

Short Article**TOWARDS A BRIEF HISTORY OF
ALTERNATIVE DISPUTE RESOLUTION
IN RURAL BANGLADESH**

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The term shalish is derived from the Arabic word “‘*shalesh*’ meaning ‘three’¹ – it conveys the sense ‘middle’ – middle man – the third party helper in a conflict resolution.”² The term though means resolution of disputes by third party neutral(s), it has some dissimilarities with ‘mediation’ in western sense. The term ‘mediation’ stems from the Latin word ‘mediatus,’ meaning middle.³ Fazlul Haq maintains that the western mediation is akin to shalish in conception but differs in context and application from the latter.⁴

This differences and, sometimes, confusion about mediation, alternative dispute resolution, shalish and even arbitration has led to the writing of this paper to offer a brief history of traditional village administration systems where shalish is a popular means for administration of justice.⁵ Also, Alternative Dispute Resolution or ADR

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¹ Byaboharik Bangla Abhidhan (Functional Bengali Dictionary), Dhaka,

² Fazlul Haq, “State of Shalish in Bangladesh”, mimeo, Madaripur Legal Aid Association, 1998.

³ William D Halsey (Editorial Director), Scribner Dictionary, 1986.

⁴ Fazlul Haq, note 3 above. However, this paper would not examine the differences between western ‘mediation’ and Bangladeshi ‘*shalish*’, rather both terms would be used to mean the same thing except, if need be, the term ‘traditional *shalish*’ would be used to mean the old form of *shalish* prevalent in Bangladesh.

⁵ See generally, “Ensuring Human Security in Bangladesh: A Precondition for Democracy and Development” A Report prepared for the Government of Bangladesh by the United Nations Department of Economic and Social Affairs, Acting as Executive Agency for the United Nations Development Programme, Dhaka, 1998; at pp.24, 70-71; Government of the People’s Republic of Bangladesh and the World Bank, Bangladesh – Legal and Judicial Capacity Building Project: Strategy Paper on Judicial and Legal Reform, Dhaka, 1998, at p. 107; Rani Dhavan Shankardass, Explorations

is used in this paper to denote the traditional shalish and adjudicative process by the village courts.

In tracing the history of shalish or ADR, this paper follows a traditional route of sub-dividing it into historical periods of political import. The rationale for such periodisation is the fact that '*shalish*', though often a spontaneous and local arrangement, yet its effectiveness and use have been influenced by the macro political structure. Needless to evidence of such influence in the earlier times is rather scanty, but as we shall see, recent governments through their legislative actions have determined the contours of *shalish*, in spite of the primarily unofficial character of the whole exercise.

SHALISH IN ANCIENT INDIA

It is assumed that mediated settlement of disputes among the people of the Indian subcontinent has been a practice from the date unmemorable. In the absence of any historical evidence it is difficult to specify the period during which mediation of disputes started among the people of this region. Nevertheless, the assumption is that certain local bodies to govern the villages were the basic forms of government till the 6th century BC or even before.⁶ It has been said that village self-government in this subcontinent is as old as the villages themselves.⁷

Presence of Panchayat and Headman seem to have existed since that time. While Panchayat was a council of five or more members to

Towards Accessible and Equitable Justice in the South Asian Region: Problems and Paradoxes of Penal Reform, New Delhi/London, 1999, at pp.31-34; Stephen Golub, "From the Village to the University: Legal activism in Bangladesh" in Mary McClymont and Stephen Golub (eds), Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World, Ford Foundation, the U.S.A, 2000, at pp.132-141; Elizabeth McClintock, "Bangladesh Case Study", in Scott Brown, Christine, and David Fairman (eds.), Alternative Dispute Resolution Practitioners Guide, Washington, D.C., at pp.2-13.

⁶ Kamal Siddique, Local Government in South Asia: A Comparative Study, Dhaka, 1992, at p. 15; "United Nations: Ensuring Human Security in Bangladesh: A Precondition for Democracy and Development" Prepared for the Government of Bangladesh by the United Nations Department of Economic and Social Affairs, Acting as Executing Agency for the United Nations Development Programme, New York, 1998, p. 102.

⁷ *Kudrat-E-elahi Panir v Bangladesh*, 44 (1992) DLR (AD) 319 at p. 326.

resolve disputes arising among the fellow villagers, the headman, as Siddique puts it:

...was generally the head of the most powerful family of the dominating caste. Sometimes the State Princes formally appointed headmen. The headman does not seem to have been elected by the villagers anywhere. The office of the headman was extremely important because all political and administrative contacts between the village and higher authorities of government were almost exclusively made through him.⁸

Some historical basis of resolution of disputes by the heads of respective clan, guild or neighbourhood is found in the work of Dr. P. Sen who claims the existence of dispute resolution at the village level during the period of Dharmashatra.⁹ He mentions that disputes arising among the members of a particular clan, occupation or locality were resolved by *Kulas* (assembly of members of a clan), *Srenis* (guild of a particular occupation) and *Pugas* (neighbourhood assemblies).¹⁰

Brihashpati mentions that during the period of kingship an assembly of people (two to five) elected from the villagers, guilds and corporations named *Samaya* was constituted to advise on any disputes that came before them.¹¹ The disputants were bound to accept the advice given by *Samaya*. The central administration, usually, did not interfere with the decision of village administration. Thus,

The village administration was self-contained and it continued to function whoever became the king at the center. The central government did not interfere with local administration but exercised only general control, being mainly concerned with the subject of land revenue and defence. The village community functioned as a miniature state having even the power of administration of civil and criminal justice.¹²

These traditional institutions were not merely alternative fora for dispute resolution but recognised systems of administration of justice.¹³

⁸ Kamal Siddique, *supra* note 6, at p. 14.

⁹ Priya Nath Sen, General Principles of Hindu Jurisprudence, Tagore Law Lectures, Allahabad, 1984, at p. 17.

¹⁰ *Ibid.*

¹¹ See M. Rama Jois, Legal and Constitutional History of India, Vol. 1, Bombay, 1990, at p.677.

¹² *Ibid.*, at p.678.

¹³ Sarvesh Chandra, "ADR: Is Conciliation the Best Choice?" In P. C. Rao & William Sheffield (eds), Alternative Dispute Resolution: What It Is and

The nature and proceedings of these institutions were similar to the ADR procedures – simple, inexpensive, informal and quick – except that the procedures followed in these proceedings were similar to arbitration or conciliation subject to the nature of the disputes, and the parties did not have the right to choose the decision makers.¹⁴

Decisions were arrived at in accordance with the prevailing customs and usage of the respective clan, group or locality. The state laws were also dependent on these customs and usage since local customs and usage were the principal source of state laws.

Manu declared that “a king who knew the sacred law must also inquire into the law of castes, of districts, of guilds and of families, thus settle the peculiar law of each.”¹⁵ Customary usage had the force of law and the king was a mere law-enforcer, not the lawmaker.¹⁶ Therefore, it appears that different modes of dispute resolution based on local customs and usage were integral parts of administration of justice in ancient India.

However, although historical evidence of the existence of Panchayats and headmen in the north and southern part of the ancient Indian sub-continent are in abundance, the existence of such local government administration in ancient eastern India is disputed.¹⁷ Some concrete evidence of the existence of Panchayat system among the Muslim population of Dhaka is found from the beginning of Moghul rule till the advent of 20th century. Such Panchayat was consisted of five members and was popularly known as the committee of Panch Laeq Birader (committee of five respected, trusted and obeyed elder brethren).

Irrespective of the justification of this claim, it is evident that the main function of the Panchayats in ancient India was to maintain public order in the village.

THE SULTANI PERIOD

How It Works? New Delhi, 1997, at p.85.

¹⁴ Ibid., p. 86.

¹⁵ Manusmriti VIII, 41, cited in P. N. Sen, supra note 9, at p. 18.

¹⁶ P. N Sen, supra note 9, at p. 17.

¹⁷ Kamal Siddique, supra note 6, at p. 16.

Later, during the time of Muslim rulers the Panchayat system seemed to have remained unchanged. The Sultans of Delhi maintained the Panchayat system as the lowest tier of adjudication.¹⁸ The Panchayat was constituted of five members and the head of the Panchayat, the *Serpanch* was appointed by Nazim or the Fouzdar. These Panchayats according to local customs and usage resolved various local, civil and criminal matters. The center did not interfere even if the decisions went against the central administrative laws.¹⁹ No appeal could be preferred against the decision of the Panchayat.

THE MUGHUL PERIOD

Village Panchayats were quite active during the Mughul period as well. The Panchayats decided almost all kinds of cases except “those pertaining to serious crimes.”²⁰ While praising the effectiveness of these Panchayats Jain observes:

These Panchayets fulfilled the judicial functions very effectively and it is only rarely that their decisions gave dissatisfaction to the village people. The members of the Panchayets were deterred from committing an injustice by fear of public opinion in whose midst they lived. The litigants and the witnesses also could not lightly tell lies, for in a small community very usually the affairs of one were known to others.²¹

Although the Kazis’ Courts, which decided civil and criminal cases, were interspersed throughout the country, the numbers of litigation before these courts were low. Village Panchayats and elder family members settled most of cases.²²

Later, when the Moghul administrative structure started disintegrating leading to the Nawab’s inferior authority to the English in Bengal, the office of the Kazi lost its glory. Most of the Kazi offices in the countryside either “did not function or functioned in a very corrupt and different manner.”²³ Such a vacuum in the sphere of law helped to evolve another system of dispute resolution by the Zamindars.

¹⁸ Gazi Samshur Rahman, *Bangladesher Ainer Itihash*, Dhaka, 1997, at p. 47.

¹⁹ Ibid.

²⁰ M. P. Jain, *Outlines of Indian Legal History*, 5th ed., Nagpur, 1999, at p.31.

²¹ Ibid.

²² Supra note 20.

²³ Ibid. p. 32

The malfunctioning and virtual decadence of Kazi courts rendered the hapless people hardly any alternative but to go to the zamindars for justice who started assuming judicial powers and administering it in the arbitrary manner.²⁴ Zamindars decided all civil, criminal and revenue cases arising within their zamindaries. However, the proceedings under zamindars' courts were also very unsatisfactory since the zamindars usually were partial, oppressive and concerned with profits.²⁵ The usurpation of Panchayats' responsibility by the Zamindars engendered the decline of local self-government during the closing stage of Moghul rule.

THE BRITISH COLONIAL PERIOD

On declination of the Moghul rule the administration of Bengal province fell under the British East India Company. The Company first realised the necessity to adopt policy of curbing the powers of indigenous institutions by introducing a new Zamindari system. Under the new system, zamindars ruled their zamindaries by themselves or through their agents. The function of the zamindars and their agents was collecting revenues. They had little concern about the welfare of the people, who lived within their zamindaries. Their faulty administration virtually brought about the doom of village Panchayat system. The Annual Bengal Report 1871 describes the situation as:

In the plains of Bengal these institutions seem to have been very much weakened even anterior to British rule and in the last one hundred years of British rule Zamindari theory of property, they have almost disappeared. It cannot be said that in the more important provinces of this administration, there are absolutely no self-government institutions. Some traces yet remain; some things are in some places regulated by village Panchayets and by headmen, elders. But more and more, the Zamindari agents supplant the old model and the landlord takes the place of indigenous self-rule.

Since the only important function of the zamindars was to collect revenues, the government passed the Chowkidari Act of 1870, which tried to revive the old village Panchayat system. The Act provided for appointment of village Panchayat consisting of five members by the District Magistrate. This body was created to maintain law and order in the villages with the help of Chowkidars. The Panchayat was

²⁴ Ibid.

²⁵ Ibid.

authorised to assess and collect taxes from the villagers to pay the salary of the Chowkidars. The institutionalised form of present day local-government system emerged from this Act. Thereafter, Lord Ripon adopted the resolution of self-government pursuant to which the Bengal Council passed Local Self-Government Act 1885. The Act provided for the constitution of a Local Board consisting of not less than six members, two-thirds of whom were to be elected and the rest nominated by the government. The Act also provided for constitution of a Union Committee consisting of at least five and not more than nine members having authority to administer an area of twelve square miles on average in the villages. The Local Board was not conferred with any power except to collect reports from the Union Committees. The Board acted only as an agent of the district board for the functions that were delegated to it. On the other hand, the Union Committee had the responsibility to work for the betterment of the villagers. It was empowered to raise funds from the villagers who owned considerable properties. Owing to its dependence upon the district board the village level local government constituted under the Act proved to be ineffective since, in the words of Siddique: "in this system local self-government was imposed from above; the system ought to have grown from the grass-roots."²⁶

Later, upon the Montagu Chelmsford Report in 1918, Bengal Legislative Council passed the Act of 1919. The Act introduced a new body called Union Board in place of Chowkidari Panchayats and Union Committees. The new body was constituted of at least six but not more than nine members, of whom two thirds were to be elected and the rest nominated by the government. The members themselves had to select a President and a Vice President of the Board. The Union Board under the Act virtually had to combine the functions of both Chowkidari Panchayats and Union Committees. The Board maintained several Chowkidars and Dafadars who were given authority "to arrest persons committing cognisable offences and possessing house-breaking implements or stolen property."²⁷

The President of the Union Board had powers to adjudicate matters related to petty civil and criminal cases. The Board was empowered, in addition to receiving grants from the higher bodies, to levy and collect a

²⁶ Kamal Siddique, note 6 above, at p. 37.

²⁷ *Ibid.*, at p. 127.

yearly rate from the villagers. The provincial government, at its discretion, could select two or more members of the Union Board to constitute a Union Court to settle minor offences. The Circle officers had the supervisory power over the Union Boards. Further, the Board had to keep records of its proceedings to be regularly inspected by the chairmen of higher Boards, Commissioners and District Magistrates. This system continued even after the partition of British India until the Basic Democracy Act 1959 was passed by the then Pakistan's military regime.

An analysis of the Acts passed and enforced by the British Colonial Government with regard to local government at the village level indicates that, instead of building upon and encouraging the traditional village administration system, they imposed a system that was top down and little concerned with the needs of the people. The system was highly influenced by the bureaucrats, serving primarily to further the administrative interests of the government.

THE PAKISTAN PERIOD

Once British India was partitioned and India and Pakistan emerged, Bangladesh became the part of Pakistan. During the early years of Pakistani administration the village local government system remained the same as it was during the British period. It was the military regime of Ayub Khan that first felt the need to decentralise the administration of the state. It passed the Basic Democracy Act 1959, which provided for four-tier rural local government system, the lowest being the Union Council. The Union Council was consisted generally of ten members elected by the residents of the constituency. The elected members had to elect a Chairman and a Vice- Chairman from themselves. The Union Council was entrusted with multifarious functions including maintenance of law and order in the villages, adjudication of petty disputes that came before them and, later, administration of Muslim Family Laws Ordinance etc.

SHALISH IN BANGLAESH

As indicated earlier, the periodisation of the subject matter of this article is based on ruling power structures. Compared to earlier times, our power structures went through a number of substantive changes during the three decades after our liberation with implications for the *shalish* practices. A number of statutory enactments during different regimes of the last three decades shaped the modus operandi of *shalish*

and hence this section of the article is sub-divided into periods of different ruling regimes of Bangladesh.

SHEIKH MUJIB GOVERNMENT

After the liberation of Bangladesh, the Union Council was renamed as the Union Panchayat in 1972²⁸, and again renamed as the Union Parishad in 1973.²⁹ Moreover, specific provisions for local self-government were enshrined in the Constitution of Bangladesh.³⁰ In the words of Mustafa Kamal J:

The Constitutional provisions on local government...mark out the Constitution of Bangladesh as clearly distinctive from other Constitutions of the world...In this sub-continent too local government developed along historical lines without following any constitutional pattern. It is the Constitution of Bangladesh which for the first time devised an integrated scheme of local government within a constitutional pattern. This is a most distinctive and unique feature of the Constitution of Bangladesh.³¹

Article 9 of the Constitution provides that:

The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to peasants, workers and women."

Further, Article 59 of the Constitution, which introduced Chapter III dealing with local government provides as follows:

- (1) Local Government in every administrative unit of the Republic shall be entrusted to bodies composed of persons elected in accordance with law.
- (2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to -
 - (a) administration and the work of public officers;
 - (b) the maintenance of public order;

²⁸ Presidential Order 1972 (PO No. 7 of 1972)

²⁹ Presidential Order 1973 (PO No. 22 of 1973) dated 22 March 1973.

³⁰ *Kudrat -E-Elahi Panir vs Bangladesh*, 44 (1992) DLR (AD) 319 at p. 325.

³¹ *Ibid.*, para 66, at p.341.

(c) the preparation of and implementation of plans relating to public services and economic development.

With a view to giving full effect to Article 59, Article 60 of the Constitution mandates Parliament to confer necessary powers including the “power to impose taxes for local purpose, to prepare local budgets and to maintain funds” on the local government bodies.

Local government institutions constituted under relevant Constitutional provisions, are ‘administrative units’ as defined by Article 152(1) of the Constitution.³² Union Parishads and Paourashavas became administrative units as contemplated by our Constitution by the Bangladesh Local Government (Union Parishad and Pourashava) (Amendment) Act, 1973 in 1973. Article 2C of the Act reads:

Unions and Municipalities shall be administrative units within their respective areas for the purpose of Article 59 of the Constitution.

ZIAUR RAHMAN GOVERNMENT

Entrusted with many administrative functions, the Union Parishads assumed its adjudicative role once the Village Court Ordinance 1976 was promulgated in the year 1976.³³ The Ordinance of 1976 brought about substantial changes in the local government system at the village level.

Under the Ordinance, a village court was to be established in every Union Parishad consisting of the Chairman (the ex-officio Chairman of the Court), two members of the Union Parishad and two other members representing the disputing parties. In cases of the Chairman’s inability or, for challenge to his impartiality by any of the parties, the parties had the right to choose a member of the Union Parishad to become the Chairman of the court. The court was empowered to try petty civil and criminal cases. Although the court could not pass any sentence of imprisonment, it had jurisdiction to impose fines up to Tk 5,000 on an accused if found guilty of any offence mentioned under the Part 1 of the Schedule to the Ordinance. Regarding the civil cases, the Village Court had the authority to try cases involving movable or immovable property valued at not more than Tk 5,000.

³² Article 152(1) of the Constitution defines an ‘administrative unit’ as “a district or other area designated by law for the purpose of article 59.”

³³ The Village Court Ordinance, 1976, Ordinance No. LXI of 1976.

The village court constituted under the Ordinance had almost all trappings of a formal court. It had the power to summon witnesses, arrest the accused by village chowkidar and proclaim judgements in criminal cases and a decree in a civil matter. It also had the power to impose fine on a judgement debtor for contempt of the court. The Village Court system under the Ordinance 1976 was an attempt to modify the traditional shalish system in rural Bangladesh in a manner that that would help reduce the number of cases in court as well as give justice to the poor and marginalized people. However, it had some significant limitations, which would be discussed below.

ERSHAD GOVERNMENT

In 1982, during the time of Ershad, the Martial Law administrator, the local government system was again reorganised.³⁴ The upgraded thanas were renamed as Upazilas by another Ordinance in 1983.³⁵ These upazilla parishads were envisioned as to be the intermediary level of local government between the Zilla Parishad and Union Parishad. This three-tier system of local government existed until the passing of Local Government Act 1993. During the period 1982-92 the village level local government was virtually the same as that established under the Ordinance of 1976.

Under the Ordinance of 1983, the Union Parishad was constituted of a Chairman, nine members, all elected through direct franchise, and three women members, one of whom was to be nominated by the Upazilla Parishad. The Ordinance gave the Union Parishad the attributes of a body corporate having perpetual succession and a common seal, with powers, subject to the provisions of the Ordinance and the Rules, to acquire and hold property and by its name to sue and be sued.³⁶

The Union Parishad was given 38 local welfare functions falling under different categories, namely, civic; police and defence; revenue and administration; development; and any functions conferred by the government (transferred) from time to time. Its adjudicative functions remained almost unchanged from those provided by the Ordinance of

³⁴ Local Government (Thana Parishad and Thana Administration Reorganisation) Ordinance 1982, dated 23 December 1982.

³⁵ Local Government (Union Parishads) Ordinance, 1983 No. LI of 1983.

³⁶ Section 4(3), Local Government (Union Parishads) Ordinance 1983.

1976. The Ordinance listed 54 cognisable offences by the Union Parishad, which had the power to impose a fine of up to Tk 5,000.

KHALEDA ZIA GOVERNMENT

After the fall of the Ershad regime, the Bangladesh Nationalist Party formed the Government in 1991, which promulgated the Bangladesh Local Government (Upazilla Parishad and Upazilla Reorganisation) Ordinance 1991 abolishing the Upazilla Parishad. The Ordinance was made an Act of Parliament in 1992.³⁷ The Repealing Ordinance was challenged as unconstitutional and, thus, void in the case of *Kudrat-e-Elahi Panir vs Bangladesh*.³⁸ In this case the counsels for the appellants argued that the Upazilla Parishads under the 1983 Ordinance³⁹ were 'local government bodies' as contemplated by the Constitution. Consequently, abolition of this local government structure by an impugned Ordinance is inconsistent with the constitutional provisions. However, the Supreme Court rejecting the appeal held that:

An Upazilla Parishad established by Ordinance No. 59, as it stood amended by Ordinance No.33 of 1983, is not a Local Government within the meaning of Article 59. This Parishad has been lawfully abolished by the impugned Ordinance No. 37 of 1991.⁴⁰

In 1993, the Local Government Act 1993 was passed providing that the Union Parishad was to comprise of one Chairman and nine members with three seats reserved exclusively for women in every union parishad. The Act provided for different standing committees constituted of its members or co-opted members for dealing with certain matters. The main functions and powers of the Union Parishad remained much the same. The second amendment of the Act of 1983 was passed in 1997 and provided that instead of three reserved seats exclusively for women members in the Union Parishad, direct elections would be held for these seats.

More interestingly, the Act provides for delimitation of the union into nine wards for the election of nine members and into three wards for the election of members in reserved seats. The Act for the first time

³⁷ Act 2 of 1992.

³⁸ 44 (1992) DLR (AD) 319.

³⁹ Local Government (Union Parishads) Ordinance, 1983, Ordinance No. LI of 1983.

⁴⁰ *Kudrat-e-Elahi Panir vs Bangladesh*, supra note 30, at 336.

brought about some statutory basis for women's empowerment in the village local government administration. Before that the selected women members hardly had any institutional integrity since they were not elected through direct vote and there was some personal preference of the Chairman who often dominated in the process of nomination of those women members. People neither considered them as true representatives of their causes nor approached them with respect. On the other hand, they became pawns in the hands of the Chairman for the accomplishment of certain obvious interests of him or the Parishad. In the last Union Parishad election the members of the Union Parishad were elected in accordance with the provisions of the Act of 1997.

SHEIKH HASINA GOVERNMENT

The present Awami League Government has enacted a new Upazilla Parishad Act 1998 to revive the repealed Upazila Parishad established by the Local Government Act 1992. Apparently the Act seems to have aimed at reviving Upazilla Parishad to play an intermediary role between the village level Union Parishad and Zilla Parishad at the district level. Although the first election of Upazilla Parishad under the new Act is yet to be held the prospective Upazilla Parishads have been conferred with some functions mentioned in the Schedule 2 to the Act, which includes co-ordination and integration of work of the Union Parishads within the Upazilla.

The main reasons to put some emphasis on the evolution, demise and revival of intermediary type of local government administration at thana level perhaps is to indicate that all the respective governments since the regime of Ayub Khan did experiment with local government administration, which reflected and still reflects mainly the administrative purpose of the government. It has been held in *Kudrat Elahi Panir v. Bangladesh*⁴¹ that:

...[S]ince Independence from the British rule, these institutions fell victim to party politics or evil designs of autocratic regimes, passed through the ordeal of suppression, dissolution or management of their affairs by official bureaucrats or henchmen nominated by the government of the day.⁴²

⁴¹ Ibid., p. 329.

⁴² Ibid., at p. >>>

Following the Muslim Personal Laws Ordinance, 1961, the adjudicative function of the village local government found some favour in 1976 by the Local Government Ordinance 1976 and remained almost untouched by the following governments. Recently, the government has proposed a new form of village courts - Grameen Courts - consisting of panels of retired judges. The court has been proposed to be mobile and settling disputes among the people sitting in different places at different times. However, the proposal is still under consideration.

Pending the establishment of Grameen Courts, the Village Courts are performing the adjudicative functions conferred on them by the Village Courts Ordinance 1976. At the same time *shalish*, the traditional institution of resolving dispute, also exists in parallel with the Village Courts. While the jurisdiction of the Village Courts is very limited, in a *shalish* the village elders, often including the Chairman and members of the Union Parishad resolve disputes far greater and grave than those mentioned under the Village Court Ordinance 1976. Disputes resolved by the Village Court are often popularly also known as *shalish* in the villages but the proceedings of the Village Court are very different from that of the traditional *shalish*. Proceedings under the Village Court are similar to court processes, the Chairman having the right to pronounce his judgment. In a *shalish* it is not necessarily the Chairman who makes the decision, each party's representatives generally help the Chairman reach a decision and sometimes a decision may come from the panel of village elders. Not surprisingly, the Union Parishad being accustomed to the resolution of disputes in a quasi-judicial manner and also in a traditional *shalish* mode there is every possibility for them to confuse the two processes. For example, proceedings under a Village Court often resemble traditional *shalish* procedures as regards participation, flexibility, and consensual decision-making. On the other hand, in certain traditional *shalish*, the Chairman may take the judge's chair, make unilateral decision and impose it on the parties. The differences between a Village Court process and *shalish* will be further discussed below.

In **conclusion**, it may be said that existence of informal and amicable mode of dispute resolution among the people of this sub-continent may be traced back more than a thousand years BC. Their existence in ancient and medieval India is recognised. Although during the time of Muslim rulers, in India, some adjudicative institutions based on Muslim personal laws were established, these were not operative

throughout India. Before the advent of Muslim rulers in this subcontinent, the kings used to administer their kingdoms by the mandate of Dharmashastras and local customs and usage.

The Muslim rulers first introduced the formal institutions of adjudication based on Muslim personal laws and, to a lesser extent, Hindu personal laws. Muslim personal laws were applied for all criminal offences and in cases of civil matters, Hindu and Muslim personal laws were applied to the members of the respective community. While the Kazis dealt with matters relating to Muslim succession, inheritance and marriage laws, Brahmins helped the courts in matters concerning Hindu personal laws. Until the end of Muslim rule, the village administration by the Panchayat was a rule. Usurpation of the Panchayat system was initiated by the Kazis and then by the Zamindars.

Once the *subah*⁴³ of Bengal fell under the administration of the East India Company, the English put the last nail in the coffin of the traditional *shalish* system. They were inclined to exploit the traditional institutions to their advantage by using them as a means of revenue collection. They introduced various Acts to establish a local government system against the will of the rural people. Those local government bodies were little more than a means of repression for revenue collection. Many of the enlisted Zamindars and their agents played a significant role in such oppression and inhuman treatment to the poor people of this region.

In 1772, Warren Hastings for the first time established the formal Anglo-Indian adjudication institution. Under his plan the traditional courts of the Nizam and Diwan were separated and their jurisdiction extended to criminal and civil justice respectively. While the administration of civil justice was taken over by the English, dispensation of criminal justice was left for the Muslim judges. Such a dichotomy led to confusion, chaos and anarchy in the administration of Bengal. In order to address this problem the Calcutta Supreme Court was established under the Regulating Act 1773. A Royal Charter conferred upon the Supreme Court elaborate powers and functions in 1774. Only after the establishment of the Supreme Court in Calcutta the

⁴³ The combined territories of Bengal, Bihar and Orissa was called the *subah* of Bengal, which was administered by the Nawab from the capital Murshidabad.

English laws and legal systems started pervading the judicial administration of Bengal in a spontaneous fashion.

We may conclude that while the English system of adjudication in Bengal dates back about to 200 years, the modern local government system has its roots from about 150 years ago. Before this period, an informal village administration system was functional albeit to a varying degree of effectiveness. This evolved its own method of dispute resolution, which is indigenous and an integral part of Bangladeshi culture and still has a considerable significance in the rural societies of the country.