

CHAPTER 4

TRADITIONAL *SHALISH* SYSTEM FOR RURAL DISPUTE RESOLUTION

The traditional *Shalish* system is the most commonly used method of dealing both civil and criminal disputes in Bangladesh. About 60-70% rural disputes are resolved through this system (Biswas 2009). Informal dispute resolution committee exists everywhere in Bangladesh most importantly in rural areas from time immemorial. *Shalish* as an institution is rooted in the pre historic period and is still in vogue. India had a long history of *shalish* in centuries before the Christ. *Shalish* used to exercise judicial and administrative functions in the rural areas of Sri Lanka since 500 BC. Similarly *Shalish* is also an age-old practice in Bangladesh (Alim and Rafi 2003, 5). Pre-Mughal in origin, the *shalish* is the indigenous form of arbitration in rural Bengal (Samity 2003) Using both mediation and arbitration, this village court (*shalish*) takes place not in the formal court, but rather in the household (Ahmed 2013, Taher et al. 2014). *Shalish* system in Bangladesh based on custom and tradition of the society is called customary and traditional *Shalish*. It helps restore community harmony formally and informally. The concepts of *shalish* as “informal”, “customary”, or “traditional” generally refer to forms of dispute resolution being not an integrated part of the formal court systems (Albrecht et al. 2011).

To answer the third research question, this chapter has been prepared based on observations of some *shalish* cases and interviews collected from various types of *shalishkars*. It is deemed necessary to define *shalish* as a traditional dispute resolution

system. Then how this system exists in its structure and operational mechanism and other related issues has been discussed. The details is coming bellow-

4.1. Definition of the term “*Shalish*”

Shalish, in Arabic is *Thālith* meaning third. It is derived from Arabic word *Thalatha* (*salasa*) meaning three. In relation to mediation it therefore means intervention of a third party for amicable settlement of a dispute between two conflicting parties (Islam 2000, 1). Also some scholars opine that *shalish* is a Persian word meaning mediation (Alim and Rafi 2003). *Shalish* is a traditional democratic mode of conflict resolution at village level in Bangladesh (Delwar 2005, 25). It is a body (committee) of selected local notable members called *Shalishkars*. The ‘*Banglapedia*’ defines *shalish* as a social system for informal adjudication of petty disputes both civil and criminal, by local notables, such as *matbars* (leaders) or *Shalishkars* (adjudicators) (Islam 2003). A notable person doing a *Shalish* is a *Shalishkar*. He argues systemically much for settlement and he is a *matbar*. Likewise, he is *dewani* in Rangpur area, *dorbari* being member of *Village Dobar Committee* in Chela, India, nearby *Chhatak* area under *Sunamgonj* district (Interview 31_15032019). The *shalish* is a public event and participatory in nature. Any person who has been wronged can call for a public hearing; occasionally the elders themselves may call a *shalish* if they feel that the community codes of conduct are in jeopardy (Siddiki 2003). *Shalish* (informal local mediation council) therefore provides a traditional alternative to dispute resolution in a community (Munni 1996).

Shalish, an indigenous traditional dispute resolution system 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 impose sanctions on them (Golub 2003, 2,3). Schraf called it customary justice, which is usually run by village head/chief in council with their traditional culture or beliefs in term of pre-modern notions of statehood and local governance (Schärf et al. 2002, 39). Ellickson defined the *shalish* as both judgment and discussion effecting punishment or compromise through the satisfactory settlement of disputes (Alim 2004b, 16). Sarker regarded the *shalish* as a “compromise between the parties”. Karim (1984) has used *shalish* as a means to resolve conflict within the villagers (Alim 2004b, 16). *Shalish* may involve voluntary submission to arbitration (which, in this context, involves the parties agreeing to submit to the judgment of the *shalish* panel), mediation (in which the panel helps the disputants to try to devise a settlement themselves) or a blend of the two.

4.2. Historical Background

Historically Panchayat was rural administrative unit with judicial repetitive responsibility. *Panchayat* means body of five wise persons. In each village, a group of five persons i.e., Panchayat, was to look after the judicial affairs along with others (n.a n.d). During the ancient period, usually the king nominated or the people of respective villages elected *panchayat*. The esteemed members of the Village *Panchayat* were responsible for the distribution of land among the villagers and for tax collection. The *panchayat* in ancient Northern India and elsewhere in the subcontinent, including Bengal,

was the lowest tier of local government, which also functioned somewhat as a court having jurisdiction over members of different castes and occupations belonging to the same village and township. The initial development of the *panchayat* was a spontaneous phenomenon to meet the social needs, and it was quite independent in their working. The *panchayat* had jurisdiction over almost every type of dispute arising in the village community. It used to address both civil and criminal cases.

The Muslim rulers later constituted their own system of judicature, which was at variance with the traditional system. But they did not touch the existing village *panchayat* virtually. However, the jurisdiction and authority of *panchayat* saw the decline with the establishment of formal courts for adjudicating civil and criminal cases during the British rule in India. The new land system introduced by the British also adversely affected the *panchayat* justice system. Yet, the British period recognized the *panchayat* justice arrangement unofficially. Some historians believed that the village *panchayat* was either non-existent or very weak in the then Bangladesh. Hence, a highly organized *Shalish* system was unlikely to have operated here at any period (Islam 2003). It is found through this study also that *Shalish* is known all over the country, instead of *panchayat* in some areas people use *somaj* (community) (interview 14_11022019).

The local mediation during the early British period in this part of the subcontinent seems to have comprised adjudication of petty disputes relating to social matters mostly through neighborhood *shalish*; and land related and inter-neighborhood or inter-village disputes through the zamindar or his agents. Later, when population increased and neighborhoods

expanded, there were both neighborhood and village-based adjudications. With the strength of the zamindari system eroding over time and the rise of the formal courts, adjudication by zamindars or their officials in the rural areas gradually became defunct. In other words, *Shalish* in Bengal villages seems unlikely to have been associated with a well-developed rural local government system. Whatever existed here was highly informal in nature, dictated by the practical situation prevailing at the grassroots level.

The incidents of local disputes and altercations continued to increase when a large number of people and communities within the village structure, in the region where Bangladesh is located, were increasingly being cramped into small areas and required to share limited resources. Consequently, the village identity took its root firmly on one hand, and the number of neighborhoods increased on the other. The village-based *Shalish* also emerged either as an addition to or as a replacement of the neighborhood *shalish*. In this phase, inter-village *shalish* was also conducted. *Shalish* is meant to be a medium for out-of-court settlement of petty quarrels or disputes in the rural society. This conventional system of mediation is deeply rooted in the history, culture, and the people of Bangladesh.

Shalish is a need-based invention by the rural people of ancient time. It has been practiced for community level dispute resolution over the years. When a dispute arises, being reported by either of the parties, some elderly peoples having social status, sit together with the parties and some other people concerned to resolve it. It is generally a public event and in most cases, disputes are settled amicably through compromise or

arbitrarily if it needs so. Normally the parties have to surrender by saying ‘I want a fair justice’ or ‘Do whatever you deem fit for me’ (Islam 2012b). The *Shalish* remains the dominant means of adjudication for small-scale civil and criminal disputes. The term *Shalish* refers to a small-scale local council which is convened for conflict resolution. It is an institution which dates back to pre-British times (Lewis 2005).

4.3. Observations of some *shalish* cases

To understand the nature, feature and operations of the village *Shalish* some of the *Shalish* cases at a village were observed by the researcher practically from February 2017 to March 2019. The purpose of these observations was to evaluate the system and to suggest the necessary improvement. The cases are reported as bellow:

Case - 01

It involves a quarrel between two children, which turned into a bigger fight between two hamlets. This was a case of ‘making a mountain out of a mole’. The case Summary is as follows:

Plaintiffs	A
Defendants	B
Middle men / Interim third party / the 2 boys who called <i>Shalish</i>	C & D
<i>Shalishkars</i>	E, F, G and others

History	This was a dispute created instantly according to the situation.
Subject	From a silly quarrel a big fight about to take place
Cause	Quarrel of Two children while playing on the field.
Details of Disputes	Two same aged (9-10 years) children of two hamlets of the same village were engaged in a quarrel on a playground. It turned into physical torturing. The elder brother of one child joined the hassle to support his brother. They jointly beat and injured the other child. It excited the whole hamlet (Para) of the injured child and a violent revengeful action emerged. Members of the hamlet came out with indigenous weapons that had to take revenge and protect each other. People from the other hamlet also got themselves prepared to

	respond.
Role of an interim neutral third party	Hearing the shouting, two young boys from another hamlet came to the spot and requested both parties to stop the violence and try for an amicable settlement through a <i>Shalish</i> by local elders. Within an hour, the situation came under control without actually any big fight and serious injuries. The two young boys talked to the potential elders, took consent of both the conflicting parties, and arranged a <i>Shalish</i> on the day after next.
Details of the main Shalish meeting	Starting Scenario of the Meeting The meeting took place in a cordial environment exchanging greetings and light humor among members attending there. Within a short period the important people arrived. Everyone felt the need to start the meeting and the meeting started.
	Chairmanship: Although the president/chairperson of such kind of <i>Shalish</i> meeting normally is selected by proposal and acceptance from the audience, it was not for this meeting. Instead, a former Union parishad chairman, in the simplistic manner was seen playing the role of chairman of the <i>Shalish</i> unobjectionably.
	Arzi / statement of the plaintiff: None of the disputing parties actually asked for the <i>Shalish</i> , but the two young boys took the initiative to make them agree for a <i>Shalish</i> . Therefore, these boys had to brief the meeting the background of the case and requested the <i>shalishkars</i> to settle the matter peacefully in order to maintain the social harmony. The injured boy and his father were asked to present their statements first.
	Shalishkars' Role: The <i>Shalishkars</i> were surprised to find how such a trifling and simple matter could lead to such a big clash. To settle the matter they pointed to the conscience of the elders of the disputing parties, more importantly lack of the guardian of the attacking boy. The father of the alleged boy stood up and sought forgiveness of the father of the injured. He expressly accepted the apology. The elder brother of the attacking boy also apologized to the injured boy. <i>Shalishkars</i> were very happy but they warned the community against the repetition of such incident, terming it as 'making a mountain out of a mole'.
	Conclusion: The <i>Shalish</i> meeting was held in the courtyard of the mosque and it ended with light refreshment with sweet.

Case 02

It involves a piece of land sold by an under-aged boy when his father was abroad and out of contact for a long time. The dispute arose when the father came back home and denied to let the plot register for the purchaser.

The Summary of the Shalish is as bellow-

Plaintiff	A
Defendant	B
Shalish/ Neutral third party	C, D, E and others

Details of the Shalish	Starting Moment/ Environment Creation Before the <i>shalish</i> meeting started formally, <i>Shalishkars</i> had created a cordial environment with some humorous or attractive story telling. Generally, they do it keeping the Shalish issue in mind. The Shalish Meeting started There were mainly two <i>Shalishkars</i> in this meeting from outside. The meeting was at night and considering inconvenience of the darkness of night, it was felt necessary to start the <i>Shalish</i> without late. So each of them was requesting the other to start it, finally the senior <i>shalishkar</i> asked the plaintiff to place his statement. Arzi (The plaintiff's statement) The plaintiff stated that almost twenty years ago he purchased a piece of land from the defendant's brother and his son and he is still getting the benefit from it. The land was sold by defendant's under-aged son when he (the defendant) was in abroad for a long time without any communication with the family members. The plaintiff could not get the land registered due to the financial constraints. Since the defendant came back home within this time the plot had to be shown sold by law by the defendant as father of the under-aged boy. So, the applicant of the case requested the defendant of the case several times register the plot in favour of him, but the defendant denied it. A Shalish was arranged in this regard to ease the issue through an amicable settlement. The defendant did not comply with the earlier Shalish decree. So he arranged this second Shalish on the same issue and requested the <i>shalishkars</i> to see the matter kindly. Jobab (Defendant's Reply) The defendant said in his reply that he did not know anything about the matter. He may ask his son when he (the son) will be available in the country. It seemed like a tactful reply and thus failed to satisfy the <i>Shalishkars</i>. They (<i>shalishkars</i>) tried their best to make the defendant understand the fact and to convince him to take an initiative to let the land get registered for the plaintiff. Then finding no other way an
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	important <i>Shalishkar</i> of this <i>Shalish</i> meeting urged a present elderly person to see the matter for an amicable settlement. No solution has come yet and no one has attempted to end this dispute. The matter is still pending and the disputant is in possession of the land. No follow up was there from the shalishkars.
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Case 03

It involves trying to occupy a piece of land under possession of the plaintiffs from around 35 years ago. This case was a complicated one and took several sessions to find out the fact and solution.

Plaintiff	The main plaintiffs were abroad and one of their cousins represented them as plaintiff/ applicant
Defendant	Not mentioned for confidentiality
Special Attendance	From third session a special <i>dalil</i> (deed) reader was made present by <i>Shalish</i> committee
Shalishkars	In the first session, Shalishkars were very few in numbers but they were present in all the sessions. From the second session of the meeting, the disputing parties made some special <i>shalishkars</i> present from their own choice. There were many other villagers present in the rest sessions. The list of the shalishkars is omitted for confidentiality.

The Summary of the case is as bellow-

The sessions at a glance	So far, 5 Shalish meetings and a compromise meeting were held in this regard. Four Shalish meetings were held on 22.11.2017, Wednesday, 10.12.2017, Sunday, 21.12.017, Tuesday and 15.02.2018 respectively, though the fourth one was postponed twice because of <i>Ijtima</i> (a countrywide religious gathering of <i>tablig jamat</i>) and sickness of the chairperson of the Shalish. There was a possibility that a decision might come from the 4th session. Seemingly, the decision might go against the defendant. <i>Shalishkars</i> assumed that the defendant might not agree to comply with the decision. To avoid another complexity a <i>Shalishkar</i> proposed the audience to allow him to take an initiative to settle the dispute through compromise. He was then given this opportunity and was instructed to present the summary of the compromise meeting on 01/03/2018 in the 5th Shalish meeting. The details are coming below.
Details of the cause of the dispute	The defendant built a hut in the darkness of night on a piece of land adjacent to the house of the plaintiffs of the Shalish. This happened on 18th November 2017. As the defendants were staying abroad, two days later, some people on behalf of them went to meet the man accused, and asked him to explain why he did so. In reply, he claimed that the piece of land on which he has made the hut belongs to him and he is ready to explain in details if a <i>Shalish</i> meeting is arranged. They agreed and instructed him not to build anything new on that land until a neutral third party sees it. But two or three days later, the defendant cut a tree worthy of an approximate price of Tk 20,000.00 to Tk.25000.00. Then a neutral third party consisting of three men stopped him and they seized the tree cut asking him to let it as it is. <i>Shalishkars</i> ' role started from here.

Session 01

Chairmanship	A former Union Parishad Chairman played the role as the chairperson of the <i>Shalish</i> meeting in its all sessions. He was selected to moderate the sessions through the proposal and support of the audience.
Details of the first Shalish meeting	The <i>shalishkars</i> confirm the presence of both the plaintiff and the defendant and the plaintiff on behalf of the main plaintiffs placed his statement first.
	Arzi (Plaintiff's statement) The plaintiff presented the statement on behalf of the main plaintiffs. The plaintiff said that the piece of land occupied by the defendant is really a piece of land purchased by the main plaintiffs' family about 18 years ago. An area of four (0.04) decimals of it was purchased first and a half (0.015) decimal of the land was purchased later. For the last 18 years, they had been enjoying the benefits from both pieces of land. Suddenly, after 18 years, the defendant causes a dispute making a house in the darkness of night and cut a tree worthy of an approximate price of tk.20/25 thousand. The plaintiff finished his speech appealing the <i>Shalishkars</i> to see the matter and ensure justice.
	The defendant's reply In reply, the defendant said that he had three (0.03) decimals of land here in this area. He inherited one (0.01) decimal from his father and purchased the other two decimals. So he built the house in his own place and the tree cut, according to him, was planted by his family around 20 years ago.
	Shalishkars' position Since both the parties were claiming the land for themselves, it was not possible to say anything without seeing into any document. It was a matter of rights. So both the plaintiffs and defendants were asked to present the written documents to support their claims. Then the <i>shalishkars</i> announced the date of next session to be held on December 10, 2017, at 10:00 am, and asked both to arrive with proper documents in favor of their claims.
Place of the meeting	The place for the next meeting was announced where the incident took place.

Session-02

Special Attendance	An old aged man from plaintiff's relatives of the same home and alive witness of the disputed land was made present. He was one who has interchanged the land 35 years before.
Shalishkars	All important figures including chairman of the <i>Shalish</i> were present. As the meeting held in the yard of the plaintiff's house, people from all walk of life were present even women of that home got the opportunity to hear the talk from behind the curtains.

Shalish Session details

Details of the original Shaliish meeting	The Shalishkars confirmed the presence of the plaintiffs and the defendants and asked them to submit their documents supporting their claims.
	The plaintiff submitted the documents On behalf of the main plaintiffs, two documents (<i>Dalils</i>) and a record of right (RoR) were brought from plaintiff's part, to determine the total amount of land of the plaintiffs obtained by purchasing or through inheritance.
	The defendant's submission of the documents Defendant, on the other hand, presented a document (<i>Dalil</i>) in favor of his claim that he purchased two (0.02) decimals of land from and he has shown a record of right for description of his getting inheritance of one (0.01) decimal of land in this plot. So he is the owner of these three (0.03) decimals of land on this site as he claimed.
	Verification phase 1 According to two documents of the plaintiffs, it was known that three members of a family sold in two times a total of five and a half (0.055) decimals of their land property to the plaintiffs family. The Shalishkars asked one of the buyers of the land about the matter and he confirmed it.
	Verification phase 2 According to a <i>Dalil</i> (document) submitted by the defendant, it is known that two sons of a deceased person have sold two (0.02) decimals of land to the defendant. The buyers confirmed it when the Shalishkars asked them.
Pointing out a fact	Then an old aged person from the side of plaintiffs informed the audience that they got a piece of land of around one (0.01) decimal from these two buyers through the interchange. This land was of low seed land and they gave to the buyer's family a piece of land equal to that in price from their house premise. Approximately 35 years ago, the place was interchanged and both parties are still getting benefits from their own changed places respectively.
Formation of jury board	A jury board was constituted for analyzing the issue and thus resolved it. They are some Shalishkars of that day including the chairman of the <i>Shalish</i> . But when the board members could not agree on any decision in that meeting, the next date was announced and the disputing parties were instructed to present all the documents with the appropriate seal and signature.
The end and the date of the next meeting	The date and time of the next meeting were announced at 10:00am in the morning of December 21, 2017. Instructions were made to arrange meetings at the same place under a broad size canopy.

Session-03

Special Attendant	An expert in <i>Dalil</i> reader
Shalishkars	All the important Shalishkars including a good number of villagers were present there. So the <i>Shalish</i> meeting became a public one.

Information related to conflicting matters & Shalish in details

Details of the Shalish	The third session started usually. This session was basically dedicated for studying the related documents (dalil & RoR) of the disputing parties. So taking the opinion of shalishkars, the chairman decided to proceed the <i>Shalish</i> based on the statements given by the parties. However, a brief account of previous sessions for informing the newcomers was felt and being directed a <i>Shalishkar</i> presented it verbally. Then the President requested the <i>Shalishkars</i> to present their own arguments to point out the facts as accurately as possible.
	Document submission: On behalf of the plaintiffs, their representative presented two documents (Dalil/Deed) to prove that the disputing piece of land is purchased by the family of the main plaintiffs from a family of the same home in two phases. He submitted other papers to see the total amount of land of them either purchased or inherited. On the other hand, the defendant presented a document and three other scripts in favor of his claim. The document (<i>dalil/deed</i>) he submitted done very recently, on November 2017. It shows that he purchased a piece of land of 0.02 decimals from two sons of a deceased man who had interchanged about one decimal out of these two decimals of land sold now. The defendant also presented some papers denoting that they have 0.01 decimal of land in this board area from their father through inheritance.
	Documents Text Reading and Content Analysis: An expert documents reader was invited to present the contents of the documents (dalil/deed). Due to not having proper seal and signature in two papers of both parties respectively, the reader drew the attention of the <i>Shalishkars</i> . So he was instructed to keep notes in such a way exactly. In the next meeting, instructions were made to present the original copy of these two papers.

Session-04

Special Attendant	An expert document reader
<i>Shalish</i> / Neutral third party	All important shalishkars including some new ones
Details the Shalish Meeting	A special guest as well as the member of this meeting was expected to be present. As he was the expert document reader for this <i>Shalish</i> , the audience was waiting for him. However, it was decided to start the meeting without waiting for him. The session began under the chairmanship of the chairman of the <i>Shalish</i> . This session was the fourth one of this <i>Shalish</i> meeting. It took much

	time to begin the discussion and after the reading of the written proceedings the Zohr prayer time came and the meeting was postponed for the prayer. Then the meeting resumed after the Prayer. At the very outset, a <i>Shalishkar</i> proposed to make a compromise through the village people. Then the chairperson made a slight modification of the proposal and asked the proposer to take initiative for the reconciliation taking help of the elders of the village. The proposer agreed finally to take this responsibility. Then the chairperson wanted to know the opinion of both disputing parties on the issue mentioned above and they have gave their consent also.
	The proposer was requested to organize a compromise meeting and conclude it before the next <i>Shalish</i> meeting to be held on Thursday, 22/02/2018 and the submitted report would be reviewed on the next <i>Shalish</i> meeting held on 01/03/2018.

Compromise meeting

On Thursday, 22/02/2018, a compromise meeting following the fourth session of the dispute resolution meeting was held. The meeting started at around 4:00pm at the house of the main plaintiffs of the case.

Mediators	The list in not mentioned for confidentiality
Meeting's Resolution	The main mediator ascertained the presence of both disputing parties and sought co-operation from both. He commented that compromise is the best way to settle any dispute, for it keeps the social relationship up. Then a member of this compromise meeting gave a hint that both disputing parties have purchased two pieces of land from various descendants of an old family. It may be that the main plaintiffs purchased their part just to compete with the defendant, which shocked him much. Then this member opined that if this land is given to the defendant which is now an adjacent land of his newly built house it may become easy to solve all other problems. The representative of the main plaintiffs told that it is naturally understood that we will discuss the ongoing issue to find out a way to settle it amicably. So we should confine ourselves to discuss this one. The matter placed before the meeting now is a separate issue. It needs the consents of the main plaintiffs to start a discussion on that issue. Then, an important mediator of this compromise meeting, suggested the representative to communicate with the main plaintiffs and let them know their opinion. Thus, the meeting ended for that time. After that, in response to the proposal one of the main plaintiffs phoned that mediator and said that on the basis of the ongoing case the compromise meeting should concentrate on the current issue. The issue raised may be discussed after the present issue. Likewise, the main mediator was informed also. Thus, the compromise meeting brought no fruitful outcome.

Session-05

The 5th session of the Shalish meeting was expected to review the summary of the compromise meeting based on which the final decision of the meeting was to be announced. The session held on Thursday, March 01, 2018.

Special Attendant	Along with the document reader two other new Shalishkars were invited by the defendants
Shalish / Neutral third party	Almost all shalishkars were present in this session. In addition to this large number of <i>Shalishkars</i> from outside the presence of the people from all occupations of the village made it a public meeting.

Information related to conflicting matters

Details of the <i>Shalish</i>	The chairperson put a brief statement to inform the newcomers and reminded the audience about decisions of the previous sessions. Later, the chairperson requested the mediator to present the results of his compromise meeting. In response, the mediator said that he tried to create an environment to settle the dispute through compromise but did not succeed. At this point, being asked to state his speech in details, he said that the main plaintiffs of this dispute are abroad. So it is impractical to finish the matter easily. Then a Shalishkar protested this speech saying that the acceptance of the statement of the mediator could make everything null and void. For four Shalish sessions have already been finished and in the fifth meeting, it has been observed by a Shalishkar that the plaintiffs are not present here. Very bad news then it is. Many others supported this protest on the ground that the <i>Shalish</i> has started knowing that the main plaintiffs are abroad, but the comment of the mediator means that it has been discovered right now. A protest and counter-protest made the meeting hard to go on. Then the chairperson requested everyone to stay calm and to co-operate him for its smooth continuation. Expert shalishkars opine that the conclusion of this dispute will not come only on the basis of document study, but the discussion should be continued on the basis of the restoration of the relationship of both the parties. It should proceed based on compromising nature of adjudication. Then the reading of the documents and writing of the Summary began. Consequently, the discussion also began. The defendant made a harsh comment on a shalishkar when he observed that the discussion is going against him. It made the shalishkars unhappy. A nearest person of the defendant left the meeting session with anger and it made the Shalishkars angrier. Thus through some unexpected disorderly situation, the meeting without any outcome ended. The defendant raised another issue of another piece of land in this disputing area. The chairperson the <i>Shalish</i> meeting received it and announced to discuss all the issues in the next meeting on condition that nobody will take the law in hand. The meeting agreed to impose a ban on the main disputing parties regarding the tree cut, not to take any part by any party
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	before the Shalish ends.
Next Meeting	The meeting ended for this time and the next meeting was supposed to be announced before the month of Ramadan, 2018.
Notes from observer of the shalish	Starting from February 2017 this Shalish meeting continued until March 2018. A full one year passed without any outcome. However, the fact became clear to everybody and the outcome was supposed to go against the defendant. Then some intermediaries took initiative to bring the parties closer to direct negotiation. It brought some benefits and finally after one of the plaintiffs came home on February 2019. After three separate meetings the dispute is now about to end with compromise. The relationship restored.

Case 04

It involves sailing a piece of land interchanged without written document 35 years back. This Shalish meeting was held on 3 September 2016. Some significant aspects of the Shalish were as follow-

Apple of discord	Denial of applicant to continue the unwritten deed regarding the interchanged land concluded between his father and defendants family 35 years ago.
Plaintiffs	A
Defendants	B
Shalishkars	C, D, E and others

Details of Shalish	The plaintiff's Statement: The plaintiffs told the Shalishkars that they want to get a piece of land returned which was interchanged by their father 35 years ago. Because the access to the land that had been given to them interchangeably disturbed by a nearest family of the defendant. That is why; they want to get their land back.
	Responding to the defendants' side: The defendants in reply informed the <i>shalishkars</i> that the land the plaintiffs wanted to get back was a piece of land interchanged 35 years ago in the presence of some of the then notable persons; the plaintiffs' father's matrimonial uncle was one of them. Both parties have been enjoying their portions prolonging the last 35years. If any neighboring family disturbed the plaintiffs they should supposed to be defendants here. It looks a bit wrong to consider us as the defendants. However, we are ready help the plaintiffs to resolve the problem, said the present defendants.
Role of the Shalishkars	It seemed to everyone and to an important shalishkar who was invited by the plaintiffs that no one from the defendants' families had created any obstacle to get benefits from the disputing land piece. This was not the only fact that compel the plaintiffs claiming to get their portion of land back from the defendants irrationally. But there was temptation by others.
	The plaintiffs delivered a so-called history that their father used to say that he was not agreed to change the place but was compelled to do it. He

	forbade them to let it registrar for the defendant officially. Taking an opportunity, someone tried to sow seeds of doubt saying that the portion given to the plaintiffs is smaller also than the portion possessed by the defendant party. The defendant replied that the plaintiffs' land was low laying seed land; in return, they were given a land similar in price from the homestead side. So there was no injustice at all. Secondly, in the last 35 years, there was no quarrel on that land and no Shalish meeting had happened since that interchange. Every one present there accepted the logic and admitted that there was no dispute regarding this land. Through this argument, it was proved that the land was interchanged properly. The plaintiffs' persuasion for this land and raising question against the interchange is just eyewash for they have fallen in a trap by others. It has also been observed that the neighboring family of that land made some problems which in turn were used against the defendants by the plaintiffs. The <i>shalishkar</i> opined that there was no dispute existing regarding this land between the disputants. But some miss behavioral activities were observed from other family that was closed to the defendant party. The main <i>shalishkar</i> who was a close relative of the plaintiffs remarked that the plaintiffs was not fair enough to inform him about the main fact but they (plaintiffs) made a deceived statement saying that the defendant families were creating obstacles for them to get benefits from their portion which was totally wrong. He even in front of everyone present there did not hesitate to declare his cousins guilty ones. He suggested that both the parties might let the portion of other part to get it registered for resolving the dispute forever. Alternatively, they might make a written document for each other to settle the matter quickly. At this stage, one of the defendants commented saying that the plaintiffs have no right to defunct an agreement made between his father and the defendant party 35years back. However, there was no objection if the agreement was to be reviewed for the betterment of both the parties in the way that the two boys would sell the portion they had to the defendant party under whose possession the land was. In return, they would get their portion back. No need to prolong the dispute for both is from the same clan and it will help them to remain in peaceful coexistence. It is not a question of right but a question of privilege based on which the previous agreement may be reviewed. The plaintiffs told that they would inform later if they agreed to the proposal. The main <i>shalishkar</i> had to leave for an urgent need and requested some elderly persons to find out a way to settle the dispute amicably. The Shalishkars went to the main point of the dispute and saw that the neighboring family was not occupying any part of that land and found no evidence of the objection except some miss-behavioral remarks from the neighbouring family.
The Next events:	First incident Five days later the Shalish meeting held, on Friday, after the Zuma prayer, one of the plaintiffs, asked those two persons entrusted by the

	main <i>shalishkar</i> to settle the dispute amicably to know how far it is to be settled. Standing nearby a man commented saying that the plaintiff had full right to sell his land to anyone whom he wanted. In counter, he was informed that the land piece was originally an interchanged piece of land that took place 35 years ago and it was not a matter of the plaintiffs to do anything they like. Again, there are now two adjacent houses for two families of the defendants. So it can never go under an auction that whoever ready to give the highest price will get the land. For the land is under others possession through an interchange. The man went off and then the intermediaries were requested by the defendant to take action as early as possible. Second incident In the meantime, the plaintiffs met one of the two intermediaries and proposed a new interchange from the side where there was a house built long 50years back. The defendants denied it and stated that the interchanged land was given from all the defendants' part and it was quite impossible to replace it from a side belonging to a family only. One family will not agree to save the interest of others sacrificing their own interest. Rather, it is said that a combined place (<i>Ijmali</i>) of all of the defendants can be given if they want to take. No positive response came from the plaintiffs. Thus, the initiative of the intermediaries remained unresponded giving no fruitful outcome.
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Case -05

It involves violence against a woman

Plaintiffs	A
Defendants	B
Middle men / Interim third party	C
Shalishkars	D, E, F and others

Summary of the case

Cause of the dispute	Violence against a woman for remarking about a newly married girl's love affair
Causes	Immoral relationship, Love affair, violence against woman
Background History	This woman came from her husband's home to visit her parents. The father's family members of the woman were accused of helping the newly married girl for falling in a love affair with a boy who had a relationship with this family. When she was gossiping with the family members of the newly married girl with a boy of same home, she remarked on the girl recalling her love affairs with her previous boy friend. It embarrassed her husband and his brother seriously and they warned her. She did not stop but jockeying. Then, as it is reported to the researcher, the boys attacked her physically. Because of weak position of the woman's father in the power structure of the

	village panchayat, three days passed no attempt was made by anyone to settle the matter. The accused persons bit this married woman, two times at her father's house. They also extensively damaged her father's dwelling. She was hospitalized and then filed a case at the police station when the village panchayet was not doing anything to her. Later on a village panchayet set to resolve it. However, because of its weak formation it was unable to resolve the problem. Subsequently a broadly based panchayet including members from outside of the village addressed the case and resolved it by identifying main two accused persons as guilty and making them openly apologies to the woman and her family and compensate for medical treatment and damage of the house. The accused till was not sure about filing of a case by the woman. Stage Two When the accused persons came to know about the filing of the complaint (the case) against them they became ferocious. The accused along with their fans again had beaten the woman for her filing the case at the police station. Her mother was also beaten This time. They seriously damaged her father's dwelling. It was a Juma day (Friday). Being informed about the incidence, the villagers after the prayer gathered at that home. In the mean time, the assigned sub-inspector of police along with a police member came for investigation. A village Shalish took responsibility to see the matter and review it Some of the influential villagers requested the sub-inspector of police to allow them two days to see the matter and resolve it mutually. The Sub-inspector agreed. The woman was taken and hospitalized for second time. After that, she was brought home to attend a Shalish session arranged by the village Shalish council. It brought no result but the accused were intimidating father of the woman to agree to withdraw the case. She did not agree. It left the accused in a tension and they start move here and there. They took shelter under local political figure.
Role of an interim neutral third party	A local political party leader played a vital role to organize another Shalish, which reviewed the decision of the previous Shalish. It satisfied the victims greatly for they had had the chance to present their statement freely. Some influential shalishkars got a hand over the unruly accused persons, which gave the victims a kind of mental satisfaction.
Details of the main Shalish meeting	1st Shalish Session This Shalish council formed consisting of the relatives and friends of accused persons and was highly biased in favor of them. They asked only two of the accused persons to apologies to Parvin and did not ask to pay compensation for medical treatment of the woman. As a

	result, she and her husband refused to accept the biased decision of the <i>Shalish</i> and did not agree to withdraw the case, even though it put strong pressure on her and her family to accept the decision. Consequence of the 1st Shalish Having failed to make the woman and her family to accept the decision of the so-called village <i>Shalish</i>, the accused became very angry and revengeful. Finding no other alternative the accused became finally frustrated and tried their best to appeal to the woman and her husband to withdraw the case. They even took shelter of a person related to the political party of present government. In the mean time an advocate of ASK (Aion o <i>Shalish</i> Kendro) was consulted on behalf of victim and requested to see the present status of the case. The Advocate talked to the victims and concerned Sub-inspector of police. The local political leader contacted the sub-inspector and the victim and requested to give him a chance to mitigate the matter in two days. He was given the chance and after few days, he organized another <i>Shalish</i>. A review <i>Shalish</i> Finally, a broad-based <i>Shalish</i> council including shalishkars outside the village was formed in consultation with two parties. The council found the accused guilty of their bad behavior and misdeeds. It asked two of the five accused persons to openly and humbly apologies to the woman and her family and pay compensation for her medical treatment and for damaging their house. The rest of the accused were warned for their misbehavior and misdeeds. Two parties agreed to the decision and the woman and her family agreed to withdraw the case from police station. This session has declared an award that satisfied the victims along with their supporters greatly. Last Episode: It has been reported by the victim that the main <i>shalishkar</i> of the 2nd <i>Shalish</i> played an important role to declare the award in favour of victims. He coupled the accused to pay recompense but the matter of great sorrow that victims got only a very small part of that money. Therefore, they refused to accept the money finally. Due to the greediness of <i>Shalishkar</i> victims become deprived of the justice sometimes.
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Case 06

It involves a family / matrimonial dispute

Main Cause	Seeking separation for impotency of husband as claimed by the wife
Shalishkars	Both family guardians and a few neutrals shalishkars
Date	10th January 2019
Interim 3rd man	An interim 3rd man played an important role in this case. He is a

	relative from both sides. He delivered his speech stating his relation with both families. His intention was to make the parties sit together for a peaceful settlement and he concluded the speech requesting the neutral third party to see into the matter for betterment of both families.
Shalish details	From the first night, the couple fell into the problem. The wife claimed that his husband is impotent one and this impotency will not be recovered at all. Though the husband admitted that he felt the problem and faced it practically but doctor assured him that it would be recovered through the consummation of marriage and he is under treatment now. The wife was not in a position to wait, so she attempted twice to commit suicide. Two family meetings have taken place in this regard. Finally, both the families agreed to go back their own home quitting the matter forever. Bride's family was more interested to go for separation. An interim third man took an initiative to make the parties to sit for a meeting to settle the matter amicably. After a threadbare discussion both family agreed to settle the matter through a compromising way that an amount of tk. 50000.00 (Fifty Thousand) out of remaining dower amounting tk.170000.00 (One lack seventy thousand) will be paid as bridal money and the gifts will be taken back also by bride's family. As the statutory law and <i>shari'ah</i> demand full payment of dower the village <i>Shalish</i> thought it suitable to resolve the matter through a <i>khul'a</i> (a divorce by wife's initiative convincing the husband) and thus the interest of both may be saved.
Conclusion	Both the families were to settle the matter amicably but to come to a midpoint of bargaining they needed to a neutral third party, and the matter ended with their help. After 20 days of the <i>Shalish</i> meeting the husband's family paid Tk.50000.00 in the presence of guardians of both families to the <i>nikah</i> and divorce registrar to hand over it to the bride and register the divorce accordingly.

Case 07

It involves an inter hamlets dispute resolution

Main Cause	Dispute on natural resources and community interest
Shalishkars	From nearby villages
Date	October to December 2018
Shalish details	A village consists of three hamlets with Masjid based activities. Out of them two hamlets have a natural source of income from a long ditch. This income is spent by two hamlets without the third one to develop and repair the village roads. Two hamlets were using this natural source for about 30 years. They were using it to build new road/s leading to the main road connecting two unions. The third hamlet, which has no share on the source, claimed a part saying that

they had some portion stated in CS (Catasdal Survey) record of land properties. Therefore, they are entitled to enjoy the source also. One of the rest two hamlets remains silent about the claim. It is as if they agreed to give them the share any way. The second hamlet predicted that the first and third hamlets might have any hidden agreement to make them weaker and give some lessons. The second hamlet discussed it thoroughly and came to a decision not to give the claiming hamlet any part in the source, which they were enjoying for long 30 years and none of the ancestors of the claiming hamlet claimed it ever. Fortunately, the denying hamlet tried to be stronger leaving their internal conflicts behind with the intention to hold their common interest saved. They decided to meet with some *shalishkars* of the nearby village located in a nearby Union Parishad but connected through the same *Mouza`* (land revenue units, divided into small plots of land in an Upozila) named *Paigoan Mouza`*. The claiming hamlet is from *Charchourai Mouza`*. In this stage, people of *PaigoanMouza`* are ready to help the denying hamlet to save their interest.

A compromising meeting was held in this regard. The *Shalishkars* coming from nearby village *Paigoan* of *Paigoan Mouza`* propose the denying hamlet to contribute an amount from the income per year which may be used for development work of the village Mosque. Based on that proposal the denying hamlet finally agreed to give tk. 5000/00 per year to the Mosque fund. However, the claiming hamlet denied accepting it. The *Shalishkars* felt it a matter of dishonor and promised to support the denying hamlet for they are from same *Mouza`* of disputed land. In the mean time, the denying hamlet abstained themselves from going to the village mosque and started to say their *salat* in their newly prepared mosque the land of which they acquired before for the same purpose. The denial became stronger than earlier.

A greater fight between the claiming and denying hamlets seemed to emerge. Both took preparation to fight, collect local homemade sticks for fighting. However, it has been stopped by some *shalishkars*. They made both the disputing parties agree to seat for a greater *Shalish* with presence an ex freedom fighter and ex chairman of *Charmahalla* Union, who was in abroad at that time.

After the ex-chairman had come back home, a *Shalish* meeting was held on the fixed date with presence of *shalishkars* involved with the case previously from *PaigoanMouza`*. Since this ex-chairman himself was interested to settle the matter from his own, he proposed the audience to let the issue to see by him. So, nothing serious was discussed on that day. The *shalishkars* from outside agreed with his proposal and let him go accordingly. Around two weeks later, no visible improvement was made. Some unexpected

	quarreling between the parties made the situation worst. Then this mediator immediately took a step to arrange a greater <i>Shalish</i> meeting again. In the presence of hundreds of people, he requested the <i>shalishkars</i> to solve the matter together. The meeting reviewed the decision of paying tk.5000.00 per year and finally decided that the natural source will be enjoyed by two hamlets as they were enjoying it before and an amount of tk.5000.00 per year will be given to the claiming hamlet for mosque fund.
Conclusion	The dispute took a new color in its last part when the nearby village Paigoan added their support with the denying hamlet claiming that it is their concern and of their <i>mawza`</i> case. It started a blame game between two nearby Unions and became an issue of prestige. Finally, by proper handling of the <i>shalishkars</i> it ended peacefully.

Case 08

It involves an inter family dispute resolution

Main Cause	Two young boys aged 18 and 16 physically attack a girl and her step mom who were of close relatives of the boys also.
Shalishkars	Elders and shalishkars of the same house
Date	January 30, 2019
Shalish details	Based on some feminine issues like quarreling between two brothers' wives living under the same roofs this dispute arose and spread out of their family. The two young boys took their mother's part and attacked on a girl who came their aunt's home. Their mother identified this girl as the main player of fueling hostility between these two families. Therefore, they did not want to see the girl there anymore causing an injury to the honor of the girl and the woman to whom she usually comes. Both the father and uncle of the boys are in abroad. Therefore, the issue got a total feminine characteristic, which normally women do within themselves. The two boys being influenced by their mother misbehaved with the girl who is actually a cousin of their father. They behaved with her family roughly, even attacked on her house and damaged partially. They physically assaulted the girl and her stepmother. The matter was so aggressive that the witnesses said that there might happen any serious injury on that day. A man from nearby village came two times to prevent the boys from their attacking on the house of the girl and her stepmother and others but in vain. He phoned another man to come and to help to stop the fighting. Finally, they could and made them come under a Shalish. They fixed a date and instructed both parties to tell the seniors and shalishkars of the home to be present on that day. Before the fixed date came, an initiative by some relatives of the boys had been taken but it brought no fruitful solution.

	On the date fixed, it has been found that the <i>shalishkars</i> and the victims are present but the party accused is absent. They were called two times by the <i>shalishkars</i> but they denied attending the meeting. Finally, under a social pressure, the boys attended the meeting. The <i>Shalish</i> started its activities and one of the relatives requested the <i>shalishkars</i> to take the matter softly for the boys are still very young. The <i>shalishkars</i> assured to consider it. All <i>shalishkars</i> termed it unprecedented. The <i>shalishkars</i> suggested the boys to apologize touching the foot of injured girl and her stepmother. Moreover, an amount of tk.5000.00 has been charged on the offenders as recompense for the damage done by them. They came to pay it the next day, but the victims refused to receive it for the honor preserving question.
Conclusion	The dispute was based on misbehavior. Though it was a case criminal in nature, the <i>shalishkars</i> took it as an issue of reconciliation and rectification. It ended without going into the details of the case and asked the disputing parties to uphold the honor of the family.

Case 09

It involves an inter village dispute resolution

Main Cause	A partial displacement of a village road for a common interest of three villages infuriating the people of other three villages using the same road
Shalishkars	All the <i>shalishkars</i> are from nearby villages
Date	28 th January 2019
Shalish details	The people of both parties got involved in a conflict because of the incident mentioned above. An interim third party took an initiative to make both the parties agree to sit for a mutual settlement. Next day the <i>shalishkars</i> visit the disputing place first and then the <i>Shalish</i> meeting starts systematically. It has been reported that the people of three villages namely <i>Kamarkhal</i>, <i>Murjai</i> and <i>Chargubind</i> took a big plan to dig some ponds on their common lands. In order to give good shape to the ponds they displaced a small part of a road used to come from and go to other three villages namely <i>Moniarsher</i>, <i>Kamrangi</i> and <i>Ahargoan</i>. They had no intention to block the road at all. They started their work and made the change. After that when they were continuing their work of digging, the later party made an objection about digging a land claiming that the land belonged to them. The dispute started from this objection. This objection led the parties to be involved in a big fight at any moment. At this warring situation, an interim third party took an initiative to resolve the conflict in a

	peaceful way through Shalish. Both the parties gave their consent to sit together. Hearing the statements from both parties, the shalishkars found that the land is a registered land of the diggers and they have the right to do anything on that land. At the same time, it is not to be ignored that the road was serving the people for a long time. When the first party was digging the ponds, the later party was observing it making no objection. Though the first party displaced the road in their own part, the other party seemed to protest it only out of their egoism. The Shalishkars convinced the first party to widen the road so that the other party can use it comfortably. It failed to satisfy the other party. The matter is still under Shalish now.
Conclusion	Shalishkars hoped that the conflict would be settled with accepting the present change by the protesting party. For the shalishkars' observation is that the land is a recorded land for the first party and they took a development plan and invested much money for the purpose. The later party was not making any objection at the beginning. So it is not wise to fill the pond and replace the road to its previous location.

Case 10

It involves a family dispute resolution

Main Cause	Intention to marry again
Shalishkars	Guardians from two families
Date	It's a case that happened around 10 years back, reported by a Shalishkar from Kumira, Sitakundo, Chittagong to the researcher
Shalish details	On the interest of 2nd marriage, the husband created this dispute intentionally. He claimed that his wife is not able to give birth to any child. He began to follow technique to marry again. The shalishkars asked him how he would manage another wife where he had a small room only. He replied that he would keep them in different residences. Guardians of the husband were not satisfied with his reply. Therefore, guardians from both sides suggested him for medical treatment of both husband and wife before his second marriage. In the mean time, she gave birth to a girl. He remained silent for few years. When the girl become 6th years old the husband began procrastinating again. Guardians from both families sit for a Shalish meeting again. Shalishkars from both sides tried their best to make him understand that only Allah can bestow man a child or not. They advised him not to marry again. For it may not be the fault of his wife. May be the fault is his. After that, the man went abroad and sent a divorce letter to the wife, which made the wife thundered. As the letter clearly described his intention for divorce, the <i>Ulamas</i> gave fatwa that she is divorced finally and there is no way to declare it invalid. After the divorce was finalized, the

	guardians of the wife took her with them. Then the husband made several efforts to take the wife back at any way, but the guardians did not agree for they asked many <i>Ulamas</i> and all of them opined that the divorce was done completely. Thus the separation occurred.
Conclusion	The <i>shalishkaras</i> from both families tried to settle the matter through mutual understanding. The husband did wrong. Though he tried to back the wife based on the state law, it might be possible through a new <i>Aqd</i> . However, the <i>Ulamas</i> (Islamic Scholars) did not get it lawful from Islamic <i>Shariah's</i> point of view.

Case 11

It involves an inter groups fighting in a village

Main Cause	Intergroup fighting in a village
	A group consists of a clan (<i>gusti</i>) and the other group consists of the rest of the families of the village.
Date	The clash was started at night after 12:00 O'clock , First week of March 2019
Shalishkars attended the spot, convinced the parties for a Shalish meeting, take preoperational steps for main Shalish meeting	Getting phone from the fighting village a Shalishkar along with some other shalishkars went there. The requested the parties involved in the blood shedding fight to stop it. Police had attended before the shalishkars attended there. All together they were able to stop the fighting. Police left the place letting the shalishkars convincing the parties for a Shalish meeting. Shalishkars also requested the parties not to do anything against a peaceful environment. In the second stage, the shalishkars went to the parties to collect their consent to fix a date to sit together. Though the smaller group agreed immediately the stronger one passed time to give their consent to sit together showing the excuse that all of their people are not present now so they will inform the shalishkars about time fixing to sit together later. The shalishkars technically accepted their excuse and took assurance not to do anything against proposed sitting. They honored the shalishkars finally. In the third stage these shalishkars drew the attention of the parties to comply with the tradition of Shalish and giving them authority tacitly signing an agreement regarding obeying the decision of Shalish meeting. Therefore, they signed on a sheet written the title of Shalish, its date and place. Then in fourth stage, they asked a security money from the parties for the case is a criminal case and some of them are wounded from both sides. It (security money) needs for some medical treatments and to meet some other expenses. Therefore, the shalishkars asked one lac taka each from the parties to deposit to a senior <i>shalishkar</i> who generally act as chairperson of the Shalish meeting in that area. The parties did it accordingly. Though all preparations were completed to start main Shalish for the hospitalized wended people, it could not be started.

	The <i>shalishkars</i> advised the parties to give their proper attention to medical treatment of the hospitalized people from their own cost in this time and preserve the supporting documents so that <i>shalishkars</i> can consider it later.
Shalish details	Before the <i>Shalish</i> starts finally by the main <i>shalishkars</i> , this interim third party delivers their speech to the main <i>shalishkars</i> describing them how did they find the parties and how the parties gave their consent for this <i>Shalish</i> meeting. They submit the agreement sheet, security money and other documents related to the <i>Shalish</i> to the main <i>shalishkars</i> and request them to see the matter and settle it amicably.
Conclusion	This <i>Shalish</i> is yet to conclude. However, It contains so many formalities that traditional <i>shalishkars</i> follow practically.

Summary of the cases studied

Generally, all these *Shalish* meetings give us a structure and a procedure. An applicant or a complainant, an accused or defendant, *shalishkars*, the issue of a dispute and the outcome are the main elements of all *Shalish* meeting. Again, to reach a decision the *shalishkars* have to follow a procedure. Procedures may vary from *Shalish* to *Shalish* but the main elements of the *Shalish* remain same.

The first *Shalish* was about a case of making mountain out of a mole. It starts from disagreement of two boys and turns into a big fight. The *Shalishkars* follow a very simple procedure to settle it. They avoid going deep of the case for it was not related to any property. However, an interim third party arranged the *Shalish* for the disputing parties were engaged in fighting, had to be stopped fighting first, and then were made to come to an agreement under a *Shalish*. Influential and sincere advices from the *shalishkars* act upon the disputants positively and open the space for easy settlement.

The second *Shalish* about the land dispute was the second meeting in this regard. Another *Shalish* meeting was held before on the same issue. For some technical fault from the claimant's part, the defendant got aggressive. *Shalishkars* tried to convince him from moral viewpoint and let the case be settled by the men of the same hamlet. They did not follow up the case later, which may be seen as a great fault of traditional *Shalish* system.

The third *Shalish* meeting took several sessions and in every session, the body of main *shalishkars* has made an oral report briefly about previous sessions. It may be considered as the efficiency of the *Shalish* and competency of the *shalishkars* that they maintain a system recorded in their memory. The *shalishkars* tried to settle the matter through either compromise or adjudication or by both, but they failed to come to any decision for uncompromising mentality of defendant party. The defending party in this case was in a mood not to comply with the decision of the *Shalish*. After the fifth meeting, it was stopped for about one year without any sitting. Finally, one of the main applicants of the *Shalish* came home from abroad in February 2019 and it started to move again. The neutral neighbors along with the disputants took initiative again and resolved the issue amicably. It ended in March 2019 starting from February 2017. The important feature of this *Shalish* meeting was that the *shalishkars* followed a systematic procedure, which may impress anyone interested to know about traditional *Shalish*. Based on necessity *shalishkars* invited some external expert from outside and took their help.

The fourth *Shalish* was the exchange of land non-documented and non-registered. After the compulsion of registration of the documents under land law in 2005, some record

owner immorally claimed right to their interchanged or sold land without any documentation. It becomes target of some troublemakers in rural area to inspire the document owner to do treachery. This kind of treachery normally happens because of moral degradation. Some other may play from the behind as a planner causing social harms. Present land law amended in 2005 has some directions to avoid this kind of treachery. People should have knowledge on both land law of the state and Islamic viewpoint about land property and land treachery. Every man has a natural attraction for land as human being is created of soil, will go back to the grave of soil and again will be back from the grave for final judgment. Therefore, land plays a vital role in his life. Though *shalishkars* can easily find out the solutions, those who do treachery regarding a piece of land do not like to settle the dispute through a *Shalish* fairly.

The fifth case represents a violation against a woman in the same hamlet. Violence against women may happen inside the family by husband and his family members. Outside the family (VAW) violence against women may occur on various issues relating with domestic birds or animals trespassing, quarreling and other behavioral faults. However, violence against women is seen as a very hateful criminal offence in the eyes of state law and Islamic laws. NGOs are very interested to deal such kind of cases for there are some feminist-NGOs to stand against these kinds of offences. It has been observed that a woman attached with an NGO running with woman affairs was related to the case to do favor to the victim woman.

This sixth case started with a problem from the very outset of this conjugal life. The bride was very young and immature to manage a situation gently. Finally, the gap

between them began wider and wider until the divorce happened within five months after the marriage. Sexual dissatisfaction is a major fact for separation between husband and wife.

The seventh case indicates that public property receives no proper attention in rural area. People fail to own it and availing this opportunity some people try to grasp the public property wrongfully. This case was a result of such an internal competition to grasp a public property. Finally, for collective resistance people saved their property.

The eighth case is related with interfamily dispute. Influenced by their mother, young boys being attacked their nearest blood related neighbor. The mother of the boys caused the incident to happen. For her provocation, the boys transgressed the limit and breached social and Islamic norms. Proper family education is highly needed.

The ninth case was related with community interest and public property. Only ego of the opposite party was the main reason of the dispute. A neutral third party tried to resolve the matter but for the egoistic refusal, the opposite party failed to comply it. It increased nothing but trouble for opposite party. From the last report, it can be said that the opposite party is not using the road for it leads them to go to their counterpart area. In the meantime, they become divided within themselves.

The tenth case was a matrimonial dispute by a unilateral pronouncement of divorce three times at a time from the husband. He stated that he did it intentionally with his full conscience. *Ulama* opined that it would be effective as three *talāq* causes separation as well. There was no ambiguity in his utterance. However, based on the state law, Muslim

Family Law Ordinance 1961, it was supposed to be accepted as a revocable *talaq*. The husband tried to get his wife back. But based on *Ulamas* opinion, wife's family did not agree with it. They said that it is a matter of *halāl* and *ḥarām*, how can we trust on the statutory law? It may be noted here that triple *ṭalāq* in a session is counted only one *ṭalāq* according to the law. Based on a fatwa of Imam ibn Taymiyah almost all Muslim countries codified it to their statutory Muslim family laws (Chua and Gudykunst 1987). It needs a separate examination.

The eleventh case shows how *shalish* interferes all types of cases in rural areas regardless of its gravity. *Shalishkars* play an important role to stop the fighting instantly. They must have to see the matter also. That is why we see where village court has to settle the case within its jurisdiction, *Shalish* has unlimited jurisdiction allowed by the social norms. Scholars may criticize *Shalish* for its interfering to all the cases from legal viewpoint. However, these *shalish* are the first tool to stop the fighting quickly. Of course, they need to know the legal boundary and take their steps within its obligation. In our study, we found that they are sincere about it also. They deal a case of severe injury or murder tactfully without violating the state law.

An analysis of the cases from structural and operational mechanism

Table: 3.1 Issue of the dispute and its relationship with disputants

S.L	Issue	Nature
Case 01	Quarrel between two children resulting a bigger fight between two hamlets	Behavioral, Social, criminal
Case 02	Land property transfer delaying officially though the possession established by the purchaser for 25 years	Moral, social, civil
Case 03	Illegal occupation of land property at the absence of the main owner	Moral, social, civil
Case 04	Selling a piece of land interchanged without written document 35 years back	Moral, social, Civil & criminal
Case 05	Violence against a woman	Moral, social, criminal
Case 06	matrimonial dispute based on wife's physical dissatisfaction	Family, civil

Case 07	Intra-village inter hamlets dispute based on common interest	Social, civil
Case 08	inter family dispute base on behavioral inconsistency	Social, Behavioral, criminal
Case 09	inter village dispute based on common interest	Social, civil
Case 10	family dispute based on husband's ill motive to marry another one	Family, civil
Case 11	Intra-village intergroup fighting based on illegal power exercising	Social, criminal

The table: 3.1, shows that two cases (cases 06 & 10) are related with family and the rest are related with social issues. So based on domain, the dispute may be a family dispute or a social one. Family issues are any way related with matrimonial issue where husband and wife are two parties there. On the other hand, in social issue two groups consisting of two families or two hamlets or even two villages are the parties. Again, the social disputes as observed by the researcher are based on behavioral transgression, mental constraint on property transfer, greediness to occupy property of other people and immorality. A family dispute results in any consequence at family level. On the other hand, a social dispute creates a disorder in a society. Both family and social disputes based on its nature are divided into civil suit and criminal case. To resolve a dispute its relationship with the parties and the nature of the issue must be considered. For example, a family dispute based on matrimonial relationship necessarily brings out some related issues to be solved by the shalishkars, namely issue of dower, maintenance, custody of children and so on. Social issues are also to be resolved with all its related issues. It has been found that the shalishkars used to divide the cases into two general categories, civil and criminal.

4.4. Structure of *Shalish*

Regarding structure of the *Shalish* it is clear through all the eleven cases that the applicant (plaintiff), defendant, *shalishkar/s*, issue of the dispute and an expected

outcome are the main elements of a *Shalish*. If no outcome is generated, the whole process must go in vain. If the disputants solve their dispute themselves without intervention of any third party, it is not a *Shalish*. A disputing issue automatically creates two disputants one of whom will raise the issue to a neutral third party against another. So they along with the disputing issue are three essential elements of a *Shalish*. It has been observed that case 01 and case 11 were involved with two fighting groups in which an interim third party (*Shalish*) had to take responsibility to manage the fighting parties. For a *Shalish* means intervention of a neutral third party to settle a dispute peacefully. However, the aggrieved party is considered as applicant for the *Shalish*. So finally, an applicant, a defendant, *shalishkar*, issue of the dispute and the expected outcome are the main elements of a *Shalish* structurally.

A *Shalish* constitutes based on a request for settlement of a dispute between two disputing parties in case of civil matter. It has no fixed dimension and its size and structure depend on the nature and gravity of the problem at hand (Golub 2003, 5). Normally a *Shalish* is constituted with a chairman and some *shalishkars* selected from among the elders and leaders of the local areas. The disputants are also given the options to choose some *shalishkars* at the *Shalish*. The *Shalishkars* themselves select a chairperson for the *Shalish*. The structure of *Shalish* is very simple and flexible. Based on the observation of the *Shalish* events and interview taken with various categories of *shalishkars* we may identify its essential structural elements as follows-

- 1 Disputants (The Accuser and Accused / Applicant and Defendant)
- 2 The *Shalishkars* (Arbiters)
- 3 Issue/ Cause of Dispute (Civil /Criminal, Public/Private)
- 4 The Sulh (agreement/settlement/outcome)

4.4.1. Disputants

Disputants are parties involved in a dispute. One who raises the dispute to the neutral third party (*Shalishkars*) is called applicant for village court procedure and his statement claiming his right is application. This is to maintain simplicity or keeping a similarity with traditional Shalish or coping with the objective of the system. In traditional Shalish, the statement of the applicant is called *Arzi* (Abdul Hak and Khan). In relation to NGO *Shalish*, the NGOs are also used to use the language of rural people. On the other hand, the accused in a dispute is called defendant and his statement is *Jobab* meaning reply. In traditional *Shalish*, the applicant is called *Badi* (complainant / litigant) and the defendant is *Bibadi* (the defendant) which is used generally in formal court. However, as the main objective of village court, NGO-*Shalish* and traditional *Shalish* are to restore the relationship and social harmony, the word applicant for complainant and defendant for the other is best fit (Interview 22_14022019).

4.4.2. The *Shalishkars* (Arbiters)

Shalishkars are those who do *shalish*. Following the act of *Shalish*, they are *shalishkars*. The word *Shalish* is actually a neutral third party in between two disputing parties who try to settle the dispute amicably. Normally the disputants choose a *Shalishkar* or *shalishkars*. Sometimes *shalishkars* have to interfere in a *Shalish* for deadly fighting parties. Whatever the case is, the *shalishkars* are some adjudicators, mediators, arbitrators or conciliators in a dispute based on the nature of the dispute and the disputants. The people who are members of *Shalish* committee to conduct a *Shalish* are called

Shalishkars (adjudicators). According to their activities, they are called *matbors*, *bichari*, *dewani*, *dorbari* etc. They are local notables elites who have several roles such as, according to Karim (1991), “religious and ritual activities, politico-jural functions, and economic and subsistence activities in the society” (Karim 1991, Alim 2004b). They are generally, village elders and respected personalities (Siddiki 2003). *Shalish* committee members usually don’t have a professional knowledge of legal matters. Nevertheless they know their own community and its social equilibrium better than any court and this can add significant quality to their decisions (Braun 2010). *Shalishkars* are generally selected on the basis of their seniority, experience, wisdom, or economic, religious, and political status (Rahman, Firoz, and Hoque 2010).

4.4.3. Issue of Dispute

A dispute may be defined as “a fact which is alleged by one party and denied by the other; and by both with some show of reason”. In another word- “Dispute is a problem to be solved together, rather than a combat to be won” (Akhtaruzzaman 2013, 27). A dispute necessarily demands two opposite parties and based on the subject matter, a dispute may be a commercial, financial, industrial, matrimonial dispute, interpersonal dispute and so on. Whatever be a dispute needs a solution.

4.4.4. The *Sulh* (agreement/settlement/outcome)

The *sulh* or settlement is the objective of the whole process in a *Shalish*. An access to justice is meaning full term when a justice seeker can exit with a justice in its real sense. It is justice per se not a legal justice. When *shalishkars* reach a decision to avert a dispute

and a written or an oral agreement is done it is called sulh *namah*. Sulh means agreement and *namah* means form. Like *kabin namah*, *wakalat namah*, *waisat namah* etc. Before the shalishkars declare a decision, they make the disputants mentally close to each other.

In this connection, a *shalishkar* said:

“Before we declare the final award, we ask from the parties to do hand shake and embrace one another. It means relationship is above everything. Then we declare the award ensuring justice” (Interview 31_15032019).

Regarding imposition of punishment in a Shalish, shalishkars are very sincere about state law. In this regard, one of the *shalishkars* said:

“It happened previously that *Shalish* sometimes imposed punishment in criminal matters. Nowadays shalishkars are sincere about such an imposition, for state law does not allow them to do it” (Interview 05_30012019).

Disputants- parties involved in a dispute as applicant and defendant, **Shalishkars**- a neutral third party to settle a dispute peacefully, **Issue** of the dispute and **the outcome** of the dispute resolving process are the four or five elements of *Shalish* system in rural Bangladesh from structural point of view.

A traditional *Shalish* contains following procedure -

4.5. Operational Mechanism

Regarding operational mechanism, it has been found from our observation that *shalishkars* are used to divide the cases into civil and criminal. It may be that they have this idea from the formal civil and criminal court of the country. To operate a case they follow a mechanism based on their inherited knowledge from their ancestors. The

shalishkars hear from both applicant and defendant equally. Then they examine the statements and reach a decision or go ahead for further query if it needs so. They collect the proper documents from both disputants for and against the claim respectively. They form a board to solve the dispute consulting with one another collectively. To reach an outcome they try their best to do it collectively and declare the decision in a voice by the chairperson. As the main objective of the *Shalish* is to uphold the social order and restore the relationship, *shalishkars* make the contending parties closer and embrace or shake one another's hand with a pleasant. Finally, they declare the decision. Operation of a *Shalish* may be discussed under three points as coming bellow-

4.5.1. Pre-operational Activities

To operate a *Shalish* systematically *shalishkars* have to get some prerequisite tasks done. Like the case must come to them by any by the disputing parties or some time by an interim neutral third party. They must have the consent from both disputing parties. They may have to take security money from the parties assuring that none of the party will avoid the *Shalish* in its mid-way or have to mitigate some emergency cost from this deposited money. A question of implementation of decision and follow up the case after the decision passed is necessary also. *Shalishkars* did not fail to do it also.

4.5.1.1. Case Filing in *Shalish*

Normally a *Shalish* lodges in a circle where the dispute happens. If the matter is about family dispute, conjugal maladjustment, elopement etc. where the prestige of the

family/kin is related- the settlement process must take place initially within the close relatives of the disputed families. Rural people do not prefer their family matters reaching out of their hamlets or villages (Barkat et al. 2012). It starts from closely related clan initiation and at the failure of this stage village may be involved. At the failure of the village *Shalish*, it enters into the next circle of union parishad or Thana level. A Shalishkar of a wide circle is called *porgonar bichari*, or *Birashir Bichari* which means a Shalishkar of a greater circle. The matter is almost same both for civil or petty criminal disputes. But for severe violence of law through involving in fighting or clash directly, shalishkars have to convince the parties for a Shalish to maintain a social harmony and order. For these reasons sometimes shalishkars have to control everything i.e. choosing *shalishkars*, time and place of Shalish, representatives of the parties and their numbers and so on. One Shalishkar report that-

“In some cases, we forbid the parties not to invite other, but we take the initiative to select the shalishkars for sometimes it happens that someone may not understand the situation” (Interview 10_01022019).

4.5.1.2. Division of cases

Based on the nature of disputes, the shalishkars divide the cases into criminal and civil cases. It may be that they divide the cases following civil and criminal courts of formal judiciary. From observation of eleven *Shalish* events it is found that they sincerely use the word civil and criminal (*Dewani* and *fawzdari*). It also seems that traditional shalishkars count petty criminal cases as civil cases to convince the parties easily. It is as if they try to give a message to the society that it is a fault not a crime and we should

together make it correct. For a crime needs a punishment and the shalishkars always try to avoid it. Though the shalishkars know it well that a criminal case may be highly sensitive, state law and state authority should deal it however, they interfere it tactfully. They deal with all the disputes occurring in a society. In our question, what type of cases the shalishkars deal the answer was same from all.

“We handle all types of disputes that happen in our society. Even murder related dispute, when the court releases the murderer for the victim party failed to prove it definitely; we handle it and settle it peacefully. We interfere all the disputes occurring in the society relying on Allah the Almighty for the wellbeing of the people” (Interview 8_31012019).

Another Shalishkar said:

“We do Shalish of all issues- including family issues, neighborhood issues, land property, quarreling, struggling and so on. It has no particular type. We deal murder case and settle it. All that happen in our society we deal it through *Shalish*. The most important thing in Shalish is that if the parties accept Shalish positively, none can raise any question about it” (Interview 31_15032019).

To deal a serious criminal issue shalishkars maintain a balance between their initiation and the legal expectation. In this connection, a Shalishkar said:

“However, there are some cases, which a court can never accept it like a murder case. For law does not allow a court to let a murder case to be settled through an informal dispute resolution system like *Shalish*. In that case, we prepare both the victim and accused parties to convince their witnesses to present their statement in a way that the cease legally may come out from the court to *Shalish*. Then we settle it peacefully” (Interview 32_15032019).

From the above discussion it is clear enough that a *Shalish* deals all types of cases be it is a civil or criminal, family dispute or social dispute. Shalishkars handle all social problems and try to settle them socially. Disputants are always sufferer and loser by court case, so finally they are also ready to accept *Shalish* mediation.

4.5.1.3. Consent and Authorization from the disputants for doing *Shalish*

Consent and authorization for a *Shalish* from the parties involved in a dispute is very important. *Shalishkars* are not appointed to do it from any authority. They do it being appointed socially and morally. It may be said that whenever a case come to them by the disputants that is also a consent from the disputants and an authorization to do *Shalish*.

However, it is found that if the dispute is a criminal in nature, and about to turn into a big fight between two disputing parties any individual or a group of shalishkars, go to them and request them not to engage in fight, which may cause serious loss for both parties. Instead, they along with the prominent local *shalishkars* may see it and try to settle the dispute peacefully. They convince the parties, fix a date, time and a place for doing *Shalish*. They try to make the parties understand that it may cause a serious consequence if the *Shalish* fails.

“When we see two persons or two groups are quarreling which may take shape of a bigger fight, we stop them requesting them not to fight each other. We assure them to see their matter taking other local notables. We seat for settling the dispute in a fixed time and try to settle it amicably (Interview 13_11022019).

“If it happens that two parties are about to fight against one another we go there and try our best to make them understand that if you fight or go to the court both of you will be sufferer. Then we bring them under binding written down. We write the heading of *Shalish* only on a plain paper and take the signature of both parties and then we proceed. It happens when we see a fighting has happened and another greater fighting may happen again (Interview 31_15032019).

Taking consent from both disputing parties is indeed to authorize the shalishkars to do a social *Shalish*. They just write the title of the *Shalish* and then take the signature of the parties. They do it in white paper, or in cartage paper of 13 inches or in 300 taka's stamps. They never use any blank sheet. It must bear at least the title of the *Shalish*, its place and date. It sometimes happens that one party without knowledge of Shalishkars goes to the court, which ultimately harasses the other party when they were supposed to follow social *Shalish*. To prevent this nuisance they take consent of the parties black and white. This is in relation to the traditional *Shalish*. Document taken by a *Shalish* is very simple in nature. Most often, when the shalishkars settle a matter peacefully they tear the

document in front of gathering with an exception that when they really feel to preserve a document, they draft it as clear as it needs, and keep a copy to the chairperson of the *Shalish* and the parties are also given their copies (Interview 31_15032019).

4.5.1.4. Security Bond

Security money varies from *Shalish* to *Shalish*. It may range from taka five thousand or ten thousand to one lac or five lac or even ten lac. Generally, it does not happen any misuse of security money. In 99% cases, the security money is preserved and returned back exactly. They maintain all kind of transparency in terms of security money. The chairperson has duty to bring the security money and show it to all in every session. Therefore, there is no technical fault to give chance for misuse of security money. However, it happens that after declaring the decision the chairperson and the shalishkars go out without giving the money back to its owner at once intentionally or unintentionally. The disputant feels shy to ask the chairperson to give their money back at that time. Then after math, if the chairperson tries to deal it another way he likes, he can do it. This is a fault from the chairperson. *Shalish* is not liable for it. It may also happen unconsciously that the chairperson and the shalishkars go out after they declare the decision. For shalishkars are generally unlettered. However, question of immorality is always there. Poor and weak people are generally involved in dispute and they have no ability to say against these shalishkars. Therefore, the shalishkars avail the chance telling them that some of the money has been spent in this or that way. This kind of misuse of security money is rare in case.

4.5.2. Common operational activities

There are some common activities to operate a case either it is a civil or a criminal one. In relation to operation a case, it may be considered as fundamental elements of operation. To understand a case and find out the inner fact of dispute and a way out for it *shalishkars* can never avoid these points any way. These are as follows-

4.5.2.1. Hearings (from both applicant and defendant)

Hearing from both applicant and defendant is the first step of a *Shalish* procedure. Infact it is the first step for all judicial procedure. *Shalishkar* has to listen to both applicant and defendant carefully. Listening may be enough to conclude a *Shalish* sometimes if it has no relation with any property right and both disputants are fair enough in their statements.

4.5.2.2. Argumentation (Cross-examinations)

After hearing from both applicant and defendant, *shalishkars* may need some clarification. It may happen that one of the disputants or both are hiding some facts. In that case, *shalishkars* ask some questions to any one or both of the disputing parties and extract some fact for all. In this stage if they feel that the real fact has been disclosed, they try to reach a solution without wasting any time. It has been found through our interview with one educated *Shalishkar* praising local illiterate *Shalishkar* so highly saying that-

“Despite no academic education rural *shalishkars* are so talented that you cannot imagine it. Their ability of understanding a problem, its internal fact and how should it be resolved are praiseworthy. It seems that their knowledge is God gifted” (Interview 16_02052018).

A Shalish may end in this stage also without going in details. Of course, it needs mental fairness from both disputing parties and shalishkars as well.

4.5.2.3. Evidence and documents checking

When a dispute relates with claiming a property, the disputants are serious about their rights and none of them is to compromise, such a dispute needs evidence. The *shalishkars* check it clearly and hire expert from outside or surveyor to measure if it is a land dispute. The *shalishkars* in this kind of dispute has to adjudicate following the law and ensure the rights of everyone.

4.5.2.4. Process of decision-making

In every stage mentioned above a dispute may end. Before the decision is declared, the chairperson consults for extracting opinion of the shalishkars or *Shalish* board and finally declares the decision. Every problem seems a new one to the *shalishkars* and they have no written solution for it. Therefore, they find the solution out through threadbare discussion. It may be termed as consultation to collect and process opinion of others to solve a problem. These hearing, augmenting, evidence taking and decision-making happened as total process of the *shalish*. There are some common activities for processing a *Shalish* of both civil and criminal in nature. Details of both aspects with their additional activities are as following:

4.5.3. Procedure of the criminal case in *Shalish*

It has been stated before that *shalishkars* have to get consent from the parties and authorization of imposition of a decision on them to settle the dispute if they find no other

way to settle it through compromise. It happens that none of the disputing parties is in a position to go to shalishkars but a group of shalishkars goes to them to make them agreed to come under a *Shalish* (Mediation). This interim third party (also called *Shalish*) makes the uncompromising, hostile disputing parties agreed to give their consent and written authorization to do a *Shalish* by wider level of shalishkars. Before the *Shalish* starts finally by the main shalishkars, the interim third party delivers their speech to the main shalishkars describing them how did they find the parties and how they took their consent for this *Shalish* event. Then they submit the agreement sheet, security money and other documents related to the *Shalish* to the main shalishkars and request them to see the matter and settle it amicably.

4.5.3.1. Formality of main *Shalish*/ Procedure of main *Shalish*

Now the main *Shalish* is to start. The main shalishkars select a chairperson from them and the chairperson ask any disputing party to present their statement. Then they listen from another party. Generally, more victimized party is given chance to present their statement first. For in this case none of the party has made any complaint. After hearing from both the disputing parties, chairperson offer the audience to take part in taking witness if it seems necessary, and arguments from the shalishkars. These are the common operational instrument described under the heading ‘Common Operational Activities’. A jury board or *Shalish* board deemed necessary for leading the *Shalish* to a fruitful end.

4.5.3.2. Formation of Jury Board/*Shalish* Board

After the common operational activities is finished, the chairperson of the *Shalish* offers the audience to form a jury/*shalish* board to assess the statements and arguments.

Sometimes the disputing parties are given chance to choose some members from their own and some members are added from the shalishkars. If it seems that party selection may create another problem, then they are no chance to the parties to choose board members. The shalishkars who were from the very beginning of the problem and contributed to form the Shalish are included in the jury board. The jury board after threadbare discussion come to a decision to settle the matter either through compromise of action or through imposition of decision which one fit best to settle the matter amicably.

4.5.3.3. *Somojuta (Compromise) / Bichar (Adjudication)*

As the shalishkars know the causes and factors of a dispute more or less, they try to settle the matter through either *somojuta* (compromise) or *bichar* (arbitration). *Somojuta* is more informal than *bichar*. To settle a dispute through *bichar* they take evidence, ask the witnesses much, argue the matter or even they get involved in debate each other. Finally, they reach a decision unanimously or on majority.

The chairperson of the *Shalish* has jurisdiction to select the members of the jury board. Sometimes the audience may choose them consulting with the chairperson. The chair of the Shalish by default is a member of the jury board also. It may happen that the jury board reaches in a unanimous decision. Sometimes they may differ but the decision is taken on majority's opinions. The jury board discloses their suggestions to the audience or to the chairperson and the chairperson formally declares the punishment or a formula to compromise the matter and settle it peacefully.

4.5.3.4. Enforcement and Monitoring

In Bangladesh, traditional *Shalish* agreements are enforced through village peer pressure. Agreements are announced and publicly proclaimed. Families lose face if they do not comply with agreements. The village *Shalish* system relies on this traditional compliance mechanism and succeeds despite the lack of formal court enforcement. Because when village elders mediate and the settlement is agreed by two disputing families it is considered dishonorable for the family that fails to comply with the agreement. If one party does not comply with the agreement, the honor of the entire family is discredited (Halim 2015). To follow up a *Shalish* decision is also a very important part of a *shalish* to get its outcome accurately. It has been observed through our *Shalish* observation that *shalishkars* have passed huge time in doing a *Shalish* and to conclude if they needed help of someone else. They gave the person/s a duty to complete it but only for lack of follow up the whole process may go in vain. In reply to a question about follow up a *shalishkar* assured that they do it. He said:

“Suppose that for a criminal offence a man has to seek forgiveness from a woman. In this case, we request any local *murobbi* (elderly person) to follow up the man and report us about his seeking forgiveness. Another way if the case is related with a land dispute. We make someone responsible to supervise it and help us giving report about its implementation. Most often traditional *Shalishkar* for being uneducated and morally derailed fails to follow up their decision” (Interview 32_15032019).

4.5.4. Procedure of a civil case in *Shalish*

A civil dispute starting from small space may turn into a criminal matter melting with some transgressions. When a civil case has a probability to become a criminal case a *Shalish* (Neutral third) party may take initiative to settle the matter. Normally if a civil

matter goes beyond the family or clan control, the applicant standing after *jum`a* prayer, requests the gram panchayat to see his complaint. It is when he feels that he is being tortured mentally or anyone is denying his rights.

4.5.4.1. Gram panchayat (village community) takes over the task of *Shalish*

The gram Panchayat calls the accused one and demands an explanation from him. Then if it needs, the *shalishkars* fix a date, sit together to settle it and tell the parties to choose some *Shalishkars* from outside the village on their own choice. Based on necessity a *Shalish* board consisting of experienced *shalishkars* is formed. If the matter is of land dispute, a demand may rise to take help of an expert to study the deeds and record of rights. Then they call a surveyor to assess the land. Both parties bear the expenses of survey work. Generally, civil matter is solved in this way. The *shalishkars* take a security money from the parties when they deem it necessary. Sometimes if the *Shalish* suspects any anarchy criminal act based on that civil case, he can impose security money on the parties (Interview 32_15032019). *Shalish* is supposed to lead the contesting parties to conciliation. *Shalish* involves consent-based-arbitration or mediation procedures, which may extend through numerous sessions over several months, while disputants pursue negotiations both within and outside the *Shalish* setting (Wojkowska 2006, 47).

4.5.4.2. Civil Case Procedure in *Shalish* In A Nutshell

The litigant for a civil case makes complaint against the accused to the rural elites. The elites come to sit together with the parties including the enthused villagers on a certain date in a certain place for solving the problems. They hear the statements of the

disputants and through a series of questions and answers try to extract the real facts. A small board called jury board of the *Shalish* finally makes a decision. Generally, in important and serious cases such a jury board is formed for critically analyzing the facts and making a decision. Otherwise, in simple cases the entire *shalish* committee work together to take a decision. The chairperson of the *Shalish* declares its final decision. Both the parties generally obey the decision of the *Shalish* but sometimes any one or both the parties may not agree with the decision.

4.6. Importance of *Shalish*

Bangladesh is a densely populated country and most of its population live in rural area. According to Census (2011), 76.70% populations reside in rural area. Dispute is a common phenomenon of every human society, but the formal courts of the country are located in the district headquarters and away from rural people. Therefore, it is quite impossible to provide judicial services for the entire rural population by formal courts. A *Shalish* has more opportunity to offer a suitable resolution than the court. For a court has no chance to see the cause of dispute exactly. The *shalishkars* know people personally. However when the disputants invite them for a *Shalish* the disputant parties describe the problem to them from their own. That is why they can settle the dispute peacefully. If any party fails to comply with a peaceful settlement proposed by the *shalishkars*, the *shalishkars* go to adjudicate maintaining justice properly. Regarding this reality an honest advocate remarks that-

We, firstly, advise our clients to settle their dispute through traditional village *Shalish*. For when they say us something, we shall understand it according to our capability. Then when we shall deliver it to the court the

judge will understand according to his ability. Finally, another judge may declare the judgment based on his understanding. In fine, the result may go against them unexpectedly (Interview 34_16032019).

In this situation, the shalishkars have full knowledge about the case and its history as well. Therefore, they are in better position to do shalish exactly, to settle a case perfectly.

The importance of *Shalish* as a dispute resolution process lies in the fact that two-thirds of rural disputes do not approach the formal court process. In other words, this huge number of rural disputes are resolved by *Shalish* and nowadays also by NGO-led *Shalish*, village courts, and arbitration councils. However, most of these are being done by traditional *Shalish*. Access to the *Shalish* does not require a high degree of literacy. In fact most of the people using the system are illiterate. Bangladesh as a densely populated country with a strong community tie, the *Shalish* process conforms to a basic need to involve the community in any reconciliation process. Given the huge backlogs, excessive delays, outrageous expenses and uncertain outcomes of the formal legal system, *Shalish* is hugely important for resolving disputes in rural communities. Again, as there is no formal administrative unit at the village level, this *Shalish* system provides social administration to the villagers (Barman 1988). It plays a role like a formal guardian for the villagers (Alim 2004b). *Shalish* being community based rural institutions closes to the people, is the best way to understand community problems and peoples' need for quick, acceptable and affordable justice (Delwar 2005). However, it needs to be properly reconstructed and modernized to be able to effectively serve the rural community in terms of maintaining community harmony. When social conflicts, violence, and chaos erupt in the community, *Shalish* appears to supplement and substitute immediate legal

needs of the community. As a social order, it would be helpful to the vast majority of rural people. It is a strong means to establish community solidarity, social bondage, and reciprocal coexistence. The formal justice system in Bangladesh is under tremendous pressure with much workload and inadequate number of officials and staff to dispose of the cases. As a result, the case backlogs add up to the existing pending cases and at present, it stands on about half a million cases. It creates a negative impact for the rural poor and vulnerable group of people who cannot afford the expenses of cases and do not have a clear understanding of how to get access to justice in the upper courts on some issues that can be easily resolved at local level.

In view of this situation the Government of Bangladesh, European Union and UNDP coming together took initiative to activate village court and a project that started in 2009 for 350 unions under 14 districts titled Activating Village Court in Bangladesh (AVCB) until 2015. It resulted in providing optimum benefit for the people. To retain the success from that pilot project the 2nd phase of AVCB started again in 2016 with financial and technical help of UNDP and EU. The Government of Bangladesh, EU and UNDP jointly financed the 2nd phase of AVCB to activate village courts at 1080 Union *Parishads* in 27 districts. This clearly emphasizes the need, importance, and role of *Shalish* system to conveniently provide judiciary services to the rural mass. The Ministry of Local Government Division is implementing the second phase of AVCB project continuing from 2016 to 2019 in selected 1080 unions under 27 districts presently.

4.7. Matters covered by *Shalish*

Shalish as a system of dispute resolution addresses all kind of disputes from a petty civil or criminal case to serious injury or even murder case also. Though state law does not allow anyone to do *shalish* in any severe criminal matter like hard injury or murder, the traditional *shalishkars* interfere it technically. They think it as a social issue and they do something here. In this connection, a traditional *shalishkar* says:

“A murder case under trial in court needs huge time and money. We take initiative to convince the parties to come to a compromise and save their time and money and good relation of the families. We interfere all the disputes occur in the society relying on Allah the Almighty for the wellbeing of the people” (Interview 08_31012019).

“Law does not allow a court to let a murder case to be settled through an informal dispute resolution system like *Shalish*. In that case, we prepare both the victim and accused parties to convince their witnesses to present their statement in a way that the case legally may come out from the court to *Shalish*. Then we settle it peacefully” (Interview 32_15032019).

A *shalish* settles a wide variety of civil matters and some with criminal implications also. These often involve gender and family issues, such as violence against women, inheritance, dowry, polygamy, divorce, financial maintenance for a wife and children, or a combination of such issues. Other matters include land conflicts, such as over the boundaries between neighbors' parcels, as well as other property disputes and minor criminal issues.

It is a means of resolving a conflict between individuals, family, lineage, the neighbor about land, unlawful activities, illegitimate relationship, non-cooperation, etc., that take place in the rural society (Alim 2004b). The subject matter of the dispute is also an

important consideration for deciding the means of settlement. If the matter is about family dispute, conjugal maladjustment, elopement etc. where the prestige of the family/kin is related- the settlement process must take place initially within the close relatives of the disputed families. Rural people do not prefer their family matters reaching out of their hamlets or villages (Barkat et al. 2012). Generally, *shalish* does not have legal authority to deal with criminal disputes. However, in the eyes and minds of the *shalish* committees many of the criminal matters are seen not as criminal acts rather as social problems. Therefore in practice they deal with a multitude of minor criminal matters as well (Moran 2015). Some examples of various civil, family and criminal disputes are given as bellow (Rahman, Firoz, and Hoque 2010, Barkat et al. 2012) :

Gender, matrimonial and family issues

- Violence against women
- Wife beating/torture by husband
- Confinement of wife at her father's house
- Divorce and claim of alimony (for children)
- Claim of dowry money and torturing wife for dowry
- Remarriage of husband without first wife's consent (Polygamy)
- Stigmatizing wives whose husbands are abroad
- Inheritance
- Conjugal maladjustment
- Financial maintenance for a wife and children, or
- A combination of such issues

Illegitimate relationship

- Love affair/elopement of young boys and girls
- Eve teasing etc
- Elopement
- Extramarital relationship of husband/wife
- Extramarital love affair by cellular phone

Unlawful activities and property dispute

- Physical assaults over different disputes
- Quarrel between two women over their children's fight
- Dispute over demarcation of land

- Quarrel over distribution of inherited land between close relatives (Family property Dispute)
- Quarrel over delay in handing over assets (land, cattle etc) to buyer (moveable or immovable property)
- Breach of land mortgage conditions
- Denial of receipt of money for selling assets
- Realization of money (delay or denial of repaying loan with or without interest)
- Cheating of households by taking advance money to send someone abroad for job
- Quarrel between two households over one's cattle/poultry destroying another's crop
- Theft of cattle, crops, fruits from orchard, fish from pond etc
- Killing or capture of other's cattle/poultry
- Enmity arising from personal rivalry
- Family and patrilineal clan tensions and
- Local political disputes

Most common of the disputes are found to be relating to dowry, divorce and marital problems; land and other property disputes; enmity arising from personal rivalry; family and patrilineal clan tensions; and local political disputes (Lewis 2005).

4.8. Current State of *Shalish* in Bangladesh

Traditional *Shalish* always played a significant role to resolve rural disputes. People were so grateful to some *shalishkars* that they set them (*shalishkars*) as examples for justice. They admire them showing their gratefulness to them. Still people are grateful to *shalish* and *shalishkars*. *Shalish* meets their immediate needs. A *shalish* cost virtually nothing. It saves their time and money. *Shalishkars* attend quickly at the spot of the problem. They come to the residence of the disputants in order to see them and their problems. The scenario is almost same until now. But some internal changes happened there. These are, for example, greediness of *shalishkars* to get benefits from the disputants in cash or in kind. It has been reported by a disputant of the case No. 03 that his case was not being set

to the *shalishkars* until he paid some money to a prominent *shalishkar* of his locality. After he had paid some money as gift this *shalishkar* came to the stop and forbade the defendant to do anything more on the land occupied by him. Then it was possible for him to arrange a *shalish*. *Shalishkars* were fair enough previously and most of them were solvent financially. They did not take *Shalish* as their income source. On the other hand, *Shalishkars* now a day are financially weak and some of them have no other income source at all. This crucial position may make them immoral to take benefits from doing *Shalish*. Once moral biasness grasps a *shalishkar* he may be bought and sold easily. Thus, a *shalish* is being bought and sold in some cases. It has also been reported that young *shalishkars* are more corrupted than the older ones. Only the payment of one hundred or fifty-taka more than that of other party may make them changed. This is naturally happening when both the applicant and the defendant are equal in strength and both try their best to bring the result in favour of them. Some respondents also affirmed the picture from other part of the country. The immoral approach to *shalish* by *shalishkars* is the root cause of all other causes. The other causes behind this lowered status of *Shalish* as identified by some scholars and our observation have supported it also, they are a) biasness, b) corruption, c) bribery, d) lack of legal awareness, e) influence of money and power, f) changing social norms etc. (Hossain 2012). To understand the present status of *Shalish* we may look at the comments of some respondents as follows-

“People become shameless that punishment does not act on them positively. In contrast, they take pictures through their smart phone. Make propaganda on behalf of the criminal which was unimaginable previously even the nearest person was not to support the crime of his nearest one” (Interview 05_30012019).

“We do *Shalish* following our ancestors, so there is no basic difference between the past and present day *Shalish*” (Interview 08_31012019).

In the past people were accustomed to keep trust on the notables of their society more than present day. Based on this trust or mutual understanding or showing respect to the elders, people were accustomed to comply with the decision of the elders, which may cause a loss for him. However, he accepted it only to maintain a courtesy and grater social interest. People are very sincere about their rights now a day (Interview 09_31012019).

The *shalishkars* are also sincere about their action. Nobody likes to make any loss now. It is a positive change no doubt. Nevertheless, another seen is found also that the people in a dispute have less respect to the *shalishkars* and trustworthiness got less importance”(Interview 09_31012019).

“Bichar become nowadays a source of income and a matter of fun. Political influence, money power, muscle power affected Shalish badly” (Interview 15_01022019).

“The reality about *Shalish* is that it will not act properly unless you have a social position through economic condition or through muscle power or you have intelligence to divide the people and rule” (Interview 17_16032019).

“Many social disputes are being resolved by whim and caprice without keeping Islamic point of view in mind” (Interview 30_15032019).

The *Shalish* takes different forms in different places, and it is clear that there can be both positive and negative outcomes for poor people. For most people, the legal system is out of their reach. To avoid costly and lengthy court, people seek local remedies such as the traditional alternative dispute resolution mechanism, popularly known as *Shalish*. These sessions tend to be conducted by local government representatives, particularly the Union Chairperson and social leaders such as religious leaders and teachers.

The relationship between law and *Shalish* has remained a disintegrated phenomenon in Bangladesh local administration system. *Shalish* sometime recreates confusion and controversy that lead to conflict and contradictions with the domestic law. It may be

noted that a significant number of the dispute resolutions by traditional *shalish* to a large extent remains unregulated, undocumented and without any follow-up or monitoring process (Khaled 2009). The state law does not recognize *shalish* as official forms and their decisions and subsequent enforcement actions have no force in law. Bangladesh legal system does not recognize the jurisdiction of the *shalish* in criminal matters (Ahmed and Islam 2013). Resolution of disputes conducted by traditional *Shalish* has no legal validity in the formal justice system. However, mediation conducted by NGOs, is generally kept documented and agreement reached through free consensus of the parties. It has some value in the eye of law and can be used as evidence before courts of law (Faruque and Khaled 2010).

Summary

Shalish is a community based dispute resolving informal institution prevailing in Indian sub-continent from a time immemorial. Panchayat was known administrative rural unit burdened with some judicial responsibilities. With the advent of Muslim period in India Hindus feel uncomfortable to go with their disputes to formal courts, which were being administered under Islamic legal system. Therefore, panchayat acted as an alternative way of dispute resolution for Hindus especially throughout the Muslim period in India. It is not clear enough in which period the judicial duties of panchayat started to be known as *Shalish*. As the origin of the word is Arabic, it may be assumed that Islam may have any way an influence to distinguish the institution as *Shalish* till under panchayat or village community administration.

Some scholars' statements "*shalish* was used to exercise judicial and administrative functions in the rural areas of Sri Lanka since 500 BC". Similarly "*Shalish* is also an age-old practice in Bangladesh (Alim and Rafi 2003, 5)". "Pre-Mughal in origin, the *shalish* is the indigenous form of arbitration in rural Bengal" (Samity 2003). "Using both mediation and arbitration, this village court takes place not in the formal court, but rather in the household (Ahmed 2013, Taher et al. 2014)", are all about panchayat system. As long as the word "*Shalish*" is of Arabic origin, so it can never be used any where before Christian era. *Panchayat* was and still is the backup administrative organization of *Shalish*. As village court is backed by local government lower unit union *parishad*, NGO-*Shalish* is backed up by NGOs policy, likewise traditional *Shalish* is backed up by *panchayat* / *somaj*.

Shalish has no fixed form but its formation is an instant initiation to meet some instant needs. The underlying sprit of *Shalish* is to find a suitable solution for a rural dispute collectively. In finding out the solution for a problem it collects the opinions of others trough a consultative (*shuratic*) way. Though it has no written law to regulate, it follows a system based on tradition recorded in the memory of the people from generation after generation.

In pre-British era when Muslims were ruling India, Islam was dominant both in individual and collective life in society. *Fatwa* was a formal institution to guide formal judiciary. It became an informal institution to guide individual and social life through updating the day-to-day knowledge about any problem according to the holy Qur'an and

tradition of the prophet and his community. In doing so *Mufti* used to use the heritage of *fiqh* (Islamic Jurisprudence) supporting his *fahm* (understanding) and try his best to give a proper solution for the problem. After eradication of institution of *fatwa* from formal judiciary by British colonial rule, it remains as an informal institution for Muslim individuals. For lack of any governmental support, the institution of *fatwa* became weaker day by day. It becomes a means for convincing local people black mailing them emotionally by some local imam and *khatibs*. Availing this opportunity some scholars bearing western legacy in their ideology tried to undermine *fatwa* itself. *Fatwa* has ability to guide always if it comes from proper authority. It cannot only bring any solution but can help to prevent so many problems to happen in society.

Shalish needs to get proper attention to get it improved from all corners, including government and non-government organizations. NGOs approach to *Shalish* is generally complementary in nature to their main agenda i.e. women empowerment and development. However, Madaripur Legal Aid Association has set an example to develop an independent modal named MMM (Madaripur Model of Mediation) for traditional *Shalish*. It got a general acceptance in the area it functions.

Village court may function as a model for traditional *Shalish* to carry it ahead. In fine, legal and moral education through every Masjid, insertion *Shalish* in formal education system proportionately in National Curriculum Text Books, combined training program through joint initiative of NGOs and local organizations may help *shalish*. Non Government Organizations should come forward to refashion the traditional *shalish*

system (Karim 2004). They are conscious of the prime need to ensure neutrality, non-imposition and attaining a ‘win-win situation’ in their mediation process. As part of a priority measure, training for the *shalishkars* (mostly volunteers) on legal issues and mediation processes has been introduced by them with a view to overcoming the limitations of the traditional *shalish* (Silvee).

