

# Effectiveness of alternative dispute resolution (ADR) in rural area of Bangladesh: a study on village shalish system of Madhukhali Upazilla

## Abstract

The aim of this study is to evaluate the effectiveness of the Shalish system in light of the field experience of Madhukhali upazila of Faridpur in Bangladesh. This study has mainly applied qualitative research techniques to fulfil the research objectives. The primary data has been collected through KIIs (Key Informant Interviews) and FGD (Focus Group Discussion). “Targeted Sampling” has been followed for conducting KIIs and FGD. In this context, experienced village leaders (Matobbor) and beneficiaries of the Shalish system in these areas were the main respondents. To collect the secondary data, information has also been collected from relevant websites, journal articles, and books. The study shows that the villagers still rely on the system confidently. Generally, two types of processes can be observed, which are top-down processes and bottom-up processes. The top-down process stresses that the Shalish may be initiated by village leaders. On the other hand, the bottom-up process stresses that the Shalish may be initiated from the beneficiary end. There are no specific conditions or criteria for being a member of the Shalish board. However, the most common types of disputes resolved by Shalish are family disputes, land disputes, arson or other kinds of violence, stealing or robbery, etc. The major challenges the system has faced are interference by politics, lack of documentation, and lack of a legal basis.

**Keywords:** alternative dispute resolution, village shalish, village disputes

Volume 6 Issue 3 - 2022

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**Received:** May 09, 2022 | **Published:** May 30, 2022

## Introduction

Alternative Dispute Resolution (ADR) refers to any kind of extra-courtroom means of settling disputes, including negotiation, conciliation, mediation, arbitration, different local mechanisms, etc.<sup>1</sup> ADR allows us to overcome the existing limitations of the traditional litigation-based justice system. Rising costs of litigation, time delays, complicated procedures, backlogs, etc. decrease the efficiency of the traditional justice system. More often than not, even in the case of simple claims, they can get delayed due to formalities and administrative complications. Thus, experimenting with different ADR methods is increasing all over the world. Some of the programs are binding or mandatory, and some of them are non-binding or voluntary. In particular, people from rural areas find it more convenient as a social structure already exists there which allows them to practice the methods of ADR. Also, since most formal justice systems are in cities, it is hard for most people to get to them, since eight out of ten Bangladeshis live in villages.

Although the constitution of Bangladesh gives all the people of the country equal access to the justice system, the actual scenario is much different from the theory. Due to costs, case backlogs, and limitations of resources and knowledge, the people of Bangladesh, especially those from rural areas and indigenous communities, rarely enjoy the full potential of their rights. Therefore, informal and local mechanisms for settling disputes, such as the Shalish, remain relevant in the society of Bangladesh. Through these mechanisms, disputants can solve their problems quicker, with few to no costs, and in a way where they are able to express themselves freely given their informal nature. Also, this platform for addressing local disputes can effectively prevent the escalation of violence in these areas.<sup>2</sup> Hence, the purpose of this is to evaluate the effectiveness of ADR in Bangladesh in light of village Shalish. The study was conducted in Madhukhali upazila

in Faridpur, Bangladesh. The study will explore the procedure of the Shalish system, its pros and cons, and the challenges it faces from different dimensions.

## ADR in Bangladesh

In Bangladesh, the concept of ADR was first inserted in Sections 10(3) and 13(1) of the Family Court Ordinance of 1985, wherein there is provision for compromise or reconciliation even before the pronouncement of judgment. However, there was no real action on the implementation of these provisions until 2000. In 2000, a special pilot project was undertaken on “Mediation as a measure of ADR”. The project was supervised by the then chief justice of Bangladesh. Under that project, three assistant judge’s courts in Dhaka were specified as exclusive family courts for the purpose of mediation. Consequently, the ADR mechanism was introduced for the first time in the general judiciary system (civil litigation) in 2003. The Code of Civil Procedure, and the Artha Rin Adalat Ain became the very first acts of a quasi-formal mechanism of dispute settlement in Bangladesh. The Code of Civil Procedure (Amendment) Act, 2003 embodied two new sections (89A and 89B) designed for the ADR mechanism in all civil suits and cases. The mechanism of ADR in the Artha Rin Adalat was given the look of a settlement conference, to be presided over by the trial judge and held in camera.<sup>3</sup>

Different NGOs also follow the ADR method for settling disputes with their beneficiaries. For example, BLAST, one of the leading legal aid-based NGOs in Bangladesh, primarily tries to conduct mediation between complaints.<sup>4</sup> MAAA (Madaripur Legal Aid Association) is another leading organization that promotes and facilitates ADR. Starting its activities with the Free Legal Aid program, we are flourishing through mediation, activated Village Court, and Arbitration Council, which are dispute resolution mechanisms of the local justice

system. Further, providing legal support to reduce overcrowding in prisons, facilitating government legal aid services, justice reform, and advocacy for legal reforms have also been included in our organization's interventions.<sup>5</sup>

There are three streams of ADR in Bangladesh: 1. Extra-judicial or community-based ADR (Informal) 2. ADR in quasi-formal systems and ADR in formal legal systems Figure 1 shows the structure of formal and informal ADR in Bangladesh.<sup>6</sup> This paper particularly focuses on community-based or informal ADR (Figure 1).

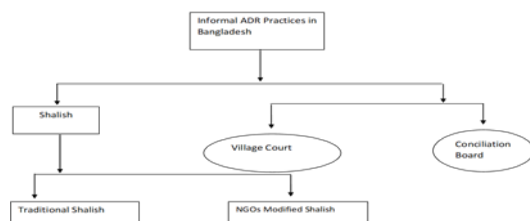


Figure 1 Informal ADR in Bangladesh.

## Methodology

The study was conducted at Madhukhali Upazila in Faridpur. Madhukhali Upazila (Faridpur district) area 230.20 sq. km, located between 23°28' and 23°37' north latitudes and in between 89°29' and 89°44' east longitudes. This study has mainly applied qualitative research techniques to fulfill the research objectives. The target of the data collection part is to evaluate the real scenario of the Shalish system in the Madhukhali Upazila. Thus, the qualitative method is perfect for finding in-depth information. Although a quantitative method may help to defend those findings more strongly, due to the limitations of budget and time, we cannot adopt the method. The primary data has been collected through KIIs (Key informant interviews) and FGD (Focus Group Discussion). "Targeted Sampling" has been followed for conducting KIIs and FGD. In this context, experienced village leaders (Matobbor) and beneficiaries of the Shalish system in these areas were the main respondents.

## Shalish as alternative dispute resolution in Madhukhali

Similar to the other rural areas of Bangladesh, the Shalish system is part and parcel of the daily life of Madhukhali. It has its own traditional values and most of the general population is totally dependent on this system for any kind of dispute they face. Thus, it helps to create a strong social bond within the area, just like in other rural areas of Bangladesh. The next section of this part of the report will try to evaluate the overall process of the procedures as well as their challenges.

## Overall process of the shalish

**Preconditions:** The precondition for conducting the Shalish is that the parties must agree to obey the decision of the board. When a dispute takes place, sometimes the head of the village calls for Shalish from self-motivation to mitigate the tension in the society. On the other hand, sometimes the conflicting groups call us to make a reconciliation through Shalish. Then a Shalish board has been formed to take the final decision. The Shalish board is sometimes formed at the preface. Generally, a conductor is selected to run a Shalish. But everyone who is presented in the place of the Shalish has the right to speak. During Shalish, general people also ask questions. The audience plays the role of advocate here, but neutral. They raise different questions

to bring the truth into light. If the answers of the respondents seem doubtful, the audience can raise questions about that. The main fact is that the members of the Shalish board actually try to evaluate the main scenario. The final verdict has come from the board. However, most of the Shalish has been conducted after the litigation. Most of the time, if both sides are able to reach an understanding, the case files will be withdrawn. However, if the court already gives a decision, then generally it becomes final. No Shalish takes place after the court decision (Personal communication, March 29, 2019).

**During shalish:** Generally, there are two parties to the dispute. Both sides are presented in the place of Shalish. At first, the members of the board listened to the full complaints in detail from the complainant. Then the accused person gets the chance to defend themselves. If both of the parties give the same kind of statement, like if the accused person confesses the complaints and agrees with the decisions of the members of the Shalish board, then the board members take the written consent from each group. And finally, they made a decision, documented in the written form. All the present audiences also give signs of judgement in that written document of judgement. Generally, the document should be preserved by the chairman of the Shalish board. If necessary, the document is presented in front of the court or Thana. If anybody files a lawsuit, initially some attempts have been made to mitigate the problem through settlement. Both parties participate in the Shalish during this process. And after the Shalish, the documents are submitted to the officer in charge of the police station to withdraw the case (Personal communication, March 29, 2019). However, when the verdict has been completed, the board declares it unitedly (Personal communication, March 29, 2019). One of the limitations of the Shalish system is that the documents are not preserved. Usually, those documents are not needed for further use. However, sometimes the members/organizers take signs from both sides of a blank sheet. Thus, it creates an invisible pressure to obey the decision. There is an additional condition that will be attached that if any of them breaks the contact, the other side can take legal action against them. In that case, the documented paper can be helpful as evidence (Personal Communication, March 29, 2019).

## Structure of a shalish board and the major actors

Generally, after the hearing, the members of the Shalish board have been chosen. To avoid the majority problem, the total number of members should be odd. The members of the board can be selected by the conflict groups or by the chairman of the Shalish (Personal communication, March 29, 2019). A Shalish board typically consists of five to seven members, including a member of the Union Parishad and other prominent members of the local community. Although there are no distinct criteria to determine this importance, which makes a person eligible to be a member of the Shalish board. These people may be educated or not educated; it doesn't matter. For example, the most renowned "Matobbor" of this village has only studied till class eight. But still, the people of society respect and depend on his opinion. Actually, the people who are trusted by both conflicting parties. Generally, people who are engaged in different social welfare activities and nominated by both parties can be members of the board (Personal communication, March 29, 2019). Another procedure described by other respondents is that both groups call for some people to conduct the Shalish. They format a board with the consent of both groups and conduct the hearing and then make a realistic decision. Generally, a board consists of a chairman and six members (3 from each conflicting side) (Personal communication, March 29, 2019).

There are no specific criteria required for being a member of a Shalish board in this context. Most of cases the people who are socially

acceptable and respectable are conducted the Shalish regardless their economic or political status or educational status. In other words, the people who dedicate themselves to social work and helping other people with any kind of problem are the ones who are called for the Shalish because these people wield significant power in society. The village court has a specific pattern in this context. But Shalish does not have this kind of standard structure. But an age group can be identified in this context. People who are at least 40 or above generally conduct or facilitate the Shalish. In this context, young people are not welcome to facilitate the Shalish. Experience in terms of age is a vital point in this context (Personal Communication, March 29, 2019).

## Types of dispute

The respondents from the field mentioned several types of disputes which are frequently handled by Shalish. Most of the disputes are non-violent in nature in this context. However, in the case of violent conflict and criminal activities, the stakeholders primarily go for litigation. But for the time delays and costs of the litigation process, the stakeholders (victims) eventually turn to the Shalish system. The following sections describe the major types of disputes/conflicts which are handled by Shalish.

### a) Land conflict

Land conflict or dispute is the most common type of dispute handled by the Shalish board. According to the respondents, there are several types of land conflict that take place, such as family land disputes, land disputes between neighbors, land grabbing by force, disputes over isles of arable land etc. However, when it comes to land documents, the Shalish board generally steps aside because of legal factors. However, most of the solutions do not last permanently (Personal Communication, March 29, 2019).

### b) Criminal activities

Criminal activities such as robbery, stealing, arson, and even murder cases are handled by Shalish. Respondents reveal that in many cases, Shalish decisions are ignored, and perpetrators lobby politically influential people to get away with the crime. Domestic violence is another issue that can be discussed in this context. The village leaders have claimed that the Shalish system in the Madhukhali area is gender sensitive and women friendly. They give top priority to domestic violence cases and ensure the punishment of the perpetrators. However, this claim is contradictory with the overall scenario of Bangladesh, as violence or discrimination against women by Shalish conductors is very common in this country. Damaging the crop is another common type of violence in this area, according to the respondents. The Shalish board also deals with this type of crime. (Personal Communication, March 29, 2019). Other types of issues, like incidents of stealing or robbery, can be raised to the Shalish for justice. (Personal Communication, March 29, 2019).

### c) Family dispute

Family disputes are one of the most frequent types of conflict in this context. It includes disputes between husband and wife, disputes between brothers or other family stakeholders etc. Land conflict and family conflict can sometimes overlap. (Personal Communication, March 29, 2019).

## Punishment

In most cases, both conflicting sides come to an understanding. Mainly financial fine and apology are the most common procedures in this context. Both can take place in one case, or one of these can

take place. In the past, there was a tradition of separating the whole family from society. But now, the traditional “Somaj” has dissolved. That’s why these kinds of punishment also became extinct (Personal Communication, March 29, 2019). In the past, different kinds of punishment have been given to guilty people. Even after the liberation war, punishments like beating them or insulting them in front of people were common. It has been significantly decreased in recent times as different human rights organizations have come to the rural area to raise awareness about human rights. However, the village leaders believe that these violent actions actually worked. According to them, the people who had received this kind of treatment did not repeat the crime. (Personal Communication, March 29, 2019).

## Effectiveness of ADR system in Bangladesh: from the light of the case

From the discussion from the previous section of the report, this section will try to evaluate the true effectiveness of the ADR system in Bangladesh. There are several dimensions of effectiveness that can be addressed in this context, such as reducing the cost of justice; reducing case backlogs from the court; building social capital; reducing corruption; and bias.

**Reducing the cost of justice:** The members of the Shalish board do not get any kind of honorarium (Personal Communication, March 29, 2019). Sometimes, when any kind of violence takes place, the board asks the accused side to bear all the cost of medical treatment for the wounded. Sometimes the board fines the accused party and gives the money to the complainants. But the people who conduct the Shalish do not get a penny for their service. They do it out of their responsibility towards society. There are social workers. They do not get discouraged because they do not get any payment. Rather, they enjoy the whole process (Personal Communication, March 29, 2019). Thus, it significantly reduces the cost of justice.

**Reducing the workload of the court:** Some of the case studies show that the disputes in the village area are protracted in nature. Thus, when any party files a case, there is a big chance that it will hang in the court for a long time. It is also time-consuming for the court. Even some serious cases don’t get much attention because of some silly cases. In this case, the village of Shalish is able to resolve these cases within a few moments.

**Building empathy and social norms:** The Shalish system encourages people to compromise on any kind of issue. In other words, it encourages a win-win situation. Thus, it plays a significant role in terms of reconciliation within the party.

**Success rate:** One of the respondents said that the success rate of the Shalish is about 80%. Another said it was closer to 95%. This high success rate shows that Shalish is able to establish true justice within society.

**Relationship with court:** In sensitive cases like murder cases, if the parties come to a settlement, the trick has been played with the witness. The judge may also understand the facts but remain silent. Sometimes the police may create an obstacle. In this context, the parties somehow manage them through bribes or fines (Personal Communication, March 29, 2019). Thus, it can be said that the relationship with the court is good.

**Free from corruption:** In the village Shalish, power does not play any vital role because the members of the court are also powerful. So, whatever the power status of the complainants and defendants, it does not play any role in this context. So, there is no space for any kind of corruption.

## Challenges and limitations

**Interpersonal conflict:** Bad blood between different important people in society is one of the main challenges for the Shalish system. Some of the influential people outside of the Shalish board, who have bad relations with members of the Shalish board, try to influence one of the parties to break the understanding or disagree with the Shalish board. Sometimes some conflicts may serve some interests to someone. Those people may not want to let the conflict get resolved. That is why they try to create obstacles in the reconciliation procedure in different ways. However, there is no issue in terms of security in the village (Personal Communication, March 29, 2019).

**Role of politics:** The main challenge or obstacle to Shalish is the politics. Party-centric politics destroys the nobility of the Shalish system. Politics is the biggest obstacle in this context. If the victim does not have close people from the ruling party or has relatives from opposing parties, there is a high chance that they may not get justice. The minor incidences of conflict directly come to Shalish. But big and sensitive issues firstly raise to the court but when they remain unsolved or pending for a long time, they turn to Shalish (Personal Communication, March 29, 2019). However, one of the limitations is that the Shalish board can not take any serious decisions or impose any kind of serious punishment apart from a financial fine. If anybody does not obey the decision, the Shalish board cannot impose it (Personal Communication, March 29, 2019).

**Reluctance of parties:** Sometimes one of the parties may not want to engage in a Shalish for a particular person. The main problem with Shalish is its lack of power. If any party breaks control, the board has no power to do anything. At present, the traditional Shalish system is almost extinct. They don't have any kind of force. Another reason for the failure of Shalish is that sometimes the members themselves may be involved in nepotism, which may turn out very harmful for the procedure. Sometimes they take bribes from the parties. (Personal Communication, March 29, 2019).

**Lack of enforcement capacity:** One of the main things which reduces the effectiveness of ADR is the lack of enforcement capacity of the ADR. The village leaders do not have any kind of force to impose the decision. Thus, gradually the bindings of the Shalish system get loosen from the society.

## Conclusion

The Shalish system is an undivided part of the culture of rural Bangladesh. The study shows that the villagers still rely on the system totally. Generally, two types of processes can be observed, which are top-down processes and bottom-up processes. The top-down process stresses that the Shalish may initiate from the village leaders' end. On the other hand, the bottom-up process stresses that the Shalish may be initiated from the beneficiary end. There are no specific conditions or criteria for being a member of the Shalish board. However, the most common types of disputes resolved by Shalish are family disputes,

land disputes, arson or other kinds of violence, stealing or robbery, etc. The major challenges the system has faced include interference by politics, lack of documentation, and lack of legal basis. However, the village Shalish system plays a great role in resolving conflicts and helping the overall judiciary system. The whole system should be promoted and protected as a cultural heritage and an effective conflict resolution tool through all means.

## Recommendations

The interference of politics in the shalish system should be reduced. In this context, social awareness should be built.

Proper documentation of the shalish session should be maintained. In this context, the administration should supervise the issue, at least the documentation.

More research should be conducted to evaluate the real scenario of the shalish system.

Proper promotion of the system is needed for the system.

A specific amount of funding should be allocated for the procedures.

A public dialogue session can be initiated where the leaders of the village will be presented as the resource people. Their experience can be valuable for resolving conflict in other dimensions, even in the international arena.

More enforcement power should be provided to the village leader.

## Acknowledgments

None.

## Conflicts of interest

There are no conflicting interests declared by the authors.

## Funding

None.

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