

DEMOCRATIZING THE TRADITIONAL MEDIATION (SHALISH) SYSTEM:

An Action Research

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1. Background

1.1 The Context

The rural society of Bangladesh has traditionally made use of the system of non-formal dispute resolution mechanism, better known to people as *shalish*. *Shalish* is a traditional village-level adjudicating mechanism through which judgment is given on diverse issues, ranging from marital discord to property distribution to access to common property resources. In the context of rural Bangladesh, *shalish* has a great legitimacy. This legitimacy stems from, a) failure of the state in providing low-cost and easily accessible legal institutions, and b) the intimacy between *shalish* and the local community. The preference for *shalish* to legal courts stem from the alienated nature of the courts themselves, which are seen as corrupt, coercive, and insensitive to the needs of the rural populace.

A *shalish* involves village elders convening community meetings in local schoolrooms or fields in which grievances are heard and settlements are made. Usually, the village elders are wealthy and powerful men. The religious leaders are also a significant part of it. The central focus of a *shalish* is to ensure unity and harmony within the community through mediation. All parties are free to express their grievances. Since there are no set procedures to follow, unlike the necessary formalities of the courts, it can often become a loud and heated event. More often than not, all the parties including relatives, UP members, and even the spectators get involved in the proceedings and express their opinions freely. Decisions of the *shalish* are swift and they are based on community consensus. This element of consensus building gives *shalish* the legitimacy it enjoys within the rural context.

Shalish plays a very significant role in terms of ensuring acquiescence to the prevailing moral codes of conduct on which the rural society is based. In fact, *shalish* is quite effectively drawn in to “discipline” individuals and groups so that the prevailing structure of morality and power is not challenged. The system of *shalish*, therefore, by attempting to maintain prevailing norms, values, and social structure, often very closely reflects the existing class and gender hierarchy of the rural society. In conflicts between the rich and the poor, or on issues pertaining to gender subordination, judgments are usually made in favor of the dominant groups.

A majority of the disputes settled in *shalishes* are related to matrimonial problems. Poor women, who are the victims of abuse and oppression, often seek redress from the *shalish*. Some common issues raised in *shalishes* are demands of dowry, physical abuse of the wife by the husband and his family members, failure of husbands to provide prompt dower to their wives (i.e. when husbands stop providing for their wives), polygamy, *talaq* (divorce), child marriage, non-registration of marriage, *hilla* (intervening) marriages etc. It may therefore be noted that a large number of *shalishes* are directly concerned with the plight of destitute women.

Although the traditional *shalish* is cost-effective and speedy, the system has some intrinsic defects nevertheless. The *shalish* system allows the village elite to maintain considerable influence within the community by enabling them to exercise their will upon the vulnerable. The village elders, such as the chairmen, landlords, and *mullahs*, appoint themselves as the “mediators” in the *shalishes* and abuse the system in order to protect their own interests. These “mediators” often impose their judgments upon parties who may or may not wish to participate in the mediation. It does not really matter whether the parties concerned agree or disagree with the outcome of a certain *shalish*. In some cases, the parties concerned do not even recognize that their actions have been violations of social and legal guidelines. The mediators often deliver unfair and harsh decisions that are nothing but misinterpretations of the law. Traditional *shaliskar* often imposes brutal and lethal punishment on women who are generally discouraged to be in the *shalishes* to begin with. Women are not allowed to raise their voices or express their opinions freely even if they are elected representatives. Conversely, since there are no specified ways to enforce the decisions reached at the *shalishes*, they often do not amount to anything concrete.

1.2 Objectives of this Research

Nagorik Uddyog (NU) has been carrying out an action research program at Damodarapur Union of Badargonj Thana, under Rangpur District. The aim of this research is to develop the existing system of *shalish* in order to ensure a) equal rights for all, b) stop the discrimination against the underprivileged, c) make the decision-making process more participatory, and d) establish a democratic and stable alternative dispute resolution system.

This research project is focused on developing effective instruments for the rural poor so that they can ensure their own access to equality and justice. These instruments include institutional framework, legal awareness, and community participation. Women are central to this research project, since they remain one of the most vulnerable and disempowered groups in Bangladesh. However, the cornerstone of this project was the full appreciation of

the existing framework of laws protecting their rights, which is undermined by an absence of social awareness and knowledge that deters their application.

The underlying issue of the research was to find the particular implications of socio-institutional power paradigm at local levels, where elected representatives are responsible for mediation (*Shalish*) in family and land disputes. Therefore, the research objective was devoted to see, through an intensive baseline survey, how the cases are frequently settled on the basis of prevailing cultural attitudes and *not* on the basis of equality. It is needless to mention that these cultural attitudes work against women's interests as well as interests of the poor people.

1.3 The Approach

The action research has adopted a two-pronged approach in order to increase access to justice. The approach was to provide education on legal/social rights to women on one hand, and to the community leaders on the other. This approach was based on the formation of *Shalish* Committees that represented a cross-section of the community.

It is difficult to operate in Chittagong since the region is prone to various socio-religious elements that have been a part of its history for centuries. Therefore, Nagarik Uddyog had to adopt novel approaches to deal with the situation. Under this particular action research called "Democratizing *Shalish*," NU invented and adopted several trade-offs in between what already existed in the region and what could possibly be persuaded.

The first attempt was to provide legal aid training to small groups of women in its project area. These courses not only act as information sessions, but by providing a forum where people can discuss their problems and concerns, they play an important role in creating community based support groups for themselves.

An important step was the appointment of a local *Shalish* Worker. A panel of staffs, qualified lawyers, and human rights activists worked toward this end. Training sessions were divided into two phases, a) training for the *Shalish* Worker, and b) training for the *Shalish* Committee.

The core elements of these training sessions were encouraging resolutions through *shalishes*, and where this was not possible, making them aware of how to obtain legal assistance to proceed with litigation.

Due to the limitations of an action research, NU concentrated its staff and resources within a relatively small project. However, it has successfully come up with a process that could very well be replicated in other areas of the country. This action research has had other tangible impacts since it has enabled NU to gain considerable support in the communities with which it works.

Through the action research called " Democratizing *Shalish*" NU wanted to:

- a) Provide training to *Shalish* workers in order to build up their para-legal capability and to remain supportive to *Shalish* Committees.
- b) Institutionalize a process that would encompass operational, social, and legal awareness within its structure. In addition, NU wanted to devise strategies to reach a wider audience through making the best use of this model.
- c) Increase the awareness of the population of their rights and legal procedures with particular emphasis on 70 problems identified by the new *Shalish* Committees. The issues taken on by the *Shalish* Committees were identified through the base-line survey outputs, which are also in harmony with broader human rights issues.
- d) Organize training sessions and workshops to sensitize local elected representatives, community leaders, and NGO representatives to the use of existing laws as a basis for alternative dispute resolution. This has also made this project effective and result-oriented.
- e) Educate elected women representatives about their potentially powerful roles in the union *parishad*. NU also wanted to train the women representatives on women's human rights and legal rights under family laws.
- f) Establish a network between the *Shalish* Committees and the Union Parishad representatives.
- g) Promote a more equitable and just alternative dispute resolution (especially family disputes). More specifically, NU wanted to ensure the participation of the entire community, elected women representatives in particular, in this alternative dispute resolution or *shalish*.
- h) Monitor *shalish* procedures in order to ensure the enforcement of women's rights.

2. The Interventions

The long-term goal of this action research project is to institutionalize the *Shalish* System in an effective way. Awareness regarding the institutional means available to fight legal discrimination arising out of social, political, and economic disparity is the central foci and niche of the research. Violation of the women's rights expresses itself centrally through crimes such as rape, divorce, dowry, domestic violence, alimony settlements etc. This violation could also be observed when the rights related to speak, to express opinions, and to defend oneself are at stake. The intervention strategies have been through a process of trial and error and remain exposed to the emerging problems. The baseline survey, which ran for months, led to the appointment of a *Shalish* Worker. The appointment of this *Shalish* Worker accelerated the formation process of the *Shalish* Committees, both at village and union levels.

The 108 member *Shalish* Committees consisted of 30% women members. In turn, this has enabled the women to effectively use the legal system to their own advantage and to address the concerns that are unique to their situation. The intervention strategy has developed in a way that has synthesized the citizen needs along with the essential legal knowledge, which ultimately benefited the community at large.

Moreover, the intervention strategy has targeted the elected representatives and community leaders, with special focus on the newly elected women representatives. The incorporation of the representatives from the cross-section of the community has established a general forum for the citizen's to address their issues more effectively. This process has also opened up doors for further interactions with the community and encourages the system in general to be more aware of the local needs. The success of the project is best understood by the community's receptivity of demonstrated elements in the project.

2.1 Phases of the current Action Research Program

First phase

Baseline survey: The purpose of the baseline survey was to investigate a) the existing situation of human rights in Damodarpur Union of Badargonj Thana, and b) assess the traditional *shalish* system. Findings of the baseline survey helped to prepare the curriculum of the training for the community leaders, elected representatives, and other people involved in the *shalishes*.

The Second Phase

Shalish Worker: One *shalish* worker was appointed from each ward. Training was provided to them on legal issues and skill development on the process and procedures of how to conduct a *shalish* on dispute resolution.

The Third Phase

Shalish Committee: *Shalish* Committees were formed at the village and union levels. These *Shalish* Committees consist of members from every cross-section of the village so that a *shalish* can be truly representative of the total village or union population. Furthermore, such a representative body would make the consensus meaningful and help to develop the basis for implementation. Out of 108 members of the *Shalish* Committee, 30% were women.

The Fourth Phase

Training: These *Shalish* Committees were invited to attend training workshops. The workshops were planned and executed with the participation of Union Parishad representatives, particularly the elected women representatives, local human rights activists, and other social intellectuals. It was ensured that *Shalish* Committees from every level and region participate in these training workshops.

The Fifth Phase

Capacity Building for Problem-Solving: During its one-year project, NU resolved 70 problems through various problem-solving exercises with the newly formed *Shalish* Committees. These problem-solving exercises ensured the effectiveness of the *Shalish* Committees being formed.

2.2. The Baseline Survey

The purpose of the baseline survey, as stated above, was to investigate the existing situation of human rights in Damodarpur Union of Badargonj Thana and to assess the traditional *shalish* system. The study union was selected purposively, since this union had high intensity of poverty. Respondents were mainly schoolteachers, traditional mediators, and elected representatives at the local level government.

2.3. Survey Methods

Damodarpur Union was purposively selected for gathering quantitative and qualitative information using the techniques of workshop and questionnaire.

Five workshops were held in Damodarpur union. On average, 30-50 respondents attended each of these sessions. Each session lasted approximately 6 hours. Some people found it difficult to afford this time. However, women were able to give more time for these sessions than the men were.

A structured questionnaire was prepared for the quantitative component of the survey, where 108 respondents were interviewed regarding various aspects of human rights and the traditional system of *shalish*.

2.4. Respondents Knowledge about Human Rights

The term "Human rights" is mostly foreign to people. For some, it only exists in theory. Following quotations should shed some light on the subject of respondents' knowledge about human rights:

“I hear about it (HR), but do not understand it.”

“This probably means that we should get food and clothes.”

“Improving the human condition.”

This is what people understand (or, do not understand) of human rights. The survey methods applied to elicit their understanding quite clearly express the fact that the respondents only have a surface knowledge regarding human rights, if at all.

In Damodarpur Union, most of the women respondent said they do not know anything about human rights. When probed further, it came out that their knowledge about the matter was quite incomplete.

Relatively speaking, men seemed to be more aware regarding human rights than women. In addition, their perceptions were nearer to what is really meant by human rights. Nevertheless, men's knowledge on the matter was still shallow.

2.5. Respondents' Knowledge about the Law

General knowledge of the villagers regarding the law could be described as a “general apathy” to the law. They believe that the law only benefits the rich people. The judgments

delivered from the courts make the rich richer, while the lawmakers break their own laws. People also believe that when poor people turn to the court, then it becomes a bitter experience for them. They like to recall the old proverb “justice delayed is just denied.”

They said that affluence and influence are the factors that guarantee advantages in the existing legal system. Therefore, it is a right of the rich people to get justice. The disparity in judgments differs by class, status, and economy. For instance, women are less likely to get justice than males. However, 50% of the respondents expressed ignorance about law particularly of human rights. Other respondents opined that it is meaningless to learn and talk about the law.

In fact, knowledge and ignorance about the law, makes no difference for the poor. They said, “it makes no difference if we know anything about the law or not, because the court will deliver its judgment in favor of those who can afford to engage good lawyers to plead their case anyway.” Another group of women said that, “Once a husband pronounced talaq, talaq is thought to have taken place. Husbands can marry four times without permission of the first wife.” Illustrating their points through vivid examples, they talked about maintenance and said, “Husbands don’t have any responsibilities in terms of paying the maintenance (alimony) after divorce. They hardly pay it for the children.”

However, on the contrary, almost all the respondents believe that basic knowledge of land laws and family laws might be useful to them, but a certain familiarity with these kind of legal instruments is required to get the desired benefits. In particular, women consider it essential to acquire knowledge about the Muslim family law, specifically laws relating to marriage, dowry, and divorce. They think it would also be useful to know (some) laws relating to the violence against women. More importantly, they had elaborated a list of their legal needs to protect their rights in the family and those that relate to various aspects of polygamy and the overall security of women. Male respondents on the other hand consider the knowledge of land laws and laws of inheritance would be helpful for them to learn.

2.6. Sources of Information on Legal and Human Rights Issues

In the study area, there are multiple sources of information about the law. According to the respondents, these sources are schoolteachers, NGOs, government officials and staffs, radio, television, public meetings, newspapers, Imam (of the mosque), village leaders, and local-level government's representative.

Although highest number of the respondents mentioned radio as their preferred source of information regarding legal and human rights issues, many of them also described various problems of this electronic media. They said that the radio is a one-way communication, which provides no room for interaction or clarification on the topics being discussed.

Among the other sources of information, respondents preferred the NGOs. The para-legal training organized by the NGOs is designed to ensure a participatory and interactive discussion. This provides the opportunity for further clarification(s) and the participants are allowed to express their views and opinions. Women coming from areas where NGOs have extensive activities preferred NGOs as the source of information, while men preferred the religious leaders. Primary schoolteachers also acted as informants sometimes.

Generally, people have immense faith and trust in the religious leaders like the Imam. People believe that the Imam cannot do any harm to the people. However, it should be noted here that only men preferred the Imam as an informant, since the possibility of interaction between the Imam and the women is highly unlikely.

The preference for Union Parishad representatives as sources of information regarding legal and human rights issues was next to the religious leaders. Some respondents also mentioned *Matabars* or village leaders as sources of information on the issue.

The least preferred sources were drama films, posters/leaflets, and public announcements in the market places.

2.7. Respondent's Perception of Human Rights Abuse

In response to the questions about incidents of human rights abuse, the respondents described a wide range of grievances, which compelled them to live under inhumane conditions. These grievances are grouped together and discussed below in accordance with the "order of frequency."

2.7.1. Poor people were Deprive from Access to Equitable Justice

All the respondents had something to say about how they have been deprived from access to equitable justice. Generally speaking, people would like to avoid legal complexities at all cost, since they view the whole legal process as "hell." Traditionally, village leaders and elders have always been active in taking advantage of these tendencies by mediating disputes within the community. If needed, elders themselves rush to the UP, Police Stations, and/or the Court. It is needless to mention that the resolutions of the cases always lean in favor of these leaders or their interests.

Unfortunately, poor people do not get justice anywhere. It (justice) remains a thing of obsolete theory since they do not have the money needed to fight a certain case. Therefore, money becomes a crucial element in terms of getting justice. The respondents revealed a wide range of grievances that clearly depicts this restricted access to justice. They have complained against all the institutions and individuals engaged in dispute resolution, including the village elders, the village leaders, the UP, the Police, and the court itself. Invariably all the respondents expressed their frustration about the police and the court, and how uncooperative these people and institutions are. The Court, they said, is inaccessible to them because they do not have money. Even if they manage the money, they cannot afford to fight the case for an indefinite period.

One women respondent said, “I do not get justice in the village or in the Thana. Only the court is left for me to go, but court means a lot of money. You have to pay the Muhuri, the Peshker, and the Magistrate. I can't afford this money. Where shall I go for justice then?”

One other woman narrated: “My husband got married for the second time without my permission. I went to everywhere for justice. Nobody cared for me. Then I went to the family court. Three years have passed since them, but I have not received any results yet.”

Another woman respondent narrated her painful experience with the court. Her story was like the following: “Once I found a false case has been filed at the district court against me. I went to a lawyer and at the time of the first meeting, he (some advisor) told me it was a very easy case and should not cost me more than Tk. 500/- only. To date I have spent over Tk. 10,000/- as lawyer fees to settle the case, but it has not been disposed off yet.”

All the respondents mention their dislike regarding the police. The most common complaint against the police is that they do not work without bribes. Respondents say that they take bribes from both the complainant and the accused. They involve innocent people in the false cases and annoy people for money and so on. People do not go to police even when they need their protection badly. In fact, police is perceived as coercive machinery, which is busy causing harm to people.

The Union Parishad has some official mandates to resolve disputes. According to the respondents, a certain fee is required to lodge a complaint with the UP. However, they also mentioned that the UP chairman¹ and other members ask for “extra” money sometimes. It is also believed that the rich and the powerful are favored in these cases.

¹ Gender specific terms like “chairman” and “housewife” are left as they are. The authors believe the use of these terms is more reflective of the reality of rural Bangladesh as it is, not as it should be. Otherwise, as an organization, NU does not support or condone the use of such terms without qualifications.

Village leaders/elders are at the lowest stage in the scale of mistrust. These people are less hostile to the poor than all other institutions mentioned above. However, they appear to have been ineffective in terms of dispensing justice to the poor. The reasons for not being efficient and equitable in delivering judgments are that these people lack the required knowledge of laws and they need special training.

Compared to men, justice for women is less equitable. Their access to justice is limited. Respondents have deliberately and in few instances critically made male-dominated institutions responsible for such a general bar to women's access to justice. They said, "It is their attitude to keep us silent."

Another group of respondents said "'Might is right' is only law in this country. However, we still go to the village leaders for justice."

2.7.2. Dowry

Respondents mentioned dowry as one of the major problems. Despite the legal prohibition against dowry, it has become a ubiquitous social custom. The law has completely failed to prevent the practice of this custom. Dowry has manifold effects on the families. Poor families cannot afford the money for dowry, and their eligible daughters remain unmarried as a consequence. Society does not view these unmarried young girls with appreciation. It is thought to be a disgrace for the family. Moreover, the families with these unmarried eligible girls remain insecure because they fear abduction, illicit relationships with young men, rape, teasing, etc. Many young girls have passed away their marriage because their families could not manage the amount of dowry. It is a major concern of the parents who have eligible daughters in their household.

On the other side, dowry tempts many married men to get married again. They think of this practice as a money making scheme of some sort. Conversely, many husbands are reported to have tortured their wives when their families have failed to pay the dowry. No matter how unpleasant and unwanted it might be, but the truth is - it is almost impossible to arrange a marriage of a daughter without giving dowry, whether in cash or in kind.

Like most other cases, settlements of the litigation regarding dowry take a long time. Poor women cannot afford these lengthy processes and the costs thus incurred. According to the respondents, the Union Parishad also fails provide justice in this regard, since they do not have the knowledge about dowry related laws. Frequency of dowry related human rights abuse is 13.16% in the study area.

2.7.3. Polygamy

Despite the prevalence of polygamy in a Muslim society, most Muslim women perceive it as a form of human rights abuse. Life as a co-wife is painful both psychologically and financially. According to the law, husband must obtain written permission from the first wife to get married for the second time. Seeking redress against such abuses is a cumbersome exercise for the illiterate and poor people. Most of the respondents believe this kind of abuse takes place due to dowry related issues, i.e. non-payment of the amount of dowry as promised before marriage, or even fresh demands for increased amount, etc. Only 20% of the respondents are aware of the polygamy laws. The frequency of polygamy related abuse is 6.45% in the study area.

2.7.4. Marriage Takes Place Without Registration

According to the law of the country, all Muslim marriages must be registered. However, in practice, very few marriages are registered. Since the marriages are not registered, the court cannot force the husbands to fulfill their financial obligation to their wives and children when the marriages end in divorces or desertions.

The sufferings of women who have been divorced or deserted are hard to fathom. On one hand, these women are socially looked down upon, and on the other hand, these women are left with their children to fend for themselves in this hostile environment. Above all, these women have no legal recourse at their disposal, since their marriages have not been registered.

2.7.5. Rape

Rape is the most direct and cruel act of violence that is plaguing our society. It is also one of the more frequent violations of individual rights. In most cases, husbands divorce their raped wives. Furthermore, the victim faces untold humiliation in order to prove the fact that she has been raped. However, she must do this in front of the UP Chairman and other community leaders who are involved in the *shalish* if she seeks justice. Usually UP Chairperson or community leaders mitigate and try to redress the victims by an economic compensation or arranging her marriage with the rapist himself. It is commonly understood that these marriages are extremely short lived, and these women are deserted as soon as they are married. Since these marriages are hardly ever registered, the rapist husbands feel free to leave the women at will, and feel no fear of any legal repercussions of his action. Male perception about rape, on the other hand, is similar to that of an “extramarital relationship.”

2.7.6. Violence Against Women at the Household Level

Violence against women has multifarious forms and it could be seen from various angles. Often the family, which is the fundamental unit of society, turns into an oppressive instrument when a husband denies the rights of a wife. The root of household violence lies in patriarchy, poverty, and a culture that condones violence. Violence against women at the household level cannot and must not be seen in isolation. It must be put in its proper context, which is the prevailing social condition.

Respondents have identified the general features of this violence. According to them, household violence is issue-based. Meaning, usually the man, who is the husband in most cases, finds an excuse for the violence. This serves a couple of purposes for him; a) he gets to state his demand quite forcefully, and b) the issue works as a justification for his violent act. For example, a husband beats his wife for the failure or unwillingness to meet his demand of dowry. Now, on one hand, by beating her he makes sure that his wife knows what he wants. On the other hand, the issue itself (i.e. the failure or the unwillingness) justifies the beating, since him as well as others in his family and the society believes the demand for dowry to be quite legitimate.

The respondents also identified other ‘issues’ that spark violence within the household. One of these ‘issues’ is infertility. It is invariably the women’s fault when she is not conceiving. Infertility is out and out a fault, and it is never the man who is infertile. It is the perception of truth that matters, not the fact.

Even for the most trifling matter women are held responsible and should have to go through traumatic experiences ranging from beating to psychological torture that often lead to suicide and even murder.

Other grievances, which the respondents perceived as human rights abuses, are *Talaq* for no reason, gender discrimination, abuse by the police, kidnapping of girls (where the kidnapped girls end up being trafficked into brothels), teasing the school-going girls, etc.

3. Opinions Regarding Existing *Shalish*

Whenever there are disputes in the village, the villagers approach the elders or *Matabars* for solutions. Villages have a traditional *shalish* system for mediation, which enjoys a high level of legitimacy among the rural populace. Respondents confirmed this fact even further. Most of the respondents believe *shalish* is the easiest way to end their disputes. They said the witness and other evidences are always within reach and one can verify the truth or falsity of the claim quite easily.

Depending on the gravity of the problem, the community leaders assemble at the request of the complainant (i.e. the plaintiff). As mentioned in the beginning of this paper, this system of mediation allows all the concerned parties to freely express their opinions. It is less expensive, easily accessible, and might even succeed in providing equitable justice for some.

However, when disputes involve women, things are quite different. They appear to be left out of this rural system of justice. Women feel that it is a male dominated system, where the issues of interest to women are not adequately represented. Moreover, the *shalish* panels are always composed of men who either do not understand women's concerns or simply do not care about them. They don't listen to the women. Most respondents think the traditional *shalish* system does not provide equitable justice when it comes to women. According to them, the verdict usually goes in favor of rich men, thus ruling out justice for poor women.

It is true that *shalish* provides an inexpensive and relatively easier way to resolve issues among the disputants, but it is also true that this is limited to simpler cases. Due to the lack of knowledge of the people in the panel regarding various human rights issues, the more complicated cases are either not dealt properly or not taken into account at all.

Despite the above complications and inadequacy, the villagers still prefer *shalish* to court. However, respondents say the traditional *shalish* system needs to be improved in order to make it more democratic and equitable for all.

4. Formation of New *Shalish* Committee

The above paragraphs give us a fairly wide range of perceptions on what people think about *Shalish*, how do they view the existing *Shalish* system, and they also provide insights into what needs to be done in order to improve it. People's ideas about the overall process of adjudication in this rural justice system have provided clues for us to make the system more effective, equitable, and beneficial to all. This is the context on which we proceeded to form the New *Shalish* Committees. In terms of forming these committees, we gave particular attention on a democratic, fair, and free *shalish* environment so that the people get a chance or are allowed to attend the *shalish*. With that in mind, the mediation committee consisted of the Chairman, members of the Union Parishad, schoolteachers, Kazis/Imams (religious leaders), day laborers, housewives (homemakers), and the social elites. Instead of a complex vertical pyramidal structure, we opted for a very simple two-wing structure, namely *Shalish* Committees at the village and Union levels.

Generally, ten to fifteen members were selected for each village and union *shalish* committee. The committees included all elected representatives of the Union Parishad. *Shalishes* were/are called either when an aggrieved party seeks justice, or when community members feel an action is required to settle common disputes or to ensure social harmony. These *shalishes* were announced a week in advance so that all the concerned parties could take adequate preparation. *Shalishes* were generally held at a local school or a community field with approximately 30 to 60 persons attending the session. Generally, these *shalishes* lasted for about two to three hours each. However, depending on the gravity and complexity of a certain case, these could last longer and even spill over to the next day. During the *shalish*, both the adjudicators and other participants were allowed and encouraged to express their views and opinions. Usually, the process was lively, and sometimes it became heated with different parties arguing over their respective points. However, as it has been the tradition of *shalishes* in the rural Bangladesh, all the decisions were made on the consensus of the people present. All the decisions were written out and read to everyone present. The documentation provided the basis for future references and set a precedence to allow for monitoring and follow-up.

5. Function of the *Shalish* Committee

Once the Chairperson² of a *Shalish* Committee receives a complaint, s/he calls for an interview of the complainant. Upon the completion of the interview, an intake sheet is prepared on the complainant, which includes personal information of the complainant, the type of complaint, the type of redress sought, and the names & addresses of the other parties involved. This interview and the information provided in the intake sheet help the chairperson to decide on the merit of the complaint. Upon examination, if the complaint is deemed worthy of a *shalish*, then a letter is sent out to the other parties of the case asking them to appear before the chairperson. This meeting or interview provides an opportunity to the other party to tell their side of the story. A date is then fixed for the *shalish*/mediation.

Both the parties appear before the committee members and express their views on the fixed date. The proceedings of the *shalish* continue until a decision is reached. As mentioned earlier, this decision is sought on the basis of consensus, wherever and whenever possible. Depending on the type and complexity of the dispute, *shalish* members may decide that it is in the interest of all the parties concerned that they appear before the *Shalish* Committee another day so that an informed decision could be provided. Thus, the *shalish* may take a few sessions before a dispute is settled.

The chairperson has an added responsibility of acting as a banker for the maintenance of all the moneys paid, documents being deposited, and hand over the required compensations to the injured parties when a decision has been reached. The role and function of the mediators is significant and requires a professionalism in order to maintain the confidence of all the parties involved.

6. Training

A very important aspect of the *shalish* system is to provide training on relevant legal issues to the committee members so that they are able to guide the people involved in matters of law and the legal consequences that may follow with the failure to comply with them. A one-day training was provided to the committee members to enable them to deal with

² Unlike the gender-specific usage of the term elsewhere in the paper, here we chose to be gender neutral since the *Shalish* Committees are a part of NU's action research intervention program, which also expresses NU's stance on the usage of gender-specific terms.

issues raised by the parties more efficiently. Moreover, the training is also to ensure that all the proceedings and decisions comply with the law of the state. Thus, *shalishes* can serve as an effective alternative to the courts.

The central goal of *shalish* is to provide remedies to those who are unable to seek redress from the court due to the huge costs involved. However, *shalish* should be conducted with the legal principles in mind, so that the consequences of failure to comply with the decision of the *shalish* may be sought from the court. Therefore, the members of the *Shalish* Committees should be trained on relevant topics, which are likely to be raised in a *shalish*. These would include, among others, laws on custody, guardianship, divorce, marriage, dowry, polygamy, maintenance, other family law issues, and the technical aspects of land and labor laws. Training should also include conditions of mediation, the rights of the citizen, and the roles and duties of *Shalish* Committee members.

A weeklong workshop should be organized where discussions would be held on existing laws that protect the basic rights of the people. Since the emphasis is being placed on destitute women, the focus is subsequently on the day-to-day problems of these women, such as violence in the form of forcible take over of assets, dowry payments, divorce, abandonment, and withholding money for food, along with verbal and physical abuses. The workshop should therefore be organized where the pertinent laws would be discussed in detail with specific regard to the issues mentioned above and how the interests of disadvantaged women may best be defended by *shalish*.

7. Monitoring-Meetings

All the members of the *Shalish* Committee at the union and village level should sit together at least once in two-month intervals. The central objective of these meetings would be to evaluate themselves and discuss any important and relevant aspect of a *shalish* that has already been conducted or one that is going to take place in the future. These monitoring-meetings would also discuss the related laws, so that all the members' knowledge is up-to-date with the current law of the country.

Other specific objectives of these monitoring-meetings would be as follows:

- ❑ Review and oversee the general human rights situation in villages
- ❑ Identify and monitor whether the judgments of settled cases are followed by all the parties concerned

- ❑ Allow the committee members to raise the issues with regard to incidences, if any, that were not forwarded to them
- ❑ Develop a legal sense, justice perspectives, the status of legal awareness, and identify the lacks, lapses, and/or loopholes
- ❑ Accelerate human rights activism among the member of the committees, as well as the community in general

8. Post Mediation Follow-up

As mentioned earlier in the paper, all the decisions reached at a *shalish* must be written down in the form of a contract. This should be agreed upon and signed by all the parties concerned. These decisions should be read out in the presence of everyone concerned, so that future monitoring can take place. In addition, these documents would serve as reference points to resolve further disputes that may arise from non-compliance of the decisions reached at *shalish*.

In terms of reconciliation, the Chairperson should follow-up for a period of six months after the judgment to see whether all the parties are complying with the decisions of the *shalish*. Methods of follow up may include visits to the party's residences. The *shalish* worker, along with another *Shalish* Committee member should make these visits.

9. Output of the Project

This is important to say here that the interventions have had a profound impact on the *shalish* system, as it has been practiced in the villages. During the project period, 70 disputes were successfully resolved. These *shalishes* dealt with various kinds of conflicts such as marriages, general conflicts, land disputes, and other intra-individual problems. In what follows, we have cited five cases to indicated the extent and nature of the impact of *shalishes* conducted by the new *Shalish* Committees formed by Nagorik Uddyog (NU)

9.1 Case One: *Shalish* on Domestic Violence

Anowara is a daughter of a day laborer. In 1995, she got married to Abdul Ghani of the same village. It was a registered marriage. Abdul Ghani is also a poor man, who is an agricultural labor, earning only Tk.1000 per month. Abdul Ghani divorced Anowara only after six months of the marriage.

Following the divorce, Anowara was married off to another man called Mainul from the neighboring Shekherpara village. Anowara became a mother of a son in her second marriage. By this time, Ghani also remarried. However, it was difficult for Ghani to forget Anowara. Every so often, Ghani visited Anowara to allure her. Initially, she didn't respond, but the persistent persuasion had an effect on her. She got convinced. Four years after her second marriage, she remarried Ghani. Though his second wife consented verbally, practically it was difficult for her to accept Anowara.

They tried to make the relationship last for a while but Ghani's second wife made the situation impossible. In response, Ghani could not stand beside Anowara, and divorced her again after six months of rough times.

Interestingly, Anowara had been staying at Ghani's house even after the so-called divorce, and the rough times continued. On March 6th 1999, Anowara was brutally beaten by Ghani and drove her out of the house.

Both the parties' appeared before the UP members, but that did not yield a decision that was acceptable to all. Finally, they approached the NU *Shalish* Committee.

After a thorough investigation, NU *Shalish* Committee found Anowara's statement true, which was supported by testimonial evidences of the witnesses. Thus, the NU *Shalish* Committee took on the case and the arbitration started. NU *Shalish* Committee, along with the help of the UP members, arranged the arbitration. During the arbitration, both the parties were present. The verdict of the arbitration panel was that Ghani would pay Tk. 15,000 to Anowara for her maintenance.

However, Ghani cheated her. He had taken Anowara's signature on a blank piece of paper and tried to deceive others saying that she has already been paid off. As a punishment, NU *Shalish* Committee decided a further Tk. 5,000 fine to be paid to Anowara. Everybody was satisfied with the decision of arbitration except Anowara.

Gloomy and dissatisfied Anowara went to Dhaka after a few a days of the decision with her only son.

Abdul Ghani had deceived Anowara. He did not pay the penalty money. The *Shalish* committee challenged the validity of the signature and had decided to go to the court. Ghani was afraid of what might happen to him. Therefore, he assured the committee that he would remain amenable to the law and pay the penalty money.

9.2 Case Two: *Shalish* on Dowry

Jabbar Hossain is a landless small trader with almost no education. He only knows how to sign his name. He makes bamboo baskets, which he sells in market.

Mominul Islam of Palipara village is a vegetable trader with very little education. However, he owns a little piece of land. Mainul Islam's marriage with a *Madrasha* educated daughter of Jabbar Hossain opened a new era in his life. The dowry of the marriage was fixed at Tk.10,000.

One year after the marriage, Mominul started creating pressure on his wife for the dowry money in order to expand his business. Rahela, his wife and daughter of Jabbar Hossain, talked to her father regarding the matter. Jabbar, the father-in-law, assured his daughter and son-in-law that he would try his best to arrange the money as soon as he could. Mominul was not convinced and continued to put pressure on her. At one point, Mominul asked Rahela to go to her father's house and return only when she gets the money. Rahela stayed nine months at her father's home. Jabbar requested Mominul several times to take Rahela back. However, Mominul denied all his requests.

At this point, seeing no other options open to him, Jabbar reported the incident to NU *Shalish* Committee. Prior to this, Jabbar had been to the UP members but failed to have any acceptable solution. Considering the importance of the situation, NU arranged the *shalish*, which was presided over by Rahmat Ali, an ex-UP member. The decision of the committee was a) Mominul will accept Rahela, b) Jabbar will pay Tk. 5,000 to Mominul within three months, and c) Jabbar will pay another Tk. 5,000 to Mominul within a year. The NU *Shalish* Committee explained this situation to the parties as the following: The money to be paid would not and should not be considered as dowry, but only a loan for his business.

This was definitely a complex problem. NU, of course, did not want to see this marriage end in a divorce. It also did not want to see itself as condoning the tradition of dowry. However, the arbitration and the decisions therein reflect the complexity of certain

situations and takes into account the reality that exists in rural Bangladesh. What was very significant is that Mominul apologized for his misdeeds and promised that he would not pressure his wife for dowry ever again. Mominul and Rahela are living peacefully, and as far as we can tell - they are a happy couple. They are grateful to NU.

9.3 Case Three: *Shalish* on Land Dispute

Rahena is a widow from Gopalpur Bayapara village. She is the mother of three children. She runs a small grocery shop and sells Indian *sarees* (women's cloth). Her father-in-law is a poor man with no real source of income. Rahena did not face any problems when her husband was alive. However, after her husband's death she had to take the burden of her children. She was hapless. The elder brother of her husband proposed to marry Rahena, but she refused it. She had no desire to remarry and wanted to live with her children on her husband's land. She had a dream to educate her children. Despite her determination not to remarry, her brother-in-law tried to allure her in many ways. Continuous disagreements pushed her into a difficult situation. The man continued to put pressure on her, and at times even threatened her.

Rahena was aware of the work of NU. Therefore, she lodged a complaint against him and demanded justice. Upon determining the legitimacy of the cause, NU arranged for the *shalish*. A women UP member presided over the arbitration. The man denied all the accusations brought against him. Rahena insisted so that the man would tell the truth. However, he said that all her complains were vague. However, the NU *Shalish* Committee investigated into the matter and found him guilty. The NU *Shalish* Committee accused the man and decided unanimously that Rahena should stay at her husband's land and asked her to make all the arrangements to settle the land ownership. Rahena became very grateful to NU and specifically to the female UP member for such solution to her problem. The women UP member also thanked NU for its laudable role for the poor woman.

9.4 Case Four: *Shalish* on Maintenance

Piara Khatoon is the daughter of a poor farmer called Bachu Miah. Due to poverty, Bachu Miah arranged the marriage of her daughter to Siddique Hossain of the same village when Piara was only fourteen years old. However, it was Siddique Hossain's second marriage, though the marriage was registered. Both of his wives were living together peacefully. However, good days did not last long. With the help of his first wife, Siddique Hossain

started to humiliate and torture Piara Begum. However, the torture could not break her down and Piara Begum did not leave her husband's house. Siddique tried another tactic. He demanded dowry and started fresh attacks in the most brutal of ways. The degree of physical torture was intense. Piara Begum miserably failed to collect any money from her father. Consequently, she was thrown out her husband's house at an advanced stage of her pregnancy.

Piara Khatoon complained to local elite. They paid very little attention to her concerns. Finally, she filed a case with the Family Court of Rangpur. Siddique became frightened when he heard that a case has been filed against him with the court, and accepted her back into his house. Piara Khatoon withdrew her case from the court as well. However, after a few days, the beating recommenced and she was thrown out of the house again. She sought justice, but justice did not smile upon her for five years. In the meantime, she earned her living as a maid, and supported her child all by herself.

In 1999, inspired by Ferdousi, a member of the NU *Shalish* committee, Piara lodged a complaint against her husband. The mediation was arranged at Shamsun Nahar's house, a female member of the mediation committee. Finally, *shalish* began with the participation of all the members of the committee. *Shalish* concluded that Siddique should pay Tk. 4,500 to Piara Khatoon for her maintenance and another Tk.1,500 for the maintenance of her son. Furthermore, the committee instructed that a formal divorce could only be arranged after the payment of the fines. After so many years of suffering, Piara Khatoon could see some light of hope. Everybody praised the laudable role of NU in this regard and they gained a bit of confidence in solving such problems through proper *shalishes*.

9.5 Case Five: *Hilla* Marriage

Ayesa Siddiqua is a girl from an economically solvent family in the village. Her Father is a small trader. In 1993, Amzad Hossain arranged the marriage of her daughter with Shamsul Alam of Mustafapur Bakshipara village. At the time of marriage, Ayesa was only 12 and Shamsul was only 15 years old.

Shamsul Islam runs a grocery shop and works as a farmer. They have do not have any children, but they are happy. However, on July 18, 1999, he had a quarrel over a familial matter with his wife and at the heat of the moment, he uttered *talak* (divorce). During their quarrel, some villages were present in front of his shop. When Shamsul sensed the

implication of what he has said, he wanted to take his words back. It was a mistake on his part, only a slip of tongue. In fact, he had no real doubts and wanted to live with his wife and family. However, the villagers vehemently opposed his desire to get back to his wife. They said, according to the *sariat* (the Islamic Law), once a woman is divorced she could not remarry the person who divorced her without first getting married to someone else. Only when she obtains a divorce from this other person she can remarry her first husband. This is what they call a *Hilla* Marriage. Shamsul's family did not accept the opinion of the villagers, who then threatened to ostracize the family from the society.

Amena Begum, a NU worker, came to know about the case through hearsay and went to Shamsul Islam. She tried to convince him that *Hilla* marriage was illegal. However, the villagers became very angry to hear such an opinion and threatened her as well. Amena Begum went home, came back with a law book, and asked them to read it.

Although there was not much the villagers could say at that point, that still did not stop them from raising hue and cry over the matter. After all, their religious sentiments were being hurt. Incidentally, the NU *Shalish* Committee was also present during this incident. They tried to understand the complexity of the matter, and decided that Ayesha should live somewhere else for three months, and then remarry Shamsul if they wanted to live together.

NU does not in any way condone *Hilla* Marriages. A settlement like the above was only reached because the religious sentiments of the people had to be taken into account. NU believes an absolutist position would have jeopardized the best interest of the complainants (Ayesha and Shamsul in this case). This was also discussed during workshop as an interesting case study. This decision was a trick just to appease the people and to find a suitable way to avoid *Hilla*. This belief is deeply rooted in the society, which would take a long time to change. However, this should be mentioned here that since this incident, the people of that locality have become aware of the 'illegality' of *Hilla* marriages.

10. Lessons Learned

The experiences gained during this one-year program have helped NU design its program in a better way. The lessons drawn from this program, that are also being incorporated in other NU programs, are described below:

- Nagorik Uddyog (NU) sees strengthening democracy at the local level as vital to the increasing fulfilment of civil and political rights of people, especially of women, in rural Bangladesh.
- There is a general acceptance among the policy makers regarding the critical role of citizens in promoting good governance. Creating and enabling the conditions whereby people can exercise equal rights to justice through community based and women-focused dispute resolutions would promote good governance.
- Activating political leaders, local representatives at different levels, and by generating greater awareness and knowledge on legal issues, and enabling these key players to respond collectively to the fundamental civil and human rights needs of the population would also ensure the issue of good governance.
- A complete *Shalish* Manual need to developed and tested thoroughly in the intervention area. The manual should include laws related to family, inheritance, violence against women and children, and basic human rights. In addition, different types of mediation, *shalish* procedures (conduction, record keeping etc.), case studies of successful settlement of disputes, and the village court ordinance should also be included. The manual will be intended to work as a guideline for the village/union *shalish* committee members to settle disputes fairly and democratically even in the absence of outside intervention. It is imperative to ensure that community members become stakeholders in this process in order to ensure the sustainability of Alternative Dispute Resolution.
- A rapid assessment should be conducted on the existing *shalish* and legal aid program of other NGOs. Coordination among these actions and programs are vital to create a nation-wide impact. Therefore, we intend to develop a network combing our research findings and other experiences. This initiative will help to draw more vital policy recommendations and will contribute to the development of a sustainable model or framework.

Strategy of Sustainability

The sustainability of the programme lies in building and strengthening the representative structures. Practices that tend to be biased against women and often offset the benefits of mediation will be constantly monitored under the proposed institutional framework. Networking between elected women representatives and the *Shalish* Committee will take place through the Legal Aid Committee. This networking will receive active support from Nagorik Uddyog (NU) for 3 years. However, after the third year, these committees and the network are expected to function independently.

The follow-up ideas should be as follows:

- Ongoing lobbying and advocacy, both at micro and macro level, to support the proposed institutional framework as an effective vehicle for women's empowerment and justice.
- The extent to which the community has been receptive to previous work will be evaluated in order to better respond to their needs as the program develops.
- Replication of this program in other vulnerable areas.

Sustainable institutional strengthening at the community level

Ward Level Shalish Committee: This committee will be comprised of 10-12 members including active women mediators and potential women mediators.

Women Justice Watch Group: Two woman from each ward (9 wards) will be selected for legal training with a specific focus on family laws, laws against violence, and national and international human rights issues.

Networking: The active role of the three elected women representatives is the key to the success of the proposed program.

Legal Aid Committee: Providing a forum for alternative mediation at a Union level involving representatives from all the committees.

Introduction of women's agenda through workshops

Workshops will be conducted with the elected representatives, women's groups, and the mediation committees, which will benefit the community in the following ways:

- Raised awareness through campaigns about political options promoting informed decision making
- The introduction of a women's agenda into the electoral debate
- More educated female voters with knowledge about their civil rights and responsibilities

11. Future Research Needs

New areas of interventions should be identified through allowing us to continue with the present research. The results of this research have created scopes to further investigate into various complex issues. In what follows, we have identified a few areas where further researches should be conducted:

1. **Community Judiciary:** The rural justice system does not mean only mediation. The institutional challenges are complex and daunting. This research has captured the direction and the process to be adopted to change the existing system and to evolve an alternative sustainable and effective mechanism. The Community Judiciary system is to be instituted through a series of tests of its elements. We have already experimented with one of the elements, such as the *Shalish* Committee. These *Shalish* Committees demand refinement, adjustments, and a legal and social footing. Transforming these committees into a Community Judiciary, which would be acceptable to all sections of the community, is only one of the key areas. Further research should shed light on other key elements of the Community Judiciary.
2. **Gender Issues:** Issues associated with widows and abandoned women are of especial concern to us. It is indeed a matter of deep concern that even in the existing *Shalish* or during the process of setting the committees, it seemed very difficult to give the care needed to them. They have certain disadvantages not just because of poverty, but also because of their status in the society.

Our experience suggests that widows and abandoned women are most vulnerable within the community. They are unable to assert their rights with respect to property, maintenance, inheritance, and so forth. Their social status is devalued and the community tends to discriminate against them. The situation with the abandoned women is particularly difficult. Husbands do not take responsibility of raising the children. We need to undertake specially designed investigations into these matters. Under the present program, a baseline survey will be carried out in order to make a detailed listing of this target group. This should provide the appropriate tools to develop strategies for their rehabilitation. In addition, we believe, these strategies should involve the community members and the victims to ensure applicability. One of the avenues to be explored in this regard will be the sensitization of *Shalish* Committee members in order for victims to receive fair judgments.

3. Comparative Analysis: We intend to compare our work area with another union (where such activities are absent) in order to measure the impact and benefits of our program. This union will be termed as the “Control” area and documentation and monitoring system will be established for this purpose.
4. Follow-up Studies: One important issue raised by different the human rights activists is the lack of information/follow up on disputants after the *shalish*. There is no in-depth study on whether disputants respect *shalish* decisions, whether the parties maintain peace amongst themselves afterwards, or whether new conflicts arise from previous disputes. Therefore, it is important to incorporate this aspect into further research. We propose to study this aspect in order to determine the impact and success of *shalishes*.

12. Conclusion

Shalish, a traditional form of people-centered mediation of disputes, is being seen as a way forward for ensuring justice and human rights in the society. Womenfolk, in the most disadvantaged socio-economic setting, are making the best use of the new democratic space made available to them, despite the insurmountable odds that they have to face. For women, severe pressures of economic survival leave very little time and energy to get involved in village and local decision making process. In the past, men have considered this their domain. Women have been and still are largely responsible for childcare and managing the home, as well as much of agricultural work and food processing.

Change will be slow, but it is encouraging to see many women-focused development programs of the last twenty years succeed, though in a small scale. Women are working with Nagorik Uddyog to confront the lack of access to the formal legal system, especially for protection and justice from violence against them. NU's aim in this regard is to settle disputes between people with the help of the community. The results have been impressive and have given many women of the study area greater confidence to begin lobbying at local government offices. After the dark years of colonial West Pakistan and the military rule, Bangladesh is building its own democracy and the women of Badargonj are claiming their rights to shape it. In Badargonj, grassroots Democracy is taking on a meaningful face through the project "Democratizing the Shalish." In a limited sense, the action research have ostensibly pointed out the way to the poor, powerless, and disorganized men and women how to exercise their right to speak up, to cross-argue, to invoke participatory discussion, and to allow the legal elements to be carried through. This is an action research. That made us conscious of delineating our limits. In practice, our task was not as such to provide legal aid, but to get people involved in all elements and stages of the project. The project has demonstrated to the people the trial process, the judicial framework, and steps of adjudication. Inevitably, legal awareness has been the essential component. The identification and analysis of the "idiosyncrasies" and "roots of the discrepancies centering around *shalish*" have always been the focus of the project. Accordingly, it was imperative for us to go for a structural analysis of law and go for problem identification with extensive socio-legal parameters. We believe, immense benefits could be harvested from this project called "Democratizing *shalish*," if there are consistent follow-ups to deal with the institutions or the form of the institutions that have worked well.

In a quite but firm demonstration of how grassroots democracy works and gets off the ground with an institutional basis, this project has revamped the old wisdom of judiciary with a grassroots judicial system consistent with the existing law of the country. This also fits into the aspiration and social demands of the study area. In Badargonj, the poor men and women are dictating the terms that affect them most: *Tin Talak* is unacceptable, no dowry for men, every marriage must be registered, and harassment of women must stop.

The changes are taking place in the villages of Damodarpur, Badargonj union under Rangpur district, one of the most impoverished areas of Bangladesh.

Many poor women exercise a lot of power. Even the elected chairperson of the Union Parishad cannot ignore them. Interviews with the women as well as with others could be epitomized in a statement of a woman who said "The chairman of our union Parishad listens to what I have to say. He knows that I have all the poor women behind me." She says this wearing a smile on her rugged face.

Badargonj is culturally resistant to women's rights. The justice system is premised upon misrule and misconduct of a few who assume the power for controlling the masses. Democratic polity is still a dream. Now, slowly the things are changing, and the changes are focused. For example, the UP Chairman cannot settle issues related to women without the women's consent. It was not easy in the beginning. At first the UP, chairman was suspicious about women's intentions. Local elite put up obstacles with religious leaders accusing women of violating the rule of *Parda* or veil.

However, it was not long after the adversaries realized that women mean no harm to them. The women in fact, are helping the local administration in the implementation of a good number of laws that have been enacted to benefit the country's women. The institutional questions under this research have received the highest priority.