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NGO-*shalish* and Justice-seeking Behaviour in Rural Bangladesh

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ABSTRACT

This paper looks into the justice-seeking behaviour of people in different formal and informal institutions. It also explores the reasons of such justice-seeking behaviour of them. Considering the legal aid programme of BRAC as a benchmark the advantages and disadvantages of all the justice providing institutions were analysed. The type of justice provided by the institutions and people's access to these and different socio-political factors motivate the justice seeker changing the routes of those institutions to get justice. The traditional justice institutions compared to others can mitigate the needs of the villagers if it is supervised and monitored by NGO i.e., the legal aid programme together with village elites.

Key words: Traditional *shalish*, Legal Aid programme, Formal court, Accessibility

INTRODUCTION

Access to justice is one of the most important human rights of people. This is an issue that requires special attention to establish such a society in Bangladesh, which will be free from all sorts of exploitation. The broader implication is that it affects the developmental process and goals of a country. Unfortunately, the system of justice in Bangladesh is worse than cannot be described in words. Yet, to avail this right people seek justice from formal and informal institutions. Several justice delivery institutions or mechanisms are typically operating in Bangladesh. The larger institutional landscape generally includes: formal district courts, which are firmly bound to the rule of law; the quasi-formal justice dispensing institutions of the local government body, or the *Union Parishad* (UP) – the lowest administrative unit, which includes the Village Courts and the Arbitration Council; the informal *shalish*¹ mechanism, a traditional dispute resolution (TDR) conducted by diverse local leaders; and alternative dispute resolution (ADR) and legal services offered by NGOs - a new dimension in the justice sector, including but not restricted to BRAC.

A person searching for justice faces complex institutional landscape and may navigate this landscape through different routes. Some of these routes lead to NGO *shalish* i.e., the Legal Aid programme (LAP) of BRAC, and others lead to formal and informal routes. While availing these routes the person experiences lots of opportunities and difficulties due to structural functions of those routes. Looking at different options of justice displayed to the justice seeker the main research questions we explore for this study were: a) why do certain people come to traditional *shalish* instead of Legal Aid *shalish* in searching for justice; b) why do they change routes; and c) do they go anywhere else afterwards?

The study was conducted in northern region of Bangladesh. Considering BRAC's LAP as a case of NGO-*shalish* we documented the processes of LAP and dispute resolution system. From the LAP we selected some cases, which were either resolved at the office (legal aid clinic) or remained unresolved. Based on those cases a single village named Bakdokra of Domar *upazila* (sub-district) was selected to conduct an in-depth study on justice institutions and norms of justice. We then selected 6 incidents for detailed case studies, which focused on the individual victim, but also included all other relevant persons involved in the justice seeking process. Eighteen in-depth interviews were conducted with the justice seeker on justice-seeking strategy and norms of justice. Besides, numerous casual conversations with the village elites and villagers were done during the two months of fieldwork.

The data were analysed on the assumption that justice-seeking process would be a series of conscious decisions undertaken by the individual with the hope that it would lead to a resolution that would approximate their notion of justice. This would depend on the several factors such as the perceptions of just and unjust of the justice seeker, and different degrees of unjust, form and type of justice, their knowledge, information and perception of different avenues of justice and finally perceived constraints to accessing justice from different avenues.

¹ The term '*shalish*', which is usually used in Bangladesh profoundly, refers to a community-based, largely informal process through which small panels of influential local figures help resolve community members' disputes and/or impose of sanctions on them (Golub 2003:3).

THE CONTEXT OF NGO PROVIDING JUSTICE

Access to justice conventionally refers to the ability of individuals to appear before formal state courts or otherwise draw on the judicial and legal structures of the state. Theoretically, everyone is entitled to such access and they seek justice from this institution but unfortunately the gap between formal entitlements and actual access can be immense (Siddiqi 2003). Exorbitant costs, excessive delays and backlogs, and a lack of knowledge or resources are major obstacles to those who seek justice in formal legal settings.

The excessive procedural formalities and administrative complexities block the filing and resolution of relatively simple cases or alimony cases brought by the segments of the population hamper the access and diminish the quality of justice (Buscaglia 1996). Mackenzie (1974) comments, "This is a country (Bangladesh) where the courts are so reviled and ridiculed, held in such contempt, so 'sold out' by common acknowledgement, that the thought of resort to the judiciary for the settlement of important conflicts has been a bad joke for generations." A study reveals that pending cases were reported by 85% households involved in the court cases. Regarding expected time for settlement of pending cases, 53.9% of the accused/plaintiffs reported that they were uncertain about the period when settlement would be reached. And about 79.8% of them reported that delays in reaching settlement were deliberate and due to (i) court's high handiness (43.1%), (ii) lawyers' business interest (42.4%) and (iii) opponent's ill motive and manipulation (53.5) (TIB 1997). A common saying captures the general perception towards the courts as well: *He who gets trapped by the law falls into the mouth of a tiger* (Siddiqi 2003).

The geographical distribution of formal courts also tends to be uneven, with the balance tilted towards urban centers. The access to the court is extremely limited; 8 out of 10 Bangladeshis live in villages. As the lowest formal court is at the district level the overwhelmingly rural poor have to bear travel and logistics costs that pose additional burdens (Siddiqi 2003).

Therefore, large segments of the population who lack information or means to surmount the significant substantive and procedural barriers seek informal mechanisms (*Shalish* in Bangladesh) to redress their grievances. These mechanisms do provide an escape valve for certain types of conflicts for the rural people (Buscaglia 1996). In this system disputes are resolved quicker, and allow the parties to freely express their opinions to their greater satisfaction (Meyer 2002, Huq 1998). Hence, about two-thirds of the disputes do not enter the formal court process; instead, they are either settled this at the local level through informal process by local leaders or a village court or they remain unsettled (Golub 2003).

But many studies also reveal the dark side of this system. It has developed serious functional complications owing to intense factional infighting and rivalries in the villages; localized petty disputes have increasingly been referred to the UP chairmen/members for mediation. These studies also indicate the pressure of the rich, influence of money or special favour, fear of the local terrorists, and domination of orthodox religious views are identified to be the main bottlenecks responsible for unfairness in *shalish* (Siddiqi 2003). In addition, *shalish* has sometimes acted as an instrument for carrying out the perverse '*fatwas*' (misinterpretation of religion that mostly directed against women) issued and propagated by some local religious leaders.

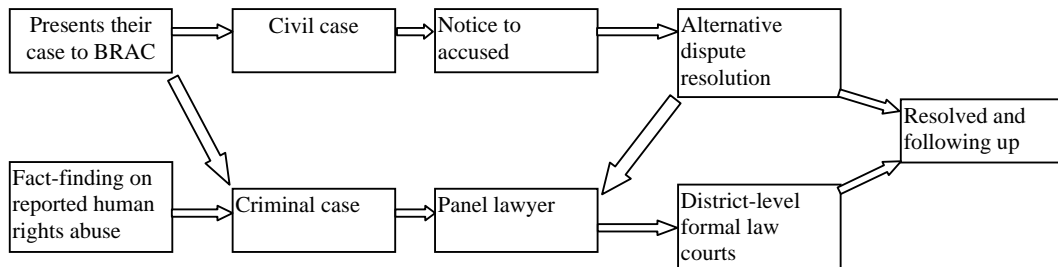
Due to persistent structural-functional problems and the lack of peace and amity within the rural social structure, it seems very difficult to bring about equitable resolution between the conflicting parties. However, one positive development that seems to have been emerging is that some NGOs have in recent years come forward to refashion the traditional *shalish* system. They are conscious of the prime need to ensure neutrality, non-imposition and attaining a ‘win-win situation’ in the mediation process (Siddiqui 1998).

BRAC, in partnership with ‘*Ain o Shalish Kendra (ASK)* – another NGO, initiated a legal service programme in 1998 to provide justice to the poor, especially women, in rural Bangladesh. BRAC started giving the legal aid, a service delivery programme that provides a combination of ADR services and legal aid in accessing formal court.

THE LEGAL AID PROGRAMME (LAP)

Before proceeding further into our analyses, it is necessary to describe BRAC’s Legal Aid Programme (LAP) in more detail. In this section, we will describe the field operations of the LAP, the extent of its activities so far in terms of geographic reach and numbers of cases processed.

Figure 1. How the legal aid programme receives, processes and resolves cases



Legal aid programme field operations are based out of BRAC area offices, which is at the *upazila* level, and is conducted by the Social Development (SD) Programme Organiser (PO). The SD-PO is assisted by the area coordinator and the Regional Sector Specialist of SD at the district level regional office. *Ain o Shalish Kendra (ASK)* provides technical support to the programme through advice, supervision, coordination and monitoring.

Most cases are received directly from complainants who come to the BRAC area office and present their case to the SD-PO. Sundays are fixed for receiving cases. Cases may also be received when the SD-PO goes to investigate alleged human rights violations in the area, offers the legal assistance to the victim, and the offer is accepted. However, an almost negligible number of cases have so far been received through fact finding.

There are different procedures for dealing with civil and criminal cases (Fig.1). For criminal cases, the SD-PO ensures the health and security of the victim, makes sure evidence is not tampered and file a First Information Report (FIR) at the police station. The SD-PO contacts the panel lawyer, who is based in the district town, and the case is taken directly to the District Court. As the case is processed, the SD-PO assists the client in completing her paperwork, preparing a list of witnesses, ensuring that the client or witnesses are aware of the dates at which they have to be present at the court, and so forth. There will be no ADR for criminal cases as it is against the law to arbitrate criminal offences.

In civil cases, the SD-PO receives the complaint and he sends a letter to the accused saying that an allegation against him has been received by BRAC and that (s)he should come to the office to resolve the matter. If there is no response after a week, another notice is sent. If there is still no response, a letter is sent through a lawyer threatening legal action. Once the accused responds, the SD-PO sets a date for a dispute resolution meeting at the BRAC offices, where the SD-PO is the primary arbitrator. At the meeting, the accused and the plaintiff come with their respective representatives. If they are unable to solve SD-PO forwards the case to the panel lawyer, who then files a case in the district courts.

NAVIGATING JUSTICE IN BAGDOKRA

People seek justice to different formal and informal institutions to resolve their disputes. The nature of formal court in providing justice is almost same throughout the world but the other institutions, having different context, hold their own procedures, norms and values to resolve disputes. The characteristics of these institutions and the justice provided to the justice-seeker shape their behaviour of seeking justice. The decision an individual takes in pursuit of justice in response to an unjust act to the different institutions in the Bagdokra village is discussed here.

Bagdokra, four km away from Domar *upazila* was a pretty big village among others.

There were sixteen *paras* (neighbourhoods), which are recognised by different names of person for example *Bosunia para*, etc. The people coming from India titled *Pradhan*, *Bosunia*, *Chowdhury*, etc. are *khandani* (elite) in terms of wealth and education compared to 'local inhabitants'. They have direct and in some cases, indirect political affiliation with the national political party. Each of the neighbourhoods has own *Dewani/Mahats* (village leader/elites) who dominates the *para*. They resolve disputes between neighbours through traditional village *shalish*. Sometimes the local political leaders also do justice for the justice seeker, if village leaders fail to do. However, people of this village resorted different sources to seek justice (for example, Box 1) that included the formal court, NGO *shalish*, village *shalish*, political party *shalish* and how justice-seeker moved from one source to another until it was resolved.

Box 1. Joimuddin with his three brothers were educated and rich in village Bagdokra. The youngest brother had a relationship with a girl of his neighbourhood. While recounting this story, Shamsheer member (ward member) was informed to get boy and girl married but he refused to do this on excuse of not being adult.

In another day, the boy was locked by girl's mother and summoned the village leaders and elites. The chairman and other elites decided that the two of them should get married. The dowry was 24 decimal land and 10,000 taka. The *den mohor* (bride price) was 1 lakh taka. And the other condition was that the girl would finish her SSC exam, and the boy his university examination before they started living together. In the mean time, the boy's family started saying that they would not accept the girl as a wife. The girl's family went to the chairman and explained the situation to him. But boy's family ignored chairman. Then they came to BRAC through a president of village organization (VO) of BRAC. PO of BRAC did not take an official complaint as the chairman said that he would try and resolve.

Again one day, a lot of *dewanis* (elites) came to the girl's house and had a meeting about this issue. Amongst them, was the girl's maternal uncle and a member in the neighbouring village. After the meeting it was decided to send the girl to her in-law's house. But the girl returned to her mother after few days and complained that she was pushed her in the chest, pulled her by her hair, etc. Then boy's family went to Ansar Professor, their maternal uncle and is closely related to the BNP relationship, who took them to Manu, the BNP secretary of the area. Manu gave Bhutto and Bokul responsibility for looking into the matter but no decision was made. Now girl's mother went to police to file a case. It was now in court.

There were three different NGOs such as RDRS (Rangpur, Dinajpur Rural Service), BRAC and *Manobadhikar* Bureau working to provide justice to the villagers. Most of the time members of those NGOs seek justice from their organisation when any of them involve in disputes with each other. The organisation has its own style of providing justice. RDRS follows their own federations² through which they attempt to solve the problem. And *Manobadhikar* Bureau is a human rights organization, which receives case from justice seeker and helps to resolve this informally. If it is not solved informally, they refer the case in formal court. In court they give legal support to the justice-seeker.

In many cases the villagers go to the elected UP chairmen directly to resolve disputes. He follows formal procedures, as he is given authority to do that. Chairman sends a notice to both the parties involving in disputes and strives to solve at his office.

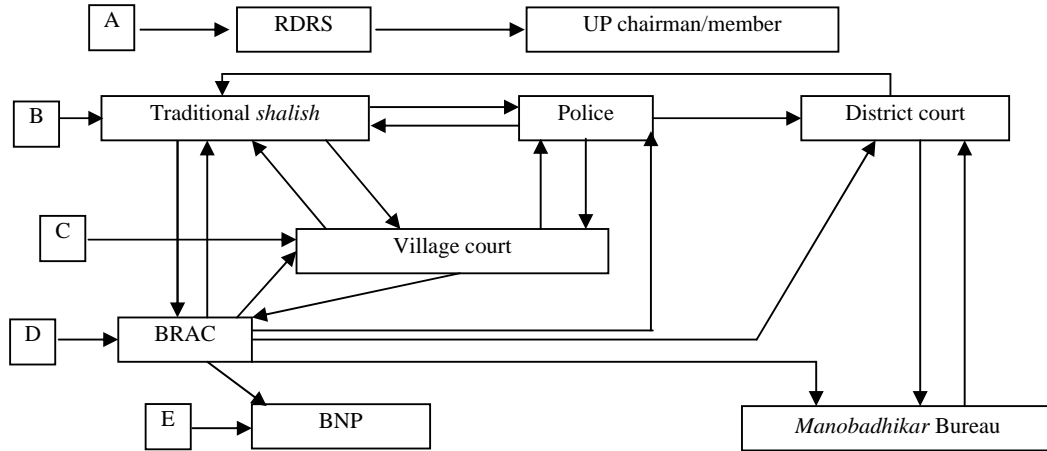
Villagers also like to go to the ruling party leaders (Bangladesh Nationalist Party - BNP). In some cases, the justice seeker has either affiliation with the party or he has relative or neighbour who is familiar with the political party leader. The leader reconciles the disputed clients. On the other hand, few of them directly goes to police to file case and at the end the court solve the disputes.

There were five routes i.e., 'A, B, C, D, and E' through which villagers seek justice directly in the study village and after that they changed their routes (Fig.2). They kept on changing the routes until their satisfaction. The justice seekers coming to RDRS had been able to resolve their disputes in some cases. Sometimes the ward member or even chairman in the respective ward or *union parishad* was invited in this justice process to make it more acceptable to the disputants. They succeeded in many *shalishes* but when they failed to resolve disputes, they went UP chairmen from whom they got justice.

A clear interaction was observed in respect to following the pathways of getting justice among traditional *shalish* and other sources of justice. Villagers who resorted traditional *shalish* first followed few avenues. Villagers who went to traditional *shalish* went to police and then to district court. Sometimes they received the final justice from the court or from the police and in some cases, after a long time, they came back again to traditional *shalish* from the formal court. They withdrew their allegation from the court and resolved disputes.

² The Federations are voluntary associations of a hybrid kind. They are local development associations, with fixed territory; co-operatives, which pool resources; and interest associations, which may admit members from the poor strata only, all at the same time. The plurality of domains – social development, credit, production and businesses – is an expectation that is also widely shared by the Federation members. They also resolve disputes with the help of RDRS.

Figure 2. Navigating the justice of the villagers in Bagdokra village



Again the villagers shifted their routes from traditional *shalish* to village court and BRAC legal aid *shalish*. The opposite direction was also observed. It means that villagers came back to traditional *shalish* from legal aid and from village court. It was also observed that the villagers who came to village court went to police. Few of them went to traditional *shalish* to resolve their disputes.

The justice-seeker coming into village court directly changed routes to traditional *shalish*, BRAC and police. And the opposite trend was also observed in this regard. On the other hand, justice seeker coming to BRAC first followed a complex route. They went to local chairmen, police and district court consecutively. Some of them went to leader of political party from legal aid and others went to *Manobadhikar* Bureau. Moreover, in a few cases such as criminal cases were directly sent to district court from BRAC legal aid. Most of the time BRAC members seek justice to the legal aid clinic and if he/she was unsatisfied went back to traditional *shalish*. Clients leaving BRAC legal aid hunted justice to other sources only in few cases. Rather while continuing the process of resolving the disputes in legal aid clinic, plaintiff resolved the disputes in traditional *shalish*.

Villagers went to BNP leaders directly and resolved their problems. There was no changing behaviour of justice-seeker observed from this place. This was probably because the leaders' *shalish* would not be disobeyed by the plaintiff and accused.

WHY IS THE INFORMAL *SHALISH* FIRST RATHER THAN LEGAL AID?

In search of justice, people tended to resort to the nearest and neighbouring village elites as a part of community feeling. Particularly the poor were inclined to do this. The rich were relatively reluctant to go to village *shalish* to solve their disputes. In fear of loosing prestige they preferred to go to formal court. However, having many routes in front of the villagers informal *shalish* is still considered as the most popular system at the village level compared to formal and legal aid *shalish*. Amongst many social sanction and accessibility were the main reasons to prefer informal *shalish* first by the justice seeker. The accessibility is defined in terms of distance, cost and time, information, submission of documents, familiarity and uncertainty.

SOCIAL SANCTION

Social sanction is used as a means of social control. It is the informal social control process that regulates individual and group behaviour, leading to conformity and compliances to the rules of a given society or social group. Sociologists, such as Emile Durkheim for example, refer to this form of control as regulation. This informal system denominates customs, traditions, norms and other social values inherited by the individual. It is exercised by a society without explicitly stating these rules and is expressed through customs, norms, and mores using informal sanctions such as criticism, disapproval, guilt and shaming. In extreme cases this may even include social discrimination and exclusion. This implied social control usually has more control over individual minds because they become ingrained in their personality. Traditional society uses mostly informal social control embedded in its customary culture relying on the socialization of its members to establish social order³.

In Bagdokra, villagers were very much concerned about this informal social control mechanism. Villagers who obeyed these norms were regarded as obedient and who did not conform was considered as deviated. Or he/she had to face different types of sanctions from the elites. The villagers must have to face social sanctions when they seek justice outside the community such as to legal aid of BRAC, or even formal court, bypassing the elites or union parishad members/chairmen. In other words, the village leaders did not like the clients to take the social problems/disputes out of the community. Woodhouse (2004) located this informal social control mechanism of the traditional society in Indonesia. "Villagers and village leaders tend to stress community harmony by implying this norm. They consider their community as one big family, characterized by family ties that should not be disrupted. They think that resolving disputes informally enables the community as a whole to remain peaceful and avoid embarrassment in the court." So avoiding elites by the villager had serious implications. He/she was either isolated from other villagers or elites would begin to non-cooperate in different sphere of life. Hence, the villager who looked for justice to other intuitions had to take the consent of village leader. A plaintiff said,

The Chairman is antacid (a pain killer tablet). If this doesn't work, we will go to Renitid i.e. BRAC's court is Renitid. If you don't let the member/chairman know before going to BRAC they become upset. They create problems, they would harass us, and they would go to the other side. They (leaders) would say, "You could have let us know first, if we couldn't solve it, then you would go to BRAC."

ACCESSIBILITY

Distance, cost and time

Villagers in Indonesia prefer to resolve disputes informally because they perceive informal mechanism to be cheaper, quicker and easier to use than the formal court, and NGO-*shalish* (Woodhouse 2004). Time, distance and cost are especially serious obstacles in rural areas where, in most places, it takes villagers lot of time to travel to the district court to present for interviews. Hence, the poor and uneducated villagers feel comfortable to resolve their problem in informal justice system i.e., *shalish*. People in Bangladesh including Bagdokra village faced similar problems. Villagers had to travel by rickshaw, van, and bicycle or walk on foot to get NGO justice, for instance legal aid clinic, existed in *upazila* level. And for formal court they had to go to district town even far away from *upazila* head quarter. Therefore, villagers were not willing to seek other sources of justice except informal justice system for the first time.

³ http://en.wikipedia.org/wiki/Social_sanction

Information

Information about the justice providing institutions is a precondition of having access to this. As most of the villagers were illiterate they had little information about the institutions such as the formal court and legal aid programme. So, they were unable to contact with the formal court or even sometimes NGO-provided *shalish*. They had to communicate with the formal court and NGO-*shalish* in most cases through the mediator who might be either village leader or broker. Besides, villagers had a fear about court, police, NGO-*shalish* because of lack of information. But villagers were very much aware of traditional *shalish*, which was next to their houses. When they involved with any disputes they went to the village leader or UP chairman, or lineage head/*mahat* (village leader). The plaintiffs knew all the participants and judges in this system very well.

On the other hand, villagers had less information on NGO-*shalish* especially legal aid *shalish*. Sometimes they heard about this but they did not know in detail. It means that they did not know how it worked, how much different from formal court, how it would be effective to get real justice. Only members were provided with the information about legal aid *shalish* through regular Village Organisation (VO) (associations of BRAC members who receive loan) meetings, *gramshava* (issue-based VO meeting), *Palli Shomaj* (federation of VOs at the ward level). The non-BRAC members knew from their neighbours, relatives or from BRAC members. This was not enough for the villagers and therefore, they still went to the village *shalish* first.

Submission of documents

Despite having information of LAP and formal court submission of some essential documents, which is essential for doing justice, refrained the villagers from having access to justice to those institutions. *Shalish*, on the other hand, is easier to have access compared to legal aid *shalish* and formal court. In *shalish* anybody can file a case to *Dewani* (Elite) without any documents. Even for rape case only victim's statement and witness of the neighbour, despite falsehood, are enough to solve the problem. Sometimes in murder case no documents or witness were necessary in *shalish*.

Box 2. Aparna came to BRAC to file a rape case against Dipak but PO refused to receive the case, as there was no witness and documents. When she managed all the documents by giving money to doctor and police she did not submit the case to clinic. She regretted "When I go for shadow (comfort) under a tree I don't see any branches of the tree except the heat of the sun. So, what is the benefit to go to BRAC office if I do not get help? If I have to pay money to get medical certificate why should I go to BRAC." In the next day village leaders resolved this case in *shalish* on condition of giving Tk.8000 as fine and in return Aparna would withdraw the case.

On the other hand legal aid clinic and formal court did not accept any complaints without any documents. For example, with regard to physical torture for dowry, or rape case the clients must have doctor's certificate and had to

go to police to file a general diary (Box 2). Together with the documents the client could file case to legal aid clinic. In *denmohor and bhoronposhon* (food and shelter) cases, registration form of marriage was essential for filing case. But sometimes villagers faced challenges to fulfill the requirements, as there were many marriages that were yet to be registered. Thus, the bureaucratic complexity was a kind of obstacles to have access in legal aid *shalish*. This reason motivated the villagers to resort *shalish* first.

Familiarity

Shalish was very much familiar with the villagers. There was little formality maintained by the plaintiffs and defendants in this system. The complainant and witnesses as well as defendant could present their arguments in front of the elites without any hesitation. In other words, they

never got frightened to speak out in *shalish*. While in legal aid clinic both the parties felt a little nervous, as it was far away from their village. The other reason was that there were some clients who never came in touch with any offices. They regarded legal aid clinic as formal court. As a result, they were sometimes reluctant to come. This happened for both the parties. But in most cases the defendant suffered from this problem much more. They had to come early and sat for long time at legal aid clinic. As such, most of the villagers prefer informal *shalish*.

Uncertainty

The familiarity led to the certainty and uncertainty in having access to justice. The defendant and litigant were unknown about the verdict of legal aid *shalish* and formal court. The complainant and defendant felt uncertain about the judgment that might come from legal aid clinic. But they often knew the consequences of what would come up at last in traditional village *shalish*. Thus, uncertainty hindered the access to justice to legal aid programme, and that is why villagers were interested to resolve disputes in village *shalish* first.

WHY DO THE JUSTICE SEEKER MOVE OUT OF INFORMAL SHALISH?

Despite the popularity of informal *shalish*, many criticisms raised regarding the actual success in providing broader access to justice to the poor. Recent research suggests that participants are generally pleased with the conciliatory, comprehensible, and flexible procedures of *shalish*, but the reasonable outcome may be minimal. Poor people's preference for using *shalish* may reflect the weakness of the formal justice system, and does not necessarily indicate satisfaction with the system itself (Woodhouse 2004). A justice seeker comments:

If the beating is too much, the neighbours will do a bichar (shalish). If the husband does not stop, she goes back to her father's house. Her father and brothers call the dosh (village elites), members and chairman. They slap the husband a few times and have him swear not to beat her anymore. If he still does not stop, he will have to be taken to court. There is also BRAC these days. - Aleya, a poor woman living in Bagdokra

This comment of a villager revealed that *shalish* did not solve all problems and hence, they had to move out of it and seek other sources of justice. There were many determinants that affected the justice seeker to move out of this informal institution (*shalish*) as follows:

NATIONAL POLITICS

Karim (1983) and Zaman (1977) identified the informal institutions such as *samaj* (society) as the primary arena, symbolically and organizationally in which local politics takes place in the village. This *samaj* contains an informal governing process in the villages. Senior members of the leading lineages or village elites and elected members head the *samaj*. They act as the court of first resort in resolving disputes among the villagers. The use of *samaj* ties for mobilizing followers is a key to political leadership and providing justice. The local politics is, therefore, mostly exercised around this traditional system (*shalish*). There was a strong linkage between local and national

Box 3. Tultuli was murdered by her husband during BNP regime. Khaled who was UP member as well as high school teacher received lot of money from Tultuli's husband to make the case as hanging by herself. Khaled master had good relationship with the renowned BNP leader named Tuhin who was Khaleda Zia's (prime minister) cousin. When he took the case in his hand the police was silent and did not proceed the case further. Village elites arranged *shalish* many times but Tultuli's parents did not get any justice from them.

politics and influenced the justice system directly and indirectly. Hence, the true justice became a dream for the poor and in that case villagers either did not conform the *shalish* or seek other sources of justice. This was found in Tultuli's murder case in Bagdokra village (Box 3). The powerful BNP leader (Named Tuhin, relative of Khaleda Zia – the then prime minister) involved with that case and this hindered to punish the accused. After that the defendants lost faith on the village leaders and left *shalish*. They did not try to seek alternative sources.

UNDERLYING NORMS, VALUES OF THE SOCIETY AND PERSONAL INTEREST

The structure of traditional *shalish* reflects the unequal class and gender hierarchy that characterize the social relations in rural Bangladesh (Alim 2004). In disputes involving parties of unequal social or economic status, judgments invariably go in favour of the dominant group. The bias is particularly pronounced in the case of poor (Siddiqi 2003). Sometimes solutions are arbitrary and imposed unethical judgments on disputants by powerful village elites (Khair *et al.* 2002). There was no exception in the Moshiur's case (Box 4). Personal interest of an elite/village leader and moral constraints affected his *shalish* very much. The chairman imposed fine on him and gave arbitrary verdict disregarding the truth.

Box 4. The inception of the incident was that when there was a dispute between a shallow pump mechanics of a rich man in the village and Moshiur. A member did a *shalish* that favoured Moshiur. But the rich man again complained to Chairman who hit Moshiur in the *shalish* by shoes and imposed fine to be paid Tk.1200 within a few days. Again his cousin's wife charged him for attempting rape and she threatened him to be imprisoned. Member of his ward also threatened him that he must have to pay Tk.5,000 as fine in the next day as convicted as a rapist. All these impelled him to commit suicide.

Even after his death his parents, wife and close relatives were not interested to file case against anyone who might have been responsible. Just after the incident Moshiur's wife wanted justice but the village leaders convinced her by threatening as such that 'the man who is gone (dead) will never come back'. This was also the belief of villagers. Besides, his parents also thought that they were poor and they could not cope with formal court. They would have to stay with leaders in that community. It was almost impossible to ignore the village leader's whim. The chairman and the member stopped police coming into the village by giving hush money. They considered coming police into the village as dishonor for villager. In other words, they think that they were failure to keep up the community harmony. In this way, victims' relatives lost their faith towards traditional village *shalish*. They did not go any other institutions for justice.

LOCAL ELECTORAL POLITICS AND ALLIANCES OF ELITE

The traditional *shalish* is influenced a lot by the local electoral politics. UP chairman, members and their elite allies used *shalish* as an instrument to exert their power and to continue their leadership. In Fulbuli case (Box 5) the chairman considered many things to reelect in the election. He first considered the number of votes through which future leadership could be continued. Thinking the number of vote and political reasons the chairman gave priority to Bidu.

Box 5. Fulbuli a poor woman - living in Jafar member's land - proposed by bidu to have illicit sex with him. In the next day Bidu was asked in a village market and she slapped him. It was very insulting for him. Bidu did not say anything but planned to attack her at night. Bidu was ward leader of BNP. Fulbuli applied for *shalish* in RDRS while Bidu submitted allegation to the UP chairman to do justice. A faction emerged when Bidu did not come to RDRS and Fulbuli in *union parishad*. This continued unresolved and finally both filed case against each other in the court.

On the other hand, patron-client relation was a factor to remain the dispute unresolved. The UP ward member tried to keep Fulbuli safe from the attack of Bidu and chairman. He

ignored the order of chairman who asked him to bring Fulbuli in *shalish*. The officer of RDRS was popular as he was a local political leader in his community. The inhabitants consulted with him to whom they cast their votes. Therefore, he was known as like as ‘vote bank’ in his ward. The ward member supported the officer not to take Fulbuli in *shalish*. Thus, with the future intention of getting votes in local election of that community the ward member supported the officer and made friendship to get his support. This created a faction, which disrupted the *shalish*. And at the end, both filed case in the court instead of village *shalish*.

FACTIONALIZATION

Shalish does not work well in many cases. Rather it inflames faction among the villagers. Different factions were found in Bagdokra. Various factors pushed to create factions among the elites and villagers. Normally there might have no problem if the accused was poor. All the elites and village leaders would agree to punish or impose undesired fine on him in *shalish*. But if the accused was well off there might have greater possibility of faction followed by conflict in *shalish*. Nepotism, bribing, and muscle power were the significant indicators responsible for the faction. The case of Fulbuli was the best example. Besides, as the Bagdokra had many *paras* lead by respective elites normally did not conform the decision of other elites coming from other neighbourhood, when *shalish* took place in his neighbourhood. Sometimes elites tried to protect their neighbour by any means although he was accused as guilty. In Runa’s case faction turned into conflict when elites of both neighbourhood took their position to protect their own neighbour at any cost (Box 6). Therefore, Runa and her husband left *shalish* and went to BRAC legal aid to get fair justice.

Box 6. Runa was married with Shohel in the same village. After marriage she was beaten everyday to bring more dowry from her father. Many *shalishes* took place to solve this problem but failed. Guardian of Shohel proposed to resolve the problem in traditional *shalish* when Runa filed a case to BRAC legal aid clinic. During *shalish* elites of both sides involved with conflict and some of them were wounded. Thus, the *shalish* failed to resolve disputes.

KINSHIP

Kinship is also another important factor, which plays significant role to be futile of *shalish* or providing biased verdict in favour of the kin. To make it happen the kinship must be between an elite and elite or elite and other social class. The moderator (elite) of the *shalish* at any cost attempts to save his kin even he is a perpetrator. Political affiliation in this case also plays a major role. In *Hutumpara* of Bagdokra an important decision was made in a *shalish* to construct a road to make an entry of the neighbour (Box 7) but failed to implement the verdict of the *shalish*. A UP member was a ruling party leader and close relative of the landowner who disagreed with the verdict. Because of his power and being relative of that member the landowner did not agree to sacrifice his land. Thus, a *shalish* failed to recognise the interest of the majority. The inhabitants of the neighbour did not try anymore to get justice.

Box 7. There was a *para* (neighbourhood) named *Hutumpara*. There was no approach road to connect this *para*. People used the land of their neighbourhood who often reproached them. Most of the people were Hindus in that *para*. They informed the chairman and at last they together submitted an application to *Upazila Nirbahi Officer* to solve this problem. And *shalish* was made many times but a UP member who was also an elite applied veto not to give any land for road. This elite was the relative of that landowner.

COMMERCIALIZATION OF SHALISH

The rulings of *shalish* are impervious to corruption, nepotism and the presence of political patronage (Golub 2003). Besides, bribe was another important and common matter in *shalish*. *Shalish* could not be performed and justice would not be provided by the village elites without this. Villagers agreed that the previous *shalish* was better than the present. The *shalishker* (leader) were honest at best to provide justice to the villagers. People could have faith to get true justice from them. Recently, especially since a decade, *shalish* had been a business to them. *Dewanis* did not come forward to resolve any problems without their interest. Therefore, few middlemen emerged who advised the plaintiff to resort to different sources of justice or to elites. Thus, he took money from the clients. They were also called 'Touts' in local language. The case of *Thakur* (Box 8) is the example of dealing with bribe in *shalish*. The following comments of a villager stuck the bribing in *shalish* clearly.

Box 8. In Brahmin para one Thakur - a village *shalishker* attended a *shalish* in his neighbourhood. It was previously decided by the *shalishkar* (elite) that Tk.5000 would be divided among them after the *shalish*. Money was charged from both sides. But the amount was different for accused and plaintiff. The accused gave this amount on condition that the verdict must be in favour of him.

The village *dewanis* (elites) are cheats (*cheatingbaj*), *there is no gain in asking them to do a shalish. They will take money for the judgment. The chairmen and members are all BNP's people, they will beat them a bit, get a 2,000 taka fine, and forget about what happens to the girl next. The police, well they are thinking about getting bribes and a good woman would not go the police – they raped that girl Yasmine in Dinajpur.*

- Doyal Chandra, a wealthy man living in Bagdokra

Elites took bribe from not only the accused but also from the plaintiff. Tultuli's brother spent lot of money to get a justice from the *dewanis* (elites). In Runa's case village touts received lot of money from her husband to solve the disputes. Her husband admitted that he had to give Tk.5000 to the touts and elites to get justice. Thus, commercialization of *shalish* created discontent of the justice seeker and disinclined resorting *shalish*. They went to legal aid clinic and resolved the dispute.

WHY DID THEY LEAVE BRAC'S LEGAL AID SHALISH AND RETURN TO INFORMAL VILLAGE SHALISH ?

People want fair justice, from wherever they get it does not matter. They want the accused to be punished. Through formal court they hope to get this. But as this system is elitist, corrupt and involved long delays (Wardak 2000) people seek justice to other institutions such as legal aid and informal justice system (village *shalish*). Like formal court it has also lot of limitations including accessibility. Many factors influenced the justice-seeker to move out of legal aid *shalish* or formal court and went back to village *shalish*. This section describes the reasons of going back to traditional *shalish*.

IMPATIENCE WITH THE PROCESS

Like formal court the legal aid clinic also had bureaucratic complexities, which had direct impact on the justice seeker. The legal aid clinic was eager to receive the family-related disputes and tried to solve this at office. The clients had to submit written complaints with detail description. Then (s)he had to wait for not less than 15 days to bring two parties at

clinics for reconciliation but the client always demanded the immediate verdict from the clinics.

Moreover, there was fixed date to receive case and to be conducted *shalish* at clinic. Again if the accused was not present in one *shalish* the officer had to refix the date. In the mean time the opposition tried to solve the matter through traditional village *shalish*, if they agreed. Or accused threatens the plaintiff to resolve this. When there was a court case the accused contacted police and paid hush money so that he was not caught. A plaintiff commented:

“He has paid off the police. They won’t arrest him. His brothers are threatening me. He (accused) says, re-marry me. We will have a family.”

During this lengthy process UP member, chairman and village elite including the accused motivated the plaintiff to withdraw case from LAP saying that BRAC did not have authority and power to punish the accused. Sometimes the plaintiff was convinced with their proposal.

In many cases the behaviour of the officer caused the plaintiff to go back to village *shalish*. When the plaintiff had to come to office twice or more after submitting his/her complaints, and if she wanted to know the reason of being late the PO behaved rude. After being frustrated they went back to *shalish*. On the other hand, when the plaintiff admitted spontaneously that her opponent proposed to solve the matter in *shalish*, the officer became angry and did not appreciate the decision. A plaintiff commented towards legal aid staff,

“He tore up the letter, he says what will you do? He also asked me to resolve the matter with him”

Moreover, the plaintiff did not want to wait for the court case. It took much more time to get the final judgment from the court. Despite the final judgment from court a complicity of implementing that verdict was found. If the court issued a warrant the police demanded hush money from the plaintiff otherwise they did not arrest the guilty. In few cases, especially with *denmohor and bhoronposhon* the court declared that husband would have to pay a certain amount of money to his ex-wife or her small child. He admitted to give money regularly standing in the court. Even he continued to pay one or two months properly. But when he (husband) suddenly stopped paying it was very difficult for the plaintiff to get him paid again. She either had to go to court or to BRAC legal aid programme. In most cases they did not go anywhere. Thus, the plaintiff got frustrated and went to village elites for *shalish*.

FAMILY AND COMMUNITY PRESSURE

The other important reason of staying or going back to traditional *shalish* was that the justice seeker faced pressure from family and the community leaders when he went to LAP. This basically happened for the justice-seeker in post verdict of LAP.

There is a traditional norm in family that as husband is salient person to earn and takes care of everybody his decision must be accepted by all. Specially wife must listen to and obey husband including her in-laws. Wife cannot circumvent the family values in particular. Besides, every family has its own status the members hold in the community. If anyone breaks this family values members of the family considers that they lose prestige they had. Moreover, community people pass bad comments towards the member who breaks the values.

On the other hand, the village leaders/elites always prefer to keep up the prestige of the community by resolving disputes within it. The members of the community who ignores the elites fell into rage of them. The village leaders including poor villagers appreciated the legal

aid *shalish* blatantly but in fact, if anybody resorted to LAP *shalish* village elites were reluctant to accept any verdict coming from this. Rather, they always had the negative impression toward LAP *shalish*. This continued pressure on the justice seeker. There was not exception of such pressure in Bagdokra.

Within the family Rawshanara suffered from such kind of pressure since she got a justice from LAP. After *shalish* of LAP Rawshanara went to her husband's home directly and, as she came from BRAC office, she was called *BRAC's beti* (daughter). Her husband and in-laws tortured her mentally throwing such bad comment. Besides, no relative from her father's home could enter into her husband's house. She was also not allowed to go to her father's home. One day her brother and father came to take her home but her husband and other members scolded them and drove away from home. She was still beaten and forced to bring dowry from her parents. A plaintiff's husband said,

"You complain to BRAC that I (husband) leave you at your father's house, and don't look after you. I won't let you go to your father's house anymore."

A fairly similar case happened in Bagdokra village. The beating increased when Runa came back to her husband after getting justice from BRAC. *She said, "After filing the case at BRAC she has learnt that there is no safer place for her either in her parent's or in husband's home."* When she was in parent's home the neighbour abused her verbally and while in husband's home beating and using slang continued everyday. In verdict of LAP her husband compelled to register 5 decimal lands in her name but her husband told that the price of land would be recovered by beating. It was not possible for her to go to BRAC to complain again. She said,

"Allah has written sufferings in my fate so it has to be borne until death." She also mentions that there is a Hadith - *"the part of the body on which husband beats will never be burnt in fire of Hell."*

The other case was with Raima who also received justice from LAP. As Raima went to BRAC ignoring traditional *shalish* her husband and family members considered it as a matter of prestige for their family. They said, *"Our son's wife compels us to be present in BRAC's court. This damages our social status in the community."* Therefore, they did not talk with her. Her husband did not beat and demand any dowry, but it was a severe mental torture. She said, *"Mental torture is harder to bear with. Rather physical torture (beating) is better."* Besides, neighbour also harassed her passing comments, which was the most problematic matter. The plaintiff's neighbour commented, *"He has got his wife from the circus pandel (LAP)"*. Many of them advised her husband not to accept his wife who has been brought from circus (bad place) (LAP).

Box 9. 1. A *shalish* of Saleha's *denmohor* and *bhoronposhon* (food, shelter, clothing, etc) was conducted by legal aid clinic. It was decided that 'a house would be registered to Saleha built with corrugated tin'. Interestingly, the corrugated tin was given by Saleha's father as dowry. What kind of justice it was, asked Saleha. She was not happy with the verdict. She did not get what she wanted. She was being still beaten by her husband and harassed by her in-laws.

2. Anowara was married by fixing Tk.43,000 as *Denmohor* and in turn, Tk.13000 was paid as dowry to her husband. Her husband and in-laws tortured inhumanely almost everyday and did not give enough food to survive. In legal aid *shalish* it was decided that she would be divorced after paying Tk.20,000. Was this a true justice, she said?

Mina, a justice-seeker filed a case to LAP. As it was taking time she and her mother went to the chairman to solve the disputes between Mina and her husband. When the chairman heard that she had already filed a case to LAP, he felt disturbed very much and was reluctant to

provide any help. He said, “You have gone to BRAC, they can solve all your problems. I cannot do it.”

THE TYPE OF JUSTICE PROVIDED BY LAP

BRAC LAP is perceived to offer more ‘retributive justice’⁴. It refers that proportionate punishment is a morally acceptable response to crime, regardless of whether the punishment causes any tangible benefits. Proportionality requires that the level of punishment be scaled relative to the severity of the offending behaviour. However, this does not mean that the punishment has to be equivalent to the offense. In other words, the amount of punishment must be proportional to the amount of unfair advantage gained by the wrongdoer.

The LAP had inbuilt mindset to make the justice-seeker win over the accused at the end of the *shalish*. But in fact, the victim did not win in LAP *shalish* in many cases. Alternatively saying, the verdict of LAP did not favour the victim. The verdict made in the case of Saleha, and Anowara (Box 9) did not satisfy them. Although there was no chance of abusing power, and violation of human rights, but the justice provided in LAP *shalish* was not similar to legal court. Besides, the dispute was solved for the time being in few cases if both victim and offender restored their relationship. When offender did not agree with the judgment of LAP the case was handed over to the formal court. This caused frustration to the victim, as the accused did not get punished in most cases.

On the other hand, the traditional *shalish* is perceived to offer ‘restorative justice’ meaning that in search of resolutions it promotes repair, reconciliation and rebuilding of relationships between victim and offender. In other words, restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all. Because of dissatisfaction of the verdict of the LAP including delay of the process the justice-seeker preferred *shalish* – the restorative justice. In other words, over time as anger of the plaintiff subsides, she preferred restoration and hence moves back to *shalish*.

DISCUSSION AND CONCLUSION

The study elucidates a complex scenario of justice providing institutions and responses of the justice-seeker from that. The entry of NGO especially BRAC in justice sector was of course an advantage for poor villagers and did their best according them. But the nature of justice they provided was less win-win situation for plaintiff and offender. On the other hand, the formal court was ‘win-loose’ game between plaintiff and offender. And there was less win for accused in traditional *shalish*. Besides, mutuality between victim and offender was preferred both in LAP and traditional *shalish*.

Given the type of justice of the institutions the formal court is perceived to be the best way to resolve disputes for the justice-seeker. If it functions properly alternative systems such as informal institutions may not be necessary in most cases. The proponents of informal justice claim advantages in cost, expedience, and cultural norms, but to Abel’s (1982:8-9) assertion that informal justice ultimately fails because ‘people want authority rather than informality’. People may want expedient and cheap justice but ‘justice may be more important to them than speed’. As a result people may be willing to endure delays and to pay higher costs in government court because they want the ‘leverage of state power to obtain the redress they

⁴ http://en.wikipedia.org/wiki/Retributive_justice

believe is theirs by right, not a compromise that purports to restore a social peace that never existed'. The consequences are significant for, as Lev (1993) asserts: 'if the going myth is that law courts, people will use law to the limits of its assumed capacity to get things done If the understanding of politics suggests that powerful men get things done, then patron-client relations are likely to prevail'. People in Bagdokra expressed in the same sort of favour to the formal court in which people could get real justice. One said, "The court understands just and unjust, and people can hope to get justice there" (Doyal chandra, a wealthy man living in Bagdokra). But the developing country like Bangladesh is facing challenges to ensure true justice by the formal court. Lot of constraints and complexities of formal court are responsible for this inability to provide justice. It needs major rebuilding and rethinking to make it worthy of function.

Hence, the legal aid *shalish* came for minimizing the disadvantages of the formal court and traditional *shalish* but the ways and formalities including expenditure were not so much different from formal court. They had to spend lot of money until their getting justice. Although LAP had less provision of taking bribe from the clients but the cost incurred when (s)he had to come to LAP for several times. The cost began from the entertainment at the family before and after *shalish* for both plaintiff and accused. Again the justice of LAP was not different from formal court and traditional *shalish*. At first it tried to restore the relationship between the disputants but if it was not possible both the accused and plaintiff had to pay a lot. It was noticed that the defendant had to sell his homestead land - the last asset - to repay, for example, *denmohor* and *bhoronposhon* to mitigate the verdict of LAP.

From the different landscape of justice dispensing institutions the conclusion may be drawn that the justice-seeker may get better justice from NGO such as LAP, if it improves accessibility and credibility in comparison to existing institutions. On the other hand, NGO especially BRAC can re-think its strategy of bypassing existing institutions and village elites, and devise a strategy of constructive engagements of elites in providing legal aid. How does it look like? The answer is that traditional *shalish* provides a better and cost-effective justice to the poor and this system does not have any limitations itself. Rather the village leader, the main patron, abuses this system. The LAP may work with traditional *shalish* directly as a mediator and monitor together with village elites so that the victim may get justice he or she expected. This may be much more relevant with the social and cultural context rather than creating alternative system which may raise conflicts with the existing justice system in the community.

REFERENCES

- Abel LR. Politics of informal justice, The American experience. New York: Academic Press, 1982;1:1-13.
- Alim MA. *Shalish* and the role of BRAC's federation: improving the poor's access to justice, The Hague: Institute of Social Studies, The Netherlands, 2004. (Unpublished MA paper)
- Buscaglia E. Introduction to law and economics of development, New Jersey: JAI Press, 1996.
- Golub S. Non-state justice systems in Bangladesh and the Philippines, paper presented at the Conference on Justice System, Department for International Development, United Kingdom, 2003. (Undated).
- Huq F. Towards to a local justice system for the poor, *Journal of Asiatic Soc of Bangladesh*, 1998;43(1).
- Karim AHMZ. Rural elites and the power structure in Bangladesh: A case study of Puthia Union in Rajshahi District., USA: Syracuse University, 1983. (Unpublished MA paper)
- Khair S *et al.* *Access to justice: Best practices under the democracy partnership*, Dhaka: The Asia Foundation, 2002.
- Levi DS. Social movements, Constitutionalism, and Human Rights: Comments from the Malaysian and Indonesian Experiences, *In: Douglas Greenberg, Stanley N.Katz, Melanie Beth Oliviero and Steven C. Wheatley (eds.) Constitutionalism and democracy: Transitions in the contemporary world*, Oxford and New York: Oxford University Press. *Litigation*, San-Fransisco: Jossey Bass, 1993:139-58.
- Mackenzie PJ. *The appearance of justice*, New York: Charles Scribner's Sons, 1974.
- Meyer Jon'a-F. It is a gift from the creator to keep Us in Harmony: Original (vs. Alternative) Dispute Resolution on the Navajo Nation. *International J of Pub Admin*, 2002;25(11):1379-1401.
- Siddiqi MD. Paving the way to justice: The experience of Nagorik Uddyog, Bangladesh. Action World: London, 2003. Available at [http:// www.oneworld.action.org/download/pavingtheway.pdf](http://www.oneworld.action.org/download/pavingtheway.pdf)
- Transparency International Bangladesh (TIB). Survey on corruption in Bangladesh, Bangladesh: Dhaka, 1997. (Unpublished)
- Wardak A. Structures of authority and establishing the rule of law in Post-war Afganistan, Paper presented at the 2002 Conference on establishing the rule of law and governance in post conflict societies, 2002. Harvard University: USA, 11-14 July.
- Woodhouse A *et al.* Village Justice in Indonesia: Case studies on access to justice, village democracy and governance, Indonesia: World Bank Social Development Unit, 2004. Available at http://www4.worldbank.org/legal/legop_judicial/ljr_conf_papers/malik.pdf.
- Zaman MQ. Social conflict and political process in rural Bangladesh: A case study. Mphil dissertation, Bangladesh: University of Rajshahi, 1977. (Unpublished)