

CHAPTER 3

CONTEMPORARY RURAL DISPUTE RESOLUTION SYSTEM IN BANGLADESH

In any human society disputes major or minor in nature, are common features. These disputes are to be resolved for harmonious living and smooth social administration and management. There are formal and informal dispute resolution systems in any country that run hand in hand. Based on relationship with the formal judiciary and administrative structure, informal dispute resolution system is divided into formal, quasi-formal and informal dispute resolution systems. Simple and petty disputes are generally resolved amicably through various quasi-formal and informal institutions. For resolution of major disputes formal judiciary approach is used.

To answer the research question two, this chapter mainly discusses about contemporary rural dispute resolution institutions. However, as it has been noticed that some contemporary rural dispute resolution institutions are linked with formal judiciary through statutory laws and are administered by local administrative unit. It feels needed to have a look at judiciary and administrative organs of the country at a glance. Again, to get a clear idea about the contemporary rural dispute resolution systems it needs to discuss its history also. It seems that to understand the contemporary rural dispute resolution system in Bangladesh we should have a look at the historical background, present political, administrative and judicial structure and existing institutions at a glance.

3.1. Historical Background of the Rural Dispute Resolution System

The history of rural dispute resolution of Bangladesh is an inevitable part of the history of civilization and administration of justice of Indian subcontinent. Referring Charles Metcalfe, one of the Viceroys of India, Islam (2012b) stated that the Villages here were self sufficient in true sense and self-governed also. The Viceroy truly commented the Villages as ‘Little Village Republics’. Before the advent of the British in Indo-Pak sub-continent, there was the existence of an old local government institution namely the Village *Panchayat*. During the ancient period, this village *panchayat*, which was either nominated by the king or elected by the people of a village, was left undisturbed in the overall management of administration of the village. The *panchayats* represented different classes and castes (Sarker 2013, 10). One of the main functions of the *panchayat* was to perform petty judicial cases and settle various disputes among the villagers.

3.1.1. HINDU REGIME (PRIOR TO 1200 C.E)

The Hindu kings ruled the Bengal (present Bangladesh) for around 1,500 years before and after the beginning of the Christian era. During this period, India was divided into several independent states and the king was the supreme authority of each state and was considered to be the fountain of justice (Panday and Hossain Mollah 2011, 7). There were five major types of court system in ancient Bengal – The King Court, the Chief Justice Court, special tribunals, town or district courts and village courts. The King’s Court was both original and the highest court of appeal in the state (Huda 1997, 740). King was assisted by Brahmins, the chief justice and other judges, ministers and learned men for

discharging his judicial functions (Akkas 2004, 55). Likewise the chief justice and other judges also used to receive advice from learned Brahmins (Panday and Hossain Mollah 2011, 7, Huda 1997, 740).

However, the judicial system of this period was not based on justice by rule of law rather it was based on whims and caprice and caste consideration. Justice was mainly administered in accordance with the Hindu religious law. Therefore, in that period learned Brahmins assisted the King in the administration of justice by expounding the Hindu law. Judges had to take oath for fair and impartial judgment. However, the King himself led the judiciary and he was free to make any changes in the structure of the court. So the independence of judiciary was not ensured (Panday and Hossain Mollah 2011).

3.1.2. MUSLIM PERIOD (1200 TO 1757 C.E)

In the Muslim *Sultanat* period, the Sultan or Emperor as head of the state was mainly the responsible person of administration of justice. A learned law officer titled *Mufti* was assigned to explain the Islamic legal provision to assist the *Qadis*. Although, equality before law was a common feature and *qadis* were fulltime judges at every level of administration, the executive authority was empowered to exercise judicial functions. Therefore, the judiciary was not independent fully (Panday and Hossain Mollah 2011). The Muslim rulers in India introduced a new judicial system, which was different from the then traditional dispute settlement systems. They used to administer their judicial functions in the district and city level. As a result, that system did not influence the rural

traditional *Shalish* system so much. The Muslim rulers at that time were well aware of such *Shalish* system, and they supported it considering its role in administration of rural dispute resolution to maintain rule and order (Rahman, Firoz, and Hoque 2010, 20).

3.1.3. BRITISH PERIOD (1600 TO 1947 C.E)

After the Battle of Plassey in 1757, the East India Company took over the Bengal administration. The traditional justice system in Bengal began to be weak because of the company's new administrative policy regarding land revenue system. The judicial arrangement that East India Company made resulted in a big decline in the authority and independence of the traditional justice systems. However, the traditional justice systems were continuing and were functioning to deal some family and social issues like marriage, divorce, caste and petty community disputes. The colonial administration did not bar the functions of traditional justice systems in these jurisdictions realizing its efficacy. British Emperor took over the governance of India from East India Company in 1858 and in a few decades the British rulers gradually replaced Indian traditional civil and criminal law and codified them except the personal laws related to family, inheritance, caste and religions. Hindus and Muslims were allowed to be governed according to their personal laws, customs and traditions, which gave the traditional justice systems a way to exist to some extent.

There were no state-led rural dispute resolution institutions in rural Bengal under the British Raj. In the year 1919, the Bengal Village Self Government Act was passed through which two rural dispute resolution institutions namely the Union Bench and the

Union Courts were established. The Union Bench, a local government body, was like the present day Union *Parishad* and had to function as Union Court to deal some petty criminal and civil cases. The Sub-Divisional Officer (SDO) or District Magistrate was the controlling authority of such institutions. SDO or the District Magistrate was responsible for imparting training to the adjudicating officials and for supervising and monitoring their performance at that time.

3.1.4. POST INDEPENDENCE PERIOD (1947 C.E ONWARDS)

These rural dispute resolution organizations continued to function in the East Pakistan (Present Bangladesh) even after the independence from the colonial rulers in 1947. During Pakistan period, Bangladesh got two pieces of legislation namely the Muslim Family Laws Ordinance, 1961 (MFLO) and the Conciliation Courts Ordinance, 1961. The latter one now stands repealed in 1976. The Muslim Family Law Ordinance made provisions for constitution of the Arbitration Council, a dispute resolution body which works for resolution of some family disputes both in urban and rural areas. The Conciliation Courts Ordinance dealt with minor criminal offences and civil disputes. After independence of Bangladesh in 1971, the government decided to continue with the systems of both the Arbitration Council and the Conciliation Court. But in 1976 the Conciliation Courts Ordinance, 1961 was repealed by the promulgation of the Village Courts Ordinance, 1976. This ordinance introduced the Village Courts to deal with petty criminal and civil disputes in rural Bangladesh. In 2006, the government repealed the Village Courts Ordinance, 1976 and the parliament enacted a new legislation called The

Village Courts Act, 2006 to deal with the Village Courts' affairs. This Act is now in operation (Rahman, Firoz, and Hoque 2010, 15-21).

Through the history of ancient Hindu period it was seen that India had utilized the *panchayat* system, whereby respected village elders assisted in resolving community disputes (Xavier 2005, 1). Munni (1996) stated, "Village panchayet was always active there to serve as intermediary between common people and the state authority. Two types of village self-government authorities, namely headman and *panchayat* (village council), seem to have existed since early times". Muslim period made a major change in the legal system. However, traditional justice dispensing institutions remained undisturbed. More importantly as the formal courts were run basically under Islamic *shari'ah*, Hindus felt comfortable to get justice through village panchayet" (Jain, 47). Also the *panchayat* system in Dhaka has been in existence particularly among its Muslim population, since the beginning of the Mughal period, and has continued until the advent of the 20th century (Munni 1996, 3). *Shalish* is basically a *panchayat* backed rural traditional justice forum. Therefore, the history of *Shalish* lies in the history of panchayet. The roots of the *Shalish* are ancient. During Pre-Mughal era, the *Shalish* was the indigenous form of arbitration in rural Bengal (Samity 2003). The *Shalish* is the oldest form of dispute processing practice in rural Bangladesh. However, such a practice is not unique to Bangladesh only; rather it is an ancient and prevalent practice almost all over the world. This type of local informal justice system was the base for administering rural dispute resolution in Indian subcontinent from the ancient time. These local rural dispute resolution systems were named differently, but their main characteristics were more or

less same, that is informal and localized. *Shalish* organizations in Bangladesh and elsewhere in the subcontinent are usually practiced through the *Gram* (Village) *Panchayats*—the lowest tier of local government. To some extent, the *Panchayat* exercises power as like as a judicature (Delwar 2005).

Shalish as an informal rural dispute resolution forum was active in present Bangladesh which was called Bangla, Bangala or Bengal, the eastern India of that part of ancient time. The king and rulers had proper knowledge and support for these local justice bodies. Usually the kings and rulers did not interfere their activities unless the gravity of the cases required severe punishment and intervention from them. In that case the local bodies either sent the matters to the king or king's high officials or implemented their decisions with the help of king's authority.

3.2. The Structure of Judicial System and Political & Administrative System in Bangladesh

In dispute resolution through formal judicial system, there are two approaches – Adversarial (in which the parties in a dispute have the responsibility for finding and presenting evidence) and Inquisitorial (characterized by the judge performing an examining role). In Bangladesh, the adversarial approach is followed. From structural point of view the formal dispute resolution system contains-

Judiciary (justice, judges and magistrates), **Courts** (The Supreme Court of Bangladesh combined with its two divisions, namely The Appellate Division and The High Court Division, and Subordinate courts such as The Court of District Judge, The Court of

Sessions and the Magistrate Courts, Special Courts and Tribunals), and **Legal profession** (Bangladesh Bar Council, Bar Associations of different districts).

In case of criminal disputes it involves Police Department or Administration (Investigation, Arrest of an accused, Police Report – Charge sheet or Final Reports, warrant of arrest, Search warrant, seizure list, execution of orders, etc.), Jail Administration etc.

The quasi-formal and informal dispute resolution institutions are more administrative and thus restorative of relationship in nature. The rural disputes occur in rural areas under rural environment. For convenience of field administration of Bangladesh, rural areas are divided into 4571 unions. The main function of the Judiciary is to settle disputes between various disputing parties, but rural disputes resolution system is generally administrative in nature. However both judiciary and administrative organs of Bangladesh share to contribute in rural dispute resolution system. Therefore, both judicial and administrative structures need to be introduced before we start discussion on rural dispute resolution system in Bangladesh.

The present legal and judicial system of Bangladesh bears its legacy mostly from 200 years British rule in Indian sub-continent. Some elements of it are remnants of Pre-British period tracing back to Hindu and Muslim administration. It passed through various stages and gradually developed as a continuous historical process. The process of evolution has been indigenous and foreign jointly. The present legal system thus emanates from a

mixed system which has structure, legal principles and concepts modeled on both Indo-Islamic and English law (Panday and Hossain Mollah 2011).

Bangladesh is a unitary state. The official name of Bangladesh is - People's Republic of Bangladesh. A parliamentary form of government runs it. It has a unicameral legislature called "*Jatia Sangsad*". The apex organization of national administration of Bangladesh is the secretariat. The structure of Judiciary in brief and then the administrative structure of the country in same manner are discussed below-

3.2.1. The Structure of Judiciary

The Judiciary of Bangladesh resembles the Supreme Court of Bangladesh. The Subordinate Courts and the Administrative Tribunals constituted under the provisions of the Constitution and Ordinary laws of Bangladesh and a range of Civil and Criminal courts and Tribunals are supervised in turn by the High Court and Appellate Divisions of the Supreme Court.

The Supreme Court

The Supreme Court of Bangladesh is the highest judicial institution of Bangladesh. It has two divisions namely the Appellate Division and the High Court Division. "The Supreme Court consists of the Chief Justice, known as 'Chief Justice of Bangladesh', and of such number of other judges as the President thinks necessary to appoint in each division"

(1972, Art. 94). The Appellate Division hears and determines appeals from judgments, decrees, orders or sentences of the High Court Division along with its various jurisdictions and functions (1972, Art. 103). It has power to review its own judgment or order also (1972, Art. 105). It functions the job of advisory jurisdiction but this Division is not bound to provide this advice to the president if it is sought by him. Likewise the president also is not bound to comply with the advice of the Division if given (1972, Art. 106). The High Court Division hears appeals against the judgment and orders of the subordinate courts. It has some original jurisdictions relating to constitution, company and admiralty matters and it exercises some other jurisdiction like review, revision and so on. Any decision of either division of the Supreme Court has the force of law and it is compulsory for all courts subordinate to it. Similarly, the decision of the Appellate Division is mandatory to follow for the High Court Division. Decision of the Appellate Division is final on any matter and there is no other forum to sit over it (1972, Art. 111).

Subordinate Courts

The subordinate courts are divided into two broad categories: Civil Courts and Criminal Courts.

a) The Subordinate Civil Courts

There are five classes of Civil Courts namely (a) the Court of District Judge; (b) the Court of Additional District Judge; (c) the Court of Joint District Judge; (d) the Court of Senior Assistant Judge; and (e) the Court of Assistant Judge (Khan and Khanam 2009, Sec. 3).

b) The subordinate Criminal Courts

The subordinate criminal courts are mainly established following the Code of Criminal Procedure, 1898. According to the Code, there are two classes of Criminal Courts in Bangladesh, namely Courts of Sessions, and Courts of Magistrates.

Special Courts

The Family Courts, the *ArthaRinAdalat*, Labour Courts, Court of Settlement, *Nari-o-Shishu Nirjaton Doman Tribunal*, Administrative Tribunal etc. established under various special statutes are some special courts in Bangladesh. Usually the judges of the above-mentioned civil and criminal courts run these special courts and tribunals.

From procedural point of view for criminal disputes it contains Criminal Proceeding (Filing of a case, issuing summons or warrant of arrest, investigation, framing of charge, trial, PW (prosecution witness) taking evidence, bail, warrants, argument stage, pronouncement of judgments etc.). For civil disputes it contains Civil Proceeding (Plaint, Summons, Submission of written statement, ADR, Framing of the issue, Trial, Taking evidence, Arguments, Judgments and Decree, etc.), Appeal, Review, Revision etc.

All these elements mentioned above make the judicial dispute resolution strictly formal, costly, time consuming and consequently an overburdened judicial system and out of reach of common people.

Therefore, in order to release the judiciary from pressure of being overburdened with cases, and to make it less costly, time saving, and common people friendly, the government formally and effectively introduced the Alternative Dispute Resolution (ADR) system in June 2000 as a process of disputes resolution. This introduction of ADR in formal judicial system is to make the system friendly to the disputing parties and to ensure quick resolution of the cases.

3.2.2. Political & administrative structure of Bangladesh

As it is stated before, the highest judiciary of Bangladesh is the Supreme Court comprising of two divisions namely Appellate Division and the High Court Division. The apex organization of national administration of Bangladesh is the Secretariat.

The Secretariat

The secretariat consists of all ministries having one or more divisions each. A division is divided into two wings, branches and sections. A minister is the political head of a ministry and the secretary is its administrative head. Next to secretary, there are additional secretary, joint secretary, and deputy secretary in descending orders. The ministries are responsible for the formulation of government policies and the implementation of these policies is the function of executive agencies called the attest departments or directorate. There are another type of functional administrative bodies called public statutory organization (autonomous / semi autonomous body). These bodies are variously known as Corporation authority, Board or Trust etc.

Field Administration

For the convenience of field administration, the whole country is divided into divisions headed by divisional commissioners. Each division is divided into districts (*Zilas*). A deputy commissioner runs the administration of a *Zila* (district). The *Zilas* are divided into *Upozilas* (Sub district). Formerly the *upazilas* were *thanas* under some subdivisions of the then *zilas*. The subdivisions were converted into *zilas* and the *thanas* were upgraded into *upazilas* by General H. M. Ershad in 1982-84. Next to *upozila*, there are unions in the rural areas. In urban areas of the country, there are *Pouroshavas* (municipalities) and City Corporations.

There are 8 administrative divisions, 6 city corporations, 64 *zilas*, 545 *upazilas* (including *thanas* within the city corporations), 310 *paurashavas*, 3161 city or *paura* wards, 4543 unions, 66926 *mauzas* or *mahallas* and 87223 villages in the country (Census 2011).

Union and Union Parishad

Union is a territorial limit whilst its administrative body is called the Union *Parishad*. Local Government (Union *Parishads*) Act, 2009 is the basic statute through which the administrative and others functions of a Union is governed. There are 4543 Unions in Bangladesh. A Union comprises ten to twelve villages on an average.

Work force (Staffs) structure of an Ideal Union *Parishad*

The Union *Parishad* is a local government unit at the grass root level. Through the Local Government Ordinance 1976, the Union Parishad (Cupach, Canary, and Spitzberg) was entrusted with forty functions. It has to conduct several public works and issuance of several public documents, i.e., birth-and death-certificate, citizenship certificate, certificate of income. There is only one secretarial post (UP Secretary) in UP for all these public works. Therefore, the UP Secretary is always overwhelmed with bulk of tasks (Barkat et al. 2012). To activate Village Court functions, a project titled (AVCB) is going on and for each UP under AVCB project there is an appointed court assistant for preserving documentation of Village Court proceedings (Barkat et al. 2012, 50).

There are thirteen elected representatives including three women members and a chairman to administer a union. It has a secretary appointed by the government. An assistant to help the secretary has been appointed in some unions. The government also appointed nine gram-polices or *moholladars* and a *dofadar* in each union to bear summon or other important information to the villagers. Two computer operators are specially assigned under Access to Information (a2i) from Prime Minister's Office to provide all necessary information to local citizens. A village court assistant appointed by NGO provides logistic and technical support under Activating Village Court phase (ii). Including all, twenty-eight staff are working in a union. This is undoubtedly a good number to do something good for a union. In relation to dispute resolution, all rural disputes are occurring at this root level of union and are resolved by state-led, NGO

administered or traditional *shalish* which is in turn the rural Dispute Resolution institutions in Bangladesh.

3.3. Structures and Operations of Rural Dispute Resolution Systems

It is the responsibility of a state to establish methods for resolution of the disputes in the society. The Judiciary organ of the state is duty bound for this purpose. However, it is very difficult for the formal judiciary to address all types of disputes. There should be some inbuilt dispute resolution systems in all walks of life. In another word disputes should be resolved at a proportionate level and the court should be the last resort of dispute resolution (Islam 2015). Bangladesh Government has established some judiciary linked methods for resolution of various petty social and family disputes outside the formal court system. These are termed as quasi-formal systems. However, these are still in very limited cases. The bulk of the disputes are still resolved through various traditional informal methods. All these quasi-formal and informal methods of dispute resolution outside the formal court system are commonly known as Alternative Dispute Resolution (ADR) system.

Alternative Dispute Resolution System (ADR) refers to the different methods of dispute resolution, which serve as alternative to the court litigation. This ADR system has been devised to afford easy access to justice without undue delay and high cost involvement (Hoque 2015, 48). The lengthy and costly process of formal court harasses the justice

seeking people in Bangladesh much, and this ADR system is a smooth informal process which has already been introduced in the administration of civil justice. ADR (Alternative Dispute Resolution) is becoming popular day by day but it has not been yet extensively used in the arena of criminal justice. The Government of Bangladesh should enhance and enlarge the sphere of the section 345 of the code of criminal procedure 1898 to develop the same system for the speedy disposal of criminal matters (Gulfam 2014).

Rural dispute resolution systems in Bangladesh are divided into two broad categories namely the State-led institutions and non-state-led institutions. The classification is based on the legal status of the justice forums. There are specific bodies of law for the State-led rural dispute resolution system to follow. However, for the non-state rural dispute resolution system there is no such specific law to comply with. That is why the non-state dispute resolution system is also described as informal justice system. Informal justice system mainly follows local customs, traditions or religious dictation. It may decide upon the circumstances.

3.3.1. State-led Rural Dispute Resolution System

The State-led rural dispute resolution systems are the Village Court and Arbitration Council, which are quasi-judicial or quasi-formal in nature. The Village Courts are constituted under the provisions of the Village Court Act of 2006. The Muslim Family Law Ordinance 1961 constituted Arbitration Council to resolve some important family matters.

There are some formalities for constitution of Village Court (VC) like filing application, application fees and case registration, notice to the parties for nomination of members of the VC, issuance of summons, recording and implementation of the decision etc. Village Courts and Arbitration Council function under the institutional control of the Union *Parishad* (Council) which is the lowest level local government's administrative body constituted through direct franchise of the people of the Union.

As a lowest level local government administrative unit, a Union *Parishad* has numerous duties and responsibilities. The Local Government (Union *Parishads*) Act, 2009 has clearly specified 39 functions which include civic functions, police and defense functions, revenue and general administrative functions and development functions. Along with all these functions, the Village Courts Act, 2006, has entrusted the Union *Parishads* with the responsibilities to run the Village Courts.

3.3.1.1. Village Court: Its Structure and Function

The village was the primary unit of the kingdom in Sultanate Period (1206 to 1526) as well as of the judicial system. In each village a group of five persons i.e. *Panchayat*, was to look after the judicial affairs along with others. The chairman of this body was *sarpanch*. Panchayats decided civil, criminal and other cases according to local customs. The merit of these decisions was that they were compulsory on the parties and no further appeal was there against the decision of Panchayat (n.a n.d).

The village court is an *ad hoc* forum for adjudicating minor disputes or conflicts in rural areas. The Village Courts Act, 2006 and the Village Courts Rules, 1976 regulate the formation, jurisdiction and functioning of this forum (Rahman and Khan 2009). According to the Village Court Act, 2006 as amended in 2013 a Village Court can try disputes over property valued not exceeding taka 75000.00. The Village Court has also power to summon a person to stand as a witness and can impose a fine up to tk. 1000 on contempt charge (Maududi 1995).

A Village Court consists of a chairman and four members. Out of these four members, two are to be nominated by each of the parties to the dispute. One of two members from each party should be a member of the Union Parishad concerned. However, any disputing party, with the permission of the chairman may nominate any person other than the members of the Union Parishad as members of the Village Court. The chairman of the Union Parishad shall be the chairman of the Village Court. However, if the chairman is unable to act as chairman for any reason, or if his impartiality is challenged by any party to the dispute, any other member of the Union Parishad will become Chairman of the Village Court (Halim 2015, 177).

A village court shall have the jurisdiction to try a case when the parties to the dispute ordinarily reside within the boundary of the union in which the offence has been committed. However, in some cases the parties to a dispute may be the residents of different unions. If the parties are from two separate unions, the village court may be constituted in the union in which offence has been committed or the cause of action has

arisen. The parties in such a dispute shall have the right to nominate their representatives from their own unions.

If a person without lawful excuse does any insulting activity to the court or any member thereof while the court is functioning as such, or causes any interruption in the work of the court, or fails to produce or deliver a document being ordered by the court to do so, or refuses to answer any question of the court which he is bound to answer, or refuses to take oath to state the truth, or to sign any statement made by him when required by the court to do so, he shall be guilty of contempt of a village court and in such a case the court may forthwith try such person for such contempt and sentence him to a fine not exceeding one thousand taka. If any person to whom a village court has issued summons to appear and give evidence or to produce any document before it, but he willfully disobeys such summon, the court may take cognizance of such disobedience and sentence him to a fine of maximum taka one thousand.

Procedure of Adjudication:

A Village Court has jurisdictions to try specific nature of disputes either civil or criminal. The State-led rural dispute resolution system is legally required to follow less formal procedure for adjudication of disputes (Hossain 2012). Compared to procedure in the ordinary courts, the adjudication process in the village court is largely informal. This is because of the Evidence Act, 1872, the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908 shall not be applicable to the proceedings before any village court. However, the Oaths Act shall be applicable to all proceedings before the village court. No lawyer shall be permitted to appear on behalf of any of the parties (Islam 2015).

A distinguishing feature between traditional *Shalish* and Village Court is that where a *Shalish* keeps no record at all, a village court has to maintain 22 (18+6) forms including 6-register books. It helps the authority to know the history of a case from its beginning to the end. Therefore, if someone does any offence repeatedly, the village court can see into the history easily (Interview 29_26022019).

Appeal against a Decision of a Village Court:

If the decision of a village court is unanimous or by a majority of four is to one (4:1) or by a majority of three is to one (3:1) in presence of four members, the decision shall be obligatory on the parties. However, if the decision is taken by a majority of three is to two (3:2), any party aggrieved may prefer an appeal within thirty days of the decision. If the case related to an offence specified in part one of the schedule, appeal may be preferred to the first class judicial magistrate having jurisdiction and if the case relates to a matter specified in part two of the schedule, it may be to the assistant judge having jurisdiction.

Investigation by police:

Nothing of this Village Court Act shall prevent the police from investigating a cognizable case because of the fact that the case relates to an offence specified in part one of the schedule. But if such case is taken to a criminal court, the court, if it thinks it needed, may refer it to a village court under this Act.

Limitations of Village Courts:

A union covers many villages and the UP chairman himself may not be familiar with the fact of the case, and people may feel hesitant to approach a UP chairman because of his unfamiliarity with local problem. There may be electoral pressures on the UP chairman. Many chairmen are also unwilling to get involved with local disputes in which they have no vested interests. They may not risk their popularity being with a party that loses in a village court hearing. Thus, they frequently turn away from the people seeking their assistance. Moreover, they advise them to go to the local *Shalish* members instant. Party politics may hamper the village court roughly.

Present State of Village Court

According to the village court act 2006, village courts were supposed to be functional in every 4543 unions of Bangladesh. But the reality is that unions outside the Activating Village Court Project are not functioning accordingly. As unions are at the root level access point of disputes, they receive so many disputes and settle through *Shalish* thinking that people do not understand village court. If any court case within jurisdiction of village court is sent to these unions, the chairmen, by his secretary or anyone else, invite the parties involved to come to the union office. Then they settle it through a *Shalish* and send a report to the court accordingly. It happens to the people of rural area who are not aware of the rules of village court. Even majority of the traditional *shalishkars* have no idea about village court too (as reported through interview 09_31012019 & 32_15032019). One of the ex-chairmen informed that village court

documents had come to his union but he along with his next one failed to execute it until today. If any case comes to them in their union, they do *Shalish* and settle it traditionally (interview 09_31012019). Again, a village court assistant informed that many cases come to village court beyond its jurisdiction, and the chairman settles them through *Shalish* meeting and doesn't let it go to the formal court. Poor people are happy having their cases settled either through village court or through *Shalish* in the union level (Interview 18_20082918).

Matters covered by village court

Usually cases are divided into two categories- civil and criminal. A village court can try 27 types of criminal cases and 06 categories of civil cases under two schedules valued of tk.75000.00 at best. It has power only to pass order to pay compensation not exceeding tk.75000.00 in respect of criminal offence specified in part one of the schedule. Likewise, it has power to pass order of payment of money up to an amount of tk. 75000.00 in a civil suit specified in schedule ii (Maududi 1995, 15). A village court may issue summons to any person to appear and give evidence or to produce any document. This provision is subject to some specific exceptions. Table below shows some important features of some cases of rural disputes addressed by VC for resolution.

Table 2.1: Important features of cases of rural disputes addressed by VC for resolution

CS Sl.	Title of the disputes	Inst. addressing the cases	Decision reached	Compliance	Location District	Nature of interest	Subject matter	Date
01	Physical Assault for Cattle Trespassing	1	1	3	Faridpur	2	3	2008
02	Land/Property Dispute	1	1	3	Madaripur	2	1	2009
03	Loan Dispute	1	1	3	Madaripur	2	1	2007
04	Rent/Money Suit	1	1	3	Faridpur	2	1	2007

05	Domestic Conflict	1 [?]	1	3	Faridpur	2	1+2	-
06	Divorce due to non-payment of dowry	1 [?]	2	n	Rajbari	2	3	2009
07	Land Dispute	1 ¹¹	1	2	Kishoreganj	2	1	-
08	Dowry	1 [?]	1	3	Rangpur	2	4	2009
09	Land Dispute	1 ¹²	1 ¹³	2	Lalmoinihat	2	1	2009
10	Dispute over Extra-Marital Affairs	1 [?]	2	n	Chuadanga	2	2+4	2008
11	Land Dispute	1	1	2	Nilphamari	2	1+3	2009
12	Land Dispute/VAW	1 ¹⁴	1	3	Barguna	2	1+3	2009
13	VAW Based on Dowry	1 [?]	1	3	Norail	2	3	2009
14	VAW Based on Cattle Trespass	1 ¹⁵	1	-	Gopalganj	2	3	-
15	Land Dispute	4	N/A	N/A	Chittagong	1	1+3	-
16	Theft Case	1	1	3	Pirozpur	2	1	2009
17	Family Property Dispute	1	1	3 ¹⁶	Faridpur	2	1	Jan. 2010
18	Dispute for Road Blocking	1	1	3	Sylhet	1	1+3	Jan. 2010
19	Family Property Dispute	1	1	3	Chittagong	2	1	2009 ¹⁷
20	Harassment due to Land Disputes	1 ¹⁸	1	3	Faridpur	2	1+3	2010 ¹⁹
21	the demarcation of a sold land	1	1	3	Faridpur	2	1	2009
22	procrastinating in repaying the money	1	1	3 ²⁰	Rangpur	2	1	-
23	protest by demanding ownership over a land	4	N/A	N/A	Borguna	2	1	2008
24	paddy field destroyed by household birds	1 ²¹	2	N/A	Moulavibazar	2	1+3	-
25	Try to obtain possession over a land bought 17 years ago	1 [?]	2	n	Faridpur	2	1	-
26	loan money as to a sum of Tk.1000 with 10% simple interest	1	1	2	Neelphaman	2	1	-
27	Family dispute	1 [?]	1	3	Rangpur	2	2	-
28	Taking a gold button home to show and giving it return without receipt	1	1	3	Chuadanga	2	1	-
29	Procrastinating to hand over an ox sold by tk. 10000.00	1	1	3	Cox's Bazar	2	1	-
30	Refusal to pay a borrowed amount	1	1	3	Neelphaman	2	1	-
31	Serious injury by a revengeful attack	3	1	3	Pirozpur	2	3+4	-
32	Possessing land fraudulently	1	1	3	Rajbari	2	1	-
33	Erecting boundary walls allegedly occupying the street of the petitioner	1	1	3	Moulavibazar	2	1	-
34	Forcefully taking possession of a piece of land was supposed to hand over by deed	1	1	3	Cox'sbazar	2	1	-
35	Taking money to send abroad	1 [?]	1	3	Cox's Bazar	2	1	-
36	An unauthorized and illegal cutting of paddy	1 ²²	N/A	N/A	Chuadanga	2	1	-
37	Engaged into fighting to get a job	1 ²³	1	2	Rajbari	2	3	-
38	Procrastinating to hand over the possession of a land committed by the father in his failure to pay a borrowed money	1	1	3	Cox's Bazar	2	1	-

11 procedure of VC was not followed properly.

12 though the case by nature was under VC's jurisdiction but the financial jurisdiction was not clear enough. it may be beyond its jurisdiction.

13 the chairman was biased by influence of respondent.

14 The case came first to UP chairman for Village Court but he failed to heed it. Then went to the NGO "Jago Nari" and through them it reached to the police station. then some distinguished villagers brought it back for VC. Finally VC settled it along the related issue amicably.

15 Chairman was not fair enough for the petitioner

16 final verdict was declared in presence of chief judicial Magistrate of Faridpur.

17 it needed four months to come to an end.

18 the case was submitted first to Officer-in-Charge of Nagarkanda P.S and given back by the judicial magistrate to VC. Subsequently UP chairman settled it under rule 33 of the Village Courts Rules, 1976.

19 it needed around seven months to complete.

20 petitioner was not fully satisfied

21 the case came back from Judicial Magistrate Court.

22 UP chairman did not constituted the VC, instead for political linking with the respondent, he requested the petitioner to condone the respondent. It might be considered as a compromise also if the petitioner is satisfied.

23 it came under VC after it was lodged to police station by both.

39	Taking money to send abroad and failure to do so	1	1		Chuadanga	2	1	2009
40	Occupying more land property based on a sold small part	1?	1	2	Moulavibazar	2	1	2003-7
41	Dowry / family dispute	1?	1	1	Moulavibazar	2	2	2003
42	Refusal of taking money against letting land cultivating by others	1	2	N/A	Chuadanga	2	1	-

Sources: From 1-20 Rahman, Firoz, and Hoque (2010) ; from 21-42 Emon (2006)

Coding

Institutions that addressed the case = inst. :

VC= 01, AC= 02, Shalish=03, None = 04, not related to it but done =?

Decision Reached / Not: Yes=01, No=2

Compliance: By petitioner only = 01, by Respondent only = 02, by both= 3, by none = n

Interest: Public = 01, Private = 02

Subject Matter: Property = 01, Family = 02, Behavioral = 03, Moral = 04, in mixed nature = - + -

Special note: Referring under footnote.

Inst. addressing the cases					Decision reached		Compliance				Nature of interest		Subject matter				
01	02	03	04	?	01	02	01	02	03	n	01	02	01	02	03	04	-+-
38	0	1	2	9	35	5	1	6	25	2	2	40	25	2	5	2	9

Summary of the table 01

Table 01 shows that out of 42 cases at least nine cases were clearly beyond the jurisdiction of village courts. Out of these nine cases, seven cases were about family disputes caused by dowry, divorce, violence against wife for dowry and so on. These seven cases were to be addressed by Arbitration Council. No Arbitration Council was formed and not a single case was settled by it. *Shalish* settled one case. Village court did not entertain two cases at all, and out of nine cases which were out of its jurisdiction, two cases were out of its financial limit. For some of these cases Union Parishad chairman has to form Arbitration Council. Chairman formed village court considering it as a petty criminal issue. It has been found through our interview with some chairmen also that they intentionally do it. To settle the dispute and to ease the burden of poor people to go to the court, union chairmen do this kind of *Shalish* under format of village court also (Interview 32_15032019).

Again, within these 42 cases only 5 cases remained undecided. Out of these five cases two were regarding family disputes and out of Village Court's jurisdiction. As two cases

were not entertained at all, village court reached a decision in 35 cases. Therefore, the success rate of Village Court is more than 80%.

It is being observed from the 3rd heading that the settlements in 25 cases are agreed by both parties. Only one case respondent did not comply though he was agreed to do it. Six cases are seen denied by applicant and two cases are denied by both to comply. After all, compliance with the decision is rife. Only two cases are related with common interest and the remaining forty cases are related with private interest. It means village court is settling private cases mainly. Fourth heading subject matter of the cases shows that property related cases are in highest position to be placed before village court. Nine cases are of mixed nature in terms of subject, either behavioral and moral or property and behavioral and so on. From the main table it has been seen that this picture of village court is available in at least 21 districts of Bangladesh where village courts are active in any form.

3.3.1.2. Arbitration Council

Like the Village Court another quasi-formal justice dispensing institution of the local government body or the Union *Parishad* (Cupach, Canary, and Spitzberg) is the Arbitration Council (Ali and Alim 2007, 4). Both the Muslim Family Law Ordinance, 1961 and the Family Court Ordinance, 1985 provide for avenues for reconciliation or alternative dispute resolution. The Muslim Family Laws Ordinance 1961 provides mechanism for reconciliation through the Arbitration Council and this type of reconciliation is not a part of judicial ADR; it is administrative in nature. On the other

hand, the Family Court Ordinance 1985 provides mechanism for reconciliation through judges as a necessary part of judicial proceeding (Court annexed ADR).

Arbitration Council and its Functions

Muslim Family Laws Ordinance, 1961 defines that arbitration council means a body consisting of the chairman and a representative of each of the parties to a matter dealt with in this Ordinance (Ahmed 2015). Arbitration Council is thus a dispute resolution body that functions both in urban and rural areas of Bangladesh. However, this council is not any independent and separate body. The chairman of a Union *Parishad* or of a *Paurashava* or the city mayor has to form this council. The functions of the arbitration council by such local elected bodies are additional to their usual functions. Provision for reconciliation or alternative dispute resolution through arbitration council has been provided for in three circumstances. These are the case of polygamy, giving *talaq* and making it effective, and failure of the husband to provide maintenance of his wife.

i. The Conciliation in case of polygamy:

The Ordinance makes a mandatory provision of obtaining permission of the arbitration council in case of polygamy by the husband. If he enters into second marriage without permission of the arbitration council, he commits an offence which is punishable up to one year imprisonment and a financial penalty up to taka ten thousand. He will be liable for some other punishments such as the marriage will not be registered under the Muslim Marriage and Divorced Registration Act 1974. He will have to pay the whole dower money of the existing wife/wives immediately.

The detailed provisions under section 6 are as follows:

- A man is not permitted during the subsistence of an existing marriage to enter into another marriage without prior permission written from the arbitration council.
- An application for such permission shall be submitted to the chairman, together with the prescribed fee, and the statement of the reason for the proposed marriage, and whether the consent of the exiting wife or wives has been obtained thereto.
- On receipt of such application, the chairman shall ask the applicant and his existing wife or wives each to nominate a representative. The arbitration council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.
- In deciding the application, the arbitration council shall record its reasons for the decision, and any party may, within the prescribed period and on payment of the prescribed fee, prefer an application for revision to the assistant judge concerned and his decision shall be final and shall not be called in questions in any court.

ii. Reconciliation in case of executing a Talaq:

One of the purposes of the Muslim Family Law Ordinance, 1961 was to provide for reconciliation to resolve Matrimonial Dispute without the intervention of the court. It sponsored the idea of reconciliation in the case of divorce by either spouse in accordance with the spirit of the Qur'an and Sunnah. The provisions are equally applicable to both husband and wife to exercise their right to divorce. The provision of a notice of *talaq* to be served upon the chairman of union *parishad* and the wife has two benefits. Firstly, it prevents hasty dissolution of marriage, which is the result of pronouncement of *talaq* that

usually occurs because of sudden anger of a husband. Secondly it offers a second chance to the couple to enjoy their marriage through reconciliation before the waiting period is expired or remarry if the period is expired (Rahman 2015). This initiative of reconciliation is applicable in case of any type of *talāq* by either husband or wife and in case of judicial separation also if the divorce is not for the third time. The arbitration council has to be activated for the purpose of reconciliation of the parties or for effecting separation or *talāq*.

Steps of reconciliation:

Section 7 provides the following steps for reconciliation:

Notice of *talāq*: Any man willing to divorce his wife shall send a copy of the notice of *talāq* to the chairman and a copy to the wife.

Waiting Period: A *talāq*, unless revoked earlier expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which the notice was delivered to the chairman. If the wife is pregnant at the time of *talāq* pronounced, *talāq* shall not be effective until the period of ninety days is over or the pregnancy, whichever the letter, ends.

Constitution of arbitration council: Within thirty days of the receiving of notice of *talāq*, the chairman shall constitute an arbitration council for making reconciliation between the parties, and the arbitration council shall take all steps necessary to bring about such reconciliation.

Procedure of Arbitration Council: With a view to reconciliation between husband and wife, the arbitration council shall send letter to both of them and fix a date for reconciliation. If both parties appear and reconciliation takes place, *talāq* will not be effective and the marital tie between the husband and wife will continue. If any one or both don't appear or if the reconciliation process fails, the *talāq* will be effective of expiry of 90 days. Only after the expiry of these 90 days, each party may get a certificate / certified copy of divorce from a *Qadī*.

Judicial Separation and the Role of the Council:

As mentioned above the provision of arbitration council and its conciliation proceeding can be applied to all types of *talāq* including judicial separation. When a judicial dissolution is effective under the Family Court Ordinance, 1985, the concerned family court has duty imposed by section 23 to send the certified copy of the decree of dissolution of marriage to the chairman within seven days after passing the decree. After receipt of such a certified copy of the decree, the procedure of section 7 of the Muslim Family Laws Ordinance will be set in motion and the decree will not be effective until the expiry of ninety days from the receipt of the notice by the chairman. On receipt of the notice of the decree, the chairman shall consider this as notice of divorce and he will issue another notice to both parties for reconciliation. It is necessary for the wife also, in whose favor the decree is passed, to inform the chairman independently about the decree, and also to send a notice thereof to the husband. An issue rose before the court was the effectiveness of the decree of the dissolution of the marriage after a successful

reconciliation. The court held that in an instance of total success of the conciliation, the decree shall be deemed to have been abandoned by the wife. The conciliation will have the effect of compromise and thus avoidance of the decree. In other words, the decree shall have no effect if, within the specified period, the reconciliation is not effected between the parties in accordance with the provision of the Muslim Family Laws Ordinance and Rules made.

iii. Reconciliation in the case of Maintenance:

Section 9 of the Ordinance provides for the following provisions with regard to the role of the arbitration council in case the husband fails to provide maintenance to his wife:

- If any husband fails to maintain his wife or wives adequately and equitably, they may apply to the chairman.
- On receiving such application, the chairman shall constitute an arbitration council to determine the matter, and the arbitration council may issue certificate specifying the amount to be paid by the husband as maintenance.
- A husband or wife may prefer an application for revision of the certificate to the assistant judge concerned and his decision shall be final and shall not be called in question in any court.

Limitations of the Arbitration Council:

The chairman of Union *Parishad* and the Arbitration Council are expected to play the role of a conciliator or mediator in real terms in the marital disputes. However, the object of the law is, to some extent, frustrated because of the Chairman's incapability to take

any initiative to arrange for conciliation or because of the parties' reluctance to reconcile. As no statistics or data is preserved with regard to the activities, it is not possible to evaluate the role of the council objectively – whether it is discharging its role in line with legislative objective or not. The Muslim Family Laws Ordinance does not provide any consequence if the Chairman of Union Parishad or the arbitration council does not arrange any conciliation between the parties. In practice, either the Chairman does it mechanically without commitment or the disputant parties forget it totally in the absence of any initiations.

The action of the arbitration council is largely reactive and not pro-active at all. When any notice of *talāq* is received by the council, it just discharges its function by issuing invitation letters for reconciliation without undertaking any pro-actives by way of counseling and reconciliation between the parties. This lacuna is frustrating for the pious purpose of the law. The arbitration council should be given proper training and instruction with regard to its appropriate role and duties. There are some inherent defects in the mechanism of arbitration council. Firstly, the Muslim Family Laws Ordinance, 1961 does not provide any definition of conciliation. Secondly, although the Council is formed by the chairman and representatives of the parties, the parties are not been given adequate autonomy to make decision. Thirdly, the council is judgmental and apt to impose their preferred decision on the parties. Fourthly, the chairman of the council is not given any training on counseling and conciliation. If adequately trained in Muslim personal laws and equipped with the skills of counseling and conciliation, the Arbitration Council could conciliate marital disputes rather efficaciously and positively.

There is no enforcement and oversight mechanism under the law for arbitration council. An author comments that it is quite noticeable that though the systems encourage decision-making in an informal atmosphere, the legal provisions as to enforcement of the decision of the Village Courts are adequately formal. However, for both the Village Courts and the Arbitration Council, there are no explicit legal provisions as to oversight mechanism.

Reconciliation under the Family Courts Ordinance, 1985

Apart from the Muslim Family Laws Ordinance, 1961, the Family Court Ordinance, 1985 went a step ahead in resolving marital disputes through conciliation during the process of the family suit. The Family Court Ordinance, 1985 has built-in conciliation mechanism enabling disputant parties to resolve the outstanding issue informally, discreetly and with a sense of accommodation in which the Family Courts play the role of a well-wisher and a friend rather than an adjudicator. The role of the Family Court judges is of vital importance for attempting such reconciliation between the parties. In-fact the enactment of the Family Court System was rooted in social welfare philosophy to establish a link between the legal and social sciences. But these provisions have not been properly understood and practiced so far.

3.3.2. Non-state led Rural Dispute Resolution System

Among the non-state led / informal rural dispute resolution systems, the *Shalish* system is dominant and overwhelming. It is a completely informal mechanism. It is basically a

practice of gathering village elders and concerned parties to settle any local or family disputes. There are traditional and NGO-led *Shalish*. NGO led *Shalish* is a modified version of traditional *Shalish*. The people who conduct *Shalish* proceedings are called *Shalishkar* (adjudicator). In most cases, the *Shalishkars* are male. A *Shalishkar* may be selected because of his seniority, experience, wisdom, or because of his economic, religious or political status.

3.3.2.1. Traditional *Shalish*

Traditional *Shalish* has no fixed form and dimension. Its size and structure depend entirely on the nature and gravity of the problem at hand. There are no written rules or standards for conduction of *Shalish*. Therefore, mode of *Shalish* management differs from one region to another and from one religion to the other (Delwar 2005). Usually a general *shalish* is called upon when the issue of dispute goes beyond the limit of privacy of a family. Either it involves a criminal act, which concerns the society, or it is a civil or family dispute that impacts upon social peace and harmony. Otherwise, clan or family based settlement is very common. Clan/family based dispute settlement process is an old practice of settling family or other civil and criminal disputes among the members of a large family, or among the families with close tie of kinship or among families of a clan (*gusthi*). However, it does not have much distinguishing characters by which it can be differentiated from *shalish*. Rather it can be termed as a 'private *Shalish* or *Shalish* in camera'. When a disputed matter involves a family or clan prestige, the disputant parties even do not want to disclose the issue to members of other families or clans. Hence, they arrange a private meeting to come to a settlement. In such a meeting,

only the senior close relatives or clan leaders can remain present. Children or other junior members may not get access unless they are required to settle the issue. In the next chapter discussion about *shalish* as the main part of the thesis will come in details.

3.3.2.2. The NGO-led *Shalish*

The NGO-led *Shalish* system started working in Bangladesh since 90s. The recent practice of NGO-organized *shalish*, which has started a modified *shalish* mediation in Bangladesh in the early 1990, also falls under the non-state rural dispute resolution system. Several legal aid & human rights NGOs like Madaripur Legal Aid Association (MLAA), Bangladesh Rural Advancement Committee (BRAC), Gano Sahajjo Sangstha (GSS), and Ain o Salish Kendra (ASK), Bangladesh Legal Service Trust (BLAST) started providing mediation and legal services to the community when MLAA is the pioneer.

In relation to traditional *shalish*, this system is also informal. But the system performs some paper-works like a formatted application for settling dispute and keeping the records of decisions and compliances. This system puts emphasis on the application of state-laws. However, its endeavor is mostly designed to come to an equitable as well as friendly solution. Like *shalish* system, this system also deals with all types of disputes (Rahman, Firoz, and Hoque 2010, 31). However, collaborating with government activities four NGOs namely Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid Service Trust (BLAST), Eco Social Development Organization (ESDO) and WAVE Foundation are providing necessary support in Activating Village Courts in

Bangladesh Project phase 2. These Four NGOs jointly appointed village court assistants for around 1080 unions under the project phase 2. As the assistants of village courts they receive cases, keep records and run awareness programs to educate rural people to take dispute resolution services from village courts. NGOs do *Shalish* directly and make Government institutions doing *Shalish* facilitating it by their staffs physically and providing training and awareness programs there.

In fact, this is a modified form of traditional *Shalish* system. In addition, NGOs have endeavored to improve the fairness of traditional *Shalish* by including women as *shalishkars*, by providing *shalishkars* with training in law and human rights and connecting *Shalish* to legal aid, so that the aggrieved parties might have the option to pursue their claims in the formal system (Das and Maru 2011).

The most important feature of the NGO organized ADR/*Shalish* is that this system puts emphasis on the application of state-laws. However, its endeavor is mostly surrounded to come to an equitable as well as friendly solution. Like *shalish* system, this system also deals all types of disputes. It settles a case directly or refers the case to its proper authority sticking to the case until it comes out with a fruitful outcome.

Selected Important NGO organized *Shalish* and their Structure and Operations

Madaripur Legal Aid Association (MLAA) founded in 1978 was the first non government organization to identify ADR as an important foundation for a cost effective, expeditious and accessible venue of justice for the disadvantaged (Rahman 2015, 252,

Kundu, Khan, and Samadder 2010). It began the process of filing cases in courts on behalf of their clients. The founder, however, was satisfied with neither the treatment nor the result that the poor received in court. Therefore, in 1988, it began to focus on mediation as a means of addressing emergency needs of clients (Halim 2015, 158). In recognition of some limitations of traditional *shalish* like imposing of decision arbitrarily, following no uniform principles of equity and justice etc., MLAA developed an alternative forum for dispute resolution for the rural poor through the reformed *Shalish*, popularly known as the Madaripur Model of Mediation (MMM) (Sadi 1988). MLAA is also providing logistic support to Activating Village Court (AVCB) project phase (ii) in some 270 unions under three districts of Madaripur, Shariatpur and Faridpur (Interview 37_21042019).

During this period, **Bangladesh Rural Advancement Committee** (BRAC) introduced paralegal programme in 1986 and it was reshaped under the umbrella of Human Rights and Legal Education (HRLE) programme (Kundu, Khan, and Samadder 2010). HRLE latter turned into HRLS (Human Rights and Legal Service). Presently BRAC has a regular *Shalish* program under Human Rights Legal Services (HRLS) in some upozilas of Chittagong district (Interview 37_21042019). ADR is one of the main components of HRLS programme that has strong rapport with Legal Aid Clinic (LAC / Sunday Clinic) as a service providing center. The clinic is supposed to be held in every Sunday, but it varies from area office to office which is the first entrance place of call for those seeking legal services (Kundu, Khan, and Samadder 2010).

Nagorik Uddyog means citizen initiative (NU), a human rights NGO, was set up in 1995. One of NU's key objectives is to enhance women's access to justice, as a part of a larger goal to establish social and gender justice in Bangladesh. NU operates in four Upazilas: Kalihati, Badarganj, Swarupkhata and Banaripara targeting intervention at the Union level. In its mediation program, NU has adopted a strategy whereby it seeks out members of the traditional *Shalish* that are more democratic and just form of dispute resolution (Hasle 2003, 108). *Shalish* remains the most appropriate mechanism for meeting the legal needs of rural Bangladeshi society. In recognition of the benefits of the informal governance system of the *Shalish*, NU is committed to transforming the *Shalish* into a more democratic mode of mediation (Siddiki 2003). In essence, NU aims to create a community judiciary without formal legal authority. Legal Aid Committees are responsible for monitoring the human rights situation in their respective localities. Every three months, the Committee meets to review the outcomes of all *Shalish* hearings (including those that are not mediated by *Nagorik Uddyog*) held during that time. These meetings provide critical feedback for Committee members and NU staff regarding successes, failures and gaps in their program (Siddiki 2003).

Nijera Kori meaning 'we do it ourselves' (NK) is, in many ways, a unique organization among NGOs in Bangladesh. It began its journey as a privately initiated response by an expatriate nutritionist working with a development agency to end the distress of destitute rural women who migrated into Dhaka city in the aftermath of the 1974 famine (Kabeer 2002). In its early phase, it was a relief-oriented initiative, providing food, shelter and income-generating skills to these women. It became inactive after its founder's departure

from Bangladesh. It revived again in 1979 when the staff (mainly women) of CUSO's (the Canadian University Services Organization) Women's Programme, dissatisfied with the welfarist direction programme taking in relation to gender issues, left CUSO and revived the defunct NK in order to run CUSO's development programs with poor, rural women under new auspices (Kabeer 2003). A further change of direction took place in 1980 when a large number of field organizers left BRAC in order to join *Nijera Kori* (Kabeer 2002). As a part of social mobilization *Nijera Kori* (NK) members are now often invited to participate in *Shalishes* to represent the interests of the poor. In many villages, they have set up their own *Shalishes* to settle disputes, thus creating a parallel structure of jurisdiction. In one of the areas studied by Christensen (1999), around 90 percent of *Shalishes* were organized by NK groups. It is suggesting that confidence in the NK *Shalish* procedure to dispense justice extended considerably beyond its group members. The NK *Shalish* often overturned the verdict of the village *Shalish* or came to the aid of those who had been unfairly treated (Hasle 2003)

Like Madaripur Legal Aid Association (MLAA), **Bangladesh Legal Aid Service Trust** (BLAST) is providing technical and logistic support in the second phase of AVCB project. It is providing support in 235 unions of seven districts under Chittagong and Sylhet divisions. BLAST is working for AVCB project phase (ii) in 235 unions of 35 *upozilas* under seven districts out of which four districts are of Chittagong and three districts are of Sylhet divisions. In this purpose, BLAST appointed 235 village court assistants, 35 *upozila* coordinators, and 7 district coordinators from BLAST. BLAST is providing training to the chairman of union parishad, members, and the village police.

There is a five days training for the chairmen, three days training for the members and one-day training program for the village police from BLAST. In addition to that, it is financing to prepare courtroom (*Ijlas*) to perform the court activities smoothly. An environment of adjudication was absent there. As unions are the grass root level administrative units in Bangladesh and the disputes as cases are received and disposed there, BLAST appointed some 235 Village Court assistants to receive the cases, place it before the village court and maintain the forms and registrar books. He (VC Assistant) arranges awareness program about this service of the government among the rural people there. BLAST has both budget and support for that at union level (reported by a BLAST district coordinator, (Interview 29_26022019). Legal aid is BLAST's core activity. BLAST does Shalish directly as part of its core activities. It receives cases which are not under jurisdiction of Village Court mainly, and try to settle it through its appointed ADR officer. If s/he fails to settle, it proceeds through formal legal system. Significant number of cases addressed by BLAST are about family disputes which include failure to pay dower on divorce, failure to pay maintenance and child support, illegal dowry demands and domestic violence (Sa`di 1988).

Summary

Rural dispute resolution in Bangladesh has a long history. The whole history of the rural dispute resolution indicates that it is present in all the periods i.e. Hindu period, Muslim, British and post-British period attached with the state directly or indirectly. However in the British period it suffered a declination for mainly Zamindari system through permanent settlement Act of British rulers. Dispute resolution is a state concern

issue, and state was never apart from it. But rural dispute resolution system reserved its rural characters and still it is being maintained by the state within legal frame work.

Contemporary rural dispute resolution system in Bangladesh is of two categories, namely State-led rural dispute resolution and Non-state-led rural dispute resolution system. The second one is of two types, traditional *shalish* and NGO-led *shalish*. State-led system tries to cover resolving the disputes of social and family domain. Village Court and Arbitration Council are two state-led dispute resolution systems. The first one established under the Village Court Act, 2006, to resolve some petty disputes occurred in rural areas of civil and criminal in nature. The second one constituting under the Muslim Family Law Ordinance, 1961 is to resolve only some matrimonial dispute like polygamy, divorce, maintenance and dower. For severe criminal family disputes formal civil and criminal courts are the main institutions. Village court may deal if it falls under its jurisdiction. Traditional *shalish* or NGO-led *shalish* also tries to deal some family disputes when they go beyond matrimonial disputes.

NGO-led *shalish* maintains a balance recognizing the benefits of traditional *shalish* and complying with state law at the same time. It trains *shalishkars* and monitors *shalish* through well-organized monitoring cells. However, the limitations that inflict this system are mentionable. The NGO-led *shalish* is functioning in some specific areas only. NGOs are reluctant about Islamic norms and in a trend to explain some Islam related matters like *fatwa* in wrong way for example *fatwabaz*. After all NGOs have to maintain and manage their activities collaborating with foreign donors which ultimately instigates them to implement some agendas in contrary to Islamic norms, for which they make some

unjust accusation against *Ulamas, khatibs, Imam* and others. It may be mentioned that those who react every action of NGOs have a knowledge constraint. family disputes that come to NGOs are based on failure of maintenance of wife or wives by husband, dowry demand by husband or his family and torturing wife physically, unnecessary second marriage by husband and creating mental pressure on existing wife for second marriage etc (Kundu, Khan, and Samadder 2010). Some of these cases were supposed to be solved by Arbitration Council following the Muslim Family Ordinance 1961. But it is hardly found in any literature that Arbitration Council is doing it actively. Arbitration Council is resolving some of these family disputes when it receives any notice to do it and in that case, it does it only as a routine work. In these gaps, NGOs are playing vital role to handling cases relating to family disputes falling out of jurisdiction of village court. NGO's in dealing these cases maintain a linkage with state laws and state's formal or quasi-formal justice dispensing units. They randomly refer the cases to family courts, to civil or criminal courts. In addition, it settles many cases peacefully collaborating with other local administrative authority. In this connection, an NGO official said:

“What we do is to resolve the disputes which are not under village court's jurisdiction like matrimonial disputes, family violence, divorce, dower, maintenance etc. We do counseling to resolve this kind of disputes or refer it to its proper places to settle it through ADR. We generally refer these types of cases to the *Upazila* Women Related Officer, District Women Related Officer and *Zila* Legal Aid” (Interview 29_26022019).

A majority of these cases are dealt by traditional *Shalish* also. In doing so, *Shalish* follows traditional customary laws and tries to find out a solution collecting opinions through a consultative way. *Shalishkars* have a very little knowledge to maintain a balance between tradition and statutory laws. They have no clear idea about NGOs

activities also. In fine, traditional *Shalish*, NGO-led *Shalish* or state-led village courts and arbitration council needs common and elementary legal and moral education to do *Shalish*. As ensuring justice is the core of *shari`ah*, the holy Qur'an as the main source can guide all of these disputes resolutions institutions in rural Bangladesh.

