

# DOMESTIC VIOLENCE AND SOCIAL CHANGE: FEMINIST INFORMAL JUSTICE SYSTEMS IN INDIA AND BANGLADESH

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## *Abstract*

*Although feminist endeavors have succeeded in legal reforms that criminalize gender-based violence in India and Bangladesh, it remains a pervasive obstacle to gender equality for women. Sociocultural norms, which legitimize violence against women, are a major reason. The authors argue that reform of traditional informal justice systems, which reaffirm these patriarchal norms, need to be the central focus of feminist research. This working paper explores the literature on two such innovations that aim to provide social justice for low-income women who are survivors of domestic violence: the NGO (Non Governmental Organization)-reformed shalish, which includes women jurors in Bangladesh, and the nari adalat or women's courts, established by the Mahila Samakhya Program in India. The units of comparison are government affiliation; mediation or arbitration practices; types of disputes; and jury composition. The differences between these two feminist alternate dispute resolution bodies reveals arenas where lessons can be learned. They highlight the advantages and disadvantages of state versus NGO feminism; peer mediator versus upper class mediator; and all-female jury versus mixed-gender jury. In conclusion, the authors recommend that these feminist informal justice systems include communal harmony in their philosophy and conduct proactive outreach so that women, who have been subject to communal violence, can also be petitioners.*

## INTRODUCTION

Both Bangladeshi and Indian feminist scholars and activists have worked effectively to change and institute laws that criminalize domestic violence.<sup>1</sup> The Prevention of Dowry Act in 1980 and the Prevention of Violence Act in 2010 constitute landmark feminist legislation in Bangladesh. Similarly in neighboring India, the Dowry Prohibition Act in 1961 was followed by amendments in the 1980s, which criminalized various aspects of gender-based violence. In 1983 an amendment of the Section 376 of the Indian Penal Code increased the rape penalty and provided greater confidentiality for the victims. In the same year, a new Section 498A of the Criminal Procedure Code made dowry harassment a crime (Vatuk 2013). The Protection of

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Women from Domestic Violence Act (PWDVA), instituted in 2005, went beyond the definition of domestic violence as physical abuse—it made psychological, verbal, and economic abuse of women a punishable offense (Magar 2003).

Despite these legal reforms, gender-based violence remains a pervasive obstacle to gender equality in both countries. In Bangladesh, the Violence against Women (VAW) Survey in 2015 revealed that 80.2% of married women are abused by their husbands. In India, the National Crime Records Bureau (NCRB) states the overall rate of crimes against women was 53.9 in 2015 and that intimate partner violence accounted for 34.6% of all crimes against women.<sup>ii</sup>

Unfortunately, since its institution, and over the past decade, the PWVDA has not led to a substantial decrease in domestic violence. Scholars argue that this “is primarily because there has been no change in fundamental attitudes towards women (Verma et al. 2013 in Kethineni et al. 2016, 285).” Formal judicial processes are not trusted by villagers in both countries. In Bangladesh there is a common saying, “He who gets trapped by the law falls into the mouth of a tiger” (Siddiqi 2003 in Ali and Alim 2007, 3).<sup>iii</sup> Clearly, reform of the formal justice system, though necessary, is only a partial solution to gender-based violence in both these societies.

Sociocultural norms, which legitimize gender-based violence are a major reason for high rates of intimate partner violence (Das et al. 2008). Lack of financial resources, and inadequate access to the formal justice system are also other factors. Integrating law and society, culture and community, traditional informal justice systems reaffirm and perpetuate patriarchal attitudes and practices – of which violence against women is the extreme expression. But there is evidence that these systems are capable of innovation. Arguing that feminist scholars need to make the reform of such age-old systems the focus of inquiry, this paper explores the literature on two

such feminist endeavors: the NGO-reformed shalish in Bangladesh and the nari adalat (women's court) in India, with a focus on domestic violence.<sup>iv</sup>

This paper is outlined as follows: First it provides context with an analysis of the meanings of domestic violence for low-income women. Second, there is description of the different historical trajectories of the reformed shalish in Bangladesh and the nari adalat in India. Third, a comparison of government affiliation, mediation or arbitration practices, types of disputes, and jury composition is provided. Fourth, it critiques the literature on these reforms. Fifth, it illustrates how the differences between these two feminist informal justice endeavors reveal arenas where lessons can be learned. Finally, the conclusion suggests programmatic improvements, policy recommendations and summarizes future arena of research.

### **MEANINGS OF DOMESTIC VIOLENCE AND IN BANGLADESH AND INDIA**

Domestic violence does not take place in a contextual vacuum. Such abuse in Bangladesh and India is embedded in the patrilocal and patrilineal social structures of these countries. The Bangladeshi traditional shalish is a customary all-male body. It is also a site of governance for *samaj* (society), the all-pervading village institution, which prescribes the meanings and performance of gender as moral order. Samaj denotes belonging; and indeed community within and beyond the extended family is created through conformance to *samaj* (Kotalova 1996); however, belonging is conditional. Men, particularly *matubors* (headmen, generally wealthier village male elders), create rules which women in the patrilocal and patrilineal *samaj*, have to follow, to prove that they are worthy of belonging. Obedience to *samaj* is enforced through the collective sanction of the shalish. In everyday rural narratives, a good Muslim woman, defined as *noromponthi*, or a subordinate woman, who obeys her husband, is contrasted with *ugroponthi*, or

an aggressive woman who talks back to her husband defying Islamic tenets (Ahmed 2008a). Some men feel that development activities have caused trouble in the household (*shangshare oshanti*) by encouraging women to talk back (*mookher upor kotha bole*). In order to ensure obedience, *samaj* punishes such women through the all-male shalish (Ahmed 2013). Recent qualitative studies reveal changes in attitudes and practices (Schuler et al. 2013), but even then four-fifths of wives report being abused by their husbands in Bangladesh (VAW Survey 2015).

Such abuse is also widespread in India. But as in Bangladesh, it is not reported for a variety of reasons, which include the stigmatization and retaliation of women who speak out. Women are vulnerable in a patrilocal society because as wives of their in-laws' household and neighborhood, they are considered to be "outsiders" or *por*. In order to be accepted and become *nijer lok* (one of our own) they have to please their in-laws (Lamb 2000).<sup>v</sup> What is unique to domestic violence in patrilocal patrilineal societies is the active participation and instigation of other in-laws through abuse (Ahmed 2008b; Kalokhe et al. 2016). Not surprisingly, women resort to their natal family elders to register their complaints. Very often these elders encourage their female relatives to try their best to "adjust" to the situation (Vatuk 2013). Women might try to be even more subservient in the hope that their husbands might stop the abuse; it's only after such efforts at "adjustment" fail that women take action and request a meeting between the two families to try to reach an informal resolution. Further, reporting domestic violence to the police or taking the case to formal courts is prohibitively expensive and often requires bribes. Family members do not want women to report such intimate matters outside the village-based kinship boundary because they consider it "shaming" (Mahmud et al. 2013). Women also feel that going to the police or to the formal court system may lead to abandonment by their husbands. As low-

income women themselves are acutely aware (Ahmed 2008b), the lot of a low-income divorced woman is hardly an enviable one in both India and Bangladesh.

For these reasons, reformed informal justice systems remain the best option for disadvantaged women in these countries. A recent study by the International Center for Research on Women (ICRW) reveals that the vast majority of women prefer informal justice mechanisms, and that feminist Alternative Dispute Resolutions (ADRs) or reformed informal justice systems specifically designed to address women's problems are the only way to combat intimate partner abuse (Heilman et al. 2016). In Bangladesh, the NGO-reformed shalish has transformed the customary all-male jury of the traditional shalish by including women in the customary all-male jury. Although many Bangladeshi NGOs offer reformed shalish services, the most prominent among them are: Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST); Ain-o- Shalish Kendra (ASK); Nagorik Uddyog; and the Bangladesh Rural Advancement Committee (BRAC), which provides one of the largest such justice systems in the world today.. The Mahila Samakhya (Women's Equality) Program<sup>vi</sup> has instituted the nari adalat, which consists exclusively of female jurors, as justice "of women, for women and by women" (Purushothaman 2011, 52). A brief social history of how these courts came into being is relevant to the comparison of the (NG)-mediated shalish and the nari adalat because it illuminates how different national contexts impacts the trajectories of feminist reform in Bangladesh and India.

### **THE NGO-REFORMED SHALISH IN BANGLADESH AND NARI ADALAT (WOMEN'S COURT) IN INDIA**

Also known as forms of Alternate Dispute Resolution (ADR), both the reformed shalish and the nari adalat, though very different, stem from grass roots mediation systems. The

Bangladeshi shalish in Bangladesh and the Indian *khap panchayat* (caste council) systems are ancient forms of village-level dispute resolution. They rely on a peer jury and social sanction, rather than lawyers and sentences. As councils outside the formal justice system, which they predate, the traditional shalish and the khap panchayat utilize mediation wherein an impartial third party enables disputants to come to an agreement and to make the final decision themselves. The two innovations explored in this paper maintain these features as they blend old and the new combining aspects of the traditional councils with novel elements to create the NGO-mediated shalish and the nari adalat.<sup>vii</sup>

### **The NGO-reformed Shalish in Bangladesh**

The traditional shalish frames the historical context of the reformed shalish. The elite status of shalishkars (jurors) is what gives the traditional shalish its power and authority: defying the shalish would mean defying the male (often wealthy) village elders. Not surprisingly, such shalish exclude women and reinforce conservative community norms to bolster their own power, leaving women, especially women in a lower class or caste, without an avenue to voice concerns or seek justice. Women do not take their domestic violence cases to the traditional shalish (Schuler et al. 2008); it is a space where they are blamed and shamed for doing so (Ahmed 2013). The bias towards men as shalishkars, combined with patriarchal narratives surrounding women's sexuality (Siddiqi 2011), makes it difficult for women to accuse their batterers in the shalish. In an attempt to make the informal justice system more equitable in terms of gender and class, the NGO-reformed shalish, arose in the 1980s (Siddiqi 2011) in Bangladesh. It changed the gender of governance of the traditional shalish by including female jurors, but it retained the advantages which include speedy resolution, no legal fees, and non legal proceedings.

## **The Nari Adalat in India**

It is important to contextualize the nari adalat in the history of extra judicial systems in India. The khap panchayat (council) system, which was a village-level mediation council, was based on caste, gender, class and age hierarchies. The British created a panchayati adalat system in the late 19<sup>th</sup> century relegating family disputes to (customary) leaders of religious and caste communities (Iyenagar 2007). At the time of Indian independence, lawmakers perceived a popular distrust of the formal legal system. They attempted to modernize informal justice, in the 1950s, by creating nyay panchayats (justice councils) which attempted to rectify previous biases within the old regime. Although modeled on the preexisting panchayat system, the nyay panchayat had several key differences: members were elected not self-selected from the elite; and the law was applied, rather than customs being enforced (Vatuk, 2013). This innovation, however, proved unworkable (Iyenagar 2007). As a result, Lok adalats (peoples' courts) were established with retired judges, other legal professionals, and social workers as arbiters. Unfortunately, the lok adalat also fell prey to vested interests. Disputants who were socially and economically marginalized were compelled to accept resolutions that reflected the status quo rather than justice. In a sense, the nari adalats in India were formed, not only as a result of an inaccessible and discriminatory formal legal system, but also because of the failure of informal justice structures, and their reforms, to accommodate the needs of low-income women.

As concerns of marginalized women became central to the contemporary feminist activism of the 1970s and surged in the 1980s, this activism found expression in government policy: in 1986, the National Education Policy contained a policy of "Education for Women's Equality". Consequently, the Ministry of Human Resources Development (HRD) instituted the Mahila Samakhya (Equality for Women) Program in 1989 in the states of Karnataka, Gujrat, and

Uttar Pradesh. Based on a philosophy that education is the empowerment of women, this program included different meanings of education that included conscientization. It was, therefore, designed not only to increase women's access to formal education, but also to increase their voice and agency. The sangha or collective, at the village level is the key decentralized unit where women learn how to access resources; to take part in political decision-making; and where they learn the importance of health, dignity, and freedom from violence. Sahayognis (women facilitators) service clusters, each of which comprise ten villages. Various clusters then form a block, which in turn is connected to other blocks through a federation. The District Implementation Unit then supervises the federation executive committee. The National Review of the Mahila Samakhya Program in 2014 stated that it had expanded to eleven states with a presence in approximately 45,000 villages and a total of over 55,000 sanghas and a membership of approximately 1,500,000 women.<sup>viii</sup>

Nari adalats are part of the Mahila Samakhya Program. Founded in 1991, after a Gujarati woman was murdered by her husband (Purushothaman 2011), the women's court was created in the belief that only a gender-sensitive informal justice system could combat the rising violence against women. The formation of the sangha precedes the nari adalat; that is, legal committees are instituted within each sangha and committee members receive legal awareness training. Women are then chosen from these legal committees at the cluster level to be given further legal training. Nari adalat members are then selected from this group at the block level. The nari adalat consists of an all-women jury, many of whom belong to marginalized communities, reflecting the same background as the disputants. In 2014, there were 481 such courts which had adjudicated over 30,000 cases (National Review 2014). The nari adalat serves as a collective platform for addressing violence against women, regardless of their age, marital status, caste,

religion, social class or occupation. They aim to provide women with ‘social justice’ rather than ‘legal justice’ provided by formal courts (Purushothaman, 2011).

### **COMPARISON BETWEEN THE NGO-REFORMED SHALISH AND NARI ADALAT**

This section compares the NGO-reformed shalish and the nari adalat in terms of their government affiliation, mediation or arbitration practices, types of disputes, and jury composition (see Figure 1).

**Figure 1. A Comparison the Shalish and Nari Adalat.**

<b>Units of Comparison</b>	<b>Reformed Shalish</b>	<b>Nari Adalat</b>
Government affiliation	No government affiliation	Part of government program
Mediation/arbitration	Mediation with both parties preferred over arbitration	Mediation
Types of disputes	Property, marriage, money issues between husband and wife, domestic violence, extramarital affairs, land dispute, declaration of rights, money suits, thefts.	Focus on gender-based violence, but also deal with other issues of gender-based discrimination.
Jury composition	Male and female jury. Encourage women to be involved as jurors, but they are not necessarily of the same class.	All female jury. Women of same class are jurors.

## **State affiliation**

Reformed shalish do not have any official government affiliation. However, they have a complex relationship with the coexisting state village court system. Union Parishads (UP), (union-level committees) members, who belong to the most decentralized tier of the elected government, are legally allowed to arbitrate family disputes.<sup>ix</sup> They also can hold village courts, which handle similar disputes as reformed shalish. UP members are elected officials, however, they can have a vested interest in protecting village elites. Unfortunately, there often is a backlog of cases, so complainants have to wait a long time for justice. Not all UPs are corrupt or untrustworthy, but for reasons mentioned previously, women are reluctant to utilize such union level committees.

The relationship between the government and the shalish system does not stop at the involvement of UPs. The reformed shalish can rely on the threat of formal legal courts. For instance, the BRAC reformed shalish, as part of its legal aid program established in 1998, illustrates the linkage with the formal judicial process. During the pre-shalish proceedings, a letter is sent to the accused, by the BRAC office, to request presence at a shalish. If the accused does not respond or establish contact, then the matter is referred to the district court.<sup>x</sup> These steps, prior to making a legal referral, shows how the process, though driven by the arbiter and by threat of legal action, still prioritizes mediation over the formal justice system. The formal justice system is used as a last resort when the accused does not respond to mediation attempts. Aware of the financial constraints that poor women face, BRAC and other NGOs take a holistic approach. If a case is submitted to the formal legal system, lawyers and legal aid can then be provided. Although the verdicts of NGO-facilitated shalish are not legally binding, failure to attempt mediation also can lead a party to the legal system. Thus, though NGOs receive little

direct government aid or official affiliation, individual NGOs, UPs, and the local formal justice system do all, at some level, interact in an attempt to provide justice.

The nari adalat is part of a government program. But it is “run entirely in a spirit of volunteerism” (Iyenagar 2007, 101)<sup>xi</sup>; the resolutions offered by nari adalats are not officially recognized by the state judiciary (Vatuk, 2013). However, nari adalat members strive to create connections and build influence within the formal legal system. Nari adalat members are supposed to communicate with government officials, in order to stay abreast of legal reforms, and update the local government on their work. Nari adalat members also can act as advocates or legal interpreters for other women, so they must create connections to the formal justice system. Learning how to navigate the politics of the local government contributes to the political empowerment of both the nari adalat members and the women who bring cases (Purushotaman 2011).

### **Mediation process**

In Bangladesh, reformed shalish are often conducted either as a part of a legal aid program, human rights, or some other developmental agenda. In contrast to the traditional shalish, the mediations carried out by NGO-facilitated shalish use principles of feminist governance in the courtroom for dispute resolutions (Ahmed 2013). Although the NGO-mediated shalish focuses more on mediation, in some cases arbitration in which a third party makes a decision after listening to testimony from both sides, also takes place. Women obtain information about it mostly from their neighbors or other members in the community, such as NGO activists or Sebikas. Prior to the beginning of the shalish, NGO practitioners review details of the dispute to decide whether it is appropriate (see Ali and Alim 2007, 4 for a diagram of the process). If so, they then focus on helping both parties involved understand their differences and facilitate the

negotiation of an agreement between both the parties, even if neither may feel particularly pleased with the outcome. The NGO-reformed shalish can take place in the village *para* (neighborhood) itself; it can even occur in the complainant's home. It also can occur in the village common or at the facilitating NGO, and can meet as frequently as necessary. There is no schedule for regular meetings, and shalish can take place at any time of the day (Mahmud et al. 2013). Shalish involving women largely deal with marital disputes, domestic violence, and extramarital relationships, but they also resolve property and money disputes. The NGO-reformed shalish can either utilize mediation or arbitration with the former being preferred.

The nari adalat deals exclusively with women and their familial concerns. There is a focus on women for marginalized communities. Gender-based violence, especially domestic violence, constitutes the majority of their cases. The goal is to settle the dispute between the justice seeker and the perpetrator by finding an agreement that is acceptable to both parties (Vatuk, 2013). Nari adalats have a deep understanding of their clients, their customs, traditions and the community in which they reside because they belong to the same backgrounds as the disputants. Nari adalat resolutions strike a balance between what is best for the woman and what is best for the community. Given their woman-centered approach, the nari adalat relies on mediation not arbitration. Schedules for regular meetings are established. They usually take place in a public place, at a set time, with set intervals between meetings. Each case is followed-up for a three month period with home visits; aware that women reside not only with their husbands but also with in-laws, the sangha members utilize these visits to monitor the behavior of the extended family and to discuss the verdict with them. The nari adalat is not supposed to have a punitive, nor and narrow conception of justice; it tries to maintain a community-wide focus, while supporting the individual woman.

## **Types of disputes**

In Bangladesh, major disputes addressed by NGO-sponsored mediations include land disputes, declaration of rights, money suits, family related disputes, cases of dowry, bigamy/polygamy, early marriage, dower, divorce, maintenance, guardianship, and cases of domestic violence. It is widely believed that early resolution helps prevent domestic violence, violent conflict, and escalation of legal action in formal court system (Alim & Ali, 2007). The nari adalats in India typically mediate specifically gendered disputes dowry harassment, second marriage, rape, domestic violence, child custody, child marriage and infertility. Inter-caste violence is also addressed (Purushothaman, 2011).

## **Jury composition**

Known as the “remodel of the indigenous shalish” (Shamshad, 2006, 68) the NGO-facilitated shalish have male and female jurors who are provided with paralegal and gender sensitivity training. The NGO-facilitated shalish is supposed to emphasize carefully-negotiated outcomes, which protect the woman’s interests, based on a thorough understanding of her contexts, rather than arbitrary verdicts, which are often rigid and harmful, resulting in a backlash against the complainant. Follow-up to ensure that the decision is implemented is considered an essential part of the NGO-reformed shalish process.

The NGO-reformed shalish intentionally has female jurors. However, there are no set requirements that disputants or shalishkars have to be women. Shalishkars do not have to be working class either. Often, women juries come from different class backgrounds, from the women whose cases they mediate. The NGO-reformed shalish encourages participation of women in the process, whether as shalish panel members, or as disputants who speak up and seek justice during shalish sessions.

In the nari adalat, all mediators are females who belong to the same community. They live in the community, or close to where the disputant resides, and are from a similar class, and socio-cultural background. For this reason, these mediators are also known as “peer mediators” (Vatuk, 2013, 77). They hold the belief that women need a safe and unthreatening environment to be able to express their disputes and sorrows. Similarly, justice seekers feel much more comfortable and confident expressing their concerns in front of these peer mediators, as they share the same cultural values, and are well acquainted with the local customs and traditions that need to be considered while mediating the disputes. It is believed that peer mediators are not only important in generating trust because they are perceived by women disputants as empathetic to their familial and socioeconomic contexts, but also because they may be more capable of arriving at workable solutions for other women like themselves (Vatuk, 2013).

#### **ASSESSMENT OF CRITIQUES: IS DIVORCE NECESSARILY THE BEST OPTION?**

One of the major critiques of the nari adalat is that its processes and decisions are imbued with a patriarchal perspective, because they emphasize marriage over divorce (Lemons 2016) and that women are urged to give up freedom of mobility and control over their incomes in exchange for better treatment from the husband (Vatuk 2013). It has been stated that nari adalat members curtail women’s freedom by discouraging divorce, often constraining and even coercing women disputants to stay in a marriage. The nari adalat’s perspective to keep the marriage intact has been described as “nonliberatory” (Lemons 2016, 246). Vatuk (2013) does point out that divorce is not an optimal option for low-income women, and that many women do not want this separation, as also analyzed by Ahmed (2014) but it is clear that she views that emphasis on reconciliation as patriarchal. As Vatuk (2013, 96) argues, “Too often, the

patriarchal values that lie at the root of the women's problems are validated by the agreements they are encouraged to sign and they are sent back into the marriages they were trying to escape from". The similar class background of jury and disputant forms another related critique. It has been argued that since nari adalat members belong to the same community as the disputants, they are limited in the scope of their imagination to think beyond prescribed patriarchal boundaries. They, therefore, insist that the woman go back to live with an abusive husband. In this way, the nari adalat resolves the tension between divorce as a disruption of community cohesiveness, and marriage as an anchor to maintain the social status quo.

We argue that meanings of justice are more complex for low-income women in patrilocal and patrilineal societies. What does freedom mean for her? What does she want? What are the structural conditions that circumscribe her ability to choose? For example, there are no battered women's shelters in the rural areas.<sup>xiii</sup> So that even if she wants divorce, there is nowhere to really go. Clearly, what a rural low-income woman wants must be connected to what she can want. As analyzed in a previous section meaning of divorce are very different for a low-income rural woman than for her urban middle-class sisters.

These questions must frame the option of divorce, as an alternative dispute resolution outcome for low-income women. A divorcee immediately becomes "disrespectable" and loses social status; she also loses economic status, because she can no longer draw on her husband's earnings. She is seen as prey, bereft of male protection, not only by men who pressure her for sexual favors, but also by other community members, who will not hesitate to take advantage of her vulnerable status. Her mobility is restricted. Given the gender wage gap and lack of work opportunities, (especially if she is not highly educated) the low-income divorcee will find it difficult to make ends meet.

Divorce also means closing a door which can never be reopened—a divorcee can never return home. It is entirely possible that those women who want divorce may want to return, because they find it impossible to make ends meet on their own. But a divorcee can never go back to her in-law's household. A woman of this status also cannot reside in her natal home, indefinitely. Even if her brothers may want her to stay, it is unlikely that their wives will acquiesce. The culture of patrilocality impacts the natal family's attitudes as well. In essence then, a divorcee doesn't really belong anywhere.

Siddiqi (2011) poignantly describes a case of Dulali, a young woman in Bangladesh, which addresses the question about the meanings of freedom for low-income women. Dulali was sentenced to caning by the traditional shalish because she was pregnant (out of wedlock) with a married man. The shalish elders also insisted that she marry the father of her child and live in his household as his second wife, after a ritual caning for *zina* or adultery. At the time of Dulali's case, a local journalist's report made the verdict national and international news. Urban middle-class feminist activists, from Dhaka, the capital city, then descended on the village. A new shalish, presumably orchestrated by the local NGO, was convened resulting in different outcomes. Dulali was given land worth Tk 40,000, a large amount for low-income villagers. Becoming a second wife was out of the question because that is the anathema to NGO-shalish philosophy. Dulali, however, found herself ostracized after the activists (and the press) left. Although her assets had dramatically increased, she remained an object of impurity and shame. She could not find anyone to till her land. In the end, she had to leave the village entirely to seek refuge in a Gandhi ashram. She remains bitter about the intervention from Dhaka, which interfered with her wish to marry her lover, to gain respectability as a married woman and to have a child.

We certainly agree with Siddiqi (2011) when she argues that caning, even if it is superficially applied as a perfunctory ritual, is humiliating. It can be legitimately argued that the women's activists certainly had the power to stop the caning and arrange the marriage. But they did not ask Dulali what she wanted. This narrative illustrates how middle-class feminists, despite all good intentions, can impose their views of what is best on low-income women.

Divorce should not be imposed on women. But neither should women have to live with a batterer. We agree with Vatuk (2013) that women should not have to go back to abusive marriages and that written agreement of the nari adalat is insufficient to ensure no further abuse. Empowerment means choice. But real choices for low-income women require structural and cultural transformation at the national level. In the absence of such social change in the larger society, the nari adalat is trying to strike a balance on a tight rope: between traditional demands of "adjustment" on wives and changing the husband's (and his family's) attitudes and practices regarding domestic violence. The choice between divorce, which can lead to destitution, and marriage, which can lead to a life-threatening scenario, is not a real one. As feminist alternate dispute resolution systems, both the nari adalat and the shalish are structural transformations which are supposed to ensure that no woman is confronted with such a choice.

As Iyenagar (2007) wisely argues, no single transformation can solve all gender-related problems. For example, neither the nari adalat, nor the NGO-reformed shalish have the skills or the funds to build battered women's shelters; it can legitimately be argued that this construction is beyond the capacity of any court and is best left to another institution. It is, therefore, imperative that their emphasis on preserving the marriage should be matched by ensuring safety for the woman disputant. For these reasons, we believe that safety and accountability should be the primary concerns of the nari adalat and NGO-reformed shalish. This emphasis means

increasing the quality and length of follow-up meeting and including a larger number of sanctions, from as many different sources as possible.

### **THE LESSONS LIE IN THE DIFFERENCES**

What are the lessons learned from the comparison of the India nari adalat and the Bangladeshi reformed shalish? Although there are many similarities, we argue that the lessons lie in the differences between these two feminist alternate dispute resolution bodies. Our comparative analysis reveals arenas where lessons can be learned. They highlight the advantages and disadvantages of state versus NGO feminism; peer mediator versus upper class mediator; and all-female jury versus mixed-gender jury. Given the different sociohistoric contexts of the two countries, we prefer to pose these differences as questions, to be discussed, rather than answers to be accepted.

Is state feminist preferable to NGO feminism for the delivery of justice to low-income women? A comprehensive government feminist initiative, at the national level, such as the Mahila Samakhya Program, in which the nari adalat is embedded, is important for garnering resources and awareness building. The successful family planning program in Bangladesh is a good example of state feminism, although it is not usually analyzed as such, because its focus is limited to fertility reduction. Other development efforts such as gender-based violence and microcredit are carried out by NGOs. In contrast to India, there is no government gender empowerment program in Bangladesh, which provides grassroots justice to low-income women, and deals comprehensively with their multiple contexts. Given the strong women's movement in Bangladesh, such a national program might be successful.

As a result, structural differences also distinguish the NGO-reformed shalish from the nari adalat. The reformed shalish is a reform of the traditional shalish. The basic structure, which includes the peer jury and no fines or sentences has been retained. NGOs also have included linkages with the formal legal system. But the line connecting the two systems is dotted; therefore, the skeletal structure of the traditional shalish remains the same in the NGO-facilitated shalish. It has been stated that the nari adalat is modelled on the caste panchayat, but we argue that it is in essence, something that is new: it is part of a government gender equality program which incorporates women staff, namely the sangha members, as volunteers. The nari adalat is connected to the larger federation of a national program. Thus, at least in principle, the nari adalat court has the flexibility of an informal justice system, but also the authority of the Mahila Samakhya program. Although operational flaws prevent the nari adalats from functioning as effectively as they should (Iyenagar 2007), we argue that this link with a national program could give the outcomes of the nari adalat a legitimacy that the NGO-reformed shalish does not possess.

There also is a difference in the dissemination of information between the two informal justice systems. Information about the NGO shalish in Bangladesh at the national level is difficult to find. Since there is no administrative umbrella for this informal justice system, basic facts, such as the total number of reformed shalish in the country and number and type of cases adjudicated, are unavailable. This lack of aggregate information not only poses problems for scholars but also does not allow NGOs to share case studies of best practices and lessons learned among themselves and with the communities they serve. In contrast, the Mahila Samakhya Program is regularly reviewed on a national basis. Such reviews contain useful statistics, which

have spurred the expansion of this national women's program and allowed exchange of information between the different women's courts in India.

Though laudable, for all the above reasons, state feminism does have its disadvantages. Despite several formal reviews which analyze its effectiveness and recommend its expansion, including the fact that the nari adalats have received international recognition (Faliero, 2013), in March 2016, the Indian Government has announced its decision to merge its efforts with another National Rural Livelihood Mission, which focuses on different aims. Feminists fear that this merger will dilute the empowerment impetus of the Mahila Samakhya program, and in turn, of the nari adalats (Jha and Menon 2016). In contrast, the NGO-reformed shalish, which grew out of the NGO movement in Bangladesh is entirely a private entity. It can legitimately be argued that the NGO-reformed shalish is independent of vested political interests that often beset government policy and of myopic bureaucratic decisions made at the national level.

Is a jury which is from the same class background better able to serve low-income women than a middle-class jury? What the NGOs have done is reform the traditional shalish by introducing trained women and male jurors. These jurors, although they may not be village elites, do not belong to the same class as the women complainants. Although gender sensitivity training is essential to their training, class sensitivity is not. The NGO-mediated shalish is not always held at times when it is convenient for low-income women, who in contrast, to their middle-class sisters, do their own housework and have to tend to animals and do agricultural labor. Evening shalish are *verboden* for women, whose families will not permit them to leave the bari (household) after dark (Mahmud et al. 2013). Dulali's example, as described by Siddiqi (2011), illustrates an extreme lack of sensitivity to class differences in shalish outcomes and what they mean for low-income women.

In the nari adalat, the jury are not caste elites but sangha members who reflect the same socioeconomic, ethnic, and caste background of the disputants. They, therefore, not only have a visceral comprehension of the petitioners' problems but also understand the rhythms of their narratives. Since testimony is central to any court system, shared meanings of narrative between juror and disputants is crucial to the truth-seeking mission of the judicial process (Ahmed 2013). When a woman approaches the nari adalats to seek justice, she is confident enough that her voice will be heard and that she doesn't have to make an exhaustive effort to prove her point as in most of the formal legal mechanisms (Purushothaman, 2011).

On the other hand, while middle-class jurors may carry more weight, nari adalat members complain that they do not have enough authority. Iyenagar's (2007) study reveals that a shared background between juror and client can also be a weakness. For reasons of their own survival, nari adalat members were constrained and more conservative, especially if the petitioner belonged to the same village. And because of their lack of education, nari adalat members were unable to fully understand legal documents much less explain their ramifications to petitioners—leaving the resolutions open to attack and further inquiry by the law. The volunteer nature of their work, their socioeconomic background, and the lack of connection with the state judiciary (even if the line is dotted) can give rise to a “personality oriented system” (Iyenagar 2007, 103). The members of the nari adalat members and its clients face the same intersectionalities of caste, class, and gender, which undoubtedly create a compassionate courtroom for women. But these similarities also make it difficult for nari adalat members to liaise with staff of other institutions, also part of their job responsibilities, as listed in the Nari Adalat Handbook (Purushotaman 2011) — perhaps because they are not perceived as possessing equal status.

Is an all-woman jury better than a mixed-gender jury? The nari adalat, which has an all-woman jury does provide women a safe and respectable place in purdah (veiled) societies. In-laws, often the accused, cannot blame the petitioner for having violated purdah norms and bringing dishonor on the family. But there are disadvantages to an all-female council. A mixed gender jury, in which both men and women are well-trained, may have a greater impact, in terms of cessation of the abuse, on the male batterer. Men listen to other men. Men are afraid of other men. Men feel accountable to other men. A feminist male juror, therefore, is potentially a role model for the accused. As a man, he has an instinctive understanding of what motivates these men to abuse their wives. As a feminist, he can teach them that masculinity means respect for women (Ahmed 2013). This transformation of masculinity at the micro-level could be better accomplished by a mixed-gender jury.

## **CONCLUSION**

Both the NGO-reformed shalish and the nari adalat represent significant developments in the efforts to eradicate gender-based violence in South Asia. Women can bring their struggles to informal justice councils that will listen to them, in their own neighborhoods. Petitioners do not have to spend much money, travel to a different city, wait years for their cases to be resolved, or face the police if they do not choose to do so. The NGO-reformed shalish and the nari adalat use feminism in a very localized context, where the histories of classism and sexism in Bangladesh and India shape their organizational structure. The effectiveness of these institutions also depends on the history and culture of their peoples. Both the reformed shalish and the women's court in India rely heavily on an ethic of community. In the formal court, perceptions of justice can be narrow: the accuser seeks individual restitution through the punishment of the accused,

and this punishment is carried out through the government. In the shalish, the harmony of the community is stressed along with, or more so, than a Western notion of the right of the individual. In contrast to the unreformed shalish, where shalishkars enforce traditional community norms, including gender and class biases, NGO-facilitated shalish selects women shalishkars and trains them to interrupt such gender biases. Its focus on mediation, in lieu of arbitration, reveals its community-based nature—agreements are made to best benefit the community, even if both parties must compromise.

These institutions, however, have their flaws. In Bangladesh, the quality of the juror training needs to be improved (Kundu, Khan and Samaddar 2010) to include the intersectionalities of gender and class, and systematic follow-up mechanisms need to be ensured. Measures should be taken to disseminate information regarding the provision of the government's legal aid fund (Mahmud et al. 2013). Female jurors need to forge affiliations with female Union Parishad members to strengthen their gender equality program. Since domestic abuse is often carried out by family members, jurors need to be trained in family counseling so they can utilize it in their follow-up. Links with the legal system need to be strengthened, and written documentation of the outcomes should be maintained by the NGO. In India, nari adalat members need to have official state recognition, in order gain more legitimacy in the eyes of state and nonstate officials; and the follow-up period needs to be extended beyond three months to ensure that abuse has indeed been terminated. The volunteer nature of the nari adalat is inspiring, however, in order to comprehensively conduct follow-up, these volunteers might need some form of monetary compensation to ensure investment in the entire legal process.

There is much scope for future scholarly inquiry. Longitudinal studies of the prevalence of domestic violence in petitioner families need to be conducted to provide solid evidence of

effectiveness. With some exceptions (Ahmed 2013; Lemons 2016)m there are few detailed qualitative studies of the mediation processes. As Scheppele (1994) argues, not enough is written about the ways in which jurors, who belong to the marginalized groups, use narrative to create safety in courtroom proceedings. It is curious cases of survivors of communal violence, a serious problem in both countries, are not brought to these institutions. Women who have been raped as a result of religious discrimination also need a safe space –perhaps more so than others. Feminist informal justice systems should include communal harmony in their philosophy and conduct proactive outreach so that women who have been subject to communal violence can also be petitioners. The shalish and the nari adalat should be a sanctuary where these women are listened to and provided justice. This, of course, would necessitate additional training and a jury that is diverse in terms of religious composition. Further investigation also is needed to illustrate how the intersectionalities of religion, caste, and class play out in the courtroom.

The NGO-reformed shalish in Bangladesh and the nari adalat in India must be viewed as endeavors which provide a measure of justice for poor women in patriarchal societal contexts that also are patrilineal and patrilocal. The critique that jurors of the reformed shalish in Bangladesh are not trained in class bias, even as they may be trained in gender sensitivity, is valid as is the corresponding critique that nari adalat members are more circumspect and conservative, when the disputants belong to their own neighborhood. But what cannot be denied is that both these alternative dispute mechanisms have succeeded in giving low-income women, who were previously silenced by gender, caste, and class hierarchies, the agency to petition against the abuse; and the voice to say that it is wrong.

## REFERENCES

- Ahmed, F. E. 2014. "Peace in the Household: Gender, Agency, and Villagers' Measures of Marital Quality in Bangladesh." Special Issue on Gender and Economics in Muslim Communities. *Feminist Economics*. 20(4):187-211.
- \_\_\_\_\_. 2013. "The Compassionate Courtroom: Feminist Governance, Discourse, and Islam in a Shalish (Indigenous Court) on Domestic Violence in Rural Bangladesh." *Feminist Formations*. 25(1): 157-183.
- \_\_\_\_\_. 2008a. "Hidden Opportunities: Grassroots Muslim Feminism, Masculinity, and the Grameen Bank." *International Journal of Feminist Politics*. 10(4): 542-562.
- \_\_\_\_\_. 2008b. "Microcredit, Men, and Masculinity" *National Women's Studies Association (NWSA) Journal*. 20(2): 122-155.
- Ali, T. O., and Alim, A. (2007). "NGO-shalish and Justice-seeking Behaviour in Rural Bangladesh". *BRAC Research and Evaluation Division* (n.p.) 1-20.
- Das, M. B., Amin, S., Johnson, K., and Hossain, A. 2008. "Whispers to Voices: Gender and Social Transformation in Bangladesh". *The World Bank Development Series* 1-120
- Faliero, Sonia 2013. "Modi is no Champion of Women" December 22. New York Times.
- Heilman, B. Paul-Gera, N. Musuya, T. Sisbert. S. 2016. "Whose Justice? Whose Alternative? Locating Women's Voice and Agency in Alternate Dispute Resolution Responses to Intimate Partner Violence". *International Center for Research on Women (ICRW)* 1-28.
- Jha, J., and Menon, N. 2016. "Why it is Important to Retain an Independent Mahila Samakhya Programme." *Economic & Political Weekly*, 51(12), 21-23.
- Lamb, S. 2000. *White Saris and Sweet Mangoes: Aging, Gender, and Body in North India*. University of California Press: Berkeley California.
- Lemons, K. 2016. The Politics of Livability: Tutoring "Kinwork" in a New Delhi Women's Arbitration Center. *PoLAR: Political and Legal Anthropology Review*, 39(2), 244-260.
- Kalokhe, A., del Rio, C., Dunkle, K., Stephenson, R., Metheny, N., Paranjape, A., and Sahay, S. (2016). Domestic Violence Against Women in India: A Systematic Review of a Decade of Quantitative Studies. *Global Public Health*, 1-16.
- Kethineni, S., Srinivasan, M., & Kakar, S. 2016. "Combating Violence against Women in India: Nari Adalats and Gender-Based Justice". *Women & Criminal Justice*, 1-20.

- Kotalova, J. (1996). *Belonging to others: Cultural construction of womanhood among Muslims in a village in Bangladesh*. Uppsala Sweden: University Press Limited.
- Kundu, D. K., Khan, A., & Samadder, M. (2010). Understanding Alternative Dispute Resolution for the Rural Women in Bangladesh: Some *Illustrations from BRAC HRLS (Human Rights Legal Services Programme. Working Paper 13*. BRAC Research and Evaluation Division (n.p.) 1-38.
- Iyengar, S. 2007. "A Study of Nari Adalats (Women's Courts) and Caste Panchayats in Gujarat". *Asia Pacific Gender Mainstreaming Programme (AGMP), UNDP, 17*.
- Magar, V. 2003. Empowerment approaches to gender-based violence: women's courts in Delhi slums. *Women's Studies International Forum*. 26(6):509-523).
- Mahila Samakhaya. 2014. A National Review. *Ravi J. Matthai Centre for Education*. Indian Institute of Management Ahmedabad. CHK
- Mahmud, S., Huq, L. and Sultan, M. 2013. "Follow-up to Dhaka Declaration: Women's access to Justice". *Center for Social and Gender Transformation*. BRAC University. (n.p.) 1-55.
- National Crime Report Bureau India 2015 Report <http://ncrb.nic.in/> accessed December 22, 2016.
- Purushothaman, S. 2011. The Nari Adalat: A grassroots response to violence and injustice against women. Innovations towards education for empowerment, grassroots women's movement. *Ministry of Human Resource and Development Department of Higher Education, Government of India, New Delhi*. 1-74,
- Scheppele, K. L.1994. "Legal Theory and Social Theory". *Annual Review of Sociology*. 1(1) 20: 383-406.
- Schuler, S. R., R. Lenzi, S. Nazneen, and L.M. Bates. 2013. "Perceived Decline in Intimate Partner Violence Against Women In Bangladesh: Qualitative Evidence." *Studies in Family Planning* 44(3): 243-257.
- Shamshad, B. 2006. :The Impact of ADR Towards Improving the Status of Poor Women: Reformed Shalish and NGO-Based Mediation in Bangladesh. *Forum of International Development Studies*. 31: 65-85.
- \_\_\_\_\_, Bates, L. M. and Islam, F. 2008. "Women's Rights, Domestic Violence and Recourse Seeking in Rural Bangladesh". *Violence Against Women*, 14(3): 326-345.
- Siddiqi, D. M. 2011. Transnational Feminism and "Local" Realities: the Imperiled Muslim Woman and the Production of (In)Justice. *Hawwa*, 9(1): 76-96.

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\_\_\_\_\_ 2003. Paving the Way to Justice: The Experience of Nagorik Uddyog, Bangladesh. *One World Action*. 1-28.

Times of India Feb. 8, 2016, “Will Mahila Samakhya lose its Edge after Merger?”

Vatuk, S. 2013. The “Women's Court” in India: An Alternative Dispute Resolution Body for Women in Distress. *The Journal of Legal Pluralism and Unofficial Law*. 45(1):76-103.

Verma, J.S. Seth, L. Subrmaniam, G. 2013. Report of the committee on criminal law. In. Kethineni, S., Srinivasan, M., and Kakar, S. 2016. “Combating Violence against Women in India: Nari Adalats and Gender-Based Justice”. *Women & Criminal Justice*, 1-20.

Violence against Women (VAW) Survey -2015, Bangladesh. <http://203.112.218.65/Home.aspx> Accessed December 16, 2016.

## ENDNOTES

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<sup>i</sup> Domestic violence or Intimate Partner Violence (IPV) is one of the most pervasive forms of gender-based violence throughout the world. It is defined by the World Health Organization as “behavior by an intimate partner or expartner that causes physical, sexual, or psychological harm, including physical aggression, sexual coercion, psychological abuse, and controlling behaviors.” (Heilman et al. 2016, 4). IPV is intertwined with economic and social factors.

<sup>ii</sup> The crime rate is calculated as crimes per one lakh or 100, 000 women. This is the overall nation average. The rate of crimes against women and domestic violence varies from city to city and from state to state within India. For example, in Delhi it was 184.3, and in West Bengal, it was 73.4. The NCRB statistics indicate that the rate of crime against women in 2015 has decreased slightly (3.1%) from 2014.

<sup>iii</sup> In a private interview, a senior NGO official stated that despite the 2010 legislation in Bangladesh, women are reluctant to proceed, because if the husband goes to jail, their economic resources will be straitened. Further without a male protector at home, they will be socially vulnerable. Therefore, many domestic violence cases are settled by *mimangsha* (settlement) at the local level.

<sup>iv</sup> There are a variety of women’s courts in India: “mahila (or nari) adalat; mahila mandal (women’s circle); mahila panchayat (women’s council); mahila manch (women’s platform); nari nyaya samiti (women’s justice committee); and so on” (Vatuk, 2013, 76). In this paper, however, we restrict our exploration to the nari adalat.

<sup>v</sup> In Bangladesh, the duty of a young Hindu bride was described as *por ke aapon kora*, which literally means “making outsiders insiders” –in other words doing everything you can to become an insider. This “adjustment” is also expected of Muslim women.

<sup>vi</sup> Also known in Hindi as the Mahila Samakhya Sangathan (Women’s Equality Society).

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<sup>vii</sup> Mediation is differentiated from arbitration, also a form of Alternate Dispute Resolution (ADR). The latter is a process when an objective third party has the authority to make the final decision based on testimony of both parties (Heilman et al. 2016).

<sup>viii</sup> In a controversial move, the government decided, in March 2016, to merge the Mahila Samakhya Program with the National Rural Livelihood Mission (NRLM). (Times of India Feb. 8, 2016, “Will Mahila Samakhya lose its Edge after Merger.”)

<sup>ix</sup> The union is a geographic administrative unit in Bangladesh.

<sup>x</sup> In civil cases, the SD-PO receives the complaint and he sends a letter to the accused saying that an allegation against him has been received by BRAC and that (s)he should come to the office to resolve the matter. If there is no response after a week, another notice is sent. If there is still no response, a letter is sent through a lawyer threatening legal action. Once the accused responds, the SD-PO sets a date for a dispute resolution meeting at the BRAC offices, where the SD-PO is the primary arbitrator. At the meeting, the accused and the plaintiff come with their respective representatives. If they are unable to solve the dispute, SD-PO forwards the case to the panel lawyer, who then files it as a case in the district court (Alim & Ali 2007, 5).

<sup>xi</sup> On average, a Mahila Samakhya sangha member forgoes Rs. 3532 per year in wages; bringing the total contribution to about Rs. 170 crore or Rs. 170 million (Jha and Menon 2016).

<sup>xii</sup> We do not suggest here in any way that battered women’s shelters, even if feasible, are the solution to domestic violence for low-income women. Instead, this mention of shelters is to illustrate the larger argument of choices for low-income women.