

# Framing Local Conflict and Justice in Bangladesh

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## Abstract

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 or village courts. Based on a nationally representative survey, qualitative evidence from focus groups, and a telephone survey

of 40 Union Parishad chairpersons (a little less than 1 percent of the total Union Parishads), it 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 village courts may pose a useful bridge between Bangladesh's informal and formal justice institutions.

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# **Framing Local Conflict and Justice in Bangladesh**

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## Introduction

Local justice lies at the intersection of two of the most forceful currents in Bangladesh. One of these is the rule of law: the government's highest aspiration is to establish law - and not personality or power - as the fundamental structure in which electoral competition will once again take place.

A second force that defines the present social and political moment is decentralization. Bangladesh has deepened its commitment to endow local communities with a greater share of the responsibilities of governing and this is visible most recently in the Sixth Five Year Plan. One premise of this shift in sharing power is that people are more capable of participating in and holding accountable the government that is within reach.

Where these two currents meet is the question of what the rule of law should look like at the local level. How can Bangladesh ensure that principles of justice, and not the forces of personality or power, comprise the frame within which local self-governance takes place? The institutional landscape of Bangladeshi local justice is rich: it includes the traditional process of shalish<sup>2</sup>, longstanding and impressive civil society efforts to improve on shalish, and a somewhat less-explored provision for gram adalat or village courts. How should these institutions evolve, and how can they grow stronger, in light of the broader changes shaping Bangladeshi society?

This paper aims to provide a foundation for dialogue on those questions. The paper has two parts. First, we will map the landscape of local justice institutions, discussing what we know about the functioning of each institution, and about how the various institutions interrelate. We

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<sup>2</sup> Described in greater detail later in the paper, the shalish is the traditional informal dispute resolution system that has historically been in existence. NGOs have worked to "reform" this shalish which has come under criticism for its elitist and unfair character and we refer to this as the "NGO reformed shalish" without taking away from the importance of the traditional mechanism. Finally by an Act of 1976 the government set up village courts or "gram adalats" at the local level. We use the terms "gram adalat" and "village court" interchangeably in this paper.

will draw on existing literature and also present data from our own research. Second, we will discuss the policy choices and possibilities for reform posed by this landscape.

## **Methodology**

This paper has several sources of data. The World Bank Gender Norms Survey<sup>3</sup> (WBGNS) is a nationally representative survey of 3,000 women from two age-groups – 15-25 year olds and 45-60 year olds. In addition, it also surveyed 1,500 male heads of households and 500 community leaders like Union Parishad members, religious leaders, teachers and businessmen. Among other questions, the survey had a few on conflict in the community and many more on spousal and other forms of violence against women. The survey also asked if in the last year the respondent had heard of certain criminal incidents in the community or acts of violence against anyone in their community (village or urban neighborhood). To our knowledge this is the first nationally representative survey on conflict despite the fact that the number of questions is few. It is also the only survey that asks questions about spousal violence of both men and women.

A companion qualitative field study was also conducted in 2006 in tandem with the WBGNS. Thirty-two focus groups of on average 7 participants each were conducted at the ward level in the districts of Dinajpur, Satkhira, Sunamgonj and Mymensingh. The distribution of focus groups was as follows: four each with adolescent boys and girls (separately) in school, four each with adolescent boys and girls (separately) out of school, four each with mothers of adolescent girls from poor backgrounds, four each with mothers of adolescent girls from elite/rich backgrounds, four each with fathers of adolescent girls from poor backgrounds, four each with fathers of adolescent girls from elite/rich backgrounds. The questions were on changes in the community, changes in the lives of girls due to education, marriage practices, access to justice, participation in political processes, aspirations of young men and women and select gender norms. The qualitative field study also asked for shalish “stories” – descriptions of shalish the respondents had attended or knew about and their level of satisfaction with the outcome and process. In all, there are twenty usable “stories” whose content was analyzed for this paper.

Finally, we administered a telephone survey to 40 UP chairpersons (a little less than 1 percent of the total UPs) to inquire about whether and how they operated village courts, their knowledge of the Village Courts Act, their understanding of the difference between village courts and other kinds of dispute resolution and their thoughts about improving local justice.

## **I. NATURE OF CONFLICT AND DISPUTES**

The WBGNS 2006 has questions on level of perceived conflict in the community and knowledge of criminal acts that have occurred in the last year. It has more detailed questions on spousal violence. This section lays out the results from those questions and despite the fact that measuring level of conflict is difficult as we point out later, we do believe that the data give us insight into regional variations and types of conflict that local justice providers have to deal with.

*Overall the WBGNS 2006 finds a very high perception of harmony in the community. Less than 10 percent of any category of respondents believed that people “fight a lot” in their village or*

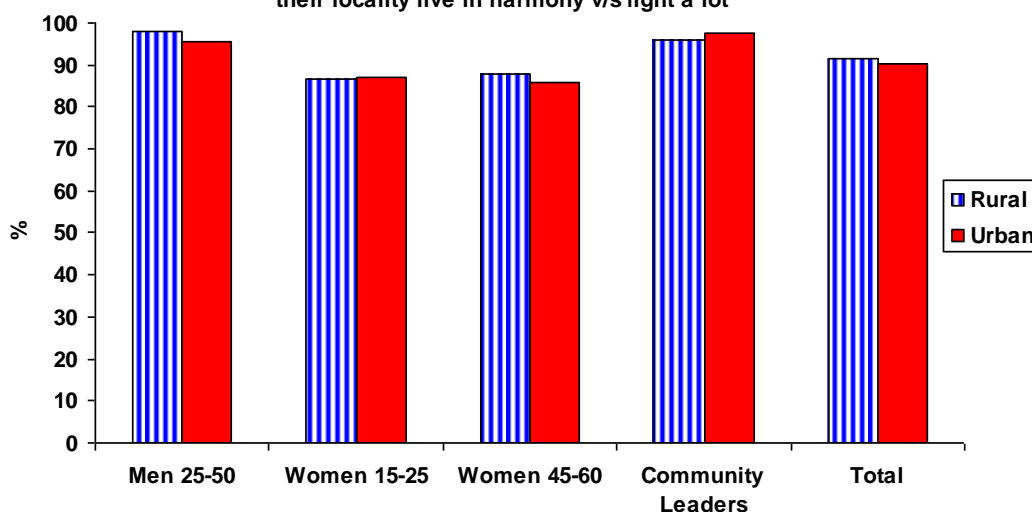
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<sup>3</sup> See annex 1 for details

neighborhood (Figure 1). These results corroborate the idea that not only perceptions of criminal incidents but also actual knowledge of members of the community having been victimized is very low. These results are almost exactly corroborated by all 32 focus groups held in different parts of the country. Interestingly, the incidence of politically motivated violence seems to be higher especially in urban areas.

**Figure 1: Bangladesh: Very high perception of harmony in the community**

Source: World Bank Gender Norms Survey 2006 - respondents saying people in their locality live in harmony v/s fight a lot



Less than 13 percent of the respondents had heard of any violent incident in the community<sup>4</sup> in the last year. At the bivariate level (table 1), residents of Chittagong and Khulna had a much higher probability of reporting such incidents in their community and this was driven to a large extent by politically motivated violence. The multivariate analysis, controlling for a range of individual and household characteristics including wealth quintile, land holding size and geographical area corroborates the bivariate results<sup>5</sup>. Essentially, region of residence and exposure to the media really determines whether you have heard of violent incidents in the last year. This commonsensical conclusion is nonetheless illuminating. What it says to us is that no other characteristic of the household such as poverty level (although individuals in the second quintile are slightly more likely to report knowledge of violence), landownership or religion or characteristics of the individual such as education or age are correlated with heightened knowledge of violence. On the other hand, residence in an urban area or in Khulna or Chittagong increases the probability of reporting knowledge of violence in the community. By contrast, living in Sylhet reduces that probability. Listening to the radio regularly also seems to make people more aware and they tend to report higher levels of knowledge of community violence.

<sup>4</sup> Violent incident implies any one of the following – anyone’s money was taken away or anyone assaulted outside the home or anyone encountered harassment while traveling or people physically hurt for political reasons. The question does not include violence within the family

<sup>5</sup> Annex 2

**Table 1: Bivariate relationship between knowledge of conflict and region in the last year**

	Barisal	Chittagong	Dhaka	Khulna	Rajshahi	Sylhet	Total
Incident of conflict	% reporting yes						
Anyone's money taken away against his/her wish	13.33	20.28	17.55	17.23	10.29	9.06	15.29
Anyone opposed women working outside the home	1.45	13.4	2.43	4.4	5.35	3.17	5.29
Anyone physically assaulted outside the home	8.98	23.94	5.89	13.79	16.37	6.83	12.92
Anyone encountered harassment while traveling	5.78	14.99	4.14	12.18	8.6	2.38	8.14
Anyone physically hurt for political reasons	10.92	23.81	6.71	23.34	9.42	4.61	12.54

Source: Authors' calculations based on World Bank Gender Norms Survey 2006

Note: The relationship between region and gender norms/violence discussed in greater detail in World Bank, 2008

*People seem to “live in harmony” in the community but violence against women is high.* While perception and knowledge of violence in the community are low, levels of violence within the family seem to be high, based on survey data. The WBGNS 2006 asked questions on spousal violence and found that 24 percent of women in the 45-60 age group and 30 percent of women in 15-25 age group reported ever experiencing violence by their husbands. An even higher proportion - over 43 percent of male heads of households reported ever having been violent to their wives. The extent of violence reported by husbands against their wives is much higher than this in the Demographic and Health Survey (DHS) 2004<sup>6</sup>. Women in the WBGNS 2006 were also asked if they had experienced violence at the hands of anyone else and only 2 percent reported that they had.

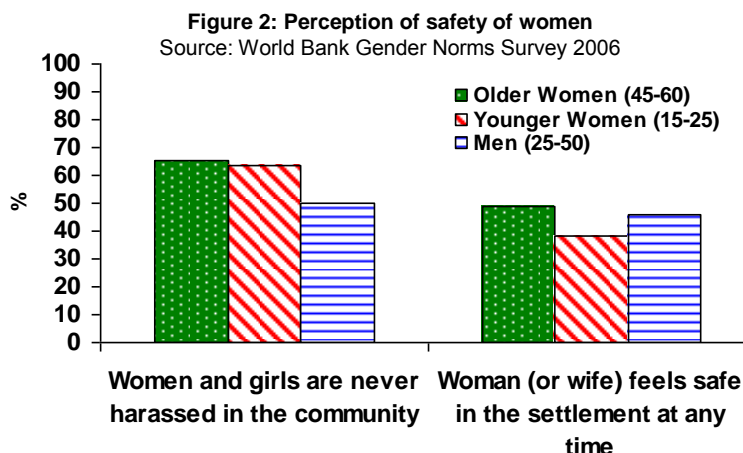
Dowry has been increasing in Bangladesh over time and the social norms moved from a regime of bride price to a regime of dowry in over the last two generations surveyed in the WBGNS 2006. It was practically non-existent in the older cohort of women surveyed— only 7.7 percent of these women compared to over 46 percent of younger women had to pay dowry at their weddings. Its increase over time and the “inflation of dowry rates” has also been associated with harassment of the woman and her family for more dowry (as reported in World Bank, 2008). Concomitantly, government and legal aid activists have realized that local dispute resolution systems are needed mainly to address family related matters (Asia Foundation, 2007; Hassan, 2006).. This picture is also in keeping with the type of cases that the major legal aid organizations receive. Thus, about three-fourths of the cases handled by the Bangladesh Legal Aid and Services Trust (BLAST) and (Bangladesh Rural Advancement Committee (BRAC) are family related (Hassan, 2006). Among these, inheritance (intra-family property related disputes) seems to form a large part. We have no information of the type of conflicts that arise against the state or service providers. The picture we get from our surveys and from the existing literature is that the level of perceived conflict in the community is low and cases that do go to legal aid organizations are mainly family or property related. The extent to which there is provider bias -

<sup>6</sup> A much more detailed analysis of this can be found in World Bank, 2008

determined by the focus of legal aid organizations themselves and the fact that they came into existence mainly to provide women with recourse against family disputes – is also unclear.

*There is a high perception of insecurity in public places:* When women were asked if they had heard of a rape in the last year over 11 percent said yes compared to the fact that only 4 percent of men said yes (WBGNS, 2006). Only 49 percent of older women and 38 percent of younger women feel safe going out at any time within their settlement (village or urban neighborhood). And strangely while a smaller proportion of men report having heard of rape, yet a larger proportion of them compared to women believe the external environment to be more unsafe for women. Men also do not regard actual harassment or spousal violence to be as high as women do. However, we have to address the issue of women’s feelings of insecurity with some caution. It is for instance likely that this sense of insecurity is instilled in them by their families or by the community narrative to ensure that women do not venture outside of acceptable public spaces – a narrative tied up as much by actual happenings in some historical past as well as by a feeling of protection for (or control of) women<sup>7</sup>. As is true of other countries, in Bangladesh too, women living in urban areas report feeling more unsafe, as do women in certain divisions. This result holds even after controlling for other background characteristics (World Bank, 2008).

Anecdotal evidence and evidence from small samples suggests that violence against women outside the home could also be related to inter-family disputes regarding property. The issue of acid attacks against women for instance, has featured prominently in the media. In 2004, 228 cases of acid burns were reported in the media and 88 cases were filed. Of these 88 filed cases, 25 girls and women were burnt because of family disputes, and 36 girls and women were burnt because of land disputes. Twenty one cases were the result of the woman’s refusal to accept a man’s proposal of love/marriage or sexual relationship<sup>8</sup>. Thus, property disputes and violence against women are often related.



*The low level of conflict between households may come as a surprise to many* – including advocates of strengthening the justice system in Bangladesh. However, this is not peculiar to Bangladesh. A recent nationally representative survey in India asked a similar question and also found a very high perception of harmony. The same survey also asked if a theft, break-in a physical attack or threat of attack had occurred in the last year. Less than 3 percent of the households had experienced any of these events in the last year.<sup>9</sup>

<sup>7</sup> On issues of measurement of intra-family violence and perception of security, see World Bank, 2008

<sup>8</sup> D’Costa, 2004

<sup>9</sup> Sonalde Desai (personal communication, 2008) based on NCAER-University of Maryland Human Development Survey 2005. Note that in the India survey the questions were regarding actual experience of respondent while in



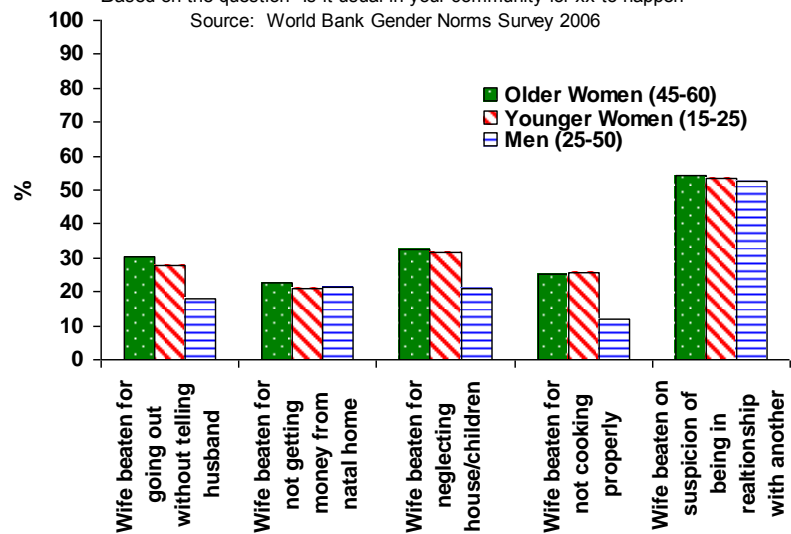
Let us however, not confuse perception of harmony with lack of conflict, or conflict with violence. Here the WBGNS 2006 has limitations. It focuses on *knowledge of incidents of conflict*. It does not capture civil disputes such as those regarding property, about which complainants may seek mediation or other recourse. The disputes that come to the Madaripur Legal Aid Association (MLAA), discussed later, are primarily family related but property related matters and enforcement of contracts also form a large part of the case-load. Our content analysis of shalish “stories” also shows that minor property disputes are common sources of tension between households. Other property related disputes stem from petty thefts. In addition, shalish of all types and our own data from village courts indicate that there are large number of cases of theft, street fights and property disputes.

There could be several reasons why the reported perception of harmony is so high. First, pride in their community may prevent residents from admitting to conflict. Second, petty thefts may not be perceived as conflict. Third, property disputes are often intra-family disputes and as such may not be understood as causes of conflict within the community. Finally, violence may actually be preempted through acceptable dispute resolution mechanisms and the promise of recourse. Of course

each of these explanations is speculative, and there may be in fact be something in the way the question is asked that gets us these responses, underscoring the difficulties in measuring these issues. What is clear is that perception of harassment of women and girls is much higher than perception of general conflict in both India and Bangladesh.

Another limitation of the data at hand is that they do not capture conflicts arising from the demands for accountability by the citizens from the state. Our tabulations from the WBGNS 2006 indicate that access to services such as health and education are important problems listed by respondents. Yet, whether grievance mechanisms to address these issues are working or not is not clear from the extant literature on Bangladesh. The Research and Evaluation Division of BRAC, for example, finds in its 2007 governance report that “insecurities arising from administrative and judicial systems” were reported across three in-depth community case studies.<sup>10</sup>

**Figure 3: Perception of occurrence of spousal violence in the community**  
 Perception of occurrence of spousal violence in the community  
 Based on the question "Is it usual in your community for xx to happen"  
 Source: World Bank Gender Norms Survey 2006



the WBGNS 2006 the questions were based on whether the respondent **had heard of** the occurrence of similar events in the community. Therefore, the Bangladesh numbers look higher.

<sup>10</sup> BRAC Governance Research Group (2007), p. 18.

## II. THE LANDSCAPE OF LOCAL JUSTICE

Bangladesh has a range of local justice mechanisms with varying degrees of formality. The traditional shalish is most informal at one end of the spectrum and the formal courts are at the other. In terms of usage, while no hard empirical evidence is available, it is generally recognized that informal systems are resorted to much more often than are formal systems. Most developing countries have multiple justice systems that co-exist and many have also had robust movements for reform. This co-existence is particularly strong in South Asia and Africa. The discourse around the role and nature of multiple justice systems, the extent to which rule of law and customary law can be applied, the issues around protection of human rights, among others are all common in these countries.

In table 2 we show the various types of local justice mechanisms and their key characteristics. We then proceed to analyze what we know about these institutions, moving from the informal to the formal and focusing on the first three pillars, since our focus in this paper is on “local justice”. We limit our treatment to civil justice, though we include in that category the minor crimes which can be resolved in shalish or in village courts with civil remedies. Later in the paper we discuss implications for reform.

**Table 2: Bangladesh, like most countries, has a spectrum of mechanisms for dispute resolution**

Less formal		More formal	
<b>Traditional shalish.</b>	<b>NGO-reformed shalish</b>	<b>Gram adalat (village courts) and arbitration councils</b>	<b>The formal judiciary</b>
An assisted, participatory mediation process, often led by community elders and elites.	NGOs have endeavored to improve the fairness of traditional shalish by: 1) Including women as shalishkars, 2) Providing shalishkars with training in law and human rights, 3) Connecting shalish to legal aid, so that aggrieved parties have the option to pursue claims in the formal system.	Courts authorized by statute and run by the Union Parishad Chairperson. The VCs have jurisdiction over minor crimes and civil cases valuing 25,000 Taka or less; the ACs have jurisdiction over family law issues like divorce and maintenance. In the VC each party chooses two panelists, one of whom should be a UP member; in the AC each party chooses one panelist. Judgments are determined by a majority of the panel.	A range of civil and criminal courts and tribunals, supervised in turn by the High and Appellate Divisions of the Supreme Court.
<b>Independent Legal Aid</b>			
In addition to facilitating alternative dispute resolution, NGOs assist citizens in seeking remedies to breaches of their rights. This work includes education, advocacy, and, in some instances, litigation in the formal courts. GoB is also committed to promoting legal aid.			

## A. The Shalish

In this section we discuss the traditional dispute resolution forums. These include shalish, various committees at the local level, NGO facilitated shalish and shalish that is run by the UPs.

Shalish may involve voluntary submission to arbitration (which, in this context, involves the parties agreeing to submit to the judgment of the shalish panel), mediation (in which the panel helps the disputants to try to devise a settlement themselves) or a blend of the two. In a harsh, extreme version of its traditional form, however, shalish instead constitutes a de facto criminal court that inflicts trial and punishment on individuals who have not consented to its jurisdiction (Golub, 2003; pages not numbered).

The literature has documented the tension between the shalish as a fast and cheap mechanism for resolution of local and family disputes and its character as the enforcer of often retrogressive norms. This line of documentation of traditional dispute resolution systems is not peculiar to Bangladesh and there is a strong body of international literature that addresses the issue of informal justice systems, their uses and abuses.

*From our qualitative data, it appears that the shalish is well-accepted in rural areas as a final dispute resolution forum. Although many participants of focus groups pointed out that the decisions of shalish are often flawed, there is both recognition of the flaws and an acceptance of the institution. This could be partly due to the fact that alternatives are limited and citizens seem to want to avoid courts and police. The acceptance contains elements of both fatalism and the confidence that a shalish will look out for the best interests of both parties within the constraints. There is also the appreciation that in any system of mediation no party will be completely happy.*

The importance of apology comes up repeatedly in the analysis of shalish “stories” from our data. For instance, a young woman whose mobile phone was stolen by her neighbor received compensation from the latter in keeping with the decision of the shalish. However, he did not apologize to her or admit his guilt, which was why she was not satisfied with the decision. Apology is a typical remedy in non-formal, community dispute resolution institutions, and fits with those institutions’ emphasis on restoration and reconciliation (Penal Reform International, 2001).

**Box 1: Is the Shalish fair?  
Between individualism, fatalism and  
communitarianism**

*“When a verdict is pronounced, it must be accepted by us. There is nothing to be satisfied or dissatisfied, because it is done for the peoples’ benefit.” (Elite man in Dinajpur)*

*“Nobody can be hundred percent happy with verdicts of shalish.” (UP Member in Mymensingh)*

*“To make a shalish (successful) somebody has to (make a) sacrifice.” (UP Chairman in Mymensingh)*

*“If accused and accuser are equally powerful (then the) verdict would be neutral.” (Adolescent boy in Mymensingh)*

*“Shalish are not always fair. The job of (the) jamat is to make compromise between parties.” (Poor man in Dinajpur)*

*“No shalish can ever please all or can ever be neutral” (Poor man in Sunamgonj)*

*“To keep their votes secure, UP chairman and members give a verdict to please both parties.” (Young women in Mymensingh)*

*“We are poor people – we are working all day -we have no time to attend shalish”. (Poor man in Dinajpur)*

Despite its general accessibility, low cost and quick disposal, the literature on shalish has underscored its elitist character and the hazard that it perpetuates existing power structures. That traditional dispute resolution systems are often undemocratic and exclusionary and access by women and the most marginalized such as landless people is poor have been well-documented. Few women are invited to sit on shalish as mediators or “shalishkars”, making other women less likely to approach the shalish. This is important because the large majority of the cases that women would like to see resolved are family based - particularly related to domestic and spousal violence. A key aspect of exclusion is that shalish decisions tend to enforce established social norms and in that sense may also deter women from participating.

Young (unmarried) women especially face the greatest exclusion (box 4). In a sense this exclusion is also related to the need to uphold norms of chastity and “proper” behavior. Since the shalish decide on cases of extra and pre marital relationships between men and women they are seen as corrupting influences on unmarried girls. Even without the discussion of these issues, younger women would likely have lower access to these as they do to other entitlements due to the intersection of age and gender (see Das Gupta, 1995).

*A related criticism of the shalish is that it has little appreciation of rule of law and serves as an enforcer of often retrogressive norms (Golub, 2003). Such norms perpetuate the lower status of especially women and the poorest in relation to the richer and more powerful (Bode and Howes, 2002; Golub, 2003; Guirguis, 2004; Jahan, 2007; World Bank, 2008). In our content analysis of shalish we found that indeed shalish tended to enforce traditional, extra-legal norms, though it is debatable whether the norms in the cases we encountered were retrogressive. For instance, relations between men and women outside marriage (whether premarital or extramarital) are frowned upon so strongly that the shalish seems to enforce the accepted norm that such relations should either be legalized through marriage or be punished and marital “harmony” restored. Other norms relate to the enforcement of age hierarchy which may in fact be a cementing factor in social relations. In a dispute concerning two sisters-in-law, the younger woman had been violent to her older relative. Her punishment was that she would apologize and touch the feet of the older woman.*

***Box 2 : Shalish: More inclusive now than in their mothers’ generation but there’s still a long way to go***

*“Ten years back it was impossible for women to attend a shalish. Now women UP members and a few women are attending the shalish.... Women are also attending school governing bodies meetings. Men also **allow** them to speak, before men did not **allow** them to shalish and meetings.” (emphasis added) Elite woman in Sunamgonj during FGD*

*“Nowadays women are going to shalish and meetings, but they are still observers.” Elite woman in Satkhira during FGD*

*“I attend all shalish in the community. As a UP member, I should not say women are not in leadership. But we are still fighting with men in this area”. Female UP member in Satkhira during FGD*

*“Women are not invited to the UP shalish – only the women UP members are invited. But sometimes we women are called in as witnesses. And elderly women sometimes attend the shalish as complainants or accused. We resolve our disputes with our neighbors or families within ourselves.” Mothers of adolescent girls in Dinaipur during FGD*

While our qualitative data did not show evidence of the infusion of religious law in the decisions of the shalish, other studies have pointed out that in fact this could well occur especially if *imams* and *moulvis* were invited to sit on the shalish as mediators (Bode, 2002). The small body of literature that has documented illegal *fatwas* in Bangladesh also points out that these extra-judicial pronouncements have the backing of elite religious groups (Pereira and Nargis, 2000) and that religious law can sometimes infuse collective decision-making.

**Box 3: Marital Dispute and the Shalish: Case from Dinajpur District**

There was a couple in Kamalpur village. The husband used to take drugs, leading to daily quarrels after which he would regularly beat his wife. The wife retaliated one day by hitting him. When the matter escalated and the husband threatened to stab the wife, she wanted a separation. A shalish took place in the village. Fathers of both husband and wife, UP Members and elite - as many as 60 people were present. The shalish recorded their argument.

**Verdict:** Both were pronounced guilty. The father of the husband beat him with shoes and the father of the wife beat her as well, in the presence of the entire shalish. The couple committed in the shalish not to indulge in such behavior in future.

Source: As told by out of school adolescent girls in Dinajpur during focus group discussions. When asked, the group expressed its satisfaction with the decision of the shalish.

*Often shalish have been criticized for their harsh and publicly humiliating punishments which violate human rights norms (BRAC, 2006).* We found some evidence of this in our analysis of shalish “stories”. For instance, punishments to thieves were in the form of caning, sometimes in addition to the compensation they had to pay. In another instance, a boy charged with harassing a girl had to have his face blackened (usually with soot) and wear a garland of shoes around his neck. These humiliating practices traditionally serve as public punishments in South Asia. In yet another instance reported later in this paper, a couple who had been violent to each other was punished by each being beaten with shoes by their respective fathers in front of the shalish. While public shaming has a value in restoring social cohesion, when such punishments become extreme, they can have negative consequences.

*However, the character of the shalish is probably quite dynamic and is evolving.* This is noted by recent studies as well (Lewis and Hossain, 2004; Islam, 2002). Focus group discussions we conducted also underscored the growing participation of women in shalish as compared to several years ago (Box 2).

**Box 4: Young women face particular exclusion from dispute resolution mechanisms**

*“We have just observed shalish through the windows or from behind the wall. The UP member and UP female member played the main roles. We have never participated in any sort of NGO shalish.” Adolescent out-of-school girls in Dinajpur during FGD*

*“Our guardians prohibit us from going to the shalish....youngsters should not go to shalish.” School going adolescent girls in Mymensingh during FGD*

*“We are not allowed to participate in any shalish (since it decides on) love affairs between boys and girls and divorce matters.” School going adolescent girls in Mymensingh during FGD*

*“I have attended a shalish meeting as an observer. I did not say anything. The shalish was on a goat theft case in Taranipur village. The village elders and the women UP members were the shalish leaders”. Young woman in Satkhira during FGD*

The *shalish* system, while retaining a patriarchal character, has shown itself capable of a measure of flexibility and increased inclusiveness. NGO credit programmes, and efforts to organise women for social action - such as within reforming versions of the *shalish* - have created both limited progress and some local resistance, which perhaps indicates potentially positive change (Lewis and Hossain, 2004: 20).

Although it had a reputation for unjust treatment of the poor and for closing its door to women, the *shalish* has potential as a powerful instrument for local justice (Islam, 2002: 99)

*This evolution of the shalish could well be related to multiple dispute resolution systems that can often co-exist at the village level.* Essentially a forum for mediation, a shalish it appears can be called by a range of actors and institutions in the village. Any powerful institution like a mosque committee or a school management committee can call a shalish. In that sense there could be a multiplicity of shalish “providers”. In Dinajpur, poor men during focus groups described dispute resolution through a mosque committee in each jamat/samaj (para). The jamat is composed of about 80/90 households. The mosque dispute resolution committee consists of 11 members. The chairman of the mosque is also the chairman of this committee. A complainant has to file a case (verbally) with the chairman of this dispute resolution committee. Justice seekers from among this focus group referred to the decision of the mosque (dispute resolution) committee as “bichar” (literally “contemplation” or “views/decision”). In yet another case, school boys described a shalish called by the School Management Committee in a complaint that involved harassment of a female student by a male student.

Anecdotal evidence suggests that when they have the choice, villagers can “shop” for the best shalish and this perhaps enhances its role as an honest adjudicator. Conversely, it is likely that in those areas where only a single type of (traditional) shalish operates and there is no competition among informal dispute resolution systems, there is also greater likelihood of elite capture. In our own focus groups we found a plethora of examples of shalish from groups in Dinajpur and Mymensingh, relatively fewer from Satkhira and very few examples from Sunamgonj. Focus groups of women too were much more vocal on shalish in the former two sites than they were in the latter two. While it is difficult to judge adequacy of services without an indication of demand, our data on conflict seem to indicate that there is roughly similar level of demand for mediation across regions.

*NGO facilitated shalish:* Longstanding efforts spearheaded by NGOs and supported by multiple international donors focus on strengthening and reforming these systems to make them more equitable for women and the poorest. Bangladesh civil society’s innovation in community-level ADR is held up as an international example. The reformed ADR forums include an equal number of women as shalishkars, and often address violations of women’s rights such as violence, dowry demands, abandonment and maintenance. The NGOs also assist parties in accessing the formal system when shalish is either not appropriate or not satisfactory. The Bangladesh Rural Advancement Centre (BRAC) probably runs one of the largest ADR systems in the world. The activities of BRAC and legal aid organizations (Bangladesh Legal Aid and Services Trust, Ain-o-Shalish Kendro and Nagorik Uddyong) which also run the “reformed shalish” are laid out in a table in Annex 3. The example in box 5 shows the evolution of the shalish facilitated by an NGO in Satkhira district. The reach of the reformed ADR is speculative

although a recent estimate puts its coverage to 30 percent of the country (Asia Foundation, 2007).

**Box 5: Ramzan Nagar Union, Satkhira: Evolution of an NGO facilitated ADR forum**

Ward committees called Shou-Shamaj (well society) have been formed under the auspices of an NGO called Shushilon and have begun to play a role in local justice. The Shou Samaj is a 15 member committee that has the blessing of the UP Chairman and includes a UP member and the female UP member who are appointed by the Chairman. Four of the 15 members in addition to the female UP member are women. Others are village elites and forum facilitators are appointed by the NGO. Complaints come to the committee which charges a fee of Tk 5. Complaints are recorded in writing and after ascertaining their validity, the committee issues a notice to both sides to come to the shalish. Attendance of the 15 members seems to be patchy but in the year predating the research residents claimed that 60 percent disputes had been settled by this committee. Another 30 percent were settled by local elite outside the Shou-Shamaj Committee, and 10 percent went to the UP Chairman. Focus group participants expressed a high level of satisfaction with the work of the committee, although attendance of all 15 members at every shalish has been a challenge.

*Union Parishad Facilitated Shalish:* NGO supported shalish have until now been the most written about, but the role of the UP seems to have increased dramatically in the conduct of the shalish. This enhanced role of the UP as mediator comes through most clearly in our focus group discussions across the country.

About 15-20 years ago almost 80 percent village disputes were resolved through village shalish. (The) Mahat (leader in the Hindu community) and Sarder (leader in the Muslim community) led the Shalish. UP chairmen and members were not very involved in Shalish, but now about 80 per cent disputes are going to the UP chairman and members. (Elite women in Dinajpur during focus group discussions)

UP officials also say that conducting shalish is a key priority for them. Some of this could be related to the growing political importance of the UP and the lack of commensurate discretionary power and resources available to them. It is likely therefore, that UPs use their role as new elites in mediation – something that gives them added political power. It is also likely that with the increasing push towards decentralization, the contact of UPs with higher levels of administration has increased. Several small donor and NGO supported projects also focus on training of UPs. Associations of UPs have similarly become stronger. Each of these related developments means that UPs now have better access to training and information on how to strengthen themselves and to acts and rules more generally, of which dispute resolution is an important part. This growing role of UPs is interestingly absent from the discourse on local justice systems that is led by “legal empowerment” organizations.

But even shalish that are conducted by UPs can have different forms. The variants were brought out by a UP Chairman in Mymensingh during focus group discussions. He distinguished between a village shalish, a Shalishi Adalot<sup>11</sup> or Aposh Shalish. It appears that when the UP Chairman is present at a Shalish it can be called Shalishi Adalot or Aposh Shalish. A written complaint is given to the Chairman who then mediates in consultation with shalishkars. When

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<sup>11</sup> The usage “shlashi adalot” may appear to be an oxymoron. Yet it seems to describe a forum that is more formal than a shalish and not quite an “adalot” (court). In some areas the arbitration councils are referred to as “shalishi adalot” (Hassan, 2008, personal communication)

such a shalish sits in the UP office it is called a Shalishi Adalot and the Chairman is the main arbitrator. The secretary writes the decisions of the shalish. Few cases come to the village court (as told in a focus group discussion comprising elite men in Mymensingh). Another Chairman said “We prefer *Shalishi Adalot* to a village court. (The) Village court is not functioning well....(it has) a comparatively long procedure” (UP Chairman in Sunamgonj).

**Table 3: Dispute resolution is seen as a priority of the Union Parishad**

Priority 1		Priority 2	
Road repair and maintenance	100%	Canal/pond re-excavation	31%
Water and sanitation program	92%	Tax assessment and collection	31%
Culvert/pipe culvert repair & maintenance	90%	Sinking/installation of tubewell	21%
Education awareness program	83%	Agricultural development	21%
Early marriage discouragement	73%	Law and order	21%
Dowry discouragement	73%	Religious festivals	17%
Plantation	69%	Repair of mosque and temple	10%
Birth registration	63%	Irrigation maintenance	6%
Celebrations of national days	52%	Fish culture	4%
Village court (salish)	42%	Dam construction	4%
Women and children welfare	42%	Disaster management	4%

Source: SDC, 2006 based on responses of chairpersons and members from 48 UPs

The institution of *salish* constitutes a means through which the Chairman establishes and /or reinforces his network of potential electoral supporters among (secondary or tertiary) local leaders. Generally, the (perceived) aggrieved party files a case with the Union Parishad to request a *salish*. Initially, these cases are referred to local influential people who reside in or near the location of the crime or incident. Often the Chairman sends a UP member to oversee the ruling. In the context of Chairman’s overall stature in the union, his acceptance and approval of a local leader’s role and ruling in *salish*, affirms that individuals leadership position within the *para* / village. (Bode, 2002)

**Multiple mediators - competition and assertion:** A number of processes, particularly the rising importance of elected representatives of the Union Parishad, the increasing penetration of NGO sponsored dispute resolution, combined with the movement towards legal empowerment of the poor has thrown up new social and political dynamics. Elites and institutions are competing for spaces and spheres of influence. Traditional elites are re-imagining themselves and new elites are carving out their roles. Mediation of local disputes provides each set of elites with a powerful arena within which to exercise influence. Thus, from an institutional perspective, the entire spectrum of local justice – a spectrum with the traditional shalish at one end and the village courts at the other, and the NGO-sponsored shalish in between – also signifies a social and political churning in Bangladesh.



Concomitantly, there appears to be some degree of competition between the NGO shalish and the UP shalish (and village courts). This may be more in the nature of different institutions and elites trying to expand their spheres of influence. Sometimes there is open tension between established legal aid organizations that conduct their own shalish and the UP, as evidenced by Banu's (2003) review of the Bangladesh Rural Advancement Committee (BRAC)-Ain o Salish Kendro (ASK) legal aid program. At times there are allegations of bribery and "miscarriage of justice" by the UP and conversely, the UP has on occasion accused the NGO-sponsored shalish to be unfair. At one level the competition between different providers of justice is probably positive as we have argued earlier in this paper, and in a hierarchical society where women and the landless are particularly excluded, the competition provides justice-seekers with alternatives. At another level, the importance of non-state justice systems could potentially undermine the role of state sponsored justice systems.

This competition also perhaps co-exists with the fact that in many areas NGOs have trained UPs in the functioning of village courts and in the conduct of a fair shalish. Democracy Watch, ASK and the Hunger Project are illustrative but there are many others as well who conduct training of UPs in dispute resolution. Other models like Sushilon described in this paper have established dispute resolution committees that include the UP member and elites who would have run the traditional shalish. While residents express a high level of satisfaction with these committees it is speculative as whether the committees create fragmentation (or multiplicity) of elites and whether this creates the conditions for more or less inclusive justice systems. Still others like MLAA are committed to activating village courts and work with state systems while using their own resources.

**Box 6: Change in justice-seeking behavior: Shrimp cultivation and increasing use of formal systems**

Twenty-twenty five years back in Ramzan Nagar Union (Satkhira), most disputes were settled within the village. According to focus group participants, 80 percent of disputes used to be settled by local Matobbar (elite), 20 percent by the UP chairman and the remaining 10 percent went to the thana (police station/formal courts). By 2005, 20 percent of disputes were settled by village Matobbar, 60 percent by the UP Chairman and 20 percent of cases went to the thana (Upazila).

The Satkhira area developed into a center for shrimp cultivation in the 1990s and conflicts are said to have increased due to illegal occupation of shrimp "ghers" and forcible sale of lands of poor cultivators. Residents indicate that the majority of shrimp "gher" related disputes go to the police. Here the Upazilla Nirbhahi Officer (administrator), police department and Thana Fishery Officer play a vital role.

## **B. The Village Courts**

The Village Courts Act of 2006, which replaced and updates the Village Courts Act of 1976, provides for the establishment of a village court in every Union Parishad. The village court is comprised of a panel of five: the UP chairperson; two other UP council members, one of whom is chosen by each party in the dispute; and then two additional citizens, who are also chosen by the parties respectively. The courts have jurisdiction over civil disputes valuing up to 25,000 Taka. They also have jurisdiction over some crimes, including assault and theft, though they do not have the power to fine or imprison; rather they can grant simple injunctions and award compensation up to 25,000 Taka (Village Courts Act 2006).

The Muslim Family Ordinance of 1961 provides for arbitration councils to deal with family matters, including divorce, dowry, and maintenance. Arbitration council panels are comprised of three members: the UP chairperson and two others, one of whom is chosen by each party. Like the village courts, arbitration councils also have the power to issue binding decisions, though the Muslim Family Ordinance does not set a limit on the size of judgments (Muslim Family Law Ordinance 1961).

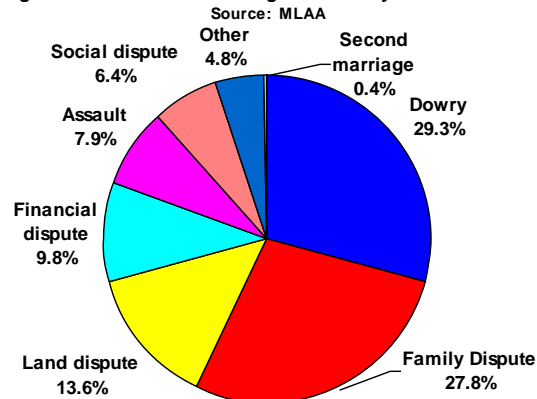
Administratively, the nodal department in charge of UPs is the Local Government Division (LGD) within the Ministry of Rural Development and Local Government. Village courts and arbitration councils are also under the supervision of LGD, rather than of the Ministry of Law, Justice, and Parliamentary Affairs. This placement reflects the distinctiveness of the village courts and arbitration councils from the rest of the judicial system: Village courts and arbitration councils are more local and less legal.

The Madaripur Legal Aid Association (MLAA), founded in 1978, has long engaged in facilitating shalish and in providing legal assistance. In recent years, the MLAA has worked in 100 Unions in Madaripur, Shariatpur, and Gopalganj Districts to activate and strengthen village courts and arbitration councils. MLAA trains UP chairpersons and council members in dispute resolution, monitors the functioning of village courts and arbitration councils, and popularizes the institutions through drama and awareness campaigns.

MLAA also provides each village court with a full-time “court clerk” – a functionary who accepts case applications, conducts outreach, and keeps court records. The village courts have a very high disposal rate.

Between July 2006 and June 2007, for example, the 100 Unions in which MLAA works carried over 347 cases from prior months and received 5,133 applications for new cases. Out of those 5,480 cases, 4,670 were decided, 343 were dropped, one was referred for certificate, and 489 remained pending. MLAA’s work was the inspiration for a recently established EU-LGD partnership to activate village courts at a larger scale.

Figure 4: Cases in MLAA village courts July 2006-June 2007



It is widely held that, outside of MLAA’s coverage area, village courts are largely defunct and UP members have little knowledge of the Village Courts Act (Bode, 2002; Lewis and Hossain, 2005; Hassan, 2006; Hossain, Moran, and Stapleton, 2007).

“A system of formal village courts located at the union *parishad*, which has rarely been effective, has now in most cases disappeared. This leaves the traditional informal *shalish* as the dominant means of adjudication for small-scale civil and criminal disputes.”  
(Lewis and Hossain, 2005: 19-20).

However, no study has a large enough sample to assert this with representative empirical validity.

We conducted phone interviews with 40 UP chairpersons from all six divisions and thirty different districts.<sup>12</sup> Our research did not confirm the view that village courts are defunct. Every chairperson interviewed reported conducting village courts; 30 out of the 40 chairpersons reported holding court one time per week or more. Common case types included family disputes, land disputes, physical conflict, minor theft, forgery, and loan recovery. All chairpersons reported deploying the UP secretary to maintain a registry of cases. Also, all chairpersons explained, when asked “who makes the decisions,” that the UP Chairperson sits on a panel with other panelists chosen in equal number by either party. Most of these chairpersons specified, as the Village Courts Act specifies, that their courts included four additional panelists, two of whom should be UP members. Seven out of 40 chairpersons reported different sizes of panels, such as three per side, five per side, or a flexible panel size.

**Table 4: Some Results from Interviews with Chairpersons**

Question	Responses of 40 UP Chairpersons Interviewed
Do you run a village court?	100% said yes; 75% said either once, twice, or three times a week.
Are you aware of the Village Courts Act?	85% said yes.
Who makes the decisions in village court?	100% explained a panel that includes chairperson plus panelists chosen by either side; most explained the exact structure specified in the Act.
Do other dispute resolution mechanisms operate in your UP?	100% said that shalish also takes place in their UP.
Do NGOs facilitate/ operate shalish in your UP?	37.5% gave a clear yes; 45% gave a clear no; answers of 17.5% were unclear.
If a party is dissatisfied with the judgment of a village court, what recourse does he/she have if any?	92.5% said that if a party was dissatisfied, he or she could appeal in civil court. (Many of these respondents pointed out that parties are seldom dissatisfied).

We should not exaggerate the significance of these figures, as this is a small sample and it reflects only the subjective views of UP chairpersons. It is possible, for example, that a chairperson would exaggerate the extent to which he runs a village court, or that NGOs facilitate shalish in a UP without the chairperson’s knowledge. But this modest data suggests that the village courts are more alive than they have been made out to be.

When asked about the difference between village courts and shalish, over 25 percent of chairpersons pointed out that the village court process was relatively long and formal. Some noted that while shalish can be conducted in or near the homes of the parties, village courts require parties and witnesses to travel to the UP headquarter. It is not surprising that a state-authorized process would entail more complexity and more cost than an informal community process. But the chairpersons did not articulate what one might consider to be the key distinguishing feature between the two institutions. When asked about the difference between

<sup>12</sup> Twenty-nine of these UPs were chosen from the list of UPs involved in the first year of the Local Government Support Program. UPs on that list were chosen for being well-performing, and so this shouldn’t be considered a random sample.

village courts and shalish, not one chairperson mentioned that the village courts allow panels to issue binding decisions whereas shalish depends on voluntary settlement. Moreover, when asked to describe “what sorts of judgments are delivered,” many chairpersons described the village courts as striving for “mutual agreement.”

Perhaps the distinction between mediation and adjudication is lost on these chairpersons because their authority is in fact relatively weak. When asked for suggestions on how to improve the system, over half the chairpersons complained that the village courts lack the power to enforce their decisions. But if chairpersons have little enforcement power, and if village courts cost more in time and money than shalish, then why is the caseload so high that 75 percent of our respondents report operating village court once or more per week? One hypothesis is that there is indeed strong demand for state-authorized adjudication, and that aggrieved parties consider even the weak authority which chairpersons reportedly wield to be worth the additional cost of bringing a case in the village court. The question of the level of demand for village courts, and the motivations of those who approach village courts as opposed to other mechanisms, merits further research.

About a third of the chairpersons explained that cases involving damages greater than the statutory limit for the village court were being resolved by shalish. An equal proportion of chairpersons (significant overlap but not all the same ones) argued in response to the request for comments and/or suggestions that the statutory limit should be raised to broaden the village courts’ jurisdiction. These responses reflect, first, awareness of the Village Courts Act and at least expressed compliance with the Act’s jurisdictional boundary. Fourteen out of 40 chairpersons mentioned that the limit was 25,000 Taka, demonstrating that they were familiar with the 2006 Act; four chairpersons mentioned that the limit was 5,000 Taka, demonstrating that they were familiar with the 1976 Ordinance but not the 2006 version; others did not specify an amount.

Second, the responses reveal what is probably an unintended consequence. The Village Courts Act’s upper limit on the value of judgments is likely meant to direct cases involving larger sums to the formal courts where, presumably, judicial competence is greater and where the nuance of formal law will be applied. At least some parties, it seems, are either unable or unwilling to invest the additional time and expense required to avail of the formal courts’ greater judicial sophistication. The village courts, though reportedly more difficult to access than shalish, are still far more accessible than the formal courts. Three quarters of the chairpersons reported charging 10 Taka or less to file a case (eight of these said they charged no fees at all). The other chairpersons all charged 60 Taka or less, except one chairperson in Chittagong District who reported charging 125 Taka.<sup>13</sup> Unwilling or unable to file formal court action, and faced with a jurisdictional limit in the village courts, parties apparently move in the opposite direction on the formality spectrum, towards the voluntary and informal shalish.

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<sup>13</sup> The Village Courts Act (2006) refers to a “prescribed fee” (§ 4.1) but does not specify an amount. A grain of salt: we imagine that the question “how much do you charge” is one of those most likely to induce a duplicitous response.

We emphasize, again, that these are preliminary inferences from a small sample and from only one kind of actor, namely the UP chair. But they do raise questions worthy of further, systematic study.

### **III. POLICY CHOICES AND POSSIBILITIES FOR REFORM**

Every band on the spectrum of dispute resolution, from the traditional shalish to the Supreme Court, is arguably in need of further investment and reform. Because our focus here is on local, civil justice, we address in particular the reform possibilities in the village courts, in ADR, and in legal aid. We cannot ignore the formal judiciary by any means, for one of the crucial sets of questions is how best to integrate these local institutions into the larger system of justice. But we will leave aside for now those challenges which can be characterized as exclusively the domain of the formal courts.

#### **Strengthening Village Courts**

The experience of MLAA suggests that the village court system may be a useful bridge between Bangladesh's informal and formal institutions. On the one hand, village courts are far more affordable, speedy, and geographically accessible than formal courts. On the other hand, unlike mediation, the village courts have, at least in principle, the authority to issue binding decisions. Though the point was not made explicit in our phone interviews with UP chairpersons, our observation of MLAA village courts did suggest that village courts can provide useful recourse to one of the classic problems of voluntary dispute resolution: that intransigent and powerful parties can refuse to reach fair settlements (e.g. Hensler, 2003).<sup>14</sup>

Village courts are also attractive from a cost and sustainability perspective: they are run by the Union Parishads, an already-existing institution with nation-wide scope. To recognize such potential in the village courts is not to diminish the crucial functions filled by both shalish and by the formal courts. Though the shalish risks reproducing inequities of gender and power, it is valued as a process for participatory community reconciliation (Lewis and Hossain, 2005). And although the formal courts are costly, slow, and sometimes corrupt, they play a unique role in the setting of precedent and the public articulation of rights (e.g. Fiss, 1984). To take a present-day example: no shalish could substitute for the law courts as the locus for the momentous corruption prosecutions that took place in 2008 in Bangladesh.

But the village courts may play a useful intermediate role between these two sets of institutions. The state has expressed its commitment to this idea in the Village Courts Acts of 1976 and 2006, and in the government's recently initiated partnership with the EU to strengthen village courts.

It is worth considering, as the government develops its approach, the experience of analogous interventions in other countries. The nyaya panchayat in India was envisioned as a judicial counterpart to the Indian gram panchayat; the two together are parallel to gram adalat and Union Parishad in Bangladesh. Nyaya panchayats were developed out of an attempt "Following independence . . . to establish village-level courts as a means of increasing access to formal

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<sup>14</sup> Hensler argues that ADR, when pushed on litigants, can disadvantage less powerful parties because of their weaker negotiating position.

justice in rural areas in India” (Penal Reform International, 2001: 86). The nyaya panchayats blended characteristics of formal and traditional justice. Like the Bangladeshi village courts, nyaya panchayats were not bound by the formal legal rules of evidence and procedure; their members were not legally trained; they had jurisdiction over civil disputes and minor crimes, but lacked the power to fine or imprison; and their decisions were subject to appeal into the formal courts.

The nyaya panchayat is judged to have been a failed experiment. Citizens considered the nyaya panchayats foreign and inaccessible in relation to their own traditional justice institutions, but not legitimate or powerful enough for their most serious claims. So “the vast majority of disputes . . . were resolved under traditional mechanisms” while “those willing and able to take their dispute further afield tended to bypass the nyaya panchayats and utilize the more formal state courts” (Penal Reform International, 2001: 88). Several states formally banned the nyaya panchayats; by the late 1970s they were considered moribund (Penal Reform International, 2001; Galanter and Krishnan, 2004).<sup>15</sup>

One key difference between nyaya panchayats and gram adalats is in panel composition. Nyaya panchayat members had permanent seats, and were elected by gram panchayat members. Fazlul Huq, founder of MLAA, considers the structure of Bangladesh village court panels to be the institution’s defining feature. Each party is guaranteed to have two panelists whom he or she respects, and the fifth is someone who is accountable, via elections, imperfect though they are, to the community at large (Huq, February, 2008).

Other countries have also experimented with hybrid justice institutions, though perhaps none bears as close a historical and institutional resemblance to the Bangladeshi village court as the nyaya panchayat. In Peru, some 4,600 unpaid, lay justices of the peace have limited jurisdiction over small civil cases and minor crimes. They adjudicate by a simple, oral process in which the emphasis is on conciliation and the parties represent themselves. NGOs have provided basic training in law, but the justices of the peace generally combine law with local custom. Until 1999 the justices of the peace were selected by the superior courts of each district, often on the recommendation of local notables. In 1999 they were elected for the first time, which added younger people and some women to their ranks. These justices of the peace have a relatively long history, dating to at least the 1970s, and have widely been considered to be popular and successful in providing affordable, accessible justice (Hammergren 2007).

The Philippines established a Barangay Justice System in 1978. Like the Union Parishad in Bangladesh, the Barangay is the most local political unit in the Philippines. And like Bangladeshi village courts, the Barangay justice system lies between customary legal systems - especially diverse in the Philippines, in part because the country is an archipelago—and the formal court system.

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<sup>15</sup> The Ministry of Panchayati Raj drafted the Nyaya Panchayat Bill, 2006, proposing to revive nyaya panchayats at a national level, but the bill has not been passed. It is opposed by the Law Ministry on several grounds, including: 1) choosing nyaya panchayat members by elections would weaken judicial independence and 2) granting legal jurisdiction to laypeople without legal training would be dangerous and would violate requirements set out by the judiciary. The Law Ministry has drafted competing legislation to extend the formal judiciary to a more local level, the Grama Nyayalayas Bill, 2007. The Gram Nyayalayas Bill has been introduced in parliament but not passed. (Upadhyay 2008).

The Barangay justice system has jurisdiction over civil cases between private persons (cases involving firms or public officials are excluded); it can also address, through civil remedies, crimes punishable by less than a year. When a complaint is filed the Barangay chief—an elected official equivalent to the UP chairperson—first attempts mediation or arbitration depending on the preference of the parties. If these initial efforts do not succeed, the chief constitutes a “conciliation panel” of three persons from the Barangay Justice Committee; the committee is made of up 10 to 20 persons selected every three years by the village chief. The conciliation panel also attempts mediation; if this too fails the village chief provides a “certificate to file action” which allows parties to lodge a case in formal court.

Surveys suggest that the Barangay system is highly regarded by past users and by the general population. Between 1999 and 2005, the Barangay system successfully mediated 75 to 85 percent of the cases it received. Problems identified with the system include the politicization of decisions, which is thought to stem in part from the concentration of power in the hands of the village chief; unfairness in relation to gender issues, which may be due in part to the fact that very few women are chosen as justice committee members; and a lack of training and standardization in arbitration and mediation technique (Mercado 2008).

The post-independence government in Tanzania sought to develop a consistent national system to unify and render more uniform the local, tribal legal institutions that had been recognized under the British colonial strategy of indirect rule. In 1969 the government established arbitration tribunals, later renamed ward tribunals, which are panels of up to five lay mediators who seek voluntary resolution of local disputes. Like the Bangladesh village courts, these tribunals are not supervised by the judiciary but are linked to it by a right to appeal from the tribunals into the formal courts. The tribunals are managed by district-level government administrators. A 2003 study of ward tribunals in the Babati District in North-central Tanzania found that, though they are considered to have some bias towards wealthier parties, and though the arbitrators are primarily male elders, community members ranked the tribunals as more “just and fair” than any other dispute resolution mechanism, including the formal courts, village and religious elders, and party organs (Lawi 2003). A study of the Kilimanarjo region of Tanzania, however, found that many communities favored unrecognized community-based dispute resolution to the state-administered ward tribunals (Moore 1992).

What leads some versions of such intermediate structures, like the lay justices of the peace in Peru and the ward tribunals in Babati District, to earn the trust of the people they serve while other versions, like the *nyaya* panchayats and perhaps the ward tribunals in Kilimanjaro fail to do so? We will explore the implications of international experience further as we address specific possibilities and challenges posed by the Bangladesh village courts. We divide the discussion into the broad categories of fairness and effectiveness.

### *Fairness*

- **What substantive law should the village courts apply?** The Village Courts Act exempts village courts from the Evidence Act, the Criminal Procedure Code, and the Civil Procedure Code, but is silent on the question of what substantive law the village

courts should apply. Given that these institutions, at least in theory, wield the power of the state, there might be an interest in ensuring that they apply consistent, valid laws. One might also hope that statutory and constitutional law would guard against discriminatory practices and local bias. On the other hand, it may be unrealistic to train UP members in formal law. According to the present structure, two of the five panelists may not be UP council members at all, and discrepancies in levels of training among panelists might work to disempower the non-council members on the panel. The nyaya panchayats in India were “required to conform to and to apply statutory law,” yet they were not trained to do so. According to Galanter and Baxi (1979), the gap between mandate and actual capacity contributed to public distrust. On the other hand the success of the Peru justices of the peace is attributed in part to the justices’ ability to draw on local customary law. It may be that the silence of the Village Courts Act is wise, that the village courts should only abide by the laws of common sense, and that the objectives of consistency and fairness should be sought by other means than the imposition of substantive statutory law.

- **Protecting Fundamental Rights.** Even if it is impractical to require village courts to apply the general body of Bangladeshi law, government may wish to require village court decisions to comply with a narrower set of fundamental substantive rights, to be conveyed in trainings and in written materials. Civil society could assist in identifying rights that are most endangered by community dispute resolution, and in developing methods and materials for conveying a core body of rights to UP members.<sup>16</sup>
- **How to mitigate the risk of a chairperson abusing his or her authority?** Unlike the national government, which has moved towards greater separation of the judiciary from the executive, the current structure concentrates both executive and judicial authority in the UP chairperson. UP chairpersons are generally powerful individuals to begin with, and the power of the position is growing with decentralization. Who checks the chairperson? What holds him or her accountable besides elections? The arbitration-style structure of the panel, with two panelists of each party’s choosing sitting alongside the chairperson, should provide some protection against abuse of authority by the chair. Below are a few other structural provisions that might be worth considering. Too much complexity can itself be a source of abuse, however; the challenge will be to incorporate basic checks without undoing the institution’s simplicity.
  - Requiring that village court be held in public.
  - Elaborating rules for recusal when a chairperson has family or business relations with a party in a dispute.
  - Allowing parties a ‘peremptory strike’—a chance to reject the chairperson or a panelist without showing cause—as is often provided for in formal arbitration.
  - Rotating chairmanship of the village court among council members.

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<sup>16</sup> Raja Devashish Roy makes a similar suggestion in relation to indigenous legal systems. He argues for greater recognition of such systems, but advocates revising customary law when it violates, for example, the basic rights of women under international law (Roy, 2005).



## *Effectiveness*

- **What sort of training is necessary and appropriate?** The contents of the Village Courts Act—including subject matter and territorial jurisdiction, contempt of court provisions, appeals procedure, power to summons—seem necessary at a minimum. Bode (2002) notes confusion, for example, among UP members about the relationship between village courts and shalish. Substantive legal training may be limited to a core set of fundamental rights, as indicated above. It may also be valuable to train UP council members in techniques of arbitration. The EU project document proposes that the Judicial Administration Training Institute serve as the primary provider of training for UP members. It seems it would also make sense to engage MLAA and others who have extensive experience in making village courts work.
- **Raise the jurisdictional limit on the value of cases?** As we indicated above, our preliminary research suggests that there may be substantial demand for the village courts to resolve cases of greater value than Tk. 25,000. The present limit seems to have the effect of steering higher-value cases towards shalish, which is perhaps the mechanism least equipped to deal with such cases, as it lacks state authority and its decisions are subject to no oversight.
- **How to strengthen the enforcement powers of the village courts?** Our interviews with chairpersons suggest that village court rulings are often unenforceable. One shouldn't take the chairpersons' pleas for more power as the only word, of course; it would be useful to find out from claimants their experience in recovering on village court judgments. Without genuine enforcement power, the village court is not an intermediate institution but a stylized shalish. The present Act instructs the UP to recover under the Public Demands Recovery Act of 1913, which involves presenting a certificate of the judgment to a collector, an upazila magistrate, or an upazila nirbahi officer. Training UP members in this procedure may help. Involving the upazila in enforcement of judgments may be positive from an accountability perspective, in that it provides an opportunity for a kind of monitoring and oversight from outside the UP itself. But further research into the effectiveness of this procedure may be warranted.
- **Strengthen integration with the formal judiciary.** MLAA's experience is that appeals to civil court are quite rare, because of the same barriers of cost and time that prevent ordinary citizens from bringing actions to the formal courts in the first instance. It may be useful to consider some more proactive form of judicial supervision. Judges might periodically review the records and practices of village courts. This would be one way of improving consistency and of placing a check on the chairperson's authority. The judges could be asked to monitor compliance with the Village Courts Act and with core fundamental rights rather than compliance with Bangladesh law in general. Introducing a supervisory responsibility means additional work for already-pressed judges, though in principle stronger village courts should lighten case loads in the entry-level law courts.
- **Administrative assistance for village courts?** MLAA posits that the provision of a secretary is crucial for the effective functioning of a village court, given the other

demands on a UP chairperson's time and the importance of transparent, well-kept records. The chairpersons interviewed all reported that they deployed the existing UP secretary to fulfill this function, though we have had no look, of course, at the quality of their records. A few chairpersons did contend, when asked for suggestions, that additional administrative assistance was necessary for the court to function properly. The EU project document proposes adding an additional staff member at the UP level for this purpose. Is that something to which LGD can commit nation-wide? Is there room for further state-NGO partnership, along the lines of the MLAA? Could the decision and responsibility be left to the discretion of individual UPs, based on the availability of local revenue and the needs of the Union?

### **Strengthening ADR and Legal Aid**

As mentioned above, a strengthening of village courts can be conceived of as a complement to, not a substitute for, civil society efforts to improve non-state dispute resolution and to provide independent assistance in seeking redress for injustice.

- **Expanding the scope of NGO-reformed shalish.** NGO-reformed shalish improves on the fairness and gender inclusivity of traditional shalish, and provides parties with a link to the formal legal system when necessary. The Asia Foundation estimates that legal aid NGOs provide ADR services to some 30% of the country, and that formal court services are provided to some 35% (Asia Foundation, 2007: 11). DFID has committed to expanding that coverage significantly, though it is in the process of reformulating the design of its project.
- **Ensuring independence.** One critical function of legal aid is to hold the state accountable for abuses against, and neglect of, its citizens. To do this work effectively, legal aid needs a measure of autonomy from the state.<sup>17</sup> Some countries, like South Africa, have sought a middle ground between integration and independence. The South African legal aid board is funded by the government but structurally autonomous from it. Organizations receiving funding from the legal aid board are not hampered from efforts that would challenge the government; indeed, some of South Africa's most famous impact litigation cases originated with the help of government legal aid funds. The same might be said of the United Kingdom, where the legal services commission gives £24 million annually to citizens' advice bureaus. As with South Africa, citizens' advice bureaus which receive monies from the U.K. legal services commission are not seen to suffer any loss in independence. If DFID decides to implement its legal aid project through UNDP, does UNDP's close

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<sup>17</sup> The history of civil legal aid in the United States is a troubling case in point. Civil legal services received strong support under Lyndon Johnson's War on Poverty and grew steadily through the 1970s. These legal services programs succeeded in achieving myriad significant reforms of state policy. Legal aid lawyers translated the experiences of their clients into reform efforts by bringing impact cases, including class actions, and by lobbying legislatures. Ronald Reagan first attacked legal services as governor of California and continued to do so as president. Republicans were aghast that federal money was going toward changing government policies according to the interests of poor people. Legislation passed in 1996, during Newt Gingrich's "Republican Revolution," gutted what was left of legal services funding and placed crippling restrictions on legal aid lawyers: no class actions, no lobbying legislatures, no representing prisoners or illegal aliens, etc. (See Quigley, 1998: 260-261).

relationship with government pose any risk to the independence of legal aid? Would Bangladesh consider the formation of an autonomous but federally funded legal aid board?

- **Supporting village courts and holding them accountable.** Legal aid organizations may play an important role in the training and monitoring of village courts. A continuous interaction with civil society may foster incremental changes in norms and decisions, as it has been found to do in some efforts at NGO-reformed shalish (E.g. Siddiqi, undated). When a vulnerable party receives an unjust decision, legal aid organizations may assist in bringing an appeal, thereby supporting citizens to hold the village courts accountable.
- **Avoiding breaches of judicial process.** Civil society representatives in Bangladesh report instances of parties dissatisfied with a village court decision raising the same case fresh in an NGO-facilitated shalish. Such breaches of legal process can undermine the village courts and place NGOs at odds with government. It is important that legal aid workers understand the Village Courts Act. If a legal aid NGO comes across an unjust decision by a village court, that NGO could assist the aggrieved party in bringing an appeal into formal court.
- **Extending accountability efforts to local government.** As the UPs take on greater governance responsibilities, there will be a corresponding need for civil society to play a greater role in monitoring local government and holding it accountable. Legal aid NGOs can assist citizens to take action in response to corruption, abuse of authority, and failures in service delivery. This work will involve advocacy with UPs and with administrative agencies as well as, in some cases, formal court action.

### **Research, Evaluation and Evidence-Based Policy**

A truly informed strategy for strengthening local justice—and justice as a whole—requires richer and more rigorous information about the functioning and impact of various institutions than is now available. Linn Hamnergren notes that evaluations of access to justice interventions usually amount to “headcounts” of how many clients, how many cases resolved. Those numbers are important but different from the more complicated question of what impact the intervention has on the lives of the people it served, and on the rule of law in the community where it took place. Also usually missing is a consideration of opportunity cost: how does the impact of this investment compare with other uses of the same resources (Hamnergren, 2007).

Hamnergren and others encourage policy makers to consider the justice system as a whole, and to make investments in a coordinated and balanced way, based on evidence of the impact of any given investment on the overall goal of providing the “best, and most equitably delivered justice service [society] can render” (Hamnergren, 2007; see also Jensen, 2003).

In Bangladesh this would require sophisticated quantitative and qualitative research into the demand for justice and the impact of the various justice institutions on the lives of Bangladeshis. Government would need to coordinate across branches given that the village courts, the frontline

of state justice provision, are under the responsibility of the local government ministry rather than the judiciary. Civil society, which tends naturally towards a diversity of approaches, may also benefit from objective analysis of the impact of interventions, greater coordination of investments, and more practical division of labor.

## **POLICY MATRIX FOR STRENGTHENING LOCAL JUSTICE IN BANGLADESH**

<b>Policy Goal</b>	<b>Possible Reform Measures</b>
Strengthening <i>fairness</i> of village courts.	<ul style="list-style-type: none"> <li>• Do not require village courts to apply general Bangladeshi formal law, but identify a core set of fundamental rights which the courts should respect.</li> <li>• Mitigate the risk of a chairperson abusing his or her authority, through: <ul style="list-style-type: none"> <li>○ Requiring that village court be held in public.</li> <li>○ Elaborating rules for recusal when a chairperson has family or business relations with a party in the dispute.</li> <li>○ Allowing parties a ‘peremptory strike’—a chance to reject the chairperson or a panelist without showing cause—as is often provided for in formal arbitration.</li> <li>○ Rotating chairmanship of the village court among council members.</li> </ul> </li> </ul>
Strengthening <i>effectiveness</i> of village courts.	<ul style="list-style-type: none"> <li>• Provide training to UP members in: <ul style="list-style-type: none"> <li>○ Contents of Village Courts Act, including jurisdiction, contempt of court provisions, appeals procedure, power to summons.</li> <li>○ Substantive legal training regarding a core set of fundamental rights which village courts would be required to respect.</li> <li>○ Arbitration technique.</li> </ul> </li> <li>• Raise the jurisdictional limit on the value of village court cases, so as to avoid the present trend of higher-value cases landing in the less formal shalish.</li> <li>• Review the effectiveness of enforcement procedure. At a minimum, train UP members in the use of this procedure.</li> <li>• Establish proactive judicial supervision of village courts, for compliance with fundamental rights and with procedural requirements.</li> <li>• Either commit additional civil servant hours to provide administrative assistance to village courts, or allow UPs to arrange for such assistance according to their priorities and resources.</li> </ul>
Strengthening ADR and legal aid.	<ul style="list-style-type: none"> <li>• Expand the scope of NGO-reformed shalish.</li> <li>• Ensure the independence of legal aid efforts which aim to hold the state accountable.</li> <li>• Legal aid organizations should support village courts and monitor them for compliance with fundamental rights and with procedural fairness. In the event of an unjust or illegal decision, a legal aid organization could assist a party to lodge an appeal.</li> <li>• Legal aid organizations should avoid breaches of judicial process, e.g. accepting as a fresh complaint an appeal from a village court decision.</li> <li>• Legal aid organizations should extend their accountability efforts to local government, assisting citizens to take action in response to corruption, abuse of authority, and failures in service delivery at the UP level.</li> </ul>
Evidence-based policy making.	<ul style="list-style-type: none"> <li>• Engage in more sophisticated quantitative and qualitative research into the demand for justice and the impact of the various justice institutions on the lives of Bangladeshis, and employ this information in the design of policy.</li> </ul>

## Conclusion

This paper has documented the nature of disputes as they emerge through survey data and the case files of NGO reformed shalish. It has also analyzed based on qualitative data, the ways in which the shalish helps and hinders local justice. Further, it has documented the evolution of local justice systems as a dynamic force, changing to keep pace with new socio-political realities. It has gone on to aid the understanding of more formal institutional mechanisms of local dispute resolution, particularly the village courts.

In Bangladesh as in many other societies, dispute resolution is one of the core needs of especially the poor, who cannot access formal courts. Old elites in the country are transforming themselves and new elites are gaining ground. This is tied up to new structures and processes of decision-making at the local level, of which local justice is a part. Therefore, reform of the local justice system is intrinsic to the enhancement of equity and inclusion, within the context of broader local governance reform.

Turning from empirical description to normative policy reflection, we suggest a number of opportunities for strengthening local justice. The village courts may pose a useful bridge between Bangladesh's informal and formal justice institutions. International experience on such intermediate institutions is mixed: they have succeeded in some cases, as with lay justices of the peace in Peru, and failed in others, as with nyaya panchayats in India.

To improve the *fairness* of village courts, reformers could consider provisions to check the authority of the UP chairperson, like recusal rules, publicity requirements, and the right of parties to strike a panelist. Asking the village courts to apply the general body of substantive formal law may be unrealistic and unwise. But fairness may be served by specifying a core set of fundamental rights to which village court decisions would be required to comply.

To improve the *effectiveness* of village courts, reformers could consider greater training for UP members, an increase in the jurisdictional limit on village court cases, a streamlining of the process for enforcing decisions, a system for proactive judicial supervision of the courts' compliance with fundamental rights and with village court procedure, and the provision of administrative assistance for the running of the courts.

Civil society efforts in legal aid and alternative dispute resolution will remain crucial. Civil society may consider expanding, and better coordinating, the provision of NGO-facilitated shalish as well as support for and monitoring of village courts. Legal aid NGOs may also consider increasing their efforts to ensure state accountability at the local level. NGOs can employ legal action as well as broader advocacy to respond to corruption, abuse of authority, or failures in service delivery by the Union Parishads.

A truly informed strategy for strengthening local justice will require sophisticated quantitative and qualitative research into the demand for justice and the impact of the various justice institutions on the lives of Bangladeshis. And translating such information into action would depend on greater strategic coordination among branches of government and among civil society organizations.

We argue that movements for rule of law and for decentralization offer an opportunity to focus new energy and resources on improving justice at a local level. With open dialogue, careful analysis, and common will, government and civil society may be able to improve the fundamental fairness of Bangladeshi society.

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# **ANNEXES**

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## Annex 1

**The World Bank Gender Norms Survey (WBGNS) 2006** is the first comprehensive nationally representative survey of gender norms and practices in Bangladesh that has both men and women in its sample. It asks the respondents questions on marriage, norms and attitudes. It is based on a sample of 5,000 adults that include 1,500 married women each in the 15-25 and 45-59 year age range, 1,500 married male heads of households men in the 25-50 year age range, and 500 community leaders (such as Union Parishad (UP) members, Imams/Moulvis (religious leaders), primary school teachers and Madrasah teachers). The samples were drawn in two stages. 91 clusters<sup>18</sup> were selected at the first stage as a subsample of the 361 clusters included in the Bangladesh Demographic and Health Survey (BDHS) of 2004. The second sampling stage selected one adult from each household. Opinion leaders were selected from among those who were resident in and around the cluster, having knowledge of and influences on the people of the cluster. On average 49 adults and 5-6 opinion leaders were interviewed in each cluster. Out of the 49 adults interviewed in a cluster, roughly 16 were married women age 15-25, 16 married women age 45-59 and 17 married men age 25-50. Interviews were conducted in April-May 2006.

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<sup>18</sup> A cluster is a census defined village that corresponds roughly to a mouza village in rural areas and a census block (part of a mohollah) in an urban area

## Annex 2

### Who is more likely to have heard of conflict and violence in the community?

	Men & women	
	coef	sd
Urban area (dummy)	0.425***	0.074
Completed primary (dummy)	0.068	0.091
Completed secondary/tertiary (dummy)	0.181*	0.099
Watch TV everyday/almost everyday (dummy)	0.117	0.084
Listen to radio everyday/almost everyday (dummy)	0.372***	0.090
Household owns agricultural land (dummy)	0.052	0.076
Assets: 2-nd quintile (dummy: poorest as ref)	0.268**	0.117
Assets: 3-rd quintile (dummy: poorest as ref)	0.205*	0.120
Assets: 4-th quintile (dummy: poorest as ref)	0.100	0.127
Assets: 5-th quintile (dummy: poorest as ref)	0.104	0.141
Muslim (dummy)	0.027	0.124
Division: Barisal (dummy: Dhaka as ref)	-0.233	0.158
Division: Chittagong (dummy: Dhaka as ref)	0.561***	0.100
Division: Khulna (dummy: Dhaka as ref)	0.592***	0.109
Division: Rajshahi (dummy: Dhaka as ref)	-0.017	0.095
Division: Sylhet (dummy: Dhaka as ref)	-0.462***	0.172
Younger Women (15-25) (dummy)	0.114	0.083
Older Women (45-59) (dummy)	0.052	0.092
_cons	-1.811***	0.167
note: .01 - ***; .05 - **; .1 - *;		

Logistic regression modeling the probability of having heard of conflict and violence in the community in the last year  
 Dependent Variable: 1 if anyone's money was taken away or if anyone was assaulted outside the home or women encountered harassment while traveling or people were physically hurt for political reasons

### Annex 3

#### Illustrative Non-Government Initiatives Providing Legal Aid And Better Access To Justice

	<b>Bangladesh Legal Aid and Services Trust (BLAST)</b>	<b>Bangladesh Rural Advancement Committee (BRAC)</b>	<b>Nagorik Uddayong (NU)</b>	<b>Madaripur Legal Aid Association (MLAA)</b>
Legal Services Provided	Litigation (legal aid) and alternative mediation, training to women mediators or Shalishkars and training also to several levels of decision-makers and citizens	Alternative mediation and legal aid through partner agencies – Ain-O-Shalish Kendro and BNWLA – legal aid cells and training to several levels	Alternative <i>Shalish</i> and legal aid. Comprised of a cross-section of society with one third of the <i>Shalish</i> members being women, especially poor women.	Legal Aid and Alternative <i>Shalish</i>
Volume of Legal Service Provision	8,867 complaints received from April 2003 to March 2004	30,125 complaints received in 34 districts across Bangladesh by December 2004	896 Applications received from July 2002 to June 2003.	579 legal aid cases filed in the fiscal year 2004-2005. Combined with the pending cases of the last fiscal year, the total number of cases is 1,442. A total of 10,138 alternative <i>Shalish</i> cases received in 2004-2005 fiscal year
Types of Cases Received	74% of the 2,364 mediation cases involved family matters 77% of complaints filed by women 79% of the 4,042 cases filed in court represented female clients.	79% of the cases received up to February 2005 concerned marital conflicts. Primarily dealing with dowry, dower and maintenance, polygamy, divorce, <i>hila</i> marriage, physical torture, land related matters, money related matters, rape, acid throwing, kidnapping, trafficking, and fraud.	Family violence, family matters, maintenance, polygamy, dowry, land related, loan repayment, minor issues and arguments that turn violence, and breaking informal contracts.	Family related, divorce, maintenance, dowry, land ownership disputes.
How the NGOs deal with complaints	Processed either through mediation or as a second choice through the filing of a court case.	If arbitration fails or if the matter is too serious a violation of human rights for arbitration, such as rape or acid attacks, ASK selects panel lawyers to take the case to formal court and oversee the work of BRAC staff members on the cases. BRAC group members can seek free advice from the panel lawyers, the lawyer's fees are covered by BRAC.	Where dispute resolution through the <i>Shalish</i> is not possible NU provides legal aid to those in need and cases proceed to formal court.	Out of the total of 275 cases that have been resolved, 163 were resolved by the Court, and 111 were resolved locally. 68 cases have been registered/documented. 936 cases were pending in the 2004-2005 fiscal year.
Follow-up Work	BLAST keeps records of its cases and follows up on cases after a settlement has been reached.	BRAC staff required to follow-up on every case six months after the settlement or mediation agreement was reached.	NU keeps records of all <i>Shalish</i> complaints. → A Legal Aid Committee monitors all <i>Shalish</i> decisions in the locality every three months to assess the successes and areas for improvement for NU programs.	The project has followed up on all resolved and pending cases to check if the verdicts are implemented in the grassroots and how the plaintiff's social, family and economic life is affected afterwards.

Source: Hassan 2006 (some figures from MLAA have been updated in the main body of the paper)