

Leave No One Behind

Citizen's Platform Briefing Note

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Citizen's Platform for SDGs, Bangladesh

এসডিজি বাস্তবায়নে নাগরিক প্ল্যাটফর্ম, বাংলাদেশ

About the Platform

The Citizen's Platform for SDGs, Bangladesh was established as a civil society initiative to contribute to the implementation of the globally adopted 2030 Agenda for Sustainable Development in Bangladesh. The Platform was formally launched in June 2016 at the initiative of a group of eminent citizens in Bangladesh with the objective to track the delivery of the Sustainable Development Goals (SDGs) in Bangladesh and embed accountability and voice in its implementation process. The concept of the Platform was informed by participatory and multi-stakeholder approach which was conceived as a crucial element to attain the goals and targets of the SDGs. The Platform currently includes 119 Partner Organisations working on SDG issues across Bangladesh. Platform's activities include mobilising stakeholders for concrete SDG related initiatives with particular focus on 'Leave No One Behind', undertaking research, organising dialogues, disseminating SDG relevant information and other activities to enhance accountability and transparency in SDG delivery in Bangladesh.

About the Programme

Easy access to courts and exercise of legal rights have been recognised in the constitution as core rights of citizens in Bangladesh. However, backlog of cases in courts and the costs and complexities associated with legal recourse often results in a situation where citizens are denied of their rights. Amendment of 'City Corporation Act 2009' promises to be an important initiative to help citizens resolve minor disputes at the local levels without the high costs which they would otherwise have incurred if they had to take recourse to formal institution of justice. To discuss issues of operationalising the Act, a virtual discussion on "City Court Act: Proposed Outline and Possibility of Implementation" was organised jointly by the Madaripur Legal Aid Association (MLAA); the Citizen's Platform for SDGs, Bangladesh; Bangladesh Legal Aid and Services Trust (BLAST) and Nagorik Uddyog on 10th October 2020. The discussion session was attended by legal experts, academicians, human rights activists, NGO workers and journalists. A number of recommendations emerged from this discussion which will hopefully of use to policymakers in view of amending the Act.

Proposed City Court Act in Bangladesh Challenges of Implementation

INTRODUCTION

About 20 million people, more than 12 per cent of total population of the country, live in the 12 City Corporation areas of Bangladesh. However, there is no legal framework for resolving petty disputes in urban, rural and municipal areas. Consequently, they have to go to formal courts to settle even inconsequential and minor disputes. As is known, about 36 lakh cases are still pending in various courts of Bangladesh and the judicial system is simply overwhelmed. In particular, in the Metropolitan and City Corporation areas, the number of pending cases tend to be very high. It is estimated that there are 1883 cases per judge and there are only 0.73 judges for one lakh people in Bangladesh.

It is in this backdrop that one sees the advantages of local level courts including the Village Courts. These courts could help people at the local and union levels to settle minor disputes. In the municipal areas there are Municipal Courts. These courts allow people at the union and municipality levels to settle disputes locally, without going to courts. This saves people from both harassment and incurring significant expenses. Number of population in Bangladesh, especially those living in municipality areas, are on the rise. Their legal entitlements must be guaranteed. Establishment of City Courts could be an innovative idea in this backdrop to ensure legal benefits, judicial benefits and good governance for people living in those areas. As an alternative to the formal legal system, such

courts will be able to also service the needs of people living in slums who are often deprived of bare minimum of civic rights.

Taking into cognisance the importance of alternative legal systems, a discussion session on “City Court Act: Proposed Outline and Possibility of Implementation” was organised jointly by the Madaripur Legal Aid Association (MLAA); the Citizen’s Platform for SDGs, Bangladesh; Bangladesh Legal Aid and Services Trust (BLAST) and Nagorik Uddyog on 10th October, 2020. The session was chaired by **Dr Debapriya Bhattacharya**, Convenor, Citizen’s Platform and Distinguished Fellow, Centre for Policy Dialogue (CPD).

SUMMARY OF THE KEYNOTE PRESENTATION

Various semi-judicial structures have been proposed under the law for the settlement of petty disputes at the local level. For example, under the ‘Village Court Act, 2006’, the Union Parishad's “Village Courts” and the “Conciliation of Dispute (Municipal Areas) Board Act, 2004” various provisions have been kept for conducting activities of “Dispute Resolution Board”. Considering this, the rationale for enacting the proposed City Court Act cannot be denied any more and deferred any longer. Such courts will help people living in the City Corporation areas to resolve disputes speedily and cost effectively. It was pointed out that the proposed law would apply to only City Corporation areas.

The proposal is to establish a ‘Dispute Resolution Court’ (City Corporation) in every ward of each City Corporation. The City Court would conduct judicial work in the ward offices of the City Corporation. The court must conduct its judicial proceedings in resolving compoundable offenses. Criminal cases mentioned in the first part of the schedule and the civil matters mentioned in the second part will be trialled by this court. The offenses under these sections are mainly related to various minor disputes which are considered compromising disputes according to the existing law. These include minor disputes, minor fights/attacks, insults, harassment, humiliation, stealing of property other than cattle, etc. However, the settlement under the proposed Act would depend on the value of the property. The maximum financial value of the crime mentioned was up to 250 thousand taka; however, opinion as regard the financial value to be covered under the proposed law tended to vary. It is important to mention in this connection that these issues and sections are similar to the ‘Village Court’ and ‘Municipal Board Act’. The offenses under these sections have been included into the proposed law since they are considered as negotiable and locally resolvable.

The court would be able to only order compensation in criminal cases, not impose any fines or imprisonment. Alternatively, the court will be able to recover the money, subject to compensation or receipt in civil cases. Furthermore, if applicable, the court may also issue directives to recover evicted property. The decision of the court must be arrived at on the basis of consensus or by a majority opinion, and the verdict must be declared publicly. In addition, if any member of the board disagrees with the decision, his/her opinion must be recorded in the settlement document. If dissatisfied with the decision, the aggrieved party may appeal to the District and Sessions Judge's Court within the next 30 days.

The decision of the court shall be considered as a decree and it would be recorded in written form. Compensation will be paid to the applicant. If the board is unable to recover the decreed money in due time, it can forward this to the City Corporation. If the City Corporation is unable to implement a verdict without monetary transaction, an application could be submitted to the Joint District Judge's Court and the court will decide about the money to be recovered. The

government will formulate rules for the proper implementation of the law which will include detailed interpretation of the law and the framework for its execution.

DISCUSSIONS WITH MAJOR RECOMMENDATION

City Court vs Municipal Corporation

Before passing the 'Municipal Corporation Act' in 2009, Municipalities only had a platform called Municipal Dispute Resolution Board. Its jurisdiction covered only an amount of BDT 25 thousand. It was perceived to be generally effective. One aspect of this law was that, advocates could not be involved here. Secondly, the court would not accept any complaint against children and thirdly, the court would not take up any case in the name of a person who was previously in jail. The advantage of this court was that five people would take decision in a participatory way where political pressure would be minimal. Those present at the proceedings also had the opportunity to evaluate the judgment. However, for the City Corporation there is no law to resolve petty disputes. If the proposed law is passed, the City Court will also be able to work without hassle.

There is a difference between crime and conflict. Bangladesh has an institutional court system for trial of criminals and crimes. But as people seeks justice from the court for settling disputes, the number of cases in court also increases. Studies shows that a large number of cases are currently pending in the courts and of these a significant number are related to compromising disputes. There is a need for reliable data for the kind of cases that are pending in the courts. It was pointed out also that at present, adequate structure is not available for City Corporation's councillors' office. No real civic activity takes place in the commissioners' offices. Most of these are bury with conducting official activities from rented premises. They even cannot issue birth certificates because everything is controlled from the head office of the City Corporation. However, enactment of the law was only a part of the solution, it was pointed out.

Reintroducing Traditional System in a Modern Way

Architect Iqbal Habib felt that the City Court has the potential to do four things and these could make a significant contribution to city management. Firstly, traditionally there used to be a unit based leader system (*mahalla shardar protha*) which functioned successfully; the system promoted connectivity among the people. The mahalla system used to take actions against crimes in the locality. There was a community feeling among the people and they took responsibility about well-being of people in the neighbourhood. Secondly, the proposed court can also play a positive role in developing person-to-person relationship. Today we are isolated in the society and our children are morally damaged. City Courts can play an important role in overcoming many weaknesses that afflict urban communities and societies. Thirdly, City Courts can also play a vital role in establishing an urban society. At present, 40 per cent of the people in the city are living under inhuman and inhabitable conditions in slums. Despite not receiving civic services they are forced to pay more house rent than the rich or the middle class people. Fourthly, City Courts can also play a significant role in the development/protection of the city's environment.

Validate City Court Act and Law

The Village Court law had been enacted but the attendant challenges have started to emerge only now. A key feature of our constitution is separation of the judiciary and the executive and the administration system. But, the local government is affiliated with the administrative department and are operated by them; these are also run by elected representatives. Therefore, it would not be appropriate to use the term 'Court' as a number of issues are involved here.

Otherwise, the law will be challenged. Thus, the concerned issues need to be considered carefully. Alternative words for court such as arbitrator or similar terms may also be used instead. If ADR (Alternative Dispute Resolution) rises, their activities will expand. If we think it from the perspective of ADR or arbitration, not as a court, then no other stakeholder would need to be involved including the magistrate.

On the other hand, the structure of local government in Bangladesh has changed over the years, particularly in the last twenty to thirty years. In local government institutions, candidates are being elected now based on symbols of political parties. Sometimes miscreants get an opportunity to participate in elections and they are also getting elected too. We certainly need the courts but associating it with the City Corporation is not a necessity. For example, there are open courts for traffic in American cities. There is a judge who listens to the complaint, hears the respondent and gives the verdict. We need to introduce this type of system in Bangladesh.

Contempt of Court and Judiciary Act

This law is basically a combination of two old laws, the 'Dispute Resolution Act, 2004' and the 'Village Court Act, 2006'. The court referred to in section 7 is a matter of big controversy. If there is a case in the name of the members of the court, there is no clear guideline of how the court will be formed to deal with the case. Article 14 states that the decision of the Board cannot be questioned. This goes against the constitution. Article 16 states that the 'Evidence Act of 1872' cannot be applied here. It is a dangerous provision that has been added in the law. No trial should be conducted without applying the 'Evidence Act' and based on one's statement in the judicial Court.

Conducting the trial under such circumstances raises question; a dangerous situation could arise here. Section 11 mentioned about the fines in false cases. However, under many laws in Bangladesh, false cases can be filed and there are no fines for it. This is risky. For this reason, many people will not go to the court. Section 18 refers to contempt of court. It has been stated here that the message is indecent for legitimate reasons. However, it is not permissible to speak indecently for legal reasons also. On the other hand, the court could render punishment for contempt. The clause needs to be reconsidered for these reasons. Article 9 refers to pre-trial which is basically an alternative way of resolving disputes. As a result, instead of pre-trial it is better to use the word dispute resolution as an alternative way. No one can be discriminated against by this Act and this should be mentioned in the Act itself.

Reconsideration of City Court Along with Administrative Support

Local government representatives are at present spending more time in dealing with political issues. This is one of the reasons why Village Courts were not able to succeed. To conduct the activities, inclusion of the secretary of the union council in the board has been tried. But the City Court idea may not work because it is difficult to establish a City Court in the same form as a Village Court. Before enacting the law, all relevant issues should be reviewed. A new judicial concept can be thought of with the combination of both arbitration and common courts. However, judicial power should be given to the magistrates instead of the City Corporations. In particular, a mixed method may be considered which would work as an arbitration board, without eliminating it altogether. Provisions for ADR should be kept and these should ensure participation of good lawyers.

The proposed draft is very similar to the Village Court. Over the past three years, Village Courts have been working in 1,080 unions. These are supported by the European Union, UNDP and the Government of Bangladesh. In total 1 lakh 97 thousand cases have been recorded in the Village

Courts till now, where the number of settled cases are 163 thousand which is about 83 per cent of the total cases. BDT 162 crore has been collected by these courts as compensation. Drawing on this experience, City Courts can play a similar role in the metropolitan area. According to the draft law, the penalty for a false case should be BDT 10 thousand and the punishment for contempt of court should be fixed at BDT 5 thousand. It needs to be considered whether inclusion of women representatives can be made mandatory in resolving disputes involving women complainants. On the other hand, administrative support is needed to implement the verdicts of the City Court. There are monitoring committees to monitor the activities of the Village Court and such arrangements are also needed to monitor the activities of the City Courts.

SUMMARY BY THE CHAIR

Debapriya Bhattacharya shared his opinion as regards the issues raised in the course of the discussion and concluded the dialogue with some summary comments. He observed that three groups of stakeholders were involved in the discourse: the first group included those who work in various NGOs working on human rights issues; the second group is involved with research and academic works pertaining to relevant issues; and the third group is directly involved with implementation of the judicial services at local levels.

He noted that, all the discussants were unanimous as regards the necessity of introducing Municipality Courts. However, opinions varied and so did suggestions with respect to methods, scope and structure that will need to be followed in this connection. Under the proposed City Court, the complainant needs to have a witness when they are filing any complaint. The court can ask any question if it wants to. He felt that there should be wide ranging awareness building programmes to disseminate knowledge about functioning of such a system.

At the policy making level, two groups are important stakeholders: one is the Parliament and the other is the Ministry. The Chair recommended that the draft of the proposed City Court law should be revised. He felt that feasibility and acceptability of the important ideas and suggestions offered by the participants should be carefully considered and examined, with a view to revising the law. Extending his support to the initiative, he stated that the Citizen's Platform will remain engaged with the civic movement to make the proposed law effective. The Platform will review all the recommendations with due diligence with a view to build a strong case and strengthen the arguments in favour of revising the law.

Main Speakers

Chair

Dr Debapriya Bhattacharya
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and
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Keynote presentation

Mr Khan Mohammad Shahid
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Dr Tofail Ahmed
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