Institutionalization of Grassroots Level Alternative Dispute Resolution (ADR): Challenges and Prospects

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DeDication

To those who find *'fait accompli'*

as their only explanation to

miserable sufferings

Abstract

Most people of Bangladesh live in rural area and are poverty striven. Class disparity is palpable there. Lack of resources, unemployment, many other demands for survival and even for settlement of various disputes compel them to depend much on the elderly personnel, the rich, the political leader and peoples of higher family name. The commonly occurring disputes in rural area can be termed as social problems since most of those arise not due to the criminal intention of the offender but by misunderstanding, misconception and traditional attitude borne throughout the ages to some issues. From legal context formal justice system is the only institution to resolve those disputes. Bangladesh has inherited an adversarial judicial system which is highly formalized and incapable of meeting the need of the dynamic nature of the society. Alien nature of the court procedure, high expense, long delay in case disposal, corruption and sold out judgment have made the system closed and beyond reach to the marginalized people. On the other hand grassroots level ADR or *Shalish* has become the prey of power politics and vested interest in rural Bangladesh. Despite all its drawbacks, in most cases the rural populace depends heavily on *Shalish*. Its need, acceptability and importance in rural life are noticeable. With some inbuilt attributes, this informal system of justice delivery has immense potential. It not only addresses the ultimate discord but also in many cases, removes the root cause of its origin; thus restores the peace and harmony of the society.

Restructuring and institutionalization of this informal system has great potential to serve the purpose of the rural disadvantaged people. MLAA, a leading NGO, has developed a viable model to make the *Shalish* system operational and effective. In this context the study attempted to examine viability of institutionalization of *Shalish* and the potentiality of this indigenous institution. The study following an analytical framework, observed that three 'socio-political barriers' namely: *social change*, *elites' fear of loss of power and authority* and *resistance to change* and two 'institutional barriers' namely: *lack of well defined rules and regulations* and *local legal practitioners* are critical factors that tend to hamper restructuring of *Shalish* process.

The empirical data drawn from the two study areas reveal that politics and political will is the most important one that can turn the process into fiasco. The respondents expressed strong abhor

to factional politics and politicization of every sphere of social life. Social change caused by increased literacy rate, government and non-government activities and communication with outside World, does not have any significant impact on *Shalish* institutionalization process.

Findings also conclude that the more the people get legally conscious the more they tend to avoid unproductive wastage of time and money. So, they depend more on informal mode of dispute resolution than formal court in settling their day to day discords. The higher is the level of legal literacy and group mobilization of common people, the higher is the level of elites' fear of loss of power and authority. This finding establishes the idea of probable resistance from local elites in fear of losing their hereditary power position against institutionalization of *Shalish*. The study also discovers that lawyers, representatives of local government institutions, police, local traditional *Shalishkers* or touts and their collusive nexus appear to be as stumbling block to the institutionalization process. Again, the study finding suggests that the common people might not show their resistance to this change process since any change in the national policy or legislation does affect their life very little. So, if the change is beneficial to them they will accept it gleefully.

The findings of the study suggest that despite having some downsides, the institutionalization of *Shalish* process has huge potential. Because respondents of both the localities ranked *Shalish* as number one (Table 2, p.42) among various justice dispensing persons and institutions. Development of a unique framework through legislation and providing institutional back up by networking with NGOs may facilitate sound implementation of institutionalization of S*halish* or informal ADR as a whole which might ensure and enhance access to justice for the rural people with particular focus to the poor.

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Acronyms

ACJM	Additional Chief Judicial Magistrate
ADC	Additional Deputy Commissioner
ADJ	Additional District Judge
ADR	Alternative Dispute Resolution
AJ	Assistant Judge
ASP	Additional Superintendant of Police
ASPC	Assistant Superintendant of Police (Circle)
CJM	Chief Judicial Magistrate
CPC	Code of Civil Procedure
CrPC	Code of Criminal Procedure
DC	Deputy Commissioner
DFID	Department for International Development
DJ	District Judge
DS	Deputy Secretary
e.g.	*Example Gratia*

FJS	Formal Justice System
i.e	Id est (that means)
ILGI	Informal Local Government Institution
ISDLS	Institute for Study and Development of Legal System
JS	Joint Secretary
KP	Katarungang Pambarangay
LA	Lok Adalat
LG	Local Government
LGI	Local Government Institution
LL B	Bachelor of Law
LL M	Master in Law
MLAA	Madaripur Legal Aid Association
MMM	Madaripur Model of Mediation
MOLJPA	Ministry of Law Justice and Parliamentary Affair
n.d.	No date
NGO	Non Government Organization
NSJSS	Non-State Justice and Security System
OC	Officer in Charge
RJS	Restorative Justice System
SJM	Senior Judicial Magistrate
SP	Superintendant of Police
UN	United Nation
UNDP	United Nations Development Program
UNO	Upazila Nirbahi Officer
UP	Union Parishad
USAID	United States Agency for International Development
VC	Village Court
VDC	Village Development Committee
WB	World Bank

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Sincerely

Moyeenul Islam
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Chapter 1

Introduction

'To no man will we sell, to no man
will we deny, to no man will we
delay right and justice'
…..Magna Carta

1.1 Background

Alternative Dispute Resolution (ADR) mechanism is a citizen's platform for removal of disagreements other than litigation or formal court. It enables the change in mental approach of the parties (Agarwal 2005). This method fosters rule of law in different ways. Most importantly, it brings community members together and they work to establish greater social harmony and to better protect their individual rights (Sternlight 2007). ADR includes a wide variety of dispute resolution mechanisms that are short of, or alternative to full scale court procedure. However the principal methods are negotiation, conciliation, mediation and arbitration. The age old *Shalish[1]* system is a perfect combination of all these types.

Conflicts or disagreements are indispensable part of community or social life (Folberg and Taylor 1990). The commonly occurring problems in rural area are violence against women (within or outside marriage), inheritance, dowry, polygamy, divorce, financial maintenance for wife and children, scuffles, land disputes, recently added Eve-teasing and such others. Most of these are social problem not criminal; since the adage says 'an act does not make a man criminal, unless his intension is criminal'.

From the legal context, only the formal court has the authority to punish or penalize the offender after being sanguine. But it does not remove the root causes of the dispute. So, once trapped in formal court procedure, permanent animosity is the ultimate result. Rather an indigenous institution close to and owned by the community can successfully negotiate this social need.

Rural dispute resolution system in Bangladesh can be named as 1) *Shalish*- the traditional ancient format still widely accepted and practiced, 2) the Village Court (VC)- introduced in 1976 through state legislation which is now in back foot, and 3) the NGO modified version of *Shalish*

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[1] For details see page 31.

which is trending in some part of the country. Before and even after introduction of the formal legal system this age old traditional system i.e. *Shalish* played and has been playing a distinct role in maintaining peace and harmony in the rural areas. This system has the potential to uncover the root causes of a conflict and attempt to reduce the disagreement and thus increases disputants' satisfaction with outcome (Sternlight 2007). *Shalish* or this community level informal system has five noteworthy aspects. The decision covers human, social, political, legal and economical dimensions of rural life. So, a sound decision that fulfills all these criteria is more sustainable.

Quasi-judicial governance is very much in conformity with ADR process. Because, it shares decision making power, encourages citizens' autonomy and independence and provides a process for upholding common good through civic engagement (Jun 2002 cited in Bingham et al 2005). In addition, the mediation process not only democratizes the 'justice system', but by securing easy access to justice, socializes the legal system (Sangroula n.d.).

Apart from ADR under the purview of formal court, some community level informal dispute resolution systems are well recognized by now. *Lok Adalat*[2] (peoples' court) in India and Barangay Justice System[3] in the Philippines are well established under national legislation. Although Nepalese Judiciary is going through transition but the Parliament has already upheld the community mediation through promulgation of act in its favor. In Bangladesh Madaripur Legal Aid Association (MLAA) has institutionalized the community mediation services (Golub 1997) to some extent in dispute resolution and has been applauded by national and international experts.

Indian subcontinent, exclusively the Bengal has rich history of civilization. The Villages here were self sufficient in true sense and self governed also. One of the Viceroys of India Sir Charles Metcalfe addressed these Villages as 'Little Village Republics'. Haque (1987) portrays a vivid picture of gradual distortion of these featured institutions over different regimes. British regime was the worst among them. Oppression and plundering along with a massive famine shattered the peaceful community relations into pieces. Final nail to the coffin was the introduction of 'The Permanent Settlement Act, 1793' which gave birth to the *Zamindars* (the landlords) with

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[2] For details see page 35.
[3] For details see page 37.

permanent land ownership. So in Eastern Bengal where majority people were Muslims and lower class Hindu, the minority *Zamindars* became the owner of three quarters of land. The class conflict reinvigorated once again. Cunning religious coloring of this conflict lowered the social relation further. And no visible attempt was made to reconstruct this 'falling apart' community organizations since then.

1.2 Statement of the Problem

Access to justice includes certain stages, which starts with the right to bring the grievances before the court and end up with enforcement of the remedy achieved. Anderson (2003 cited in Jahan, n.d.) suggests five stages to be crossed to ensure access to justice. The stages are- naming (i.e. identifying a grievance as a legal problem), blaming (i.e. identifying a culprit), claiming (i.e. staking a formal legal claim), winning (i.e. getting rights and legitimate interests recognized) and enforcing (i.e. translating rights into reality). The formal court has failed to deliver this service efficiently. At the same time, *Shalish* albeit peoples depend much on it, is not flawless. Problems associated with both the system are described below.

1.2.1 About the Formal Justice System

A functioning modern judiciary supports healthy governance, provides justice and maintains rules of law. It is characterized by accessibility, transparency, efficiency and strong institutional capacity (UN 2007). But in reality formal judiciary of Bangladesh has been much discussed in recent years for rampant corruption, political biasness and inefficiency. Common court scenario in Bangladesh has been perfectly exposed by Mackenzie long back in 1974 (cited in Alim and Ali 2007). He comments-

> This is a country (Bangladesh) where the courts are so reviled and ridiculed, held in such contempt, so 'sold out' by common acknowledgement, that the thought of resort to the judiciary for the settlement of important conflicts has been a bad joke for generations.

The statement is a harsh truth for still today's court.

The FJS is blindly formalized. No matter what happens to the parties, the system persistently sticks to the rules. Insensible and frequent court adjournments, unscrupulous time prayer from the lawyers, court boycotting, political unrest, and failure of the prosecution to produce witness timely and lengthy process of investigation altogether make the life of litigant parties simply miserable. Repetition of the same scenario over the years has created a deadlock situation in the lower and higher judiciary as well. Records say, about 750,000 cases are pending with the courts of judicial magistracy. And in Supreme court about 500,000 cases, both civil and criminal, are pending with Appellate Division and at least 300,000 other cases, including writ petitions, are pending before the High Court Division (Siddiqui 2010). So once caught in the vicious circle, the justice seekers simply grope for the escape route. Never ending demands of freelance lawyers and their assistants (in the name of different fees and service charges) and rent seeking behavior of bench assistants added with opportunity cost have made the court expenses extremely high.

Managing this excessive cost for infinitive period of time is simply a punishment to majority of rural people.

About 76.45% peoples (Baseline Survey Report on Village Courts in Bangladesh 2009) do not know about the existence of Village Court (VC) and its jurisdiction. So, the cases those are exclusively triable by the VC, are often lodged with the formal court. These vexatious cases eat up a significant part of total time of formal court and investigation. If strong and just local level dispute resolution institutions could be established and citizens were made aware of it then this sort of unnecessary delay or hazards could be avoided.

Box 1: Misuse of Power in Village Court

Paranoid performance of Chairman, Gidary Union Parishad under Gaibandha Sadar Upazila has surpassed all the precedents of power abusing. In his village court it requires case filing fees, attendance fees and some other fees as well. He issues warrant of arrest to the absent party. He does not allow parties to place their case without his set advocates. He often imposes inhuman punishment to the accused.

(The Daily *Prothom Alo*, 8th January, 2012)

Jahan (n.d.) identifies a psychological barrier of the poor. She argues that even if the formal court functions with absolute efficiency, the majority of the rural people will still seek justice from the informal systems. The laws, procedures, arrangements and persons associated with it are highly unknown to them. This alien feature of the formal legal system has made it an elitist

institution and acts as invisible screen to keep the poor away from approaching there. In fact their perception is not at all fictitious, since after the colonial period very little has been done to make formal justice institutions people oriented. The elites resumed the role of colonial rulers and retained the rigid nature of the system that excludes marginalized people from it.

Huge growth of global commerce has given rise to international commercial disputes as well. It has popularized the ADR method indirectly in commercial dispute resolution since parties are reluctant to waste much time in a foreign court (Cordia 2007). Likewise, to decrease the deadlock condition of the formal court, this alternative method is imparted into the formal court slowly. In the formal court of Bangladesh[4] it is becoming popular and branching into different acts. An opposite scenario is present in rural area. Government introduced Village Court in 1976 through promulgation of 'The Village Court Ordinance, 1976' which is later repealed by 'The Village Court Act, 2006', with a view to ensure easy access to justice for the rural poor, marginalized and disadvantaged. The VC is mandated to try both civil and criminal cases in an informal and flexible manner. After these long years of inception, the VC is yet to get a solid foundation. Villagers are still ignorant about its operation. The Baseline Survey Report on Village Court in Bangladesh, 2009 has also identified only six strong points compared to twenty weak points of VC. The dilemma is that in the higher judiciary when ADR process is gaining popularity, then at the grassroots level despite having immense potentials, VCs have failed to be the hub of rural civil and criminal dispute resolution.

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[4] Both the Muslim Family Laws Ordinance, 1961 and the Conciliation Courts Ordinance, 1961 were enriched with the community level informal provision to resolve disputes. The Family Court Ordinance, 1985 also has the provisions of informal settlement. The fallacy is that neither the judges nor the advocates ever showed some interest to bring those provisions into practice. But in recent years considering peoples obsession to expeditious, ingenuous and cost-effective nature of ADR and deadlock condition in the courts, the Supreme Court of Bangladesh under the leadership of the then chief justice Mr. Mostafa Kamal took the initiative to introduce ADR in the formal courts. Thus in formal court of Bangladesh ADR mechanism started functioning on 1 June, 2000 with Pilot Family Court mediation under Dhaka Judgeship with the help of Institute for Study and Development of Legal System (ISDLS, USA). The Code of Civil Procedure (CPC) is amended in this regard through the CPC (Amendment) Act, 2003 and section 89A and 89B are inserted. This has widened the scope for application of ADR to all suits to be filed and pending before the courts. In nonfamily disputes, civil court started mediation from 1 July, 2003. Besides, in Chapter-V of Money Loan Court Act, 2003 Sections 21 to 25 have been incorporated for the purpose of facilitating the parties to settle their commercial disputes through Settlement Conference. The scope for ADR is expanding day by day in some other areas also.

Strengthening local level dispute resolution system is treated as a reform to formal justice system in many countries of the world (Hassan 2005) since it is a dynamic force to keep pace with new socio-political realities. Khan (2010, p.187) frames the harsh reality in reform of judicial administration in Bangladesh in this way-

> Allegations of corruption are endemic (according to surveys and newspapers reports) against all levels of judiciary in Bangladesh. The dishonest lawyers have converted court cases into a form of gambling, where concocted evidence is presented to defraud the state as well as innocent people. The challenge before the courts of Bangladesh very often is to find truth from lies presented by both parties. *Daroga* (Officer in charge of police station) are notoriously corrupt since time immemorial. Local governments are captured by the rural elites. The reforms in such a hostile environment are not easy.

1.2.2 About the *Shalish*

Persons dealing with *Shalish,* in most cases do not have adequate knowledge and experience regarding the legal issue of the dispute. For example, a total of 5839 incidents of women oppression have been reported from January, 2011 to October, 2011 among those 54 are fatwas[5] (The Daily *Prothom Alo*, 24th November, 2011). Fatwas are said to be according to the Islamic Sharia[6] but the people who are awarding it, are not eloquent with the Islamic law and in most cases it goes against the explanation of Islam.

Rural power structure revolves around the elected representatives of Union Parishad[7] and local rich and elite peoples (Golub 2000 cited in DFID Briefing 2004) who are aided by some touts[8] and political henchmen. Due to their presence and dominance *Shalish* has now become the center of rural politics (Alim and Ali 2007). These leading people maintain a collusive nexus to reign supreme over the disadvantaged people. They are able to curtly bury down many agonies of the poor with their influence. This status of those community leaders, often fuelled by politicization (Ali and Alim 2005) and corruption (Golub 2003 cited in Jahan n.d.) or malpractices blatantly denies fair justice to the poor. Thus quality of *Shalish* has decreased over the years; however

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[5] The verdict of Islamic Pundits on different social affairs according to Sharia. But generally it is used as misinterpretation of Islamic rules that mostly directed against women and marginalized people.
[6] Islamic religious law.
[7] *Parishad* means council. Union Parishad is the lowest tier of local government institutions of Bangladesh.
[8] Individuals who capitalize on little bit of legal knowledge and political connection and sell their influences secretly for personal gain.

finding no feasible alternatives in hand marginalized people of Village area still depends on *Shalish* very much.

The social norms, customs and context that helped to endure *Shalish* as an effective dispute resolution mechanism for long, has started to fall apart. In the past, *Shalishkers*[9] were selected according to their reputation, age, personality, status and lineage. Now political leaders and influential persons conduct *Shalish* where those traits are less important than their money and political influence. In this way *Shalish* has been converted from an instrument of rendering service to people to a mechanism of business and interest. Moreover, when political leaders take control of *Shalish*, before giving their decision they tend to consider its impact on their vote banks rather than fair and justness. In addition expansion of education has put many peoples in the same height rather than few in the past. Members of new generation unlike their predecessors do not show the same respect or obedience towards elderly personnel and traditional practices; thus social acceptance of *Shalish* is declining.

Shalish has no institutional or legal framework. Likewise decisions of *Shalish* are without legal force. So, parties are free to accept or decline the decisions of it. Moreover, taking the chance, *Shalishkers* set the bylaws depending on situation and mould it according to their will. This allows some space for the influentials to manipulate *Shalish* to curry favor. Here comes the necessity of State which shall organize Village informal institutions and empower them with required authority to function as units of self government.

In rural areas, informal ADR process is considered more effective in resolving the commonly occurring disputes than the formal courts in providing justice, especially in countries where the judiciary has lost the trust and respect of the citizens. Culturally appropriate ways to maintain social peace and harmony, win-win outcome and simplistic nature of ADR create social binding help building confidence in community and thus provide easy access to justice for the hapless poor. Because, their primary concerns include not punishment but restoration of harmony in the society and compensation to the victims (World Bank-BRAC ongoing research on justice 2006 cited in Jahan n.d.).

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[9] The influential persons who administer *Shalish.*

A comparative picture to show how far *Shalish* or informality facilitates access to justice, is given below in the table.

Stages	Problems Faced by the Beneficiaries in *Shalish*	Problems Faced by the Beneficiaries in FJS
Identifying a grievance as a legal problem	None	Inadequate laws, too much technicality
Identifying a culprit	None	Ineffective law enforcement bodies, corruption
Staking a formal legal claim	None	Anti-poor laws, negative attitude, excessive bureaucracy
Getting rights and legitimate interests recognized	Biasness, corruption, declining acceptability of the patrons	Delayed justice procedure, corruption
Translating rights into reality	Acceptability of decision taken	Corruption, abuse of political power

Source: Adapted from Anderson, 2003 (cited in Jahan n.d.).

Here informality plays its part in first three stages and helps in quick disposal of the dispute. On the other hand for rural poor, the formal legal systems, from 100-meter sprint, turns into a 100 meter hurdles. The poor are not expected to finish the race without injuring themselves. This injury or fear of injury denies access to justice and forces them to move to the informal system (Jahan n.d.).

A comparison shows that formal courts, VCs and traditional *Shalish* are susceptible to misuse of power, biasness (to political alliance, to elites or rich and to relations), nepotism, and corruption. But the tendency is less frequent in NGO-modified *Shalish*. Because about 10-15 people who are to some extent trained on legal rights and practices, conduct the session. It is difficult to influence or bribe all of them. The poor are represented in strong group. The NGOs provide legal assistance, if needed, to the *Shalish* and challenge any illegal decision passed. Moreover it is easy to remove somebody from the board of council if accused of corruption or moral degradation compared to the UP Chairman and Members in a VC.

1.3 Scope of the Research

The long serving traditional *Shalish* system with some improvement can be taken into confidence to restructure the local level justice dispensing mechanism. NGO- modified version of *Shalish* is getting popularity through empowering marginalized people and ensuring access to

justice to them. More enthusiasm concentrates on to see whether people want government involvement in this flourishing sector of dispute resolution at grassroots level. If people like it, then discovering the barriers that hinder institutionalization of grassroots level ADR and gathering the causes why it is so popular, are the aim of the study.

ADR process is successfully being used in financial, commercial, revenue related disputes and disputes related to family affairs. So why cannot it be used in grassroots level petty civil and criminal dispute resolution? Thus the selected study area, institutionalization of grassroots level ADR is purely untouched in research context. This is a new and exploratory study; so respondents are selected from different walks of life including stakeholders in *Shalish*, practitioners, experts/academicians, people's representatives, members of policy making entity and implementing side also. Because the researcher predicts that cross validation of views from diverse section of respondents will help to expedite the actual problems of institutionalizing *Shalish*.

1.4 Significance of the Study

Alternative forum for dispute resolution is very much cost effective since it takes only 10% time of total duration of litigation and resources of litigants and courts (UN 2007). Informal ADR empowers the participants by enhancing their scope of access to justice. It emphasizes more on restoration of community relation and peace of the society by addressing the emotional involvement of the parties and compensation rather than punishing the offender.

The community mediation services backed by NGOs have facilitated changes in the mindset and codes of conduct of justice providers at local levels. This process guarantees neutrality, transparency, accountability and more fascinatingly women's participation. Thus it has generated tremendous confidence among local communities in establishing their rightful demands (Khair 2008).

Since disputes submitted to mediation are resolved more swiftly than those submitted to the formal judicial system, this, in some ways, assists the judicial system by actually reducing the burgeoning caseloads of courts. When cases, which need not be taken to court, are informally settled, the quality of formal justice is also enhanced as judges are then in a position to devote

more time to cases that must be heard in courts (Khair 2008). Moreover, it is possible to stop capital consequences of much family and land related disputes if it is addressed informally at the premature stage because 'prevention is better than cure'.

It is evident that there are some positive as well as negative side of both the formal and informal justice system. So there is a growing recognition that isolated initiatives are inadequate in empowering disadvantaged groups to mobilize for change. It is felt that integrated services have greater potential in bringing about a more constructive change in poor people's lives. This is evident from the experiences of development organizations that demonstrate how their programs achieved better results when development activities were combined with legal services (Khair 2008).

1.5 Objective of the Research

Unless the legal system changes to meet the growing need of the society it becomes dead and useless. With huge case loads, antiquated experiences and practices and in-built inability the legal system of Bangladesh fails to identify new problems (Hassan 2005). In most judicial reform attempts demand side that deliver the most dispute resolution service, is generally neglected. Restructuring of *Shalish* or NGO mediation can effectively solve the problem (Khan 2010). NGO backed community mediation is efficient and flexible enough to keep pace with the dynamism of society and it has popular sanction in favor. Unlocking the potentials of *Shalish* in rural dispute resolution and the problems and challenges associated to its institutionalization is the ultimate objective of the study.

So the specific objective of the study is - to identify and analyze the challenges and prospects of institutionalization of *Shalish* or informal ADR.

1.6 Research Question

Formal justice system has become a closed institution for the marginalized people. Traditionally practiced *Shalish* is infested with corruption and malpractices. In this darkness NGO modified version of *Shalish* is working as light house to ensure access to justice for the poor. Its success is pointing to the immense potential of *Shalish*. A meticulous restructuring of *Shalish* through

government intervention can establish rule of law in the rural society. Keeping the idea in mind the study aims to detect the problems and challenges associated with the institutionalization of *Shalish.* So the research question is-

What are the challenges and prospects of institutionalization of grassroots level ADR?

1.7 Limitations of the Study

Limitation is natural in social research because covering every aspect of a social problem is simply impossible. The principal limitation of this study is that it covers only two Upazilas[10] of Madaripur and Patuakhali district. There are some other Upazilas which feature peculiar and indigenous characteristics. The sample size was also pretty small. Hence it will be hard to generalize the extracts for whole of the country. Due to time constraint the study could not target to collect some more data through in-depth observation and focus group discussion. The author believes that these could be more useful in understanding the *Shalish* process thoroughly, its contribution to restore peace and harmony in community level, to ensure access to justice for the poor and its relation to rural power structure.

1.8 Structure of the Thesis

The entire thesis is distributed into six chapters, glimpses of which are given below.

Chapter One presents the background of the study, research problem and significance of the study. It also includes research questions, research objectives, scope and limitations of the study and structure of the thesis. *Chapter Two* outlines the methodologies used in the research. An attempt has been made to justify the reasons for utilizing those methodological approaches. Effort is made to incorporate a precise description of relevant literature here in *Chapter Three*. By reviewing the literatures, it is attempted to figure out various aspect of institutionalization of informal ADR and how the independent variables affect it. An analytical framework is also developed articulating some anticipated independent variables. Operational definition of some variables/terms is also added in this part. *Chapter Four* attempts to frame up the roots of origin

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[10]Bangladesh is divided into 7 Divisions and 64 Districts. Each District is further splitted into several Upazilas, the second highest (from the bottom) tier of local government.

of informal dispute resolution over the ages at different part of the World. It also describes some established form of community level or extra-judicial participatory dispute resolution mechanism of this region. The most important part of the study is *Chapter Five.* Information collected during the field study is analyzed here. Analysis focuses primarily on the relation between different variables keeping research objectives and research question and research title in mind. First parts rationalize the institutionalization endeavor and the latter parts discuss the problems and challenges attached to it. *Chapter Six* concludes the thesis. It highlights the major findings of the study. It also states some suggestions to overcome the barriers identified by the study.

Chapter 2
Methodology

2.1 Introduction

The approach and strategy used to pursue a research depends upon the nature of the problem to be studied and research question to be answered. Previous studies in this field are mainly done as project evaluation conducted by the Asia Foundation, the WB, and UNDP and as the annual report of different NGOs. But no in-depth research in true sense is done in this regard. Aim of the study –exploring the barriers of institutionalization of *Shalish* and its prospects were thought to be a descriptive one. So the qualitative approach has been attempted to meet the objectives of the research. A combination of questionnaire survey, in-depth interview, expert opinion and case studies are used to collect first hand data and content analysis technique is applied to validate it. The purpose of using of different methods is that it minimizes the risk of biasness in the study and thus works as a reliable tool.

2.2 Research Design

The choice of an appropriate research design is essential for a scientific study since it gives a framework of what the researcher will do from setting the research question to the operational implications of the data analysis. A research design is 'the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure' (Selltiz 1965 cited in Aminuzzaman 1991, p.53). The study is focused on exploring the challenges that hinders institutionalization of grassroots level ADR. Hence descriptive and analytical research designs have been chosen. Because descriptive research design helps to describe the current practices and events while analytical research design enables to establish relationship between variables (Aminuzzaman 1991).

2.3 Research Method

Cresswell (2009) mentions three principal approaches for conducting scientific research namely qualitative, quantitative and mixed approach. The study aims to describe the events and respondents perception scientifically without using numerical data. The researcher solely relies

on the views of respondents of demand side and supply side as well as experts on this very topic under study. Qualitative approach suits the best to meet the objective of the study. Besides, some questionnaire survey using three sets of questionnaire was conducted to make efficient use of time. For two sets the sample size was four and four and for the rest set of questionnaire the sample size was fourteen. From this questionnaire survey only simple mean was used. So, the study was mainly a qualitative study we can say.

2.4 Rationale for Selecting Qualitative Method

The process allows collecting data from the natural setting. In the entire qualitative research process, the researcher keeps focusing on extracting the participants' actual thoughts about the problem. This method itself is an emergent one i.e. there is no hard and fast rule to stick to the initial planning rather it allows changing of questionnaire, respondents, sample size and even study area as it gradually progress after researcher enters into the field and starts data collection. Qualitative research is a form of interpretive inquiry in which researchers make interpretation of what they see, hear and understand. And last but not the least; qualitative researchers try to develop a complex picture of the problem under issue (Creswell 2009, p.175). A combination of content analysis, questionnaire survey, interview with a structured questionnaire and case study method has been used in the research with a view to cross validate data at field level instantly and also to reduce biasness.

2.5 Distribution of Study Population

Study population has been selected from administrative side, expert on this very issue, peoples' representative, local elites who are involved in *Shalish* dispensation (*Shalishkers*), stake holders of informal ADR, NGO practitioners and others closely associated with *Shalish*. Details are given in the following table-

Table 1. Distribution of the study population

Distribution of the Study Population	Number of Persons Interviewed/Surveyed
DC/ADC/UNO (administration officers)	1+1
DJ/ADJ/CJM/ACJM/SJM/AJ (judicial officers)	2+2
SP/ASP/ASPC/OC (Police Officers)	1+1
President + Secretary, Local Bar	2+2
ADR seekers/Shalishkers/Local Elites	7+7
DS/JS of MOLJPA	02
Chairman, Upazila and Union Parishad	2+2
Expert	02
Case Study	02

The marginalized people are the ultimate user of *Shalish*. The local elites and elected representative of the Union Parishad are involved in the process as *Shalish* administrators. So these two sections have been selected to know their thought on this age old informal institution. Another aspect of picking them is to overcome the psychological barrier of ignoring the demand side as a common practice. Lawyers, police officers, field level officers of administration and judges are selected as implementing entity. Moreover they will be affected somehow, positively or negatively, with the very topic under study. So their thoughts are gathered as core information. In addition officers of Ministry of Law Justice and Parliamentary Affairs are selected to know their plan about breaking the deadlock condition of the formal court and institutionalization of customary *Shalish*.

2.6 Sampling Method

Basically, the study used purposive sampling method so as to get the best information to achieve the objectives of the study. This method gave flexibility to the researcher to pick up only people who are likely to have the required information and be willing to share it. Moreover, the sampling method helped to ensure representation of different variation of service providers as well as service seekers. In other words, heterogeneity in the composition of sample of service seekers and providers (age, sex, senior-junior officials, education, and profession) were attempted to maintain as possible.

2.7 Sources of Data

Generally, there are two different sources of collecting data, viz., primary sources and secondary sources. The research is based on both primary and secondary sources of data. ***Primary data*** were collected from the study area directly using different data collection techniques. On the other hand, the researcher used different relevant publications, dissertations, books, journal articles, reports, websites etc. as sources of ***secondary data***. The data collected from secondary sources were very useful to cross validate primary data and also to analyze the relationship among variables.

Primary data are collected from Madaripur Sadar[11] Upazila and Patuakhali Sadar Upazila. Some important statistical information about the two Upazilas is given below.

Table 2. Some important statistical data of the two Upazilas

Description	Classification	Madaripur Sadar	Patuakhali Sadar
Area		313.81 Sq. Km.	439.51 Sq. Km.
Population	Total	3,07,822	3,06,517
	Male	51.18%	50.12%
	Female	48.82%	49.88%
	Muslim	90.65%	91.12%
	Hindu	8.64%	8.8%
Literacy	Overall	38%	42.55%
	Male	46.2%	50%
	Female	29.7%	35.1%
Main Occupation	Agriculture	33.32%	40.98%
	Agriculture Labor	23.53%	12.15%
Land Control	Landless	24.42%	45%
	Small Peasant	24.27%	22%
	Intermediate	23.8%	30%
	Rich	2.91%	3%

Source: Banglapedia 2006.

Purpose of selecting Madaripur district is that Madaripur Legal Aid Association (MLAA) is the pioneer in NGO modified *Shalish* process and has developed a model of informal and alternative dispute resolution process namely Madaripur Model of Mediation (MMM). Simultaneously,

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[11] Sadar can roughly be translated into Head Quarter.

Patuakhali is a coastal belt district. Occupying and usurpation of reclaimed land is a very common scenario. Beside family related and other discords, land litigations and land based criminal activities are frequent there. Hence it is also known as 'conflict prone area'. So the comparative study will give some insight of the problem under study.

2.8 Data Collection Technique

A brief description of the data collection techniques used in the study is detailed here.

2.8.1 Questionnaire Survey

For unique and exploratory research new information are required. Questionnaire survey is the easiest and most widely used instrument for data collection in this regard. This method allows the researcher to come in direct contact with the respondents, to observe their attitude during answering time and to analyze the issue under study in ordinary setting. Depending upon the role and status of the respondents in relation to *Shalish*, three sets of questionnaire having open and closed ended questions were prepared. Thesis Supervisor provided precious suggestions and corrections to make the questionnaire precise enough to meet the objectives of the study without exaggeration. Besides, comments and advice from other faculties and fellow participants during chapter defense had great support to frame up the questionnaire.

The researcher went locally and had direct interaction with the respondents. The purpose and objectives of the study were explained to the respondents as simply as possible allocating sufficient time so that they swallow up the idea and can come back with spontaneous thoughts. Thus questionnaires were filled up to avoid unwarranted biasness.

2.8.2 Interview

Interview method helps the researcher to collect data by face to face contact from the respondents. Interview is a very systematic method by which a person enters deeply into the life of even a stranger and can bring out needed information and data for research purpose (Aminuzzaman 1991, p.82). The researcher interviewed several officers related to administration of justice and policy making level. Side by side, one expert who practices community mediation and one academician having specialization on ADR were interviewed in-depth to understand the

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pros and cons of institutionalization of *Shalish*. One interview was carried out on the third week of March, after the completion of questionnaire survey in Madaripur. The other was carried out on the last week of April, 2012 after the completion of all form of data collection. Officers of Police and Administration departments, who work closely with community people to maintain law and order of the society, were selected to know their view on this traditional institution. Conversely judicial officers were interviewed to gather their thoughts on the problem under study, because they have indispensible role to play in this regard.

2.8.3 Case Study

Kothari (Cited in Ahmed 2010, p.31) mentions the case study method very useful for data collection in a qualitative study. It helps to probe the phenomenon deeply and analyze it intensively with a view to establish generalization. The distinctive need for case studies arises out of the desire to understand complex social phenomena. Many social scientists still deeply believe that case studies are only appropriate for the exploratory phase of an investigation (Yin 2009, p.18). Two case studies- one from Madaripur and one from Patuakhali district have been conducted to explore the pattern and effectiveness of *Shalish* in real sense.

2.8.4 Content Analysis

Content analysis is a documentary method that aims at a qualitative and/or quantitative analysis of the content of texts, pictures, films or other forms of verbal or written communication (Ahmed 2010, p.36). An extensive study of published documents of UNDP, WB, The Asia Foundation and articles, books and reports was made to triangulate first hand data and to develop a link among the variables. It also facilitated to fix the modus operandi of the study.

2.9 Data Processing and Analysis

In qualitative study the researcher has the freedom to marshal gathered data to meet the desired objectives of the study (Creswell 2009). Partial data of questionnaire survey were processed using simple mathematics. The rest of the data were explained carefully to meet the aim of the study and research question and also attempted to establish relation among the variables. Some important and strong statements were referred in the analysis part to add value to the findings.

Endeavor was made firstly to unleash the potential of *Shalish* and to rationalize its institutionalization; secondly to detect the challenges, prospects and finally to put some light on to overcome the barriers.

2.10 Data Validation

Validity refers to trustworthiness which is done through cross checking the data collected from one source to that of others. If themes are established based on converging several sources of data or perspectives from participants, then this process can be claimed as adding to the validity of the study (Creswell 2009, p.191). In this study data were triangulated during survey and interview and latter justified with secondary data.

Chapter 3

Literature Review and Analytical Framework

3.1 Review of Literature

Mohiuddin (1999) referring Max Weber and Baylis, mentions that the ability to rule people through establishing control over resources is treated as a standard of power structure. Other components of power and authority are patron-client relation, connection with national level political party and government high officials. Village power structure has been revolved around the minor powerful, rich class of the society. The principal mode of exhibiting power by them is *Shalish*. So if power centre be shifted by developing awareness, organizing the powerless poor, infusing right and legal knowledge into them, there shall be a balance of power in the rural area. Thus this article has reviewed the role of NGO in balancing power through organizing and ensuring participation of the poor in *Shalish*.

DFID Briefing (2004) contains different aspect of non-state justice and security (NSJS) system. Beside describing different types of NSJS system and their advantages and disadvantages the briefing also presents some sectors from where potential resistance could come to incorporate NSJS system into the formal justice system (FJS). It identifies judges and lawyers as the prospective barriers to strengthening NSJS system. Those two category personnel are used to play within the formalized system; hence they could be reluctant to acknowledge the weakness of this formal system. Moreover fear of income loss may insist the latter category to protest. The paper also argues that political leaders, both local and national and some local elites, who are the beneficiaries of status quo, may resist reinforcement of community level informal system from the fright of losing the authority to control the system. The briefing suggests conducting effective and thoughtful research on specific context and also provides some suggestion to overcome these barriers.

AnanthPur (2004) has studied informal local governance institutions (ILGI) in 30 Villages in Karnataka, India. The paper mentions, leadership in Village area is being changed gradually irrespective of caste and class. It is driven mainly by the expansion in the number of government rural development programs and the increasing value and power of people who have the

education, personal skills and political connections to act as intermediaries between Villages and political and bureaucratic arenas. Apart from dispensing informal justice, this informal organization participates and plays key role in social development. A wide range of disputes like civil, criminal and civil with criminal implications are brought before the ILGIs. Villagers do not necessarily see dispute resolution by ILGIs as an end point, but rather as the first opportunity for justice because it is quick, affordable and accessible. If they are not resolved to the satisfaction of both parties, then the ILGI advises them to approach the formal institutions of justice.

Galanter & Krishnan (2004) mention that in India 'Nyaya Panchayat' (NP) was introduced in 1950s with a view to provide a system of justice superior to that of India's British-style court. The proponents of NPs sought to provide a convenient, accessible, understandable forum that would encourage popular participation, express popular norms, and promote harmonious interaction. However it failed to deliver the expectations. Later inspired by an influential 1976 article by Upendra Baxi, the *Lok Adalat* template was introduced. Finding the system successful, the judiciary started sponsoring it and within a short span of five years time the Parliament enacted 'The Legal Services Authorities Act, 1987' which was amended consecutively in 1994 and in 2002. The Act empowers *Lok Adalat* with jurisdiction over 'any matter', and authorizes to proceed according to its own procedures, which need not be uniform and to be 'guided by the principles of justice, equity, fair play and other legal principles'. Moreover the compromise or settlement in *Lok Adalat* shall be final and binding on litigant parties and no appeal shall lie to any court against the award. The act mandates that the *Lok Adalat* will be presided over by a retired justice of high court or current chief district judge and the judicial panels include one social worker and one lawyer or other legal expert and that one of the three members must be a woman. Cases on the docket of a local court (or tribunal) are, with the consent of one or both of the parties, transferred to a *Lok Adalat* list. On a weekend day, attended by judges and other officials, the cases are called before a mediator or panel of mediators. Noteworthy points are that the mediators are typically retired judges or senior advocates. The presiding judge of a *Lok Adalat* is an experienced adjudicator having proficient legal acumen. So even if the judge happens to address claimants gruffly or to treat the issues before him in a hurried manner, at the end of the day his decisions are usually on the mark—or at least they are close enough, so that the parties are better off than they were originally. Regardless of how gruff and perfunctory the

justice dispensed, *Lok Adalat* improve the overall legal system. The statistics of successful running of *Lok Adalat* are described also in the paper.

Wojkowska (2006) argues that due to mistrust of the law, lack of understanding (i.e. language issues, unfamiliarity of formal procedures and court atmosphere, low legal literacy), cultural distance, higher opportunity costs, exceptional rigidity and frequent adjournment, poor and marginalized people avoid formal justice system. They find informal justice system as the cornerstone of dispute resolution and access to justice. In many countries about 80-90% and in Bangladesh about 60-70% of disputes are resolved through informal system. At the same time the author mentions that this informal system is not a panacea or superior to the FJS. They have their own limitations such as often discriminatory to women and marginalized group, not maintaining the international human right standards, susceptible to elite capture etc. Based on the findings, the author concludes that ignoring such a prevalent and dominant system is not wise because it will not eliminate the problematic practices and flaws of the informal justice system. Rather it needs a holistic approach taking all the stakeholders seriously to remodel it. A careful planning and gradual addressing of the weakness faced by the informal justice system will certainly enhance the quality of dispute resolution systems. Such initiatives should be part of a broader, holistic access to justice strategy, which focuses on achieving the broader goal of enhancing access to justice by working with both formal institutions and informal justice systems.

Byrne et al (2007) in their paper "Decentralization and Access to Justice" describe decentralization is an utmost necessity to promote a liberal democratic and participatory society. At the same time it carries the risk of spreading corruption even at the local level and elite or interest-group capture the local government or administration (both formal and informal). A truly participatory decentralization without the poor and common people having enough bargaining power is not materialistic. Although state is the sole provider of economic and social conditions that remove legal discrimination, a failure of state functioning creates the space for non-state actors to take part in development process. For an accountable and effective legal process at local level strong and authoritative state support is needed. Thus being backed by state, non-state justice system is the dominant form of regulation and dispute resolution in many countries of the world. The paper also identifies 'political will' as the 'potential stumbling block' for reform

(decentralization). However, carefully planned, effectively implemented and appropriately managed decentralized governance can lead to significant improvement in the welfare of people at the local level, the cumulative effect of which can lead to enhanced human development access to justice also.

The change pattern of rural power structure is studied by Mozumdar et al (2008). Their study reveals a remarkable change in leadership in rural Bangladesh during 2001 to 2007 period. They sort out three variables namely- control over land, linkage with administration and non-agricultural sources of income as the most important, to get access to the rural power structure. Young people with personal attributes like education, affiliation with major political parties, connection with administration, non-agricultural source of income are dominating in the Villages. Class, clans, age or family lineage do not matter there. The elderly personnel also strive hard to hold their status and position by creating business groups, party network, involving in government and non-government organizations and above all maintaining good relation with local Member of Parliament (MP). There is simply a competition for capturing the leading position in the Villages.

Asaduzzaman (2009) in his article 'Development Role of Local Governance Institutions in Bangladesh' describes that despite having long historical background the Union Parishad is yet to become efficient enough to serve the interests of the local poor people let alone other local government institutions. Over the years the successive governments in Bangladesh, have simply twisted the inherited local bodies to suit their political needs. Due to frequent changes and experimentations, the institutions have suffered and could not take a permanent and viable shape. The UP officials still serve the interest of three groups, namely- ruling party members, local government officials and the local elites. Local people are generally least interested to visit the UP and its officials, because the UP has turned into a center of mismanagement and corruption, rather than being a centre of local development and people's participation. This poor performance of the public institutions (UPs) has paved the way for NGOs and private or informal institutions to play an important role in development of rural society. With the weaker institutional structure, comparing to the public institutions, these private and informal institutions have become much people friendly, service and development oriented within shorter period of time. Hence this paper suggests a networking and partnership based governance system in local

government, where all actors and sectors of the state such as public, non-profit, private or informal and the civil society would work together to provide the benefits of the state to the local inhabitants in ensuring good governance and sustainable development of the developing world.

Das and Maru (2011) in a Policy Research Working Paper facilitated by the World Bank, suggest that the institutional landscape of local dispute resolution in Bangladesh is rich: it includes the traditional process of *Shalish*, longstanding and impressive civil society efforts to improve on *Shalish*, and a somewhat less-explored provision for *gram adalat* (Village Court). It is based on a nationally representative survey and provides both an empirical mapping of local conflict and justice and pointers to possible policy reforms. It suggests a number of opportunities for strengthening local justice and argues that the VCs may pose a useful bridge between Bangladesh's informal and formal justice institutions.

A Framework for Strengthening Access to Justice in Indonesia describes a national strategy to ensure equal access to justice for every Indonesian. It mentions the necessity of strong justice sector for promotion and protection of social stability. The strategy paper acknowledges that only institutional reform (supply side) is not enough but taking into consideration, the demand side of the justice sector that is what the community people wants, is necessary. Since a significant number of disputes are resolved through non-state justice system at community level, national strategy should include special attention on enhancing the performance and social inclusiveness of non-state justice actors and institutions.

Training Manual on Alternative Dispute Resolution and Restorative Justice, produced by the National Judicial Institute, Nigeria in collaboration with the United Nation's Office on Drugs and Crime and with the Financial Support of the European Commission describes modernization of Judiciary through the integration of ADR and Restorative Justice System[12] (RJS) in formal or state judiciary. It mentions merits and demerits of ADR and RJS, quality of a good mediator/negotiator, mechanism of negotiation process and models of RJS.

International Council on Human Right Policy mentions (in chapter VII of its book called 'When Legal Worlds Overlap: Human Rights, State and Non-State Law') about the recognition,

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[12] Restorative Justice System is the community level informal justice system in which community relations are restored.

incorporation and decentralization of plural legal order. This chapter examines some of the conceptual and practical challenges involved in policy-making and human rights analysis that arise when a non-state legal order becomes, or seeks to become, part of a state legal order. Such a situation can occur as a result of decentralization; incorporation of a non-state legal order; or recognition of a claim for the law to reflect cultural diversity. It suggests recognition of particular tradition of particular community but is not applicable for whole of the country.

Khan (2010) mentions that lawyers maintain a strong association among themselves through local Bar. They often intimidate the difficult judges with threats of collective boycott. By seeking frequent adjournments, they delay the disposal of cases. The dishonest lawyers have converted court cases into a form of gambling through rampant corruption. Judges are totally helpless in the manipulations of lawyers. It also locates the historical milieu of lawyers' corrupt practices which have made the court highly expensive.

Dr. Yubaraj Sangroula (n.d.) of Kathmandu School of Law questions about the inadequacy of the formal justice system to ensure access to justice for the disenfranchised people. The vices of nepotism, financial irregularities, corruption coupled by 'formalism' makes the formal justice system 'a mockery'. It fails to protect the genuine interests and rights of needy people. On the other hand community level mediation or justice dispensing system is highly useful in this regard. It dissolves the root causes of the disputes and establishes peace and harmony in the society by touching every heart. Unfortunately this community mediation and other form of popular but informal justice system which provide access to justice for the hapless poor, have not received much government attention. He proposes upgrading of University level legal education curriculum to develop a group of change manager with pro-ADR mentality.

3.2 Salient Features of Reviewed Literature

From the literature reviewed above, it is evident that formal justice system (FJS) has become a closed institution for the poor and disadvantaged in many developing countries. So, they are in search for a viable alternative. Experts in this field are encouraging the community level informal dispute resolution system or non-state justice system (NSJS) currently. Likewise an alternative system is required to get rid of from the present state of judicial deadlock in Bangladesh. Sporadic initiatives by some NGOs have put light on a workable solution. Their

successes speak for reinvention of *Shalish* or ADR at grassroots. Despite having some defects, this informal method is the principal mode of rural dispute resolution. So, ignoring it curtly is not wise. A sound and meticulously planned initiative from the state is required for improvement of *Shalish*. For example *Lok Adalat* is designed in such a way that it is free from official formalities but not absolutely connected to the traditional practices. Rather it is conducted by legally literate personnel to ensure access to justice for the distressed peoples. But to that end resistance is imminent. The potential sectors from where fierce resistance could come up are identified as lawyers, political leaders and political will, local government officials and local beneficiaries of the status quo. To make any reform or change sustainable it is necessary to evaluate the demand side of the issue which is usually neglected. *Shalish* has an instrumental effect on Village life. And Village power centre swivel on the few rich and influential peoples. Organizing the marginalized people in groups, enhancing their bargaining power and uplifting their social status through awareness campaigning will have a clubbing effect to shift the power centre. This balance of power will ultimately ensure access to fair and acceptable justice to the poor. Ensuring fair justice and access to justice through restructuring *Shalish* is more likely to be a governance issue rather than a judicial reform. It is known that the actors of governance are state, civil society and private sector. Involvement of all the three actors is needed to make any governance initiative successful. So, authority, jurisdiction or structure of formal judiciary will not be hampered. Another important extract is that for introduction of every reform or change and its sound implementation, sincere political will and devotion from all concerned are required. Because good practice with high standard of morality is essential to make a system successful rather than strong institution.

3.3 Analytical Framework

The study proposes some thematic variables and attempts to explore the specific constraints those hinders the institutionalization of *Shalish*. The challenges may be grouped into socio-political and institutional barriers.
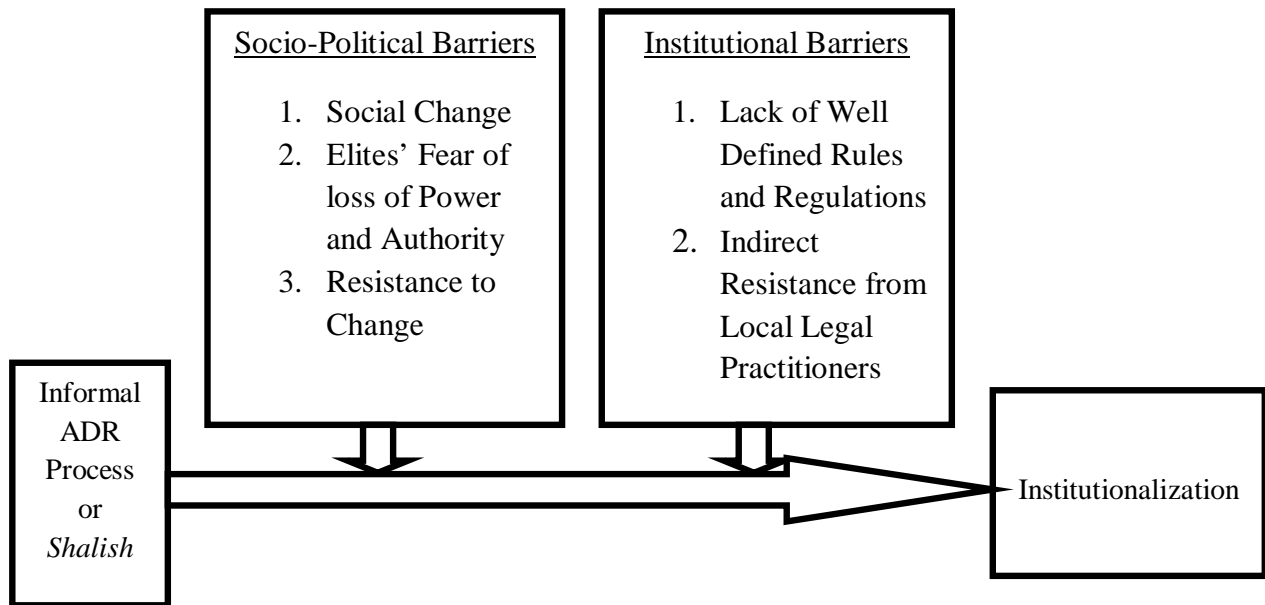
Fig 1. The Analytical Framework

A brief description of those proposed variables and their indicators, is given below.

3.3.1 Socio-Political Barriers

3.3.1.1 Social Change

Society is a dynamic concept. It changes over time to keep pace with the demand of the day. Those who cannot cope with the situation, become isolated or obliterated. Community level dispute resolution mechanism was need based invention of our ancient ancestors. Then this formal justice system was not available. However with the gradual evolution the formal judiciary, people have changed a lot also. Development of communication, expansion of education and cultural hybridization has changed mentality of people as well as the fabric of

society. It is depicted that representatives of new generation do not show same respect to this age old informal institution as their forerunner showed. Formality is taking place of informality slowly; so they could demonstrate their bias to formal court. Thus 'social change' itself can be an obstacle to institutionalization of *Shalish*.

3.3.1.2 Elites Fear of Loss of Power and Authority

Village power structure has been revolved around the minor powerful, rich class of the society. They value the 'class friendship'. They maintain authority over the deprived poor by ensuring patron-client relation, connection with national level political party and government high officials. In the name of resolving the dispute the powerful often linger it to consolidate their power and thus poor people are denied from access to justice. So if the poor people become organized and are made aware of their right then there is a chance of shifting the rural power centre. Their higher status or position can be lopsided. This fear of power and authority loss encourages community leaders to resist institutionalization of informal ADR.

3.3.1.3 Resistance to Change

Human beings are by nature try to resist change for fear of unknown. They pretend to be happy with what they have. Empirical evidences suggest that power structure is not in favor of innovative practice (Aminuzzaman 2011). This resistance could be either from the community leaders for losing their charismatic dynasty which is so compelling that it is automatically transferable to their spouses and offspring (Khan 2010, p.204) or by the common mass in fear of unknown. Because the common mass are already frustrated with the existing justice system for rampant corruption, delay and high expenditure and if the *Shalishkers* are authorized by legal support they could abuse power. So resistance could come up from both elites and commoners.

3.3.2 Institutional Barriers

3.3.2.1 Lack of Well Defined Rules and Regulations

There is no dearth of laws and regulations in Bangladesh. In many cases the laws, rules and regulations are not clearly defined, hence ambiguous and overlapping. In specific commercial or court level dispute resolution process highly educated and qualified personnel are involved. But

in rural level dispute resolution the community leaders are often not that much educated or learned; so they need more simplified and specific laws for better performance of the rural ADR process. It is a huge challenge to promulgate simplistic but specific law defining clear jurisdiction. Content analysis of laws regarding different institution and views of key informants may provide a perfect picture in this regard.

3.3.2.2 Indirect Resistance from Local Legal Practitioners

Lawyers through their strong association maneuver the court process. By seeking frequent adjournments, they delay the disposal of cases. Judges are totally helpless in the manipulations of lawyers. If formal justice system is decentralized to local levels then there is a chance that the lawyers will loss a significant number of cases. Simultaneously the income of lawyers as well as their assistants and some court related touts will decrease. So there is a high chance of resistance from local legal practitioners, to incorporate rural ADR process to formal justice system. To measure this challenge their role of ensuring access to justice will be considered.

The aim of the study is to explore the barriers of institutionalizing *Shalish*. So the dependant variable for this research is 'institutionalization'. Likewise the predicted independent variables and their measuring indicators for the sake of this study with brief description are given below.

Table 3. Independent variables, measuring indicators and propositions

Variables	Measuring Indicators	Propositions
Social Change	Education	Change in literacy rate and educational qualification play an important role in shaping up the rural leadership.
	Awareness (Legal/Political)	Level of awareness has direct correlation in decreasing psychological gap between the privileged and underprivileged groups.
	NGO Activities	NGO activities like group formation of the marginalized people, campaign on right (human and socio-legal) issues help shifting the rural power centre and ensure access to justice.
	Government Development Activities	Dissemination of information regarding government services boost up the people's confidence and they can use it when necessary avoiding middleman's help.
	Communication with outside World	The more the local people are integrated with outside world, the more is the chance of mental change due to admixture of foreign culture, norms and knowledge.
Elites Fear of Loss of Power and authority	Collectivism (group mobilization)	The higher the level of collectivism among the poor the higher is the chance of elites' fear of loss of power.
	Participation of elites in local development work	The higher level of spontaneous participation of elites with the commoners points to their fear of losing supremacy.
Resistance to Change	Elites response to social change	The more easily the local peoples (both elites and commoners) accept the positive change of 'social change indicators' the less they are resistant to change.
	Common people's attitude to introduction of new ideas, norms or values	
Lack of Well Defined Rules and Regulation	Key informants views on rules and regulations	Absence of clear standard guidelines affects the quality and implementation of *Shalish*.
Local Legal Practitioners	Role of lawyers in ensuring access to justice	The local lawyer has a stake in the institutionalization process of *Shalish* and is likely to resist it.

3.4 Operational Definition

3.4.1 Access to Justice

Access to justice required more than being able to present a grievance in front of a court, or before a mediation panel, provided your claim is recognized as legitimate and access includes an effective remedy whereby your right is translated into reality" (Anderson 2003 cited in Jahan n.d.).

3.4.2 ADR at Grassroots

ADR at grassroots means Mediation, Negotiation, Conciliation or Arbitration (i.e. *Shalish*) used to resolve both civil and criminal dispute at local/community level. In this study it is synonymously used with *Shalish*.

3.4.3 Institutionalization

For the purpose of this study institutionalization[13] refers to formalizing *Shalish* under a legal framework so that it is recognized and its verdicts are officially acknowledged by different legal and law enforcing agencies.

3.4.4 *Shalish*

Shalish is a need based invention by the rural people of ancient time. It has been practiced over the years for community level dispute resolution. When a dispute arises, being reported by either

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[13] Institutionalization is a continuous variable rather than a nominal variable. It means a process through which the "learning that has occurred by individuals and groups…" (Crossan, Lane and White 1999, p.525 cited in Wiseman 2007) "…is embedded in the design of the systems, structures, and procedures of the organization" (Crossan, Lane, White and Djurfeldt 1995, p.347 cited in Wiseman 2007). Dynamics of institutions to a great extent depends on the level and extent of the performance within which it exists and operates (Peters 2000). So, to understand the normative conceptualization of institutionalization it is better to assess the context and values within which the institution exist (Martin and Frost 1996). While rational choice institutionalism argue that the individuals who interact with the institutions have their own well ordered sets of preferences that remains largely unchanged by any institutional involvement; 'the empirical institutionalism' focuses formalization with government organization (Peters 2000). Again Selznick (1957 cited in Peters 2000) describes institutionalization as 'infusing a structure with value'. Men come and go but structure persists and being the repositories of values it socializes new members and enforces regularity in human behavior (Peters 2000).

of the parties some elderly peoples having social standing, sit together with the parties and some other concerned to resolve it. It is generally a public event and in most cases disputes are settled arbitrarily. Normally the parties have to surrender by saying 'I want a fair justice' or 'Do whatever you deem fit for me'. There are three types- (1) traditionally administered by Village or religious leaders, (2) administered by a local government body or Village Court and (3) NGO modified version. In this study we will focus mainly on the traditionally administered form and compare it with the MLAA modified version to explore the space for development.

Chapter 4

Informal Alternative Dispute Resolution in Practice: Regional Scenario

4.1 Introduction

Forms of conflict resolution in which a third party helps disputants resolve their conflicts and come to their own decisions, have probably been practiced since the existence of three or more people on earth (Folberg and Taylor 1990). Since that very origin, it has been a part and parcel of social life and has been changed over time according to the need of the society. This chapter gives brief description of historical dynamics of informal community level justice system exercised by the rural people for ages, to settle their disputes.

4.2 Informal ADR in Ages

Community level dispute resolution or mediation shows its frequent existence in different ages and different part of the world. The first event listed on ADR was in 1800 B.C. when mediation and arbitration were used to settle disputes between kingdoms in the ancient Middle East. The practice of ADR can be found in the Bushmen of the Kalahari Desert, the Hawaiian Islanders, and the Yoruba of Nigeria and in others area in 960 B.C. At that time practice was based on wide range of religious faiths, beginning in the Biblical Wisdom of Solomon. In this subcontinent Manusmriti[14] states mediation as a good practice of state authority (Lederach and Thapa 2012).

Community level dispute resolution system is characterized by compromise which is prevalently present in 'the Twelve Tables[15]' of Rome. Para 6-9, table-1[16] (The Twelve Tables) reads as-

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[14] The code is given by Manu as the basis of Hindu law and is treated as one of the ancient Hindu religious book.

[15] The twelve table was codified in 5th Century B.C. and is regarded as Rome's first code of law and the foundation of all written law there. Pomponius, Manual, sole book mentions ... it was decided that there be appointed, on the authority of the people, a commission of ten men by whom were to be studied the laws of the Greek city states and by whom their own city was to be endowed with laws. They wrote out the laws in full on ivory tablets and put the tablets together in front of the rostra, to make the laws all the more open to inspection. They were given during that year sovereign right in the *civitas*, to enable them to correct the laws… They themselves discovered a deficiency in that first batch of laws, and accordingly,

> When the litigants settle their case by compromise, let the magistrate announce it. If they do not compromise, let them state each his own side of the case, in the comitium of the forum before noon. Afterwards let them talk it out together, while both are present. After noon, in case either party has failed to appear, let the magistrate pronounce judgment in favor of the one who is present. If both are present the trial may last until sunset but no later.

Confucian ideology dominated mediation was principal mode of dispute resolution in ancient China (Folberg and Taylor 1990). Confucius believed that natural harmony in human affairs should not be disrupted. Unilateral self-help and adversarial court proceedings disorganize the peaceful understanding and social harmony (Cohen 1966 cited in Folberg and Taylor 1990). So, community relation should be underscored in order to maintain serenity in society.

The common law system is inquisitorial[17] in practice. Contrary to adversarial system, judges frequently participate in the proceeding to delve out the truth. The parties are allowed to build up their own case and eventually they control the whole proceeding. The community participation in decision making is still central to the common law system of dispensing justice.

As usual, Japanese peoples find a moral obligation to help settle the disputes of their neighbor. Community leaders play pivotal role in this regard. Finding it useful and efficient, the Japanese Courts enacted conciliation provisions for personal level disputes settlement before World WarII. This community dispute resolution system is so strong that attorney profession is almost at risk there. Scanty number of lawyers is very eye soothing in Japan and it is rightly described by Vroom, Fossett and Wakefield (1981 cited in Folberg and Taylor 1990)-'the tradition of conciliation and mediation is so imbued in Japan that there are rumored to be more flower arrangers in Japan than attorneys'.

4.3 Some Established Informal Forum of the Region

To strengthen the idea of institutionalization of community level informal method of dispute resolution, brief description of some well reputed systems in this region those expand easy

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they added two tablets to the original set. It was from this addition that the laws of the *Twelve Tables* got their name.

[16] See Ancient Roman Law (available at: www.pravos.unios.hr/engleski/pdf/roman_read.pdf).

[17] The judge actively controls the proceedings and makes his or her own inquiries hence this is known as an 'inquisitorial' system.

access to people through community participation and highlight local cultures and informality, are enclosed here.

4.3.1 *Lok Adalat* in India

Nyaya Panchayat[18] (NP) has its origin from of yore existence of non formal institutions. In 1959 the Indian government took initiative to endorse this institution. Widening the access to justice for the marginalized people by exercising simple and flexible rules and procedures was its aim (Baxi and Galanter 1979). The proponents of NPs sought to provide a convenient, accessible, understandable forum that would encourage popular participation, express popular norms, and promote harmonious interaction. They were unable to deliver on this (Galanter and Krishnan 2004). Rather unusual delays in dispute resolution process forced government to think otherwise. On the other hand being inspired by the success of Harivallabh Parikh's '*Lok Adalat'* in local dispute resolution in Gujrat, Upendra Baxi wrote a master article on it in 1979. This forum had neither any burden of official laws and formalities in real sense nor any palpable link with traditional tribal institutions (Galanter and Krishnan 2004). The judiciary responded very positively to this private initiative and the local courts began to transfer cases from its docket to the LA lists with the consent of both or either parties. Just five years after the judiciary began to sponsor LA, Parliament enacted 'The Legal Services Authorities Act of 1987', which was amended in 1994 and then again in 2002. The act direct the LA to run its operation 'guided by the principles of justice, equity, fair play and other legal principles'. It also instructs LA to 'arrive at a compromise or settlement'. The 1994 amendments to the Act mandate that the compromise 'shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award' (Galanter and Krishnan 2004).

The LA is comprised of three members. A retired justice from the state High Court or a current chief district judge chairs the panel. The other two will be a social worker and a lawyer or other legal expert. Among these three, one member must essentially be a woman (Galanter and Krishnan 2004). The camp sits intermittently on a weekend day and the cases are produced

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[18]Judicial wing of Panchayat separated from executive of Village Panchayat, the local government institution in India.

before a mediator or a panel of mediators who are usually retired judges or senior advocates. Date, time and venue are notified previously to the parties according to the case lists.

The suit starts in a LA when on receipt of an application from all the parties or either of the parties, the formal court deems it fit to transfer the case to the LA. The formal court in its own discretion may transfer appropriate case to the LA. Furthermore, getting application from any of the parties to the dispute, the committee organizing the LA may refer the case to the LA after giving necessary hearing. Prime target of LA is to produce a compromise. If no compromise is attained, the case is sent back to the referring court where the proceeding starts from the stage just before reference (Kumar n.d.).

The presiding judge is full of legal knowledge and the other two members are learned and motivated to render service to people. Moreover they are assisted by a group of scholarly persons who are accustomed to the local tradition and state laws as well. So, albeit the judges treat the cases gruffly and in a hurried manner, the decisions are on the mark or very close to it. Thus LA is improving the overall legal system especially in reducing court backlog (Galanter and Krishnan 2004).

4.3.2 Mediation in Nepal

Nepali judiciary is going through transition (International Commission of Jurists 2008). Nepali people are divided into strong tribes, ethnic groups, clans and castes. Their community bondage is amazingly strong. USAID Survey (2009) indicates that in Nepal majority of the disputes are resolved not by formal institutions, but by informal community actors or Village Chiefs. Opposite to it, the formal court is very rigid, rule bound and inefficient. New leadership of Nepal as an attempt to convert the Nepali peoples' 'traditional belief on community participation in dispute resolution' into a 'sustainable form of justice dispensing mechanism' (Sangroula n.d.), inserted some provisions in 'The Local Self Governance Act, 1999' (LSGA). It vested some authority to Village Development Committee[19] (VDC) to mediate the disagreements among the community members and also to maintain a roster of mediators. Later on the Mediation Act 2011 further extended its coverage by including provisions for certified mediators and community

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[19] Lowest local government institution in Nepal.

mediation side by side. The choice to have three mediators, originally mandated by the LSGA, became a procedural mechanism for establishing the panel of mediators for each case. Each party chooses one, and the mediation center adds the third (Lederach 2012). This acts provided legal foundation to the community level mediation or informal dispute resolution system which is now successfully running throughout Nepal.

4.3.3 Barangay Justice System in the Philippines

Barangay is the lowest local government institution in the Philippines. In June 1978, Presidential Decree 1508, or the Katarungang Pambarangay Law, was promulgated that led to the creation of the Katarungang Pambarangay (KP) the conflict-resolution mechanism for the people living in a similar barangay. The KP Law was revised and improved with the enactment of 'The Local Government Code of 1991' (Blue et al 2002). Creation of KP was with a view to recognize and institutionalize time honored Filipino culture and tradition of amicably settling disputes among families and Barangay members at Barangay level, without judicial discourse. The targeted multifaceted benefits were swift administration of justice, a filter to indiscriminate filing of suits in the regular court and to convert destructive forces of conflict in human relationship into workable and productive societal order. To oversee the whole process of KP, a body called 'Lupong Tagapayapa[20]' (for convenience it is described as 'Lupon' in the later part) is created at every Barangay. Each Lupon is composed of Barangay Captain[21] as Chairman and no less than ten and no more than twenty members depending upon the population size and quantity of disputes. The Barangay captain selects the members for a period of two years, from among the residents of that Barangay. The Barangay secretary concurrently holds the secretary post of the lupon (Pe and Tadiar 1982, p.31). Members are selected[22] on the basis of their integrity, impartiality, independence of mind, sense of fairness, and reputation for probity, including educational attainment. For every dispute a 'Pangkat ng Tagapagkasundo' (described simply as 'Pangkat' in the later part) meaning 'conciliation panel' is constituted. The parties in the presence of Barangay captain, choose three members from the Lupon membership. They also

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[20] 'Lupong' means council and 'Tagapayapa' means peace-making; hence 'Lupong Tagapayapa' means peace-making council.
[21] Head of the Barangay.
[22] See section 1(a)(1) of the Presidential Decree No. 1508 of the Philippines annexed in Pe and Tadiar 1982.

select a fourth person as an alternate member of the Pangkat[23]. The three regular members of Pangkat elect a chairman and a secretary from among themselves.

A dispute under the purview of Lupon is brought orally or in written before the Barangay captain. He first attempts an amicable settlement within a span of 15days. If he fails, refers it to the Pangkat which shall be formed immediately following the procedure mentioned above. The Pangkat also gets fifteen days time from its initial meeting with the parties and the period can further be extended to more fifteen days if the progress pattern permits so. If the Pangkat also fails then the secretary of Pangkat or Lupon will certify in this regard and only then the aggrieved party can go to the court. Section 6 of Presidential Decree, 1508 has made the conciliation compulsory for all the disputes excepting those mentioned in section 2 of the same. The section reads as-

> No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated.

Thus this process operates as a screening filter and prevents unscrupulous case filing in the formal court. Apart from resolving the disputes, this method dissolves the agony and grief of the parties. Hence community relations restored to status quo ante. For this Blue et al (2002, p.vii) finds a strong negative correlation between cases settled at the KP level and the volume of crime, mainly non-indexed low level crime.

4.3.4 Madaripur Model of Mediation

In Bangladesh Madaripur Legal Aid Association (MLAA) has developed a community based institution for dispute resolution. MLAA started its journey offering free legal aid assistance to the destitute poor in 1978. Huq (1988, p.63) founder and current secretary of the organization writes in his own words-

> Gradually we realized that legal battles for small claims are often disastrous, wasting time and energy, and turning neighbors into enemies. As an alternative to this impasse, we felt

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[23] See Rule V, section 1 of the Katarungang Pambarangay Rules annexed in Pe and Tadiar 1982.

legal institutions should provide resolution of disputes through mediation and conciliation. To meet this challenge, we resorted to the traditional Bangladesh institution of 'Shalishi[24]' for resolving the commonly occurring disputes.

MLAA's study unearthed that 'traditional Village mediators' or Shalishkers with minor persuasion and motivation can be used as potential resource in this regard. So MLAA employed a 'Union Organizer' who sit with the majority adult people of a Ward[25] and form a committee of 12-15 members (40% of them are female). Prior warning is given to the people to elect the members from diverse walk of life, who will best serve their purpose voluntarily. Through this democratic and participatory committee formation process the unwanted persons are excluded automatically. MLAA arranges training for the members of the Ward and Union committee to orient them with the existing laws and legal practices of the country. It also serves as a motivator to the trainee. The 'Union Organizer' receives allegations or reduces the oral allegations in a prescribed form, scrutinizes it (whether it is under the purview of the Shalish or mediation committee or not), fix a date, notify the parties and concerned Ward committee to be present. Following some other minor formalities they sit for the dispute resolution. Before actual sitting, if the nature of the case demands, the mediators sits with the parties in a strategic meeting (Sattar 2007). After some introductory conversation to set the bylaws and other formalities, the information are gathered from the parties. Parties themselves determine the points of issue. During argument and counter argument the mediators guide the course of action with necessary legal and other suggestions. They do not impose any decision arbitrarily rather help the parties to converge to a reasonable and acceptable solution. In other words, the decisions are taken on consensus basis. The compromise is then documented and preserved for monitoring and follow up by the MLAA authority.

MLAA sticks to the principle of pro-people attitude, honesty, sincerity and volunteerism. It never compromise with corruption or malpractice. Thus MLAA is now functioning successfully in 100 unions of Gopalganj, Shariatpur and Madaripur district. Almost 90% of allegations thus received are resolved peacefully only in one or two sittings.

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[24] The Shalish administering process.
[25] Each Union is further divided into nine Wards.

4.4 Inferences from those Models

In Philippine and Nepal, state legislation has been promulgated to recognize and institutionalize time honored culture of tradition and affable settlement of disputes among community members. In India the *Lok Adalat* is somewhat different. *Lok Adalat* forum is free from official formalities and traditional tribal connection. But it is very much informal and flexible and administered by legally literate personnel. Succinct inquest suggests two notable points here. One is reinstating community relation through traditional practice and the other one is quick disposal. In both cases informality is common. Besides, Roman law and Common law encourage compromise and community participation respectively in dispute resolution. Away from the government initiative, MLAA in Bangladesh has shifted its focus from legal aid to community mediation. In all those cases community participation is underscored because it touches the hearts of disputants, mollify their distresses and renovate harmonious cohabiting against the resultant permanent animosity in formal court. This mechanism where majority of rural disputes are resolved amicably, needs sagacious planning to make it more productive and to help breathe the formal court freely from suffocating case load condition.

Chapter 5
Empirical Analysis of Field Data

5.1 Introduction

This chapter presents the empirical findings of the study which attempts to finds the challenges and prospects of institutionalizing grassroots level ADR. Five independent variables (social change, elites fear of loss of power and authority, resistance to change, lack of appropriate acts and rules and indirect resistance from the local legal practitioners) were placed in the analytical framework to give the reader an initial idea about the barriers. Some measuring indicators with propositions for the independent variables were also predicted. While analyzing the collected data endeavor was made to expedite the linkage among research title, research question and objectives of the study. Taking the opportunities of qualitative approach the author strived to delve out the causes behind the responses of the respondents. The participants' attitude was keenly observed during data collection. In some cases researcher has tried to articulate these together. The first sections provide the present status of *Shalish*, its weaknesses and space for perfection; the middle sections map rationale for government intervention, process of institutionalization and the challenges that may stand against institutionalization and the last sections put some light on prospects and future line of action.

5.2 *Shalish* and the Community

Conflicts and disputes are part of our life. We cannot circumvent it. So inevitability should be enjoyed. The emerging theory of conflict resolution supports the idea and push trained mediators to help people managing their disputes productively (Folberg and Taylor 1990). This age old system of dispute resolution is developed as a doctrine of necessity by the community people. So the community owns this informal institution as an effective alternative forum for local level day to day dispute resolution. All the respondents in the study agreed that this age old informal dispute resolution system should be in situ. Although some official category respondents differed with the idea of its institutionalization, they are unanimous on its existence and importance.

Table 4. Participants' perception about the role of different persons and institutions in ensuring access to justice

Person/Institution	Madaripur (Mean)	Patuakhali (Mean)	Aggregate Mean
Judge/Magistrate	4.33	3.33	3.83
Police	3.44	2.33	2.89
Advocates	3.11	2.44	2.77
Elites	4.44	3.78	4.11
Shalish	4.55	4.11	4.33
Village Court	4.89	3.00	4.00

Scale: 5= Very Good, 4= Good, 3= Neutral, 2= Corrupt, 1= Highly Corrupt

From the data it is evident that *Shalish*, elites and Village Court are highly acceptable in ensuring fair justice to the rural people. The mean score for those (4.33, 4.11 and 4.oo respectively) person and institutions in comparison to others show how passionate the peoples are about them. These persons and institutions are close to them and they own it. This finding goes very much in line with the statement 'among the various public institutions in rural Bangladesh, the *Shalish* stands as the only one for which there is any empirical evidence of popular support' (Blair 2003).

Conversely, the respondents were asked to measure the effectiveness of three form of justice dispensing institution (formal, quasi-formal and informal). The question was aimed to justify their comparative perception about these institutions in resolving the commonly occurring disputes in their locality. The most frequent disputes are land related, money transaction, altercation, assault, scuffle or use of criminal force and family related such as separation, dower, maintenance etc. Total score for formal court is 56 out of 90 (5×18). The mean score is little more than 3 at a scale of 1-5 (where 5 indicates very good and 1 indicates very bad). For Village Court the average score is in between 3 and 4 and for *Shalish* it is more than 4. Despite all those flaws, the score signifies the importance of *Shalish* in rural life. This finding strongly resembles to the study of UNDP on justice seeking behavior (UNDP human security report 1994 cited in Harrold 2007) of rural people. In that report mean score for *Shalish* is 4.00 which is much higher than VC (2.8), police (1.7) and court (1.5). Interesting to mention that one respondent of Madaripur tells that 'we need not to go to the formal court for resolving this sort of minor discords'. The finding signifies that even with some flaws, *Shalish* has wide acceptance.

5.3 Characteristics of *Shalish*

However, the most important features of *Shalish* i.e. why common people and the UP level elected representatives (Members and Chairmen) go for (as disputing parties or *Shalishkers*) or participate in *Shalish* as indicated by the respondents, are discussed here.

5.3.1 Informality and Easy Accessibility

The system is developed by the rural populace. They consider it as their own institution. This rural organization is created to facilitate easy legal access to the village population (Baxi and Galanter 1979). All the other formats, be quasi formal or formal justice dispensing system (namely VC or Formal Court) have some sort of formalities. But *Shalish* is very much flexible, no hard and fast rules and beyond those formalities. Villagers do not treat this community organization as the end point rather as the first opportunity for justice because it is quick, affordable and accessible (AnanthPur 2004). Either of the disputing party alleges orally to the Village elderly person or respected elites (the social status may be due to his education, wealth or political connection) or UP Member/Chairman and that is all. He then fixes a date, asks some other peer *Shalishkers*, as the nature of the case permits and arranges a *Shalish*. Both the case studies are the example of this informality and easy accessibility. Nothing written is required and not even the decisions are noted down. If the case deserves, often the compromise or agreement deeds are produced, signed by the parties and the *Shalishkers* also sign as witnesses.

5.3.2 Less Time Consuming

The system is very effective in quick disposal of disputes. According to respondents some disputes can be solved instantly, so no one gets the chance to influence or manipulate it. Dissolving the disputes at very initial stage prevent it to infect other or to grow colossal. Patuakhali case (tension was increasing between the two groups and rapid intervention of UP Chairman dissolved the agonies) conforms to this statement. Moreover single sitting was enough to settle the differences in both the case studies. But it should be remembered that in the name of quick disposal, fairness, judiciousness and equality can't be compromised (Agarwal 2005). And this is frequently happening in the hand of crooked *Shalishkers*.

5.3.3 Participatory

Unlike the adversarial formal system *Shalish* is very much participatory. People can express their views freely without fear or hesitation. They know their cultural norms and comfortable with the local practice. Beside the disputing parties with their respective witnesses and the *Shalishkers*, many inquisitive people flock to the venue of *Shalish*. Presence of 35 persons in Madaripur case and 80 persons in Patuakhali case signifies how inquisitive the local peoples are about *Shalish*. Although the *Shalish* is to some extent arbitrative, people of either party express their grievance and demand unwaveringly. Sometime a very layman point out some previous precedence and make important statement to the points of decision.

5.3.4 A Win-Win Game

In the adversarial or formal justice system win or loss is the ultimate outcome. This zero-sum situation discourages involvement and contribution (Bingham et al 2005). But in *Shalish* the scenario is different. The *Shalish* panel tries to dig out the demand of the disputing parties and then maneuver discussion to a precise direction. The discussion helps the parties to regurgitate their agonies which eventually pacify their pains. In the meantime points of differences shrink to few. Mentionable that rural simple and naïve people are ready to curtail many of their demands for the sake of community peace. This is the main area where *Shalish* harnesses much. At last the panel pronounces a balancing judgment keeping good and evils in mind. The most important thing is shaking hands of the parties. So the community relation is restituted and peace and harmony prevails.

5.3.5 Cost of Justice

The formal court has become highly expensive. All the fees and rent, opportunity cost and other associated expenditure have made it beyond the reach of the poor. For trivial commonly occurring disputes to bear these expenses is a nightmare to them. Rather they are ready to accept negligible injustice. The *Shalish* can be arranged with insignificant cost of 'paan' (betel leaf), 'bidi' (low cost cigarette used mainly by poor, labor class people) and tea and often without cost at all. In most cases the *Shalish* sitting is set at afternoon session or free time of the day. So nobody had to sacrifice his labor or other business. Moreover it frequently takes not more than

two sittings. Thus opportunity cost is reduced to the minimum. *Shalish* in this way assures an acceptable dispute resolution at very low cost.

5.3.6 Hassle Freeness

Shalish as mentioned earlier is very easy to arrange. Only the oral allegation is enough to the local elite or UP Member or Chairman. The other thing is to invite other respected person whom they think will best serve their purpose or as directed by the very elite person. All are available in the same locality, so they need not to travel hither to thither. On the other hand moving from the Village to the police station at Upazila Head Quarter or to the formal court at District Head Quarter, to the attorneys, being trapped by the touts, waiting and running from person to person for official formalities to be completed and making all other associated paper works or procedures happen, is simply a hazardous and life exhausting task. It is not matter of once, twice or many, rather peoples have to do it time and again over the years in the formal justice system. In most cases, on every date the parties are to appear before the courts and 90% of these attendances are purely a formality, irrespective of the cost, mental humiliation, and corporeal trouble of the litigants (Sangroula n.d.). Assault and harassment in court premises is common especially for women justice seeker (e.g. a young lady who came to file a legal suit in Dhaka court with her parents, has been assaulted and molested by some police members on 29th May, 2012: The Daily *Prothom Alo*, 30th May, 2012).

5.3.7 Service to People

The *Shalishkers* whether local elites or elected representatives consider it as a way of rendering service to people directly. They love people living happily in the locality. They belong to the same society, values and norms; so it is better to survive together peacefully. Even a murder case is compromised often, which can't be done in the VC or FJS (although not permitted by law). They argue, not all the murders in rural context are done by the habitual offender or in a planned way. Some murders or grievous offences are committed on sudden provocation based on minor altercation. But when back in sense they become repentant. Rigorous punishment of the offender is not enough to compensate the victim or his family. So conceding the hard reality, both the parties try to satiate the loss either in cash or in kind.

5.4 Weaknesses of *Shalish*

The rural life has been changed over time. Accordingly people's mentality has been transformed a lot. The commonly occurring problems have altered its texture and have become much more complicated. Thus it often provides impetus for changing social values and norms (Folberg and Taylor 1990). The *Shalish* has not been developed that much to cope with the situation. So it is imminent to upgrade *Shalish*. The weak points of *Shalish*, as identified by the respondents are as follow-

5.4.1 Politicization

Shalish is currently infested with massive politicization. The answering attitude of the commoners exhibited abhor to current political practice. Politically backed young people are dominating the *Shalish* processes nowadays. They simply weigh the political lineage of the disputing parties and manipulate the total procedure accordingly. If their supporter is found guilty, they linger the process and often use muscle power or intimidation to outplay the opposition party. The very genuine conflict is often colored politically and fair justice is denied to the aggrieved. These political goons are devoid of sense of morality or righteousness and are more susceptible to malpractice. One ex-police head

> **Box 2: *Shalish* as Business Instrument**
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> A Union level political leader comments 'Some so-called social leaders do not have any source of income. They earn by various rural arbitration process which they take as their hereditary property. Justice system does not exist anymore. Those who are known as good people in the society can't participate in arbitration processes'.
>
> …adopted from Rahman, 2010.

or Inspector General of Police (IGP) detected 'performing according to the will of the political leaders' as one of the major reasons of corruption in Police department (Haque 2011, p.65). Politicization has tarnished the image of every sectors through which it has gone across. Because the political system of the country has turned to the process of criminalization (Aminuzzaman 2010 cited in Panday and Asaduzzaman 2011).The rural society is no exception. Vote factor often add fuel to this. Hence, people's passion for making *Shalish* politics free denotes how strongly they dislike politics in their day to day affair.

5.4.2 Absence of Legal Authority

Shalish has no direct legal back up. Some indirect provisions are there in different law. For example section 345 of CrPC for criminal litigation, section 89A, 89B, 89C of CPC for civil dispute, Muslim family law ordinance, 1961 for family affairs provide some support. But in all these cases the suit should be lodged in the court first and do not empower rural informal institution unless directed by the court. Report says almost 70% (Golub 2003) of local disputes never come to the court. But due to absence of any direct legal platform, it is manipulated by the powerful people. All the respondents of common people and *Shalishker* and UP Chairman categories demanded legal recognition of *Shalish* and vesting some specific authority to the *Shalish* panel. Because, state power is necessary to resolve a dispute authoritatively (Byrne et al 2007) they think. *Shalishkers* often face problem to enforce the attendance of influential or rich party to the dispute, in the meeting. Even if they remain present, make dilly-dally to conform the decision when goes against them.

5.4.3 Nepotism

All the disputing parties and *Shalish* administrators are the members of same society. They are connected to each other in different way- be it relational, political, neighborhood or some other ways. The close the relation is the difficult to avoid it. The *Shalishkers* or local elites often become bifurcated in two groups centering certain dispute depending on their line of relation. It is interesting to note this separation never or seldom goes against power connection. The elites always maintain an unholy alliance. Besides, underhand dealings of money or muscle power often foment partisan behavior.

5.4.4 Power Structure

Control over resources play a dominant role in rural power distribution (Mohiuddin 1999). The rich people enjoy natural dominance over relatives, neighbors, people work with them and over society as a whole. Feudalistic and patron-client relation explain the situation better. Referring to Rahman (1981), Mozumdar et al (2008) identify a strong positive correlation between education and land ownership patterns. They view that level of education, proximity to administration and non-agricultural sources of income elucidate leadership quality. These variables together

determine the rural power structure. And Village power structure revolves around this minor powerful, rich class of the society. They use *Shalish* as principal mode of exhibiting their supremacy over the rest. Normally the decision of *Shalish* reflects one sort of peer respect although illegal and inhuman in some cases. As Golub (2000 cited in DFID Briefing 2004) describes-

> In Bangladesh, a 'triumvirate' controls *Shalish* as a part of local governance structures. The elected officials of the Union Parishad are the most powerful actors and are often connected to the ruling party. Village elders are next in the hierarchy, and often have vested interests in the local economy as rentiers or money lenders. The *Mullas*[26] also have influence, endorsing the activities of their patrons, the village elders, by issuing fatwas. The rural poor, often women, are victims of these fatwas. Local patronage systems also mean that a patron sitting on a *Shalish* panel may use his power to benefit his client. There may be value in working with organizations such as Madaripur Legal Aid Association, which has been a pioneer in setting up reformed NGO *Shalish* to challenge these power imbalances.

The very presence of this powerful LG representatives or local so-called elites often compels poor people to keep silent or not to unveil the truth. The dissident to the decision often finds himself in trouble with the UP Chairman or as an accused in a false case (Siddiqi 2006, p.31). Compliance to Chairman's request by Sundar Ali (Patuakhali Case study) without any say is an indication to this feature.

5.4.5 Denying Women's Participation

In *Shalish* women's participation is denied usually. They are excluded on ground of social norms, religious values and often patriarchal nature of the society. But many women centered disputes like family violence, women oppression, extra marital affair, illicit sexual relation etc. become subject matter for *Shalish* consideration. 'Women are guilty' is the perceived notion of the *Shalish* panel in many

> **Box 3: Inhumane and Imposed Biased Decision in _Shalish_**
>
> Some local young men proposed illicit sexual relation to a housewife in Chunarughat Upazila of Sylhet and was denied as well. They charged her for adultery and complained to the Union Parishad Member of that Ward. That very housewife and a man were dragged to the *Shalish*. As usual hapless housewife and the man were decided guilty. The panel fixed a punishment of 100 shoe pounding to her and Village lap for the man wearing shoe garland.
>
> (The Daily *Jugantor*, 30th March, 2012)

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[26] The so-called Muslim religious leader.

cases. In most cases women's position are not considered properly. She is refuted or feels shy to communicate her status in front of huge male majority gathering.

5.4.6 Ignorance of Legal Provision

Shalishkers' ignorance of existing laws and legal practice in the country is another problem. They are not aware of their jurisdiction. They virtually attempt to mitigate all the disputes or offences irrespective of its heinousness. They often give fatwa which is meant to be according to Islamic edict but in most cases, goes against it. Often brutal and inhuman punishment imposed to both man and women. All these happen due to ignorance of legal and human right and legal provisions practiced in the country. Punishment to the woman in Chunarughat (Box 3, p.48) without allowing her right to self protection is a burning example.

5.4.7 Corruption

Corruption has become a common phenomenon of *Shalish* nowadays. Some people have taken *Shalishi* as profession. They use it as an instrument of exploiting the hapless populace. Involvement of many elected representatives in this malpractice has become a matter of grave concern. They never hesitate to redirect the decision on ground of political lobby or strong force of underhand dealing. These politically biased or corrupt *Shalishkers* are desperate to save the culprit. Due to this ill practice, the balance of fair justice has been reduced from 80-20 to 60-40.

5.4.8 Forceful Imposition of Biased Decision

The *Shalish* is an arbitrative mechanism of alternative dispute resolution. In rural practice both the parties have to surrender to the *Shalish* panel (even in black and white in some special cases) with blank cheque. Then the parties are to abide by whatever decisions they take. After hearing both the sides the panel then fixes its line of action considering the factors mentioned above. Utilizing this absolute authority the *Shalishkers* exploit the destitute poor and consolidate their dominance, a biased and partisan decision is then passed on. The dejected party then has left no option but to comply with it.

Beside those mentioned above, lack of accountability and non-adherence to international human right standards (Wojkowska 2006), since the *Shalishkers* are not permanently selected and have no orientation to international human right standard, are the major weakness of *Shalish*.

5.5 Issues of Institutionalization

Respondents of the study in general suggested that *Shalish* system should be reorganized by some involvement of formal structure of the government functionaries. In view of the expectation, this researcher has assumed some of the predominant factors that might stand as barrier of such institutionalization.

5.5.1 Social Change

To get an idea about whether social change will be a barrier to institutionalize *Shalish*, the researcher selected five indicators namely- education, awareness to rights (legal/political), NGO activities, government activities and link of the local people with outside world. The prediction was that these factors play a dominant role in shaping the social change. The respondents' perception was recorded in two decades, identified as 1981 to 1990 and 2001 onward. A clear gap was kept deliberately to help distinguishing the status of two periods distinctly.

Table 5. Perception of local respondents about some indicators of social change and *Shalish* quality

Indicators of social change	Madaripur (Mean)		Patuakhali (Mean)	
	1981-90	2001+	1981-90	2001+
Education	2.54	4.18	2.18	3.81
Awareness to rights (legal/political)	2.27	4.27	2.27	3.27
NGO activities	2.09	3.63	2.09	3.72
Government activities	2.54	4.00	2.54	3.91
Communication with outside World	2.36	4.18	2.27	3.91

Quality of *Shalish*	3.00	4.09	3.63	2.72

Scale: 5= Very high, 4= High, 3= Moderate, 2= Low, 1= Very low

The Table shows that the indicators have changed positively in both the districts. Some indicators like education, awareness to rights and communication with outside world have changed far more in Madaripur than those of Patuakhali. All other indicators also exhibit a

higher value in Madaripur than in Patuakhali. From this table it can be assumed that people of Madaripur are more conscious than people of Patuakhali. This finding conforms to the finding of awareness level. The mean score for awareness level of people of Madaripur is 4.00 whereas it is only 2.89 in case of Patuakhali albeit literacy rate in Patuakhali (42.55%) is higher than that of Madaripur (38%). From the finding it appears that while answering, subconsciously they have focused their thoughts on legal literacy and awareness; because the aim of the study was explained to the respondents prior to the questionnaire fill up. The finding points to the fact that academic study is not sufficient to develop legal awareness. Extra input is compulsory and MLAA has seal the deal in Madaripur in this regard. So, despite having higher literacy rate Patuakhali is lagging behind in awareness exclusively on legal and right issues. Interesting fact is that despite the positive increase of all the parameters in Patuakhali, the quality of *Shalish* has decreased over time and it is very unlikely to the scenario of Madaripur. It was apprehended that changed social scenario such as expansion of education, infusion of external or foreign culture and thoughts and increase of government as well as NGO activities would have definitive impact on people's mentality. Psychological gap between rich and poor and privileged and underprivileged people will be reduced. Since leadership structure in rural area is shaped currently by 'the level of education' and then 'personal quality' and 'affiliation with political party' consecutively (Mozumdar et al 2008) and not by the age or family name. So people of almost same mental stature could deny the supremacy of one another. This in turn could provoke a tendency of declining use of age old informal institution or *Shalish*. As Merry (1982 cited in Folberg and Taylor 1990, p.2) explains-

> As rural families gathered together in Villages, as Villages grew into cities, and as the nuclear family supplanted extended family, the family structure began to provide less of a resource for conflict resolution. People turned increasingly to formal rather than informal mechanisms to resolve their disputes.

The causes of declining of the quality of *Shalish* in Patuakhali as identified by the respondents are young political leaders' dominance in *Shalish* process. This information is corroborated by the statement 'older formations of social hierarchy have given way to newer ones in which money, party politics and youth often win out over age, reputation and lineage' (Siddiqi 2006, p.15). Low level of morality, involvement in corrupt practices and political factionalism practiced by these power politicians has lowered peoples' confidence on *Shalish* process. Besides, unwarranted involvement of touts in the process is responsible for downfall of *Shalish*

quality. Social life of Patuakhali is ravaged by natural calamities and oppression of landlords (specially the absentee landlords). NSJS systems may be used to control the distribution of land and resources by local elites, who may abandon 'traditional' norms in favor of their own material interests (DFID Briefing 2004). So the inhabitants show an inbuilt nature of ferociousness and litigiousness. Ambiguous thing is that those respondents, at the same time, have shown their good confidence on elites (mean score 3.78, Table 4, p.42) and *Shalish* (mean score 4.11, Table 4, p.42) in ensuring commonly occurring disputes resolution. This signifies that despite aggravation of quality of *Shalish*, marginalized people rely much on it for settling disputes. From the score it can be inferred that the rural people value their known environment, persons and institutions rather than to plunge into the uncertainty of the formal court. It may also be said that they have to depend on it considering the standstill situation of formal court. Absence of any viable option may be other explanation. One fascinating statement of a respondent of Patuakhali which deserves appreciation can be expressed as 'all the political leaders may be elite but all the elites are not politician'. But the fact is different in Madaripur where people show more confidence on *Shalish* or this informal NGO modified version of mediation. The dominant presence of MLAA in Madaripur and its institutionalized form of mediation has made the difference between these two localities. Findings of Madaripur suggest that the more people become aware of their right, the more they tend to avoid formal judicial system in dispute resolution. This finding goes in line with the recent popularity of alternative system of dispute resolution. Confidence on *Shalish*, as indicated in Table 4 (p.42), even after this changed social condition also supports this finding. So it can be concluded that changed social condition will not be a barrier to institutionalization as was anticipated.

5.5.2 Resistance to Change

After enumerating the changes (Table 5, p.50) the local respondents were asked to describe the elite people's attitude to these changes and the results are presented in Table 6.

Table 6. Attitude of the elite people towards the social change as evaluated by the participants

Respondents Class	Madaripur (Mean)	Patuakhali (Mean)	Overall (Mean)
Common peoples and *Shalishkers*	4.70	4.00	4.35
UP Chairmen	4.00	3.00	3.50
Advocates	4.00	3.00	3.50
Aggregate (Mean)	4.45	3.63	4.04

Scale: 5= Highly cooperative, 4= Cooperative, 3= Neutral, 2= Non-cooperative, 1= Vindictive

Respondents evaluated the attitude of local elites and powerful people to some social changes, such as i) expansion of education, ii) increase of awareness to rights (legal/political), iii) government and NGO activity and iv) coming in contact with outside world, as cooperative or highly cooperative. The UP Chairmen and the advocates of Patuakhali ranked elite's attitude as moderate where as in Madaripur it is 4. However the aggregate mean 4.04 express elites' attitude towards social change is highly cooperative. This does mean that elites will not stand in opposition if the change is beneficial to the community. Social changes have also changed the mindset of the local elites to some extent. Now they do not hinder this dynamic process strongly. They feel shaky at inception level, observe it minutely and then decide. In some cases although the elites feel irritated but finding people's sanction in favor, they do not express it publicly. Admixture of local and external knowledge and culture and youthful thinking of new generation has made it possible to bend the stubborn attitude of the elites to adapt with the societal need.

Table 7. Attitude of common people towards introduction of new things, ideas, culture etc.

Respondents Class	Madaripur (Mean)	Patuakhali (Mean)	Overall (Mean)
Common peoples and *Shalishkers*	4.28	3.83	3.78
UP Chairmen	5.00	3.00	4.00
Aggregate (Mean)	4.44	3.22	3.83

Scale: 5= Highly cooperative, 4= Cooperative, 3= Neutral, 2= Non-cooperative, 1= Vindictive

Attitudes of people towards introduction of new ideas, values or concept scores little above 3 on an average for respondents of Patuakhali but more than 4 in Madaripur. The result indicates that people of Madaripur are more adaptive than those of Patuakhali, to introduction of new things.

However aggregate mean 3.83 shows a tendency to acceptance of new norms, values, ideas and culture introduction. Awareness level plays a significant role in accommodating change particularly regarding access to justice. People of Madaripur having MLAA exposure are quick to respond and adapt new things. On the other hand people of Patuakhali although slow in adaption but not resistant to change at all. If the thing is beneficial to the populace, they will be more than happy to accept.

5.5.3 Elites Fear of Loss of Power and Authority

For measuring 'elites' fear of loss of power' two indicators namely 'spontaneous participation of elites in local development work' and 'collectivism' were used. Collectivism is featured by interpersonal trust and group mobilization. A higher level of trust among the members of a group expands its capacity to perform certain task better than the reciprocal group (Putnam et al 1993, p.167 cited in Askvik 2011). The prediction was that the higher the value of these two indicators the higher the level of elites' fear of loss of power. In a high power distant society like Bangladesh, elite people's spontaneous participation in local development work is very significant. It is very unusual indeed. So, when they participate spontaneously it denotes their longing for power. They take all available opportunities to consolidate their command over the common people, even by condescend from their former proud position and extending shoulder to the commoners.

Table 8. Perception of participants about elite's fear of loss of power

Indicators	Respondents	Madaripur (Mean)	Patuakhali (Mean)	Aggregate Mean
Spontaneous participation of elites in local development work	Common people and *Shalishkers*	4.00	3.14	3.57
	UP Chairmen	4.00	2.50	3.25
Aggregate Mean		4.00	3.00	3.50
Collectivism	Common people and *Shalishkers*	4.57	3.42	4.00
	UP Chairmen	4.50	2.50	3.50
Aggregate Mean		4.55	3.22	3.89

Scale: 5= Very high, 4= High, 3= Moderate, 2= Low, 1= Very low

From the answer of local respondents, it is evident that Madaripur is much more advance in awareness; practice of collectivism and in coping with change. Local elite people participate more spontaneously in Madaripur than Patuakhali. The variable 'Spontaneous participation of elites in local development works' scores 4 on an average in Madaripur whereas 3 in Patuakhali. At the same time variable 'collectivism' scores more than 4 on an average in Madaripur and slightly more than 3 on an average in Patuakhali at the same scale. These two variables ultimately signify that people of Madaripur practice more collectivism than that of Patuakhali. Low scores in both cases are the reflection of socio-political life of Patuakhali. Natural disaster and subjugation by the landlords have traumatized marginalized people's faith on the rich or powerful people. Hence they have shown a precautionary reaction in comparison to those of Madaripur. However the aggregate mean value for both the indicators show moderate to high propensity to 'fear of loss of power'. At the same time practice by MLAA in Madaripur also ushers some light ahead. MLAA involves local elites having popular acceptance in the process. Finding their esteemed position in the mechanism they happily join hands to serve the society. Since a strongly tied society shows more respect to their values, norms and culture, so informal dispute resolution mechanism works better in Madaripur (Khan 2010, p.186).

The local elites act as the gravity centre. Village activities spin around these social leaders. With their position and status they are able to discard many of the rages and resentments of the poor. If these deprived people become conscious about legal right, team up together and raise their voice against the oppression, then power centre will be shifted. This will dismantle their 'beneficiary of status quo' position. Upgrading of this traditional system might simply derogate their dominant position. This is the rationale of the respondents to place local elites as a challenge to institutionalization of *Shalish*.

5.5.4 Legal Practitioners

In our country the fame of a lawyer depends on how much cases he has in his bag, not by his disposal rates. They have developed a culture of 'never say no to a client'. Whether merit of the dispute permits or not, most of the lawyers persuade their clients to file the suit first. After that they engage every mean to linger the process to maximize their earning. Galanter and Krishnan (2004) accurately characterize them by saying 'These lawyers are all alike, regardless of who

they work for. Delay is all they know'. Their corruption has reached an intolerable height. Khan (2010, p.183-185) digs deep into the historical evolution of lawyers' unprofessional and extra-ethical conduct. He continues on saying that origin of the institution of lawyers in Bangladesh is different from that of Western countries. At the very outset of introduction of this alien adversarial legal system by the British in British India, language difference became the most prominent predicament. This difficulty forced the British judges to permit lawyers in all cases and this was very unlikely to the common law practice. Taking the chance, the lawyers started exploiting ignorant and naïve inhabitants. Frequent use of false witnesses and forged documents and development of illicit nexus with the opposing party lawyers have later turned into a vicious circle. In addition, lack of accountability and rudimentary peer monitoring simply ignited rampant corruption.

Box 4: Rich-Local Government Representatives-Police Nexus

Moiful Begum (20) disappeared from her husband Ziarul's house. Rumor held her neighbor Alamgir responsible for this incident. Her sister Molika with her husband Farid came back home from Dhaka and engaged all out effort to find her out. Alamgir influenced UP Chairman, Member of the Ward and some other powerful people to arrange a *Shalish* in this regard. Out of utter surprise they held Farid guilty and beat him mercilessly. Two sub-inspectors of police were present at the gathering. This atrocious beating and public humiliation led Farid to commit suicide.

(The Daily *Jugantor*, 27th April, 2012)

These unholy practices are trending still today in the judicial arena. Table 4 (p.42) gives a crystal clear picture of peoples' attitude to attorneys. If strong alternative system of dispute resolution develops in the rural area, litigant people will visit less to the lawyers. Their quick buck making process will be hampered. Lawyers may treat this rise of informal dispute resolution mechanism as a threat to their incomes. So they may put strong opposition against institutionalization of *Shalish*. Pertinent to mention, officers of judicial service expressed their grave concern over non-expansion of ADR in civil suits due to noncooperation of lawyers. The advocate's assistants are one step ahead; their close association might outnumber the commoner's interests.

5.5.5 Local Touts

In Villages, throughout the Country, there lives some vested interested groups. They have no visible source of income but live tip-top. The 'tout' culture is tightly coupled with judiciary since colonial period. At that era their movement became so palpable that the British government promulgated 'The Tout Act, 1879'. Urban migration of educated people creates space for their filthy business. They exploit commoners capitalizing on their simplicity. These people have nothing to do but provoke one against other and fish in the troubled water. Everybody dislikes these thug but they are so deeply rooted that the commoners cannot avoid them. Institutionalization of *Shalish* by law might simply weed out these people as well as their crooked practices. MLAA has been successful in eliminating those cheat. So in fear of losing the dishonest business they might create anarchy against institutionalization.

5.5.6 Elected Representatives of LG Institutions

It is interesting to mention that no respondent of common people and *Shalishker* category, of Madaripur district, think UP Chairmen and Members as hurdle to institutionalization of *Shalish*. To them UP Chairmen and members do not interfere in the proceedings of MLAA, rather they happily participate and help people in resolving their disputes. Due to dominant presence of MLAA, UP level elected representatives do not risk their popularity. MLAA train up the UP level elected representatives and provide clerical assistance to run the VC successfully. This has changed their mind set. A good alternative in hand has widened the people's opportunity to access to justice. The scenario in Patuakhali district is opposite. There is no well accepted alternative institution here. All the respondents conceded that quality of *Shalish* has been questioned over time. UP level elected representatives use informal ADR or *Shalish* to exploit people. They are sunk in fraudulent practices. The UP representatives serve mainly the interest of ruling party members, local government officials and the local elites. The members of these groups always maintain good relationship to abuse power and misuse government resources (Asaduzzaman 2009). The news mentioned in Box 3 (p.48) is a perfect instance of collusive nexus. Considering the creation of a parallel organization as a threat to their power and authority, UP Chairmen and Members may hinder the institutionalization process of *Shalish* because it will corner them to some extent by curbing their power and authority.

5.5.7 Political Leaders

Sincere political will is the sine qua non of enacting a good policy or law and its implementation. *Shalish* has become an important political institution in rural area. Young and power loving people having no background, join in politics simply to spread their control over the area. They often inflict their irritating whim on the disputing party who is particularly against their political lineage. Local politicians are directly interlinked with national level politics and politicians. Power party policy maker always biased to keep some space for their party members in policy implementation process at grassroots level. They never ponder opposite scenario of future regime change. Local leaders with political power and status always try to pay back by upholding the interest of their party bosses. Thus a typical patron-client relation is practiced in between these two ends and scope for huge politicization as well as malpractice is created. By nature human being are unwilling to give up power and authority. Enactment of a sound policy or law and strict adherence to its execution will squeeze the opportunity of these so-called political leaders' involvement. So, it can be speculated that the policy makers will not go against the interest of their rural clients. So 'political will' is a potential 'stumbling block' (Byrne et al 2007). One expert interviewee illustrates in the same way that obscure perception or misperception of political leaders may stand as a challenge to the institutionalization process of *Shalish*.

5.5.8 Police

The respondents justified police department in ensuring fair justice to the poor people. They assessed police department in a scale of 5 (very good) to 1 (highly corrupt). In Madaripur the average score is 3.4 (31/9) and in Patuakhali it is 2.3 (21/9). The score (Table 4, p.42) suggests that although people of Madaripur have fair confidence on Police, people of Patuakhali plainly treat this department as corrupt. The fact appears to be that people of Madaripur visit less to Police for minor offenses and hence consider them good. The summation average of the two districts is 2.88 (below average score 3) which indicates respondents' negative attitude to police department. Despite differences in many other areas the respondents of both the localities converged to this point. They expressed their misery saying 'Ah! Police and fair justice never go together'. The participants' response in this regard is well grounded by TIB Report (2010 cited in

Haque 2011) on corruption perception. It states, 80% peoples agreed on the fact that police is the most corrupt institution in Bangladesh. Khair et al (2002) refuse to regard this very institution as the protector of citizens' rights and social peace any more. In this context, common people prefer suffering in silence or take the law in their own hands rather than approaching to police for assistance. Police officer responded as saying that they encourage compromise and often try to mediate the conflict and lodging first information report (FIR) is the result of a failed venture. But local respondents unearth the mystery behind this compromise attempt by saying 'they trade on that so-called compromise endeavor'. Thus, in fear of reduction of illegal earning, police department may also hinder the process of institutionalization indirectly through their collusive partners.

5.5.9 Lack of Appropriate Law

Defining the needs of the demand side clearly and fixing the responsibility of the implementing departments are very challenging for promulgating a sound law. In many cases overlapping laws and huge space for discretionary power create ambiguity and scope for misinterpretation. So, ultimate non-implementation and a chaotic situation are resulted. In this case (if law is promulgated for institutionalization of *Shalish)* the practitioners might be very layman. The key informant questioned on the ability of those Village people to perceive the force of law and to deliver rightly. Moreover, obscure concept and conflict of interest may provoke policy makers and lawyers to stand against institutionalization of *Shalish*.

5.6 Prospects and Potentials of *Shalish* System

Pondering the existing horrendous situation in formal court versus immense potentials of it, remaking of *Shalish* seems to be very much justified (Siddiqi 2006). Weaknesses of *Shalish* have been identified. Now question arises how these can be removed or how *Shalish* can be made more effective. The answers as identified by the respondent, are-

5.6.1 Participatory Committee Forming

A *Shalish* committee or panel for every Ward of a Union Parishad can be formed. All or majority of the adult people's participation might facilitate electing truly honest, neutral, nonpartisan and

learned persons to constitute the panel. People from different walk of life, such as teacher, religious leader, elites, farmers, businessman and women who are known for their pro-people and service oriented mentality might be selected. This selection should be made in open meeting and no imposed or deliberately selected committee will be accepted. M. K. Gandhi's (cited in Baxi and Galanter 1979) statement is relevant in this regard-

> Here then is perfect democracy based upon individual freedom. The individual is the architect of his own government. The law of non-violence rules him and his government. He and his village are able to defy the might of a World.

This selection process will empower commoners and alternatively will exclude the biased and corrupt person from the panel. MLAA in its working area select the Ward and Union committee in this manner. Union organizer arrange the meeting, one or two of their Upazila level officers go there, brief the people about the benefit of committee formation and the selection criteria. The committee thus formed work successfully in their locality.

5.6.2 Legal Validity of *Shalish*

Shalish should be validated through legal provision. Dead lock situation in the formal court has made this institution pariah to the poor. Sky high expense associated with it is frightening to them. So they try not to go to this formal institution. And even once caught in the system by chance, they simply grope for the escape route. Taking the opportunity, the rich and powerful when in a dispute with the poor, try to take it to the court. Utter surprise is that an institution (although informal) resolving almost 60-70% of the local disputes (Wojkowska 2006, p.12), has no legal validity. All the respondents in the study mention that *Shalish* should be in position and should be institutionalized. Legal validity will create a level playing field for honest and non-partisan people's involvement in *Shalish* and it will also exclude self declared young so-called leaders or *Matbars*[27] from the process. Thus institutionalization of *Shalish* through promulgation of act could make it more effective by removing most of its demerits.

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[27] Informal Village leaders.

5.6.3 Vesting *Shalish* Panel with Limited Authority

Shalish has no formal authority. If somebody refuses to attend in the meeting or to comply with the *Shalishi* decision, the panel has nothing to do. The poor people tend to go for *Shalish* the long it is acceptable to them. But the rich and powerful deliberately bend the *Shalish* process according to their will. Problems arise with them. So if *Shalish* panel is authorized with limited power to summon the conflicting parties, force them to join in the process and to implement their decision, then it will best preserve the poor people's interest. All the local respondents of Patuakhali and Madaripur observed that *Shalish* panel should have limited authority. Then it will not be possible for the recalcitrant, they argue, to avoid *Shalish*. Furthermore, recognition of *Shalishi* decision in court as evidence will alternatively pressurize the declining party.

5.6.4 Training of the *Shalishkers*

The rural elites, in most cases, are dispensing their duties in dispute resolution without having any formal legal training or orientation. The honest and learned persons motivated by their conscience ensure fair justice. But the corrupt, stubborn and biased so called powerful people mould the whole procedure according to their whim and pronounce decision which goes against human right, legal provisions practiced in the country and also against the religious diktat. The only way out to tackle this paranoid decision is to train these *Shalishkers* on necessary laws, legal practices and human rights and to motivate them to refrain from it. MLAA provides training to the members of *Shalish* panel as well as the UP Members and Chairmen. As Agarwal (2005) states inclusion of huge number of *Shalishkers* in the training process and good governance practice by them has changed the mentality of the parties. Hence this type of shocking incident is very rare to MLAA's working area. Lederach (2012) observes it the best-

> Community mediation provides much more than just the resolution of disputes. Changing 'lenses', from a narrow view of 'resolving cases' and 'access to justice' to a wider view encompassing broader affects on the local community, shows that when mediation is available as a response to conflict, and when it is conducted using local resources, it changes both individuals and historic patterns of exclusion.

5.6.5 Politics Free *Shalish*

The hill-billy peoples like their disputes to be resolved quickly. They are ready to sacrifice some of their interest. But they do not want it hanging for long. When politics is infused into their problems their lives become miserable. They treat Village politics as the worst politics in the World. So, people want *Shalish* to be politics free. They think that if *Shalish* can be institutionalized through government involvement or promulgation of act; it will generate opportunity for the involvement of widely accepted neutral and honest person in the *Shalish* process. Strong and sincere political will is essential for institutionalization and this will also exclude the so-called partisan and corrupt political goons automatically. This whole procedure in turn, will increase the effectiveness of the *Shalish*.

5.6.6 A Unique Framework

Shalish has no unique or universally accepted framework. Different institutions have developed their own module based on their ideology and vision. On the other hand at community level it depends mainly on the aspiration of one or two person who usually presides over or dominates in the *Shalish* mechanism. They set the bylaws of the very *Shalish* according to their line of interest. This flexibility paves the way for manipulation and corruption. So the local respondents as well as the expert emphasizes for a stipulated and universal *Shalish* framework. Examining the pros and cons of different framework used by different NGOs and perusing the strength, weakness and potentials government can develop a useful and efficient framework.

5.6.7 Motivation and Campaigning

There is no alternative to motivational training for the *Shalish* administrators and campaigning for the effectiveness of *Shalish*. The enrolled members of the *Shalish* panel should be brought under training program. The program will cover both motivational counseling and orientation to the commonly used laws and general legal practice. The training program must be designed in conformity with the educational and intellectual level of the participants. After these long years since its inception 76.45% of the respondents still do not know about the VC (Baseline Survey Report on Village Courts in Bangladesh 2009). In the same report 77.6% respondents mention that they go to Village leaders (*Matbars* etc.) when some disputes arise. The statistics denote that

Shalish is widely acclaimed and known to the people. So it will take less labor to inform rest of the populace; in fact those Villagers who know about *Shalish* can be the source of information for the rest. At the same time motivational training program will inspire the *Shalishkers* to ensure fair justice to the marginalized peoples and will reduce the malpractice as well.

5.7 Necessity of Government Involvement to Make *Shalish* Effective

All the above mentioned suggestions reflect the need of government involvement in improvement of *Shalish*. None but the state or government alone has the sovereign authority to take decision for the well being of her people as a whole. NGOs can modify the *Shalish* to fulfill their organizational goal. It may continue its operation in a particular region for particular purpose but not for the whole population of the country. Moreover their operations largely depend on the availability of fund and its conditionality. Academician expert's analysis adds value to it. She says that it will not be wise to issue NGO a blank cheque to implement. Government must have necessary control, because it is the responsibility of the sovereign authority to maintain rule of law for her citizens. This indicates government involvement is a must for the improvement of *Shalish*.

When asked directly, all the respondent of common people, *Shalishkers*, UP Chairman and lawyer category wanted government intervention for improving the age old informal institution. DFID proposes incorporation of non-state justice system into the lower levels of the formal judicial system (DFID Briefing 2004). Moreover development of state supported alternative dispute resolution mechanism is necessary to call it a reform (Byrne et al 2007).

5.8 Reform to Ensure Access to Justice for the Poor

Apart from the common people, *Shalishkers*, UP Chairmen and lawyers' views, the officials and experts opined in favor of strengthening local level quasi-formal or informal institution. They primarily accentuated on activating and strengthening of VC. Recently Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, has issued a circular making efficient operation of VC an important criterion for getting government grant [Memo no-46.018.030.00.00.006.2011 (part-1).93 date: 15/03/2012]

Side by side they viewed that *Shalish* is an alternative forum for dispute resolution in rural area and is closely associated with the community. So it can be strengthened and reorganized in a purposeful way to best serve the commoners interests. For conducting *Shalish* a forum can be created with honest and neutral people on whom general people have trust.

Some other suggestions include establishment of separate court for ADR and creation and appointment of 'Legal Aid and Public Relation Officer' at every Upazila to oversee the whole process of informal ADR. All respondents advised institutionalization of *Shalish* this way or that way.

5.9 Institutionalization of *Shalish* through Promulgation of Act

When the respondents were asked whether legal validity or institutionalization of *Shalish* through promulgation of act will improve its quality, mixed opinions were found from different categories of respondents. Local level participant unanimously expressed affirmative views. Although some of the official and expert categories differed in law promulgation in favor of institutionalization, most others agreed on it.

Previous discussion has made government involvement obvious in improving *Shalish*. For giving anything a permanent structure, government needs to promulgate an act and rules. Act sets the framework and rules provide necessary instruction to implement it thoroughly. The school in favor thinks that promulgation of act will give *Shalish* a solid foundation. Under the act there will be a definitive procedure for *Shalish* panel formation. Strict adherence to the law in *Shalish* panel formation will reduce the scope of unwanted persons' inclusion. This will be a legal recognition for the *Shalish*. So honest people will be encouraged to be involved in *Shalish* process which in turn will motivate them to dispense just and fair justice to the disputing parties.

Legal empowerment is likely to facilitate implementation of *Shalish* decision. Presently the disputing parties obey *Shalish* decision due to social bindings, participatory decision making and status and acceptability of *Shalish* administrators (some exceptions are always there). After promulgation of law all these societal parameters will be in situ; in addition legal authority will be incorporated. So whatever powerful the party be, will have no option but to sit for the *Shalish*

and abide by its decision. Because denial of this primary institution will go against him in further court proceeding. This in turn will empower and uplift poor people's position.

Structured legal orientation program will reduce the scope of unwanted decision of *Shalish* like *fatwa*. Fear of punishment for violation of any of the sections or being sacked from the panel might prevent *Shalishkers* from doing misdeeds. Besides strong two tier monitoring system, from NGOs and civil society and from concerned government agency, will make *Shalish* more effective, neutral and people friendly.

Institutionalization thus will lower the demerits. People will treat it as a government institution. Despite all its problems and defamation, common peoples still feel comfortable in dealing with public organizations. *Shalish* is already popular and with added promotion of its efficiency by this process, commoners will simply flock to it.

The dissidents to this idea consolidate their position by saying that promulgation of act may undermine the fame of law enforcing agency. It will also be devaluation to the formal court. On the other hand, ADR is a Western concept. Rural socio-political state of Bangladesh is not at that level. So institutionalization of this informal ADR will rather make it complicated. They also foresee a power abusing tendency among the *Shalishkers*. Some say institutionalization of rural *Shalish* is unnecessary. A community level formal or quasi formal dispute resolution institution called VC is there for the same purpose. VC after long years of inception is going very poor, so how can we expect another parallel institution functions effectively? But the fact is different. Neither custom nor other formal and informal system works in isolation rather works in constant interaction with each other (Vani 2002).

Secretary of MLAA suggests that there are many indirect legal back up for informal mediation or compromise like section 89A, 89B and 89C of the CPC, 1908, section 345 of CrPC, 1898, so there is no need for promulgation of act. His concern is that people have lost confidence on government institution for malfunctioning, malpractice, not being responsive to the commoners need and for power abusing tendency. But he admits indirectly that it needs to be institutionalized either through government agency or through NGO partnership. His arguments are refuted by the findings of Askvik (2011, p.91). According to him, '*while most experts rate the trustworthiness of public institutions as low, recent survey data suggest that ordinary people*

in Bangladesh tend to express high level of trust in such institutions'. The other expert (interviewed in the study) believes *Shalish* is a popular informal institution. Despite having some demerits it has immense potential. *Shalish* has no definitive framework, so different people whether NGO or rural elites, bend it to his/her advantage. To remove all these weaknesses and bring *Shalish* under a unique structure it needs to be institutionalized. Wojkowska (2006, p.28) explains-

> Governments may enact legislation to define and regulate informal justice systems. Self-regulation may be initiated by the systems themselves. Minimum regulations may be put in place, for example by making it an offence to order physically coercive punishments, to try a person under duress or in absentia or to try a person for serious offences such as murder or rape.

The human civilization has gone through various changes but the informal system of dispute resolution is still vibrant. Its roots are deeply embedded in community life. So, ignoring this informal system is impractical and insensible. This informal system is very much essential to enhance access to justice for the marginalized peoples. Taking all concerned into confidence, project should be taken to enhance the quality of *Shalish* by removing its weaknesses.

5.10 Madaripur versus Patuakhali: A Comparative Analysis

The question was inserted to ferret out the causes of decreasing/increasing the quality and acceptability of *Shalish*. This comparative portion was inserted to unearth the causes of variation between the community level alternative dispute resolution systems of two different localities. Madaripur was selected as laboratory area since 'Madaripur Model of Mediation' has already set a trend there. These causes will create the rationale for government intervention and will put some light on exactly where the sovereign authority needs to concentrate its focus.

5.10.1 Quality of *Shalish* in Madaripur

All the respondents of common people or *Shalishker* category in Madaripur have told that quality and acceptance of *Shalish* has increased in recent years (2001 and on ward) than past (1981-1990).

MLAA arranges legal orientation training program for the *Shalishkers*. Thus they have become eloquent with existing law and legal practice of the country. Being the part of an established

institution the *Shalishkers* try to uphold neutrality and dispense justice without biasness. MLAA uses a unique framework which excludes undesirable persons in the panel, reduces scope for manipulation and corruption. So the commoners simply flock to this institution. Finding people's sanction in favor of it, local political leaders and elected representatives of local government institutions seldom interfere into the process. They usually avoid betting on vote factor. People have become more aware with expansion of education and positive change of other social parameters. They prevalently take the chance of utilizing in-house efficient and cost-effective option for dispute resolving. Besides social pressure, dazzling institutional back up often push back the recalcitrant party or person to abide by the *Shalish* ruling. Involvement of women in *Shalish* panel bolsters the morale of the previously suppressed class. They find confidence on seeing a homogenous one in decision making stratum. Moreover, when interventionist mediators explain the actual legal position of the parties the power centre shifts from accused to the victim. Under MLAA umbrella, decisions are made on participatory and consensus basis and documented as well. Participation ensures transparency and documentation guarantees accountability through monitoring and follow up. In this way fair justice is guaranteed. Then again in case of a failed venture, MLAA endorses legal aid to the victim in filing a court case. Thus participatory and consensus based decision making, interventionist mediation, active women involvement, legal aid support and institutional back up are the mystery behind the success of MLAA in dispute resolution. The good governance practice in dispute resolution by MLAA has changed the mentality of the stakeholders in that locality. The formal court has unofficially recognized this very institution which is reflected in the interview of an expert and in case study of Madaripur. So it is of no doubt that illustrious presence of MLAA has made the *Shalish* an institution of confidence to the marginalized populace of Madaripur.

5.10.2 Quality of *Shalish* in Patuakhali

All the respondents of beneficiary and *Shalishker* category in Patuakhali district have told that quality and acceptance of *Shalish* has decreased in recent years (2001 and onward) than past (1981-1990). Alim and Ali (2007, p.13) also discovered the same justification on *Shalish* -

> The *Shalishker* were honest at best to provide justice to the Villagers. People could have faith to get true justice from them. Recently, especially since a decade, *Shalish* had been a business to them.

In Bangladesh politicians enjoy power and status without wealth. Young people having no family background or heritage but with little educational qualification, enroll in politics to capture the local power centre quickly. They consider *Shalish* as the most important instrument to dominate in local politics (Alim and Ali 2007, p.10). Thus young political leaders' capture of *Shalishkers* position has transformed the texture of *Shalish* drastically. 45% people of Patuakhali Sadar Upazila are landless. They are devastated by frequent natural disaster like all others. They find the loss insurmountable. These destitute peoples are the easy victim of the *Shalish*. There is no viable alternative or institution in Patuakhali to ensure fair justice and access to justice for the marginalized people. There is no monitoring and accountability. Side by side, urban migration of truly learned and elite persons creates a void. Naturally the vacuum is promptly infiltrated by the unwanted power loving people. These 'want to be *Matbars*' indulge in corruption, nepotism and partisan behavior. They consciously maneuver the process. They do not care for social value and morality rather treat the *Shalish* mechanism as a business instrument. So people's confidence on *Shalish* has been questioned in recent years in Patuakhali. The situation provoked Siddiqui (2000, p.148 cited in Jahan, n.d.) to write 'with a credible past, in a case of a dispute resolution, at present, this particular system either had 'completely broken down' or had 'become largely inoperative'.

It becomes obvious through minute scanning that presence of MLAA has made the big difference between the *Shalish* of two localities. It also reinforces the rationality of institutionalization of *Shalish*.

5.11 Networking for Institutionalization of *Shalish*

All the respondents of different category supported for NGO partnership for institutionalization of *Shalish*. They all opined that NGOs can be involved for training of the *Shalishkers* and supervision of the whole process. Participation of judicial and police official in the process may further add value to the *Shalish* activating process. Since committee formation throughout the country and arranging training for the panel members and monitoring the whole process is a huge task, it would not be possible for the government to manage all these things smoothly. Moreover the core state institutions namely police and judiciary are infested with inefficiency and corruption. Poor performance of public institutions has paved the way for NGOs and private

organizations to play a significant role in development of community life (Sarker 2003 cited in Asaduzzaman 2009). So voluntary public-private partnership i.e. government- NGO partnership is the feasible option.

Officers in most cases opined against introduction of new thing. Their view is that VC is there with almost same features; so why government should be involved in this apparently untouched sector. At the same time they said that NGOs can play a pivotal role in this regard. They did not provide any logical answer to the million dollar question 'who will persuade NGOs to work in this voluntary and non-productive area'? Currently most NGOs in Bangladesh are too much engaged in profit making through micro-credit to spontaneously come up to work in this field. Moreover there is no unique framework for this NGO modified *Shalish*. Some work on women empowerment, some on legal empowerment and some on public interest litigation. NGOs having legal expertise and work on human right, women empowerment issue may show some zeal, if government takes initiative with a unique framework. Shaping social behavior through social mobilization is more a governance issue than judicial process. Currently networking governance is the buzz word for local development as well as efficient functioning of local government. So networking might be the best option to transmit state benefit to the local inhabitants through the practice of good governance (Asaduzzaman 2009).

One expert commented cautiously recommending to experiment first with pilot projects separately by government agency and by NGO and then to decide. But the other expert vehemently emphasized on government's involvement in either case.

Chapter 6

Conclusions

6.1 Introduction

This chapter summarizes the overall findings of the study. Previous discussion makes it crystal clear that careful restructuring initiatives will boost up the current high confidence of commoners on *Shalish* and government intervention is necessary in this regard. Among the predicted barriers, changed social condition will not be a problem. Expansion of education, government and non-government activities increase awareness level but are not enough for legal literacy. And legally conscious people prefer to adopt informal mean for commonly occurring dispute resolution. Not acts and rules but political will matters for institutionalization of *Shalish*. On the other hand, the elites who enjoy beneficiaries of status quo and lawyers in fright of loss of power and authority and income respectively, might resist *Shalish* institutionalization method. In addition, political will may surface as the most powerful obstacle. The rationale for institutionalization, challenges associated to it and prospects are precisely described here.

6.2 Netting the Challenges of Institutionalization

No change or introduction of new thing is left unchallenged. Some logical and some whimsical barriers stand blocking the smooth progress of the proposed system. This study reveals some challenges as well, to institutionalize the traditional dispute resolution system. Five independent variables or barriers (i.e. three socio-political and two institutional) from where potential resistance could come up or might stand as stumbling block were identified primarily. Among these five, the study expedites that 'social change' will not be a barrier to institutionalization. In both Districts the indicators for the variable (p.30) changed positively. In Madaripur the rate of change was higher than Patuakhali. But even with higher literacy rate Patuakhali is lagging behind Madaripur in context of legal awareness. This signifies some extra input and reliable option in hand is essential for the development of legal consciousness. In Patuakhali although *Shalish* quality has been questioned in recent years but its acceptance is still high. Simultaneously in Madaripur the Madaripur Model of Mediation (MMM) has wide acceptance.

This is because modern people are global citizen, conscious and sensitive. They value time and money and do not want to waste it for mere unnecessary formalities. Rural people are not at all stubborn against change if it is introduced for their betterment. The overall score (combined mean of the two districts reflected in Table-5) indicates a shaky feeling but shows a tendency towards acceptance. Moreover one participant's statement in this regard is very significant. He mentions 'the long the change is beneficial to the populace, they are more than happy to accept it'. It can be concluded here that legally empowered people even at this changed social condition will not resist institutionalization of *Shalish*.

Elites have a chance to resist this institutionalization process for fear of loss of power and authority. Common people of Madaripur show a higher collectivism which suggests better performance of Village organizations (Khan 2010, p.186). They are more empowered with legal knowledge and participation in the resolution process. For being selective to panel manufacturing, local elites either in or outside the panel will be under constant pressure not be isolated for any of their misdeeds. So, they always try to stand shoulder to shoulder to the marginalized people. In a high power distant society of Bangladesh, this symptom is a bit unusual and it indicates their craving for power. Comparatively less collectivism is practiced in Patuakhali. 45% of landless and nature ravaged people are not organized that much. Similarly the elites there are reluctant to respond to people's need. Empowerment of these poor people through restructuring of *Shalish* might have instrumental effect on to the rural power structure. This finding establishes the idea of probable resistance from local elites in fear of losing their hereditary power position and authority.

Local legal practitioners are potential resisting factors to institutionalization. All the respondents including the experts mentioned them as potential threat to institutionalization of *Shalish*. One Coordinator (himself being a lawyer) of MLAA explains it in this way 'since we (officers and members of MLAA) successfully mediate most of the rural disputes locally, many lawyers have turned from our friend to foe'. Their clients have shrunk to few since only victims of grievous or heinous offences visit to them. Hence the legal practitioners may unionize themselves in protest pointing to human right abuses and non-conformity to strict rules and regulations in informal system of dispute resolution.

Sincere political will, not government capacity, matters for promulgation of an effective law. Government machinery has that capacity to draft an impeccable law but problems surfaces with implementation. Records say a good number of immaculate laws are subsided due to political non-cooperation or massive politicization. Statement of an expert interviewee is very much relevant to cite as he says *'we adhered to our principle of pro-people attitude, honesty, sincerity and volunteerism. Now this organization is functioning successfully in many unions of Madaripur and adjacent districts. When good sense prevail over bad, nothing is impossible'*. So, proper law won't be a factor if the government earnestly wishes to do so.

The analytical framework of the study proposed the argument that a set of socio-political and institutional barriers tend to affect institutionalization process of grassroots ADR or *Shalish*. The findings of the study reveal that among the socio-political barriers 'social change' and 'resistance to change' have no visible influence on institutionalization process of *Shalish*; but 'elites' fear of loss of power and authority' appears to have some effect on the same. On the other hand, out of two institutional variables 'indirect resistance from local legal practitioners' appears to be a cognizable factor for institutionalization process. But 'appropriate laws' do not seem to be an affecting factor to institutionalize *Shalish*, till the government sincerely wishes to expand the scope of access to justice for the poor people.

Beside these, some other resisting factors or persons are identified by the participants. These are elected representatives of LGI, local political leaders, local touts or professional *Shalishkers* and police. These four groups are interlinked and maintain a strong collusive nexus in exploiting commoners (e.g. Box 4, p.56). Fear of being cornered by institutionalization process might compel them to group together to resist.

6.3 Impetus for Institutionalization

Article 27 and 31 of the Constitution of People's Republic of Bangladesh guarantee the equal protection of law and to be treated in accordance with law for each and every citizen. But after the colonial rule is over, very little reform is done to make the formal judicial system people oriented. Rather the elites resumed the role of colonial rulers and retained the rigid nature of the system. The blindly formalized and alien features of the formal legal system, ignited by

corruption, sky high expense, incredible delay have made it an 'exclusive preserve of the rich' (Khan 2010, p.185) which keep the poor away from approaching there easily.

Shalish has some inbuilt and imposed pitfalls like absence of legal force, predilection and ignorance of *Shalishkers* about legal provisions and practices, corruption, politicization and lack of a sustainable framework. Capitalizing on those loopholes, leaders of the rural power structure aided by some tout and greedy peoples often maneuver *Shalish* for their personal, political or relational gain. The resulting inhumane outcome reflects diminishing quality of *Shalish*. And frequent reeling incidents (e.g. box 3 and 4, p. 48,56) are instances of denial of right to invoke justice for the weaker section of our population.

Despite those drawbacks, the attributes of *Shalish* like homely atmosphere, informal and flexible nature, win-win feature, easy accessibility, expeditious disposal, hassle freeness and responsiveness to people's need attract the marginalized populace. They find it as only resort where at least 'some justice' is gettable.

Sporadic NGO initiatives in Bangladesh context act as conclusive evidence that not an alien system but revitalization of an in-house traditional system can be highly useful in rural dispute resolution, restoring community peace and above all ensuring access to justice for the poor. Some State led community level dispute resolution mechanism in India, Nepal and the Philippines provide reinforcement to the idea.

Considering the facts mentioned above, it is understandable that there is no alternative but to institutionalize *Shalish* with little modification under a comprehensive strategy or framework to widen the access to justice for the disadvantaged people as well as a remedy to cure the strangled condition of the formal courts.

6.4 Overcoming the Barriers

The study does not aim to suggest any recommendations to overcome the barriers; however putting some light on the way out is inbuilt. So some precise suggestions are depicted here.

6.4.1 Legislative Framework

The study finds politics and political will are the most important challenge to institutionalize *Shalish*. It is the most daunting task to control one's mentality because no one wants to give up power willfully. Development of a substantive framework (implementing and regulatory) through legislation, with discreet policy guideline might help reducing politicization to some extent (at least corrupt politicians).

6.4.2 Training to Change the Mind Set up

Training will include the *Shalish* panel and the representatives of local government institutions. The module should be designed in a way that addresses the practical need of the *Shalishkers*, focuses mainly on issues frequently brought before *Shalish* (Khair 2008, p.242). Inspire them not to think it just of settling a simple dispute rather to think of the greater benefit of the society as a whole. Let representatives of local government institutions (UP Chairmen and Members) think them as superior organization to register the lists of the *Shalishkers* in all Wards, monitor the *Shalish* process intensively and report to the higher authority if any gross violation performed.

6.4.3 Group Mobilization

Rural power structure is centered on minor rich and powerful people. Marginalized people are barred directly or indirectly to raise their voice even to establish rightful demand. But, when they are organized in groups and legally empowered, the power center shifts to a balancing position. Chance of getting their right established increases. Collective power of peoples is far more effective in attaining tangible results (Khair 2008). Group formation and ensuring their representation in *Shalish* panel acts as a balancing counter force to local elites or powerful or politician. Furthermore group mobilization smoothen the progress of information dissemination.

6.4.4 Networking and Inclusive Governance

A perfectly decentralized local government system works in partnership with all the available non-profit, private and the civil society actors to ensure good governance and sustainable development to the local inhabitants (Asaduzzaman 2009). *Shalish* is an informal community level organization that deals mainly with social problems. It is well recognized that social

mobilization or a concerted effort from all available actors is essential for addressing social problems. Involvement of NGO reinforces the strength of *Shalish* committee. This NGO connection pushes the ill-doers back; because it is easy to intimidate or manipulate a single person but not an institution which has national level recognition. So politician and local touts or professional *Shalishkers* maintain a safe distance to it. Moreover, in case of failure the legal aid project of NGO provides every support to make it a court case and adhere to till the judgment pronounced. This stiff bondage with NGO indirectly pressurizes the obstinate parties to take part or to comply with the *Shalishi* decision (Khair et al 2002).

6.4.5 Information Dissemination

Information dissemination is an utmost necessity to any change management program. Huge campaign is required to develop a pro-ADR culture among all the practitioners, beneficiaries and all other concerned. Workshop, seminar, symposium, street drama, courtyard meeting can be arranged by all the Ministries concerned (like Ministry of Information, Education, Women and Children Affairs, Social Welfare, Local Government Division etc.) under the leadership of Ministry of Law Justice and Parliamentary Affairs. The added advantage of *Shalish* is that most people (about 76%, source: Baseline Survey on Village Court in Bangladesh, 2009) know about it and they could act as information source for the rest. All out and persistent campaigning is necessitated to develop a pro-ADR culture and to make it sustainable.

6.4.6 Monitoring

Based on the inference drawn from the KP of Philippines, LA of India and the mediation of Nepal, Union Parishad can be given the responsibility to oversee the whole process. A District level committee can be formed for guiding the *Shalish* panel with necessary legal counseling (whenever needed) and to take necessary action against the reported ill-doers. Simultaneously monitoring from NGO or Civil Society might play key role in steering the *Shalish* in right direction.

6.4.7 Legal Education

Sangroula (n.d.) of Kathmandu School of Law and one expert to this study question about the inadequacy of academic syllabus of legal education in this Sub-continent. It is of utmost necessity to upgrade University level legal curriculum with necessary amendment. This may help developing ADR culture among the law graduates. Local Bar might be given the important responsibility to popularize this informal method among the lawyers and the litigants. They must be reminded that as responsible citizen they have some responsibilities as well to the community besides making money. Huge publicity of the success of ADR might help overcoming their initial shakiness.

Despite all the weaknesses and flaws *Shalish* still receives a popular approval. Empirical observations of the study clearly reveal that, among different justice dispensation persons and institutions, *Shalish* has got the highest level of ranking among the rural dwellers. All the respondents of this study conceded the important role of *Shalish* in rural life. This is the institution, although informal, from where the marginalized people nevertheless get at least 'some justice' without virtually any cost. It is perhaps a high time to review and restructure the *Shalish system* with an aim to give the system a broader quasi-legal recognition to make it more effective and people-oriented. Since the Government of Bangladesh is encouraging informal method of dispute resolution at the higher level formal courts as a policy option, there is also a need to examine the potential of widening the scope of *Shalish* system to ensure access to justice for the poor in rural area. Considering the immense potentials of *Shalish* government may therefore undertake some action research initiatives to further review the viability of institutionalization of *Shalish* process.

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Annexure

Annexure-1: List of the Personnel Interviewed or Key Informant

Description of the Person	Category
Mr. Fazlul Huq, Founder and Secretary, MLAA	Expert and Practitioner
Dr. Jamila Ahmed Chowdhury, Assistant Professor, Dhaka University	Expert and Academician
Deputy Secretaries (2), Ministry of Law Justice and Parliamentary Affairs	Officials/Key Informants
Deputy Commissioner, Madaripur	
Police Superintendant, Madaripur	
Additional District Magistrate, Patuakhali	
Additional Superintendant of Police, Patuakhali	
Senior Judicial Magistrates (2), Madaripur	
Senior Judicial Magistrates (2), Patuakhali	

Annexure-2: Questionnaire for Beneficiaries of *Shalish* and *Shalishkers*

Môg chَ#qi weKَ we‡iva wb®úwË Kwh₱ug‡K AwBbMZ ˆeaZv cÖwb: GKwU D˜NUbgj-K mgx¶jv

[ivóَq wePvi e¨e¯\'vi wewıfbZ¶†‡tΪ weKَ we‡iva wb®úwË Kwh₱ug‡K AšÍ¥ Kiv n‡\"Q| †mtcͬ†‡tΪZ Môg chَ#q cͬwjÛ Z weKَ we‡iva wb®úwË Kwh₱ug Z_¥ cͬwjÛ Z mwjjk e¨e¯\(K AwBbMZ ˆeaZv cÖwb‡bi †¶‡tΪ ezwamgn- D˜NUb KivB G M‡telYvi D‡\Ïk¨| miKwi bwZ cͬq‡bi †¶‡tΪ wKObv Av‡jwKcvͬZ KitZ m¶g n‡j I mswoß cwimti cwiPwj Z G M‡telY Pov šÍ¥m×wšÍ Môt Yi Rb¨ LₖB Acͬ‡į| ZwB AmstKwtP Z_¯/gZvgZ cÖwbi Rb¨ Ab†įiwa Kiv h‡\"Q| D‡jL¨ Z_¯/gZvgZ cÖwb‡bi †¶‡tΪ bwg/¯\¶¥ji cÖwb m¤úY⨯B"Quwb Ges Z_¯/gZvgZ cÖwbKvixi cwiPq †Kvbfu¢eB cͬKuk Kiv n‡tebv| mnthwMZvi Rb¨ AwM̈ab¨ev`|]

mvaviY gwb lَ/ mwjk KviK‡`i Rb¨ cͬ¤ejx

01| DËi`vZvi m¤úwKֿَZ mvaviY Z_¯¥ejx

K) bvg: *L) eqm:* *M) ciy*d/gwnjv:*

N) wk¶vMZ †hvM¨Zv: *0) †ckv:*

P) Mͬg: *0) Dc‡Rjv:* *R) †Rjv:*

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02| ub¤ŋjuLZ uel‡q Avcbvi Mĭg/BDubq‡bi Ae¯ṽb eYⓢv Kiŵb

| | D"Pgv‡bi/D`vi | | | | ub¤ĝv‡bi |
| | 5 | 4 | 3 | 2 | 1 |

MĭgxY Abvbĝŵwbk msMVb/ msNe×Zv	
AŵaKvi (AvBbMZ/gvbewaKvi) uel‡q gvb‡Ŋli m‡PZbZv	
cĺqvR‡b D"P chⓡqi ivR%bwZK ‡bZv (msm` m`m¨) ev miKvwi KgⓡZⓡ`i (BDGbI/Gmwc/ŵWwm) mv‡_ thvMv‡hvtMi m‡hvM	
¯vbxq Dbqbgj-K Kv‡R gnr-gvZei/mgvRcwZ‡`i ¯Z:ùZ©AskMĭhY	
mgv‡R/GjvKvq bZła iwxZ-bwxZ Pvjⓘy cŵZ gvb‡Ŋli g‡bvfve	

03| b¨vq uePvi ubwõZ Ki‡Z ub¤ŋjuLZ e¨w³/cŵZôv‡bi fŵgKv m¤ú‡K©Avcbvi aviYv uwK?

| | L¸B fvj | | | | L¸B `ŷmŸZ civqb |
| | 5 | 4 | 3 | 2 | 1 |

uePviK (g¨wR‡÷U/RR)	
cyŵjk	
AvBbRxex	
mŷwRb/MY¨gvb¨ e¨w³	
‡eÂ mnKvix	
AvBbRxex mnKvix	
mvŵjk	
Mĭg Av`vjZ	

04| Avcbv‡`i GjvKvq mPivPi Kx Kx ai‡Yi Aciva/we‡iva msNŴUZ n‡q _v‡K?

05| Dc‡i ewŶZ Aciva/we‡ivamgŷni (¸iaZi Aciva- nZ¨v, alⓢ, WvKwZ BZ¨w` e¨ZxZ) ub®úŵÉ‡Z KvhⓇwwiZv we‡ePbvq ub‡Pi uePvi e¨e¯v¸jvi gŷmvgb Kiŵb|

| | L¸B fvj | | | | L¸B Lvivc |
| | 5 | 4 | 3 | 2 | 1 |

Av`vjZ	
Mĭg Av`vjZ	
mvŵjk	

06| Dc‡i e‡YŹ ‡e‡iva wb®ú…Ëi Rb¨ mvaviY gwb‡y Av`vj‡Z bv wM‡q mwyj ‡k hvq KviY-

   K) mwyj k mnRj f¨ev mn‡RB Gi e¨e¯v/Av‡qvRb Ki v hvq

   L) `‡Z wb®ú…Ë nq ev djvdj cvIqv hvq

   M) mwyj k AskMhŗgj-K A_¶r A‡b‡KB Ask wb‡Z cv‡i

   N) ‡e‡ivaxq c¶‡`‡i g‡a¨ m¤úK©c‡y¯ww‡cZ nq

   0) LiP Kg

   P) Ab¨vb¨ hw` _v‡K...

07| Avcbvi M‡¤‡gi wb¤ùyjwLZ ‡elq¸‡j vvi Z‡bvgj-K gj-¨qb Kivb (5 Gi g‡a¨)

µwggK bs	‡el‡qi ‡eeiY	Ae¯b	
		1981-1990	2001+
K)	wk¶v		
L)	gwb‡jj i ivR%bwZK/AwaKvi ‡elqK m‡PZbZv		
M)	GbwRI ‡`i KgŘvÛ/cŘviYv		
N)	M‡g ch¶q miKwi KgŘv‡Ûi gvĨv		
0)	evB‡ii mv‡_ ‡hvM‡hvM (moK e¨e¯, msev`c‡Î/wWwf, PvKwi/e¨emv BZ¨w`i gva¨g)		
P)	mwyj k cwiPvjbvKvi‡`i MhY‡hvM¨Zv		
0)	mvgwMŘK fy‡te mwyj ‡ki MhY‡hvM¨Zv		

08| Dchŧ mvgwRK cwieZ‡bi (K n‡Z P) c‡Z mgvRcwZZ/gnr-gvZ‡ei‡`i g‡bvfve gj-¨qb Kivb?

   L¸B mn‡hwMZvc‡Y©   c‡Zwnsmvc‡Y

      5   4   3   2   1

09| eZ‡§n‡b mwyj ‡ki MhY‡hwM¨Zv K‡g hv‡Ivi‡ew× cv‡Ivi KviY Kx Kx e‡j Avcwb g‡b K‡ib?

10| Avcbvi wb‡Ri †Kvb ‡elq wb‡q A_¨gŘev¸ ev ‡eev¸ wn‡m‡te mwyj k AskMhY K‡i‡Qb wK?   nü¨   bv

11| mwyj ‡ki `y¶® ¸w`K¸‡jv Kx Kx?

12| mwyj e¨e¯vi c¤j¸b ivLvi c‡qvRb Av‡Q e‡j g‡b K‡ib wK?   nü¨   bv

   DËi bv n‡j ‡Kb?

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13| mwwjk e¨e¯¼K Kxfv‡e Avi I KvhŘi Kiv hvq e‡j Avcwb g‡b K‡ib?

14| mwwjk‡K Avi I KvhŘi Ki‡Z miKwwi D‡`¨v‡Mi cÖqvRb Av‡Q e‡j g‡b K‡ib wK?   nüv   bv

   DËi ÔnüvÕ n‡j miKvi Kx ai‡Yi D‡`¨M MÖhY Ki‡Z cv‡i?

15| AvBb cŘq‡Yi gva¨‡g mwwjk‡K ˆeaZv †`Iqv n‡j (Av`vj‡Zi AvIZvq Avwbv n‡j) Gi ¸YMZ gv‡bi Dbqb n‡e e‡j g‡b K‡ib wK?   nüv   bv

   DËi nüv/bv n‡j, Kxfv‡e?

16| mwwjk‡K AvBbMZ ˆeaZv cÖ`v‡bi (Av`vj‡Zi AvIZvq Avwbvi) †¶‡Î Kx Kx ev †Kvb †Kvb w`K n‡Z evav Avm‡Z cv‡i e‡j Avcwb g‡b K‡ib?

Annexure-3: Questionnaire for Union Level Elected Representatives

Mům ch#qi weKí we‡iva wb®úúwË Kvh½g‡K AvBbMZ ˆeaZv cÖwb: GKwU D˜NvUbgj-K mgx¶v

[iwóñq wePvi e¨e¯¼vi wewfbœ†¶‡Î weKí we‡iva wb®úúwË Kvh½g‡K AšíF9 Kiv n‡"Q| †m‡c†¶‡Z Mům ch#q cŮyjZ weKí we‡iva wb®úúwË Kvh½g Z_v cŮyjZ mwwjk e¨e¯¼K AvBbMZ ˆeaZv cÖv‡bi †¶‡Î erawmgn- D˜NvUb KviB G M‡elYvi D‡Ï¨k¨| miKwwi bwZ cŮq‡bi †¶‡Î wKObv Av‡jvKcvZ Ki‡Z m¶g n‡j I msw¶ß cwim†i cwiPwjZ G M‡elYv Pe¤Ším×všÍMů‡Yi Rb¨ LMB AcŮyÿ| Z¾B Amst‡KwP Z_"/gZwgZ cÖv‡bi Rb¨ Ab¾ina Kiv hw‡"Q| D‡jL" Z_"/gZwgZ cÖv‡bi †¶‡Î bwg/¯¶]i cÖwb m¤úÝ½"BÒqvab Ges Z_"/gZwgZ cÖwbKvixxi cwiPq †Kvbfv‡eB cŘwk Kivn‡ebv| mn‡hwMZvi Rb¨ AwMÿm ab¨ev`|]

BDwbqb ch#qi RbcÖZwbwa‡`i Rb¨ cŘwejx

01| DËi`vZvi m¤úwK½Z mvavi¨ Z_¨vejx

K) bwg: L) eqm: M) ciyñd/gwnjv:

N) wk¶wMZ †hwM¨Zv: 0) †ckv:

P) Mům: 0) Dc‡Rjv: R) †Rjv:

02| ‍ub¤ejuLZ ueI‡q Avcbvi Mĥg/BDubq‡bi/Dc‡Rjvi Ae¯‍vb eY®bv Kiab

	D"Pgv‡bi/D`vi				ub¤gv‡bi
	5	4	3	2	1

MĥgxY AvubĝwdoK msMVb/ msNe×Zv	
AwaKvi (AvBbMZ/gvbewaKvi) ueI‡q gvbĵyi m‡PZbZv	
c‼qvR‡b D"P ch®qi ivR%àwZK ‡bZv (msm` m`m¨) ev miKvwi Kg®KZ®`i (BDGbI/Gmwc/Wŵm) mv‡_ ‡hvMv‡hv‡Mi m‡hvM	
¯‍ibvq Dbtjbgj-K Kv‡R gnr-gvZei/mgvRc¼Z®`i ¯‍ZùZ©AskMhY	
mgv‡R/GjvKvq bZ‡b iuwZ-bwZ Pvj¼y c‖Z gvbĵyi g‡bvfve	

03| b¨vq ueacj ubwõZ Ki‡Z ub¤ejuLZ e¨w³/c‼Zônï‡bi fûgKv m¤ú‡K©Avcbvi aviYv wK?

	L‼B fvj				L‼B ‍bĥZ civqb
	5	4	3	2	1

uePvi K (g¨wR‡÷U/RR)	
c¼ĵ k	
AvBbRxex	
m‍wRb Rb/MY¨gvb¨ e¨w³	
‡eÂ mnKvix	
AvBbRxex mnKvix	
mwĵ k	
Mĥg Av`vjZ	

04| Avcbv‡`i GjvKvq mPivPi Kx Kx ai‡Yi Aciva/we‡iva msNuUZ n‡q _v‡K?

05| Dc‡i euY©Z Aciva/we‡ivamg‡ni (¸i‡Zi Aciva- nZ¨v, al®, WvKwZ BZ¨w` e¨ZxZ) ub®ú‍mĚ‡Z Kv¸hR®wiZv we‡ePbvq ub‡Pi uePvi e¨e¯‍¸‡jvi gj¼yqb Kiab|

	L‼B fvj				L‼B Lviuc
	5	4	3	2	1

Av`vjZ	
Mĥg Av`vjZ	
mwĵ k	

06| Avcbvi mwWj‡k AskMÖn‡Yi KwiY¸‡jv (mwWjkKwiK w›‡m‡te) cQ›`i µgvby‡yv‡ti mvRvb

    K) RbM‡Yi †mevi Rb¨   ☐

    L) GjvKvq kwšÍ k;Ljv eRvq ivLvi ¯‡_©   ☐

    M) Rb ms‡hwM Kivi GKwU Dcvq   ☐

    N) mwWj‡ki gvËv¨tg GjvKvq wb‡Ri cÖfve cÖvi/we¯‡fi Kivi wqq   ☐

    0) †j v‡K WW‡K ZvB hvB   ☐

    P) Ab¨ †Kvb KviY hw` _‡K... ☐

07| MÖg Av`vj‡Z Awffv‡M Ki‡Z bv e‡j Avcwb mwWj‡k hvb †Kb (BDwc RbcÖwZwbwa‡`i Rb¨)?

07| Avcbvi BDwbqb‡bi/Dc‡Rjvi wb¤wjwLZ welq¸‡jvi Z¡jbvgj-K gj-¨qb Kiæb (5 Gi g‡a¨)

µwgK bs	wel#qi welY	Ae¯b	
		1981-1990	2001+
K)	wk¶Öv		
L)	gvbyÿli ivR%bwZK/AwaKvi welqK m‡PZbZv		
M)	GbwRI‡`i KgÖKvÛ/cÖviYv		
N)	MÖg ch¶q miKwi KgÖvÛi gvÎv		
0)	evB‡ii mv‡_ †hvMv‡hvM (moK e¨e¯Í, mseÖv`cÎ/wUwf, PvKwi/e¨emv BZ¨w`i gva¨g)		
P)	mwWj cwiPvjbvKvix‡``i MhY‡hvM¨Zv		
Q)	mvgwMÖKfv‡e mwWj‡ki MhY‡hvM¨Zv		

08| DchÖ¨ mvgwMÖK cwieZ¦bi (K n‡Z P) cÖZ mgvRcwiZ/gnr-gvZei‡`i g‡bvfve gj-¨qb Kiæb?

    LyB mnthwMZvcY©   cÖZnsmvcivqY

        5   4   3   2   1

09| eZ©wb mwWj‡ki MhY‡hvM¨Zv K‡g hvIqvi/ew× cvIqvi KviY Kx Kx e‡j Avcwb g‡b K‡ib?

10| mwWj‡ki `y¨Ô w`K¸‡jv Kx Kx?

11| mwwjk e¨e¯vi c‡jb ivLv c‡qvRb Av‡Q e‡j g‡b K‡ib wK?   nüv   bv

DËi bv n‡j Kwi Y Kx?

12| mwwjk e¨e¯v‡K Kxfv‡e Avil KvḧŔi Kiv hvq e‡j Avcwb g‡b K‡ib?

13| mwwjk‡K Avil KvḧŔi Ki‡Z miKwwi D‡`¨v‡Mi c‡qvRb Av‡Q e‡j g‡b K‡ib wK?   nüv   bv

DËi ̂nüŴn‡j miKvi Kx ai‡Yi D‡`¨M M̂Y Ki‡Z cv‡i?

14| AvBb c‡bq‡Yi gvä‡g mwwjk‡K ̂eaZv †`Iqv n‡j (Av`vj‡Zi AviZvq Avbv n‡j) Gi ̧YMZ gv‡bi Dbqb n‡e e‡j g‡b K‡ib wK?   nüv   bv

DËi nüv/bv n‡j, Kxfv‡e/‡Kb?

15| mwwjk‡K AvBbMZ ̂eaZv c‡b‡bi (Av`vj‡Zi AviZvq Avbvi) †¶‡Î Kx Kx ev †Kvb †Kvb w`K n‡Z e‡ev Avm‡Z cv‡i e‡j Avcwb g‡b K‡ib?

16| G mKj e‡ev DËi‡Yi Dcvq Kx?

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Annexure-4: Questionnaire for Lawyers

Mÿg ch#qi ‡eKî ‡e†iva wb®úˆË K¼hÕÞg‡K A¤BbMZ ˆeaZv cÖvb: GKwU D˜NvUbgj-K mgx¶¸v

[ivôq ‡ePvi e¨e¯vi ‡ewÝbœ†¶‡Î ‡eKî ‡e†iva wb®úˆË K¼hÕÞg‡K Aš‡F§ Kiv n‡î"Q| †m‡c¶‡Z Mÿg ch#q cÖÿjZ ‡eKî ‡e†iva wb®úˆË K¼hÕÞg Z_¨ cÖÿjZ mvuj k e¨e¯‡K AvBbMZ ˆeaZv cÖ‡¢bi †¶‡Î exvmgn- D˜NvUb KivB G M‡teI¼vi D‡Ïk¨| miKwi bvvZ cÖ‡qtbi †¶‡Î vKQbv Av‡jvKvcvZ Ki‡Z m¶g n‡j I msv¶ß cwim‡i cwiPvjZ G M‡teI¼v PÖvšÍm×vvšÍ IMᶢYi Rb¨ L¿B Acᶢƒ| Z¼B AmšÍvˆuP Z_¨/gZvgZ cÖ‡¢bi Rb¨ Ab¶iva Kiv h#t"Q| D‡jL¨ Z_¨/gZvgZ cÖ‡¢bi †¶‡Î bvg/¯¶¶"i cÖ‡¢b m¶úv–Y-B"Quxb Ges Z_¨/gZvgZ cÖ‡¢bKvixi cwiPq †Kwbf¼teB cÖKwk Kiv n‡tebv| mn‡hvwMZvi Rb¨ Aw‡Mÿ ab¨ev`|]

¯Ívbxq AvBbRævext` i Rb¨ cÖkœejx

01| DÉi`vZv m¤úúKÕZ mvvviY Z_¨vejx

K) bvg: *L) eqm:*   *M) cvyÕd /gwnj v:*

N) ‡wk¶vMZ †hvM¨Zv: *0) †ck v:*

P) Mÿg: *0) Dc‡Rj v:*   *R) †Rj v:*

02| Mÿgxb `wi`'mvvviY gvb¶Ii ‡ePvi cÖwßˆZ/‡e†iva wb®úˆ‡Z mvuj ‡ki fwgKv‡K Avcwb Kxfv‡te gj¨vqb K‡ib?

      LyB DcKvix/AcKvix, KviY-

03| Avcbvi GjvKvi wb¤æ¸wj¼LZ ‡eIq¸‡jvi Z¿jbvgj-K gj¨vqb Kiæb (5 Gi g‡a¨)

µwgK bs	‡el‡qi weeiY	Ae¯ív	
		1981-1990	*2001+*
K)	*wk¶v*		
L)	*gvb¶Ii ivR‰bwZK/AvaKvi ‡elqK m‡PZbZv*		
M)	*GbwRI‡`i KgÕKvÛ/c¼viYv*		
N)	*Mÿg ch#q miKwi KgÕk¤Ûi gvÎv*		
0)	*evB‡ii m¤_ ‡hvMv‡hvM (moK e¨e¯í, msev`cÎ/‡Uwmf, PvKwi/e¨emv BZ¨w`i gva¨tg)*		
P)	*mvuj cwiPvj bvKvix‡`i MhY‡hvM¨Zv*		
Q)	*mvguMÕKfv‡te mvuj ‡ki M¼Y‡hvM¨Zv*		

04| Dch𝔂 m𝗏g𝗐RK c𝗐ieZ‡bi (K n‡Z P) c𝗂Z mg𝗏Rc𝗐Z/gnr-g𝗏Zei‡`i g‡b𝗏f𝗏e gj-¨𝗏qb Ki𝗮b?

LഴB mn‡hw𝕄Z𝗏cY©   c𝗂Z𝗐nsm𝗏c i𝗏qY

                    5   4   3   2   1

05| eZ𝗀𝗏‡b m𝗐j‡ki M𝗂Y‡hw𝕄¨Z𝗏 K‡g h𝗏Iq𝗏i/e𝗐× c𝗏Iq𝗏i K𝗏iY K𝗑 K𝗑 e‡j A𝗏c𝗐b g‡b K‡ib?

06| m𝗐j‡ki `𝗀𝑓 𝗐`K¸‡j𝗏 K𝗑 K𝗑?

07| m𝗐jk e¨e¯𝗏i c𝗉j b i𝗏L𝗏 c𝗂q𝗏Rb A𝗏‡Q e‡j g‡b K‡ib 𝗐K?   nü   b𝗏

        DËi b𝗏 n‡j K𝗏iY K𝗑?

08| m𝗐jk e¨e¯𝗏‡K K𝗑f𝗏‡e A𝗏iI K𝗏h𝗋i Ki𝗏 h𝗏q e‡j A𝗏c𝗐b g‡b K‡ib?

09| m𝗐jk‡K A𝗏iI K𝗏h𝗋i Ki‡Z miK𝗐i D‡`¨‡Mi c𝗂q𝗏Rb A𝗏‡Q e‡j g‡b K‡ib 𝗐K?   nü   b𝗏

        DËi 𝗂nü𝗂n‡j miK𝗏i K𝗑 ai‡Yi D‡`¨M M𝗂Y Ki‡Z c𝗏‡i?

10| A𝗏Bb c𝗂q‡Yi g𝗏a¨‡g m𝗐jk‡K ˆeaZ𝗏 †`Iq𝗏 n‡j (A𝗏`𝗏j‡Zi A𝗏IZ𝗏q A𝗏b𝗏 n‡j) Gi¸YMZ g𝗏‡bi Db𝗊b n‡e e‡j g‡b K‡ib 𝗐K?   nü   b𝗏

        DËi nü/b𝗏 n‡j, K𝗑f𝗏‡e/‡Kb?

11| m𝗐jk‡K A𝗏BbMZ ˆeaZ𝗏 c𝗂𝗏‡bi (A𝗏`𝗏j‡Zi A𝗏IZ𝗏q A𝗏b𝗏i) †¶‡Î K𝗑 K𝗑 e𝗏 †K𝗏b †K𝗏b 𝗐`K n‡Z e𝗮a𝗏 A𝗏m‡Z c𝗏‡i e‡j A𝗏c𝗐b g‡b K‡ib?

12| K𝗑f𝗏‡e GB e𝗮a𝗏mgn- (13 bs c𝗂k𝗈e𝗐Yℤ) `i-Ki𝗏 h𝗏q e‡j A𝗏c𝗐b g‡b K‡ib?