

Paving the Way to Justice

The Experience of
Nagorik Uddyog



Mission Statement

One World Action is working for a world free from poverty and oppression in which strong democracies safeguard the rights of all people.

To this end, we provide money, expertise and practical help to organisations committed to strengthening the democratic process and improving people's lives in poor and developing countries. In all cases they initiate and work on the projects that we support, ensuring that local needs are genuinely understood and met.

As well as supporting our partners' work on the ground, One World Action represents their interests in Europe, putting forward their views in debates on policy towards poorer countries, and helping them to forge closer links with decision-makers in Britain and the European Union.

These 'partners for change' include other voluntary organisations, community and co-operative movements, women's organisations and trade unions. Though diverse in kind, they have a common commitment to strengthening local institutions and giving people a say in the decisions that shape their lives.

Central to our work is the belief that defeating poverty goes hand in hand with promoting human rights and good democratic government. Only if we pursue these goals in a coherent way can we build a just and equal world.

Policy Change Programme

One World Action's Policy Change Programme aims to inform and deepen the debate in the UK and at the European level on democracy, governance, rights and development issues. We publicise the work of our southern partners in building and strengthening democratic organisations, particularly at the local level, their engagement in local, national and international political structures, and their work for basic social, economic and political rights.

We have commissioned a number of in-depth profiles of some of our southern partners.

These are analytical and constructively critical studies which examine the approaches and activities of each partner and the context in which they work. In particular, the profiles discuss how partners' approaches and activities strengthen democratic decision-making structures and promote greater gender equality and equity. We are publishing these profiles to contribute to development thinking by providing examples of 'good practice', and to document the views and experiences of our partners and the communities with which they work.

Paving the Way to Justice

The Experience of Nagorik Uddyog, Bangladesh

by **Dina M. Siddiqi**

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Nagorik Uddyog (Citizen's Initiative), Bangladesh founded in 1995 is a non-government organization that promotes human rights and good governance with a particular focus on local governance. It is committed to democratizing the conventional system of mediation, so as to establish social and gender justice. It facilitates the realization of rights of women at grassroots level through education on civic rights, human rights and women's rights and by resolving community and family disputes through mediation. Nagorik Uddyog can be contacted at zhossain@agni.com

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Photographs:

The photographs used in the report are taken from NU activities. They illustrate the training of union legal aid committees, women's leadership development training, women's group discussion, *Shalish* sessions, legal awareness training and registering of complaints.

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1

Introduction

This document has been produced in light of the increasing recognition that access to justice is a fundamental means of establishing human rights. It begins with a brief review of common problems associated with providing meaningful access to justice in poor countries. The report then focuses on the activities of Nagorik Uddyog (NU), a non-governmental organization in Bangladesh whose approach offers a model that appears to have a substantial and sustainable impact on justice delivery. It is hoped that the lessons learned from NU's experience will help guide future work in this area in Bangladesh and elsewhere (see section on Lessons Learned).

Founded in 1995, NU promotes human rights and good governance, with a particular focus on local governance and gender rights. NU considers the establishment of a gender sensitive society to be critical to the formation of a larger democratic polity. It is committed to democratizing the conventional system of mediation, so as to establish social and gender justice. It facilitates the realization of rights of women at the grassroots level through education on civic rights, human rights and women's rights and by resolving community and family disputes through mediation.

NU's approach and ideology are encapsulated in its name, which translates into Citizens' Initiative. In the words of NU's coordinator, Zakir Hossain, the organization works "to strengthen participatory democracy at the local

level by promoting a more equitable system for resolving disputes and developing people's awareness of their rights – as women, as voters and as citizens." The long-term objective is to create democratic spaces, conditions and processes that will enable marginalized and disempowered groups, especially women, to claim for themselves their rights as citizens.

▶ Access to Justice and the Limits of the Formal Justice System

Access to justice conventionally refers to the ability of individuals to appear before formal state courts or otherwise draw on the judicial and legal structures of the state. Theoretically, everyone is entitled to such access, which is a primary means of establishing human rights. Unfortunately, the gap between formal entitlements and actual access can be immense. Typically, justice within the formal state system is beyond the means of most poor people in the South.

Exorbitant costs, excessive delays and backlogs, and a lack of knowledge or resources are major obstacles to those who seek justice in formal legal settings. The geographical distribution of courts also tends to be uneven, with the balance tilted toward urban centres. Since people in poor countries live overwhelmingly in rural areas, travel costs and logistics pose additional burdens.

A formidable social distance also exists between most people and formal judicial institutions. Procedural complexities are difficult to master even for those who are familiar with the language of the law. Poor and marginalized populations are least likely to possess the self-confidence or knowledge required to navigate an inherently intimidating legal system. For many people the entire process, from beginning to end, becomes an exercise in alienation. Indeed, the barriers to access cited above effectively deny poor people the right of access to justice.

Non-formal Justice Systems

The majority of the world's impoverished people live in small face-to-face communities, many of which possess informal dispute resolution practices alongside formal judicial institutions. These parallel, community-based modes of dispute resolution have certain features in common: they generally incorporate measures that are 'face-saving' rather than adversarial, and to which both parties are in agreement. The larger interests of the community are usually taken into consideration in the pronouncement of sentences. The emphasis is on restitution or restorative justice rather than on punishment.

Local modes of conflict resolution also tend to encourage a high degree of direct community participation. The adjudicator or judge is selected from the community itself and known to both parties in any dispute. Rulings are non-binding, and enforcement depends on the ability of the community to exert social pressure on the individual(s) concerned.

In contrast, formal judicial institutions operate on the basis of legal doctrines derived from philosophical traditions that are distinct from, and sometimes antithetical to, notions of justice embedded in many local communities. From the latter perspective, "western-style" justice systems appear to be culturally inappropriate and hostile to the interests of the community. Individuals brought up with community mores that emphasize reconciliation often find the

stress on punishment to be counter-intuitive, repressive or simply unjust. The same holds for the strict rules of evidence fundamental to formal judicial procedures. Perceived contradictions and illogical or unjust outcomes produce alienation and mistrust of the system.

Disaffection with the judiciary is compounded by corrupt state practices and manipulation of the judicial system by political and social elites found in many countries. A widespread perception shared by impoverished groups across the world is that legal systems work for the interests of those in power — at the expense of the powerless. Not surprisingly, most poor people opt to, or have no choice but to, settle their disputes using traditional or informal conflict resolution mechanisms. Compared to the frustrations of appealing to the formal judiciary, informal systems of justice offer multiple benefits. Hearings can be obtained relatively quickly in one's own locality, the process is flexible and carried out in a familiar idiom, and expenses are minimal or non-existent.

Toward a Broader Definition of Access to Justice

If we are to take seriously the legal needs and social realities of impoverished groups, we need to engage with the modes of justice on which they rely. In other words, we must revise conventional definitions of access to justice. Clearly, the barriers of access to the formal legal system are formidable. It is imperative to broaden the term "access to justice" so that it encompasses the informal as well as the formal state justice system. However, it is important to keep in mind that informal modes are not a substitute for formal ones. Rather, the two systems are complementary.

2

Local Justice in Bangladesh: Background and Context

Bangladesh is one of the poorest countries in the world, with around a third of the population living below the poverty line. The UN estimates that 45-50 million people are “extremely poor” that is, they live on less than a dollar a day.¹ The immediate concerns of most people center on the provision of adequate food, shelter and healthcare. Although the country has made great strides in providing free primary education, especially for girls, the quality and availability of education remain inadequate. At the same time, the average citizen has minimal knowledge of his or her legal rights or of how to exercise these rights.²

The combination of resource constraints and knowledge gaps increases the inability of

citizens to gain access to judicial institutions or to exercise their constitutional rights to justice (Khair et al: 1). Social practices and attitudes toward the poor as socially inferior and therefore entitled to fewer rights, present other less visible constraints.

► Democracy at Work?

Since the end of military rule in 1990, there have been three national elections, with fairly smooth transitions between governments. The formal trappings of democracy notwithstanding, a general ‘culture of rights’ is notably absent in the national and local arenas. At present, there is a broad consensus that the law and order situation has broken down. Escalating forms of violence, especially violence against women, are symptomatic of the larger problem of social and political disorder. The institutionalisation of violence in political culture, especially the patronage and protection of criminals, has had severe repercussions in citizens’ everyday lives. Key public institutions, such as the judiciary, the police and local level administrative units, routinely fail to deliver justice or uphold basic human rights. Public

Photo: Tom Crick/One World Action



¹ This was stated in a press briefing in Dhaka by UN Assistant Secretary General Hafiz Pasha on February 25, 2003. *The Daily Star*, Dhaka. February 26, 2003. p.12.

² Illiteracy need not be a barrier to the acquisition of legal knowledge. However, formal schooling provides an obvious forum for learning about citizen’s rights and duties.

disenchantment with national level electoral politics and cynicism toward the judiciary and police are widespread.

Bangladesh provides a classic example of the structural and substantive problems that hound the official judicial system in many poor countries. The judicial process is burdened with a huge backlog – according to one official estimate, there are around 500,000 civil cases pending with courts currently.³ The process itself is expensive. A recent report concludes that most people in Bangladesh are simply priced out of the judicial system.⁴ It is also excessively time-consuming — a civil case in a District Court takes an average of five years, from filing to sentencing, to be resolved.

Physical access to the courts is extremely limited; 8 out of 10 Bangladeshis live in village communities but the lowest formal court is at the district level – three administrative units (village, union, thana) away from the individual in a village. Moreover, the basic structure of the legal system is biased toward the affluent and the politically powerful. Corruption, nepotism and inefficiency can lead to individuals being subjected to frequent procedural harassment. Litigants even have to pay to have evidence collected promptly and appropriately. A common saying captures the general perception toward the courts: *He who gets trapped by the law falls into the mouth of a tiger.*

In recent years, law enforcement agencies also have lost much of their credibility. The basic units of local government, the district and *upazila*, were originally constituted to meet the needs of the colonial state and so are tilted toward magisterial and police functions. Vested with a disproportionate amount of power, with little corresponding accountability,

the police and the magistracy have become notorious for their susceptibility to external political pressure. Their ‘capacity to punish’ has become a prized resource, fundamental to party politics and especially vulnerable to corrupt practices (Hossain and Islam 2002: 6). In cases that are politically charged or involve those with criminal connections, litigants are frequently intimidated into withdrawing charges. In certain circumstances, even getting the police to register a complaint can be difficult.

Thus, a widespread perception of poor people in Bangladesh is that the instruments of formal justice – the courts and the police – exist only to further the interests of the rich and the powerful. The ability to win a case in court depends more on one’s financial resources and political connections than on the merits of the grievance itself

Local Government Bodies

One of the more encouraging signs of democratization at the grassroots level in Bangladesh is the considerable enthusiasm for elections to the Union Parishad (the basic unit of electoral representation). Notably, since 1997 women candidates have formally participated in Union Parishad (UP) elections, in reserved and independent seats. Although

Photo: Nagorik Uddyog



³ Bangladeshi Law Minister Moudud Ahmed’s statement in Parliament on February 25. *The Daily Star*. Dhaka, February 26, p. 12.

⁴ United Nations Development Program *Human Security in Bangladesh: In Search of Justice and Dignity*. Dhaka, UNDP, 2002. p.4.

the UP elections of 2003 were marred by occasional violence and intra party feuds, the overall impression is positive. Almost 40,000 women filed papers for nomination. An unprecedented number ran for unreserved seats, many for the post of Union Chairperson. As in earlier elections, women also have voted in large numbers, sometimes standing for hours on end to exercise their right to vote. The large-scale participation of women in the local electoral process marks the success of sustained NGO and government efforts to promote voter literacy and women's electoral rights. However, the concrete benefits may be limited, since the mandate and jurisdiction of the Union Parishad are fairly circumscribed (Mirza Hassan 1999: 5). In addition, most UP members are unaware of their powers or their responsibilities toward their constituencies. The institutional and jurisdictional weakness of local government bodies, in contrast to the authority of the police and magistracy, effectively silences the voices of the poor in the institutional arrangements of the state (Islam and Rahman 2002: 5). It is essential, then, to establish sustainable institutions at the local level, which are capable of representing the interests and voices of those who are outside the circle of power.

Embedded Gender Injustices

Despite constitutional guarantees of equality and a plethora of laws designed to protect their

human rights, women who seek formal justice in Bangladesh face numerous obstacles. Most legislation on the books is enforced selectively, if at all. Among other things, the activities of law enforcement agencies are hampered by political interference and influence peddling by those with powerful political connections and also by social elites. More often than not, women victims of violence find that the police are either unable or unwilling to offer them protection or assistance.⁵ Public officials charged with upholding the law can at times exhibit a shocking disregard for women's rights. Procedural delays caused by the indifference of concerned officials can also play havoc with the fate of individual complaints.⁶

Once women do gain entry into the courtroom, they confront gender discrimination and hostility from the predominantly male judges and magistrates who preside over their cases. Poor women also face a host of class prejudices. Moreover, the substance of many state laws is discriminatory. The Bangladesh Constitution ensures equal legal rights to men and women but simultaneously acknowledges the primacy of religious laws in matters of inheritance, marriage, divorce, maintenance, and child custody. In such matters, personal or religious laws tend to work against the interests of women.⁷ Moreover, the language of many 'secular' state laws — some of which have remained unchanged since they were introduced during colonial rule — is highly patriarchal in tone and intent.⁸

⁵ In the same week in April 2003, two school-going girls committed suicide in Khulna District. Both deaths were the outcome of a prolonged period of the sexual harassment by locally powerful youths and the failure/negligence of the police to put an end to the harassment despite repeated requests from the families concerned. See Dina M. Siddiqi "New Trends in Violence: Sexual Harassment and Obstacles to Mobility in Bangladesh." Position paper prepared for the NGO Coalition on Beijing Plus Five, Bangladesh. Dhaka 2003.

⁶ A study the access to justice by survivors of acid attacks carried out by the Human Rights Monitoring Cell of the Bangladesh Bar Council in 2001 noted that delays in getting proper medical certificates presented a major problem. 97 of the 100 women in the survey were unable to pursue their cases because they were not able to obtain medical certificates. Cited in Nila Matin "Women's Rights: Freedom of Participation and Freedom from Violence" in Hameeda Hossain (ed.) *Human Rights in Bangladesh, 2001*. p. 236.

⁷ For a serious proposal to amend personal laws, see Faustina Pereira *The Fractured Scales: The Search for a Uniform Personal Code*. UPL: Dhaka, 2002.

⁸ For details, see Dina M. Siddiqi "Of Consent and Agency: A Report on the Law and Practice of Forced Marriages in Bangladesh." Prepared for Ain-o-Salish Kendro and Inter Rights. 2002.

Customary practices that fall outside the purview of state law also remain entrenched in many domains. Practices such as the proclamation of so-called religious edicts or *fatwas* or the social acceptance of verbal divorces persist, reflecting the enduring nature of the broader patriarchal culture. *Fatwas* and *hilla* marriages⁹ are traditional tools for regulating women's sexuality, mobility and autonomy. Justified as upholding tradition or custom, these practices rely on selective and patriarchal readings of religious texts and traditions.

In general, Bangladeshi women tend to have access to fewer financial resources, are less educated, and have minimal autonomy and decision-making powers within the household (Khair: 7). Of course the situation varies by class and social background — poor and minority women are multiply disempowered within the family, the community and society. Socialized into a culture of hierarchy and deference, many women (as well as impoverished men) also believe they have few or no legal rights. Even when they are aware of certain rights, women who depend on male social protection may be convinced it is not in their best interests to claim those rights.¹⁰

Major Sources of Conflict

Conflicts at the local level fall into three general categories. In the predominantly agricultural

setting of rural Bangladesh, a disproportionately large number of cases center on land disputes. These may be boundary disputes or struggles over inheritance and the division of property. Land disputes have a tendency of rapidly descending into violence. The Acid Survivors Foundation estimates that in 2001, 20% of all acid burn cases resulted from disputes over property.¹¹ Relatively minor disputes over territorial boundaries or precious resources (such as the cutting down of a neighbor's tree or the accidental killing of a farm animal), loan repayment or perceived slights, are also common sources of conflict.

A major site of conflict and ensuing violence is the domestic sphere. The causes of domestic conflict vary, although dowry demands seem to be an increasingly significant factor. Disputes related to dowry payments are a relatively new phenomenon in Bangladesh but frequently result in domestic violence, in many cases leading to grievous injury or death. Conflicts also surface around questions of maintenance, divorce, multiple marriages, and child custody. In the prevailing political climate, women are also increasingly subject to harassment and violence by virtue of their association with male relatives involved in disputes.

Photo: Nagarik Uddyog



⁹ A *hilla* marriage is an intervening marriage that a Muslim woman must contract if she is to remarry a man from whom she has been divorced. Typically such divorces arise from casual and thoughtless verbal pronouncements of divorce made by husbands in a fit of anger. The law in Bangladesh does not recognize the legitimacy of casual verbal divorces although they have widespread social acceptability.

¹⁰ Muslim women in rural Bangladesh frequently give up their rights to inheritance of property in exchange for 'social protection' from male relatives. For details, see M. Mahbubar Rahman and Willem van Schendel "Gender and the Inheritance of Land" in van Schendel and Westergaard (eds.) *Bangladesh in the 1990s: Selected Studies*. Dhaka: UPL, 1997.

¹¹ See The Acid Survivors' Foundation website. <http://www.acidsurvivors.org>

▶ Resolving Disputes Locally: The *Shalish*

Minor disputes tend to be resolved informally within the family or the community. Some cases make their way to the courts, often at great expense and hardship to the litigant. Others develop into violent conflict. Litigation continues to be a popular, if highly inefficient, mode of dispute resolution in matters relating to property. Most cases that go to the courts remain unresolved for years on end. It is estimated that about two thirds of disputes never even enter the formal court process.¹²

As noted earlier, the majority of the population lives in rural areas and has little access to formal justice institutions (Islam 2003:97). Aside from the cost of traveling long distances, individuals possibly must forgo daily wages, as well as pay court and lawyer's fees, all in order to begin litigation. None of this guarantees how many court appearances will be required for the case to be settled. Moreover, in many rural areas, court appearances also carry with them a degree of social stigma, especially for women. In the face of such odds, people turn overwhelmingly to informal modes of dispute resolution.

The most common and effective mechanism for dispute resolution at the village level is the

shalish or informal village community hearing. The *shalish* is an enduring and fundamental feature of rural society, one that has been neither displaced nor endangered by the introduction of a formal justice system. Its considerable social legitimacy in rural Bangladesh attests to its resilience and strengths. A *shalish* consists of a panel of representatives or *shalishdars* who adjudicate over disputes brought to their notice (Islam: 99). Disputes can be of any nature, ranging from theft and conflicts over property, to marital discord, sexual violence and the "transgressive" behavior of individual villagers.

As an informal institution, the *shalish* is dynamic and flexible, with few set procedures to be followed. Generally, village elders and respected personalities constitute the *shalishdars* (those who preside over *shalish* hearings), although the exact membership is fluid at any point in time. 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 community codes of conduct are in jeopardy. *Shalish* hearings may become quite animated and, since it is open to the public, frequently the audience chimes in with its views.

Numerous commentators have noted the widespread use of the *shalish* in rural Bangladesh (Islam and Rahman; Islam; Hashemi and Hayat). For poor villagers, especially women, the *shalish* offers many advantages. First, a *shalish* hearing does not require any serious expenditure. Second, it takes place locally, at a time that is convenient for all of the parties involved. Proceedings occur in a language and framework of justice that is comprehensible to the litigants. Third, disputes are resolved relatively quickly, usually in one to three sittings.

Photo: Nagorik Uddyog



¹² United Nations Development Program *Human Security in Bangladesh: In Search of Justice and Dignity*. Dhaka, UNDP, 2002. p. 9.

Ideally, all parties should be able to voice their concerns and decisions should be reached on the basis of consensus. The verdict is declared verbally and in the presence of all those sitting in on the *shalish*. The stated objective of *shalish* rulings is to restore social relationships and community harmony, and to provide restitution rather than to exclusively punish offenders. Rulings are socially rather than legally binding. The enforcement of *shalish* sentences depends entirely on the degree of social pressure that can be exerted in any one case.

Limitations of the Traditional *Shalish*

Paradoxically, the shortcomings of the *shalish* in its existing form mirror many of the problems with the formal justice system (Golub 1997: 21). The structure of the traditional *shalish* reflects the unequal class and gender hierarchy that characterize social relations in rural Bangladesh. By convention, village elders and others who sit on a *shalish* are drawn from the elite and powerful sections of society; they are almost always male. Women are not only prevented from making their voices heard in a traditional *shalish*, their presence even on the margins of a public hearing is strongly discouraged. Men from impoverished backgrounds also find it difficult to voice their opinions freely, let alone preside over the proceedings.

Consequently, in conflicts involving parties of unequal social or economic status, judgments invariably go in favor of the dominant group. The bias is particularly pronounced in the case of poor women. Rulings on matters of custom or religion tend to be made on the basis of personal (and highly patriarchal) interpretations of texts and community norms rather than with reference to the legal framework. Nor are *shalish* rulings impervious to corruption, nepotism and the pressures of political patronage.

Moreover, the language of consensus - when the consensus is not reached democratically

- becomes a powerful tool for suppressing dissent. The ideal of consensus and the restoration of social harmony frequently translate into the imposition of judgments that may be far from neutral. Appeals to act according to community norms effectively regulate the moral conduct of community members, especially women. Research indicates that community level contentions over women's conduct and honor (*izzat*) often mask deeper conflicts over social, economic or political issues between males (Siddiqi 98). The traditional *shalish*, then, reproduces existing social hierarchies and practices, and provides an effective tool for disciplining individuals and groups who dare to transgress established social rules.

Photo: Tom Crick/One World Action



3

NU's Objectives, Approach and Strategies

At the core of NU's approach is the belief that the *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. NU's initiatives have been pioneering in this respect. Currently, NU is in the third year of a 3-year

project entitled "Improving Women's Access to Justice in Bangladesh". The success of the project has been impressive and coverage has expanded from 16 to 24 unions in the past year. The stated objective is to enable marginalised populations to have meaningful access to justice, primarily by recasting *shalish* procedures so that they promote egalitarian rather than hierarchical modes of dispensing justice. Broadly, NU would like to pursue the following goals and objectives.

Photo: Andy Rutherford/One World Action



- Establishing social and gender justice irrespective of gender and social status through mediation and legal aid support;
- Adopting education programs with a view to raising consciousness of human and women's rights at the grassroots level;
- Supporting the struggle of women at grassroots level to ensure their effective participation on a larger scale in the electoral process;
- Conducting training programs on human rights for NGO workers, activists, and community members;
- Creating an environment conducive for the exercise of democratic rights;
- Establishing a network of national and international organizations in the field of human rights; and
- Conducting research on various aspects of society, economy, human rights situation, and the polity of Bangladesh.

4

NU's Programme Approach to Women's Access to Justice

It may seem counterintuitive to promote the *shalish* - conventionally used to police morality and maintain class domination - as the primary vehicle for increasing access to justice. However, NU's approach was developed from extensive ground level studies of the functioning of local governance structures as well as from large-scale attitudinal surveys of target populations. The ground reality is that poor people have little choice but to resort to the *shalish* for justice. By the same token, injustice at the grassroots level is inextricably linked to the inequities of traditional mediation practices. Without the development of alternative institutional structures - which will be both equitable and sustainable in the long run - access to justice will never be democratic. To this end, NU was among the first organizations to recognize the potential of the indigenous mediation system and to work towards its transformation. This is a daunting but urgent task, one that requires short and long term planning.

Initially, NU formed *shalish* committees in a monitoring capacity, to ensure that state laws were not being violated as well as to prevent the intimidation or harassment of individuals. NU has since systematised its approach to local mediation and devised a two-pronged strategy. NU staff first assists in the formation of alternative *shalish* committees at two levels, the village and union. In contrast to the composition of the traditional *shalish*, committee members represent a cross-section

of the community. One third of the members are women. NU's institutional support ensures that women's voices, which were previously marginalized, are included.

Second, *shalish* committee members attend intensive workshops on a broad spectrum of laws related to subjects that account for the majority of disputes at the local level. Legal aid training provides a comprehensive understanding of existing state laws, so that members will be able to identify violations of laws as well as decisions that are insensitive to gender and class interests. The objective is to ensure that *shalish* rulings are consistent with the framework of state laws. Sessions cover the legal rights of citizens, women's rights and personal laws (custody, marriage, divorce, maintenance and inheritance laws). They also include technical knowledge on land and labour laws. Committee members also undergo regular refresher courses. A *shalish* worker from each of the nine wards of a union is provided with special training to build up his or her capabilities and to provide support services to the *shalish* committee.

A core element of training sessions involves the encouragement of dispute resolution through the *shalish* and, where this is not feasible, to make the members aware of how to obtain legal assistance. NU draws on a local network of lawyers to assist in their training workshops. These lawyers help to clarify the more complicated points of the law and to define

the jurisdiction of the *shalish*. They are also consulted in cases where informal mediation fails and formal litigation needs to be taken up. NU provides legal aid to those who are in need of it.

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 in that time period. These meetings provide critical feedback for Committee members and NU staff on the successes, failures and gaps in their program.

NU's operational structure is best understood with reference to the structure of local government and administration. (See box below.) The union is the smallest local administrative unit in rural areas; each union in turn is divided into 9 wards. NU's basic unit of operation is the ward. NU forms two kinds of committees - Ward Level *Shalish* Committees (WLSC) and Union Level Legal Aid Committees (ULLAC). Every union has one community mobiliser (CM) who is in charge of nominating eight males and four females from each ward as potential *shalish* committee members. Members of the ULLAC are drawn from the *shalish* committees.

Local government structure ¹³

Representation	Administration
Zila Parishad	Deputy
64 Districts	Commissioner
Upazila Parishad	Upazila
486 Upazilas	Nirbahi Officer
Union Parishad	
4,405 Unions	
Villages	

In order to ensure acceptance in its project areas, NU first holds a Thana-level advocacy meeting to which local government members, elected Union members, police personnel, and various representatives of the local elite are invited. This initial meeting is critical for the future success of NU programs -- it provides a forum for NU staff to introduce the organization and its goals and allows participants to voice any concerns, resistance or queries they may have. Once NU has established its identity and authority at the Thana level, it moves on to the Unions.

To form the Union Level Legal Aid Committees, NU staff selects 3 men and 2 women from each Ward Level *Shalish* Committee. The 45 members of 9 wards attend a daylong participatory workshop, which is also attended by local Union Parishad members. The workshop concludes with the selection of a 27-member Union Level Legal Aid Committee.



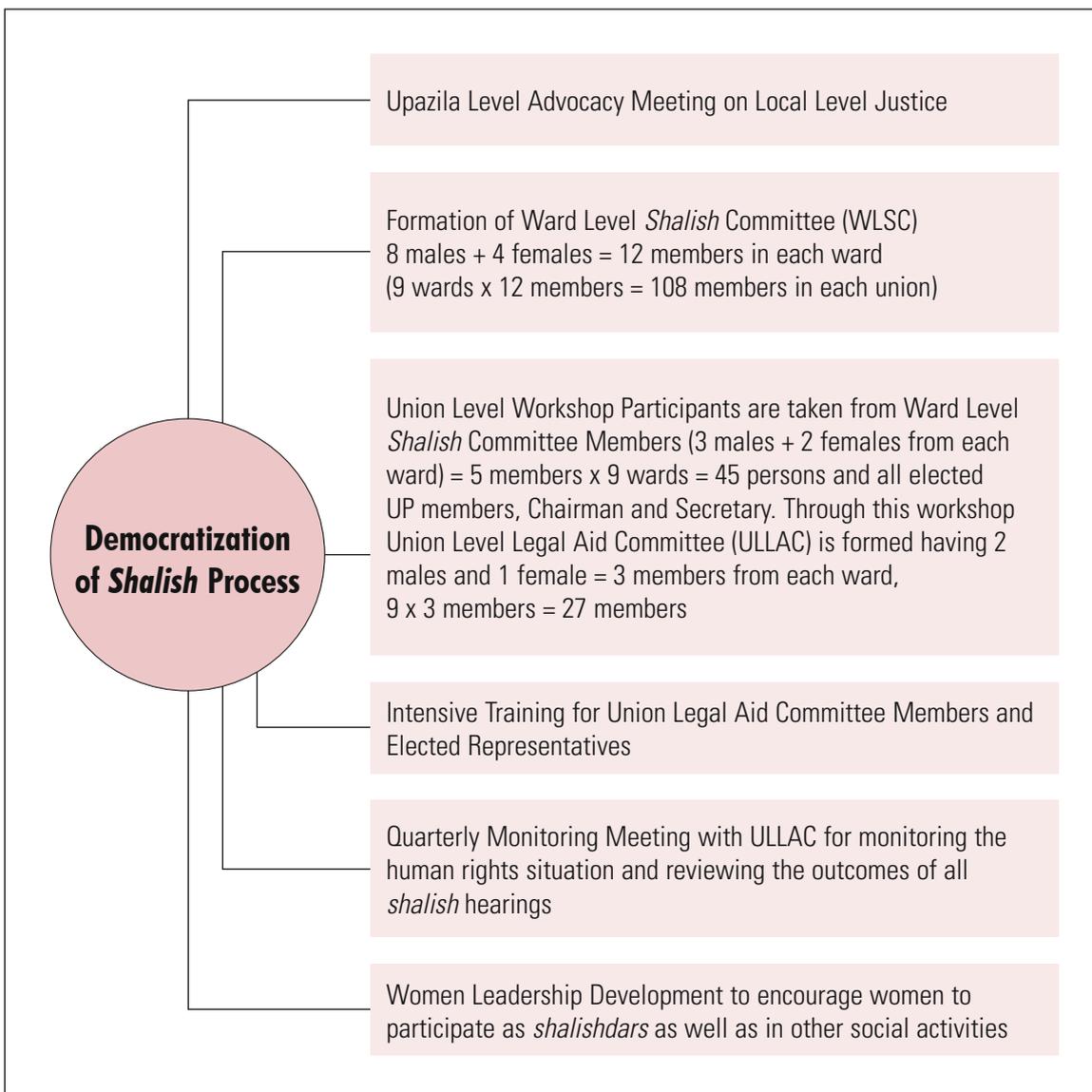
Photo: Nagorik Uddyog

¹³ Bangladesh Population Census 1991, Bangladesh Bureau of Statistics

How NU Convenes an 'Alternative' Shalish

Anyone can call a *shalish* by approaching a local shalishdar, who may or may not be a WLSC member. If a non-NU *shalish* takes place, a member of the WLSC will be present to ensure that a fair hearing takes place. If the shalishdar fails to resolve the dispute and is also a member of the WLSC, s/he will inform an NU community mobiliser of the event – with the consent of the accused party. Once a complaint reaches the community mobiliser, a formal *shalish* registration takes place at the local NU office. The complainant must fill out a *shalish*

form specifying the nature, history and details of the grievance. The *shalish* form serves as an official record of the proceedings. The local staff then undertakes a fact-finding mission to investigate the validity of the charges. On the basis of this evidence, NU sends a notice announcing an upcoming *shalish* to both parties. If both sides are willing, a mutually convenient date and place of *shalish* is fixed. In case one party does not show up on the designated date, NU will set new dates. In a few cases, NU refers the aggrieved party to the courts. *Shalish* forms registered with NU play a critical role here since they are usually the only documented history of the case available.



The participation of women *shalishdars* visibly changes the dynamics of community dispute resolution. Aside from encouraging gender-sensitive rulings, it allows women to voice their concerns and claims more confidently and directly than they would be able to otherwise. Field organizers like Fazila Akhter Lily say that women feel more comfortable revealing personal, and sometimes intimate, details of their lives to female *shalishdars* and so are more forthcoming during a *shalish* hearing.

▶ NU's Relationship with Local Communities and Government Institutions

Community outreach and the mobilisation of community resources form an integral aspect of NU's work. From the first advocacy meeting at the Thana level, NU staff work to ensure the active participation of community members. NU proceeds on the premise that local power structures should be transformed rather than alienated or ignored. It recognizes that in order to change local attitudes and practices, it is imperative to obtain the support of the most influential members of society. The selection criteria for membership in the *shalish* committees reflect this overall philosophy. The members are chosen after a thorough canvassing of local opinions. Those individuals who have high social acceptability and a reputation for integrity and neutrality are identified as potential members.

NU regularly carries out workshops with local elected representatives as well as with community leaders, NGO workers and community-based organizations. Aside from fostering a collaborative relationship with local NGOs, these workshops help to sensitize participants to the use of existing laws as a basis for alternative dispute resolution. NU's Legal Aid Committees also play a critical role in maintaining links with local community members and their concerns.

It is NU's explicit policy to reach out to locally elected representatives and bodies. Officials such as the Upazila Nirbahi Officer (UNO) are informed of upcoming training events and workshops. They are often invited to participate in certificate-giving ceremonies and other events in their official capacity. The inclusion of UNOs and UP members has proved to be an effective strategy; it promotes dialogue and contributes directly to building sustainable and democratic institutions at the local level.

▶ The Women's Leadership Program

NU's experience reveals that legal training is not enough to overcome barriers to women's active participation in *shalish* hearings. Cultural expectations of female passivity often prevent women from speaking out or from being heard. Initially, NU organized *uthan baithak* (courtyard meetings) every three months for groups of 35-40 women. The *baithak* provided women with a place to go to share problems, experiences and opinions. However, NU realized the need to take a more proactive approach and, in 2000, introduced a program specifically for developing women's leadership capabilities. Two women from each of the nine wards of a union, selected for their potential leadership skills, as well as the three female members of the Union Parishad, participate in intensive one or two day workshops regularly. That is, 21 women from every union are trained on a variety of issues ranging from legal rights to health care problems. These women in turn convene discussion sessions with their neighbours. The strategy of nurturing potential women leaders who are confident, creative and armed with knowledge appears to be paying dividends. It is not uncommon now to find women mobilizing themselves to protest against unlawful practices such as *hilla* or child marriage. There has been a perceptible change in women's participation in *shalish* hearings as well.

What is Distinctive and Innovative About NU?

Bangladesh reputedly has the highest number of NGOs in the world. The majority of these NGOs are service-oriented, that is, they deliver a set of fixed goods to their target groups. Their primary goal does not include the transformation of social structures and power relations; most programs are not sustainable in the absence of their respective service providers.

NU operates on an entirely different philosophy. Individuals are not paid to attend workshops, training sessions or *shalish* meetings. Those who volunteer their time and other resources do so with a clear appreciation of NU's goals. What NU does offer are the tools with which community members, especially from poor and marginalized backgrounds, can begin to participate meaningfully in the process of social transformation and decision-making, and to obtain access to justice. NU is ideologically committed to the idea of empowering citizens through building up their own resources - helping people to help themselves - rather than to simply providing intervention services. This approach ensures that NU's programmes will be sustainable in the long run - indeed, the ultimate mark of its success will be when its presence is no longer required in its project areas.

A handful of other agencies in Bangladesh are also working in the field of informal or alternative dispute resolution. While all of them are committed to reforming non-state mediation practices, their respective strategies differ considerably. Some organizations prefer to bypass local government institutions. They focus instead on raising the legal awareness and knowledge of the general population and on monitoring local *shalish* decision-making. Others have chosen to fully institutionalize the *shalish*, thereby diminishing the flexibility so critical to the process. Yet others provide micro-credit and *shalish* services simultaneously, with the idea of creating an alternative to local power structures and resources.

A major difference, however, is that these organizations usually rely on the services of legal professionals, without whose presence the programs are unlikely to be sustainable in the long run. NU staff is not drawn primarily from the legal profession. Rather than providing a narrow legalistic approach to social problems, NU's staff is trained to have a broad vision and perspective, and so is able to communicate with equal ease at different social levels. Indeed, one of NU's long-term objectives is to produce local level paralegals - individuals who are familiar with the complexities of the law as well as the dynamics of the local landscape.

NU sees the engagement of all social groups as essential for the transformation of an inequitable social structure into one that is more just. NU targets government functionaries, the local elite and the poorest segments of the population. Its programme is innovative because it makes specific use of local governance structures like the Union Parshads, collaborating with them in the delivery of local justice. It also gives a central role to elected female representatives in the UP, who previously were marginalized or co-opted by their male counterparts. NU's access to justice program also focuses on empowering women through developing their leadership potential.

In short, NU is innovative and distinctive because of:

- The emphasis on transforming, rather than working within, the traditional mediation system so that it meets the needs of poor women.
- The involvement of elected female representatives at different levels of the program. The formers' role has been largely symbolic until now.
- The focus on developing women's leadership at the grassroots level, so that women are mobilised as active agents of change.

5

Other NU Activities and Programmes

▶ Human Rights and Voter Education

As part of a broader agenda for promoting human rights education and democratic participation, NU has carried out comprehensive and highly successful voter education campaigns. The programme proceeds on the premise that an informed and concerned electorate will be able to shape its own agenda eventually. The central focus has been on educating women voters about their political rights and enabling their participation in the electoral process. In consultation with several other NGOs, NU has developed a highly effective training module for educating and training women voters. Targeted toward semi-literate or illiterate women, the manual also

includes sections on how to create a political agenda that is relevant for women and how to mobilize candidates or other authority figures on the issues.

▶ Open Space Folk Performances

One of the most successful aspects of NU's voter education program is the use of folk theatre as a medium of communication. By drawing on indigenous performance genres, NU has been able to achieve multiple goals simultaneously.

- It reaches the poorest people (who don't have access to electronic media and are generally deprived of most forms of entertainment).
- It gets its message across in a language and idiom that is familiar to the audience.
- It encourages discussions of rights based issues in an open and friendly forum.
- It helps in the construction of a community based, non-hierarchical public sphere.

▶ Human Rights Education for Legal Professionals

NU's experience reveals that legal practitioners usually have minimal knowledge of human rights laws. In order to address this major gap in efforts to make justice more democratic,

Photo: Lisa Larance





Photo: Nagorik Uddyog

NU has designed a one-year intervention program that will provide judges and other legal professionals with relevant human rights education. The project aims to develop awareness among those at the frontlines of the judicial system of the human rights dimensions of their everyday work. It also facilitates the exchange of information about new developments in human rights law and practice among stakeholders. The project will culminate with the development of a handbook on human rights education and resources for legal professionals.

▶ A Human Rights City

NU has also taken the initiative to set up a Human Rights Sensitive City in Dinajpur, northern Bangladesh. The objective is for all inhabitants of the city, from policy makers to ordinary citizens, to be aware of and to respect their human rights obligations. Community learning, dialogues with stakeholders and the formation of citizen's committees are central aspects of this project.

▶ The Rights of Widowed, Abandoned and Divorced Women

In recognition of their extreme destitution and social isolation, NU's latest action research project targets poor women who are widowed, abandoned or divorced. Women in this category are subject to severe economic and social exploitation and are invariably deprived of their legal rights to property and other assets. The NU program will enable women to claim their inheritance rights under the law. An important component of the program is to foster a sense of confidence and self-esteem among women who are used to being on the margins of society. Simultaneously, the project seeks to change social attitudes toward this vulnerable group.

▶ Lobbying and Networking

NU has pioneered the establishment of a collaborative network of like-minded NGOs, the Access to Justice and Information Network (AJIN). AJIN members, which include 14 local level NGOs and act an advisory capacity to

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leading national organizations that provide legal aid and mediation services (including Ain-o-Salish Kendro, Bangladesh Legal Aid and Services Trust and Madaripur Legal Aid Association). The network was established to facilitate cooperation and develop more effective strategies for intervention through the exchange of experience and ideas. Through this network a quarterly newsletter called *Unmochon* (Unveil) is being published. The aim is to examine issues related to access to justice, the right to information and their relation to development.

As part of the effort to promote a women's leadership network at the grassroots level, NU convened a meeting of all its Thana level women leaders on International Women's Day this year. Local government representatives were also invited; newly elected women UP members were given a special reception in recognition of their achievements. The Grassroots Women's Leadership Conference, the first ever of its kind in Bangladesh, culminated in the drafting of a Joint Declaration by the women participants.

The meeting provided another fora for making women more visible in their own communities and facilitated government-NGO understanding and collaboration.

Publications

- NU publishes a quarterly thematic newsletter, Nagorik Uddyog Barta (NUB), which is disseminated free of charge everywhere the program operates. Each issue provides a comprehensive overview of a relevant subject such as the Personal Laws of Bangladesh or the scope of international conventions such as CEDAW. The newsletter has had unprecedented success; originally meant to be a resource for *Shalish* Committee members and women leaders, it is in great demand from other workers in other NGOs who use it in their own training sessions.
- NU has initiated the publication of a journal devoted exclusively to the writings of its women leaders. *Narir Sapna Pata* (Women's

DEVELOPMENT OF WOMEN IS A PART OF THE OVERALL DEVELOPMENT OF SOCIETY

THE ROLE OF WOMEN IN ALL ASPECTS HAS TO BE ENSURED FOR THIS PURPOSE

In order to ensure the development of women

- Right to education and freedom of expression has to be established
- There should be equal opportunities at all levels of the society
- There should be equal rights in social and familial decision-making process
- There should be freedom of choice in terms of job selection and assurance of equal pay



In order to ensure the development of women leadership

- There should be opportunities to take part in politics and to become candidates
- They should be able to get involved in various social activities
- They should be able to form organizations to ensure their rights and place their demands
- They should be able to get involved in developmental planning and implementation

Do you know?

- The Union Council has the legal power to mediate (shalish) regarding the following five areas - conjugal rights, alimony, maintenance, divorce, and custody of children
- Both giving and receiving dowry is a crime
- It is not enough to utter the word "divorce" in order to obtain a divorce
- Hilla marriages are illegal

নগরিক উদ্যোগ
NAGORIK UDDYOG

MAINTAIN PEACE MAINTAIN RELATIONSHIPS SOLVE THE PROBLEMS OF THE VILLAGE WITHIN THE VILLAGE TAKE DECISIONS THROUGH SHALISH (MEDIATION) IN THE LIGHT OF THE PREVAILING LAWS



Losses in formal litigation

- Litigation, court, etc. are expensive and psychologically taxing
- In a case many relationships are broken, enemies increase, and conflicts are created in society
- In a case, socially and economically both parties lose, while one party gets demeaned

Benefits in Shalish (Mediation)

- Shalish does not cost anything and it is less time consuming
- Everyone can be open in a shalish, since it is amongst familiar faces
- Since there are no winners or losers in a shalish, peace prevails and no enemies are created
- There is no pressure
- It is possible to take an impartial decision altogether

DOs of DON'Ts of shalish

- ◆ It is your duty as a citizen to help others for resolving conflicts
- ◆ Look at both parties equally
- ◆ Make no promises, and do not take any advantages from any parties
- ◆ Pay due importance to what women have to say
- ◆ There must be a woman elected member and other women present in a familial dispute resolution process

নগরিক উদ্যোগ
NAGORIK UDDYOG

Dream Pages) features articles, poetry and topical updates from women leaders in project areas. The first venture of its kind in Bangladesh, Sapna Pata has been received with great enthusiasm. It provides a forum for women to share experiences, develop solidarity and strengthen networks. It also promotes creativity, self-confidence and pride in one's achievements. This was abundantly clear from conversations the author had with several contributors to the first issue.

- NU has published an impressive array of working papers based on its program interventions. It is working toward establishing a fully-fledged research unit in the near future.

► NU's Successes

- The elimination of illegal *shalish* verdicts in project areas. The vigilance of NU staff and of legal aid committee members ensures that all *shalish* rulings conform

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to the existing legal framework. By the same token, persons presiding over traditional *shalish* are aware that extra-legal verdicts can and will be challenged by NU and its associates. The situation also reflects a heightened awareness of human rights and women's rights issues in local communities.

- An increased willingness on the part of men to attend *shalish* hearings. In the past many men would simply ignore summons to appear before a *shalish*. Women's leverage in this respect has increased considerably. Since NU provides legal assistance where mediation fails, the potential threat of legal action by women encourages men not only to show up for *shalish* hearings but also to accept rulings of the alternative *shalish*.
- A broadening of women's participation in *shalish* processes. Women have more negotiating power and confidence during negotiations because they know they have institutional support of NU backing them.

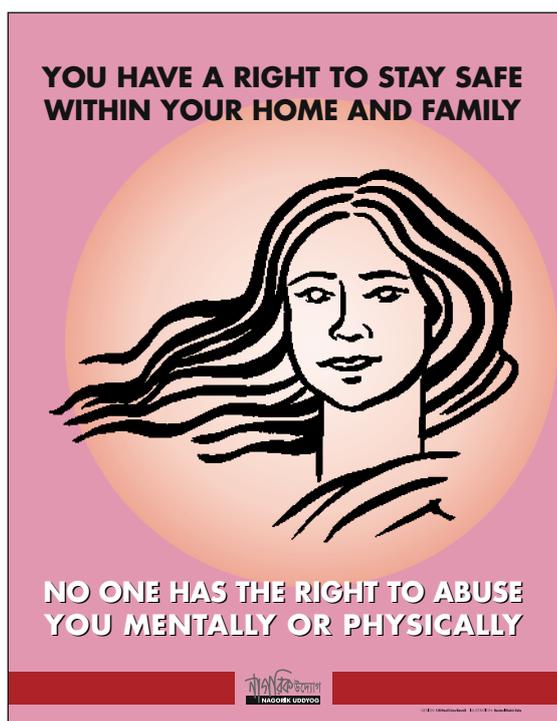


Photo: Tom Crick/One World Action



6

Conclusions

▶ Lessons Learned

- It is not enough to disseminate information or to educate disempowered groups about their political and legal rights. It is critical to create enabling conditions in which people can begin to use their knowledge effectively.
- A fundamental enabling condition for the exercise of equal rights to justice is the promotion of more egalitarian community level dispute resolution mechanisms. These must be based on the existing legal framework and sensitive to the interests of the most disadvantaged groups, especially women.
- Until there is a serious shift in attitudes and gender ideology, institutions that work to transform the *shalish* must ensure that comprehensive monitoring and follow up services are provided to those who seek their assistance.
- Elected female representatives at the Union Parishad level are still marginalized politically and socially. Their position must be strengthened. In order to strengthen local level democracy, elected women representatives must establish greater social legitimacy as human rights activists and advocates.
- Trained female *shalishdars* often find that they have knowledge but lack the authority to make a substantial difference. Nurturing solidarity and networking among women leaders will allow women to raise their voices collectively and assert their position in the community more visibly and effectively.
- Women who are in community based or civil society organizations realise the need for knowledge and training about the laws that affect their lives. It is only with this knowledge that they can begin to mobilize for change – mapping out clear agendas and lobbying their representatives. Investing in these women’s groups will promote civil society activities at the grassroots level and make them more effective.
- Some degree of male resistance is inevitable, making gender sensitivity training for Union Parishad members and other influential males an essential component of access to justice programs. A female *shalishdar* trained by NU told the author “Men may know the laws but they don’t always want to cede their authority to us. If they sit with us during training, we can hold them accountable more effectively outside the workshops. We can remind them of the laws of which they are fully aware.”

Recommendations

Most commentators identify the failure of local governance as a primary obstacle to the promotion of human rights and access to justice in Bangladesh. The infamous corruption, bureaucratic inefficiency and nepotism of the judiciary and the police - as well as the failure of the state in carrying out meaningful reforms in these domains - have led to widespread cynicism toward the official justice system. As a consequence, local human rights organizations are increasingly turning to alternative dispute resolution mechanisms in their work. Even the Bangladesh government has come to appreciate the benefits of non-state justice systems. The Alternative Dispute Resolution – Code of Civil Procedure (Amendment) Act, 2003 authorizes the settlement of ongoing legal disputes through informal mediation - if contesting parties agree. As the Law Minister Moudud Ahmed noted, “There are about 5 lakh civil cases pending with courts in the country now. Even if 20% of these cases are resolved through alternative dispute resolution, it will make a great difference in the justice delivery system in the country.”¹⁴ How much of a dent the Act will make in the massive backlog of cases remains to be seen.

A study of the available literature reveals that international donor communities are also increasingly drawn to the *shalish* (and other informal modes of mediation all over the world) as a viable alternative to formal legal institutions. The positive experience of Nagorik Uddyog could serve as one model for an alternative or modified *shalish*. However, donors should keep in mind that a narrow focus on providing modified *shalish* services will produce limited results. NU’s success derives from its comprehensive and integrated approach to the problems of meaningful access to justice in rural Bangladesh. Its strategy of drawing in the local community, especially the

more influential members, and of nurturing women’s leadership capacities, is especially noteworthy.

In Bangladesh, most poor people have no option but to turn to the traditional *shalish* for dispute resolution. That, and the intractable problems of the formal justice system, is sufficient justification for supporting efforts to democratize *shalish* practices. However, it should be noted that the jurisdiction of the *shalish* is limited; it does not have the authority to adjudicate criminal offenses. Among other things, this means that much of the violence to which Bangladeshi women are subjected – rape, acid-throwing, abduction – is outside the purview of the *shalish*.

In other words, informal dispute resolution practices can complement but not function as a substitute for formal legal institutions. Increased attention to informal legal practices will have substantial benefits for stakeholders, but they should not come at the expense of pressures to reform formal judicial institutions. Efforts to reform the police and the judiciary should form an integral aspect of interventions aimed at improving women’s access to justice. In this respect, Nagorik Uddyog is ahead of curve with its education program for legal professionals.

Moreover, state laws themselves are in need of scrutiny; as they currently stand, many laws are geared primarily toward the needs of elite males. The system of bail, for instance, is blatantly anti-poor. It may not be possible for a poor man to furnish a bail bond while a wealthy man charged with a similar crime can ‘buy’ his way out of jail quite easily. By the same token, laws related to rape and other sexual offences, such as existing laws of evidence, are highly discriminatory toward women.¹⁵ Women from minority religious communities are especially disadvantaged in the current legal structure. Hindu women in Bangladesh,

¹⁴ Quoted in *The Daily Star*, Dhaka. February 26, 2003, p. 12.

¹⁵ United Nations Development Program *Human Security in Bangladesh: In Search of Justice and Dignity*. Dhaka, UNDP, 2002. p. 23.

for instance, have no access to divorce under state laws. At present, even the most gender-sensitive and egalitarian *shalish* can offer only limited solutions to Hindu women who seek to escape abusive marriages.

What a reformed *shalish* could offer poor people is a viable option when they seek justice. A study conducted by the author suggests that the relationship between the *shalish* and formal legal institutions is quite fluid in practice.¹⁶ The analogy of people using both homeopathic and allopathic medicine, depending on convenience and results, comes to mind. The availability of an effective alternative to the formal judiciary – one that would guarantee a degree of justice — would reduce the number of disputes that escalate into violence or that end up in courts. In other words, the modified *shalish* has all the prospects of becoming an early

intervention strategy, offering the possibility of a resolution before a civil dispute turns into a criminal offense. However, formalizing the *shalish* must be done with care. Otherwise, it is in danger of losing some of its most important features, such as its flexibility and low cost.

Finally, an immediate priority should be to generate rigorous qualitative and quantitative research on informal justice practices in Bangladesh. At present, very little hard data on the topic is available. Research on actual conditions on the ground should inform future plans and priorities. Comparative studies on the respective experiences and strategies of organizations in the field of dispute resolution should also be undertaken. A related priority should be to strengthen networking and collaboration among the different NGOs working in this field.



Photo: Tom Crick/One World Action

¹⁶ Dina M. Siddiqi “The *Shalish* and Gender Justice Programs in Bangladesh: A Review” prepared for Ain-o-Salish Kendro and Research Initiatives, Bangladesh. Forthcoming.

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