

# Accessibility Challenges in the Formal and Informal Justice System Faced by Poor and Marginalized Groups in Rural Areas of Bangladesh



# Thematic Research on

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## Acronyms

ADR	Alternative Dispute Resolution
AKS	Ananya Kallyan Sangstha
ASUS	Anirban Samaj Unnayan Sangstha
BBC	Bangladesh Bar Council
BLAST	Bangladesh Legal Aid and Services Trust
BNWLA	Bangladesh National Women Lawyers Association
CHT	Chattogram Hill Track
CSO	Civil Society Organisation
DLAO	District Legal Aid Officer
DNA	Deoxyribonucleic acid
FIR	First Information Report
FGD	Focus Group Discussion
GD	General Diary
IDI	In-depth Interview
KII	Key Informant Interview
LEB	Local Elected Bodies
MLAA	Madaripur Legal Aid Association
MOHA	Ministry of Home Affairs
MOLJPA	Ministry of Law, Justice and Parliamentary Affairs
MP	Member of Parliament
NGO	Non-Government Organisation
NLASO	National Legal Aid Services Organisation
NU	Nagorik Uddyog
PSUS	Prattasha Samazik Unnayan Sangstha
UMUS	Uddipto Mohila Unnoyan Songstha
UNO	Upazila Nirbahi Officer
UP	Union Parishad
VC	Village Court
WE	Welfare Effort

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## 1.1. Background

Bangladesh, a home of about 170 millions population, is a 'least developed country' with deep-ridden and inherited poverty, growing social and economic disparities, frequent cases of political and civil unrest and the daunting challenge of natural hazards with the impact of climate change. These challenges tends to an alarming situation of public trust on judicial system, public confidence on political and governing system as well as enjoyment of their rights as citizen.

Bangladesh justice system basically stands on the British common law system and from the British Era of ruling India, Code of Civil Procedure, Code of Criminal Procedure, Penal Code, Evidence Act, Transfer of Property Act, Specific Relief Act and such other basic laws were enacted. After liberation, Bangladesh adopted all of these laws. Though there were number of amendments had been taken to align with the country context, these procedural laws are still the base of the formal justice system of Bangladesh.

Bangladesh judiciary is overburdened of huge backlog of unsolved cases. Delay procedure, intentional non-cooperation of justice stakeholders and inadequate number of judges might be the reasons of this due backlog cases. As a result, to avoid long duration of case, court expenses and harassment by the justice actors, people are primarily preferring quasi-formal and informal justice services, such as, Village Court, Local Salish, etc. On the other hand, informal justice system is speedy, available and easily accessible. But the challenges of this system are patriarchal, biased and unequal representation, particularly, less participation of women and vulnerable groups. To ensure access to justice for all, government has initiated a comprehensive legal aid services. This services include, appointment of panel lawyer with government costs, facilitate alternative dispute resolution (ADR), providing court fees, cost of DNA Test and newspaper advertisement for fugitive opponent, and free legal advice. However, inadequate human resource, limited cooperation from panel lawyers and court staff, lack of enough awareness initiatives, lack of coordination between district legal aid committee and upazilla/union legal aid committees are creating obstacle to deliver proper and high quality legal aid services.

Village Courts are quasi-formal justice system, which are expected to resolve petty disputes speedly at local level. Nevertheless, the service of the Village Court (VC) could not meet the expectation, as the VCs are not fully active in all Union Parishad (UP). Due to politicize election system in UP and lack of human resources tends to less effective VC.

## 1.2. Justice System of Bangladesh: An Overview

The justice system of Bangladesh has evolved over centuries, shaped by different historical periods and influences by different rulers. As a part of the Indian subcontinent, Bangladesh's legal system reflects a blend of indigenous traditions and foreign interventions. The current judicial framework of Bangladesh is a legacy and product of five significant phases: the Hindu, Muslim, British, Pakistani, and Bangladeshi periods, each leaving distinct marks on the legal landscape of the country. During the periods, the country had to go through each ruler's distinctive legal systems. The British colonial rulers had developed the legal framework and Courts hierarchy followed in Bangladesh. These basic legal and administrative structures are embedded in the judicial system of the country. Some aspects of the Muslim and Hindu law were also maintained as their respective personal laws as practiced by their respective religion.

Constitutionally, the Judiciary of Bangladesh is independent, however, due to the socio-political perspectives, the executive body of the State had often tried to control the judiciary. The higher courts had tried to free from control of the executive, but the lower courts could not overcome to free from the control of the executive body until 2007. Following the the Appellate Division judgement in Masdar Hossain vs State case, both the higher and lower court become independent legally in 2009.

The justice system of Bangladesh can be divided in two groups, i.e. formal and informal justice system. The formal system includes the court structure of Bangladesh including magistracy, police, prosecution, prison, etc. whereas the informal system covers traditional Shalish, NGO facilitated mediation, Village Courts, Dispute Resolution Board (Municipal Areas), etc.

## 1.2.1 Formal Justice System of Bangladesh

The formal justice system is embedded in the Constitution of Bangladesh and Part IV of the constitution of Bangladesh describes the formal structure of judiciary as the Supreme Court, the subordinate courts and specialized courts and tribunals. The higher judiciary the Supreme Court consists of Appellate Division and the High Court Division (Constitution Article 94). There are two sets of subordinate courts which are the civil courts and the criminal courts. The Constitution of Bangladesh describes the composition, power and jurisdiction about the Supreme Court of Bangladesh while some codified and statutory laws describe the composition, power and jurisdiction of the subordinate courts of the country. Apart from these, there are some special courts of both civil and criminal nature created by several special laws such as the family court, financial loan court, special tribunal, court of special judge and administrative tribunal, administrative appellate tribunal, special tribunal, Nari O Shishu Nirjaton Daman Tribunal etc..

The institutions and professionals of the justice system of Bangladesh are governed by the different ministries and departments. Police and Prison departments is governed by the Ministry of Home Affairs (MOHA), whereas the Lower judiciary governed by the Supreme Court and the Ministry of Law, Justice and Parliamentary Affairs (MOLJPA). The lawyers are loosely regulated by the Bangladesh Bar Council (BBC), an autonomous body manage by elected lawyers committee, however, the prosecution is mostly governed by MOLJPA and police prosecution part governed by MOHA.

The police played an important role in dispensing justice, mostly, in criminal justice. They received, lodge complaint, investigate, issues warrant and arrest accused, and submitted police report. Based on the police report, the criminal case become ready for trail. Being the only authority for framing, investigating, and reporting the cases, there is enormous scope for manipulation by the police. Similarly, the prosecutors and defense lawyers has a pivotal role in realizing justice for a victim, however, due to lack of institutional accountability for prosecutors and defense lawyers dilute justice dispensation.

<sup>1</sup> Hoque, Kazi Ebadul, (2003): Administration of Justice in Bangladesh, Asiatic Society of Bangladesh.

<sup>2</sup> (1999) 52 DLR (AD) 82

## 1.2.2 Informal Justice System of Bangladesh

The informal system of Bangladesh comprises with traditional Shalish, NGO facilitated mediation, Village Courts, Dispute Resolution Board (Municipal Areas), etc. Among the of informal justice system, Village Court and Dispute Resolution Board (Municipal Areas) are govern by the legislation and headed by the local government and mediation are completely fluid and based on social norms and customs, which generally called Salish.

The Village Court, Dispute Resolution (Municipal Area) Board and Arbitration Council are the semi-formal justice system headed by local government. The Village court is constituted in Union Parishad (UP) to settle petty civil and criminal disputes locally under the Village Courts Act 2006. The Village Court consists of 5 (five) members, two persons from each side (1 member of the UP and 1 notable person) making 4 members and the Chairman of the UP is the ex officio Chairman of the Village Court. It is notable that in case of involved interest of women and children in a dispute, concerned party must nominate a woman representative. The Dispute Resolution (Municipal Area) Board constituted in Municipal Area to settle petty civil and criminal disputes locally under the Dispute Resolution (Municipal Area) Board Act, 2004. The Board consists of 5 (five) members, two persons from each side (1 member from the Councilor of the Municipality and 1 notable person) making a total of 4 members and the Mayor of the Municipality ex officio is the Chairman of the Board. The Arbitral Council is a body set up to resolve certain Muslim family disputes in the UP under the Muslim Family Law Ordinance, 1961. The Arbitration Council consists of 3 members, the Chairman of UP or, in absence of Chairman, a member nominated by the Chairman to preside the Council and one representative from each party.

The informal mediation or Salish has no legal sanction, however, it is based on social and ethical norms and customs. Local mediation system or Salish refers to the informal process of resolving petty disputes at the grassroots level by local respected, dignitaries or individuals following. There is no formal structure of local mediation or Salish. Generally, elderly person or dignitaries conducted Salish locally.

### 1.2.3 Customary Justice System of CHT

CHT has divided into three circles- Chakma, Mong and Bohmang- each circle lead by a Head (King or Raja), officially knownas- Chakma king, the Mong king and the Bohmang king. A total of 378 mouzas<sup>3</sup> in CHT where 378 headmen appointed for overseeing the mouzas. Additionally, 4,811 Karbaris (village chief or elder) are selected for 4,811 Paras (villages)<sup>4</sup>

#### **Circle Chief (Raja)**

According to the Rules of the Administration of the Chittagong Hill Tracts 1900, Circle Chief has both administrative and judicial power. Maintenance of law and order situation and preventing crime are within the duty of the Circle Chief.<sup>5</sup> If any question and or explanation arises in the court of Deputy Commissioner relating to traditional law and social custom and Deputy Commissioner asks for any advice from the King regarding any explanation of that law and custom, the King will give such explanation. The Circle Chief has the power to give decision in the dispute among the residents of the Circle but in hierarchy s/he is above Headman and can fine maximum 50 Taka. They can conduct the dispute resolution according the social norms. From their decision, appeal can be preferred to Deputy Commissioner.

#### **Headman and Karbari**

According to Rule No. 38 of 1900 Act, the duty of the Headman is related with Jhum cultivation and revenue collecting, providing recommendations on government land lease, mutation etc. S/he has to abide by the order of Deputy Commissioner and Upazila Nirbahi Officer (UNO). S/he will maintain the law and order situation in his area. The Headman of a particular mouza can give decision in the dispute among the tribal residents of the mouza. S/he can fine maximum 25 Taka and can retain the stolen property until the further order of the Deputy Commissioner. They can conduct the dispute resolution according the social norms. Local Karbari or Headman can settle the dispute related to tribal, cultural and social issues bought by the tribes of CHT applying their ethnic customs and rituals. From their decision, appeal can be preferred to Circle Chief and or Deputy Commissioner no court fee is required in the dispute resolution of the Headman. According to the CHT Rules for Administration under section 18 of the CHT Regulation 1900 and Hill District Council Act, 1989, the institutional justice making system of the CHT consists of basically with five personnel on a hierarchical basis.

<sup>3</sup>Population and Housing Census 2011, BBS

<sup>4</sup>ibid

<sup>5</sup>Rule 38, CHT Regulation, 1900

Divisional Commissioner, Deputy Commissioner, Circle Chief, Mouza Headman and Karbari are the stakeholders of the traditional justice system of the CHT. Among them Divisional Commissioner has the highest authority to resolve any dispute, whereas Karbari is the lowest unit in the hierarchy. Karbaris are immediate subordinate to Headman of a Mouza, which consists of several villages. If a Karbari cannot resolve a dispute of a certain village area, the dispute then goes to the jurisdiction of a Headman. The Circle Chief Court acts as an Appellate Court of Headman, failing which the case may be referred to the Deputy Commissioners of the respective hill districts or Divisional Commissioner of the Chattogram Division. Generally, the Headman and Karbaris resolve tribal disputes and land disputes through conducting shalish in their own area. First of all, anyone can apply to Karbari for conducting shalish. Land disputes, thieving, quarrel among the families or neighbours, family disputes, money disputes and illegal relation are the main issue to come to the shalish in CHT region.

The CHT Regulations 1900 is applicable for all inhabitants of the CHT irrespective of religion, race or color. According to Rule 1 of the Rules for the Administration of Justice of the CHT, the administration of civil justice shall be conducted in the most simple and expeditious manner while Rule 40 prescribes that the mouza headmen shall adjudicate on all disputes, which may be brought to them by persons resident within their mauzas. They shall decide tribal cases in accordance with the social custom of the parties.

Headman and Karbari including the Circle Chief cannot deal with the following crimes;

- Crimes committed against State and Riot;
- Murder, Culpable homicide, Rape, Abduction etc;
- Grievous hurt and Loss of Limb;
- Crime against person including unlawful trespass,
- Crimes against property above 50 Taka etc,
- Forgery and crimes related to heavy arms.

## 1.3 Objective of the Study

The overall objective of the study is to contribute to the promotion of inclusive access to justice for rural marginalized groups in Bangladesh by identifying the accessibility challenges that they faced within formal and informal justice system in rural areas. The Specific Objectives of this study are;

- a) To assess the existing justice systems (formal and informal) effectiveness of the study areas to settle and reduced the community disputes;
- b) To identify the accessibility challenges that encountered by poor and marginalized groups in accessing formal legal system and informal dispute resolution mechanisms in the study areas;
- c) To assess the justice-seeking behavior of the poor and marginalized communities to resolve their disputes;
- d) To assess and identify the underlying causes and factors that excluded women and other minority communities from accessing the justice system, both in formal and informal legal structures.

## 1.4 Literature Review

Lena Hasle (2003)<sup>7</sup> discussed various aspects of the Alternative Dispute Resolution (ADR) program of national level non-government human rights organization, Nagorik Uddyog (NU), to ensure access to justice for the rural poor, especially women. The researcher assesses what classes of women come here to seek justice, what kind of problems they bring and how NU try to resolve. She mentioned that NU mediation is more satisfactory in getting justice for poor women than the traditional local justice system i.e. Salish.

Dina M. Siddiqi (2003) in her book 'Paving the Way to Justice: The Experience of Nagorik Uddyog' gives a brief idea about the reasons why the common people or the rural poor are not interested in the formal justice system. Apart from this she briefly discusses the rural mediation system and 'alternative dispute resolution' with its various limitations in dispute resolution. Moreover, she also illustrate the NU approach of dispute resolution.

<sup>6</sup> Rule 38, CHT Regulation, 1900

<sup>7</sup> Hasle, Lena (2003): Too Poor for Rights? Access to Justice for Poor Women in Bangladesh, Bangladesh Institute of Development Studies (BIDS), vol. 29(3-4), pages 99-136, Sept-Dec.

Dina M. Siddiqi (2004)<sup>9</sup> in her article 'Salish and the Quest for Gender Justice: An Assessment of Strategic Interventions in Bangladesh' analysed the role and relationship among the customary norms, personal laws and state laws in resolving community disputes. The article also examines the relationship between formal and informal institutions in resolving social and economic disputes at community level. In analysing the social norms and informal institutions, the article reveals the power structures and the changing nature of Salish over time. The article examines the usefulness of Salish as Alternative Dispute Resolution (ADR) tool at the community level as well as its evolving traits and impact.

Sumaiya Khair (2008)<sup>10</sup> in her book '**Legal Empowerment for the Poor and the Disadvantaged: Strategies Achievements and Challenges**' examines some of the principal factors that deny the poor and disadvantaged people access to justice and administrative processes in Bangladesh and explores the approaches used by relevant actors for 'empowering' them in meaningful ways. In so doing, the book broadly looks at legal literacy, public interest litigation, alternative dispute resolution and legal aid as tools of legal empowerment and critically evaluates their role in tangibly changing the lives of the poor and the disadvantaged. It also underscores the achievements and drawbacks inherent in these various initiatives and poses vital questions regarding the sustainability of their impact in the long run.

Md. Adil Hassan Chowdhury and Md. Ershad Hossain (2010)<sup>11</sup> in their book revealed the justice seeking behavior of the marginalized people and the contexts when they approach to both informal and formal justice system for dispute resolution. They also identified the challenges of the marginalized people in access to justice as well as revealed the obstacles they face in different level of justice journey and why. Moreover, the book highlights existing perceptions of marginalized communities about the justice system.

<sup>8</sup> Siddiqi, Dina M. (2003): Paving the Way to Justice: The Experience of Nagorik Uddyog, One World Action.

<sup>9</sup> Siddiqi, Dina M. (2004): Salish and the Quest for Gender Justice: An Assessment of Strategic Interventions in Bangladesh; RIB, Dhaka.

<sup>10</sup> Khair, Sumaiya (2008): Legal Empowerment for the Poor and the Disadvantaged: Strategies Achievements and Challenges, Colorline, Dhaka.

<sup>11</sup> Chowdhury, Md. Adil Hassan & Hosain, Md. Ershad (2010): Bangladesher Prantik Jonogoshtheer Nayabichar Praptir Shomoshya (Problems of the Marginal People in Bangladesh to get Justice); Bangla Academy, Dhaka.

Sheikh Hafizur Rahman (2016)<sup>12</sup> in his article 'Towards a qualitative and sustainable framework of community mediation' try to identify the commonalities, problems, opportunities and sustainability of the models/systems developed and practiced by the NGOs in Bangladesh including MLAA, BRAC, BLAST, NU, BNWLA, WAVE Foundation. The article also explored the good practices from among the models/systems of community mediation. At the end the article tried to develop a sustainable framework of community mediation in the context of the existing practice by the NGOs.

## 1.5 Rationale of the Study

The 'right of fair trial' which also described as 'no man should be punish unheard' is one of the basic principles of natural justice. Article 27 of the constitution of Bangladesh declares that 'all citizen are equal before law and are entitled to equal protection of law'. However, availing this right is difficult for the people who are financially destitute and socio-economically disadvantaged. Here, easy accessibility into the formal justice system is defined as the pre-condition to enjoy the right of equal protection of law. However, easy accessibility into the formal justice system are facing mainly two types of challenges: structural challenges and socio-cultural challenges.

The structural challenges are huge case backlog and delay procedure of disposing cases in formal courts, outdated laws, ineffective law enforcement authority, increasing politicization etc. On the contrary, the socio-cultural challenges are corrupt practices by the justice actors, high cost for conducting cases, limited cooperation from the lawyers and court staff and harassment by touts etc. Bangladesh Justice Audit-Report 2018 reveals that, only 4% of victims go to the police, while only 9% go to court for settling their disputes. That means, lack of trust and confidence of the court users on formal justice system is low and which resulting people go to the informal mechanism.

To ensure the access to justice of the poor and marginalized people, government of Bangladesh provisioned for legal aid and established National Legal Aid Services Organization (NLASO). Under the supervision on NLASO, government has formed District Legal Aid Committees at each district and Upazila Union Committees at each upazila to provide legal aid to the poor and disadvantaged people. However, due to lack of awareness among the people; particularly lower-income group, women, dalit and ethnic minorities; they are not getting that much benefit from government legal aid as expected.

<sup>12</sup> Rahman, Sheikh Hafizur (2016): Towards A Qualitative and Sustainable Framework of Community Mediation; MLAA, NU and WAVE Foundation.

Due to its amicable, speedy, and cost-effective and reconciliation nature, Salish gained enormous popularity especially at the community level. But as the days goes, this shalish system has also surrounded with many controversies and started to lose its reputation and acceptance. Women and poor often become the worst victim of shalish as it is seen to reinforce the patriarchal norms, with serving the interests of the rural elites. On the other hand, court is under tremendous pressure to settle the backlog cases. Currently, there are over 42 lakh backlog cases pending in the court, which has been reached three times over the last 15 years. Additionally, 43,114 women's rights-related cases are pending in court for five years for trial, and a total of 1, 78,231 cases are yet to be settled.<sup>13</sup>

The marginalized groups of Bangladesh are tremendously affected by both structural and socio-cultural challenges of accessing justice. Marginalised people in Bangladesh are diverse in terms of culture, religion, profession, identity, ethnicity, and physical and social dimensions.<sup>14</sup> Low economic condition, lack of awareness and social stigmatization are the main challenges for the access to justice of the marginalized people.

Understanding the facts in access to justice system in both formal and non-formal mechanism, particularly for the poor and marginalized groups, Nagorik Uddyog (NU) has commissioned the study under the Community-based Dispute Resolution Mechanisms and Improving Gender-just Access to Justice Project aiming to reveal the accessibility challenges and its perpetuated factors that enhanced constraints in the formal and informal justice system faced by Poor and other Marginalized groups in Bangladesh.

<sup>13</sup> Sarkar, Ashutosh: Cases pile up in courts, The Daily Star, 27.04.2023

(Available at-<https://www.thedailystar.net/news/bangladesh/news/cases-pile-courts-3305171>)

<sup>14</sup> Brief No 09-The State of the Marginalised in Bangladesh, Citizen's Platform for SDGs, Bangladesh, , November, 2017

(Available at- <https://bdplatform4sdgs.net/wp-content/uploads/2018/09/Citizen%E2%80%99s-Platform-Brief-9-The-State-of-the-Marginalised-in-Bangladesh.pdf>)

## 2.1 Study Design

In order to promote inclusive access to justice for rural marginalized groups in Bangladesh by identifying the accessibility challenges faced by the marginalized groups within formal and informal justice system in rural areas. The study has adopted explorative approach and qualitative method to reveal the justice-seeking behavior of the poor and marginalized communities and to identify the accessibility challenges in accessing both formal and informal legal system by them.

Moreover, the study has measured the effectiveness of the justice system (formal and informal) in the study area in resolving community disputes as well as to identify underlying causes and factors that exclude marginalized groups.

Data has been collected from both secondary and primary sources. The secondary sources includes relevant policies, laws on access to justice. Additionally, local justice system, and formal justice system of Bangladesh has been reviewed for developing comprehensive understanding and gaining knowledge.

The primary sources of data collection has been collected from the relevant key persons of formal justice actors, and informal justice actors such as judges, lawyers, local mediators, elected local government representatives, local community leaders, mediators, members of civil society organizations, and community people particularly from marginalized groups.

A list of respondents has been developed with checklist of taking interview. The primary data was collected by applying qualitative techniques including in-depth interview (IDI), focus group discussion (FGD), key informant interview (KII) and case studies. Besides, open ended interview guidelines have been utilized to get the information from the respective respondents.

□

## 2.2 Study Area

The area of the study has covered different strata of society based on vulnerability, i.e. status of minority, nature of marginality and geographical proximity of access to justice phenomena. To select the study area, the team considered the aforementioned variables and geographical representation. Moreover, considering available resources (especially time and field support from local CBOs) and inception discussion with NU team and field reality, the following six purposively project selected study areas are covered for data collection:

- Moharajpur Union of Jhinaidah Sadar, Jhenaidah
- Sankarchandra Union of Chuadanga Sadar, Chuadanga
- Tala Union of Tala, Satkhira
- Kalikapur Union of Choddogram, Cumilla
- Badarpur Union of Patuakhali Sadar, Patuakhali
- Kohalong Union of Bandarban Sadar, Bandarban

## 2.3 Study Population and Sampling

As a qualitative study, sampling does not intend here to make generalization over the population. The principal purpose of sampling in this study is to assess the existing justice systems and justice seeking behaviour as well as to identify the accessibility challenges of the system. Hence, the sampling was non-probability and specifically address purposive and quota sampling.

A group of people representative from different communities and administrations has been interviewed to get the information for this study. This group of people were formal justice actors (Judges – including DLAO, Prosecutors, Lawyers, Police Officials- Sub-inspector or Inspector); informal justice actors (UP Chairman and Members, Local Mediator (Shalisder), Community Leaders); members of civil society organizations and community based organizations who have experience working on access to justice; LEB and community people particularly from marginalized groups i.e. women and girls, ethnic minorities, dalits, person with disabilities. Area wise sampling and administered tools are given below.

### Areas Wise Tools Administered

District	Upazila	Tools Administered		
		KII	FGD	IDI
Satkhira	Tala	3	2	4
Jhenaidah	Jhenaidah Sadar	2	2	4
Chuadanga	Chuadanga Sadar	3	2	4
Cumilla	Chouddagram	2	2	4
Bandarban	Bandarban Sadar	2	2	3
Patuakhali	Patuakhali Sadar	2	2	3
Dhaka	Dhaka City	2	-	-
Total		16	12	22

## 2.4 Data Analysis

All interviews including KII, IDI and FGD have been recorded with prior consent of the study participants. Research team has transcript the responses of participants with special focus on the research questions and the transcription of responses were the primary dataset of the study.

Later, collected data were summarized according to the study objectives and relevant sub-thematic and procedural areas of access to justice and dispute resolution. At initial stage, data from IDI, FGD, KII, and case studies were summarized separately. These data were analyzed by considering the content and context analysis. With prior review of existing secondary sources, the dimension and critical areas of legal gaps, justice seeking behaviors and accessibility challenges have been analyzed. Finally comparison and triangulation were made between the data from different respondents and sources.

## 2.5 Limitation of the Study

- The study took place during the political turmoil and transitional situation, thus some expected respondents, particularly local elected representatives and police personal, were not available in the field. Moreover, the few respondents were little bit hesitant to response on some issues like political violence and communal violence at the time of transition.
- During the study it was full rainy seasons, hence, in some areas, administering interviews was challenging.
- Conducting face to face interview with the judges and lawyers was notably challenging as it took a long time to get their appointment.

### 3.1 Formal Justice System

The formal justice system of Bangladesh is a legacy of colonial era and till now the system is govern by the colonial archaic laws and policies. Consequently, it has structural limitations to adopt the modern principles as well as dispensing justice in this age. Although, in several occasion initiative has been taken to reform the system, these were piecemeal and scattered rather than a comprehensive reform. Moreover, the actors of the system taking advantage in absence of updated procedural laws and policies.

Thus, the system gradually lose the confidence of the people in claiming justice. In 2018, the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) conducted a Justice Audit with the support from the development partners and it revealed some interesting findings. In replied to a question on where they go for justice, only 9% respondents replied 'formal courts', whereas 58% replied they go to the UP Chairman and 19% replied they go to the Salish.<sup>15</sup> The IDI and FGD respondents of our study iterate the Justice Audit findings.

They seek justice primarily to the local leaders including local government elected representatives. The IDI respondents, who went through the formal justice system, have expressed annoyance on the system and informed that they had no alternative except to go to formal court. These findings transmit the peoples' confidence on the formal justice system. However, as the system run by the codified laws and policies and have less influence over the system, people are comparatively more satisfied by the end result of the system. And thus the formal justice system is last resorte of a justice seeker.

<sup>15</sup> <https://bangladesh.justiceaudit.org/national-data/system-overview/justice-system-in-practice/>

### 3.1.1 Effectiveness

The effectiveness of the formal justice system of Bangladesh is in questions due to the overwhelming backlog of cases, socio-economic inequalities, corruption, and social and cultural norms. Due to the delays in case resolution, the justice seekers become disappointed on the justice system and obstruct their ability to seek timely redress. The extensive waiting periods frustrate defendants, victims, and witnesses, depriving them of justice within a reasonable timeframe. Further, the socio-economic inequalities play an important role in inhibiting access to justice in Bangladesh. Marginalized and economically disadvantaged peoples as well as those residing in rural areas often lack the financial resources to engage in legal representation, navigate complex legal processes, or travel to court venues. Furthermore, due to the absence of robust disciplinary and accountability mechanisms in the formal system, the justice seeker encounter corruption in their interactions with justice actors.

Moreover, deep-rooted cultural norms and societal expectations often discourage marginalized groups, particularly women and ethnic minorities, from engaging in formal justice mechanisms. The World Justice Project's Rule of Law Index (2024) ranks Bangladesh 127 out of 142 countries in terms of accessible and impartial justice, indicating the challenges in case disposal.<sup>16</sup> The citizen's confidence over the formal justice system is shrinking gradually due to the above mentioned structural and substantive flaws.

There is popular legal maxim that 'justice delayed is justice denied', - it means if legal redress or remedy to an injured party is available, but it is not coming in a timely fashion, it is effectively the same as having no remedy at all. In Bangladesh, delay in getting remedy from the formal justice system is very usual. One can assess the effectiveness of the formal justice system of Bangladesh analysing the following case backlog trend matrix;

#### Pending Cases in Bangladesh Formal Courts<sup>17</sup>

Name of the Courts	Year 2008	Year 2012	Year 2017	Year 2022
Appellate Division	6,892	16,647	16,565	19,928
High Court Division	293,901	297,731	476,750	516,674
All Subordinate Courts	1,489,121	2,135,449	2,861,185	3,660,001
Total	1,789,914	2,449,827	3,354,500	4,196,603

<sup>16</sup> <https://worldjusticeproject.org/rule-of-law-index/country/2024/Bangladesh>

<sup>17</sup> মামলা দ্রুত নিষ্পত্তি ও মামলার জট ব্রাসকরণে আইন কমিশন এর সুপারিশ সম্বলিত প্রতিবেদন Law Commission of Bangladesh.

In the December 31, 2008 the total pending cases were 1,789,914 and in December 31, 2022 the total pending cases were 4,196,603. The number of pending cases were increasing mathematically, however, there are very rare and no realistic initiative to address the problem. As the realistic approach i.e. appointment of sufficient judges, amendment of procedural laws, application of ADR etc. were not initiated by the government as much as required. The said report<sup>18</sup> observed that if swift action is not taken to resolve this unusual caseload, the judiciary will collapse along with public confidence in the justice system.

On the other hand, the number of judges, dispensing justice in the formal system, are very few compare to other similar jurisdictions. In fact it is very frustrating for justice seekers. The population of the country are about 180 million people against these population, the country has all about 2100 judges including judges of the Supreme Court. There is only one judge for every 94,444 people in Bangladesh. On the other hand, neighbouring India has one judge for every 47,619 people and Pakistan for every 50,000 people.<sup>19</sup>

The marginalized communities of the country are less inclined to approach to formal system to resolve their disputes. However, still court is the the last resorte for realizing legal rights and seeking justice. Almost all the respondents of this study inform that, if they fail to resolve any dispute through local justice system they approach to the formal justice system.

Despite numerous hurdle in the formal system, few IDI respondents inform that, they have realized their rights by the formal justice system going through a long snaky journey. A KII respondent inform that in a number of cases, particularly family cases, court encourage the lawyers of both parties to settle the dispute out of court through mediation and most of the mediation come up with a successful resolve.<sup>20</sup>

<sup>18</sup> ibid

<sup>19</sup> <https://www.dhakatribune.com/bangladesh/324006/bangladesh-has-one-judge-for-95-000-people>

<sup>20</sup> Umasing Marma, lawyer, Bandharban

### 3.1.2 Accessibility Challenges

The challenges of the access to formal justice system are multifaceted. These challenges derives from the justice actors, justice system, justice seekers as well as socio-political power dynamics. The accessibility challenges of the formal justice system revealed from the study respondents are mentioned here.

#### Police service is not free

Most of the FGD and IDI respondents who took police services in the process of seeking justice reported that they have to pay police personnel for receiving services from the police station. The services include reporting a General Diary (GD), lodging a complaint, investigation of their complaints etc.

#### Police generally denied to lodge complaint against the ruling party members

When there is a cognizable offence perpetrated by any member of the ruling party, the police station usually denied to lodge the First Information Report (FIR). In these situation, police sometime suggest the complainant to resolve the matter with perpetrator. In some cases, police receive the FIR by the recommendation of the influential ruling party members and MPs.

#### The community people are not aware about the formal court system

It was found that most of the respondents are not aware about the court system. They even don't know which types of complaint need to lodge where and how. Moreover, the community people have very rare legal literacy. Furthermore, there are very little scope to know the legal information.

#### Community people have to go to the district town to file a case before the formal courts

For filing a case before the formal courts, either civil or criminal, they have go to the district town. Due to the lack of financial ability, they prevent themselves to file a case in the formal courts. Additionally, they have to go periodically to the district town for their case by discontinuing their livelihood work, which jeopardize their life severely. Therefore, they either try to mitigate the dispute alternately or they refrain to seek justice.

### Formal courts takes 5 to 10 years to resolve a dispute

It is a common perception of the community people that if they file a case before the formal courts, it will take 5 to 10 years to resolve, particularly in land matters. Which impact on their justice seeking behavior. A number of KII respondents informed that, due to the delay in court proceedings to resolve a dispute, people are reluctant to lodge complaint in the formal justice system.

### High cost to engage lawyers and law clerks

The IDI respondents who have resolve their disputes through litigation in formal courts informed that during the long journey in courts they have to pay regularly to the lawyers and clerks. As there is no fixed fee for lawyers and clerk, they charge whatever fee they want. Ultimately, it become over burden for the justice seekers in the formal courts. An IDI respondent from Patuakhali said that a land related case lodged by his father at 2012 and his father died 5 years ago, till now he is continuing the case in the appeal court. Being a small street vendor, it is very difficult for him to continue the case. Similarly, another women IDI respondents from Cumilla said that she file a case to realise her dower and alimony in the family court at 2019 and till now the case is pending before the court. At the begaining she engaged private lawyer and paid 15,000 Taka to the lawyers in an expectation that she will receive dower and alimony soon, but that is not happened. Later, she engaged legal aid lawyers by the suggestion of a NGO staff to conduct her case.

### Non-cooperation of the court staff

A number of KII respondents reported that the court staff are non-cooperative in most of the instances, if they are not paid speed money or tips by lawyers or clerk or clients. The matters of non-cooperation are not to provide case information or giving a long date of the case or not to bring case file from srestha etc. Though, the court staff are appointed by the government to do these duties.

### Formal justice system for rich not for poor and marginalized

There is a common hearsay in the community that Goriber Kono Bichar Nai (There is no justice for the poor). In fact one of the study respondents (IDI) from Noapur, Choddogram, Cumilla replied the same hearsay while giving interview before the study team member. The respondent was tortured by her husband and in-laws and abandoned by husband and denied to pay dowry and alimony. She approached her complaint to local community leaders (matabbors) but the local community leaders can't do anything as her husband and in-laws are financially rich and ruling party members.

Later, she lodge the complaint to the police station with physician's prescription and she spend 12,000 taka in the police station, but the complaint was not even lodge formally. By delaying 4 months without taking any steps, the respective police personnel assure her verbally that he will take steps in this regards.

A good amount of cost associated with lodging or filing a case in the formal justice system and in each stage of the case, the litigant have bear the cost of lawyers and clerk. Moreover, the litigant have to spend money as bribe or speed money for the court officials, police officials etc. It is very difficult for poor and marginalized people to bear the cost. Thus it is expedient to say the formal justice system is for rich not for poor and marginalized.

## 3.2 Informal Justice System

The informal justice system of Bangladesh typically refers the traditional community mediation (Salish), however, there are some other quasi-formal system having legal authority to resolve disputes in an informal settings at lowest tire of administrative that is Union Parishad and Municipalty i.e. Village Court, Arbitration Council and Dispute Resolution (Municipal Areas) Board. Consequently, informal justice system of Bangladesh also refer these quasi-formal systems including traditional Salish. Shalish is an informal community-based dispute resolution process conducted by local elders and or respected community members who mediate and resolve conflicts in the community.

On the other hand, Village Court is a community-based justice system functioning at the Union level in resolving petty civil and criminal disputes and Arbitration Council is also functioning at the Union level to deal with few family issues among the Muslims. Similarly, Dispute Resolution (Municipal Areas) Board is also a quasi-formal system which resolves petty civil and criminal disputes arises in the municipal areas, but mostly non-functional, despite having legal enforcement.

### 3.2.1 Effectiveness

The informal justice system of Bangladesh is mostly based on the traditional mediation (Salish). Primarily, community people mostly rely on traditional Salish in resolving their community disputes. The Justice Audit Bangladesh revealed that 19% of the population go to Salish and 58% of the population go to the UP Chairman for justice.<sup>21</sup> Again, a baseline assessment of the AVCB Project Phase 2 shows that 85% of the resolved disputes were resolved in the Shalish.<sup>22</sup>

<sup>21</sup> <https://bangladesh.justiceaudit.org/national-data/system-overview/justice-system-in-practice/>

<sup>22</sup> Baseline Assessment of the Activating Village Courts in Bangladesh II, UNDP Bangladesh, 2016

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The IDI respondents, who have resolve disputes through traditional mediation (Salish), express their satisfaction on the process and outcome of the Salish. They expressed their satisfaction with the outcome of the Salish as the disputes resolve within very short time without spending much money. A KII respondent meticulously mentioned that if a family or a civil matter or a petty criminal offence lodge before the formal justice system, it will take 3 to 7 years or more to resolve, whereas, if the same matter approach before to Salish system, it will take 1 to 2 months to resolve.

*"I tried again and again but could not get the Salishders to sit in the Salish. The Salishders said that the other side is not willing to sit, they are the ruling party leaders, we can't do anything, and you can go to the court." - Nasrin Akter, IDI Respondent, Cumilla.*

Moreover, they relief from the harassment of thana/police and courts. Though they have faced several challenges in the process of Salish. An IDI respondent from Cumilla informed that she could not even organise the mediation (Salish) session, due to her opponent's affiliation with rulling party. She applied and frequently urged to the local Salishders to resolve her dispute through Salish, but the local mediators could not obliged her opponent to sit in a session. Another IDI respondents from Chudangha informed that they go to a local NGO office and this NGO organise and facilitate Salish session and they get very good resolution. All the FGD respondents unanimously opined that the traditional mediation (Salish) is more effective than police and court in resolving their local disputes. On the other hand, they raise some concern about the Salish, particularly about the Salishders. FGD respondents mentioned that, in most Salish the neutrality did not maintained by the Salishders. Political power become also a determinator in Salish decision. In recent past days, most of the Salish were conducted by the local political leaders and we had no option to go other Salishders to resolve our disputes.<sup>23</sup>

<sup>23</sup> Dilip Kumar Das, KII Respondents, Tala, Satkhira

Moreover, the FGD respondents also mentioned about unethical transaction in Salish. Furthermore, they also raised women's participation in the Salish. They said in a number of instances, the women are denied to join in the Salish, though the matter was pertinent with the women's interest.<sup>24</sup>

Similarly, KII respondents also acclaimed the Salish in resolving community disputes. A number of KII respondents inform the study team that, at present, political identity or political designation became the predominant indicator to become a Salishder. Sometimes the local party committee assign some of their party person for a respective village or para to resolve the disputes of the respective village or para. Consequently, in most instance, it can be heard about the malpractice in the Salish. KII respondents also informed that the participation of women in Salish are gradually increasing, particularly, by women UP members, though 10 to 12 years ago it was almost unimaginable.

*"Earlier, people used to go to honest and respectable person to resolve their complaints. But now ruling party members, who have economic and political influence, are given the responsibility as a Salishder for certain areas and people have to go to them to resolve their dispute resolution." - Anower Hossain, Local Mediator, Patuakhali.*

A Women Member from Jinadha opined that, due to NGO intervention in our area, women's participation in Shalish has increase and elected and defeted Women Members are taking part regularly in local Salish.<sup>25</sup>

### 3.2.2 Accessibility Challenges

The challenges of the access to informal justice system are mostly derive from community power dynamics. Though the Salish denote socio-ethical obligation upon the parties, however, the outcome of the traditional Salish fully depend on the voluntary obligation of the parties. Thus, the accessibility challenges of the informal justice system somehow different from formal one. These challenges of informal justice system associated with changing social norms and customs. The accessibility challenges of the informal justice system revealed from the study respondents are mentioned here.

<sup>24</sup> Ashura Khatun, IDI Respondents, Jinadha

<sup>25</sup> Mst. Sevana Begum, Woman Member (Ex.), Haripur, Moharajpur, Jhenaidah

### *Partiality towards powerful and relatives*

While answering the main obstacle of the Salish in resolving disputes, most of the respondents raise about the partiality in Salish. The community leaders who sit as Salishder, shows, directly or indirectly, affinity or adherence to the socially, economically and politically powerful person. Similar case happened when any party become the relatives of any Salishder.

### *If you are financially solvent and powerful, the Salishder might talk in favour of you*

The respondents of the study mentioned that sometimes the Salishders became bias to the financially wealthy people of the community. It reflected in the process of the Salish and the decisions of the Salish. Similarly, if a party of the dispute is more powerful then the opposite party, the attitude and conversation of the Salishders become change and they are inclined with the powerful party.

### *If you spend money, Salish decision might go in favour of you*

The KII respondents opined that among the disputant parties of the community, generally, the party who have committed the wrong, either civil or petty criminal, is less interested on Salish to resolve the dispute. In such cases, the outcome of the Salish depends on the power dynamics between the parties and community mediators' approach to the facts. Very few IDI respondents, those resolve their dispute through Salish, inform that the local mediators could not beholden the respondent parties to resolve the dispute through Salish. Sometimes they even not interest to sit in Salish session. Similarly, the FGD respondents agreed that the wrong doers are less interested to the Salish, they tried to approach to the formal system for that they can take benefit from the formal system. In some cases, the wrong doers approach to the alternative channels to resolve, instead of Salish, due to fear of social stigmatization.

### *Salish process and decisions are gender bias and discriminatory towards women and girls*

A number of women IDI and FGD respondents informed that while taking decision of a Salish, the local mediators (Salishders) could not properly consider women's voice. Most of the time they became subjected of discrimination, though women are the intrigal part of the society. The FGD respondents agreed that till now the participation of women in Salish is very low as well as their opinion in the Salish is less valued by the male Salishders.

The KII respondents opined that women's participation in the Salish process are gradually increasing due to the NGO intervention and increase women's participation in socio-economic activities. Moreover, the whole process of traditional Salish is male dominated which resulted women's less interest in participating in Salish process. Furthermore, due to the inherent socio-religious and patriarchal norms among the mediators, the women and girls became the subject of discrimination in the Salish process and decision.

### *There is nothing to do if Salish decision is not accepted by the parties*

As discussed, the outcome of the Salish depends of the voluntary obligation of the parties. Most of the respondents of the study resonated that, if any party of a dispute reject the decision of the Salish, the mediators or Salishders have nothing to do. That means, the decision of a community Salish could not create a legal obligation rather than a social obligation.

### *The increase tendency of politicization in Salish process*

Most of the respondents of the study mentioned that the traditional Salish process become politicised. The politicization of Salish process impacted on social peace and harmony and create complexity among the neighbours in the community.

*“Upazila level ruling party leaders or officials from administration or local MP give instructions and pressurized the community level mediators to provide judgment or decision as per their desire.” – Anwar Hossain, KII Respondent, Patuakhali*

A number of KII respondents elaborated the politicization of Salish in the community. They inform that the mediators (Salishder) must be a ruling party member. That means to be mediator, a person have to have affiliation with the ruling party. More interesting facts have revealed from Patuakhali that, who will be the mediator in a respective Union or Ward are determined by the ruling party Upazila Committee Chair or Secretary or even the respective MP. Furthermore, in a respective Salish, the Upazila level leadership of the ruling party provide instructions to the local level mediators what will be the decision of the Salish and they create pressure upon the local level mediators to give decision guided by them.

### 3.3 Justice Seeking Behaviors

The respondents of the study inform that, if anyone become a party of a dispute, s/he first seek remedies from local justice forums to resolve their disputes. In the process of seeking justice from the local justice system, it is a common phenomena in all the study areas to seek resolution from community leaders and or elderly respectable persons, if failed, then they approach to the locally elected representatives for resolving disputes. If the local elected representatives also failed, they approached to the formal system. It is noted to be mentioned here, if the disputes are related to atrocious crime, they directly approach to police station. Very few respondents mentioned that sometimes the atrocious crimes also tried to resolve through locally.

#### 3.3.1 Justice Seeking Behaviors of the Religious Minorities and Dalit

Religious minorities and dalits usually live in a particular local area or para. The respective local area or para have some sort of system like para head or committee or church or panchayat or matabbor etc.

The respondents from religious minorities and dalit communities particularly from IDI and FGD respondents inform that when any dispute arise on family, land or social issues within their community members, they initially seek remedy to their respective local area or para's system. If the dispute arise between members from religious minorities or Dalits and Muslim communities, then the justice seeking behaviors differ. Usually, it hinge on power dynamics between the parties. Few religious minorities or dalits approach to local elected bodies (LEB) or semi-formal system (VC) or to formal courts, if they are economically well off and politically well connected.

*"Ours is Hindu Para. We solve our internal problems within our family members and relatives. However, if there is a dispute of our land, especially with others, I do not have the courage to seek justice outside the village." - Mohadev Sarker, IDI Respondent, Satkhira.*

But, in some instances, they even dare not to approach to seek justice in any forum. The respondents from religious minorities and dalits said that they have very no that much courage to go outside their respective para to seek justice. Besides, if any gravious crimes occurs in the community, they approach directly to Thana police.

### 3.3.2 Justice Seeking Behaviors in CHT

For ethnic minority communities of the CHT, local level justice system is mainly centered on traditional justice system run by Karbaris and Headmen. Few of them go to the semi-formal and or informal system.

*“Family matters of the ethnic communities usually resolve through customary justice system, but other disputes – land demarcation, petty crimes – resolve through semi-formal and or formal justice system.” - Umasing Marma, lawyer,*

In the CHT areas, local Bengali people approach to the UP Members and Chairmen for settlement of their disputes, which are usually settled by them informally without resorting semi-formal system i.e. VC. Karbaris and Headmen are responsible for settlement of local disputes such as land, and family disputes arising out among the tribal communities. Local tribal people prefer to discuss with Karbaris and Headmen as they can talk openly with them. According to the findings of KII and In-depth interview, Karbaris and Headmen are generally reluctant to send disputes to semi-formal and formal system as they consider it as a threat to their hereditary and ancestral profession.

Due to the prevalence of the traditional justice system and resistance from Karbaris and Headmen, most of the disputes are settled locally. However, justice is not always ensured through Karbaris and Headmen as they might be biased or due to hereditary in nature they might have some enmity with other people. Generally, settler Bengali people go to the semi-formal and formal system i.e. VC, police station or court, to lodge their complaints for settlement of disputes.

### 3.4 Causes and Factors that Excludes Women and Marginalised Groups

The causes and factors that exclude women and marginalized groups from access to justice are multi-dimensional. From the responses of the study respondents, it was found that the main causes and factors that exclude women and marginalized groups from access to justice are mainly due to the constraints of legal and policy landscape, economic and social constraints and institutional constraints as well as individual constraints. In this section, the causes and factors are elaborated based on the study responses.

### *Lack of women and marginalized groups friendly formal court system*

The physical environment of the formal courts are mainly mainstream male dominated and may produce an atmosphere of exclusion, alienation or disempowerment for women and marginalised. This has adverse effects on women and marginalized groups' access to justice. A number of respondents raise the issue that the formal court is not conducive for them considering the male dominated environment. It is sometimes alleged that women litigants face gender stereotyped attitudes and behaviour by male lawyers during hearings. Questions on woman's purity, especially her 'loyalty' or 'chastity', are common. This sort of questioning in public can be extremely humiliating for a woman. As a result women and marginalized people refrain to lodge complaint to the formal system.

### *Lack of updated substantive and procedural laws*

The ability of women and marginalized groups to claim and to protect their rights and seek a remedy is influenced by the contents of the laws that establish these rights and regulate the processes for claiming their protection. Though the Constitution of Bangladesh guarantees equal protection of law, which is important in securing equality in access to justice. However, constitutional guarantees of equality do not necessarily guarantee that equality will be available to women and marginalized groups in practice. As mentioned earlier that the legal system of Bangladesh is a mix of colonial law, personal law and parliamentary enactments.

Merely having a legal framework is inadequate to protect women and marginalised. The existing substantive and procedural laws, in some instances, are unclear, inconsistent and outdated; and are not suited to the needs of the poor and marginalized women. For example under the Family Court Ordinance of 1985, a women have to wait prolong to get her marital benefits after separation or divorce due to faulty procedure of summons execution at pre-trial and decree execution at post-trial. Further, the principal procedural laws, like the Civil Procedure Code of 1908 and the Criminal Procedural Code of 1898, are outdated and inconsistent with present days.

### *Discriminatory law and policies*

In many circumstances laws simply discriminate against women and marginalized groups, affording them fewer or lesser rights than men and mainstream groups. The most typical example of legal discrimination remains within family laws, on issues related to marriage and divorce, where women are accorded fewer rights than men.

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. Similarly, in some instances, the existing laws discriminate marginalized groups, due to non-recognition of their vulnerabilities. For example, the State Acquisition and Tenancy Act, 1950, the Dhaka Metropolitan Police Ordinance, 1976, the Government Primary School Teacher Appointment Rules, 2019 and many other enactment has discriminatory provisions which create obstacle the access to justice of the marginalized people. Similarly, some policies like, the National Housing Policy 2016, the National Health Policy 2011, the National Land Use Policy 2001, and many more policy and stretagy did not recognize the vulnerability of the marginalized people.

### *Lack of women friendly court structure*

An IDI respondents have mentioned her experience in court. In the court premises there are lack of available and clean washrooms. Moreover, the absence of security to protect women from harassment and intimidation, the unavailability of safe transportation to bring them 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.

### *Gender insensitive justice actors*

Both the formal and informal justice actors are gender insensitive. The formal justice actors are judges, lawyers, police officials and court staff and some respondents raise the issue of the gender insensitivity of the formal actors. On the other hand, most of the respondents says about the gender insensitiveness of the informal justice actors.

### *Formal courts are far away from the community*

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. Women and marginalized people have to travel to districts to file a suit.

### *Economic condition of the women and marginalised*

Lack of economic independence of women and marginalized groups is another major barrier to access to justice. The legal system of Bangladesh involves considerable financial involvement in terms of travel costs, lawyer's fees, and production of witnesses, procurement of documents, and other associated expenses.

High costs related to the justice system make the formal justice system almost inaccessible for the majority of Bangladeshi people, let women and marginalized group more vulnerable to access to formal justice system. One of the major constraints that women face the cost of initiating a legal process and to continue it. On the other hand, due to vulnerable economic condition of the women and marginalized groups, they face hurdle in approaching the informal system like, Salish to resolve their disputes.

### *Corruption in formal justice system*

Corruption within the judicial branch and police can further limit access for women and marginalized groups who do not have the means to pay bribes in order to gain access to the justice system.

### *Lack of available information on government and NGO legal aid*

Although the government has set up 'Legal Aid Fund' (handled by District legal Aid Committees), the utilisation of this fund remains unused due to lack of proper publicity. The accessibility of government legal aid services to women and marginalized groups is very limited as these legal services are mainly based in the city. Moreover, women and marginalized groups members have little information about government and NGO sponsored legal aid.

### *Delay in resolving disputes at the formal courts*

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. Thus, women and marginalized are not inclined to lodge cases to the formal court.

### *Domination of patriarchal norms*

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 exacerbate women's subordination and creates dependency on men. Women's 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. Moreover, the informal justice actors particularly, community leaders are adhere with patriarchal norms and often interfere with the informal justice process which further limit the access to justice of the women.

### *Legal Litaracy and Awareness*

Women and marginalized groups 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 makes an individuals more vulnerable to be abuse or exploitation in the justice system. They are less likely to receive a fair justice.

The study conducted with the various representative of marginalized communities including, Dalits, Adibashi, Hindus, local govt. representatives, CSO representatives and formal or informal justice actors to understand the barriers and challenges that impeded the accessibility of all level people in the justice system. The study has been conducted purposively in Satkhira, Jhenaidah, Chuadanga, Bandarban, Patuakhali and Comilla districts. The study has identified number of key findings. In the study area, community people and other interviewees commented that, local Salish facilitators prioritize rich and/or group with muscle powers. This is very usual that when two parties come if one is male, the system acts discriminately that mostly male gets an advantage. The quasi-formal justice system i.e. VC are not fully functional as it has lack of human resources and other facilities, and it cannot follow the procedure appropriately, rather the elected chairman/member tries informal mediation.

People believes, in the formal justice system, there are number of doors where they are not entitled to enter and they must rely on lawyer, court staff, lawyer's assistant, and even touts. People think, any court user cannot get justice without spending a lot of money, undetermined duration of case-life, undue expenses and non-cooperation from service providers.

Since there is a patriarchal culture in Bangladesh, in the rural area its range, in fact high extent, it influences justice behavior of service holders and service providers. In the local Salish women victim/justice seeker have no permission to speak, even they are not allowed to describe their own disputes, on behalf of them, their male member of the family narrates the disputes. This is a big challenge to ensure justice both in formal and informal justice system when the marginalized groups, Dalits, gender diverse communities, religious minority feel confused and less confident to get in the justice institutions.

## 4.1 Conclusions

Instead of conclusion, the study team would like to summarise the discussion that the justice system of Bangladesh, both formal and informal, remain accessibility challenges. The formal justice system are fronting challenges from the 'system' and 'actors' as well. The 'system' is administered by the procedural laws those were adopted about two hundred years ago in the colonial era. These procedural laws are not entirely capable to fulfill the demand of the present digital age.

Moreover, the 'system' is running by insufficient human and logistic resources. Furthermore, due to lack of proper accountability, the 'actors' of the formal system are reportedly engaged with malpractice which aggravate the accessibility challenges. On the other side, the challenges fronting by the informal justice system are associated with changing social norms and practices. Though the community people have more trust on the informal system to resolve community dispute, however, the client-parton relationship among the social classes directly and or indirectly manifest in the informal system. The recent trend of politicization magnify the accessibility challenges of informal system. Ultimately, these challenges of the access to the justice system worsen the situation of women and marginalized people.

At the end, it is well understood that, Bangladesh faces number of challenges with strengthening access to justice, particularly for women and other vulnerable and excluded groups which are surmountable. To ensure access to justice there must be an impartial, non-discriminatory and biasless justice delivery system either formal or informal. An effective informal system can contribute in reducing huge backlog of formal system. The capacity of the stakeholders of the informal system including traditional Salish and quasi-formal forum i.e. VC need to be enhance to improve the access to justice of the women and marginalized. The stakeholders should trained with legal literacy, gender and exclusion sensitivity and impartial dispute management. Moreover, a strong accountability mechanism should be in place for both formal and informal to enhance the confidence of the community people over justice system.

GOB and CSOs must undertake initiatives for building the capacity of local level leaders, particularly, local mediators, up members and local elites on basic laws, compoundable matters as per domestic laws, gender equality and integrity. NU believes, capacity building initiatives will help local actors to understand dispute resolution process, peaceful manner and justice seeker's needs in accessing justice system.

## 4.2 Recommendations for Improvement

Based on the study findings, the team set some recommendations for government as well as NGOs/CSOs.

### Recommendations for Governments

- Government should update and reform substantive and procedural laws considering women and other marginalized groups;
- Government should identify the gaps and loopholes of the existing laws and policies that discriminate the women and marginalized peoples and should remove these discriminatory provisions of the laws and policies to ensure equal treatment of the law for women and marginalized groups;
- Government should take initiative to ensure women and marginalized groups friendly formal court system by providing logistics support in court premises as well as by facilitating training on the gender and pro-poor sensitivity to the justice actors;
- Government should take an action plan to reduce the case backlog which is delay justice;
- Government should take initiative to appoint number of required judges to decrease the case back log;
- Government should take initiative to decentralize the formal court system;
- Corruption in formal justice system is widespread. The government should address the corruption issue strictly;
- A permanent prosecution system is the demand of the time. Government should immediately take initiative to set up a permanent prosecution system for ensuring timely justice;
- Government should establish an independent and effective crime investigation authority to ensure the sentence of the perpetrators;
- Government should train the quasi-formal justice actors on ADR, gender sensitivity and diversity to ensure justice for all irrespective of class, race, social status and other social determinants;
- 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.

### *Recommendations for NGOs and CSOs*

- NGOs and CSOs should undertake programs on the community mediation to transform the traditional system into a gender and diversity sensitive dispute resolution forum;
- Awareness programmes should be organised amongst women and marginalized groups to provide knowledge on family law, process and procedures of mediation and Village Courts;
- NGOs/CSOs should undertake awareness program on legal literacy for the women, girls and marginalized peoples;
- NGOs/CSOs can initiate programs to develop the capacity of the community leaders on ADR and relevant laws to reduce illegal transaction in the community mediation;
- NGOs/CSOs should undertake policy advocacy with government to reform the discriminatory laws and policies to ensure access to justice for all.

## References

1. Berger, Tobias (2017): *Global Norms and Local Courts: Translating 'the Rule of Law' in Bangladesh*; Oxford University Press, India.
2. Chowdhury, Md. Adil Hassan & Hosain, Md. Ershad (2010): *Bangladesher Prantik Jonogoshtheer Nayabichar Praptir Shomoshya (Problems of the Marginal People in Bangladesh to get Justice)*; Bangla Academy, Dhaka.
3. Hasle, Lena (2003): *Too Poor for Rights? Access to Justice for Poor Women in Bangladesh*, Bangladesh Institute of Development Studies (BIDS), vol. 29(3-4), pages 99-136, Sept-Dec.
4. Justice Audit Bangladesh (2018): *Ministry of Law, Justice and Parliamentary Affairs*.
5. Khair, Sumaiya (2008): *Legal Empowerment for the Poor and the Disadvantage: Strategies Achievements and Challenges*; UPL, Dhaka.
6. Rahman, Sheikh Hafizur (2016): *Towards A Qualitative and Sustainable Framework of Community Mediation*; MLAA, NU and WAVE Foundation.
7. Siddiqi, Dina M. (2004): *Salish and the Quest for Gender Justice: An Assessment of Strategic Interventions in Bangladesh*; RIB, Dhaka.
8. Siddiqi, Dina M. (2003): *Paving the Way to Justice: The Experience of Nagorik Udyog*; One World Action, UK.

## Annex-1: List of KII Respondents

SL#	Name	Designation	Address
1	Md. Mizaur Rahman	Lawyer	Advocate, Patuakhali Judge Court, Patuakhali.
2	Anower Hossain	Local Mediator	President, Press Club, Patuakhali,
3	Umasing Marma	Lawyer	Advocate, Bandhorban Judge Court, Bandharban
4	Faing Mrao Marma	Karbari	337 No. Balaghat Mouza, Bandharban
5	Dilip Kumar Das	Marginalised Community Leader	Tala, Satkhira
6	Ferdous Morol	Local Mediator	Tala, Satkhira
7	Farhana Yeasmin	Women Member	Tala, Satkhira
8	Martin Hirok Chowdhury	Marginalised Community Leader	Chuadanga Sadar, Chuadanga
9	Abdur Razzak	Panel Chairman	Vill: Jhorajhat, Alukdia Union, Chuadanga
10	Advocate Bellal Hossain	Panel Chairman	Vill: Alukdia, Alukdia Union, Chuadanga
11	Mst. Sebana Begum	Ex Woman Member	Haripur, Moharajpur, Jhenaidah
12	Abu Sayed	Local Mediator	Tetulbazar, Moharajpur, Jhenaidah
13	Ranjan Kumar Das	Sub Inspector	Choddogram, Cumilla
14	Mir Ahmed	Local Mediator	Noapur, Choddoogram, Cumilla
15	Asif Iqbal	Senior Judicial Magistrate	Dhaka Judge Court, Dhaka
16	Md. Afanur Rahman	APP	Dhaka Judge Court, Dhaka

## Annex-2: List of IDI Respondents

SL#	Name	Designation/ Category	Address
1	Abdul Jalil	Community People, resolve case by formal justice system	Village- Dumki, Upazia - Dumki, Patuakhali
2	Muslem Mir	Community People, pending case before formal justice system	Village – Jalisha, Post – Dumki, Patuakhali
3	Nasrin Begum	Community Member, tried to resolve by mediation (Salish)	Village – Noapur, Post- Chupua Madrasha, Chaddagram, Cumilla
4	Minu	Community Member, tried to resolve by mediation (Salish)	Village – Badarpur, Post- Chupua Madrasha, Chaddagram, Cumilla
5	Jhorna Mondal	Marginalised Community Member	Village – Baruhati Kayputra para, Tala, Satkhira
6	Mohadev Sarker	Marginalised Community Member	Village – Baruhati Kayputra para, Tala, Satkhira
7	Moyna Sarker	Community People, Dispute resolve by mediation (Salish)	Village – Kismatgona, Tala, Satkhira
8	Trishna Rani	Community People, Dispute resolve by litigation	Village – Khanpur Daspara, Tala, Satkhira
9	Ahsan Habib	Community People, Dispute resolve by mediation (Salish)	Village- Sarishadanga, Mominpur UP, Chuadanga
10	Md. Arshed Ali	Justice Seeker	Chuadanga Sadar UP, Chuadanga
11	Muslem Uddin Baul	Formal, Dispute resolved by formal ADR	Village- Panchkomlapur, Khadimpur UP, Chuadanga
12	Wahidul Islam	Person with Disability, local mediation and NGO	Village- Pirpur, Alukdia UP, Chuadanga
13	Monsur Ali	Marginalized- village mediation (Salish)	Tetulbazar, Moharajpur, Jhenaidah
14	Ashura Khatun	Marginalized – resolved by community mediation	Haripur, Moharajpur, Jhenaidah
15	Sufia Khatun	Community Formal- Nari Shishu Case ongoing through formal justice system.	Haripur, Moharajpur, Jhenaidah

## Annex-3: FGD Checklist

### যোবাস গ্রুপ ডিসকাসন (এফজিডি) চেকলিস্ট

#### In general

১. আপনাদের মধ্যে কেউ কি গত তিন বছরে কোন বিরোধ বা ঝগড়া/দ্বন্দ্ব/বিবাদ এ জড়িয়েছেন? (কত জনে কতজন) বিরোধ টি কি ধরনের ছিল? (সবগুলো ধরন নোট নিতে হবে এবং যদি কোন ধরন একাধিক ব্যক্তি উল্লেখ করে তাও নোট লাখতে হবে)
২. বিরোধ/ঝগড়া/দ্বন্দ্ব/বিবাদ হলে তা মিমাংসার জন্য প্রথমে কোথায় বা কার কাছে যান? কেন বা কি কারণে প্রথমে সেখানে বা তার কাছে যান? প্রথমে যেখানে গিয়েছেন সেখানে যদি আপনার বিরোধের মিমাংসা না হয় তাহলে কোথায় যাবেন?
৩. আপনাদের মতে বিরোধ মিমাংসার জন্য কি কি ব্যবস্থা রয়েছে? আপনাদের মতে এই ব্যবস্থাগুলোর মধ্যে সবচেয়ে ভালো কোন ব্যবস্থাটি? (কত জন কোনটি বলে নোট নেওয়া) কেন? (কারণগুলো নোট নিন) আপনাদের মতে এই ব্যবস্থাগুলোর মধ্যে সবচেয়ে খারাপ কোন ব্যবস্থাটি? (কত জন কোনটি বলে নোট নেওয়া) কেন? (কারণগুলো নোট নিন)

#### On Informal Justice System

১. স্থানীয়ভাবে বিরোধ মিমাংসার জন্য আপনাদের এলাকায় কি কি ব্যবস্থা রয়েছে? আপনারা স্থানীয়ভাবে বিরোধ মিমাংসার জন্য কোন ব্যবস্থা বা কার কাছে যান? কেন এই ব্যবস্থা বা ব্যক্তির কাছে যান?
২. আপনাদের এলাকায় 'স্থানীয় সালিশ ব্যবস্থা' কিভাবে পরিচালিত হয়? 'স্থানীয় সালিশ ব্যবস্থা'য় কারা কারা সালিশকারী হিসেবে অংশ নেয়? তারা সালিশকারী হিসেবে অংশ নেয় কেন বা কি কারণে তারা সালিশকারী হিসেবে অংশ নেয়? 'স্থানীয় সালিশ ব্যবস্থা'র ভালো বা ইতিবাচক দিক কোনগুলো? 'স্থানীয় সালিশ ব্যবস্থা'র খারাপ বা নেতিবাচক দিক কোনগুলো? সালিশের সিদ্ধান্তের ক্ষেত্রে কোন কোন বিষয়গুলো প্রভাব ফেলে?
৩. 'স্থানীয় সালিশ ব্যবস্থা'য় বিরোধ মিমাংসার ক্ষেত্রে আপনারা সন্তুষ্ট হন কিনা? হলে কেন? না হলে কেন?
৪. স্থানীয় নির্বাচিত প্রতিনিধিগণ স্থানীয় বিরোধ মিমাংসায় কি ধরনের ভূমিকা রাখে?
৫. আপনাদের এলাকায় বিরোধ মিমাংসার জন্য ইউনিয়ন পর্যায়ে 'গ্রাম আদালত' গঠিত হয় কিনা? গঠিত হলে কিভাবে গঠিত হয়? আপনাদের মধ্যে কেউ 'গ্রাম আদালত' এ অভিযোগ দায়ের করেছেন? (কত জন নোট নিতে হবে) 'গ্রাম আদালত' এ বিরোধ মিমাংসার ক্ষেত্রে আপনারা সন্তুষ্ট হন কিনা? হলে কেন? না হলে কেন?
৬. আপনাদের মতে 'স্থানীয় সালিশ' ও 'গ্রাম আদালত' ব্যবস্থায় বিচার প্রাপ্তির সমস্যা ও বাধাগুলো কি কি? এই সমস্যা ও বাধাগুলো কিভাবে দূর করা যায়?
৭. 'স্থানীয় সালিশ' ও 'গ্রাম আদালত' ব্যবস্থায় বিচার প্রাপ্তির ক্ষেত্রে অর্থনৈতিকভাবে অসচ্ছল ও সামাজিকভাবে অসহায় বা প্রান্তিক ব্যক্তিগণ কি কি বিশেষ সমস্যা বা বাধার সম্মুখীন হন? এই সমস্যা ও বাধাগুলো কিভাবে দূর করা যায়?
৮. পারিবারিক বিরোধ এবং পারিবারিক সহিংসতায় বা নারীর প্রতি নির্ধাতনের ঘটনা মিমাংসার জন্য আপনারা সাধারণত কোথায় যান? স্থানীয়ভাবে এ সংক্রান্ত কোন কোন বিরোধগুলো মিমাংসা করা হয়? স্থানীয়ভাবে এই সংক্রান্ত বিরোধ মিমাংসার ক্ষেত্রে ভুক্তভোগী নারীর অবস্থান কি থাকে? স্থানীয় সালিশকারীগণ ভুক্তভোগী নারীকে কিভাবে মূল্যায়ন করেন?

#### On Formal Justice System

১. আপনাদের মধ্যে কেউ কি কখনো থানায় মামলা দায়ের করেছেন বা থানায় কোন সেবা গ্রহণ করতে গিয়েছেন? (কতজনে কতজন) কে কে থানায় দায়ের করেছেন বা কোন সেবা নিতে গিয়েছেন? বিষয়টি কি ছিল?
২. থানাতে মামলা দায়ের বা সেবা গ্রহণ করতে কি কোন অসুবিধা হয়েছিল? কি অসুবিধা হয়েছিল? থানায় দায়িত্বপ্রাপ্ত পুলিশ কর্মকর্তার আচরণ কি ধরনের ছিল? আপনি কি থানার সেবায় সন্তুষ্ট? হলে কেন? নাহলে কেন?
৩. আপনাদের মধ্যে কেউ কি কখনো আদালতে মামলা দায়ের করেছেন বা মামলার পক্ষ হয়েছেন? (কতজনে কতজন) কে কে মামলা দায়ের করেছেন বা মামলার পক্ষ হয়েছেন এবং মামলার বিষয়টি কি ছিল?
৪. আদালতে মামলা দায়ের বা মামলায় পক্ষ হতে কি কোন অসুবিধা হয়েছিল? কি কি অসুবিধা হয়েছিল? আদালতে দায়িত্বপ্রাপ্ত বিচারক, আইনজীবী ও আদালতের কর্মচারীদের আচরণ কেমন ছিল? আপনি কি আদালতের সেবায় সন্তুষ্ট? হলে কেন? নাহলে কেন?
৫. থানা ও আদালতে সাধারণ মানুষের ন্যায়বিচার পাওয়ার জন্য আপনাদের সুপারিশ কি কি?

## Annex-4: In-Depth Interview (IDI) Questionnaire

### প্রথম ভাগ

১. নাম:
২. মায়ের নাম:
৩. বাবার নাম
৪. জেডার:
৫. বয়স:
৬. বৈবাহিক অবস্থা:
৭. শিক্ষাগত যোগ্যতা:
৮. পেশা/পদবী:
৯. ঠিকানা:
১০. ক্যাটাগরি:

### দ্বিতীয় ভাগ

#### *Marginalized Groups Member*

১. আপনাদের এলাকায় ব্যক্তি জীবনে বা পরিবারে বা সমাজ জীবনে সাধারণত কি কি বিষয়ে বিরোধ/ঝগড়া/দ্বন্দ্ব হয়ে থাকে? ব্যক্তি জীবনে বা পরিবারে বা সমাজে কোন বিরোধ হলে কি কি পদক্ষেপ নেওয়া হয়?
২. আপনাদের এলাকায় ব্যক্তি জীবনে বা পরিবারে বা সমাজ জীবনে বিরোধ/ঝগড়া/দ্বন্দ্ব হলে কিভাবে মিমাংসা করা হয়? বিস্তারিত বলুন। আপনার এলাকায় বিরোধ মিমাংসার ক্ষেত্রে সমস্যা/বাধা গুলো কি কি?
৩. আপনার নিজের বা আপনার পরিবারের কোন সদস্যের কখনো কারো সাথে কোন বিরোধ হয়েছিল কিনা? হলে কি বিষয়ে বা কি ধরনের বিরোধ হয়েছিল বিস্তারিত বলুন? বিরোধটি মিমাংসার জন্য আপনি কার কার কাছে গিয়েছিলেন কেন গিয়েছিলেন?
৪. উক্ত বিরোধের কি মিমাংসা হয়েছিল? কিভাবে বিরোধটি মিমাংসা হয়েছিল বিস্তারিত বলুন? এই মিমাংসার প্রক্রিয়া কিভাবে শুরু হয়েছিল? মিমাংসার প্রক্রিয়ায় কারা কারা যুক্ত ছিল? উক্ত মিমাংসায় আপনি কি সন্তুষ্ট হয়েছেন? কেন আপনি সন্তুষ্ট মনে করেন? সন্তুষ্ট না হলে কেন?
৫. বিরোধটি মিমাংসা না হলে বর্তমানে কি অবস্থায় আছে? আপনার মতে কেন বিরোধটি মিমাংসা হচ্ছে না?
৬. স্থানীয় বিরোধ মিমাংসার ক্ষেত্রে আপনার এলাকার নির্বাচিত প্রতিনিধিদের (চেয়াম্যান ও মেম্বারদের) ভূমিকা আপনি কিভাবে দেখেন?
৭. স্থানীয় বিরোধ মিমাংসার ক্ষেত্রে আপনার এলাকার রাজনৈতিক নেতৃবৃন্দের ভূমিকা আপনি কিভাবে দেখেন?

৮. আপনি বা আপনার পরিবারের কেউ কি কখনো থানায় কোন কাজে গিয়েছেন? কি কাজে গিয়েছেন? থানা থেকে কি সেবাটি পেয়েছেন? উক্ত সেবা পেতে আপনাকে কি কোন খরচ করতে হয়েছে? স্থানীয় বিরোধ মিমাংসার ক্ষেত্রে থানার ভূমিকা আপনি কিভাবে দেখেন?
৯. আপনি বা আপনার পরিবারের কেউ কি কখনো আদালতে মামলা দায়ের করেছেন বা মামলার পক্ষ হয়েছেন? মামলার বিষয়টি কি ছিল? বিস্তারিত বলুন?
১০. আদালতে মামলা দায়ের বা মামলায় পক্ষ হতে কি কোন অসুবিধা হয়েছিল? কি কি অসুবিধা হয়েছিল? আদালতে দায়িত্বপ্রাপ্ত বিচারক, আইনজীবী ও আদালতের কর্মচারীদের আচরণ কেমন ছিল? আপনি কি আদালতের সেবায় সন্তুষ্ট? হলে কেন? নাহলে কেন?
১১. দরিদ্র মানুষজন বিচার পাওয়ার ক্ষেত্রে সমস্যা বা অসুবিধা কি কি? এই সকল সমস্যা বা অসুবিধা কিভাবে দূর করা যায় বলে আপনি মনে করেন?

### Marginalized Groups Member

১. আপনাদের এলাকায় ব্যক্তি জীবনে বা পরিবারে বা সমাজ জীবনে সাধারণত কি কি বিষয়ে বিরোধ/ঝগড়া/দ্বন্দ্ব হয়ে থাকে? ব্যক্তি জীবনে বা পরিবারে বা সমাজে কোন বিরোধ হলে কি কি পদক্ষেপ নেওয়া হয়?
২. আপনাদের এলাকায় ব্যক্তি জীবনে বা পরিবারে বা সমাজ জীবনে বিরোধ/ঝগড়া/দ্বন্দ্ব হলে কিভাবে মিমাংসা করা হয়? বিস্তারিত বলুন। আপনার এলাকায় বিরোধ মিমাংসার ক্ষেত্রে সমস্যা/বাধা গুলো কি কি?
৩. আপনি নিজে বা আপনার পরিবারের কোন সদস্য যদি কখনো কোন বিরোধে জড়িয়ে পড়েন তাহলে আপনি কি কি করবেন? কেন তা করবেন?
৪. স্থানীয় বিরোধ মিমাংসার ক্ষেত্রে আপনার এলাকার রাজনৈতিক নেতৃত্বের ভূমিকা আপনি কিভাবে দেখেন?
৫. আপনি বা আপনার পরিবারের কেউ কি কখনো থানায় কোন কাজে গিয়েছেন? কি কাজে গিয়েছেন? থানা থেকে কি সেবাটি পেয়েছেন? উক্ত সেবা পেতে আপনাকে কি কোন খরচ করতে হয়েছে? আপনার জানামতে স্থানীয় বিরোধ মিমাংসার ক্ষেত্রে থানার ভূমিকা আপনি কিভাবে দেখেন?
৬. আপনি বা আপনার পরিবারের কেউ কি কখনো আদালতে মামলা দায়ের করেছেন বা মামলার পক্ষ হয়েছেন? মামলার বিষয়টি কি ছিল? বিস্তারিত বলুন?
৭. আদালতে মামলা দায়ের বা মামলায় পক্ষ হতে কি কোন অসুবিধা হয়েছিল? কি কি অসুবিধা হয়েছিল? আদালতে দায়িত্বপ্রাপ্ত বিচারক, আইনজীবী ও আদালতের কর্মচারীদের আচরণ কেমন ছিল? আপনি কি আদালতের সেবায় সন্তুষ্ট? হলে কেন? নাহলে কেন?
৮. দরিদ্র মানুষজন বিচার পাওয়ার ক্ষেত্রে সমস্যা বা অসুবিধা কি কি? এই সকল সমস্যা বা অসুবিধা কিভাবে দূর করা যায় বলে আপনি মনে করেন?

### Community People (informal)

১. আপনি কোন বিরোধটি স্থানীয়ভাবে মিমাংসা করেছেন? প্রথমে বিরোধটি সম্পর্কে বিস্তারিত বলুন।
২. বিরোধের পর কখন, কিভাবে এবং কার উদ্যোগে বিরোধটি মিমাংসার আলাপ-আলোচনা উঠে? আপনি কি নিজেই স্থানীয়ভাবে মিমাংসার উদ্যোগ নিয়েছেন? কেন?
৩. স্থানীয়ভাবে আপনার বিরোধটি কিভাবে মিমাংসা হয়েছে? বিস্তারিত বলুন। মিমাংসার প্রক্রিয়ার সাথে কারা কারা যুক্ত ছিল? তাদেরকে কি আপনি বা আপনার বিরোধী পক্ষ নিযুক্ত করেছেন? মিমাংসা হতে কত সময় লেগেছিল? মিমাংসা করতে আপনার কত খরচ হয়েছিল?

৪. স্থানীয় ভাবে বিরোধ মিমাংসার ক্ষেত্রে আপনি সন্তুষ্ট কিনা? হলে কেন? না হলে কেন?
৫. স্থানীয় নির্বাচিত প্রতিনিধিগণ স্থানীয় বিরোধ মিমাংসায় কি ধরনের ভূমিকা রেখেছে?
৬. আপনার মতে স্থানীয়ভাবে বিরোধ মিমাংসার সমস্যা ও বাধাগুলো কি কি? এই সমস্যা ও বাধাগুলো কিভাবে দূর করা যায়?
৭. আপনার মতে স্থানীয়ভাবে বিরোধ মিমাংসার ক্ষেত্রে অর্থনৈতিকভাবে অসচ্ছল ও সামাজিকভাবে অসহায় বা প্রান্তিক ব্যক্তিগণ কি কি বিশেষ সমস্যা বা বাধার সম্মুখীন হন? এই সমস্যা ও বাধাগুলো কিভাবে দূর করা যায়?

### Community People (formal)

১. আপনি কোন বিরোধটি থানা বা আদালতের মাধ্যমে মিমাংসা করেছেন? প্রথমে বিরোধটি সম্পর্কে বিস্তারিত বলুন।
২. বিরোধের পর কখন, কিভাবে এবং কার উদ্যোগে বিরোধটি থানা বা আদালতে যায়? আপনি কি নিজেই থানা বা আদালতের মাধ্যমে মিমাংসার উদ্যোগ নিয়েছেন? কেন?
৩. থানা বা আদালতের মাধ্যমে বিরোধটি কিভাবে মিমাংসা হয়েছে? বিস্তারিত বলুন। থানা বা আদালতে বিরোধটি মিমাংসার প্রক্রিয়ার সাথে যারা যুক্ত ছিল তাদের কাছ থেকে কি পূর্ণ সহযোগীতা পেয়েছেন? না পেয়ে থাকলে কি কি অসহযোগীতা কার কার কাছ থেকে পেয়েছেন? মিমাংসা হতে কত সময় লেগেছিল? মিমাংসা করতে আপনার কত খরচ হয়েছিল?
৪. থানা বা আদালতের মাধ্যমে বিরোধটি মিমাংসার ক্ষেত্রে আপনি সন্তুষ্ট কিনা? হলে কেন? না হলে কেন?
৫. আপনার মতে থানা বা আদালতের মাধ্যমে বিরোধ মিমাংসার সমস্যা ও বাধাগুলো কি কি? এই সমস্যা ও বাধাগুলো কিভাবে দূর করা যায়?
৬. আপনার মতে থানা বা আদালতের মাধ্যমে বিরোধ মিমাংসার ক্ষেত্রে অর্থনৈতিকভাবে অসচ্ছল ও সামাজিকভাবে অসহায় বা প্রান্তিক ব্যক্তিগণ কি কি বিশেষ সমস্যা বা বাধার সম্মুখীন হন? এই সমস্যা ও বাধাগুলো কিভাবে দূর করা যায়?

### Person with Disability

১. প্রতিবন্ধী ব্যক্তিদের সাধারণত কি কি বিষয়ে বিরোধ/ঝগড়া/দ্বন্দ্ব হয়ে থাকে? কোন বিরোধ হলে প্রতিবন্ধী ব্যক্তিগণ কি কি পদক্ষেপ নেয়?
২. আপনাদের এলাকায় প্রতিবন্ধী ব্যক্তিগণ কোন বিরোধ/ঝগড়া/দ্বন্দ্ব জড়িত হলে কিভাবে মিমাংসা করেন? বিস্তারিত বলুন। আপনার এলাকায় প্রতিবন্ধী ব্যক্তিগণের বিরোধ মিমাংসার ক্ষেত্রে সমস্যা/বাধা গুলো কি কি?
৩. আপনার নিজের বা আপনার পরিবারের কোন সদস্যের কখনো কারো সাথে কোন বিরোধ হয়েছিল কিনা? হলে কি বিষয়ে বা কি ধরনের বিরোধ হয়েছিল বিস্তারিত বলুন? বিরোধটি মিমাংসার জন্য আপনি কার কার কাছে গিয়েছিলেন কেন গিয়েছিলেন?
৪. উক্ত বিরোধের কি মিমাংসা হয়েছিল? কিভাবে বিরোধটি মিমাংসা হয়েছিল বিস্তারিত বলুন? এই মিমাংসার প্রক্রিয়া কিভাবে শুরু হয়েছিল? মিমাংসার প্রক্রিয়ায় কারা কারা যুক্ত ছিল? উক্ত মিমাংসায় আপনি কি সন্তুষ্ট হয়েছেন? কেন আপনি সন্তুষ্ট মনে করেন? সন্তুষ্ট না হলে কেন?
৫. বিরোধটি মিমাংসা না হলে বর্তমানে কি অবস্থায় আছে? আপনার মতে কেন বিরোধটি মিমাংসা হচ্ছে না?
৬. প্রতিবন্ধী ব্যক্তিগণের বিরোধ স্থানীয়ভাবে মিমাংসার ক্ষেত্রে এলাকার নির্বাচিত প্রতিনিধিদের (চেয়ারম্যান ও মেম্বারদের), রাজনৈতিক নেতৃবৃন্দ ও থানা-পুলিশের ভূমিকা কি থাকে?
৭. আপনি বা আপনার পরিবারের কেউ কি কখনো আদালতে মামলা দায়ের করেছেন বা মামলার পক্ষ হয়েছেন? মামলার বিষয়টি কি ছিল? বিস্তারিত বলুন?
৮. আদালতে মামলা দায়ের বা মামলায় পক্ষ হতে কি কোন অসুবিধা হয়েছিল? কি কি অসুবিধা হয়েছিল? আদালতে দায়িত্বপ্রাপ্ত বিচারক, আইনজীবী ও আদালতের কর্মচারীদের প্রতিবন্ধী ব্যক্তির প্রতি আচরণ কেমন ছিল? আপনি কি আদালতের সেবায় সন্তুষ্ট? হলে কেন? নাহলে কেন?

## Plain Land Ethnic Minority

১. আপনার কমিউনিটিতে ব্যক্তি জীবনে বা পরিবারে বা সমাজ জীবনে সাধারণত কি কি বিষয়ে বিরোধ/ঝগড়া/দ্বন্দ্ব হয়ে থাকে? ব্যক্তি জীবনে বা পরিবারে বা সমাজে কোন বিরোধ হলে কি কি পদক্ষেপ নেওয়া হয়?
২. আপনার কমিউনিটিতে ব্যক্তি জীবনে বা পরিবারে বা সমাজ জীবনে বিরোধ/ঝগড়া/দ্বন্দ্ব হলে কিভাবে মিমাংসা করা হয়? বিস্তারিত বলুন। আপনার কমিউনিটিতে বিরোধ মিমাংসার ক্ষেত্রে সমস্যা/বাধা গুলো কি কি?
৩. আপনার নিজের বা আপনার পরিবারের কোন সদস্যের কখনো কারো সাথে কোন বিরোধ হয়েছিল কিনা? হলে কি বিষয়ে বা কি ধরনের বিরোধ হয়েছিল বিস্তারিত বলুন? বিরোধটি মিমাংসার জন্য আপনি কার কার কাছে গিয়েছিলেন কেন গিয়েছিলেন?
৪. উক্ত বিরোধের কি মিমাংসা হয়েছিল? কিভাবে বিরোধটি মিমাংসা হয়েছিল বিস্তারিত বলুন? এই মিমাংসার প্রক্রিয়া কিভাবে শুরু হয়েছিল? মিমাংসার প্রক্রিয়ায় কারা কারা যুক্ত ছিল? উক্ত মিমাংসায় আপনি কি সন্তুষ্ট হয়েছেন? কেন আপনি সন্তুষ্ট মনে করেন? সন্তুষ্ট না হলে কেন?
৫. বিরোধটি মিমাংসা না হলে বর্তমানে কি অবস্থায় আছে? আপনার মতে কেন বিরোধটি মিমাংসা হচ্ছে না?
৬. আপনার কমিউনিটিতে স্থানীয়ভাবে বিরোধ মিমাংসার ক্ষেত্রে আপনার এলাকার কমিউনিটি লিডারদের ভূমিকা আপনি কিভাবে দেখেন?
৭. আপনার কমিউনিটিতে স্থানীয় বিরোধ মিমাংসার ক্ষেত্রে আপনার এলাকার এলাকার নির্বাচিত প্রতিনিধিদের (চেয়াম্যান ও মেম্বারদের), রাজনৈতিক নেতৃবৃন্দ ও থানা-পুলিশের ভূমিকা কি থাকে?
৮. আপনি বা আপনার পরিবারের কেউ কি কখনো আদালতে মামলা দায়ের করেছেন বা মামলার পক্ষ হয়েছেন? মামলার বিষয়টি কি ছিল? বিস্তারিত বলুন?
৯. আদালতে মামলা দায়ের বা মামলায় পক্ষ হতে কি কোন অসুবিধা হয়েছিল? কি কি অসুবিধা হয়েছিল? আদালতে দায়িত্বপ্রাপ্ত বিচারক, আইনজীবী ও আদালতের কর্মচারীদের আচরণ কেমন ছিল? আপনি কি আদালতের সেবায় সন্তুষ্ট? হলে কেন? নাহলে কেন?
১০. আপনার মতে আদিবাসী মানুষজন বিচার পাওয়ার ক্ষেত্রে সমস্যা বা অসুবিধা কি কি? এই সকল সমস্যা বা অসুবিধা কিভাবে দূর করা যায় বলে আপনি মনে করেন?

## Annex-5: Key Informant Interview (KII) Checklist

### মূল তথ্যদাতা স্বাক্ষাৎকার (কে আই আই) নির্দেশিকা ও চেকলিস্ট

#### মূল তথ্যদাতা (Key Informant)

কোন সুনির্দিষ্ট বিষয়ে বিশেষায়িত বা বিশেষজ্ঞ জ্ঞান সমৃদ্ধ ব্যক্তি মূল তথ্যদাতা। আবার কোন বিষয়ে সরাসরি মাঠ পর্যায়সহ বিভিন্ন পর্যায়ে কাজ করার বাস্তব অভিজ্ঞতা সম্পন্ন ব্যক্তিও মূল তথ্যদাতা হয়ে থাকেন। এ ধরনের বিশেষজ্ঞ বা বাস্তব অভিজ্ঞতা সম্পন্ন ব্যক্তিগণ নির্দিষ্ট বিষয় বা সমস্যা সম্পর্কে গভীর বিশ্লেষণধর্মী তথ্য দিতে পারেন পাশাপাশি তারা সমস্যা উত্তরণের জন্য বাস্তবসম্মত সমাধানের সুপারিশ করতে পারেন। মূল তথ্যদাতা (Key Informant) স্বাক্ষাৎকারের ক্ষেত্রে স্বাক্ষাৎকার গ্রহণের সকল নিয়ম কানুন অনুসরণ করতে হবে। তবে এক্ষেত্রে লক্ষ্য রাখতে হবে যে, উত্তরদাতা সংশ্লিষ্ট বিষয়ে বিশেষায়িত জ্ঞান সমৃদ্ধ তাই চেকলিস্ট অনুসরণ করে বিশ্লেষণধর্মী প্রশ্ন করতে হবে।

#### In general

১. আপনার এলাকায় সাধারণত কোন কোন ধরনের বিরোধ বা ঝগড়া/দ্বন্দ্ব/বিবাদ হয়?
২. বিরোধ/ঝগড়া/দ্বন্দ্ব/বিবাদ হলে তা মিমাংসার জন্য প্রথমে কোথায় বা কার কাছে যান? কেন বা কি কারণে প্রথমে সেখানে বা তার কাছে যায়?
৩. আপনার মতে বিরোধ মিমাংসার জন্য কি কি ব্যবস্থা রয়েছে? আপনার মতে এই ব্যবস্থাগুলোর মধ্যে সবচেয়ে ভালো কোন ব্যবস্থাটি? কেন?

#### Local Mediator

১. আপনি গত কত বছর থেকে এলাকায় বিচার সালিশি করছেন? এলাকায় বিচার সালিশির পাশাপাশি আপনার পেশা কি? আপনি কি কি বিষয়ে সালিশি করেন? কিভাবে করেন?
২. আপনাদের এলাকায় কারা কারা সালিশিদার হয়? কোন বিরোধ মিমাংসায় কারা কারা সালিশিদার হবে তা কে নির্ধারণ করে?
৩. একেবারে শুরু থেকে একটি সালিশির পুরো প্রক্রিয়া বর্ণনা করুন। সালিশি পক্ষগণের বক্তব্য কখন ও কিভাবে শুনা হয়? সালিশির কোন পক্ষ যদি নারী বা দরিদ্র বা সংখ্যালঘু বা দলিত বা প্রতিবন্ধি (দৃষ্টি ও বাক প্রতিবন্ধী) হয় তাহলে আপনারা কি করেন? বর্ণনা করুন। কিভাবে সালিশি সিদ্ধান্ত গ্রহণ করা তা বর্ণনা করুন।
৪. আপনার মতে সালিশির সীমাবদ্ধতা সমূহ কি কি? এই সকল সীমাবদ্ধতা কিভাবে দূর করা যেতে পারে?
৫. আপনার মতে নারী বা দরিদ্র বা সংখ্যালঘু বা দলিত বা প্রতিবন্ধি ব্যক্তিগণ সালিশির মাধ্যমে ন্যায়বিচার পায় কিনা? এই সকল ব্যক্তি সালিশি ন্যায়বিচার প্রাপ্তিতে বাধাসমূহ ও সীমাবদ্ধতাসমূহ কি কি?

## UP Women Member /UP Chairman/UP Member

১. আপনার এলাকায় সাধারণত কোন কোন ধরনের বিরোধ হয়? সবচেয়ে বেশী কোন ধরনের বিরোধ হয়? কোন ব্যক্তি বিরোধে পড়লে সাধারণত কার কাছে যায়? কেন যায়?
২. আপনি কি বিরোধ মিমাংসা করে থাকেন? কোন কোন বিরোধ মিমাংসা করেন? কিভাবে করেন? বিস্তারিত বলুন?
৩. আপনার ইউনিয়নে কি গ্রাম আদালত সক্রিয় আছে? সক্রিয় থাকলে আপনারা কি গ্রাম আদালতের মাধ্যমে বিরোধ মিমাংসা করেন? কোন কোন বিরোধ গ্রাম আদালতের মাধ্যমে মিমাংসা করেন? গ্রাম আদালতের মাধ্যমে কিভাবে বিরোধ মিমাংসা করেন? গ্রাম আদালতের অসুবিধা ও সীমাবদ্ধতাসমূহ কি কি? আপনি কি মনে করেন বিচারপ্রার্থী মানুষ গ্রাম আদালতের বিচারে সন্তুষ্ট? কেন মনে করেন?
৪. আপনার মতে নারী বা দরিদ্র বা সংখ্যালঘু বা দলিত বা প্রতিবন্ধি ব্যক্তিগণ গ্রাম আদালতের মাধ্যমে ন্যায়বিচার পায় কিনা? এই সকল ব্যক্তি গ্রাম আদালতে ন্যায়বিচার প্রাপ্তিতে বাধাসমূহ ও সীমাবদ্ধতাসমূহ কি কি?

## Marginalised Community Leaders

১. আপনার এলাকায় সাধারণত কোন কোন ধরনের বিরোধ হয়? সবচেয়ে বেশী কোন ধরনের বিরোধ হয়? কোন ব্যক্তি বিরোধে পড়লে সাধারণত কার কাছে যায়? কেন যায়?
২. আপনার কমিউনিটিতে কোন বিরোধ হলে কিভাবে মিমাংসা করা হয়? বিস্তারিত বলুন।
৩. আপনার মতে সমাজে নারী বা দরিদ্র বা সংখ্যালঘু বা দলিত বা প্রতিবন্ধি ব্যক্তিগণ ন্যায়বিচার পায় কিনা? এই সকল ব্যক্তির ন্যায়বিচার প্রাপ্তিতে বাধাসমূহ ও সীমাবদ্ধতাসমূহ কি কি?
৪. রাষ্ট্রীয় বিচার ব্যবস্থার ন্যায়বিচার পাওয়ার ক্ষেত্রে সমস্যা বা অসুবিধাসমূহ কি কি?

## Police Officials/Lawyers /Prosecutors

১. আপনার মতে বিদ্যমান বিচার ব্যবস্থা বিরোধ মিমাংসায় ক্ষেত্রে কতটুকু কার্যকর? দেশের সকল নাগরিক কি সমানভাবে বিদ্যমান বিচার ব্যবস্থায় ন্যায়বিচার পায়? কেন আপনি তা মনে করেন?
২. নারী বা দরিদ্র বা সংখ্যালঘু বা দলিত বা প্রতিবন্ধি ব্যক্তিগণ বিচার ব্যবস্থায় অভিজ্ঞতার/প্রবেশের ক্ষেত্রে কি ধরনের বাধার সম্মুখীন হয়? কেন হয়? এই বাধাগুলো কিভাবে দূর করা যায়?

## Judges/DLAO /Local Justice Expert

১. আমাদের আনুষ্ঠানিক ও অনানুষ্ঠানিক বিচার ব্যবস্থার সীমাবদ্ধতাসমূহ কি কি? এই সকল সীমাবদ্ধতাসমূহ কিভাবে দূর করা যায়?
২. নারী বা দরিদ্র বা সংখ্যালঘু বা দলিত বা প্রতিবন্ধি ব্যক্তিগণ বিচার ব্যবস্থায় অভিজ্ঞতার/প্রবেশের ক্ষেত্রে কি ধরনের বাধার সম্মুখীন হয়? কেন হয়? এই বাধাগুলো কিভাবে দূর করা যায়?

