

# Impediments to Equitable Access to Justice in the Trial Process of Land Litigation in Bangladesh: A Look for a Way Out

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## Abstract

**Purpose:** Land is one of the essential elements of economic well-being, and there is nobody who can deny its necessity in human life. Land litigation dominates the entire judiciary of Bangladesh, as land conflict is the main source of civil litigation in the country, and a considerable portion of the total pending suits is either directly or indirectly related to land. The main objective of this study is to explore the existing impediments to equitable access to justice in the trial process of land litigation in Bangladesh and also to provide an avenue to mitigate the prevailing impediments. **Design/Methodology/Approach:** This study is qualitative research based on secondary data, where an analytical method is used. Sources of data are various journals, books, reports, and newspaper articles. **Findings:** This research finds that the judiciary is the last resort of a man, but people involved in land litigation in Bangladesh are afraid to go to the court to settle their disputes due to prevailing impediments in the way of equitable access to justice, and day by day they are losing their confidence in the judiciary. Bangladesh needs to amend the existing laws regulating land litigation and to digitalize the court management system, land offices, and land record system to enhance public confidence in the judiciary and to ensure easy, speedy, low-cost, and equitable access to justice for all. **Research Limitations/Implications:** The core implication of this research is that it will play an important role in ensuring easy, speedy, and low-cost justice for people involved in land litigation in Bangladesh by eliminating the defects of the existing laws governing the trial process of land litigation in the country and the malpractices of the parties, their pleaders, and a few corrupt court officials. This study will make the people of the country, particularly justice seekers in land litigation, aware of major impediments in the way of equitable access to justice in the trial process of land litigation in Bangladesh. This study also provides a new avenue for

scholars to contribute their knowledge and wisdom to eliminate injustice by further researching the drawbacks of the civil justice system regulating land litigation in Bangladesh. **Practical Implications:** This study will play a vital role in eliminating the existing impediments to access to justice in land litigation in Bangladesh, and the litigants will be able to settle their litigation without any kind of hindrance. It will also facilitate policymakers of the country in amending the existing laws regulating land litigation to make those laws time-framed. **Originality/Value:** The paper sets out proposed amendments to the laws regulating land litigation and also proposes to digitalize the court management system, land offices, and land records system to deter corruption in this sector. Thus, it will be of interest to justice seekers and policymakers in those countries facing similar problems.

## Keywords

Land Litigation, Impediment, Trial Process, Access to Justice, Bangladesh

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## 1. Introduction

Bangladesh is a small country in the world; her land-man ratio is very alarming. The rapid increase in the population of the country is constantly creating pressure on land, and day by day, land is becoming more in demand. In a country like Bangladesh, where a considerable part of the total economy of the country still depends on agriculture, undoubtedly, land is one of the most essential elements for the elimination of poverty and inequality. Land is not only a source of income and social security but also a source of power, social respect, and honour (Khan & Zaman, 1998). Land is a source of power to political scientists, the principal factor of production and a kind of capital to economists, an element of culture to anthropologists, a definite indicator of a sense of security to social psychologists, and a part of the social system to sociologists (Ahamed, 1982). Land rights of a man are guaranteed under the Universal Declaration of Human Rights, 1948, as article 17 of the UDHR states everyone, either alone or in association with others, has the right to own property, and no one can be arbitrarily deprived of it. The Constitution of the People's Republic of Bangladesh has also guaranteed this right. Conflict in human society is a common phenomenon, and in Bangladesh, land conflict dominates the entire civil justice system. One of the age-old problems still remaining in Bangladesh is land litigation, since it is inherited from the British, and although about fifty years have passed since its liberation, the land management system has not developed to the expected level (Chowdhury, 2017). Almost seventy percent (70%) of the total pending cases of the judiciary of Bangladesh are either directly or indirectly related to land (Zahid, 2014). Not only civil suits but also most criminal cases are derived from land conflict. Access to justice is a constitutional right of every citizen of Bangladesh, as the Constitution of the People's Republic of Bangladesh has guaranteed the right to enjoy the protection of law.

But in Bangladesh, where the adversarial trial system exists, access to justice is restricted by many factors, including participants whose resources can never be equal in terms of capability and public access to justice, the prohibitive cost of litigation, inordinate delay in the courts, corruption in the justice delivery sphere, backlogging of cases, and several complex procedural rules (Faruque & Shah, 2010). The determination of land ownership in Bangladesh is a lengthy and complex process, which enhances conflicts (Nahrin & Rahman, 2009).

Due to some reasons, equitable access to justice, especially in the trial process of land litigation in Bangladesh, for the vast majority of the people, has become a hollow promise guaranteed under the constitution (Islam, 2011). Equitable access to justice is the precondition of any civilized society and is also necessary to ensure the rule of law, democracy, and fundamental human rights. The judiciary is the last resort of a man and redresses the grievances of people and disputes (Patoari, Murad, & Mahmud, 2014). Justice should be easy and equitably accessible to all; if it is limited to the rich only, then the poor and deprived will have no stake in the rule of law, and they will have no confidence in the judiciary and will try to resolve their disputes through extra-judicial means, which could pose a threat to the entire judiciary of the country. Unreasonable delays, high expenses of litigation, widespread corruption, procedural complexities, backlog of cases, shortage of judges and other court officials, lack of application of proper technology in the court management system and land offices, weaknesses of existing laws relating to land litigation, and malpractices are major impediments to equitable access to justice in the trial process of land litigation in Bangladesh. To ensure equitable access to justice for all, especially for the poor and marginalized people of the country in land litigation and to enhance public confidence in the judiciary, these impediments should be removed effectively through proper initiatives.

## 2. Access to Justice

The meaning of the term “access to justice” is intricately intertwined with the meaning of the term justice (Bhat, 2013). The notion of justice evokes the cognition of the rule of law, the resolution of disputes, institutions that make law, and those who enforce it and ensure fairness and the principle of equality in all spheres of human life. The true nature of justice is that its rules advise a man how he must act in order to secure and promote the general welfare of mankind. The notion of justice being linked with equality of treatment undoubtedly owes much to the association of justice with legal proceedings. To determine the position of a nation in political civilization, the test of the degree to which justice as defined by the law is actually raised in its justice delivery process is more decisive. Equal access to justice is a *sine qua non* for rule of law, democracy, human rights, and fair trial. Access to justice means access to courts or tribunals or access to litigation or access to equal opportunity for bringing a matter of dispute to the courts and tribunals without any kind of hindrance. Access to justice is not only one of the fundamental human rights but also an indispensable avenue for combating poverty,

prevention, and resolution of conflict (Khan & Karim, 2017). “Every year, one in every eight people on earth runs into serious conflict that is hard to avoid: at home, at work, regarding land, about essential assets they bought, or with local authorities. About half of these people do not succeed in obtaining a fair, workable solution, although many of these problems could be addressed and solved with better access to justice” (Akram, 2017). Impediment to equal access to justice is a violation of human rights, which opens the way for discrimination and a threat to the principle of procedural fairness.

Equal access to justice is one of the fundamental rights in almost all democratic countries of the world. The Constitution of the People’s Republic of Bangladesh also ensures this right, as the Constitution of Bangladesh ensures equality before the law and equal protection of the law, and also ensures the right to a fair trial (Abdullah, 2006). Access to justice connotes that a justice seeker must get equal opportunity and there will be no discrimination against the poor and backward sections of the country, and everyone must be entitled to get it easily, quickly, and effectively. Unfortunately, the legal system of Bangladesh has failed to ensure equitable access to justice for all, especially in land litigation, due to the prevalence of some impediments in the way of delivery of justice (Islam, 2011).

### 3. Impediments to Equitable Access to Justice in the Trial Process of Land Litigation in Bangladesh

Traditionally, equitable access to justice indicates the capability of every citizen to appear before the court or tribunal of the country to enforce his or her rights as given by the existing laws of the country. One of the fundamental rights of every citizen of the country is the “right to a fair trial” without any sort of hindrance, and it is the duty of every democratic state to ensure this right for her citizens. It is a paramount method of establishing basic human rights. It is also used to mean equal access to the dispute settlement mechanism of a country. The earlier concept of access to justice was the right to litigate or the right to defend a claim by the aggrieved party (Cappilietti & Garth, 1978), but the modern concept is not only the right to litigate or defend a claim but also access to such forums and the equilibration of power with the other litigants. Though the Constitution of the People’s Republic of Bangladesh has ensured access to justice for all citizens of the country, there are some impediments in the way of equitable access to justice, especially in the trial process of land litigation in Bangladesh. The major impediments that most people, especially the poor and backward sections of the country, face while seeking justice in land litigation are described below:

#### 3.1. Unreasonable Delay

The main impediment to equitable access to justice in the civil justice system of Bangladesh, especially in land litigation, is inordinate delay. Delay in the judiciary of Bangladesh has reached such a level that it has become a factor of injustice (Islam, 2011). It is the right of every citizen that his or her suit should be disposed of

within a specified time. Every citizen of the country has the right to know when his litigation will be disposed of, but in Bangladesh, if a land litigation starts, it is very uncertain when it will be disposed of. In Bangladesh, by the time judgment is pronounced in most cases, the necessity for judgment has ceased to exist. In many cases, the litigant cannot get the result of land litigation in his or her lifetime. To ensure the uninterrupted functioning of all organs of a country, to attract foreign investment, and to continue the progress of a country, disposal of civil suits within a specified time is essential (Reza & Ahmad, 2016). Disposal of a suit within the specified time is one of the constitutional obligations of the country (Islam, 2004). Delay in the delivery of justice causes dissatisfaction among the litigants; people lose their confidence in the judiciary and take extrajudicial means to settle their disputes.

Delay in the disposition of land litigation is common in any country, but in Bangladesh it is the main challenge of the civil justice system, which decreases public credence in the judiciary. There is a general perception among the people of Bangladesh that once a case goes to civil court, it will take years and generations before the court pronounces a final judgment (Rafiqur, 1986). The land litigation system in Bangladesh is so lengthy that the affected people are not interested in going to court for fear of further suffering due to inordinate delay.

Delay in land litigation in Bangladesh is both intentional and unintentional. Unintentional delay is due to the existing age-old system, which is not properly updated from time to time to make it time-framed, and intentional delay is mainly due to malpractice by persons involved in the trial process, including court officials and bad tactics of parties, lawyers, and court officials. Disposal of suits within a specified time is a precondition of justice, rule of law, democracy, and human rights, but delay in the land litigation process in Bangladesh has reached such a point as to pose a formidable threat to the protection and promotion of human rights. Delay in the judiciary of Bangladesh is a factor of injustice and violation of human rights (Chowdhury, 2013). Delay in the trial process of land litigation in Bangladesh is the main problem of the civil justice system of Bangladesh, and it is so hazardous and lamentable for the marginalized people of the country that it cannot be explained, and in many cases, poor people who went to court to address their grievances sold off their lands and property to meet the expenses of the court but did not get justice in their lifetime (Alam, 2014). “Delay devalues judgment, creates anxiety in the minds of litigants and uncertainty for parties and lawyers, results in loss or deterioration of evidence, waste of court resources, needlessly increases the cost of litigation and creates confusion and conflict in the allocation of court resources” (Islam, 2004). An aggrieved party expects unpolluted, speedy, and low-cost justice. Access to justice connotes more than simple entry into formal courts of law but includes the ability to reach lawmakers, lawyers, law-enforcing agencies, and the capacity to bear the expenses of these services (Khair, 2004). Delay in the trial process of land litigation in Bangladesh is a curse which causes financial losses to the litigants and the government, wastes valuable time of the

court and countless working hours of the litigants, and creates various social problems (Das, 2015). Delay in the trial process of land litigation in Bangladesh is such a problem which is not only a mere impediment in the way of delivery of justice but also a problem which puts the entire civil justice system of the country into question and destroys all achievements of the country.

### 3.2. Inordinate Expense of Litigation

The high cost of litigation is one of the major impediments in the way of delivery of justice in land litigation in Bangladesh. Around one-third of the total population of the country lives below the poverty line (Akram, 2017), and a considerable portion of them are “extremely poor” who cannot live from hand to mouth; they are unable to maintain a civil suit for a long time. The average cost of a suit related to land in Bangladesh is worth forty-five percent (45%) of the concerned household’s annual income (Zahid, 2014). About seventy to eighty percent (70% to 80%) of the people involved in conflict are not interested in going to the court system to settle their land dispute, fearing further loss (Islam, 2010). Court fee, process fee, pleader’s fee, and other relevant expenses, along with some hidden costs (which are many times more than prescribed in law), especially to collect certified copies of various documents from courts and land offices in Bangladesh, are so high that litigation cost is one of the main obstacles to access to justice for the people of the country, especially for the poor, disadvantaged, and backward sections of the country (Akram, 2017). Besides these expenses, physical and mental sufferings and waste of working hours cannot be explained in words. The judiciary of Bangladesh is not friendly for the poor and disadvantaged people of the country, and to win the case, parties must have huge amounts of money; otherwise, they will become victimized. Legal support to the poor from the government and NGOs is very insufficient, with less than five percent (5%) receiving support from government and NGOs.

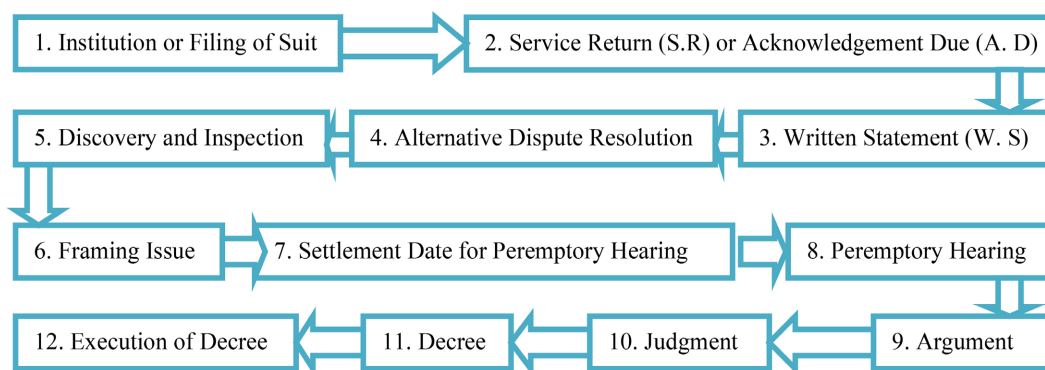
### 3.3. Corruption

Corruption in the judiciary of a country is not only an obstacle to the delivery of justice but also like cancer in the human body, which completely destroys the entire judiciary of the country and annihilates all the achievements of the government. The judiciary of Bangladesh is now at the centre of public debate mainly due to excessive delay, high expenses, and corruption among the persons involved in the trial process of litigation (Patoari, Karim, & Mahmud, 2013). Though the appointment process of the judicial officers of Bangladesh is very transparent and impartial, the appointment process of the court’s supporting staff is not transparent, and in most cases, they are appointed for political considerations. As a result, unqualified persons are appointed, and by these unqualified and unskilled manpower, court functions have to continue, but their output level is very poor, and most of them are involved in corruption. Sometimes pleaders of both parties and some corrupt court officials develop an unholy alliance to milk both contesting

sides as long as possible (Zahid, 2014). “Nezarat section, bench clerk, M. L. S. S (member of lower subordinate staff) and process server—they are a syndicate, and they intentionally make mistakes in serving summons, such as incorrect name of the father of the defendant, incorrect holding number, incorrect road number, etc., mentioned in the address of the defendant, and they jointly involve themselves in these unfair practices (Chowdhury, 2013).” Sometimes concerned pleaders apply for adjournment of the suit on fragile grounds just to prolong the trial, and the court, having no other way, grants the application repeatedly (Hasan, 2013).

### 3.4. Procedural Complexities

The entire civil justice system of Bangladesh, including the land litigation process, is age-old, inherited from the British, and is full of complexities. Most of the people in Bangladesh involved in land litigation, especially in rural areas, are poor, illiterate, and unconscious, who do not have proper knowledge regarding the complex procedures of land litigation and also the language of the court. Due to the procedural complexities of land litigation in Bangladesh, poor and illiterate justice seekers are frequently obstructed in the way of getting justice. Outdated laws are the fertile ground of complexities for justice seekers. Most of the procedural laws governing land litigation in Bangladesh were made by the British to secure their colonial administration more, and not to make it more fruitful and friendly for the marginalized people of the Indian subcontinent (Akram, 2017), which is obstructing the way of equitable access to justice (see Figure 1).



**Figure 1.** Land litigation process in Bangladesh. Source: Hasan (2013).

### 3.5. Backlog of Cases

Backlog of cases is another impediment to access to justice in land litigation in Bangladesh. Land litigation still dominates the entire judiciary of Bangladesh (Zahid, 2014). Two-thirds of the total suits pending in the judiciary of Bangladesh are related to land (Islam, 2010). Due to the huge backlog of cases, the judiciary of Bangladesh is overburdened, and land disputes in Bangladesh have reached such a level that one in every seven households is either directly or indirectly involved in land disputes (Staff Correspondent, 2014). Day by day, the population of the country is increasing, which continuously creates pressure on land. As a result,

land is becoming more in demand and the number of land litigations is increasing, especially in the rural areas of Bangladesh, which is continuously creating pressure on the judiciary of the country. The backlog of cases causes wearing delays which is “eating Bangladesh judiciary” (Alam, 2000). The backlog of cases in the way of justice delivery puts tremendous pressure on the judiciary, which causes not only delays in the delivery of justice but also extra financial losses for the parties and wastes valuable time of the court as well as the parties concerned. The backlog of cases in the judiciary of Bangladesh, especially in the delivery of justice in land litigation, is not only an obstacle to equitable access to justice but also one of the major causes of judicial injustice.

### 3.6. Shortage of Skilled Manpower

Shortage of judges and efficient court officials is one of the major drawbacks of the judiciary of Bangladesh. In considering total pending civil suits, the number of judges in civil courts is very insufficient to ensure speedy justice. The judicial mechanism in Bangladesh, especially the subordinate courts, cannot function efficiently and effectively with the expected speed due to the shortage of judges and efficient court officials (Akram, 2017). The judge-population ratio in Bangladesh is ten (10) judges per million people, which is not adequate to ensure speedy justice (Sarkar, 2013). In contrast, this ratio is forty-two to one hundred seven (42 to 107) in developed countries of the world, and even in our neighboring country India, there are seventeen (17) judges per million people (Thakur, 2016). The number of supporting staff in subordinate courts in Bangladesh is very poor in comparison with the volume of work. There is a shortage of court officials on one hand, and on the other hand, existing supporting staff of subordinate courts are not competent enough to ensure speedy justice, and they are not so interested in developing themselves as they think they are doing a government job and have sufficient job security and do not have any accountability to the people. There is a lack of proper training for lawyers and supporting staff of subordinate courts of Bangladesh, and the training for judges of subordinate courts is not sufficient. But competent and dutiful judges, as well as supporting staff and pleaders, are *sine qua non* to maintain speedy and equitable access to justice in any litigation (Islam, 2011).

### 3.7. Weaknesses of Existing Laws Governing Land Litigation

Defects in existing laws regulating land litigation in Bangladesh are an obstruction to ensuring equitable access to justice in the trial process of land litigation in Bangladesh. Most of the laws regulating the trial process of land litigation were drafted by the British more than one hundred years ago. These laws were made considering the socio-economic condition and demands of that time, but the advantages of technology are not included in these laws. These laws have not been properly amended from time to time to make these laws timely. The land administration and management system is very old and complex, which cannot keep pace with

the growing demand and changing situation of the land market (Nahrin & Rahman, 2009). “The land management system in Bangladesh is old, slow, conventional, and characterized by inefficiencies and corruption, and computerization of land records and development of an organized land information system have become essential” (Islam, Moula, & Islam, 2015). Land administration and management system, court record system, and records of land offices are not digitalized. The Evidence Act, 1872 still does not recognize audio and video recordings as evidence, whereas many developed countries of the world have recognized them as evidence and have also introduced audio, video conference, and Skype in taking evidence from witnesses who are far from the court or extremely old or sick. Collection of certified copies of documents from land offices and collection of certified copies of judgments and decrees from the court are still conventional, which causes unbearable suffering to the parties and also consumes their valuable time, money, and energy.

### 3.8. Dual Jurisdiction of Judges

Under the existing judicial system of Bangladesh, judges of the subordinate court, i.e., District Judge, Additional District Judge, and Joint District Judge, exercise both civil and criminal jurisdiction (Hossain & Hossain, 2012). Though the judges have both civil and criminal jurisdiction, in practice, judges give more importance to criminal cases than civil suits. In civil suits, especially in land litigation, a huge number of documents are involved, and the procedure of land litigation is more lengthy than criminal cases. Normally, the hearing and argument process of land litigation is more lengthy than criminal cases, and the judges are more interested in hearing criminal cases than civil suits, especially land litigation, which is not only an impediment to access to justice but also a direct injustice to the justice seeker. The reasons for doing so by the judges are: “a. it is easier to deal with criminal matters than civil matters, as criminal matters are less time-consuming and less formal, whereas civil matters are very technical, formal, and time-consuming; b. it has become practice that if a government witness, e.g., Investigation Officer (I. O.), comes to attend criminal cases, the court should take his evidence by adjourning civil proceedings that day; c. the judge has to prepare and submit to his superior authority monthly or weekly statements of judicial functions, which must include a certain number of disposals irrespective of civil or criminal, and failure to reach that number makes him accountable. This prompts him to fulfill the number of disposals even with mere criminal cases. It is not rare to find that a District Judge has not disposed of a civil suit during his judgeship at the district level” (Hossain & Hossain, 2012).

## 4. Possible Way Outs

Judiciary is the last resort of a man. To ensure justice, rule of law, democracy, and fundamental human rights, the justice delivery system of a country must provide easy, cheap, speedy, and equitable access to all. Existing major impediments to

equitable access to justice in the trial process of land litigation in Bangladesh can be removed effectively in the following ways:

1) To remove unnecessary delay in the trial process of land litigation in Bangladesh, existing laws governing land litigation, mainly the Code of Civil Procedure, 1908, have to be amended to make it time-bound.

2) The Evidence Act, 1872 has to be amended mainly to recognize audio and video records as evidence, and the provision has to be included that, in cases where witnesses stay far from court, are sick, or of extremely old age, the evidence of these witnesses may be taken through Skype or video conference.

3) To prevent intentional delay, there must be a provision of a fine or punishment if any party, their pleader, or any court official is involved in any malpractice to delay the suit intentionally.

4) To prevent corruption and reduce the expense of litigation, the court management system, land offices, and land records system must be digitalized so that parties can collect certified copies of various documents and information regarding their suit online.

5) Appointment of the supporting staff of the court must be fair, impartial, and without political influence. Personal qualification should be the only basis for the appointment of court officials.

6) To reduce the backlog of cases, states have to encourage the parties of the suit to pursue alternative dispute resolution (ADR) by creating awareness regarding the advantages of ADR. In this regard, electronic and print media and NGOs can play a vital role in creating awareness among the poor and illiterate people of the country.

7) Judges-population ratio should be at least like our neighboring country India, i.e., seventeen (17) judges per million people. The number of supporting staff of the court should be increased, and there must be proper training arranged for them, and their promotion should be on the basis of qualification and skill.

8) Sufficient specialized courts, like family court, artho rin adalat (money loan court), and environment court, should be established. Dual jurisdiction of the judges should be abolished, and the judges of the civil court shall have civil jurisdiction, and the judges of the criminal court shall have criminal jurisdiction only.

9) A certain number of civil suits should be included in the monthly disposal of work of judges having dual jurisdiction, failing which they shall be held liable.

10) There should be a provision for incentives for judges disposing of more civil suits.

## 5. Conclusion

Land dispute litigation in Bangladesh exists from time immemorial, and day by day, the number of land litigations is increasing rapidly. Land litigation still dominates the entire judiciary of Bangladesh, and more than two-thirds of the total suits pending in the civil courts are either directly or indirectly related to land. Not only civil suits but also the root causes of many criminal cases are related to

land. Having no other opportunity, people go to court, as the judiciary is the last fulcrum for justice seekers to obtain justice by establishing their rights. However, the existing civil justice system of Bangladesh regulating land litigation is not dexterous enough in delivering justice because of the prevailing deteriorative land administration and trial system, due to procedural as well as practical loopholes. The trial process of land litigation in Bangladesh is so costly, so painful, so deleterious, so complicated, and so inadequate that sometimes justice seekers become victims of injustice. Justice seekers always want justice easily and speedily with minimum cost, in the absence of which they may lose confidence in the judiciary and may be tempted to take extra-judicial means to resolve their disputes. Many impediments in the way of equitable access to justice in the trial process of land litigation in Bangladesh prevail due to the defects of the existing laws governing the trial process of land litigation and malpractice by the parties, their pleaders, and some corrupt court officials. To ensure equitable access to justice, especially for the poor, disadvantaged, and marginalized people of the country in the trial process of land litigation in Bangladesh, these impediments should be removed effectively by proper initiatives, as mentioned; otherwise, justice seekers will continue to suffer injustice in the name of justice.

### Author Contributions

Conceptualization, Md. Manjur Hossain Patoari and Ridwan Goni; methodology, Md. Manjur Hossain Patoari; software, Md. Manjur Hossain Patoari; validation, Md. Manjur Hossain Patoari, Ridwan Goni, and Rokshana Jannat; formal analysis, Md. Manjur Hossain Patoari; investigation, Md. Manjur Hossain Patoari; resources, Md. Manjur Hossain Patoari; data curation, Md. Manjur Hossain Patoari; writing—original draft preparation, Md. Manjur Hossain Patoari; writing—review and editing, Md. Manjur Hossain Patoari; visualization, Md. Manjur Hossain Patoari and Rokshana Jannat; supervision, Md. Manjur Hossain Patoari; project administration, Md. Manjur Hossain Patoari; funding acquisition, Rokshana Jannat and Ridwan Goni. All authors have read and agreed to the published version of the manuscript.

### Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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