

QURANIC APPROACH TO DISPUTE RESOLUTION: AN ANALYTICAL  
STUDY OF CONTEMPORARY RURAL DISPUTE RESOLUTION IN  
BANGLADESH WITH SPECIAL REFERENCE TO SHALISH SYSTEM

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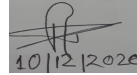
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**AUTHOR DECLARATION**

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I hereby declare that the work in this thesis is my own work except for quotations and summaries, which have been duly acknowledged.



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## ABSTRACT

About 70% of disputes in rural Bangladesh are solved through traditional arbitration system known as *shalish*. As an informal traditional system *shalish* is commonly viewed as having no established structure and operational procedure. Though Bangladesh is a Muslim country with 90% of its population as Muslims, it pursues a secular approach in its state management and legal system. Therefore, it is important to ensure that the *shalish* system operates in conformity with the Islamic norms of dispute resolution. So far, no study has been made in this respect. This study is an attempt in this direction to fill this gap. It studies the structure and scenario of operational processes and effectiveness of *shalish* and scope for enhancing its efficiency by integrating Quranic Approach. It looks into and reflects on the formal judicial system, rural dispute resolution system run by the government through village court and arbitration council and NGO-led *shalish* system in the country. However, the focus of the study is on the informal traditional *shalish* system. The study has applied the qualitative approach of research methods. Data were collected from both primary and secondary sources. Primary data were collected through observations of a few *shalish* events in villages and taking face-to-face interviews with various *shalishkars* and disputants. The major findings of the study are 1) contrary to the common understanding, *shalish* is found to have a traditionally (unwritten) maintained structure and operational procedure. 2) The traditional *shalish* is playing a vital role in resolving disputes in the rural areas for both poor and rich people with the poor more beneficiary from it. 3) *Shalishkars* are generally common people having no or very little literacy, but with long experience, ability and skill for the job. 4) Establishment of justice is the main objective of sending the messengers with clear Signs. For this purpose, it has been sent down with them the Book and the Balance of Right and Wrong. The holy Quran promotes just and knowledgeable mediator. Thus for a better performance, the *shalishkars* need clear knowledge about Quranic approaches of *ṣulḥ*, *taḥkīm* and an approach blended with *ṣulḥ* and *taḥkīm* as mentioned for family dispute resolution on necessary basis and other approaches that societies improved in course of time for social dispute resolutions on condition that they are in compliance with Quranic approaches and favourable to achieve the main objective of establishment of justice. 5) Legal and moral education from Islamic legal personalities will help them in this regard. *Khatibs* in their *juma* sermon must address the dispute resolution issues from time to time. All involved in dispute resolution following the traditional methods specifically in rural areas are likely to get immensely benefit from the findings of this study.

## ABSTRAK

Sebanyak 70% pertikaian di luar bandar Bangladesh diselesaikan melalui sistem timbang tara tradisional yang dikenali sebagai shalish. Sebagai sistem tradisional informal shalish biasanya dianggap tidak memiliki struktur dan prosedur operasi yang mapan. Walaupun Bangladesh adalah negara Muslim dengan 90% penduduknya sebagai orang Islam; ia menerapkan pendekatan sekular dalam sistem pengurusan dan perundangan negara. Oleh itu, adalah mustahak untuk memastikan bahawa sistem shalish beroperasi sesuai dengan norma-norma Islam penyelesaian sengketa. Sejauh ini, belum ada kajian yang dibuat. Kajian ini adalah usaha ke arah ini untuk mengisi jurang ini. Ia mengkaji struktur dan senario proses operasi dan keberkesanan shalish dan ruang lingkup untuk meningkatkan kecekapannya dengan mengintegrasikan Pendekatan Al-Quran. Ini meneliti dan merefleksikan sistem kehakiman formal, sistem penyelesaian sengketa desa yang dijalankan oleh pemerintah melalui pengadilan desa dan dewan timbang tara dan sistem shalish yang dipimpin NGO. Walau bagaimanapun, fokus kajian adalah pada sistem shalish tradisional yang tidak formal. Kajian ini telah menggunakan kaedah kualitatif kaedah penyelidikan. Data dikumpulkan dari sumber primer dan sekunder. Data primer dikumpulkan melalui pengamatan beberapa peristiwa shalish di desa-desa dan melakukan wawancara tatap muka dengan berbagai shalishkars dan perselisihan. Penemuan utama kajian ini adalah 1) bertentangan dengan pemahaman umum, shalish didapati mempunyai struktur dan prosedur operasi yang dipelihara secara tradisional (tidak tertulis). 2) Shalish tradisional memainkan peranan penting dalam menyelesaikan perselisihan di kawasan luar bandar untuk kedua-dua orang miskin dan kaya tetapi orang miskin lebih banyak mendapat manfaat daripadanya. 3) Shalishkars pada umumnya adalah orang biasa yang mempunyai literasi yang sedikit atau sedikit, tetapi dengan pengalaman dan kemampuan serta kemahiran yang panjang untuk pekerjaan itu. 4) Pembentukan keadilan adalah objektif utama untuk menghantar utusan dengan Tanda-tanda yang jelas. Untuk tujuan ini diturunkan bersama mereka Kitab dan Imbangan Betul dan Salah. Al-Quran mempromosikan orang tengah yang adil dan berpengetahuan. Oleh itu, shalishkars memerlukan pengetahuan yang jelas mengenai pendekatan al-Quran sulh, tahkim dan pendekatan campuran sulh sulh dengan tahkim atau sebaliknya seperti yang disebutkan untuk penyelesaian pertikaian keluarga berdasarkan keperluan dan pendekatan lain yang ditingkatkan masyarakat dalam jangka masa penyelesaian pertikaian sosial dengan syarat bahawa mereka mematuhi pendekatan Al-Quran dan baik untuk mencapai objektif utama pembentukan keadilan. 5) Pendidikan undang-undang dan moral dari peribadi perundangan Islam akan membantu mereka dalam hal ini. Khatib dalam khutbah jumaanya harus menangani masalah penyelesaian sengketa dari semasa ke semasa. Semua yang terlibat dalam penyelesaian pertikaian mengikuti kaedah tradisional khususnya di kawasan luar bandar cenderung mendapat banyak manfaat dari penemuan kajian ini.

## ملخص البحث

يتم حل حوالي 70٪ من النزاعات في المناطق الريفية في بنغلاديش من خلال نظام التحكيم التقليدي المعروف باسم *شاليش*. كنظام تقليدي غير رسمي، يُنظر إلى *شاليش* بشكل عام على أنه ليس له بنية وإجراءات تشغيلية ثابتة. على الرغم من أن بنغلاديش دولة مسلمة 90٪ من سكانها مسلمون؛ إنها تتبع نهجاً علمانياً في إدارة الدولة ونظامها القانوني. لذلك، من المهم التأكد من أن نظام *شاليش* يعمل وفقاً للمعايير الإسلامية لحل النزاعات. حتى الآن، لم يتم إجراء أي دراسة في هذا الصدد. هذه الدراسة هي محاولة في هذا الاتجاه لسد هذه الفجوة. يدرس هيكل وسيناريو العمليات التشغيلية وفعالية *الشاليش* ونطاق تعزيز كفاءتها من خلال دمج النهج القرآني. إنه ينظر في النظام القضائي الرسمي ويفكر فيه، ونظام تسوية المنازعات الريفية الذي تديره الحكومة من خلال محكمة القروية (Village Court) ومجلس التحكيم (Arbitration Council) ونظام *شاليش* الذي تقوده المنظمات غير الحكومية (NGO-led *Shalish*) في البلاد. ومع ذلك، تركز الدراسة على نظام *الشاليش* التقليدي (Traditional *Shalish*) غير الرسمي. لقد طبقت الدراسة المنهج النوعي لأساليب البحث. تم جمع البيانات من كل من المصادر الأولية والثانوية. وتم جمع البيانات الأولية من خلال ملاحظات عدد قليل من أحداث *شاليش* في القرى وإجراء مقابلات وجهًا لوجه مع مختلف *شاليشكار* (Arbitrators) والمتنازعين. النتائج الرئيسية للدراسة هي (1) على عكس الفهم المشترك، وجد أن *شاليش* لديه هيكل وإجراءات تشغيلية (غير مكتوبة) بشكل تقليدي. (2) يلعب *الشاليش* التقليدي دوراً حيوياً في حل النزاعات في المناطق الريفية لكل من الفقراء والأغنياء ولكن الفقراء هم الأكثر استفادة منه. (3) *شاليشكار* (Arbitrators) هم عامة الناس الذين لا يعرفون القراءة والكتابة أو لديهم القليل من المعرفة، ولكن لديهم خبرة طويلة وقدرة ومهارة للوظيفة (4) إقامة العدل هو الهدف الأساسي لإرسال الرسل بعلامات واضحة. لهذا أنزل معهم الكتاب وميزان الحق والباطل. إن القرآن الكريم يروج للوسيط أن يتصف بالعدالة والعلم. لذلك يحتاج *شاليشكار* إلى معرفة التوجيهات القرآنية لتسوية النزاعات صلحا أو تحكيما واضحة أو بنهج مختلط يمزج فيه الصلح مع التحكيم أو العكس كما هو مذكور لحل النزاعات الأسرية على أساس ضروري وكذلك عليهم أن يستخدموا الوسائل الأخرى التي قامت بها المجتمعات بتنميتها على مر الزمان كالدور. حل الخلافات الاجتماعية لابد أن تكون متوافقة مع التوجيهات القرآنية ومواتية لتحقيق الهدف الأساسي لإقامة العدل. (5) التربية القانونية والأخلاقية من الشخصيات الشرعية الإسلامية ستساعدهم في هذا الصدد. يجب على الخطباء أن يلقوا في خطبهم في الجمعة معالجة قضايا حل النزاع من حين وأن. من المرجح أن يستفيد جميع المشاركين في حل النزاعات باتباع الأساليب التقليدية تحديدا في المناطق الريفية بشكل كبير من نتائج هذه الدراسة.

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## Glossary

- `Aqd* When a man and a woman come to marry, a proposal on behalf of or made by one of the parties and an acceptance on behalf of or by another party creates an *`aqd* (marriage contract). The acceptance and proposal need to be expressed in one of the meetings at the time of hearing of acceptance and proposal; there is a need for witnesses. This includes two males or one male and two female. These people should be of sane mind and adult.
- Arbitration Council Arbitration Council is a dispute resolution body working in both urban and rural areas. It deals with the matters related to family disputes as per the Muslim Family Law Ordinance.
- Arzi* The plaintiff's statement or application is called *arzi*
- dofadar* The head of the gram police is called *dofadar*
- Family *Shalish* Family members resolving family disputes within family level is called family *shalish*. It hardly goes out of the family level.
- Fard-al-Kifayah* A collective duty – an obligation which, if performed by one person suffice for the rest; as it does not have to be performed essentially by all.
- Faskh* The word *faskh* means annulment or abrogation. It comes from a root, which means the right of *Qāḍī* or judge to annul a marriage contract on the application made by the wife. It is therefore, the dissolution or recession of the contract of marriage by judicial decree.
- Gram-polices For a union *parishad* there are some guards called gram-police
- Hidanah* Custody, the bringing up, nursing or fostering of the child and taking care of the child's emotional and personal affairs on a day-to-day basis is termed as *Hidānah*
- ilā* Vow of continuance, legally means when a husband swears that he will not have sexual intercourse with his wife and if he abstains from it for four months or more and then *Talaq* becomes effective.
- Jatia Sangsad* The unicameral legislature of Bangladesh, the national assembly of the country
- Jobab* Defendant's Reply accepting or denying the statement of applicant is called *Jobab*, an Arabic word meaning reapply
- Khula* Literal meaning of *Khula* is redemption. If the mutual relationship between the husband and wife is not good the wife may seek a *Khula* divorce by relinquishing her claim to the dower
- lian* It is a mode of dissolution of marriage, which signifies testimonies confirmed by oath, on the part of a husband and a wife in case of the former levels adultery charges against the latter

|                        |                                                                                                                                                                                                                                                                                                                            |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Mahr</i>            | Dower - a mandatory bridal gift from the bridegroom to the bride                                                                                                                                                                                                                                                           |
| <i>Moholladar</i>      | Gram-police are called <i>mholladar</i> also                                                                                                                                                                                                                                                                               |
| <i>Mubaraat</i>        | The word <i>Mubara'a</i> indicates the freeing of each other (from the marital tie) by mutual agreement. It is a mode of mutual release or discharge, which leaves each party without any claim upon the other.                                                                                                            |
| <i>Nafaqah</i>         | Maintenance includes food, clothing and lodging and that is compulsory on husband                                                                                                                                                                                                                                          |
| NGO-Shalish            | NGO-shalish is a non-state rural informal dispute resolution institution. A number of legal aid and human rights-based NGOs of the country are working in this field. Usually the trained up, knowledgeable and experienced people conduct <i>shalish</i> in the NGO-led <i>shalish</i> system                             |
| <i>Panchayat</i>       | The term “panchayat” implies an assembly of five or more persons. It still exists all over Bangladesh in the form of <i>panchayat</i> or <i>samaj</i> . Panchayat or <i>samaj</i> is nowadays is the rural community consisting of heads of the families residing in an area sharing a common interest.                    |
| <i>Samaj</i>           | The <i>samaj</i> is a traditional association of people having jurisdiction over a certain area within a village community. It is used with panchayat interchangeably.                                                                                                                                                     |
| Secretariat            | The apex organization of the national administration of Bangladesh                                                                                                                                                                                                                                                         |
| <i>Shaliskars</i>      | Arbitrators                                                                                                                                                                                                                                                                                                                |
| <i>Talaq</i>           | Divorce in general                                                                                                                                                                                                                                                                                                         |
| <i>Talaq-e-tafweed</i> | The power to divorce delegated to the wife herself or to a third person is called <i>Tafweed</i> and the divorce where that power is used is called <i>talaq-e-tafweed</i> .                                                                                                                                               |
| The Supreme Court      | The highest judicial institution of Bangladesh, which is formed with two divisions, namely, the Appellate Division and the High Court Division                                                                                                                                                                             |
| Traditional-Shalish    | Traditional <i>Shalish</i> refers to a community/ <i>panchayat/samaj</i> -based informal dispute resolution system.                                                                                                                                                                                                        |
| Union Parishad         | It is the Lower level administrative unit of field administration of Bangladesh. Union is a territorial limit whilst its administrative body is called the Union <i>Parishad</i> . Local Government (Union Parishads) Act, 2009 is the basic statute                                                                       |
| Village Court          | State-led rural dispute resolution institution. Village Court is not a part of the regular judiciary. However, it has statutory law and a connection with formal civil and criminal courts.                                                                                                                                |
| <i>Wilayah</i>         | Guardianship ( <i>wilayah</i> ) means the power to effect legal transactions and contracts with responsibility for the legal consequences. Guardians are individuals that have legal authority to care for another person. The individual being cared for is called a ward. Legal guardians must take care of their ward's |

personal and property interests.

*Zihar* *Zihar* signifies the act of a husband comparing his wife to any of his female relations with whom the marriage is prohibited on account of consanguinity or fosterage. *Zihar* by itself does not dissolve the marriage, but the wife becomes unlawful to the husband without expiation.

*Nasihah* It means to give sincere advice, counseling, guidance, faithfulness and loyalty, exhortation, consultation, friendly admonition and reminder. *Al-Nasihah* is derived from the Hadith “Religion is an advice”



## List of Statutes

## Act /Ordinance

The Evidence Act, 1872  
The Majority Act of 1875  
The Guardians and Wards Act 1890  
The Code of Criminal Procedure, 1898  
The Code of Civil Procedure, 1908  
The Bengal Village Self Government Act, 1919  
The Children (Pledging of Labor) Act of 1933  
The Muslim Personal Law (*Shari'at*) Application Act 1937  
The Dissolution of Muslim Marriages Act 1939  
The Muslim Family Laws Ordinance, 1961  
The Muslim Marriage and Divorced Registration Act 1974  
The Children Act of 1974  
The Village Courts Rules, 1976  
The Village Courts Ordinance, 1976  
The Local Government Ordinance, 1976  
The Family Court Ordinance, 1985  
The Village Court Act, 2006  
The Local Government (Union Parishads) Act, 2009  
The Child Marriage Restraint Act, 2017

## LIST OF APPENDICES

- Appendix 01 Examples of Case summary of selected rural disputes in different areas in Bangladesh
- Appendix 02 *Ayat, Hadits and Hikayat*
- Appendix 03 Interview Guide



## LIST OF ABBREVIATIONS

|       |                                               |
|-------|-----------------------------------------------|
| a2i   | Access to Information                         |
| AC    | Arbitration Council                           |
| ADR   | Alternative Dispute Resolution                |
| ASK   | Ain o Salish Kendra                           |
| AVCB  | Activating Village Court                      |
| BLAST | Bangladesh Legal Service Trust                |
| BRAC  | Bangladesh Rural Advancement Committee        |
| CUSO  | the Canadian University Services Organization |
| ESDO  | Eco Social Development Organization           |
| GSS   | Gano Sahajjo Sangstha                         |
| HRLE  | Human Rights and Legal Education              |
| LAC   | Legal Aid Clinic (Sunday Clinic)              |
| MLAA  | Madaripur Legal Aid Association               |
| MMM   | Madaripur Model of Mediation                  |
| NGO   | Non Government Organization                   |
| NK    | <i>Nijera Kori</i>                            |
| NLASO | National Legal Aid Services Organization      |
| NU    | <i>Nagorik Uddyog</i>                         |
| SAAS  | Salla Allahu Alaihi wa Sallam                 |
| SDO   | The Sub-Divisional Officer                    |
| UP    | <i>Union Parishad</i>                         |
| VC    | Village Court                                 |