

**Understanding Alternative Dispute  
Resolution for the Rural Women in  
Bangladesh: Some Illustrations from  
BRAC HRLS Programme**

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# Abstract

During the last decade, Alternative Disputes Resolution (ADR) gained enormous currency in rural development arena as an informal justice institution in Bangladesh and BRAC's HRLS Programme has contributed in the domain of ADR of Bangladesh significantly. This study explored the contribution of ADR of HRLS programme in ensuring social justice for the rural poor women in Bangladesh. Data were collected in two phases applying qualitative methods. First phase observed 26 trial sessions from the legal aid programme and in second phase 10 ADR cases were selected to interview regarding parties. ADR provided the functional alternative of traditional *shalish* to the rural poor women. The study observed the disputes of ADR were the demand of dower and maintenance, demand of dowry money and assets, regain of conjugal rights, and appeal for separation and divorce. But all the cases had common background in terms of physical torture, mental abuse, not to provide adequate food. The ADR process contributed in providing social protection to the women victims and kept social harmony in a short range. The process sometimes gets crippled for weak procedure, alleged as women-biased, lack of skills and resources. Most of the Programme organizers (POs) had no legal background, upgrade knowledge and skills as they often had to apply their common sense and defector experiences in conducting the sessions. In conclusion, it can be said that the whole ADR process has contributed a lot in providing social justice to the women. HRLS programme can initiate publicity through billboard, miking, TV and radio commercial, cinema hall advertisement for ADR, which may enhance participation and level of awareness and ensure access to information on ADR services. HRLS programme also may consider some initiatives to reduce insecurity and vulnerability of the clients during and post ADR period.

# Introduction

There is no 'clash of civilizations' on women's rights and gender issues between the 'neo-conservatives' and religious conservatives (Sen 2005).

The defenseless life of poor women of Bangladesh, often get crucified by severe intra-household and social discrimination and disparity in terms of dissolution of marriage through *Talaq*<sup>1</sup>, restitution of conjugal rights, various forms of domestic violence, dower, maintenance, recovery of small loans, minor criminal matters, and many more that remain unnoticed and not addressed. (Hossain *et al.* 2007). Without ensuring their primary access to justice to address this oppression, the development of women in Bangladesh is almost impossible.

But as the accessibility and complexity of formal legal services are embedded in slow, costly and long-term procedure, aggrieved women become not interested to go to court for seeking justice. This limitation has opened the scope for informal justice system, *shalish* to address some cases out of the court.

But *shalish* hardly provides a guarantee to legal equality, equity and rights to women. In this context several Non Government Organizations such as BRAC, Ain O *Salish* Kendra (ASK), Bangladesh National Women Lawyers' Association (BNWLA), Madaripur Legal Aid Association (MLAA), Banchte Sheka<sup>2</sup> began to provide legal aid services to the community people, especially women.

BRAC introduced Human Rights and Legal Services (HRLS) in 1998, which was basically a continuation of the paralegal programme of 1986 with a restructure. In 2002, this programme was incorporated into Challenging the Frontiers of Poverty Reduction (CFPR) programme. HRLS programme has three main components: 1) Providing legal and human rights education to the rural poor particularly women; 2) Providing alternative dispute resolution (ADR) through legal aid clinic (LAC) and court oriented legal aid; and 3) creating and activating social catalysts drawn from among the village elites (ibid. 2007).

BRAC's legal aid clinic received about 20,516 complaints (including the pending ones) at its area office of which 7,540 complaints were resolved through ADR mechanism. About 1,901 cases were sent to the court for justice, and 832 cases received judgment in favour of the plaintiff (CFPR-TUP Progress Report 2006). Moreover, a study explored the socio-political reason for the rise in popularity of ADR generally, and mediation specifically, for domestic complaints (Susan 2006). Moreover, a recent review focused on some difficulties such as inadequacy of women's voice, lack of satisfaction of the parties, controversial role of local elites,

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<sup>1</sup> Divorce under *Shariah* Law

<sup>2</sup> An NGO of Bangladesh provides ADR services

and recommended to clarify the role of BRAC staff in terms of either facilitation or arbitration (Hossain *et al.* 2007). This review also revealed some strengths of ADR like ability to resolve the complaints and enabled poor litigants to obtain a measure of financial relief. From these reviews, a qualitative understanding of ADR can bring some new and additional dimensions to know how this programme contributes to achieve social justice for the poor rural women of Bangladesh.

### **Concepts and institutionalization of ADR**

The term 'alternative dispute resolution' or ADR is often used to describe a wide variety of dispute resolutions that are sort of or alternative to full-scale court process (ADR Practitioner Guide 1998). The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look very much like a court room process.

Negotiation systems create a structure where both parties negotiate directly with each other without the intervention of third party. Whereas mediation and arbitration systems are similar in that they interject a third party between the disputants, but they do not have the authority to settle a dispute. Moreover, arbitration systems authorize a third party to decide how a dispute should be resolved. Another most popular format of ADR is mediation-arbitration (Med-Arb) particularly an example of multi-step ADR, where parties agree to mediate their dispute with the understanding that any issue not settled by mediation will be resolved by arbitration, using the same individual to act as both mediator and arbitrator.

By nature, ADR has two basic forms: binding and non-binding. Among the systems negotiation, mediation, co-mediation, and conciliation programmes are non-binding, and depend on initiatives of parties to reach a voluntary agreement. But arbitration programme may be either binding or non-binding. Most often, binding arbitration produces a third party decision that the disputants must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the party may reject. In mandatory process, parties must have contractual agreements. But in voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.

Moreover, ADR is practice by different organizations throughout the world developing their own standard. National ADR Advisory Council (1997) uses its own definition and category of ADR in practice. The most common and widely accepted categories of ADR are: facilitative ADR process, advisory ADR process, and determinative ADR process. Facilitative process involves a third party providing assistance in management of the process of dispute resolution. Generally, the third party has no advisory and determinative role on the content of the disputes or the outcomes of its resolution. This category of ADR includes the processes of mediation, conciliation and facilitation (NADRAC 1997). Unlike facilitative process, advisory process involves a third party, who investigates the disputes and provides advice as to the facts of the dispute and in some cases advice on possible,

probable, and desirable outcomes and the means whereby these may be achieved. This category includes the processes of investigation, expert appraisal, case appraisal, case presentation, minitrial, and dispute counseling. However, determinative process involves a third party investigating the dispute (which may include the hearing of formal evidence from the parties) and making a determination, which is potentially enforceable, as to its resolution. This category of ADR includes the process of adjudication, arbitration, and expert determination, private judging, fact finding and early neutral evaluation. The process of ADR is highly associated with some terms like ADR practitioner, ADR service provider, party, ADR community and fact finding. ADR practitioner usually is an individual resolves disputes using ADR tools. ADR service provider is usually an organization, which provides or refers the services of ADR practitioners to the public. In this study the Programme Organizers (PO, Legal Aid) and in some cases Staff Lawyers (SL, HRLS) are considered as ADR practitioners and BRAC as ADR service provider. Several terms can be used for those whose disputes are dealt with in ADR processes such as users, disputants, participants, parties and consumers. But in Bangladesh, *Badi* (Claimant) and *Bibadi* (Defender) are widely used terms in ADR process.

In this study ADR community refers to all those persons and entities who have an interest in ADR. This would include practitioners, service providers, parties and their advisers or representatives, governments, courts, ADR bodies, and professional associations. Fact finding is such a process by which a third party renders binding or advisory opinions regarding facts relevant to a dispute. The third party may be an expert on legal or technical questions, may be representatives designed by the parties to work together or may be appointed by the providers (ADR Practitioners' Guide 1998).

### **Institutionalization of ADR in Bangladesh**

We considered ADR as a modified and hybrid version of traditional informal justice institution like *shalish*. Primarily, institution refers in anthropology and sociology to 'an endurable status and role, sets of which collectively shape the behavior of a group of people' (Wallis 1985). Unlike formal institutions, they are not sanctioned or codified via legal recognition, legal enforcement, or official access to power/policymaking. It is clear that the set of un-codified social norms, moral values, cultural practices and beliefs, and informality exercised in the community is called informal institution.

Following the traditional disputes resolution techniques, the ADR movement in developed world was launched in the 1970s. It started as a social movement to resolve communitywide civil rights disputes through mediation; and as a legal movement to address increased delay and expanse in litigation arising from an over-crowded court system.

During the late 1990s, a shift from experiment to institutionalization of ADR influenced and inspired by the existing socio-legal and litigation practices and involved various agencies and countries in practicing ADR. Some developing

countries have imported the ADR models from the United States directly or hybrid the models bearing in mind the indigenous dispute resolution mechanism that they had. In developing world, a number of countries are engaging in ADR experiment, including Argentina, Bangladesh, Bolivia, Columbia, Ecuador, the Philippines, South Africa, Ukraine, and Uruguay (ADR practitioners' Guide 1998).

In Bangladesh, several NGOs like MLAA, BRAC, Gano Sahajjo Sangstha (GSS), and ASK started providing legal services to the community in the early 1990. In 1981, MLAA began the process to provide filing cases in courts on behalf of their clients: In 1988, it began to focus on mediation, as a means of addressing emergency needs of clients. During this period, BRAC introduced paralegal programme in 1986 and it was reshaped under the umbrella of Human Rights and Legal Education (HRLS) programme. USAID Bangladesh has enthusiastically embraced USAID Washington's 'reengineering goals' which revealed some strategic goals to increase participation in local decision-making and to ensure more equitable justice, especially for women. In response to the request for application of USAID Bangladesh, The Asia Foundation (AF) and BRAC jointly submitted an application and it was accepted. In August 1995, these three organizations jointly formed democracy partnership along with another two including MLAA to ensure social justice to the poor.

Consequently, the HRLS programme of BRAC emerged in 1998. BRAC established a partnership with ASK outreach legal aid unit (OUT) in 1998 to widen access to justice through ADR for the rural poor, especially for women replicating ASK's system of legal clinic in Dhaka (ASK Report 2004). Under the programme, BRAC was responsible for all logistics, management and programme activities such as increasing Human Rights (HR) awareness, mobilizing clients for legal aid, running legal aid clinics and assisting community members to participate effectively in ADR. ASK was responsible for providing training to BRAC legal, paralegal and management staffs on laws, court procedures, documentation, paralegal skills, and office management, including management of legal clinics. In 2005, ASK phased out from the districts under Dhaka division but continued its collaboration in Rajshahi division. Now MLAA, Bangladesh Legal Aid and Services Trust (BLAST) and Banchte Shekha are operating ADR programme designing their own models, which are mainly community-based. Despite some operational and structural differences with the above mentioned organizations, HRLS programme of BRAC is now practicing ADR through legal aid clinic all over the country.

### ***The BRAC model of ADR***

ADR is one of the main components of HRLS programme that has strong rapport with LAC (Sunday Clinic) as a service providing center. The clinic is supposed to be held in every Sunday, but it varies from area office to office, is the first entrance place of call for those seeking legal services. In a clinic day, the PO registers any complaints made to him in a register book maintained at the office and charged Tk.10 as token money for case file. On receipt of the complaint, the PO visits the spot, and (in criminal cases) conducts a fact finding exercise, talking to the complainant and the defender as well as their neighbours. In some cases, an



attempt may be made to settle the dispute at the village level without bringing it to ADR. If this initiative fails, then the Clinic will issue a notice through PO on behalf of the complainant on the defender, on failing to receive a response, it issues a second notice; finally if no response is received to that, it issues a legal notice through the Panel Lawyer (PL), and if no response or settlement is reached, then the matter proceeds to litigation through court.

The ADR usually takes places in the Clinic room at BRAC office, usually it is the PO's room. Normally notice for ADR is served by the PO following the lodging of the complaint and the field verification. Both parties are required to be present along with any other persons they wish to attend on their behalf. The PO plays the role of moderator. The PO reads out the complaint in front of everyone and invites the defender to place his/her arguments. In course of deliberations, the participants present their accounts and arguments. If there is any written document related to the dispute these are also presented by the PO to the ADR community. Usually Staff Lawyer (if present) assists the PO in recording complaints received from clients, and preparing notices and other documents to be submitted to Panel Lawyer and answering technical legal queries from any of the staff. While Staff Lawyer are not available, s/he is usually called to sit in on ADRs that are complicated. Normally ADR needs few trials (Sittings) to resolute the dispute and to bring result. According to BRAC tradition of ADR, it is reported that PO would follow up the cases after verdict until or unless the justice is to be ensured.

## **Broad objective**

### ***Main Research Question***

How does ADR of HRLS programme contribute in ensuring social justice for the rural poor women in Bangladesh?

### Specific objectives:

- Why do the victims go for ADR?
- Can the ADR process ensure the gender equality (access and participation in decision-making) and fairness through informal justice environment among the rural poor women?
- To what extent ADR ensure the satisfaction of both the parties?
- What are the criteria of a dispute settlement?
- How does ADR ensure services after the resolution in terms of achieving outcomes?
- Do the providers take into account the social norms and values (cultural acceptance) in conducting or to construct a decision from ADR?
- What differences claimants find between *shalish* and an ADR and why?

- What are the difficulties and the scope of finding a pro poor ADR for the rural women in existing system?
- Do they prefer community ADR?
- Do the performance of Programme Organizer/Staff Lawyer provide an assurance to reduce the vulnerability and feeling of insecurity of the women plaintiffs during and after trial?
- How does local power structure influence ADR process?

The above-mentioned research questions required qualitative method in understanding ADR for the rural poor women. The study was designed to operate in two phases. The main purpose of the first phase was to understand the process and effectiveness of ADR. The second phase looked at all the parties related to ADR to understand their level of satisfaction, participation and role to conduct an effective ADR (providers and customers, or ADR community) and longevity of the outcomes. Both the phases helped understand ADR process which is expected to show the effectiveness and difficulties, range of coverage, and the possible ways to enhance more coverage, and scope for the poor women of Bangladesh to ensure social justice.

# Methods

## Data collection technique

Data were collected in two phases applying qualitative methods such as 1) Documentation of ADR through process observation, 2) In-depth interview (IDI) with victims and perpetrator and key informant interview (KI) with stakeholders of the ADR parties, and 3) Informal group discussion with male and female members of the community. Four trained field researchers collected data from Badrganj, Taragang, Kaunia, Pirgacha *upazilas* of Rangpur district during 25 July to 10 September 2007. The areas were chosen on the basis of CFPR/TUP progress report 2006. The number of incidents and the amount claimed through ADR and court was high in Rangpur district than other districts. Rangpur has been selected due to number of incidences occurred was highest among the HRLS coverage.

## Sample size

Phase 1 comprised of trial observations of on going ADR (26) process drawn from the legal aid programme. Then in phase 2, ten ADR cases were selected to conduct the interviews with the concerned parties. The inclusion criteria followed the ADR, which was completed at least 6-12 months before. Phase two comprised of in-depth interview of the victims (10), perpetrators (11), kin/neighbours/peer group member/relative of the victims (15), key informants interview of local elites (10), programme organizer/staff lawyer (4), and informal discussion with community members (10). Thus, 60 interviews were conducted.

## Data processing, analysis and presentation

Following some standard of ADR practiced worldwide, this study generated some effectiveness-tools and produced checklist and issues for observation and interviews. The data were analyzed manually and presented in a narrative and descriptive manner using tables and matrix. Both observations, case studies and interviews generated narratives a mutual data preparation followed a sequence of analytical schema. Narrative data were collected in Bangla and translated into English. Data also were categorized thematically into tables and boxes applying coding and decoding process. Data processing was followed manually.

## Developing an analytical schema for the study

This study considered social justice as one of the major aims of ADR. But it is very difficult to define social justice because of its theoretical and philosophical dilemmas. The term 'social justice' was coined by Jesuit Luigi Taparelli in the 1840s based on the teachings of Thomas Aquinas (Novak 2000). Social justice refers to a concept of a society in which justice is achieved in every aspect of

society, rather than merely the administration of law. A study featured social justice as a political, often describes as movement for a just society and conceptually based on human rights and gender equality (Rawls 1971). Thus HRLS programme attempted to provide socio-legal protection through ADR as an informal institution to the rural women from all forms of gender-based discrimination at individual level to acquire social justice collectively in a greater extent. However, society or community level intervention through ADR may achieve goals of social justice protecting the most vulnerable people through individual dispute resolution. If we consider social justice as a social movement or a process to acquire justice, functionally it focuses on some interrelated phases like access to social justice, procedure to bring just result, and how the result brings impact on particular claimant, and implementation of the result that would be achieved.

Social justice may be linked with various approaches of development that may help generate critical viewpoint on an informal justice-seeking institution like ADR in achieving justice. These approaches illustrate various aspects to understand the discrimination and violence against women in an unjust society. Following the Beijing Platform for Action, empowerment approach was recognized as one of the most critical areas of concern in women in power and decision-making on the basis of equality in all spheres of society. One of the studies (Moser 1993) focused on the self-reliance and internal strength of women where as others (Young 1993; Karl 1995) emphasized on the radical alteration of the processes and structures, which reproduce a woman's subordinate position as a gender. Another study (Friedmann 1996, Alim 2004) showed that self-organization of the poor women preserving some dignity and gaining control over the means to social justice. In this study empowerment (social, economic and legal) was used to mention greater access to social justice, participation in decision-making procedure, the ability to challenge, and resist in case of facing unjust results.

On the other hand, rights based approaches emphasizes on non-discrimination vulnerability of women to development mention some distinguished rights of women like access to justice and social protection (Rights based approach 2000).

Capability approach having commitment to social justice and gender equality makes to see women not to as 'object' to be helped developed, but as a subject who can participate in culture, the economy and the society. Poor women are being victims of discrimination within the household and the community and their lives are integral to political subjectivity of society, or what we can call 'body politics' (Harcourt 2007). Capability approach underlines the possibility of enabling poor women to function as human beings, who are aware of rights. Therefore, they can be educated to change their family situation and communities, find support outside home through social mobilization. Under this approach, Basic internal and combined capabilities are required to ensure well-being rather than just help a victim of domestic violence and then leave her with no option but to return to the family and community where the problem originated.

All these approaches were considered in this study to understand ADR in providing social justice for the rural poor women. ADR of HRLS programme has some

supportive components such as human rights implementation committee (HRIC), legal issues, and clients' meeting, directly linked with empowerment approach. It has a weak association with rights-based and capability approaches. Because women cannot protest and mobilizes for their well-being.

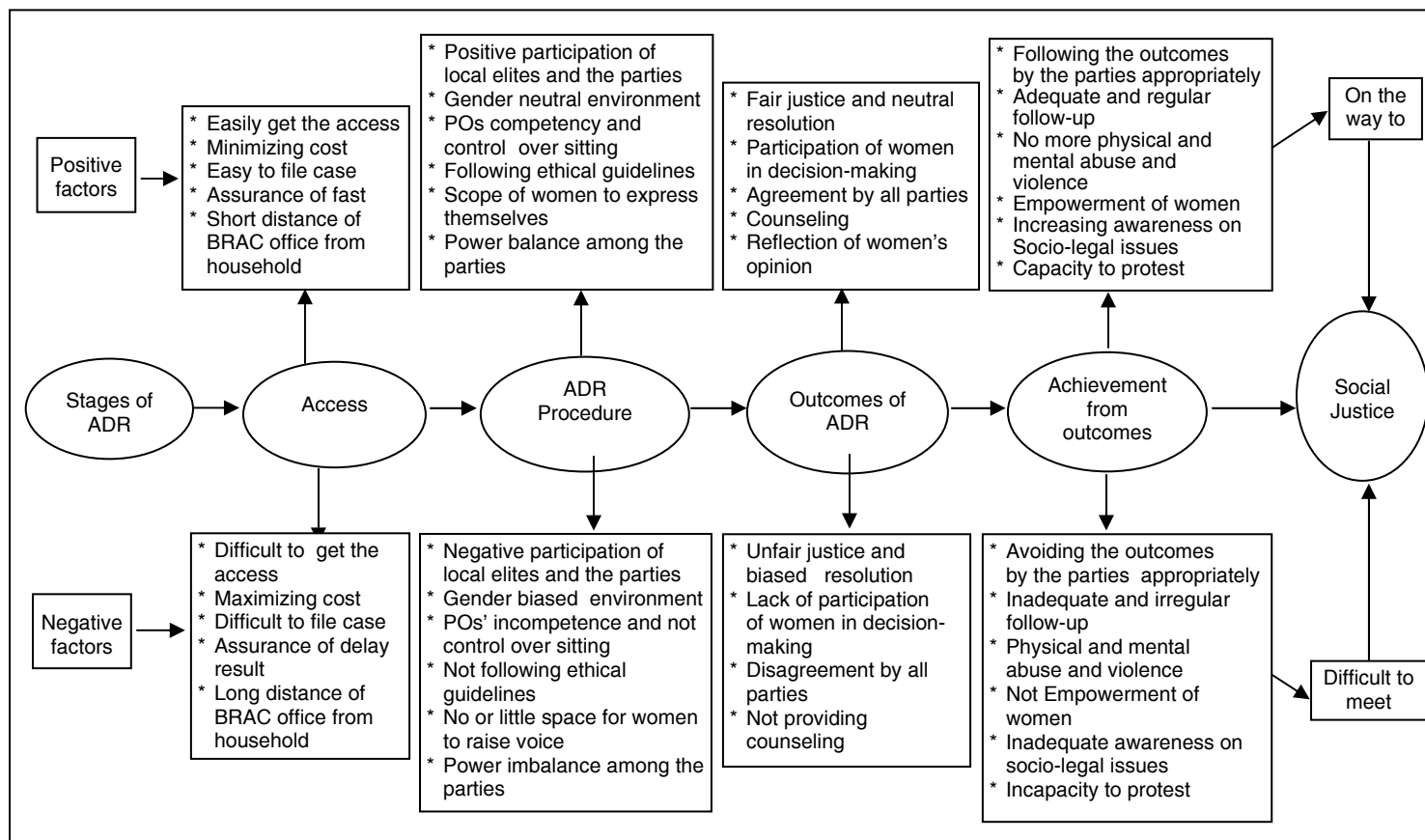
Analyzing the concept of social justice and various approaches of development related to discrimination against women, this study was initiated to generate an analytical schema to understand the contribution of ADR (Fig.1). This framework undertook various stages of ADR such as access, procedure, outcomes and achievement of outcomes in ensuring social justice. In each stages of ADR, this framework introduced some factors as unit of analysis to measure the contribution of ADR as a whole. Horizontally the factors of the upper portion indicated the positive factors of each stage that results some positive impact in seeking social justice and the lower portions indicated the reverse impact.

In access stage of ADR, the positive factors comprised of various aspects such as easiness, assurance to get justice, minimizing cost and quick result, and physical distance of BRAC area offices from the claimant's households. In contrast, the negative factors comprised the negative version of the positive elements.

In procedure stage of ADR, both the factors emphasized on the positive and active participation of local elites as well as the parties, gendered environment, PO's competency and control over sittings, ethical guidelines, women's scope to raise voice, issues on respect and visible or invisible power balance among the parties. The factors-were fairness and neutrality of the resolution, role of women in decision-making, participation of all parties to generate an agreement, and issues of counselling after bring the results are taken into account in outcome stage.

The final stage of ADR process identified some factors through which the results would be studied whether it brought any impact or not. Moreover, the factors comprised of such issues like follow the outcomes by the parties, follow-up system, incidence of physical and mental abuse and violence to women, status of socio-legal awareness of the victims, empowerment of women that they feel, and women's capacity to protest.

**Figure 1. Analytical schema of the study**



# Findings

The existing standard of ADR addressed in this study mainly concentrated on four issues: access, process, acceptable outcomes, and achievement from outcomes. The session (trial) observations have provided all the information on procedural issues. However, the in-depth interview findings as well as parties' view would provide anecdotal understanding of achievement from the outcomes, and its sustainability to ensure social justice for the poor women.

## Access to ADR

Twenty-four ADR sessions (trial) were observed and all of the claimants/victims were married women. In all of the cases the perpetrators were the husbands of the victims. According to the settings observed, most of the disputes filed in legal aid clinic were demand of dower and maintenance, demand of dowry money and assets, physical violence, fraud, regain of conjugal rights, and appeal for separation and divorce. Most of the reported disputes had some common background-- physical tortures such as scold, beat by hand and beat by stick, kick, and some other psychological and mental abuse such as quarrel, not to provide adequate food, rude attitude and behaviour, rigorous work load and verbal abuse. In most cases, family disputes focused that mothers-in-law; fathers-in-law, sisters and brothers-in-law insisted the perpetrators to commit more incidence. In most cases, expectation of dowry and assurance, commitment and failure to pay dowry was seemed to be prior cause in occurring the incidences. There were some other factors that could be considered as root causes of the disputes such as remarriage without permission of previous wives, hide the incidents of previous marriage, early marriage, extra-marital relationship, drug addiction of the husbands, suspicion, unemployment and greediness of money from in laws-house. Some of the victims had previous experiences to face local *shalish*, which did not bring any fruitful results for her, in some cases they became victimized by the local *shalishkars* and *dewanis*<sup>3</sup>. Most of the victims had no idea about ADR before attending the sittings. In most cases, the victims noticed that they became informed about ADR by their neighbours, VO members, *Shebikas*, NGO activists while they were searching a scope to seek justice.

The findings revealed that the goodwill of BRAC assured the poor rural women that they would not be victimized any more and could protect them from all kinds of unjust activities.

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<sup>3</sup> *Shalishkar*, the person who resolute the traditional *shalish* and *Dewani*, the term used in Rangpur district, is one of the leaders of traditional village *shalish*, usually support a party and try to influence the decision.

## **The starting process of ADR**

The POs, who usually performed as ADR practitioners, filed the case after considering the merit of disputes and following guidelines whether it would be appropriate for ADR or not. They issued notices to the defenders. Most often, as observed in the ADR sessions, the defenders responded after receiving one to five notices.

### ***Triggering the ADR session***

The POs usually followed and practiced binding arbitration and mediation-arbitration (med-arb) process of ADR. Most often female victims and her associates had to wait for long time (1-6 hours) at BRAC office before the ADR session starts. The defenders and their associates were reluctant to follow the scheduled time. In this lean period, the victims had to suffer a lot without having a breakfast or lunch but they obliged it. It is evident that both the parties had to face some difficulties to participate in ADR session at their working days. Moreover, the victims had to manage some villagers as witness providing their transportation cost, which seemed to create economic burden on the parties. In some cases, the victims had to pay for their lunch. In some cases, the defenders were found to be absent in the ADR sessions that generated tremendous vulnerability and frustration among the victims. Firstly, the POs invited both the parties to sit for trials and at the beginning of the trial s/he described the procedure and goals of the ADR process. Observation revealed that the POs followed introductory courtesy without describing the process properly, which seemed to produce inadequate and ambiguous knowledge about ADR process among the parties. Firstly, the POs gave floor to the victims to place their disputes verbally. Then the POs gave floor to defenders, local elites and relatives or neighbours of both parties.

Most often the POs allocated maximum time for victims to present their facts clearly to raise their voice and intentionally prioritized what the victims really expected from the ADR session. In some cases, the defenders as well as their relatives noticed that the POs did not allow them to speak more about the fact. Few local elites and proto elites also considered ADR as predominantly women biased. Usually how many sessions and days would be required in resolution varied on the complexity and pattern of disputes and nature of power imbalance between the parties. Usually a dispute essentially required one to five sessions (trials) to bring any kind of results or to be terminated. In some cases, Staff lawyer was present in the sessions and made control over that. Without this exception, most often, the POs made control, and led the sessions and had an intention to mutually convince the victims to lead conjugal life with husband. It is even observed that to revive conjugal life, staff lawyer also advised the victims to follow the commands of their husbands at any cost, for example, 'wife could have prepare food for her husband in time so that husband would be happy' (Case: Sakina vs Rumel, Dower & maintenance, Taraganj, Box: 1). In this regard some dialogues could be meaningful to internalize the nature of imposition held in ADR by POs.



### **Box 1. Decision provided by PO**

*Victim: I thought many times and I am not interested to live with my husband. I wanted to get back my dower.*

*PO: You could run your conjugal life no longer by receiving your dower. We wanted to see you happy in conjugal life that would be good solution for your life.*

*Victim: He did not have any property where we could live. 'Did we live under the big tree that even hardly found in village?'*

*PO: He had no ability to manage your dower. On the other hand, your husband could realize his faults and requested you to go back that would be better for both of you and your child.*

*(Case: Sakina vs Rumel Dower & maintenance ).*

In most cases dowry was considered as usual social phenomenon and was not characterized as offence in dispute resolution. In one case, victim's father had to pay rest of dowry money, which he promised earlier as precondition of resolute the dispute in ADR.

The incidence of physical torture was the most common phenomena behind the most disputes conjugal life which was not addressed and documented clearly. Though the disputants felt free in ADR sessions most of the sessions were driven following the patriarchal norms partially. But, the victims had the opportunity to play significant role in making decision as they intended. In few cases, gender and class/social status-based discrimination was found. Usually the victims were not willing to show the evidence of physical torture or injuries to the male POs. Therefore, it became very difficult for male POs to understand the intensity of physical torture and its psychological impact on victims, which was beyond their experiences and imagination.

### **Quarrels and verbal abuses during sittings**

It was observed that both the parties became furious expressing their arguments with abusive language, which created embarrassing situation among others who attended. In such situation, the POs took few initiatives tackling the situation to desist both parties in such type of aggressive attitude but s/he could stop it rarely. Some scenario has been illustrated here (Box: 2).

### **Box 2. The use of abusive words during sittings**

*Husband: Tor moto koto magi asay, 300 taka dele ganer magir shathe rat katano jai.(Rafiquel vs Khadija, Pirgacha).*

*Wife: Tui ekta beshar shathe ghumao, amar dorkar ki. Husband: khanki magir chawal, ami morbo, fasi hobe kintu tor shathe ghar korbo na. (Lili vs Bakul, Pirganj)*

*Daughter: Uni (father) ke sudu magi baji kora shikche (Kalam vs Sultana, Mithapukur)*

### ***The dealings and dilemma with elites***

Most often the local elites were cooperative during ADR sessions, but those who were more powerful socially and politically often attempted to play influential and hegemonic roles and created some complexity during ADR. In some cases proto-elites discovered themselves less empowered and had less opportunity to play influential role which they usually did in local *shalish*. Often local elites used to encourage the victims to pay dowry for reviving their conjugal life. 'Otherwise the bride/girl would not lead conjugal life and dowry would be considered as prime means of happiness in conjugal life.' (Case: Dower and maintenance, Bhulbanu vs Alamgir, Nazirhat). The role of the elites observed as suggestive rather than dominating while the sessions were conducting and an elite commented, 'You have passed enough time in acting drama in your conjugal life, forgetting everything and put concentration in generating income' (Sakena vs Rumel, Taraganj).

### ***Using the existing resources effectively***

It has been observed that the POs as ADR practitioners effectively used all kinds of material resources (papers, files, pens and other necessary documents) received from legal aid programme and ensured their optimum use. Besides, the POs were seemed to be keen involving staff lawyer, other BRAC workers, VO members, as well as HRLS *Shebikas*. In most cases, the POs were found to be effective in involving VO members and *Shebikas* in fact finding. Moreover, they tried a lot to engage local elites and proto-elites to receive maximum output for ADR. It was observed as reality that the POs had to work managing huge workload. Lack of adequate human resources for ADR caused some difficulties to follow the schedule. In some cases, the POs had to communicate with the parties directly, which required financial support for transport and cell phone cost. However, usually staff lawyer had to provide services in two districts, therefore the POs received inadequate and irregular advice from staff lawyer.

Moreover, all of the POs interviewed mentioned the requirement of adequate training on ADR for their capacity building.

### **Examining the standard of ADR sessions**

#### ***Fairness***

Most of the sessions provided equal opportunity to the parties. Victims usually expected fairness from ADR practitioners which they received. In some cases, the perpetrators expressed that they did not receive equal opportunity.

#### ***Participation of parties***

In general, participation of parties especially victims was found to be spontaneous and willing in ADR. Besides, the perpetrators were bound to participate as they considered the notices had to have some legal bindings. But they were reluctant to

maintain the scheduled of sessions. Both the parties had the intention to manage and hire more people to speak in their favour as they would enhance their strength in the sessions. In some cases, the local elites and the community leaders considered the participation as part of their social responsibility and the distinct nature of an active member of the particular community.

### ***Selection criterion of an appropriate case***

Most often the POs selected the cases such as family and land disputes following the selection criteria without involvement of any criminal matters. Besides this guideline, the POs also considered the merit of a particular dispute and analyzed the possibility of generating an outcome, which would not victimize any parties. Exception was found in this study where the victim was severely injured by her husband and this case might not be considered for solution through ADR.

### ***Practitioner's competence***

A 15-days training on HRLS did not make POs competent to execute ADR session. Basically such trainings provided partial practical knowledge where incorporates few mock trials in the learning procedure. Most of the POs had no legal background, upgrade knowledge and skills; most often they had to apply their common sense and defector experiences in conducting the sessions. POs were seemed to be effective in playing role when tension grew between the parties. It has been seemed that they became incapable to manage odd situations where the tremendous power imbalance was found between the parties. Staff lawyer mentioned that some legal aid POs were not efficient to conduct an ADR and required extensive assistance from staff lawyer. In a sessions it was clear that the POs seemed as not capable enough and had showed his bias to perpetrator, which might be considered as un-ethical and supposed to be cause a penalty. In that specific case, staff lawyer took over the leadership of the case and tried to follow the ethical guideline of conduction trial to ensure justice for the victim women.

### ***Advertising and publicity***

As the manual mentioned a practitioner must not engage in misleading or deceptive publicity or advertising. Generally, the POs as arbitrator or mediator were not observed to perform this kind of activities. But when they were outside of the offices, they committed some publicity inviting poor women to seek justice at BRAC. But most of the parties mentioned that BRAC's legal aid programme required massive publicity, so that more victims would be informed and find alternative opportunities in seeking justice. The VO members, HRLS *Shebok/Shebikas*, and HRIC members except POs may play significant role as active participants of integrated publicity and advertising strategies.

### ***Confidentiality***

Following the provisions, any information received by the practitioners in the course of mediation/arbitration shall be kept confidential and should not be

discussed within ADR centres. It has been observed that most often the documents were kept confidential at BRAC offices. But, still some of the victims claimed that no confidentiality kept in course of mediation.

### ***Communication issues and introductory norms***

It was observed in most of the ADR sessions that the POs described the procedures in short, but not mentioned the legal aspects; in some cases they did not follow the introductory traditions including introducing each other, describing the procedure and how the decision would be made, etc. In some cases, the PO's failed to overcome the communication gap between educated and non-educated participants, which often produced ambiguous interpretation.

### ***Conduct during proceedings***

The POs showed dignity and formality while sessions were conducting. The perpetrators were observed to violate ADR norms and lose temperament through shouting and attempted to threaten the victims in alternative. In some cases both the parties began to quarrel. Often few POs were observed to show anger and lost temperament and became even rude.

### ***Neutrality and impartiality***

Provision of the ADR perceived that practitioners should not disclose anything before and during sessions which might cause a conflict between two parties of interest. Few cases revealed that POs were not committed to reach a mutual satisfactory agreement by favoring a party.

### ***Termination***

If the POs find difficulties in handling a case and to bring any fruitful result in favour of victim or no scope to ensure justice or the case is of severe criminal offenses then the PO terminates the case from ADR or refers to the court.

### ***Settlement***

Observing all the ADR sessions, it was found that while the parties reached a consensus both the parties agreed to maintain arguments properly. The settlement agreements were documented properly. Moreover, the POs were observed to keep minutes of the proceedings and maintained the files properly and they had adequate efficiency to write settlement agreements.

### ***Professional responsibilities***

Provision of the ADR depicted that practitioner do not criticize colleagues/co-mediator in front of parties. But in one case, it was observed that staff lawyer criticized POs incompetences while the session was conducting.

### ***Feeling of insecurity during sessions***

Victims often felt insecure during series of ADR sessions. During sessions if they had to stay at their in-law's house, the perpetrators enhanced the intensity both physical and mental torture as because of her claim in ADR. In some other cases, when the victims had to stay at parents' residence or relatives' residence also had to face tremendous threat and pressure from her in-law's side. Moreover, when the disputes had an intension to resolute and a hope to continue the conjugal life, the victims often became afraid of thinking what would happen if they had to return to their in-law's residence again.

### ***Clients' satisfaction on sessions***

Most often the victims were satisfied with the proceedings and outcomes even if verdict was not implemented properly. But usually the perpetrators were not satisfied as they were less prioritized. The local elites were not seemed to be satisfied as they did not receive proper attention what they were supposed to deceive society. Some of the elites criticized ADR and raised questions on BRACs' legitimacy to organize ADR.

### ***Reliability and statutory issues***

Most of the victims considered ADR as reliable and legally valid although they had no clearer conceptions on the issues. In some cases, the perpetrators had no knowledge on it and raised questions on its statutory/legal issues.

### ***Gender dimension of ADR***

This section incorporated some gender tools as lens to understand gender related issues of ADR alternative sessions.

### ***Gender sensitivity***

Most of the POs were found gender sensitive with few exceptions. Most often, the perpetrators and the relatives intentionally mentioned some negative aspects of victims' character and use abusive comments towards their parents. Considering the victims as vulnerable and marginal often the POs were found to deliver some gender-biased words. It was observed that the POs forced women to play typical gender roles while the question of revive the conjugal life arised.

Most often the victims felt comfortable, safer and congenial at BRAC offices and faced fewer obstacles from elites' side.

### ***Participation of women in decision-making***

In reality the victims had the opportunity to speak more than any other in a session and received maximum priority from the ADR practitioners. But very few victims could use the opportunity to speak. Moreover, women had the opportunity to

participate in decision-making because the POs most often asked them about their desire to resolve the cases and in every stages it has been followed strictly.

### ***Women empowerment***

Victims' marginality within the households increased if they have to return to their in-law's residence after the ADR sessions. The victims were found to seat in chairs with local elites and the perpetrators along with POs avoiding the existing social tradition, which might be considered as a symbol of empowerment that they never found before. Moreover, their opportunity in raising voice and their participation in decision-making would be considered as process of empowerment.

### ***No or very few female POs***

Is it possible for the male POs to understand the sufferings of women? During the sessions the women felt ashamed to share some of their experiences with male POs.

### **ADR in practice: experiences of ADR community**

This section deals with the experiences and opinions of the parties based on interviews essentially associated with ADR process and its contribution in achieving ADR goals. However, this portion extensively followed 10 ADR cases that had already brought results 6 to 12 months before the fieldwork started.

### ***The experiences of victims<sup>4</sup>***

All the interviewed victims were married women and mostly housewives. Following the cases, the victims stated various aspects of ADR, particularly their expectations, results, follow-up and achievement of the outcomes in terms of lasting. Half of the total victims (5) interviewed reported the incidence of physical torture as dispute and rest of them mentioned dower and maintenance. All of the cases required a range of two to four notices and five sessions.

Dower and maintenance-related cases consisted of repeated physical and mental torture faced by victims. Therefore, the victims had a very common expectation from the ADR to stop violence against them, though it was not the prior claim earlier. Some of them (4) considered ADR outcomes satisfactory as they expected earlier and fully represented their opinion as well as fulfilled their expectation. In most cases, it was expected from verdict that physical tortures would be stopped, but it had never been stopped any more after the verdict.

In few cases, the necessities of settlements required fulfillment of some under-hand unexpected prerequisites such as to provide van and cows to husbands of the victims. In some cases the victims (4) found no gap between their expectations and results in ADR, rest of the cases showed that some transformation had been

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<sup>4</sup> This section is referring the Table 1 of page 20.

occurred in bringing verdict making result whereas victim's opinions were not followed properly. In two cases, the POs motivated victims to change their decisions in favor of their husbands. In one of the cases, the PO identified victim as defaulter who did not agree with the verdict.

The most commonly mentioned weakness of ADR was its follow-up system and victims received follow-up not more than five times in lieu of thirty-six times in six months. Two of the victims did not receive any follow-up. Moreover, among the 10 interviewed, one victim mentioned that she did not suffer from any kind of insecurity during and post ADR period. When the victims accessed the ADR their in-law's family considered it as violation of family values and disclosure of family affairs, and gave extreme threats to victims and her parents and the same thing happened after ADR period.

After six to twelve months of receiving verdict, one of the 10 victims was completely satisfied in terms of following and achieving ADR verdict, whereas five of the 10 victims interviewed were partially satisfied. One victim did not agree with the verdict because she did not prefer separation. Rest of them claimed that verdict was not being performed well and they felt insecure until they were being interviewed. Four victims were unsatisfied in achieving the verdict. In most of the cases, when victims expected separation were ignored by the session. In contrast, perpetrators received the opportunity as they wished. The underlying Table 1 may represent the most common trends of victim's perception regarding expectations, outcome level of satisfactions referring the interviews.

After the dispute settled, a victim (Marufa) wanted to return to her in-law's residence to lead a good conjugal life. But after seven months of verdict Marufa discovered her as vulnerable and oppressed as she was before ADR period (Box-3).

In most cases, women faced homogenous experience when they came to BRAC's legal aid clinics to seek justice, and the questions were being raised- why they go outside to seek justice. In some cases, the victims followed some coping strategies to protect her from all sorts of threats and pressures (Box-3.b).

In some instances when the POs came to follow-up the cases after a long break. They did not receive proper information on the actual situation (Box-3.c). Most of the women victims seemed to be concerned about the necessity of follow-up (Box-3.d).

In some cases, when the perpetrators seemed that the PO was reluctant about follow-up, then they started to misbehave torture and demand dowry again. Some of the victims also mentioned that they had no adequate conception on justice and who would monitor whether the verdicts being achieved or not (Box-3.e).

### **Box 3. Victim's views**

- a) *"My brother-in-law and chairman often threatened me mentioning what would BRAC do?" (Marufa Begam, Victim, 26 years). "Perpetrator and his father challenged the PO, Whatever you could decide, you would not be able to bind us to follow your decision. ( Momena, victim, 18 years)".*
- b) *"We have received tremendous threat from the perpetrator. However he has defies us while we went to attend BRAC shalish. Therefore, we had to move with our uncles for participating in the trials regularly to confirm our security (Momena, victim, 18 years).*
- c) *"When the PO came to visit our residence for follow up, usually I could not speak up any real thing In front of my husband. Thereafter, he began to threat and tortures me after the PO has gone. If BRAC would provide some strong follow up, I would not be victimized further regularly (Omena, victim, 18 years)".*
- d) *"Empowerment for few minutes sounds good, but it results nothing in real life. Without strong follow-up system, shalish would not be able to ensure real justice (Sakhina Begum, victim, 42 years)"*
- e) *Despite of taking oath to maintain the decision, my father-in-law still now is demanding dowry money and creating pressure on my poor father unofficially. How can I protect myself from the situation and what is the way I can sustain here more? ( Rozina, victim, 18 years).*

### **The experiences of perpetrators**

Some of the perpetrators claimed that they did not even receive proper attention in sessions what was mention to be women-biased (Box-4.a). Some of the perpetrators revealed that there was propensity of POs seemed to draw less attention in fact-finding and favouring the claimants through argument (Box-4.b). Consequently, they raised questions on effectiveness of the decisions that would not take in a proper way without measuring whether it would be fruitful or not (Box-4.c). Some of the perpetrators mentioned that long distance and financial crisis were the main constraints to attend in ADR (Box-4.d).



**Table 1. What claimants/victims achieve from ADR?**

Nature of disputes	Notices required	Sittings required to solve	Expectations of victims	Results brought	Transformation	Follow up received	Level of insecurity	Level of satisfaction
Physical torture for demand	2	1	To get maintenance and to stop verbal and physical abuse	As per expectations of victim	No	3 times in scheduled 6 months	During and after ADR	Satisfied on decision taken but not on its' implication
Dower and maintenance	4	2	To get maintenance and to stop verbal and physical abuse	As per expectations of victim	No	3 times	During ADR, threat for kidnapping	Satisfied on whole process
Physical torture for dowry	2	1	To stop further pressure for dowry, physical torture and use abusive words	As per expectations of victim	No	2 times	During ADR, relatives produced threat	Not satisfied because her family had broken
Physical torture	4	5	Back the money and to stop beating and want punishment	Only money has been backed PO told her father to give a Van to her husband (Hidden)	PO considered her defaulter	No follow up received	Still she felt in secured because her father could not afford to provide van	Not satisfied with verdict
Dower and maintenance	1	4	To stop beating and use of abusive words and to get maintenance	As per expectations of victim officially	Before taking decision, PO proposed her to go back in- laws house	2 times	Still she received tremendous threat from her in laws side	Satisfied having back to her family but not completely for achieve partial outcomes
Dower and maintenance	2	3	Dower and maintenance for child and herself	Break of relation, perpetrator was suppose to provide 100 Tk. per month for child	No	3 times	During ADR	Satisfied but now facing problems in receiving maintenance of child
Physical torture	3	3	To stop physical torture and ensure maintenance of children	As per expectations of victim	No	One of BRAC staff rented house near her, No formal follow up	Pre and during ADR period	Satisfied

(Table 1. continued...)

(Table 1. ... continued)

Dower and maintenance	2	4	To get dower and maintain the conjugal life	Separation and dower ensured	Perpetrator decided to separate	1 times	No	Satisfied now though she did not want separation earlier
Maintenance	3	2	To get maintenance and to stop physical torture	Received maintenance cost only	PO decided that victim's father would provide a van to her husband	4 times	Pre, during and post ADR period	Not satisfied at all, PO did not value her opinion
Physical torture	3	1	To ensure separation receiving dower and maintenance cost of three months	Victim went back to her husband's residence	Firstly husband decided to ensure dower, but finally he felt urge to reconstitute conjugal relation	1 times	Pre, during and post ADR period	Satisfied with decision but decisions were not achieved at all due to absence of follow up

#### Box 4. Perpetrator's views

- a) *I was not supposed to come in ADR willingly unless BRAC forced me to response. Verdicts that had taken did not represent my opinion. Definitely I harassed my wife but BRAC shalish did not consider some other aspects of real fact. (Tohiruddin, 56 years)*
- b) *"PO always prioritized victims and most often did not put any insight to the fact behind the fact. Why did I commit such kind of incidence? A session never took in as accounts to reach in a decision" (Aminul Islam, 26 years and Jahirul Islam, 26 years).*
- c) *"It has been decided that in-laws will provide a van within six months. Neither BRAC nor the in-laws followed their commitment. Moreover, BRAC had no strategies to implement the verdict" (Atiar Rahman Gendu, 25 years).*
- d) *"BRAC may open couple of shalish centres (community based) to provide legal aid services to the rural women. It would be convenient if they find a clinic near their residence that might enhance their participation, access and by this way empowered them as a Shalish centre would protect her". (Noor Ali, 30 years).*
- e) *"I prefer community-based ADR, what would be easily communicable and takes less time to access in session. Other wise, it smashes out long hours from our working schedule." (Tohiruddin, 56 years). "BRAC's shalish is quite better because we could not have to convince dewani (Shalisker) offering them at least two hundred taka before each session in village shalish". (Goffar, 43 years).*

Few perpetrators were able to make a sharper distinction between the advantages of ADR and local *shalish* (Box-4.e).

#### Elite perceptions of ADR

Six of the 10 rural elites had strong association with traditional village *shalish* and one of them had no such experience like others. Among the rural elites, majority were related with local business and agriculture, two were UP Chairmen, one of them was president of the local fish selling committee, one was a small woman entrepreneur, and one was retired government officer who was performing as local *shalishkar*. At least two of them had strong political affiliation with mainstream political parties.

Data revealed that a few of them recognized ADR better than traditional *shalish* in terms of making decision. But all of them felt proud in attending ADR because BRAC involved them in ADR procedure. In some cases the role of rural elites was controversial as they directly supported the perpetrators in ADR. Most of them agreed and confessed that women perceived ADR as their best place to seek justice where they received justice than resolution (Box-5.a). Some of them mentioned some problems in quick decision making procedure. A few of them expressed resentment about ADR session because they did not get ample opportunity to play role like village *shalish* (Box-5.b). In contrast, the court is the complex place where the clients have to spend more money and time for its

procedural dilemmas to get the verdict (Box-5.c). To some extent, one woman elite who provided shelter to the victim felt vulnerable. Somewhere the victim faced tremendous threats and insecurity during the session (Box-5.d).

#### **Box 5. Elite's views**

- a) *"BRAC has to increase woman representatives in ADR sessions. Female UP members, female ward commissioner and female POs might provide friendlier environment for the rural women. Moreover, victims, most often who were women, would be comfortable to express their problems and share their sufferings with the female colleagues than their male counterpart" (Moqbul Hossain, UP chairman, 54 Years).*
- b) *"PO would have to take one or two days in hand to take any decision after discussion. I was present in a session and observed that the decision was taken instantly" (Mozaharul Hoque Sarkar, Businessman, 32 years)*
- c) *"Perpetrator think that if they failed to bring any consensus at ADR, he would have to face formal court that would be more hazardous often resulted economic and procedural dilemma for him as well as for his family. Moreover, the victims most often did not choose traditional village court for its male biasness. (Noor Islam, Farmer and political worker, 40 years)*
- d) *"Zohora took shelter to my residence and her husband tried to kidnap her. BRAC would be concerned about their security during trial period. I also preferred community-based Shalish, where trained community women would lead the shalish in front of BRAC staff and local leaders". (Tahmina Begum, Primary Teacher and small entrepreneur, 40 years)*
- e) *"Publicity such as arranging dialogue, telecasting TV commercials, posturing radio programme are essentially needed for the programme to inform the masses" (Mozaharul Hoque Sarkar, Businessman, 32 Years).*

In some cases, rural elites were seemed gender-biased and considered domestic disputes arose from the astrological fault (Rashir dosh) of married women.

Some of them considered that it would not be wise to involve women in formal courts which hampered the social status and prestige of the victims as well as family. Most of the rural elites focused mostly on massive publicity of ADR. Some of them focused on reformation of traditional village court restructuring its existing structure through training and development of a procedure. Some of them also mentioned the necessity of family counseling programme (Box-5.e).

#### **Experiences of relatives or kin**

The relatives (father, mother, brother, cousin, father-in-law, brother-in-law, sister-in-law) interviewed informed that they played important roles in negotiation and in taking verdicts. Most of the relatives were male and occupationally they were farmers, housewives, and businessmen. They mentioned about the negligence and reluctance of the perpetrators in participating in ADR and the nature of pressure required to compel them to participate. (Box-6.a)

## Box 6. Relatives views

- a) *“Most of the cases had common sequence of physical violence for demanding dowry. At the beginning, the perpetrators did not show respect to notices and avoided at least 3 notices. Therefore, the PO created pressure through police and then they bound to come”. (Rasheda Begum, 25 years, Relative of victims)*
- b) *“PO provided less scope to my daughter to speak, because she was a female. The PO also less prioritized me while I raised my hand to speak. The UP member and other male members of the session received most opportunity to speak”. (Sajeda Begum, Mother of perpetrator, 54 years)*
- c) *“The decisions taken in BRAC shalish was violated by victims family. Therefore, they went to local shalish and took a decision of divorce. This situation was really frustrating for us because they did not show any respect to keep the promises that they agreed earlier at BRAC shalish”. (Siddique Hossain, Father of the perpetrator, 50 years).*
- d) *“Rozina’s father had to pay the rest amount of dowry and it was a precondition of any kind of negotiation. BRAC shalish even could not stop them to receive the dowry rather boycott”. (Abdus Samad, Relative of victim, 40 years).*
- e) *“Long-term and regular follow-up are needed essentially to achieve ADR outcomes. The period of follow-up might be expanded from six to twelve months”. (Abdus Samad, 40 years). “According to the module of ADR, the PO would have to provide follow-up service 6 times per month for 6 months. But the PO had provided follow-up to Momena not more than 4 times after the decision taken”. (Rasheda Begum, 25 years, Relative of victims).*

The relatives of the perpetrators had some negative observations about the ADR sessions (Box-6.b). Another relative claimed that the victim disobeyed and rejected the outcome of the ADR session. (Box-6.c). Few relatives of victims claimed that in case of restitution of conjugal life, family of victim had to pay rest of dowry money before settlement and it seemed as undocumented in ADR (Box-6.d). But most of relatives who were involved in ADR sessions, confessed the weak follow-up system in post ADR period (Box-6.e).

## POs as ADR Practitioners

All the four POs mentioned that they received a two or four-week training where they partially learned some knowledge on ADR and eventually acquired necessary skills by practicing and handling the sessions. (Box-7.a). All of them mentioned that the complexity of giving and responding notices made the period longer. But they had to face some difficulties from the rural elites (Box-7.b). Another PO depicted that it required more time to fact-finding before taking final decision for each and every dispute that would bring worthwhile results in terms of sustainability (Ahsan Habib, PO, Peerganj). He further mentioned that using tape recorders in fact-finding would help them a lot in enhancing the effectiveness of ADR and suggested developing a strong association with administration, police and local government bodies through workshop on a regular basis. All of them considered early marriage, adultery, and tradition of dowry as root causes of family-related disputes and physical violence (Box-7.c).

Most of the POs agreed that there were some family, social and religious barriers originating from patriarchal norms of society as obstacle in accessing ADR by the rural women victims. All the POs strongly mentioned about weakness of ADR in follow-up system (Box-7.d).

Two of the four POs suggested that they required at least two hours to provide follow-up service. One of them mentioned that one PO would like to serve one area office and they really did not have enough time to perform such diversified activities like regular follow-up. The implementation as well as success of any victims from ADR mostly depended on proper follow-up.

#### **Box 7. Problem faced by PO**

- a) *"I have no direct training on legal aid or ADR and have only two training on social development and human rights and legal services. I have conducted already 80 ADR and brought some worthwhile results. But when the parties expected separation, we tried but failed to change their decision, rather being frustrated a bit. Therefore, I considered it as lack of my efficiency". "Behavioral training that I had received earlier, not necessarily important in conducting ADR. Therefore, a detailed training on ADR specifying its phases ought to be badly needed for us".*
- b) *"In some cases, I failed to tackle the pressure of local elites while I conducted the sessions. We became more careful when the victims were directly BRAC beneficiaries and intended to support intensively because they have valid expectations than others to ADR".*
- c) *"ADR at least protects the victims from massive physical harassment for a shorter period. In most of the cases, mother-in-laws and sister-in-laws are strongly associated with these kinds of physical harassments though they are also women".*
- d) *"Our service has less concentration on follow-up, therefore, most of the cases do not bring worth while results as what was being expected earlier. If one PO can look after only one office, this problem may be mitigated. LAC may provide some transport cost for the victims where required".*

#### **Staff Lawyers' view**

Staff lawyer was such a mobile person providing legal advice to POs along with some other activities including court activities (Box-8.a). Staff lawyer mentioned that most women of the villages were not informed properly about BRAC *shalish*, which might be considered as a limitation to access in ADR. Religious context, especially the fear of *Fatwa*<sup>5</sup> from *Maulana*<sup>6</sup> still had influence over rural women what in fact might be desisted them from accessing in ADR. Despite these

<sup>5</sup> Arabic for opinion by a person learned in *Shariah*. In Bangladesh villages, it is pronounced by persons who have no legal authority; they do not clarify an ambiguous legal situation but weigh up evidence, which traditionally was never a function of a *Fatwas* giver. Increasingly, *Fatwas* are being used to bolster the authority of the *shalish*. Some punitive *Fatwas* have been issued against women being divorced, for working with NGOs or even working outside the home. Some punishments are inhuman, such as, flogging, being buried up to the waist and stoned to death, beating with shoes, cutting the hairs, etc.

<sup>6</sup> Religious leader and teacher.

difficulties, poor women were supposed to seek justice from BRAC at any cost. Then he sketched some issues that might create a confrontational situation with Legal Aid Clinic that he had to face regularly. Members of elite families never likely to rely on ADR; they usually raised questions on the legitimacy of HRLS programme to operate *shalish* in such way. The staff lawyer of the programme was surprised when he found some of the lawyers of adjoining district courts who were not familiar with ADR service of BRAC. Staff lawyer also noted that during trials the rural elites used to shout and take the scope to influence the process of justice. Staff lawyer recommended to develop a strong follow-up strategy to achieve fruitful results from ADR (Box-8.b).

#### **Box 8. Views of Staff lawyer on BRAC ADR**

- a) *"I am officially responsible for 33 offices of Rangpur and Dinajpur districts. I could not spend more than one day for visiting session in each area office".*
- b) *"Staff lawyer prescribed to develop strong relationship with local administration, police as well as local elites to enhance the effectiveness of ADR for the rural women".*

#### **Perceptions of the masses**

At least two-third of common people were not familiar with BRAC *shalish*. Moreover, all among the respondents were concerned about the discriminatory features of traditional *shalish*. One of the interviewee raised some questions on neutrality, impartiality, and bribery or underhand exchange of money to get favour in village court. She emphasized on some other exploitative aspects such as bias to powerful party. (Box-9.a). Rest of them had inadequate knowledge on ADR and among them some had direct experiences with ADR. Another interviewee had clearer knowledge on BRAC *shalish*, being a VO member (Box-9.b). Most of the village women stated that they had no idea about BRAC *shalish*.

Moreover, those who were familiar considered by BRAC *shalish* as disclosure of internal family disputes. Some of them revealed that, legal aid programme might initiate some strategies to stop domestic violence against women creating awareness among family members. It would decrease the number of domestic disputes related to conjugal life and dowry within household. Some of them showed respect to BRAC activities. They considered BRAC staff as loyal, honest and neutral in operating programmes (Box-9.c). Some of the respondents considered that massive publicity of BRAC *shalish* might have great influence on traditional *shalish* indicating its disadvantages and the existing practices of husbands to commit such disputes against women. Whereas, most of the poor women thought that lack of alternative options to seek justice finally pushed them to BRAC *shalish*. Most of them acknowledged that BRAC *shalish* had the scope to create massive impact on the incidence of existing tradition of wife beating, dowry, dower and maintenance what they thought to be changed (Box-9.d).

### **Box 9. Peoples view on BRAC ADR**

- a) *Traditional village shalish was biased to power and money resulted victimization of poor and women in rural area often used to seek an functional alternative. (Tahazzol, Tailor, 34 years, Bodorganj). "Legal aid programme showed immense respect to victims, which was almost absent in traditional shalish. Considering this reason, women victims became more interested to come to BRAC shalish rather than traditional shalish. (Peyari Begum, VO member, 40 years, Gangachara).*
- b) *"One of the victims from my neighbours' house invited me to participate in BRAC Shalish. The institutional name and frame added some values on effectiveness of BRAC shalish, where traditional village shalish did not have that and poor women victims had the opportunity to seek justice in ADR". (Shafiullah, farmer, 87 years, Peergacha)*
- c) *"No one could influence BRAC shalish offering bribe to PO. However, the victims were getting opportunity to seek justice without paying any money (Moshlem Uddin, Rickshaw Puller, 55 Years)"*
- d) *"BRAC had to enhance its publicity among the married rural women within the villages. When the common people come to be know about the services, they would be eager to join in ADR". (Asheda Begum, domestic labour, 18 years, kaunia)*



## Discussion and Conclusion

This discussion section particularly followed the stages of proposed analytical schema considering the factors. Accessibility to ADR brings into focus couple of crucial impediments– like pressure from family not to bring the family matter into outside, non cooperation of the either party in the process, apprehension of insecurity during and after ADR, etc. Village women were found to seek justice through BRAC's ADR. But it has to be considered that the service is almost voluntary in nature, easy rather than having procedural complexity and minimal cost which ultimately benefits the poor, especially women having previous experience of not getting justice in extremely male biased village *shalish*. The ADR of BRAC has gained credibility because BRAC office itself has been treated as a place of assurance for the women victims where she would not receive unjust behaviour.

Following the ADR sessions, the POs practiced arbitration and med-arb process of ADR rather than perform as mediator or facilitator, which is slightly contradictory with the review report (Hossain *et al.* 2007). This report (ibid, 2007) further mentioned that inadequacy of women's voices reflected a dominating situation controlled by male participants. Arguably, this study finding revealed a reverse scenario where women's voices were adequate without few exceptions. ADR is considered as better forum than *shalish* as women are getting more potentials to realize their rights here.

The study did not confine the ADR of BRAC within the boundary of appraisals. That is why it has mentioned the cases where POs did not follow the introductory norms and the procedure became ambiguous and less meaningful to the parties as they were not familiar with the procedure formerly. Cases were also found when the abusive language of the perpetrators and local elites and male biased atmosphere created gender vulnerability for the victim, PO's intervention at least could prevent the situation getting worse. At the same time, the study had the cases where the PO became compromising with the unjustified demands of the perpetrators and losing control on the session and his modesty, staff lawyer took over the responsibility to bring a neutral result. Staff lawyer confessed the inadequate training of POs in this regard.

It was observed in ADR processes that POs wanted to resolve disputes suggesting the victims to provide rest of dowry to their in-laws as precondition of restitution of their conjugal life which directly contradict with the ethical guideline of ADR. But collection of dowry and maintenance money would be considered as worthwhile achievement of the ADR programme.

Instead of following the traditional social norms, many local elites still take it as external intervention. In few cases, the elites tried to influence the verdict as they did in village *shalish*. But normally the presence of proto elites and their participation brought good impact on the participants.

It was revealed that the female victims could not show marks of their physical assault and were not able to share their gender-based sufferings of daily life to the male POs. Moreover, it was difficult for a male PO to internalize the sufferings and problems of female victims, which were also beyond their experiences. This particular situation might discourage women to seek justice through ADR. This was also mentioned in a study prescribed that village women would more likely to bring cases if there were female jurors (Ahmed 2004).

All the parties found to get equal opportunity to take part in decision-making. Women victims considered the results as neutral, which might be considered as precondition of delivering social justice. But the most important problem was that the victims had to wait for long time to participate in ADR sessions, as perpetrators were reluctant to maintain the scheduled time. Moreover, among the parties the poorer section had to spend more than one day for the purpose which caused their financial losses due to absence in work.

But during and in post-ADR period, most of the victims had to face tremendous threat including facing obstacle to join in ADR and insecurity even if the perpetrators assumed that the results would bring nothing for him. So, the ADR should be concerned about the security issues of women victims during and in post ADR period.

Some ADR decisions did not reflect the expectation of the victims as the POs considered restitution of conjugal relation as best possible result that would be able to keep social harmony. These patriarchal norms of the society generated some problems in decision-making not reflecting the opinion of the victims. The fundamental question was what the victims achieved from the ADR or the impact of ADR decisions on their life. In most cases, the victims further faced the threats and became victims of physical violence after the ADR outcome. On the other hand, the POs did not get enough time to follow-up the cases considering their workload and long distance of the household of the clients from the BRAC offices. Follow-up might be the weakest feature of ADR, which made the perpetrators to ignore the outcomes.

Finally, the ADR could not help diminish domestic violence or demand for dowry, or desist the perpetrators threatening the women. In reality, it seemed very difficult for a programme like ADR to stop such incidences which might be considered as or patriarchal culture rather an aspect of social change. The ADR programme of BRAC can follow the right-based and capability approach for some negotiable achievement in social change.

Although the village women are coming to ADR for their grievances, it has not yet been able to alter the whole patriarchal system of oppression against women. But the participation of women in decision-making process and their chance to raise voice against the injustice through ADR need to be mentioned. The study also suggests wider the publicity of BRAC ADR as a large number of women are still unaware of this prospect.

Moreover, the entire ADR process contributed in providing social protection to the women victims and kept social harmony in a short range. Though the process sometimes gets crippled for weak procedure, alleged as women-biased, lack of training and resources, the entire ADR process has contributed a lot in providing social justice to the women victims.

### ***Food for thought***

- HRLS programme can initiate publicity through billboard, miking, TV and radio commercial, cinema hall advertisement for ADR, which may enhance participation and level of awareness and ensure access to information on ADR services.
- Gender sensitization training would be effective for POs to avoid gender-biasness.
- A specialized training package on ADR including regular training and performance evaluation may increase the knowledge and skills of the POs.
- HRLS programme may take a strategy recruiting female POs as ADR practitioners and engage female UP members regularly to ensure more gender equality in terms of participation in decision-making.
- HRLS programme may take some initiatives to reduce insecurity of the clients during ADR period.
- ADR would have to initiate a strong follow-up strategy revising the existing structure because it is difficult for POs to follow the existing policy.
- A family counseling can be helpful to change the attitudes of perpetrators and his family members, which may contribute in bringing family harmony.
- HRLS programme may take some strategies for HRLS to train local elites regularly, which may help POs to reduce severe power imbalance during the ADR session.
- Despite some prescription for community ADR from various researches, HRLS may increase community participation after providing them training but the venue of sessions may not be changed, as BRAC office is a symbol where poor women received an assurance of receiving just behaviour.
- A strong connection with local police station and local administrative bodies may strengthen ADR programme. It may have a strong impact on local power structure. ADR may invite any one from the formal institutional authorities in every month as an observer, which may have an impact on parties to follow the verdicts.
- Initiating some strategies like organizing annual gathering for client workshop, *shebok/shebikas*<sup>7</sup> workshop may convey the measure of contribution of ADR in community level.

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<sup>7</sup> Specially selected VO member, and TUP member who has been a member for two years, and is trained to provide HRLS classes to VO members.

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# Annex

## Trial sessions observation matrix

Patterns of disputes	Number of cases	Behind the scene	Resolving time (days)	Result			Participation					Perpetrator's code				
				Resolved cases		Continuing cases	Claimants/Defenders/Local elites (In number)					Perpetrator's code				
				Revived conjugal life cases	Separation cases		A1	A2	B1	B2	C	a	b	c	d	e
Dower & maintenance	17	1. Physical torture-19 times 2. Abusive words-11 times 3. Demanding dowry-8 times 4. Not given maintenance only wife-3 times and wife & children-7 times 5. Threate-1 time	41 days on average per case	18	4	2	49	60	15	80	11	22	13	7	5	3
Maintenance	1		Average of 7days-134 days													
Physical\Mental torture	2															
Demand dowry	2															
Misunderstanding between couple	1															
Remarriage	1															

In ADR/Trial session participation code

Victim along with total female = A1  
 Victim along with total female = A2  
 Victim along with total female = B1  
 Victim along with total female = B2  
 Local elites = C

Perpetrator's code

Husband = a  
 Mother in law = b  
 Father in law = c  
 Sister in law = d  
 Brother in law = e