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## **EFFECTIVENESS OF ARBITRATION AS AN ALTERNATIVE DISPUTE RESOLUTION IN BANGLADESH**

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### **Abstract**

The structured legal system of Bangladesh is costly and takes a long time to complete. As a result, poor citizens in rural areas can seldom seek justice through the formal judicial process. The costs of hiring a lawyer, the time and money expended in court, and the amount of talent, schooling, and experience needed to litigate all act as roadblocks to justice. As a result, poor people prefer or have no choice but to use conventional justice systems such as Shalish. However, Shalish is a very informal type of local judicial practice that heavily influences rural society's power structure. With time, people with special interests and musclemen dominate the informal justice system at the village level. Alternative dispute resolution (ADR) had arisen in the Indian subcontinent to improve the village justice system's condition. For the past 35 years, the state-led rural justice system, such as Shalish and village court, has played an essential role in resolving petty rural litigation, but at a sluggish and informal pace. In the evolving landscape of rustic political influence, this age-old court is having difficulty dispensing justice to the countryside citizens. The study looked at the existing rural informal justice systems in Bangladesh, especially the Union Parishad-led ADR, and argued that, if adequately enabled and revamped, this justice system could be a desirable alternative to the formal system of justice for people living in rural areas. The study aimed to recognize the obstacles that the Union Parishad faces in dispensing justice, both directly and indirectly (UP).

**Keywords:** Shalish; Alternative Dispute Resolution; Union Parishad; Bangladesh.

## **INTRODUCTION**

Traditional justice systems are the most critical problem of dispute resolution in developing countries around the world. It is estimated that the informal justice system in many developed countries deals with many conflicts (Chirayath et al., 2005). For the villagers, it acts as a formal guardian (Singer, 2018). Arbitration is a form of alternative dispute resolution (ADR) that allows parties to settle disagreements outside of the courtroom. It is a localized version of a standard conflict settlement mechanism. It is a method of resolving disputes between individuals, families, lineages, and neighbors over property, illegal activities, illegitimate relationships, non-cooperation, and other issues in rural society (Mohiuddin, 1999). Due to extreme factional infighting and rivalries in the villages, the village-based Shalish has created severe functional complications; localized petty conflicts have increasingly been referred to the Union Parishad (UP) Chairmen/members for mediation, albeit outside of the formal village courts. These also point to pervasive corruption in the informal Shalish performed by local government or UP officials, including a lack of regard for applicable laws or agreed justice standards. The key bottlenecks liable for unfairness in Shalish are the burden of the elite society, control of money or special favor, fear of

local terrorists, and dominance of fanatic religious views. Shalish has been used as an instrument for carrying out perverse fatwas (mainly directed against women) given and propagated by local religious leaders in some areas of the world. In today's Bangladesh, anyone interested in the continuation of Shalish finds it a real challenge to revive and implement traditional Shalish in a way that reflects the people's spirit and ambition. However, it appears that reaching an equitable settlement between the opposing parties would be difficult due to ongoing structural-functional issues and a lack of peace and amity within the rural social system. However, one encouraging trend appears to be that several non-governmental organizations (NGOs) have stepped forward in recent years to refashion the conventional Shalish structure (Siddiqui, 1998).

Poor people's preference for Shalish reflects the formal justice system's flaws rather than a reflection of satisfaction with the systems themselves (Woodhouse, 2004). This system has several issues, including corruption and misuse of authority, prejudice in judgment, and non-compliance with international human rights standards, such as discrimination or cruel and degrading punishments, lack of inclusiveness, and transparency. Since the typical Shalish is

made up of men, women are especially vulnerable to harsh judgments and penalties (Khair et al., 2002). Traditional Shalish was once thought to be the most efficient means of resolving conflicts. However, its meaning, importance, and efficacy have all declined in recent years. a) racism, b) corruption, c) gender inequality, d) lack of legal knowledge, e) money and power control, f) shifting social norms are the reasons for shalish's reduced status (Islam, 2011).

In Bangladesh, Shalish is currently caught in a vicious cycle of complications. Huq (1998) cited studies on rural informal Shalish led by the Union Parishad as a source of widespread corruption among its administrators. In casual Shalish incidents, there is a propensity to deny or pay insufficient attention to institutional laws and permitted justice standards. Most Shalish operations are influenced by orthodox religious beliefs, wealth, nepotism, political dominance, and the social status of upper-class citizens. As a result, the Shalish rulings are impervious to corruption, nepotism, and political patronage pressures (Golub, 2003). Because of difficulties in getting to court, financial problems, literacy issues, and a long-standing unresolved case, poor villagers do not want to file a case in an informal court. As a result, they tend to resolve the issue in Shalish. In disputes

between groups with unequal social or economic standing, however, the dominant party still wins. When it comes to the poor, prejudice is particularly pronounced. Rather than referring to the legal system, decisions on tradition or faith are often taken based on personal interpretations of texts and cultural norms (Siddiqi, 2003). Corruption may also infect the process in other respects, such as when a panel member solicits bribes to sway the group's agreement in a particular direction (Golub, 2003). The pressure of the wealthy, the power of money or special favors, the threat of local jihadists, and the dominance of orthodox religious views have all been described as significant bottlenecks in Shalish (Siddiqi, 1998). Many conflicts are not resolved in the Shalish system; instead, quarrels or physical assaults occur, leading to abuse. Furthermore, when deciding on this process, face value is heavily emphasized. Nepotism is also visible, and harsh punishment and unjust trial practices can drive a person to commit suicide, even though he or she is not the victim or guilty party.

Shalish is widely used in rural communities where the justice system is available. Almost all of the problems that disadvantaged people are concerned with are addressed, such as social security, local violence, the defense of people's rights, and the settlement of family and

neighborhood conflicts. Informal legal structures can govern key institutions at a lower cost and in ways that are more reflective of local circumstances and customs (Khadiagala, 2001). This process is also favored for several reasons, including its low cost, speed, flexibility, cultural impact, and openness to poor people's concerns about dispute resolution. According to Woodhouse (2004), people prefer informal conflict resolution because they believe it is less expensive, faster, and simpler to use than the formal legal system. Time, distance, and cost are particularly significant barriers in rural areas. It can take villagers a long time to travel to the district court for interviews. As a result, the villagers feel at ease resolving their issues through the informal justice system, as informality provides low-cost conflict resolution mechanisms to the vulnerable and uneducated (Depew, 1996).

According to Woodhouse (2004), villagers and village leaders emphasize community cohesion, claiming that resolving conflicts informally enabled the community as a whole to remain peaceful and avoid embarrassment in court. They describe their neighborhoods as one big family with strong family bonds that should not break. Furthermore, the Shalish scheme, like magistrate's courts, significantly decreases the workload of the

formal justice system. It's also worth noting that, since Bangladesh's traditional justice system is politically tainted and plagued by long delays, most people avoid dealing with it (Wardak, 2002). As a result, in rural areas, the conventional institution of informal justice persists. People are content to settle their problems quickly and cheaply. In circumstances where biases and power imbalances prevent fair treatment of disputes, traditional justice, or Shalish, can provide simple, secure, and understandable access to justice (Haque, 2002). As a result, this study can help focus on the benefits that local people receive due to an effective Shalish system. It could be linked to student academic discipline, as well as local and national growth. The results of the research can be helpful to policymakers in local government. The analysis can also identify significant obstacles to ensuring justice or an impediment to improving local government and Union Parishads.

The overall goal is to project the effectiveness of arbitration (Shalish) as an alternative dispute resolution in Bangladesh. The specific objectives of the study are: (i) To assess the effectiveness of the arbitration (Shalish) process/justice system of the local level, (ii) To find out the community perception of benefits from

the system, (iii) To seek out the potentiality of the arbitration (Shalish).

## **METHODS**

The study was conducted from January to October 2020. A research design is a set of conditions for data collection and analysis that seeks to collect relevant data cost-effectively for research purposes (Aminuzzaman, 1991). Any study requires selecting an appropriate research design because it offers a structure and allows the researcher to determine everything from the research goal to the operational implications of data analysis. According to Cresswell (2009), there are three main methods to conducting scientific research: quantitative, qualitative, and mixed approaches. To achieve the research goals, a qualitative approach is necessary. Besides, a questionnaire survey was performed to make the most of the time available. Every study has its own set of methods for achieving the study's goals. This study was planned around the research variables to conduct the study's overall goal. The information for the analysis was gathered from both primary and secondary sources.

Three methods were used to collect primary data. To begin, a questionnaire

survey of residents was conducted. Second, interviews with union leaders were also performed (Chairpersons, member). Finally, as part of a Key Informants Interview, information would be gathered from busybodies and civil society members (KII). This research will hold an in-depth discussion to gain a better understanding of the results. Secondary data was gathered from books, journals, and commissioned research studies by international donor agencies and other organizations. Finally, context information was compiled with the help of secondary sources.

The study was conducted at the level of the Union Parishad. It was performed at Bijoypur union under Moddom Bijoypur, Kashipur, and Dhonmura of Cumilla districts. The study area is situated a very close distance to the researcher's station. For communication convenience, the study area was selected by the researchers. The following is a detailed scope of the analysis, which includes critical research questions, metrics, measurement methods, and essential variables organized by study objectives:

**Table 1: Research Matrix**

<b>Objectives</b>	<b>Indicators</b>	<b>Variables</b>	<b>Measuring Tools</b>
To assess the effectiveness of the arbitration process/justice system of the local area.	Bias calculation	Elites power, political impact, nepotism.	Qualitative and quantitative tools and techniques (average, percentage, correlation), etc.
To find out the community perception of benefits from the arbitration system.	Level of satisfaction	Equal justice, low cost, speedy, dispute resolution, efficiency.	Qualitative and quantitative tools and techniques (average, percentage), etc.
To seek out the potentiality of the arbitration (Shalish) system.	Ensure transparency	Legal order, maintain strong association, high level of collaboration.	Qualitative and quantitative tools and techniques (average, percentage, correlation), etc.

The study's participants included Union Parishad leaders (Chairman, members), poor rural men and women who sought assistance from the UP-justice system, and local Union Parishad elites. Representatives from UP are actively involved in the UP and local arbitration processes. Therefore, women who sought help from local justice should be available and willing to share their information. A final list of selected participants would be made based on a preliminary interview with prospective participants to confirm their suitability and willingness to participate in the research. Random sampling, stratified sampling, and multi-stage sampling would all be covered in the study.

The study used a total sample size of 90 people to execute it. The respondents were chosen using a method known as purposeful sampling. The participants in the study were drawn from the general public, elected officials, and local elites interested in Shalish. Shalish's final users are marginalized. The elected official and local elites are also active in the Shalish process as managers. These two sectors were chosen to learn about their conventional informal institutions' perspectives and observe social practices.

Furthermore, as an informal customary Shalish, the general public will be influenced positively or negatively. The case study approach is sufficient for data collection and qualitative research. It aids in in-depth analysis and considers it

purposefully to create a broad perspective. Case studies primarily assist in the comprehension of complex social phenomena. Many researchers still use case studies because they are helpful for every observational step of a study (Yin, 2009). Three case studies were performed to investigate the outline and effectiveness of Shalish in practice. To make data analysis more accessible, all of the collected data would be transcribed into excel texts, and the data would be further analyzed. Tabulation, frequency, the percentage would be used as statistical methods. Graphs, tables, narrative text, basic computations, and logical reasoning would be used to present the result. The analysis would be done following the study objectives.

## **RESULTS AND DISCUSSION**

The three crucial terms 'ADR' make up the mechanism of the Alternative Dispute Resolution System. The term "alternative" is one or the other of two items, of two things so that one or the other may be preferred, or offering a choice of two or more things. In everyday language, the term "dispute" refers to a disagreement or quarrel. The term resolution refers to something that has been resolved or is in the process of being resolved between the disputing parties. Thus, the word 'Resolution' can mean 'to

resolve.' It can mean an appropriate solution to a problem or challenge.

According to a study followed by Hossain (2012), Bangladesh's structured justice system is currently costly and maintains a lengthy process. Rural poor people are rarely able to obtain justice through this scheme. As a result, poor people choose to practice Shalish. Shalish is a very informal type of native justice that prominent people inspire in rural areas. In Bangladesh, about two-thirds of religious disputes do not enter the formal court, according to Islam (2015). The rural population enjoys the widespread use of the traditional Salish method. The poor have no other choice but to stick with the Salish scheme. According to a UNDP report, Shalish committees deal with a wide range of minor criminal matters in operation. Many criminal cases have a civil component, allowing the Shalish to deal with them and order the convicted party to pay compensation, increasing access to justice and reducing the burden on the formal system. Almost all Bangladeshis (97%) are familiar with the traditional Shalish and its functions (UNDP, 2015).

Mediation, also known as conciliation, is the most common form of alternative dispute resolution. Mediation, unlike arbitration, offers a forum for parties to settle their differences with the

assistance of a neutral third party (Jaiswal & Mandloi, 2020). A mediator attempts to put the parties closer together and assist them in reaching an understanding on their own (Roberts, 2007). Suppose the parties are unable to reach an agreement. In that case, they must go to arbitration—either before the same arbitrator or a new arbitrator—for a final and binding judgment (Touval & Zartman, 1985).

ADR is a broad term that refers to various methods for settling disputes outside of the courtroom. It is divided into six categories: negotiation, mediation, arbitration, conciliation, collaborative law, and early neutral assessment (Scottish Legal Aid Board, 2014). Most types of ADR, except for arbitration, are facilitated settlements. Several studies have found that mediation has more advantages than adversarial court processes, such as quicker resolution, reduced costs, higher levels of satisfaction, and better compliance with settlement agreements (Salem, 2009). While the benefits of mediation are usually placed in contrast to adjudication, Genn (2009) argues that the presumption that mediation (and by extension other types of ADR) is an alternative to litigation and adjudication is misleading since the most common type of conclusion to litigation is, in reality, an out-of-court settlement. According to Genn (2009), the literature on mediation is

marked by divergence, if not division, of opinions on its efficacy. It's the right strategy for the right issue, with the right people involved (Costantino & Merchant, 1996, 1996). As a result, the parties usually can choose who will decide on the question. The parties will also address the terms and conditions in which negotiators are used to resolving disputes and the procedures for their selection. Some contracts call for “eternal” arbitrators.

According to Folberg & Taylor (1984), mediation is the mechanism by which the parties, with the help of a neutral individual or persons, systematically isolate contested issues to formulate options, discuss alternatives, and achieve a consensual solution that meets their needs. Furthermore, the disputants have the opportunity to settle the matter with their own hands. Money and power are valuable assets that affect the outcomes of recent Shalish decisions, jeopardizing the organization's reputation and respect among the general public. The Shalish scheme was also found to have high levels of corruption (Aminuzzaman, 2000).

In developing countries like Bangladesh, an effective alternative mechanism is needed to break the current justice deadlock (Islam, 2012). At the grassroots level, Shalish is a viable alternative. Despite its flaws, this informal mechanism is the primary method for

resolving rural conflict (Alim, 2006). As a result, upgrading Shalish would necessitate a detailed plan initiative. It is essentially free of official legislation but not entirely free of everyday activities. Shalish affects rural life and the rural power system, dominated by a few wealthy and influential people (Islam, 2012). When all people have equal access to power, marginalized people will finally have fair access to justice. Shalish, governance policies are soundly enforced through good justice practice to ensure equal justice by rearrangement (Asaduzzaman, 2019). The satisfaction of the local population is used as a measure of the success of the rural justice system in this research.

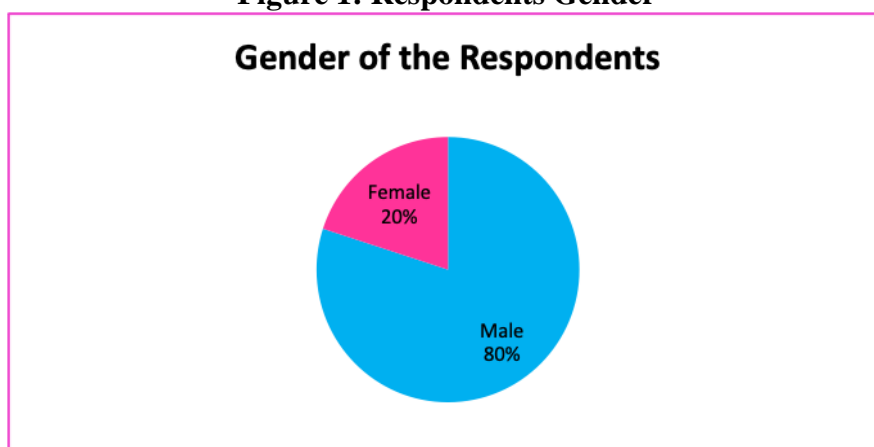
The analysis focuses mainly on finding out gaps between theory and practices regarding the informal system

according to the scenario of three villages. It also attempts to understand the characteristics of ADR of the three villages under the Bijoypur Union of Bangladesh.

### Demographical Profile of the Respondents

A demographical profile is an essential part of the study. Generally, demographical profiles include gender, age, homeownership, employment status, and location (French, 2014). Demographics are about the population of a place the culture of that's area. In this study, age, participant's gender, occupation of the participants, educational qualifications were considered important demographic aspects of the respondents. These demographical profiles are given below:

**Figure 1: Respondents Gender**



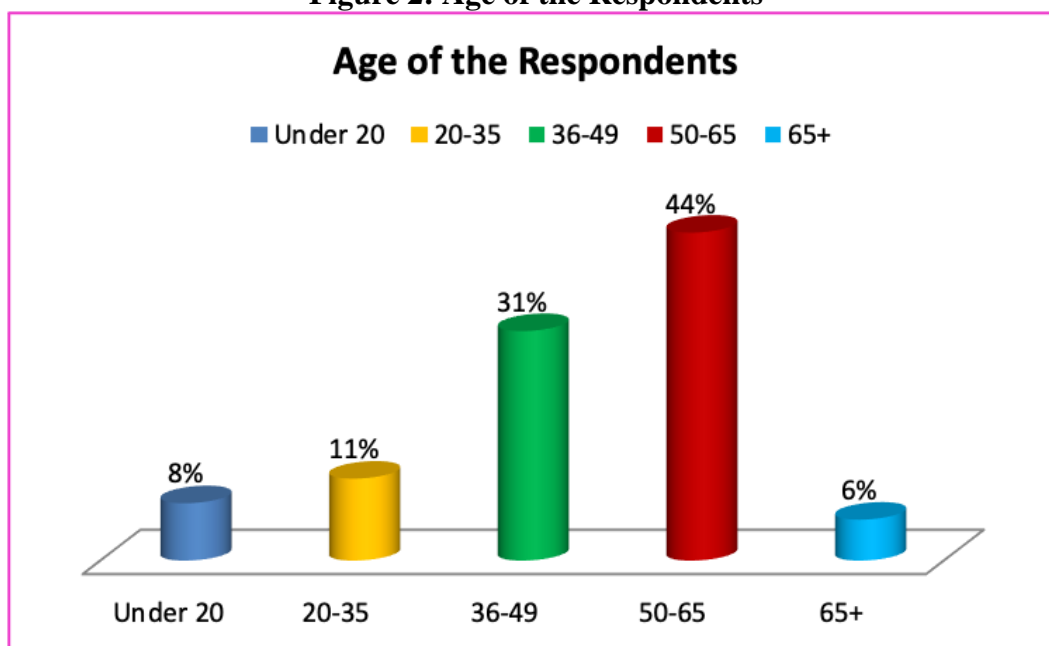
Source: Field Survey, 2020

Figure-1 shows the respondent's gender. In this study, primary data were collected from 90 respondents of three villages under the Bijoypur union in Cumilla District. We took 80% male members & 20% female members of these three study areas while collecting data. The research has been conducted based on their information. However, in the villages, females were reluctant to answer and participate in the discussion. So, in this study, researchers were to collect data only from 20% female respondents.

Figure-2 shows that the age of the respondents. To conduct the study, the

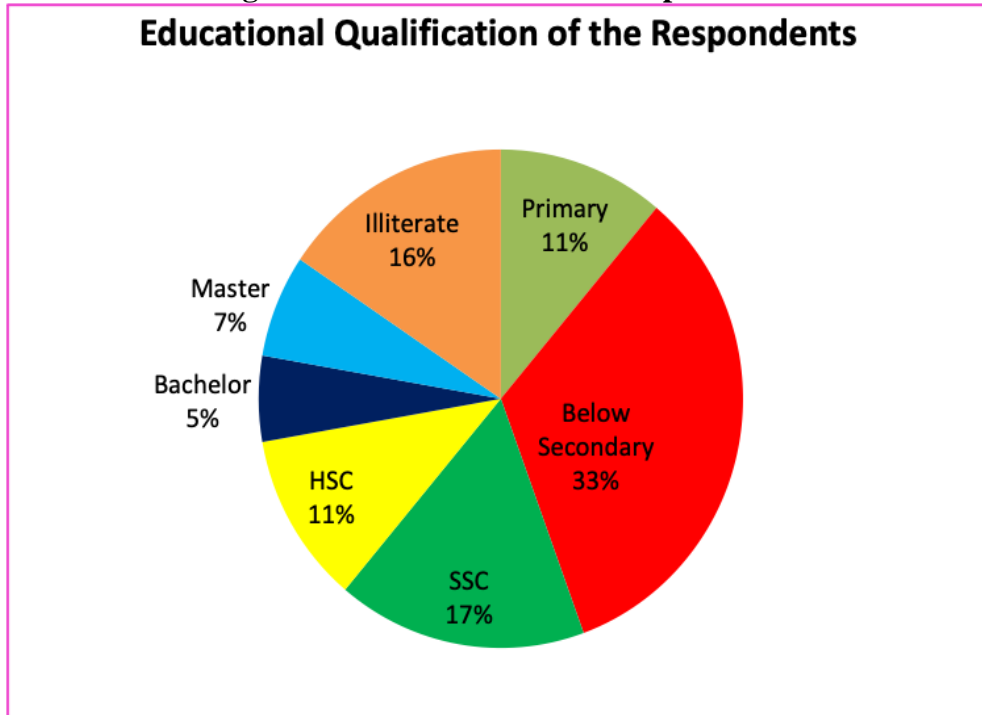
respondents included general people, UP elected representatives, and local busybody. Different ages were covered to make the study more representative. These respondents' age were classified into different groups, such as under 20 years, 20-35 years, 36-49 years, 50-65 years, and 65 years above. Considering the total number of respondents of three areas, it was found that most of the respondents (44%) belonged to the age group 50 to 65 years. Under 20 age were 8%, 20-35 ages were 11%, 36- 49 were 31% and 60+ were 6% respectively.

**Figure 2: Age of the Respondents**



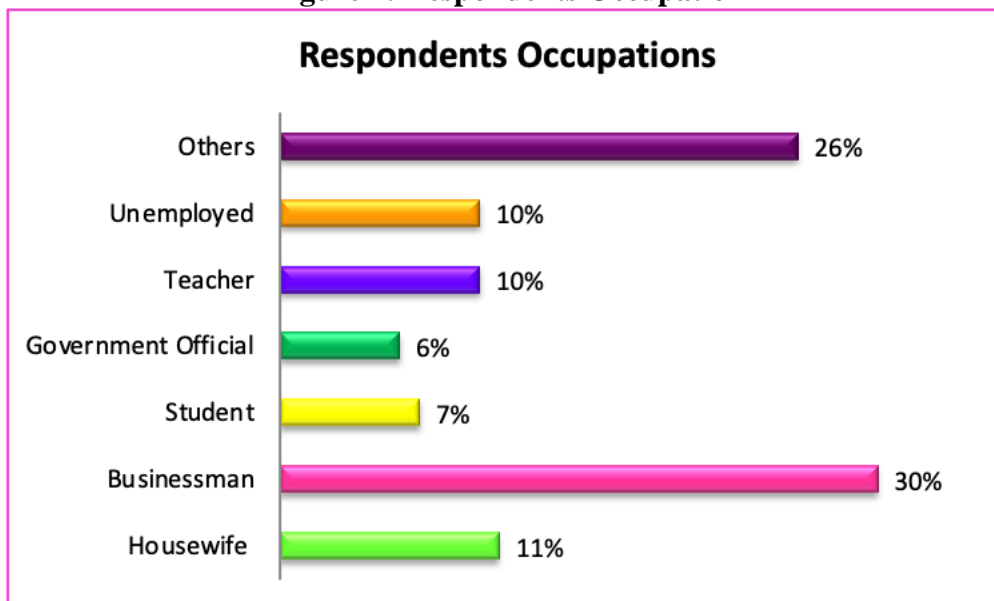
Source: Field Survey, 2020

**Figure 3: Education Level of Respondents**



Source: Field Survey, 2020

**Figure 4: Respondents Occupation**



Source: Field Survey, 2020

Figure-4 shows the occupation of respondents. To know the present socio-economic condition, it is very significant to observe the occupation of the respondents. It is required to investigate the occupation of the respondents and

occupation representing the skill level, attitude, and supervision capability that analyses arbitration effectiveness. It is revealed that most of the respondents (30%) involve in business. Rest 11% housewife, 16% Teacher, 7% student,

government official 6% and 26% farmer. 10 % of respondents were financially wickered, and they were unemployed.

**The Effectiveness of Arbitration Process of Local Area: Analysis of Views of Respondents of Three Villages**

In a variety of situations, Shalish does not put forward a reasonable effort. Instead, it exacerbates people's divisions in specific ways. Various problems forced the villagers into forming factions. If the offender was terrible, there were usually no issues. In Shalish, community leaders and elites would agree to a rebuke or a fine (Alim, 2006). Nonetheless, if the defendant is wealthy, a faction is formed in Shalish. The dominance of the local elite, nepotism, bribery, and political influence were all significant indicators of the

arbitration process's ineffectiveness (Islam, 2012).

The table-2 shows the level of the local elite's power. In this regard, most of the respondents (48%) mentioned 'high.' According to them, the local elites provide rendering service to ordinary people directly as a trustable hand. To solve different cases, their influential power is high. Another 16% expressed 'moderate' in response. They handle the whole matter in many conflict cases and try to satisfy both parties. Finally, 15% of respondents said 'very high influence' in response and take speed money. Most of the time, they cannot handle service providing efficiently and effectively in a time-bound way. Some citizens are faded up with the mismanagement.

**Table: 2**  
**The Level of the Local Elites Power**  
**(Response of General Citizens)**

Criteria	Number of Respondents	Percentage %
Very High	14	15%
High	43	48%
Moderate	14	16%
Little	12	13%
Very Little	7	8%
Not at all	0	0%
<b>Total</b>	<b>90</b>	<b>(100%)</b>

Source: Field Survey, 2020

**Table: 3**  
**The Level of Political Impact**  
**(Response of General Citizens)**

Criteria	Number of Respondents	Percentage %
Very High	31	35%
High	21	23%
Moderate	23	26%
Little	3	3%
Very Little	10	11%
Not at all	2	2%
<b>Total</b>	<b>90</b>	<b>(100%)</b>

*Source: Field Survey, 2020*

The table-3 shows the level of political impact. In this regard, most of the respondents (35%) mentioned 'very high.' According to them, Shalish is presently infested with considerable politicization. Politically supported people are leading the rural Shalish procedures nowadays. Another 26% expressed 'moderate' in response. According to them, the political class is attempting to manipulate the entire Shalish system. Suppose their supporter is realized to be vicious. In that case, they

slow the process and demonstrate their muscle power to win the animosity party. Finally, 23% of respondents expressed high because political parties often malpractice and destroy morality. Conflict is frequently colored politically for gaining personal interest.

In case study-1, participants described how political parties currently influence the Shalish procedures that affect local people. The case is present below:

#### **Case Study-1: Conflict on land-related issues**

Sujon, Nayon, and Prodip (Pseudo names) were their brothers. They live in the same village. Sujon said that his cousin has illegally consumed his bamboo and sold 20 medium sizes of bamboo from the disputed land to other persons without his permission. The price of that bamboo was around 5000 tk. When the person cutting down bamboo, Sujon created a barrier and discouraged cutting bamboos from this disputed land. In that moments, Saiful's wife abused Sujon. So there was started a massive quarrel. Then Sujons daughter came there and requested him not to harm her father.

At last, they arrange a political party so that they have threatened him. He had gone to the rural community leaders to proper justice. After five days, Salish sittings in their house for a solution. Finally, Sujon got one part, and his cousin got two elements from the land ownership. The disputed land also settles by negotiations, but the political party provided extra money.

**Table: 4**  
**The Level of Nepotism**  
**(Response of General Citizens)**

Criteria	Number of Respondents	Percentage %
Very High	5	6%
High	17	19%
Moderate	40	44%
Little	18	20%
Very Little	10	11%
Not at all	0	0%
<b>Total</b>	<b>90</b>	<b>(100%)</b>

*Source: Field Survey, 2020*

The table-4 shows the level of nepotism. In this regard, most respondents (44%) mentioned 'moderate' because all disputing parties and Shalish supervisors exist simultaneously in the same society. They are familiar through various means, including family, political party, community, and organization. The elites continuously retain alliance. Moreover, familiarity, dealings of money, and influential power often encourage partisan conduct. Another 20% expressed 'little' in response. According to them, the Shalishkers maintain relation. 19% of respondents replied high because they never go against muscle power. Shalish administrators are maintaining close relations.

The table-5 shows the level of equal justice. In this regard, most of the

respondents (36%) mentioned 'average' regarding equal justice. Dishonesty has to turn into a common occurrence of Shalish at present (Alim & Rafi, 2003). Some people use it as a tool of misusing the unfortunate people. Several elected representatives have malpractice as a matter of apprehension. 18% of respondents said not satisfactory because of ill practice. Unfair justice has existed in the arbitration system. Shalish administrators and the disagreeing parties are living the same society. 15% of respondents said that political biases are distressed to save the offender. On the other hand, 14% of respondents said they never hesitate to inform others about their decision. 10% of respondents said excellent, regarding the disputes in rural areas are resolved arbitrarily.

**Table: 5**  
**The Level of Equal Justice**  
**(Response of General Citizens)**

<b>Criteria</b>	<b>Number of Respondents</b>	<b>Percentage %</b>
Excellent	9	10%
Very Good	6	7%
Good	13	14%
Average	32	36%
Little	14	15%
Not Satisfactory	16	18%
<b>Total</b>	<b>90</b>	<b>(100%)</b>

*Source: Field Survey, 2020*

The table-6 shows the level of expense for conducting the conflict resolution. In this regard, most respondents (32%) mentioned little because the Salish procedure can be organized very efficiently with low cost of cigarette, betel leaf, and tea. Sometimes it can be arranged even without any charge. 27% of respondents said moderate in response. The Shalish meeting is set after the lunch session. Occasionally Shalish meeting is also nominated for Friday or free time

(Alim, 2006). Thus none had to lose his work or other activities. Village people are accessible at the afternoon session. Besides, it commonly takes no additional time, more than two or three sessions. 22% of respondents said very little in response. Therefore, the minimum cost is used for conduction Shalish and any dispute resolutions are implemented at low cost. On the other hand, only 5% of respondents said high because some busybody takes money secretly.

**Table: 6**  
**The Level of Expense for Conducting the Conflict Resolution**  
**(Response of General Citizens)**

<b>Criteria</b>	<b>Number of Respondents</b>	<b>Percentage %</b>
Very High	0	0%
High	5	5%
Moderate	24	27%
Little	32	32%
Very Little	20	22%
Not at all	9	10%

*Source: Field Survey, 2020*

**Table: 7**  
**The Level of Efficiency**  
**(Response of General Citizens)**

Criteria	Number of Respondents	Percentage %
Very High	0	0%
High	6	6%
Moderate	21	22%
Little	44	46%
Very Little	25	26%
Not at all	0	0%

*Source: Field Survey, 2020*

The table-7 shows the level of efficiency. In this regard, most of the respondents (46%) mentioned ‘little’ in rural areas, and both parties were permitted to renounce the Shalish board. Then both parties are put up with whatever jury decisions they proceed. Another 26% expressed ‘very little’ in response. According to the respondents, the Shalishkers exploit the impoverished person by using authority. Therefore, a biased decision is not ensuring efficiency. 22% of respondents said moderate because sometimes the depressed party has no opportunity, and they comply with the partial judgment. The respondents believe that Shalishkers have no proper training and quality of leadership.

The table-8 shows the level of importance of collaboration for dispute

resolution. The old-fashioned Shalish is supposed to offer justice regarding explanations. It encourages the settlement of relationships between offender and victim. In this regard, most of the respondents (27%) said vitally essential in response. To maintain equal justice, justice-seeker, local busybody, elected representatives, and local elites should build sound collaboration so that equal justice preserves to all. Another 16% said collaboration for dispute resolution is essential for restoring the relationship between offender and victim. On the other hand, 20% of respondents said not so crucial in response because all disputes are not solved. Sometimes, some cases are not settling, and the offender did not approve the decision of Shalish. Finally, the case was passed to a formal court.

**Table: 8**  
**The Level of Importance of Collaboration for Dispute Resolution**  
**(Response of General Citizens)**

<b>Criteria</b>	<b>Number of Respondents</b>	<b>Percentage %</b>
Essential	15	16%
Vitally Essential	24	27%
Important	10	11%
Moderately Important	16	18%
Not So Important	18	20%
Not Important	7	8%
<b>Total</b>	<b>90</b>	<b>(100%)</b>

*Source: Field Survey, 2020*

The table-9 shows the level of inclusiveness. In this regard, most respondents (35%) mentioned 'moderate' in response. Shalish system is more participatory, and ordinary people can express themselves freely and without fear as per the respondents. They know that they are comfortable with this practice and adjust to the existing cultural norms. 8% of

respondents said that the level of inclusiveness was high. However, people of both parties express their complaints firmly. 28% said inclusiveness was not appropriately maintained. Women's participation is ignored. Because the culture of women's involvement is not developed yet, they are not included in the points of the jury decision.

**Table: 9**  
**The Level of the Inclusiveness**  
**(Response of General Citizens)**

<b>Criteria</b>	<b>Number of Respondents</b>	<b>Percentage %</b>
Very High	2	2%
High	7	8%
Moderate	35	39%
Little	25	28%
Very Little	16	18%
Not at all	5	5%

*Source: Field Survey, 2020*

**Table: 10**  
**The Extent of Women Participation in the Process of Shalish**  
**(Response of General Citizens)**

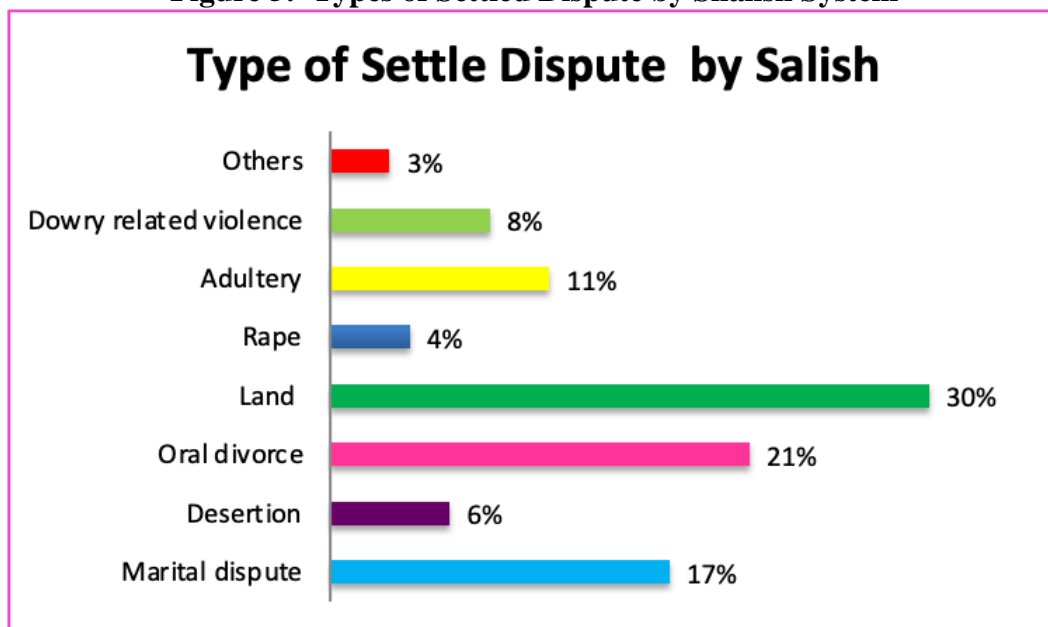
Criteria	Number of Respondents	Percentage %
Very High	0	0%
High	0	0%
Moderate	0	0%
Little	12	13%
Very Little	20	22%
Not at all	58	65%

Source: Field Survey, 2020

The table-10 shows the Extent of Women’s Participation in the Process of Shalish. In this regard, most of the respondents (65%) mentioned ‘not at all, in response. In the Shalish system, women’s involvement is denied commonly. They aren’t included because of religious beliefs and the male-dominated nature of society. However,

domestic abuse, illicit sexual relations, women’s repression, marital issues, and other conflicts should be considered. Another 13% expressed 'little' in response. According to them, women representatives seldom play a role in women-centred disputes as per the respondents' view. Therefore, women's situations are not measured appropriately.

**Figure 5: Types of Settled Dispute by Shalish System**



Source: Field Survey, 2020

The figure-5 shows about types of disputes that are settled by the Shalish system. The justice seekers are capable of determining their disputes. Sometimes the UP member/chairman was invited to solve the problem. Most of the respondents (30%) said land-related disputes are resolved by Shalish procedure as the land dispute is prevalent in rural areas. Rural people face various cases and try to resolve their quarrels. Marital disputes are 17%, desertions are 6%, oral divorces are 21% & dowry related violence's are 8%.

The table-11 shows the level of benefit from the arbitration system. In this regard, most respondents (56%) mentioned 'moderate' in response. The Shalish system is a suitable source for the people in ensuring justice. It facilitates in justifying comparative views of the occurrence of disputes in the local region. The most

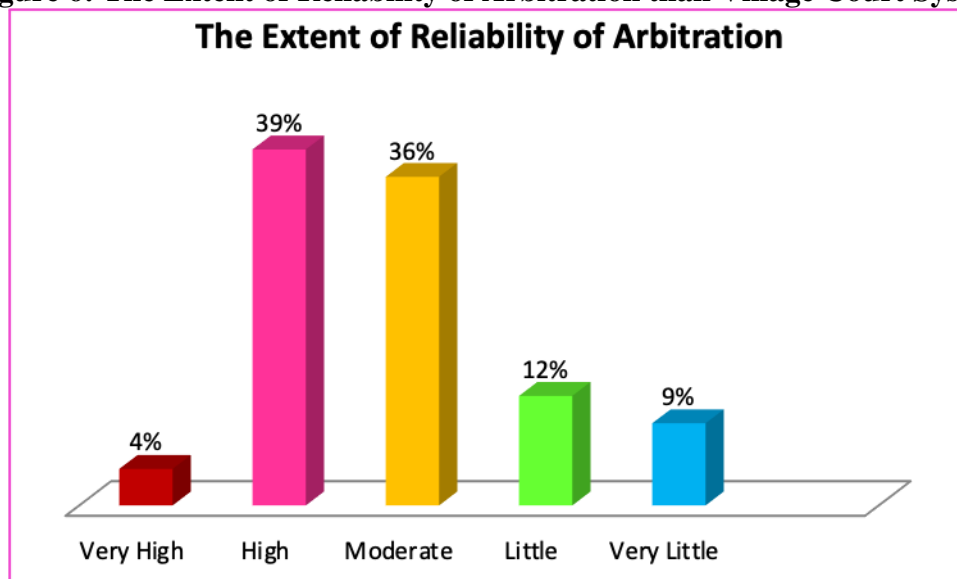
common disagreements are land-related quarrels, assault, fight, husband-wife separation, and domestic violence. 14% expressed 'high' in response. According to them, Shalish has been extensively accepted in the rural people for resolving any minor discords. Ordinary people consider it as per their organization. It creates to help easy access and free of all formalities. Another 12% said very high because Shalish is more flexible and no strict rules. Villagers consider it as a good opportunity for justice due to its speedy and easily accessible. Even nothing writing on paper is required. There is no need for a noted down. The contested party verbally declares senior rural busybody and village, elite person, political figure, civil society member, UP chairman/member, etc. Local busybody fixed a day and asked other Shalishkers based on informality.

**Table: 11**  
**The Level of Benefited from Arbitration System**  
**(Response of General Citizens)**

Criteria	Number of Respondents	Percentage %
Very High	11	12%
High	13	14%
Moderate	50	56%
Little	6	7%
Very Little	10	11%
Not at all	0	0%

Source: Field Survey, 2020

**Figure 6: The Extent of Reliability of Arbitration than Village Court System**



Source: Field Survey, 2020

The figure-6 shows the level of reliability of arbitration. Most of the respondents (39%) said arbitration consider a high level reliable to people. In the current time conflict, dowry, women violence is a significant problem in rural areas (Kamruzzaman, 2015). The shalish process is very trustable to ordinary people because it saves money and saves time. 36% of the respondent's average reliability because it offers a range of services. The Shalishker were truthful at the greatest to deliver justice to rural people. People might have trust to get natural justice. However, Shalish had recently appeared as a commercial platform for them. Without any interest, elites did not solve any

difficulties. 12% of respondents said little because the judgments of Shalish procedure are impenetrable due to corruption and political support. The respondents faced problems of corruption. 9% of respondents replied very little in response.

In a case study-2, participants defined how minor quarrels turn into more significant conflicts that carry serious consequences. Moreover, bribe was an alternative substance in Shalish. Finally, participants described a case (Case study-3) how the Shalish process resolves significant disagreements. The images below provide a good understanding of conflicts. The case study indicated below:

### Case Study-2: Reduction of Local Conflicts

Rahman and Kamal (Pseudo names) are neighbors. The goat of Rahman damaged the harvests of Kamal. So, he caught the goat for confined. Rahman's father hearing this news and went to Kamal's home. They said Rahman's father would keep the goat in the local 'Khoar.' Otherwise, they will kill it. Kamal's wife mistreated Rahman's father. At a stage, they meet a quarrel. After sometimes Kamal also reached there. The beating was started among them. Hearing the crying sound, neighbors came to the occurrence place and protested them. After four days, they went to village community leaders to settle down the dispute through Shalish. Salish groups like UP chairman & member, village distinguished people with both parties assembled to solve the issue. After hearing the whole matter from both parties. The Shalish board decided that Kamal will give Rahman 2,000 Tk. as fine. They must seek regret to Rahman's family for their misconduct openly. Finally, the conflict was terminated through local Shalish procedures.

### Case Study-3: Gender-based Violence

Rima Begum (Pseudo names) when she was 13 years old, she faced domestic violence. Her neighbor Saiful Islam (Pseudo names) was 24 years old, which often disturbs her. Several times Saiful Islam proposed to her. When Rima moved here and there, he always followed her. Once, Rima was going to the bank of the river with her younger cousin. There was nobody around there. At that time, Saiful requested her to do to physical relation, but she refused. Then Saiful touched her hand and want to feel her private part. When Rima started crying, Saiful left her. Her younger cousin noticed everything and informed Rimas's mother of details. Her father complained against Saiful to the court. After some days, Shalish sitting in her locality at the school field. UP members and renowned people gathered to resolve the problem. Seven persons constituted a jury board to end the crisis. After hearing the whole matter, they took the decision. The Jury Board decided that Saiful would give Tk 30,000 as a fine. He must be seeking an apology for his misbehavior to Rima. The Saiful family accepts the decision and agrees to provide money as compensation. The case was solved without any enforcement.

### Key Observations and Findings

Significant findings of the study are given below:

1. **Local Elites Influence:** The Elites people appreciate natural domination over poor people in society. Rural power structure turns around elite class society.

2. **Political Impact:** This study has that Shalish is now infected with huge politicization. Respondents expressed that politicians earn more money through the rural Shalish process.
3. **Nepotism:** In such disputes, the busybody often shows partiality

based on their relationship. They try to maintain a power connection. The elite's people keep the formal alliance.

4. **Unequal Treatment:** Local people don't identify with the existing legal remedies. This traditional justice procedure cannot judgments timely and adequately. The structure can little help rural people.
5. **Low Efficiency:** Some persons have taken as a business. Political lobby creates low efficiency. Sometimes corrupt busybodies are saving to the offender. Lack of integrity and accountability are noticed in some case disposal.
6. **Lack of Inclusiveness:** Common people have low awareness and little confidence in this system. There was existed a lack of inclusiveness.
7. **Ignore Women's Participation:** The rural deprived women are often victims of violence. Local patriarchal systems are the main barrier to exercise power. In the Shalish system, women's participation is deprived of gathering generally.
8. **Less Reliable:** The socio-economic situations of service seekers are not well. Their education level is under

SSC. It points out that rural villagers who stay in better conditions do not rely on this system. The Rural responsible body does not have adequate knowledge and expertise regarding the settlement of arguments.

## **CONCLUSION**

The absence of proper justice is a significant problem in Bangladesh (Nasreen, 2003). Due to fair justice, people are incapable of voices heard, encountering discrimination, and cannot use their human rights. While functioning justice systems are accessible to general people, they can help create a safe, efficient, and affordable environment with positive effects. Unfortunately, the formal justice system is too pressure, with massive workloads in Bangladesh.

In many developing countries, rural people, particularly vulnerable groups, have a deficiency of knowledge of formal justice systems and a lack of the costs of legitimate proceedings. To protect the people from the lengthy judicial procedure of the legal law court, the Bangladesh government introduced the Village court rule after the liberation. Presently it was changed, namely Village Court Act, 2006 (Sikder, 2016). However, this ensures a high level of formality. The government had given great importance and

highlighting the justice system, primarily criminal and civil disputes for the rural people (Panday & Mollah, 2011). The Shalish system contributes to decreasing the pressure on the formal law court (Masum & Ara, 2017).

From the study, it has been found that generally, people are conscious about the Shalish system, and they are also interested in this system for conflict resolution. For better performance, they are pleased. To resolve the disputes by maintaining alternative ways with the intervention of the informal justice system is a great success. It has made great opportunities and expectations to the complainant public. A quarrel is settled with due time and lowest to ensure honesty. Arbitration is an informal justice system that has effectively resolved disputes, demonstrating a dynamic ADR for improving rural access to justice. But this study indicates that Shalish is not reliable to provide equal justice due to politicization, nepotism, lack of inclusiveness. Some critical issues can create the Shalish system more efficient and active. So, these following matters would make the Shalish system more effective.

1. The power of the local elites should be reduced.

2. For making the Shalish system effective and robust, it should receive adequate logistical support.
3. All citizens must be made aware of the Shalish system. Local elites, UP Chairmen, and members nominated as informal justice. The government should arrange training programs for them.
4. The authority should require regular supervision.
5. Honesty and integrity must be increased among the jury board.
6. Electronic media should build awareness of the procedures among citizens. In addition, the government must be encouraged the NGOs to create awareness among all villagers.

## REFERENCES

- Alim, M. (2006). Shalish and the Role of BRAC's Federation: Improving the Poor's Access to Justice. *Shalish and the Role of Brac's Federation: Improving the Poor's Access to Justice*. Retrieved from: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=905745](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=905745)
- Alim, M. A. & Rafi, M. (2003). Shalish and Role of BRAC Federation. Dhaka: Research and Evaluation Division, BRAC.
- Asaduzzaman, S. M. (2019, April 11). Social justice for all. Dhaka Tribune, Retrieved from: <https://www.dhakatribune.com/opini>

- on/op-ed/2019/04/11/social-justice-for-all
- Aminuzzaman, S. M., (1991). *Introduction to Social Research*. Dhaka: Bangladesh Publishers.
- Aminuzzaman, S. M. (2000). *Baseline Survey for Capacity Building Interventions of Build Project*. Dhaka: CARE Bangladesh.
- Chirayath, L., Sage, C., & Woolcock, M. (2005). Customary law and policy reform: Engaging with the plurality of justice systems. World Bank. Retrieved from: [https://openknowledge.worldbank.org/bitstream/handle/10986/9075/WD R2006\\_0006.pdf?sequence=1](https://openknowledge.worldbank.org/bitstream/handle/10986/9075/WD R2006_0006.pdf?sequence=1)
- Costantino, C. A., & Merchant, C. S. (1996). *Designing conflict management systems: A guide to creating productive and healthy organizations*. San Francisco: Jossey-Bass.
- Creswell, J.W. (2009). *Research Design: Qualitative, Quantitative and Mixed Method Approaches*. Thousand Oaks, CA: Sage.
- Depew, R. C. (1996). Popular justice and aboriginal communities: Some preliminary considerations. *The Journal of Legal Pluralism and Unofficial Law*, 28(36), 21-67.
- Folberg, J., & Taylor, A. (1986). *Mediation: A comprehensive guide to resolving conflicts without litigation*. San Francisco/Oxford: Jossey-Bass Publishers.
- French, C. (2014). Why Demographic Data Matters? Community Planning New Hampshire, Retrieved from: [https://extension.unh.edu/resources/files/Resource004765\\_Rep6784.pdf](https://extension.unh.edu/resources/files/Resource004765_Rep6784.pdf)
- Genn, H. (2008). ADR and civil justice: What's justice got to do with it. *Hamlyn Lectures*.
- Golub, S. (2003). Non-state justice systems in Bangladesh and the Philippines. *United Kingdom Department of International Development*. Retrieved from: <http://www.gsdrc.org/docs/open/ds34.pdf>
- Haque, T. (2002). *In Search of Justice: Women's Encounters with Alternative Dispute Resolution*. Dhaka: Asia Foundation.
- Hossain, S. M. B. (2012). Dispensing Justice Locally: A Study of Two Village Courts in Bangladesh. *Master in Public Policy and Governance Program, Department of General and Continuing Education, North South University, Bangladesh*.
- Huq, F. (1998). Towards a Local Justice System for the Poor. *Grameen Poverty Research*, 4(1).
- Islam, M. S. (2011). Efficiency and effectiveness of alternative dispute resolution schemes towards the promotion of access to justice in Bangladesh. *IIUC Studies*, 8, 95-112.
- Islam, M. (2012). *Institutionalization of Grassroots Level Alternative Dispute Resolution (ADR): Challenges and Prospects* (Doctoral dissertation, Dissertation Submitted for Masters in Public Policy and Governance, Department of General and Continuing Education, North South University).
- Islam, Z. (2015). *Strengthening State-led Rural Justice in Bangladesh: Views from the Bottom*. Dhaka: CCB Foundation.
- Jaiswal, H., & Mandloi, P. (2020). Mediation as a Form of Alternate Dispute Resolution and Its Advantages. *White and Black: The Law Journal*.
- Kamruzzaman, M. (2015). Dowry related violence against rural women in

- Bangladesh. *American Journal of Psychology and Cognitive Science*, 1(4), 112-116.
- Khadiagala, L. (2001). The failure of popular justice in Uganda: Local councils and women's property rights. *Development and change*, 32(1), 55-76.
- Khair, S., Casper, K. L., Chen, J., Ingram, D., & Jahan, R. (2002). *Access to justice: Best practices under the democracy partnership*. Dhaka: The Asia Foundation.
- Masum, M. S., & Ara, M. Y. (2017). SHALISH an Effective Means of Justice for Disadvantaged in Bangladesh: A Case Study. *International Journal of Business and Technopreneurship Volume*, 7(1), 69-76.
- Mohiuddin, K. M., (1999). Grameen Shalish e Daridro Janoganer Ongshograham: NGO-r Vumika Parjalochana (Participation of Poor People in Village Shalish: A Review of Role of NGO), Somaj Nirikhsan, Somaj Nirikhsan Kendro, DU.
- Nasreen, B. (2003). Bangladesh/Bangladesh the present situation, problems and solutions in the legal system related to corruption control. *Revue internationale de droit penal*, 74(1), 469-478.
- Panday, P. K., & Mollah, A. H. (2011). The judicial system of Bangladesh: an overview from historical viewpoint. *International Journal of Law and Management*, 53(1), 6-31.
- Roberts, K. M. (2007). Mediating the evaluative-facilitative debate: Why both parties are wrong and a proposal for settlement. *Loyola University Chicago Law Journal*, 39(1), 187-213.
- Salem, P. (2009). The emergence of triage in family court services: the beginning of the end for mandatory mediation?. *Family court review*, 47(3), 371-388.
- Scottish Legal Aid Board (2014). International Literature Review of Alternative Dispute Resolution (Making Justice Work Programme). <https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwin5drbwoDxAhVJZt4KHeeDCtYQFnoECACQAA&url=https%3A%2F%2Fwww.slab.org.uk%2F%3Fdownload%3Dfile%26file%3D1436&usg=AOvVaw3AuGq5btaWZhb2OhRG4PI9>
- Sikder, P. (2016, 05 April). Village courts: A dilemma within. *The Daily Star*, Retrieved from: <https://www.thedailystar.net/law-our-rights/village-courts-dilemma-within-1204333>
- Siddiqi, D. M. (2003). Paving the way to justice: The experience of Nagorik Uddyog, Bangladesh. *One World Action*, 1-28.
- Siddiqui, K. (1998). In quest of justice at the grassroots. *Journal of Asiatic Society of Bangladesh*, 43(1).
- Singer, L. R. (2018). *Settling disputes: Conflict resolution in business, families, and the legal system*. Routledge.
- Touval, S., & Zartman, I. W. (1985). *International mediation in theory and practice*. Boulder, CO: Westview Press.
- UNDP. (2015). Access to Justice in Bangladesh Situation Analysis Summary Report 2015.
- United Nations. (2011). Resource Guide on Strengthening Judicial Integrity and Capacity. New York: United Nations Office on Drugs and Crime.
- Wardak, A. (2002, July). Structures of Authority and Establishing the Rule of Law in Post War Afghanistan. In *Conference on establishing the*

*rule of law and governance in post conflict societies.* Conference Organised by Harvard University, the United Nations Association - USA, and Koç University, Istanbul, July 11 - 14.

Woodhouse, A. (2004). *Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance.* Jakarta: World Bank Office.

Yin, R. K. (2009). Case study research: Design and methods 4th edition. In *United States: Library of Congress Cataloguing-in-Publication Data.*