

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

This chapter presents the summary of the thesis based on chapter two, three, four and five. It highlights the findings and discusses the major contribution. The study also makes necessary recommendations for improvement of rural dispute resolution system in Bangladesh and of *shalish* system.

6.1. Summary of the Findings

As a social being, men live in society. Dispute is a social and common phenomenon of human society due to differences in the life style and opinions of individuals. However, it requires a proper solution and therefore they (human being) develop many institutions to resolve their disputes from time to time. Quranic Approach to dispute resolution centers round the concept of restoration of relationship. It refers '*sulh*' as the best option to settle disputes peacefully, and finally it achieves this end.

In Bangladesh, urban and rural disputes are resolved in various ways. Rural disputes are resolved in the following Quasi-formal and informal ways. Village Court and Arbitration Council are two state-led quasi-formal institutions. *Shalish* is mainly the informal way for dispute resolution in rural Bangladesh. About thirty years ago, some human rights and legal aid based NGOs started doing *shalish* modifying the traditional one in their ways leading to another form of *shalish* namely NGO-*shalish*. Most popular and effective system of these contemporary rural dispute resolution systems is traditional *shalish* which

is based on custom and tradition of the society. Village Court and Arbitration Council as statutory institutions are allowed to deal some petty civil and criminal disputes and some specific family disputes only under two pieces of statutes namely the Village Court Act, 2006 and the Muslim Family Law Ordinance, 1961 respectively. Traditional *shalish* and NGO-*shalish* are similar in nature in terms of following informal ways. However, in dealing any dispute, NGO *shalish* tries not to go against state laws. Most important feature of NGO *shalish* is that it requires participation of women in *shalish* panel. Traditional *shalish* deals all types of disputes of all ranges occurring in rural areas. Though traditional *shalishkars* have no knowledge about the related laws of rural disputes, they are nowadays aware of it and try their best not to fall in any embarrassed situation. Contemporary rural disputes resolution systems are found largely in conformity with Quranic norms.

It is interesting to note that in Bangladesh traditional *shalish* has no legal recognition. However, it is respected by the administration. Accordingly this study finds that *shalish* is the cheapest, easiest, fastest and most popular method of almost all rural disputes. *Shalish* is constituted with local leaders and elders with no well formed body. For each dispute, a *shalish* is constituted with the local elders headed often by one senior most *shalishkar*. *Shalish* is often blamed for biasness, bribe taking by the *shalishkars* and for influence of rural elites on them and thus on dispute resolution. This study finds that in spite of various limitations, the *shalish* system is working well and the *shalishkars* are fair enough and are doing a respectable job in dispute settlement in rural areas in



Bangladesh. However, the *shalish* system should be improved for enhancing its efficiency and effectiveness.

6.2. Specific Contributions of this study

6.2.1 *Sulh* has been discussed in classical Islamic literature just as a contract to avert any dispute. For various commercial, interpersonal and social disputes, modern scholar used it in the meaning of Alternative dispute resolution. however no discussion about *sulh* is done in the line of emerging trend of ADR. So this study discusses it as the meaning of ADR more clearly.

6.2.2. So far, no formal studies have been made on the structure and operational mechanism of traditional *shalish* system for rural dispute resolution in Bangladesh. This study has done it and made an addition to the existing literature on the subject.

6.2.3. *Sulh* includes all the process of ADR and *shalish*. However ADR and *shalish* never takes any initiative before any dispute occurs. Again *shalish* includes all types of third party intervention. Any peaceful settlement by disputing parties themselves may come under *sulh* and ADR, but not under *shalish* any way.

6.2.4. Another contribution is that it has discussed and proposed an effective way of integrating Islamic norms with the traditional *shalish* system for rural dispute resolution.

6.3. Recommendations

The study makes following recommendations for the purpose.

Registration of a *shalish* decision by state policy (Documentation & Preservation):

As village court is governed by village court act, 2006 amended in 2013, it may be amended again to add a clause titled ‘registration of *shalish* decision’ in village court registrar book. It may be stated that the cases falling under jurisdiction of village court, if resolved by traditional *shalish*, may get registered if they (the *shalishkars*) follow the act in formation of *shalish* panel, in operation of *Shalish*, and in reaching a decision. A *sulh namah*, signed by the chairman of *shalish* and four other *shalishkars*, may be registered and preserved thereby in union office by the village court. Both the applicant and the defendant of the disputes will get a certificate of settlement of dispute titled “*Sulh Namh....dated on*”. The disputants must pay a fee for registration of the *sulh*. As village-court has a connection with assistant judge court for a civil case and with first class magistrate for a criminal case, like wise a *shalish* decision, if felt necessary, may go to both assistant judge court and first class magistrate court in the same ground.

Following the form no. 12 of village court, the form of decree a *sulh-namah* for *shalish* may be as mentioned bellow-

Sulh Namah

Resolution of dispute through <i>shalish</i> between
Applicant:
Defendant:
Matter of dispute:

It is to notify that todayregarding the dispute mentioned above we undersigned came to a decision unanimously/ based on majority as follows-

Those are for the decision	Those are against the decision
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Name	signature	Name	signature
1.			
2.			
3.			
4.			
5			

Nikah Registrar may be allowed as a member of AC for family dispute resolution:

It has been found through this study that arbitration council is very weak in performing its duties. The Union Parishad chairman as a chairman of arbitration council feels no interest to be involved with such a matrimonial dispute, or families of the parties are not interested to involve UP chairman. Again, if a family dispute ends with a divorce at any form, it needs a registration. *Nikāh* registrars being appointed permanently are qualified

enough in solemnizing a marriage. Likewise, they play their role in resolving a marriage related dispute when a couple goes to them. As they have a religious background, they have sufficient knowledge about marriage and divorce. Therefore, they may be included in conciliation of family disputes as a member of Arbitration Councils. By virtue of status a Nikah Registrar should be included in AC and be trained up therefore. Union Chairman who is to perform as chairman for AC is elected for a period of time. If any family dispute deserves to go to family court, i.e. it is about dissolution of marriage, restitution of conjugal rights, maintenance, guardianship or custodianship of child and dower, *nikah* registrar may play a role to resolving it advising the couple and may refer the case to a family court if it is deemed necessary. It may increase the ability of access to justice for the weak, vulnerable poor women of rural Bangladesh. It needs an addition to Muslim Family Law Ordinance, 1961 stating “registration of family dispute cases of rural area through *Nikah* registrar”.

Criminal Cases and traditional *Shalish*:

A criminal case under jurisdiction of village court may come under jurisdiction of *shalish* also. A criminal case out of jurisdiction of village court normally *should* not come under jurisdiction of *shalish*. However, practically this study finds that the *shalish* intervenes every kind and every range of dispute in the society. As *shalish* plays an important role to control many criminal cases like fighting between two groups, stealing and so on. Therefore, there is a scope for *shalish* to resolve it also. Criminal cases are state concern issues and sensitive sometimes. So *shalish* should not be involved directly to settle any criminal case. However, it may help the fighting parties to make them understand the

severity of the issue they are involved with. *Shalish* may bring the parties to come to a compromise where both parties are really in need of *shalish*. It is better to get a dispute settled than to let it unresolved.

Involvement of local Islamic personnel (*ulama*):

If it is possible and available, local Islamic personality (*ulama*) should be involved as *shalishkars*. This study finds that *ulama* are reluctant about *shalish* and are not involved generally to do *shalish*. It has been found also that a *Mawlana (Alim)* was involved in every session of *shalish* held in a locality and he played influential role there. After he died, local *shalishkars* felt his presence much. The *shalishkars* opine that if any *Alim* (Islamic Scholar) is involved in *shalish*, its quality will be improved definitely.

Attention to innovation of dispute avoidance techniques:

Formal courts in Bangladesh are over loaded with cases. A family court in Chittagong is loaded with more than three thousand pending cases. In another word, only one judge has to settle that number of cases within a year. This huge number indicates not only the dead lock system of the court but also the distress that the common people are having in the country day by day. A revengeful mindset and uncompromising attitude involved with unproductive but destructive disagreement must be avoided. Proper legal and moral education for all through *Juma* sermons and other monthly or half-yearly or yearly programs for all may be arranged under *Juma Masjid* in every rural area for this purpose.

Documentation of *Shalish* proceedings:

Unfortunately the proceedings and decisions of traditional *Shalish* are not recognized anywhere. Whenever a *shalish* successfully ends, it needs documentation and preservation by disputing parties and social or local institution like central *Jam`e Masjid*, or the *Union Parishad* or by both. As government is intended to reduce caseload from formal court, and ADR is already adopted in CPC generally and in Family Court specially, there are so many statutory ADR we have in Bangladesh to resolve commercial, financial, labour, industrial and other institutional disputes. As we have already village court to modify village *shalish* and to reduce caseloads from formal judiciary, it may take a policy to registrar a *shalish* decision under village court or arbitration council under some conditions. It needs documentation of *shalish* properly.

***Masjid* may be used as Knowledge Dissemination Center:**

Every village having a *Jame-Masjid* may introduce a cell for recording local dispute resolutions and for preserving the documents. Since amicable dispute resolution is a vital issue, *Jum`a* sermon should be about causes of dispute. *Khatibs* may deliver their speech integrating the Quranic approach to a dispute and present legal framework as well. The main focus should be on avoiding techniques of disputes following *sīrah* of the prophet (SAAS), the life of his companions and other righteous persons.

ADR in the meaning of *shalish* should be set in the textbooks:

NCTB (National Curriculum and Text Board) books should incorporate a chapter about amicable dispute resolution system, its importance and benefits. It should focus on *shalish* more than western flavor of ADR. It may help the students understand the importance of dispute resolution. Sulh may be discussed also in the line of *shalish*, which is a great act of worship as both Quran and Sunnah emphasize on it. Books, booklets leaflets and writing in electronics and printing medias should be published in favour of *shalish*.

Training for *shalishkars*:

Participation in *shalish* meetings under a senior *shalishkar* is the basic mode of learning for the young *shalishkars*. However, they need modern training through time-to-time formal lectures and workshops on issues pertaining to the nature of rural disputes and conflicts and their legal, social, religious, and administrative dimensions. Though *shalishkars* do not have any organized professional body yet, it seems that they are well organized in their activities. They have no fixed office, but the development of modern communication system made them close to everybody who needs their help. They also can communicate themselves easily. For all practical purposes, they may be organized under the chairman of union council at union council office. Their social participation and performances may be documented and preserved in a file of union council office.

Nursing of Allah fearing and hereafter faced mentality (preventive):

The main objective of *shalish* is to keep the mutual relationship up. Its immediate objective is to avert a dispute between two disputing individuals or groups. *Shalish* takes a dispute as a social problem and tries its best to repair and reshuffle it. It is termed as “*Islahu dhat al bain*” in the holy Quran. As the rural people in Bangladesh are Muslims in majority, Islam has a great influence in their life. People are influenced by Islamic norms sincerely or insincerely and *shalishkars* are not out of this culture. It has been seen that almost all *shalishkars* are of the opinion that they hope a return from Allah as He is the Only Judge in the life hereafter. Some utterances of *shalishkars* are as follows:

“Those who do *bichar* (*Shalish* adjudication) are under the shadow of *Arsh*” say the *Ulama*. Therefore, when we do *Shalish* we keep it in mind. We feel it from our inner part of heart that we will get reward from Allah in the life hereafter (Interview 08_31012019).

“When we sit to settle a dispute, we hope to get Allah’s favor,” said another *shalishkar* in reply to the question how far Islamic norms are maintained there in a *Shalish* (Interview 09_31012019).

In doing all that we do in a *Shalish* we hope reward in hereafter. We try our best to save the parties from any unexpected loss. We tell some tales from life of prophets and messengers just to control the *Shalish* and convince the parties in the dispute (Interview 10_01022019).

They think that to reshuffle the relationship and reconciliation between two disputing parties are definitely good deeds. It is better than so many *nafl* (Optional) *Ibadat*. A widespread proverb is there to the *shalishkars*, which states their view on a *shalish*-

“*Hazar Ibadat ak adalat*” meaning one justice is better than thousands of acts of worship (Interview 31_15032019).

Shalishkars have sensitive feelings about their *Shalish* activities. It is reported by one that *shalishkars* have to take some risk to cool down fighting.

Whenever I go out for a dispute resolution, I pray to Allah solemnly to help me in this regard. I think Allah has extended my life after a great surgery and an accident to do some good deeds (Interview 31_15032019).

As a good number of *shalishkars* in traditional *shalish* are illiterate, they feel the presence of some *ulamas* in *shalish* meeting necessary to maintain Islamic norms. However, in absence of such an *Alim* they ask the presence of anyone expert in religious matters, like divorce.

If any *`alim* (Knowledgeable person in Islam) takes part in a *Shalish*, it helps us to soften the disputing parties reminding them the final judgment in the life hereafter (Interview 08_31012019).

Mawlana Abdul Wahid who died few days before was a potential member of our *Shalish*. He used to try to address the parties from Islamic point of view. It was very effective for *Shalish* environment. We feel him much and feel the presence of this kind of Islamic people in *Shalish* more (Interview 09_31012019).

Previously *shalishkars* were more honest and they have Allah fearing mind. Nowadays most of them have become reluctant about Islamic norm. However if they do *shalish* maintaining honesty, *shalish* will remain a great means to resolve disputes in rural areas in Bangladesh. A *shalishkar* from Islamic background (Interview 30_15032019) supports this view. In reality if the disputing parties have a good morality, they themselves have chance to settle their dispute peacefully (Interview 17_16032019). *Shalish* should come under continuous evaluation system by the local administrative bodies like union parishad, *upozial parishad* and *zilaparishad*. Zila Legal Aid may be included in this purpose.