

# *Salish* – Conflict Resolution at the Grass Root Level in Bangladesh: A Challenging Issue for Justice

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**ABSTRACT:** *Salish* is a traditional method and technique for conflict resolution widely practiced at the grass root level in Bangladesh. This paper is an attempt to discuss the mechanism of *salish* used for conflict resolution and its justification for the disadvantage people who are out reach from the formal court. The main focus of this paper is to examine to what extent *salish* is able to provide justice in conflict resolution at the grass root level where there is no formal court in Bangladesh.

## INTRODUCTION

Many countries have long history of using non-judicial and indigenous methods to resolve dispute. Alternative Dispute Resolution (ADR) was started in 1800 B. C. when mediation and arbitration were used to settle disputes between kingdoms in the ancient Middle East. The practice of ADR is found among the Bushmen of the Kalahari Desert for conflict resolution. It was also practiced among the people of Hawaii L and Nigeria in 960 B. C. but the practice was based on religious faith (Lederach and Thapa, 2012). *Manusmriti* (The code as given by Manu as the basis of Hindu law) also practiced in Indian sub-continent as states mediation for conflict resolution (ibid). The dispute resolution is practiced in China based on Confucian ideology (Folberg and Taylor, 1990). Confucius believed that harmonious relationship in human society should not be disrupted by conflict rather it should be solved with mutual understanding between the parties. In Japan, the community leaders play vital role to settle the disputes at the community level as their moral responsibility (Folberg and Taylor, 1990). It is found in the US-

AID survey (2009) that in Nepal majority of the disputes are resolved not by formal institutions, but by informal community actors or village chiefs through community participation for dispute resolution (Islam, 2012 and Khan, 2010). In India, *Lok Adalat* was formed to resolve the conflict at the community level and it is free from official formalities. *Lok Adalat* is designed in such way that it is not absolutely free from official formalities rather it is connected by legally literate personnel to ensure access to justice for the disadvantaged people.

In Bangladesh, dispute resolution outside of courts is not new. In the traditional system, disputes are resolved at the grass root level using the mechanism of *shalish*. During the British period, in 1870, the *Panchayat* system was introduced to resolve minor disputes at the grass root level within their own initiative involving the local avoid leaders. The major disputes were forwarded for legal procedures. In 1919, the Bengal Village Self Government Act was introduced and Union Court was set up to resolve disputes locally. The Government of Bangladesh established the *Rin Shalishi* Board keeping in view to bring the peasants free from the *Mahazons* (money lenders) and also to avoid clashes. The Family Court

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Ordinance of 1961 and the Village Court Act of 1976 were introduced and authority was vested upon the Chairman of Union Parishad to try petty local cases and small crimes committed in their area and take consensual decisions. These were later strengthened in 1985 with additional power to cover women and children's rights. The village court consists of Union Parishad chairman, members and representatives from concerned parties. Under the Village Court Act of 1976, the village court can try disputes over property. The village court provides easy access to the local people without any obstacle and allows them to defend their position without any outside assistance or lawyer. Union Parishad is the first tier in the hierarchy of local bodies in Bangladesh and has a mandate to settle disputes of the local people through *Shalish*. The main focus of this paper is to examine to what extent the *shalish* can be able to contribute in dispute resolution maintaining the justice at the grass root level where there is no formal court in Bangladesh.

#### THEORETICAL FRAMEWORK

The term '*shalish*' refers to a community-based, informal process through which small panels of influential local figures help to resolve community members' disputes. On the other hand, Alternative Dispute Resolution (ADR) is often used to describe a wide variety of dispute resolutions to full-scale process (ADR Practitioner Guide, 1998). It is facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to legal process, to arbitration systems. Alternative Dispute Resolution (ADR) is a citizens' platform for removal of disagreements other than litigation or formal court. Agarwal (2005) stated that it enables to bring the change in the mind set of the parties. Sternlight (2007) mentioned that ADR contributes to bring the community members together and they work to establish community stability to protect the human rights.

Conflict is a dynamic process. It has a beginning and has to pass through several stages before it ends. At the beginning some conditions appear that can be said, as sources of conflict, and a situation of environment of conflict is created. Then people start to perceive the conflicting situation and they become

aware of it. Next, the feeling of tension emerges, distrust arises and fear develops. In this stage, conflict becomes overt and parties start indulging in aggressively defensive behavior. Dispute resolution is a process that implies the causes of conflict as well as the resolution of such conflicts. Conflict is a regular and continuous process of life and society. Conflict can be resolved or settled, but once resolved, new conflicts may arise. It is also a continuous process - one is resolved and another one emerges. Conflict cannot be eliminated forever from our life and society, but it can be minimized and *salish* is one of the mechanisms to resolve conflicts at the grass root level in Bangladesh. The academic difference between dispute and conflict is that conflict includes coercion and aggressive behavior whereas dispute implies disagreement on minor issues, which may or may not have elements of destructive or extreme action.

On the other hand, *court is a place where persons appointed as magistrates or judges officiate in administration of justice*. More specifically, a court is a governmental body that adjudicates legal disputes by interpreting and applying the law to specific cases. To form a court, there will be building or locale where the judge or judges sit on for regular session and adjudicate legal disputes.

Many intractable conflicts are fought over the concept of "justice," but defining exactly what that concept means is very difficult. Sometimes "justice" is defined in terms of equality—everyone should get or have the same amount, regardless of how hard they work, or "what they put in." Other people define "justice" in terms of equity—people should get benefits in proportion to what they contributed to producing those benefits. Each culture has its own justice system these sometimes clash with internationally accepted standards of human rights and other international laws. The specific definition of justice is fairness, moral rightness, and a system of law in which every person receives his or her due from the system, including all rights, both natural and legal. Justice is conformity to truth and reality in expressing opinions and in conduct; fair representation of facts respecting merit or demerit; honesty; fidelity; impartiality; as, the justice of a description or of a judgment.

## METHODOLOGY

This paper is based on secondary information through literature review. The reviewed literatures are very much related to the subject of the study. The published books, journals, reports and documents along with unpublished dissertations, reports, papers or any document relevant to *salish* are considered as sources of literature. The theoretical, empirical and policy research data on *salish* included in this study directly or explicitly. The author also took help from the key informants such as local leaders, members of the particular *salish* committee, disputants, lawyer and so on to supplement the secondary data collected from the different sources. In addition, the author has already reviewed some of the case studies relevant to this study and cited a few cases to strengthen the analysis which is very important to get in-depth information (Yin, 2009).

## CONFLICT RESOLUTION AT THE GRASS ROOT LEVEL

The community sometimes takes a leading role in resolving local disputes. In Bangladesh, these are popularly known as *shalish* and *minangsha* (compromise). These are usually undertaken through mediation, negotiation, and reconciliation. In the *Shalish* the community leaders go deep into the root cause or causes in the presence of both parties, hear viewpoints of disputants, and try to find out a solution agreeable to the parties concerned. Resolving disputes through community initiatives with the above tools are commonly known as Alternative Dispute Resolution (ADR). The village arbitration council or *salish* is an institution which goes back to traditional forms of conflict resolution through mediation; it is not part of the judicial system which was given its present form during the colonial period. It has no legal standing but persists as a body that passes informal judgment like a council of elders seeking compromise solutions in local disputes, for instance over property, family, women related problems, inheritance matters or any other issues. There is no uniform term of reference for the *salish*, and there is no legislation governing it. A village *salish* is apparently established as and when the need for arbitration arises. It usually consists of local elders, including the village clergy, and its verdict is reportedly accepted by all the

disputants. The institution of the *salish* has been controversial in Bangladesh. Many observers in Bangladesh consider it an effective indigenous non-formal body using methods and techniques for conflict resolution which permits the rural population to seek justice outside an expensive, slow and sometimes corrupt lower judiciary.

### *Mechanisms of ADR*

Combination of negotiation and mediation process provides a traditional alternative to dispute resolution at the grass root level and covers both civil and criminal cases of varying intensity and degree. This system at the grass root level has been in place for centuries. Local leaders provide an opportunity for resolving local disputes. Women and the poor particularly, favor this option of conciliation through *salish*. They feel comfortable about easy access to the resolution process and are not required to pay money for it. Since the local *salish* is in a relatively better position to know the real nature of the conflict, the chances of exaggeration of issues are significantly less. Negotiation, mediation and arbitration are the most common features of ADR techniques in Bangladesh. Let us discuss the three important ways of dispute resolution which are applied at the grass root level in Bangladesh.

### *Negotiation*

Negotiation is the process whereby the parties within the dispute seek to settle or resolve the dispute. The negotiation process provides the parties or disputants as an opportunity to exchange ideas, identify the important points of differences, find a solution, and get commitment from each other to reach an agreement. Bargaining is a common feature of the negotiation process. This feature makes it different from mediation and arbitration. In negotiation, a third party may or may not be involved. When a third party is not involved in the negotiation process, someone usually breaks the ice and brings the parties to the negotiation table and then withdraws from the negotiation process.

### *Mediation*

Mediation is simply an extension of the negotiation process. Mediators are individuals

experienced in the negotiation processes to bring disputing parties together and make attempts to work out a settlement or agreement that both parties can accept or reject. Mediation is used for a wide gamut of case types, including interpersonal, local business and national issues. Mediation is generally understood as a third party intervention between conflicting parties to promote reconciliation, settlement or compromise. It has been found in many research works that negotiation plays a vital role in conflict resolution at the grass root level in Bangladesh.

#### *Arbitration*

Next to mediation and negotiation, arbitration is another dispute resolution tool. In arbitration systems, the court authorizes a neutral person or a third party to resolve the dispute at the place of occurrence. The Arbitration Act of 1940 was introduced to settle disputes through this process. But the practice of arbitration by the court is not popular. It has been reported that in arbitration, the authorized persons by the court wanted to play dominant role in conflict resolution and as result it creates problem for justice.

#### RATIONALE OF SALISH FOR DISPUTE RESOLUTION

The most important aspect of *salish* is that the both the parties can solve their problems locally involving the local leaders in harmonious manner. *Salish* is an institution to solve the problems of disadvantaged people who are deprived from justice. It is an innovative problems solving institution involving the local leaders to provide justice at the grass root level. The rationale of the *salish* in conflict resolution are as follows:

##### *Easy Accessibility of Disputants*

*Salish* is created to facilitate easy legal access to the rural people at the grass root level (Baxi and Galanter, 1979). It has been reported by the disputants that *salish* is a great opportunity for them to solve the problems quick, affordable, and accessible manner. In many cases written is not required and even the decision is noted note down. If the case is desired, then deed is produced signing by the parties and the persons were involved also sign as witnesses.

##### *Time Consuming*

System of *salish* is very effective in quick disposal of disputes. It has been observed that some disputes are solved instantly with the mutual consent of the parties. Under the circumstances, there is no scope to influence by any one in conflict resolution. Moreover, many disputes are solved with single sitting and as a result it contributes community stability in avoiding the conflict.

##### *Use Participatory Approach*

In *salish* system, people of the both parties can express their own views without any hesitation and obstacle. Sometimes, they themselves contribute to solve their own problems through interaction between the parties in presence of the members of *salish* committee. Consequently, they could blame the members of the *salish* committee about the result of the *salish* if they are not satisfied with the decision. This participatory approach helps to provide the opinion of the parties in dispute resolution and thus contributes to maintain cordial relationship between the parties.

##### *Sake of Community Peace*

The *salish* panel tries to find out the demand of the disputing parties and discuss to find out precise direction to solve the problems. The discussion helps the parties to take decision in peaceful manner in avoiding aggressive attitude. Under the circumstances, both the parties try to cut many of their demands for the sake of community peace and to continue their harmonious relationship by shaking their hands. The main objective of *salish* is to solve the problems in harmless process so that the community relationship is restituted.

##### *Justice without Cost*

The formal court is highly expensive because of different fees and as a result it is beyond the reach of the disadvantaged people especially who are living at the grass root level. The *salish* can solve the problems with offering some of the ingredients viz. betel leaf, tea and low cost cigarette among the members present in avoiding financial involvement. Usually, *salish* set at afternoon or any free time so that no one is disturbed The *salish* is an institution

for dispute resolution at very low cost or without cost and as a result it is popular among the poorer section of population in Bangladesh.

#### *Service Oriented to People*

The members of the *salish* and the disputants along with accused persons are belong to the same community and most of them have common culture in terms of customs, beliefs, norms and value system. The members of the *saish* either elected representatives or local elites always found their mind set to serve the community people in different perspectives when they face any problem. Consequently, *salish* contributes to solve the problems of both parties showing welfare attitude so that no one is put in trouble to get justice in conflict resolution. Moreover, *salish* maintains indigenous style which contributes to create social binding among the parties, reconciliation between disputants that helps to bring positive outcome in building confidence among the people at the community level and as a result it encourages others to resolve disputes in harmonious manner for the well being of the people.

#### *Challenging Issues for Justice*

The *salish* is an effective indigenous non-formal body using methods and techniques for conflict resolutions at the grass root level which permits people to seek justice outside an expensive, slow and sometimes corrupt lower judiciary. On the other hand, the jurisdiction of *salish* is strictly limited to small civil matters and petty criminal offences. In criminal cases they may not pass any sentence of fine or imprisonment. The establishment and jurisdiction of In many studies it is found that the institution of *salish* is a controversial issue in Bangladesh to provide justice all other courts are governed by the provisions of the Constitution of Bangladesh and statutes like the Code of Criminal Procedure of Bangladesh but acts of parliament may establish further special courts. All criminal proceedings are regulated by the provisions of the Code of Criminal Procedure of 1898 or specific acts passed by parliament. The *salish* clearly has no legal authority to try criminal cases. To take part in a criminal trial by a *salish* violates national law. The

Government of Bangladesh has a duty to supervise such bodies and to ensure that they do not take the law into their own hands. Consequently, challenges are there for the institution of *salish* in providing conflicts resolution to maintain justice at the grass root level in Bangladesh.

#### *Challenges to Legal Authority*

*Salish* has no direct legal back up. There are some indirect provisions in different laws viz. 345of CrPC for criminal litigation, section 89A, 89C of CPC for civil dispute, Muslim Family Law Ordinance 1961 family affairs provide some support. All these cases the suit should be lodged in the court first and then to *salish* under the direction of court. It has been reported that about 70 percent local disputes never go to court (Golub, 2003). Sometimes *salish* is manipulated by powerful people due to the absence of legal authority and as a result *salish* could not able to maintain proper justice of the parties.

#### *Challenging Issue to Nepotism*

The parties of disputes and *salish* administrators belong to the same society and many of them are interlocked in kinship network relations either in consanguineal or affinal or fictive. These kinship relationships are challenging issue for the *salish* administrators to provide justice in avoiding nepotism. Moreover, the *salish* administrators often become bifurcated into two groups centering certain disputes based on their line kinship relation. Nepotism is found as one of the impediments to maintain justice to the parties because it encourages to be biased in taking decision.

#### *Challenges to Power Structure*

People who are involved in rural power structure played dominant a role on the *salish* administrator in dispute resolution. Sometimes patron-client relationship between the local elites and the *salish* administrators creates problems for disputes resolution in providing justice. It has been reported that the local elites who are involved in power politics always influence in taking decision of *salish* in favor of their own people and as a result it is challenging issue for justice to the parties.

### *Challenges to Lack of Awareness*

The members of *salish* administration don't have clear idea about of jurisdiction for conflict resolution because in many of the cases they are found not well educated. Sometimes they depend upon *fatwa* (Islamic edict) which goes against the disputants and as a result they do not get desired justice. Sometimes inhuman punishment is imposed on both the parties especially if the case is related to sex.

### *Challenges to Corruption*

The members of *salish* are found corrupted in many cases because many of them have taken it as their profession to make money. Sometimes they take biased decision hiding the fact in exchange of bribe. Consequently, the real culprits are saved. The disputants do not get justice rather they may put in trouble by the culprits.

### *Challenges to Arbitrative Decision*

The *salish* is an arbitrative mechanism for alternative dispute resolution. It has been reported both the parties have to surrender to the *salish* panel for justice. The parties are to abide whatever decision they take. This is absolute depends upon the authority of *salish* and it is considered one of the impediments to provide justice to the disputants. A case is cited from the research report of DFID (2004) to get a clear picture how the arbitrative decision creates impediment to get justice.

In Bangladesh, a 'triumvirate' controls *salish* as a part of local governance structure. The elected officials of the Union Parishad are the most powerful actors and they are often connected to the ruling party. On the other hand, local leaders are next in the hierarchy and they have vested interest in local economy. Moreover, the *Mullas* (Muslim religious leaders) also have influence, endorsing the activities of their patrons, local leaders etc. by issuing *fatwas*. The disadvantaged people especially the women are the victims of these *fatwas*. Sometimes the local patrons sit on *salish* panel using their power for providing benefit to their clients.

From above case it is found that the powerful local elites often compelled the poor people to keep silent at the time interaction or not to unveil truth (Siddiqi, 2006). Consequently, the poor at the grass root level are deprived from justice because of biased result of

the so called *salish* system due to the influence of local elites.

## CONCLUSIONS

In conclusion it can be remarked that the incidents of *salish* taking the law into their own hands in many cases of dispute resolution. The local arbitration councils appear to be tolerated by the government as traditional arbitration bodies and to this extent are accountable to the government. They are not part of the judicial system, yet in every case cited the *salish* has acted entirely outside its authority in trying and sentencing the defendants and encouraging villagers to carry out illegal acts like public flogging, stoning or burning and so on. Further the defendants in all the cases cited were apparently tried, convicted and sentenced under a form of Islamic law in contravention of the civil law enshrined in the Bangladesh Penal Code. A case is cited here from Amnesty International (1993) for an example.

In April 1992 a village arbitration council in Dohar Thana sentenced a young woman and her mother to 100 lashes each. Earlier, the young woman, Shefali, aged 14, had been raped by an influential village elder. When she became pregnant, the local people convened a *salish*, composed of village elders and local clergy, to decide her case. The participating clergy decided that since there had been no witness to the coitus, the elder could not be held responsible as under Islamic law four adult male Muslim witnesses of good repute need to have witnessed illicit coitus to permit conviction for rape or adultery. But as Shefali had admitted to the coitus when she complained about having been raped and her pregnancy was obvious evidence for coitus having taken place, she was sentenced to 100 lashes to be administered in public. Shefali's mother was sentenced to the same punishment as she had accused the village elder of rape. Shefali's punishment was deferred pending delivery, while her mother's punishment was apparently carried out. A human rights organization in Bangladesh has challenged in court the authority of the *salish* to convict Shefali and her mother and to impose.

This case study indicates that the *salish* violates the defendants fundamental rights of the people which are guaranteed by the constitution. It is depicted in the Constitution of Bangladesh that no one shall be

deprived of life or personal liberty saved in accordance with law. Salish hardly provides a guarantee to legal equality, equity and rights to the people (Kundu, Khan and Samaddar, 2007). It is found that in the name *salish* the rural elites in many cases taking the law into their own hands showing their power and as a result conflict resolution in danger proving justice and it is a challenging issue at the grass root level where there is no formal court.

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