networking, advocacy and community mobilisation. NGOs efforts had made measurable impacts on the status and material circumstances of women by restraining the illegal practice of paying dowry and recovering dowery money.

The main strategies for NGOs' intervention for women's legal empowerment are the following:

first, many legal and human rights NGOs conduct mediation. In mediation, parties are empowered to apply their sense of values and to reach results that are outside the typical

⁶³ "Global Study on Legal Aid", Global Report, UNDP, New York, October, 2016, p. 59.

juridical order.⁶⁴ On the other hand, outcomes of litigation are limited to strictly legal remedies. The informality of mediation allows conducting negotiation more quickly and decisions can be made immediately following negotiation. Apart from reduced economic cost, mediation can provide social and psychological benefits to the parties. Legalistic and formalistic approach of litigation which lead to win-lose outcome in most situations, can be counterproductive to the future relationship of the parties.⁶⁵ Over the years, NGOs such as MLAA and BLAST have formalised the mediation system substantially to address the biasness and gender discrimination in the traditional *shalish* system. This re-modeled *shalish* is conducted by trained mediators and within the framework of legal system. In Bangladesh, many legal and human rights NGO are conducting ADR at the rural area either as a part of human rights and legal aid programmes or as part of broader development agenda. Key features of these mediations include a systematic, informed, participatory and gender-sensitive process in dispute resolutions. In particular, NGOs put a special effort to engage female mediators in their mediation projects, especially for cases involving women's rights, family disputes and other gender equity issues. They encourage women in the process of dispute resolution, either as a member of *shalish* panel or as disputant telling her story. NGOs-sponsored *shalish* or mediation offers several advantages: modification of the traditional process which is often arbitrary, biased and harsh, cost effective delivery of justice, enhanced community knowledge of the law, women's participation in the decision-making; greater gender equity and justice, greater negotiating strength of the disadvantaged, and gradual sustainability of the changes over time.⁶⁶ NGOs sponsored mediation also helps the parties to understand their differences and facilitates to reach an agreement which is acceptable to both parties. BLAST and MLAA have made the *shalish* more gender sensitive and pro-poor and their female *Shalishkars* have participated and been listened to which resulted in increase in the number of women seeking justice in project areas and increase in the number of female victims allowed to speak at *shalish*. All of these are very tangible indicators of an improved situation for women seeking justice through the *shalish*.⁶⁷

NGOs have developed specific procedural guidelines to mediations including development of user-friendly strategies and tools on accessibility of clients to services offered, application processes, guidelines for mediators, and privacy and confidentiality issues. NGOs have also developed documentation and monitoring mechanism for following up mediations conducted. Mediation conducted by NGOs is documented and generally a memorandum is prepared and signed by the parties detailing the resolution adopted on the basis of mutual acceptance of the disputants.

Second, legal aid as one of the strategies of affording access to justice has now been widely recognised in many countries and has remained an important area

⁶⁴ *Supra* n 10.

⁶⁵ *Ibid.*

⁶⁶ Sumaiya Khair, "Alternative Approaches to Justice: A Review of ADR Initiatives under the Democracy Partnership", Report Prepared for the Asia Foundation, Dhaka, May, 2001.

⁶⁷ Daphne Keevil Harrold, "Legal Empowerment Strategies in Bangladesh: *Empowering Women and Poor People through Legal Means*", December 2007, BRAC, Dhaka.

instrument of legal empowerment.⁶⁸ Legal aid can conjure up a range of activities including public legal aid scheme, pro bono arrangements organised by the legal community and legal advice and litigation by NGOs. In adversarial legal systems like Bangladesh, reaching legal services depends to a great extent upon the economic ability of the litigants to obtain skilled lawyers and to pursue the time consuming, expensive investigation, pre-trial procedures, trial, post trial arguments, and appeals. In such a situation, equalisation of resources becomes absolutely necessary for having equal protection of law. This necessitates that legal aid should be granted to the poor litigants as a matter of right, not a matter of charity.⁶⁹ There are two main approaches to legal aid: individualistic and structural. According to individualistic approach, legal aid is generally given to individuals by way of legal advice, assistance, or representation and payment of court fee in litigation. The main focus of this approach of legal aid is to assist indigent individuals by encountering ordinary legal problems through case by case basis. On the other hand, structural legal aid seeks to use legal services to assist groups in the pursuit of legal rights to initiate social change. The underlying argument advanced for such approach to legal aid is that it addresses the causes of injustice and seeks to remedy them.

Third, the innovation of PIL as a tool to achieve social justice by enabling easy access to courts for those disadvantaged socially and economically has become an important part of judicial landscape. The PIL can promote access to justice by allowing any public-spirited citizen or social action group to approach the court on behalf of the oppressed and marginalised segments of society to realise their rights. It is undisputed that initiation of PIL requires relaxation of the rule of standing which is one of the impediments in access to justice in many countries. Many NGOs like BLAST, BNWLA, *Ain-o-Shalish Kendra* have lodged many PIL cases for protection of women's rights and the higher judiciary have provided innovative remedies and in some cases, delivered guidelines for upholding their rights. Although there is a lack of empirical data on how many people are actually benefitted by the PIL, PIL cases broadened access to justice of the downtrodden community and helped increase people's confidence in judiciary. Even when the court's directives are not fully enforced, PIL actions add value by generating public awareness, mobilising public opinion, galvanising activists and thereby deterring further rights violations.⁷⁰

It should be noted that the main outcome in most of the PIL cases is injunctive in ambit that is, preventing the infringement of a fundamental right. In a few cases, the judgments in PIL cases are remedial in scope. Nevertheless, over the last decades, through the PIL cases, the higher judiciary expanded the jurisprudence of economic, social and cultural rights, which are yet to be recognised as constitutional rights in Bangladesh. Many PIL cases cover a range of collective rights of disadvantaged people including women, children, ethnic minority community, prisoners, persons with disabilities and slum

⁶⁸ *Supra* n 59.

⁶⁹ See, Abdullah Al Faruque and Md. Mohiuddin Khaled, "Legal Aid in Bangladesh: Goals and Strategies", *Chittagong University Journal of Law*, Vol. IV, (1999), pp. 131-150.

⁷⁰ Avani Mehta Sood, "Gender Justice through Public Interest Litigation: Case Studies from India", *Vanderbilt Journal of Transnational Law*, (2008), Vol. 41, pp. 833-906, at p. 893.

dwellers. It should be mentioned that in PIL cases, the higher judiciary focused on both the application of existing laws and reforming laws and policies to protect marginalised groups. The higher judiciary rulings in many PIL cases have resulted in legal reform and policy change. For example, BLAST's PIL case on gender discrimination has helped modify gender discriminatory policy and government recruitment practices. Similarly, the High Court Division in PIL cases relating to sexual harassment, eve teasing, arbitrary arrest and detention, protection of domestic workers has issued guidelines and directives to initiate legal reform in these areas.

Some of the PIL cases involving rights of marginalised communities were useful for legal empowerment of poor people. In some cases, PIL cases have delayed or prevented the eviction of slum dwellers in order to delay or prevent the loss of what meager assets they possessed at the time of the threatened eviction. Thus, the court intervention in PIL cases on slum eviction have temporarily halted many groups of poor and marginalised people being evicted from their land. In this way, PIL cases had a direct and real impact on the lives of the poor and marginalised people including women.

Fourth, legal awareness programme has emerged as a response to the need to provide greater access to justice for marginalised and less privileged group. The legal awareness programme acts as rights enhancement process. These programmes are recognized as an important instrument for legal empowerment of women, particularly those living in rural areas. These community-based legal awareness activities have rapidly grown in size and representation in Bangladesh, and the role of these programmes has been increasingly recognised within the country's justice sector. Many local NGOs are running legal literacy programmes such as court yard meeting, street theater as they are important ways of facilitating women's access to justice. The aim of the courtyard meeting is to spread awareness and help the grassroots people, especially for rural women on legal issues.

Fifth, advocacy measures at governmental level for legal and policy reform to bring positive changes for protection of women's rights and legal empowerment. For example, as a result of sustained advocacy, many gender sensitive legislation such as the Domestic Violence Act 2010 has been adopted.

Sixth, many NGOs such as Madaripur Legal Aid Association (MLAA) and BLAST are engaged in activating formal justice system such as the Village Court and the Arbitration Council through collaboration and training of UP chairman and members. For example, MLAA started a programme for providing training for Union Parishad (UP) members and raising awareness to encourage villagers to choose the village court and arbitration council over the *shalish*.⁷¹ The MLAA intervention for activating village court has some tangible impact in targeted areas as number of cases in the Village Court increased and people of those areas used it as alternative to *shalish*.⁷² More importantly, within the Village Courts, women are encouraged to participate in the process.

Seventh, many NGOs such as MLAA, BLAST run gender-specific training programme for their panel lawyers and para-legal activists. Community-based training

⁷¹ See, Daphne Keevil Harrold, "Legal Empowerment Strategies in Bangladesh: Empowering Women and Poor People through Legal Means", December 2007, BRAC, Dhaka.

⁷² Mirza Hassan, *Towards Institutional Reform of the Village court in Bangladesh-the MLAA Experiment*, (Bangladesh: Madaripur Legal Aid Association (MLAA), 2006).

targets the specific needs of select communities and allows legal empowerment providers to work closely with particular beneficiary groups.⁷³ This, in turn, enables providers to understand the problems faced by beneficiaries better and to design and implement strategies to assist them. In some countries, law schools offer students opportunities to participate in community-based training as a component of clinical legal education programmes. While some training initiatives promote general legal awareness, they are especially relevant to development projects that focus on the legal problems of specific beneficiary groups and on the role of government officials in solving problems of this kind.

Finally, many NGOs form community-based organisation (CBO) as an important instrument of community mobilisation and awareness for legal empowerment. CBO organises meetings and conducts various programmes to create awareness at both individual and collective level.

NGOs operating at local or grass root level differ in terms of approaches and strategies for legal aid and legal empowerment of the women in varying degree. Many grass root NGOs promote awareness by distributing legal education posters in different public places. NGOs' program for legal empowerment is also reflected in an increased voice for women and the poor in mediation (*shalish*) and through effective and gender-sensitive verdicts for women.⁷⁴ NGOs activities have also enhanced the level of awareness about the legal rights of women, brought positive changes in the practices and outlook of government organisations and improved functioning of the formal system of judiciary such as the Village Court in targeted areas in favour of women and the poor.

However, the main problem is that there are too many NGOs. In terms of sustainability, many activities do not have long-term impact. The rapid expansion of NGOs and their wide variety of programmes on access to justice in general and women's access to justice in particular has triggered questions of the sustainability in terms of their longer-term impact on the lives of women. Because many organisations cannot continue their programmes after completion of the particular project. Most of the NGOs in Bangladesh are dependent on foreign fund or donation and their programmes are fund driven.

Except a few, most of the NGOs have no specific or direct programmes on women's access to justice. Rather, agenda for women's legal empowerment and access to justice constitute an essential part of broader framework of access to justice for the poor. Yet many NGOs have not developed the indicators or guideline to measure the impact of the programmes on women's access to justice.

VI. THE WAY FORWARD

Securing access to justice for women calls for a comprehensive action to address the constraints mentioned above. For removing legal constraints, the government should

⁷³ 'Legal empowerment for women and disadvantaged groups', Mandaluyong City, Phil.: Asian Development Bank, 2009.

⁷⁴ Stephen Golub, "The Political Economy of Improving of Traditional Justice Systems: A Case Study of NGO Engagement with *Shalish* in Bangladesh", S.Hassane Cisse, Sam Muller, Chantal Thomas, Wang Chenguang (Eds.), *The World Bank Legal Review: Legal Innovation and Empowerment for Development*, Washington D. C., 2013, pp. 67-88.

revise discriminatory or inappropriate sectoral legislation in line with the relevant international standards and instruments is the first necessary step towards better access to justice for rural women. Government should arrange for regular training of lawyers, court officers, law enforcement agencies about the challenges faced by women in accessing the Courts, organise equality and discrimination training for lawyers and court staff, amend laws to repeal link between a wife's entitlement to maintenance and her 'obedience', 'chastity', 'marital duties' or 'good character'.⁷⁵ The Village Court should be focal point of justice delivery system at local level. The Village Court Act 2006 should be reformed to make it more women friendly. NGOs practice of reformed *shalish* can be replicated in the practice of the Village Courts.

The government should set up waiting rooms, nursing rooms, women's washrooms, reserved seats for women in the restaurant/canteen in court premises, ensure the safety and security of women in court premises e.g. guards on the premises, set up fast tracking of cases involving persons with disabilities. It should also enforce compliance with the law⁷⁶ to provide and pay for communication facilities for people with disabilities (for example, sign language interpreters). The government should establish awareness building programmes and mandatory training for the police, court officials, lawyers and judges on the rights and needs of women with disabilities.

For addressing social constraints, it is essential to arrange for regular training of lawyers, court officers, law enforcement agencies about the challenges faced by women in accessing the Courts, to organise equality and discrimination training for lawyers and court staff. Awareness building programmes and mandatory training should be undertaken for the police, court officials, lawyers and judges on the rights of women to create gender-sensitive judicial system. Awareness programmes should be organised amongst women to impart ideas on family law, process and procedures of mediation and Village Court. For addressing economic constraints, State-sponsored legal aid should be speedily available for women litigants. For short-term strategies, Help Desks in Court premises can be established to help women litigants find courtrooms and other facilities.

The legal aid fund should be made fully operational and for this purpose, awareness programmes should be launched at the local level. More women lawyers should be included in the District Legal Aid Committees.

VII. CONCLUSION

Bangladesh's prevailing justice system is considered as gender biased, anti-poor and exclusionary. To make the justice system more accessible for women, the government, NGOs, and the legal community should undertake concerted efforts to dismantle the existing barriers to access to justice so that it can deliver much needed goods to the common people. Accessibility of the justice system is one of the most important strategies for legal empowerment for women. Securing access to justice for women requires

⁷⁵ *Supra* n. 10.

⁷⁶ Schedule 12 (D) of The Rights of Persons with Disabilities Act, 2013 of Bangladesh.

comprehensive strategies and action plans to address the constraints mentioned above. To make the justice system more accessible to women, the government, NGOs, and the legal community should undertake concerted efforts to dismantle the existing barriers to access to justice as mentioned above. It also involves a complex combination of legal and institutional reform so that justice system can reach the rural women. It also depends on responsiveness and sensitisation of the judiciary to interpret the legal texts to overcome the procedural barriers and accept the claims to vindicate rights of the women. National Legal Aid system needs to have specialised and targeted legal aid provisions for women to facilitate their access to justice in Bangladesh.