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Paving the Road to a More Free World: ADR as Sustainable Development – a Look at Bangladesh

M. Amadea Gosh*

I. INTRODUCTION

Pervasive human rights abuses and challenges to democracy consistently plague South Asian countries.¹ “Sectarian tensions, home grown and imported terrorist groups, extremism, pervasive corruption, and ineffective legal systems present major obstacles to development, peace, and stability in the region.”² Corruption in South Asia is notoriously rampant.³ Corruption in both the governments and judicial systems perpetuates inefficiency and a lack of justice, often heightening abuse against the most vulnerable members of society, such as women, minority religious sects, and ethnic groups.⁴

While these problems persist throughout South Asia, Bangladesh, in particular, has had a traditionally poor track record when it comes to human rights abuses and institutional corruption.⁵ This impoverished nation suffers

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1. South Asia is comprised of the following countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. The World Bank, South Asia, *available at* <http://www.worldbank.org/sar/> (last visited Jan. 15, 2009).

2. U.S. DEP’T OF STATE, SUPPORTING HUMAN RIGHTS AND DEMOCRACY: THE U.S. RECORD, at 199 (2004), *available at* <http://www.state.gov/g/drl/rls/shrd/2003/> (follow “South Asia” hyperlink).

3. *Corruption in South-East Asia*, THE ECONOMIST, Feb. 19, 2004, *available at* http://www.economist.com/world/asia/displaystory.cfm?story_id=2446845.

4. U.S. DEP’T OF STATE, *supra* note 2.

5. See Frederick T. Temple, World Bank Country Director, Bangladesh, Fighting Corruption in Bangladesh: Introductory Remarks at PARC Workshop (Mar. 12, 2000), *available at* <http://go.worldbank.org/QK28GCR270> (last visited Jan. 15, 2009).

from a chronic law and order problem as a result of political violence,⁶ overpopulation,⁷ gross economic challenges,⁸ and an unworkable legal system.⁹ One of the poorest and most populated countries in the world, Bangladesh was also recently ranked first on Transparency International's list of the world's most corrupt nations.¹⁰ Like many developing countries, Bangladesh needs to accelerate economic growth and to improve its political and judicial systems.¹¹ Economic growth, however, especially sustainable growth, does not automatically happen. For Bangladesh to raise itself above its current state of poverty, it must create a more favorable investment climate.¹² It must also create an environment where the poor—the majority of its citizens—can participate in the growth process.¹³ Numerous factors affect the potential for enduring stable growth including: macroeconomic strength, quality of infrastructure, a solid regulatory framework, an absence

6. See, e.g., Press Statement, Richard Boucher, Spokesman, U.S. Dep't of State, Political Violence in Bangladesh (Jan. 28, 2005), available at <http://www.state.gov/r/pa/prs/ps/2005/41349.htm> (last visited Jan. 15, 2009).

7. See CIA, The World Factbook – Bangladesh, <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html> (last visited Jan. 15, 2009).

8. INT'L MONETARY FUND, BANGLADESH: POVERTY REDUCTION STRATEGY PAPER 15 (2005), available at <http://www.imf.org/external/pubs/ft/scr/2005/cr05410.pdf> [hereinafter IMF]. The gross domestic product per capita in 2007 was \$520 U.S. U.S. DEP'T OF STATE, BACKGROUND NOTE: BANGLADESH (2008), available at <http://www.state.gov/r/pa/ei/bgn/3452.htm>.

9. DALEM CH. BARMAN, M. GOLAM RAHMAN & TASNEEM SIDDIQUI, INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE REPORT, DEMOCRACY REPORT FOR BANGLADESH 15 (2007), <http://www.idea.int/publications/sod/upload/Bangladesh.pdf>.

10. TRANSPARENCY INT'L BANGLADESH, Corruption Perceptions Index: Frequently Asked Questions, available at http://www.ti-bangladesh.org/index.php?page_id=216 (last visited Jan. 15, 2009) [hereinafter Transparency Int'l, Corruption Index] (stating that Bangladesh was perceived between 2001 and 2004 to be the most corrupt country in the world). See TRANSPARENCY INT'L BANGLADESH, CORRUPTION DATABASE REPORT 2004 (2004), available at <http://www.ti-bangladesh.org/documents/CorruptionDatabase-04.pdf> [hereinafter TRANSPARENCY INT'L, CORRUPTION REPORT], for an explanation of the report. Eliminating corruption is essential to economic growth and political stability as outlined by Transparency International (TI). *Id.* In its annual report, TI states: "Just as corruption adversely affects our society economically, similarly it violates human rights, creates obstacles to development, deteriorates law and order and accelerates environmental degradation. . . . [A]lthough financial losses topped the list among the direct impacts resulting from corruption, human rights violations and hindrances to development had the maximum indirect or secondary impact." *Id.* "The World Bank estimates that 2-3% of GDP growth is lost to corruption each year." Deutsche Welle, *Bangladesh: Politics and Business between Corruption and Development*, BONN, COLOURS OF BENGAL, Apr. 15, 2005, at 1, available at http://www.transparency.org/content/download/2048/12352/file/PE_corruptern&development_15-04-05.Bonn.doc. "Per capita income could double if the government restrained corruption." *Id.*

11. THE WORLD BANK, BANGLADESH: IMPROVING GOVERNANCE FOR REDUCING POVERTY 1 (2002), available at <http://www.lcgbangladesh.org/reading.php?i=13> (Located under "Reports").

12. See *id.*

13. See *id.*

of bureaucratic corruption, and, importantly, the rule of law.¹⁴ Without the critically necessary element of a well-functioning judicial system, economic growth cannot occur.¹⁵

In this paper, I will look at the sustainable impact that Alternative Dispute Resolution (ADR) programs are having in the third world by examining one such nation in particular, the country of Bangladesh. Due to its historical problems combating poverty and corruption, Bangladesh has uniquely devised alternative, extra judicial means of resolving conflict.¹⁶ I will begin by looking at the current state of affairs of the country's government and judicial systems. Next, I will examine the nation's distinctive dispute resolution mechanism, known as *shalish*, and then discuss the pivotal role non-governmental organizations (NGOs) are playing in adapting the traditional ADR methods into a modern and more effective framework. Next, I will discuss the impact that the NGO-improved processes are having upon the traditional judicial system. And finally, I hope to provide some insight on what Bangladesh should do to continually work towards a more sustainable future.

14. *See id.*

15. See Robert M. Sherwood, et al., *Judicial Systems and Economic Performance*, 34 Q. REV. ECON. & FIN. 101 (1994), “[f]or an examination of the hypothesis that effective judicial systems are requisite for optimal market functioning[.]” In that article, the authors believe that countries which attempt economic liberalization under a weak judicial system suffer “at least a 15 percent penalty in their growth momentum.” *Id.* at 113; see also Frank B. Cross, *Symposium: What We Know and Do Not Know About the Impact of Civil Justice on the American Economy and Policy Y: Law and Economic Growth*, 80 TEX. L. REV. 1737, 1740 (2002). Renowned economist Hernando de Soto explicated in his book on the essential correlation between law and proper functioning economies. HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL* 159 (2000). De Soto displays the great importance on the establishment of property rights to economic growth in poor countries. *Id.* In his book, he writes: “Without succeeding on these legal and political fronts, no nation can overcome the legal apartheid between those who can create capital and those who cannot.” *Id.* In his proposal for a “Comprehensive Development Framework” in January 1999, the World Bank President, Mr. James D. Wolfensohn, stated:

Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible. A Government must ensure that it has an effective system of property, contract, labor, bankruptcy, commercial codes, personal rights law and other elements of a comprehensive legal system that is effectively, impartially and cleanly administered by a well-functioning, impartial and honest judicial and legal system.

MARIA DAKOLIAS, *COURT PERFORMANCE AROUND THE WORLD: A COMPARATIVE PERSPECTIVE* (1999), at v, available at <http://www-wds.worldbank.org/0M6OWMOG90> (Click on “PDF” under “Downloads”).

16. Bangladesh's alternative dispute resolution system is known as *shalish* and will be discussed in detail. *See infra* Part IV.A-B.

II. CURRENT STATE OF AFFAIRS IN BANGLADESH

Bangladesh has created its own man-made roadblocks to expanding sustainable development.¹⁷ Overloaded courts forestall the administration of justice.¹⁸ Fair and expeditious trials are problematic due to corruption within the system, inaccessibility to the courts, and a large judicial backlog of cases.¹⁹ A prominent Bangladeshi Supreme Court Justice aptly stated the condition of the judiciary: “[Our judicial system] has become antiquated and overburdened by its in built inability to recognize new problems. . . . [T]he current backlog and delay problem in our country has reached such a proportion that it effectively deny [sic] the rights of citizens to redress their grievance.”²⁰ A poorly functioning judicial system prohibits sustainable development because investors and citizens alike do not have confidence that their property is secure, that their contracts are enforceable, or even that their case will be heard.²¹

Recent surveys conducted by the World Bank find that large sections of the population regard the courts in Bangladesh as “unresponsive, many lawyers as self-serving, and the police [and courts] as both inefficient and corrupt.”²² Twenty-five percent of respondents said they avoided a court case even when one had been necessary.²³ Twenty-one percent said that the court’s orders could not be executed even if the order was favorable to the

17. See THE WORLD BANK, *supra* note 11, at 2. Many of these “roadblocks” are due to the nation’s protracted weakness in policies and practices dealing with public administration, particularly within the judicial system. *Id.*

18. See DAKOLIAS, *supra* note 15, at 1.

19. See U.S. DEP’T OF STATE, *supra* note 2, at 204. Justice is not swift in Bangladesh. A criminal case usually takes six months to two years and sometimes more to reach judgment. Md. Abdul Alim, Shalish and the Role of BRAC’s Federation: Improving the Poor’s Access to Justice 22 (Dec. 2004) (unpublished M.A. thesis, Graduate School of Development Studies at the Hague) (on file with Institute of Social Studies, The Hague), *available at* http://www.bracresearch.org/publications/thesis_alim_bhair_full.pdf. Land related cases usually take five to ten years but at times about twenty years to be resolved. *Id.*

20. K. M. HASAN, A REPORT ON MEDIATION IN THE FAMILY COURTS: BANGLADESH EXPERIENCE I (2001), <http://www.peacemakers.ca/research/Bangladesh/BangladeshBib.html> (Located under “ADR, Mediation and Court Case Flow Management”).

21. See THE WORLD BANK, *supra* note 11, at 5; *see also* TRANSPARENCY INT’L BANGLADESH, *supra* note 10, at 3-4.

22. See THE WORLD BANK, *supra* note 11, at 5, 9. Those surveyed include both households and businesses alike. *Id.*

23. *Id.* at 10. “High cost [], delay [], and the bribes necessary [] were cited most often as reasons why these households avoided seeking justice from the courts.” *Id.* Bangladesh “is a country where the courts are so reviled and ridiculed, held in such contempt, so ‘sold out’ by common acknowledgment, that the thought of resort to the judiciary for the settlement of important conflicts has been a bad joke for generations.” Alim, *supra* note 19, at 22.

parties.²⁴ Business owners must vigilantly search for ways to resolve their disputes outside the traditional court system.²⁵ Entrepreneurs surveyed reported that they too generally find alternative ways to resolve disputes due to the heavy expense and expected delays within the state court system.²⁶ While people may have decided against litigation for any number of reasons, nearly half of the people surveyed faulted the time span required to cultivate a settlement agreement while forty-three percent cited the high cost of court fees.²⁷ A third maintained that bribes are a necessary expense for a case to progress to the next stage of the litigation process, while twenty percent believed that judgments are only infrequently executed.²⁸ Partiality by the courts, threats from opposing counsel, and the unavailability of suitable lawyers were cited as other complaints.²⁹

Problems in the judicial system adversely affect the poor and disadvantaged disproportionately.³⁰ In many Asian countries, as in Bangladesh, the poor constitute the largest proportion of the population.³¹

24. See THE WORLD BANK, *supra* note 11, at 10.

25. *Id.*

26. *Id.*

27. See *id.* Court costs are exorbitant due to attorneys' fees, fees for motions, fees for witnesses, fees for transportation and fees for court staff. *Id.* at 11. Fifty-nine percent of surveyed individuals stated that they had to visit the court more than ten times for hearings, adding to the time missed from work and additional expenses to the court. *Id.*

28. See *id.* at 7. According to the World Bank's statistics, the average price paid to the police to register a complaint is as follows (in Taka, currency for Bangladesh): for a robbery or murder – 595; theft – 1855; crimes against women – 286; fraud – 3804; violence related to property disputes – 4787; violence related to extortion – 1998; and violence related to political rivalry – 3644. *Id.* As previously stated, Bangladesh's GDP per capita is US \$456 or per month at the current rate of exchange, Tk 2660. See IMF, *supra* note 8. Obviously, these fees can amount to more than a month's salary.

29. THE WORLD BANK, *supra* note 11, at 10-11.

30. See Alim, *supra* note 19, at 5:

Typically, justice within the formal state system is beyond the means of most poor people. . . . Exhorbitant costs, excessive delays and backlogs, and a lack of knowledge or resources are major obstacles to those who seek justice in formal legal settings (citation omitted). . . . The basic structure of the legal system is biased toward the affluent and the politically powerful.

Id.

31. See ASIAN DEVELOPMENT BANK, LAW AND POLICY REFORM AT THE ASIAN DEVELOPMENT BANK 25 (2001), available at http://www.adb.org/documents/others/law_adb/lpr_2001.pdf. According to PovcalNet, which is a statistics replicating mechanism used by the World Bank, inputting the average income per month for Bangladeshis (or \$38 US), the stats reveal that 46.34% of Bangladeshis live under the poverty line, as well as almost 40% of Indians, 33.73% of Nepalese, and 16.97% of Pakistanis. See The

Poverty and discrimination undermine the rights and well-being of the populace and detract from other economic and political opportunities to which they are equitably entitled.³² In Bangladesh, the poor do not have the means to access the formal justice system.³³ Main obstacles the poor face include inflated legal costs, unnecessary delays and a lack of education of both the legal system and potential resources.³⁴ Moreover, courts tend to be geographically based within urban centers³⁵ Most of Bangladesh's population, however, is rural.³⁶ Thus, access to the court system is extremely limited. According to a study by the Bangladesh Rural Advancement Committee (BRAC),³⁷ eight out of ten Bangladeshis live in village communities far away from any formal court.³⁸ As a result, the rural poor have to bear travel and logistics costs.³⁹ One colloquial saying in Bangladesh captures how people generally perceive the courts: "*He who gets trapped by the law falls into the mouth of a tiger.*"⁴⁰

World Bank Group, Regional Aggregation Using 2005 PPP and \$1.25/day Poverty Line, available at <http://iresearch.worldbank.org/PovcalNet/povDuplic.html> (last visited Jan. 15, 2009). These statistics solely relate to the proportion of the population subsisting on roughly \$1.27 per diem. See *id.*

32. ASIAN DEVELOPMENT BANK, *supra* note 31, at 25.

33. See Alim, *supra* note 19, at 5.

34. See *id.*

35. See *id.*

36. U.N. Econ. & Soc. Affairs, *World Urbanization Prospects: The 2003 Revision*, 171, U.N. Doc. ST/ESA/SER.A/237 (2004), available at <http://www.un.org/esa/population/publications/wup2003/WUP2003Report.pdf>. "[N]early two-thirds of Bangladeshis are employed in the agriculture sector . . ." See CIA, *supra* note 7.

37. BRAC, discussed below, began as an almost entirely donor-funded, small-scale relief and rehabilitation organization to help Bangladesh overcome the devastation and trauma of the Liberation War. Today, BRAC has emerged as an independent, virtually self-financed paradigm in sustainable human development. It is the largest in the world employing 97,192 people, with the twin objectives of poverty alleviation and empowerment of the poor. Through experiential learning, BRAC today provides and protects livelihoods of around 100 million people in Bangladesh. BRAC.net, <http://www.brac.net/about.htm> (last visited Nov. 9, 2008).

38. DINA M. SIDDIQI, PAVING THE WAY TO JUSTICE: THE EXPERIENCE OF NAGORIK UDDYOG, BANGLADESH 7 (2003), available at <http://www.oneworldaction.org/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=18A82462-1DB2-4854-9117-9A1BA2FA46DB&mode=link&guid=62eed6babe7040c089d3bfe7b64f1546>.

39. *Id.* at 7.

40. Alim, *supra* note 19, at 6.

III. LEGAL EMPOWERMENT

“Legal empowerment” became popular terminology in the field of development in the 1980’s.⁴¹ Scholars defined legal empowerment in several ways: (1) “control over community resources,” (2) “the means required for escape from poverty,” (3) “participation in decision-making,” or (4) “the power of decision-making,”—that is, the ability to make choices.⁴² At the heart of empowerment is the concept that power can be legitimately shared, distributed and redistributed.⁴³ Because legal empowerment is so crucial to helping stem the impasse of poverty and development, particularly in the poorest of nations, numerous international organizations such as the United Nations (UN), the World Bank, and the Asian Development Bank (ADB) have begun to amass ways to improve governance in Bangladesh, and in turn, improve Bangladeshis’ access to justice in Bangladesh.⁴⁴

An ADB report, examining legal empowerment, found that the use of law increases the control disadvantaged populations exercise over their lives, contributes to good governance and poverty reduction, and assists other development goals.⁴⁵ According to the ADB, a legal environment conducive to development is essential for all developing countries.⁴⁶ The ADB promotes the rule of law through a pro-poor legal and institutional framework which creates stability, predictability, transparency, accountability, and greater participation in society.⁴⁷ Good governance programming supports equitable and inclusive growth and the spread of economic freedoms and rights.⁴⁸ The good governance programming, which leads to greater legal empowerment, involves building the confidence of and providing information to the poor and disadvantaged, while also creating an environment where they learn to collaborate for common development

41. *Id.* at 18. The term *empowerment* is the process of challenging existing power structures and gaining greater control over sources of power. *Id.*

42. *See id.* at 19.

43. *See id.* at 18.

44. *See, e.g.,* ASIAN DEVELOPMENT BANK, *supra* note 31; *see also* THE WORLD BANK, *supra* note 11; Md. Awal Hossain Mollah, Good Governance in Bangladesh: Role of Parliament, *available at* <http://unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN014209.pdf> (last visited Jan. 15, 2009).

45. *See* ASIAN DEVELOPMENT BANK, *supra* note 31, at 25.

46. *See generally* ASIAN DEVELOPMENT BANK, *supra* note 31.

47. *See id.* at 26.

48. *See id.* at 25.

objectives.⁴⁹ Furthermore, good governance programming contributes to institutional reform because it mobilizes “public interests and expectations that are often neglected by more narrowly focused efforts to strengthen formal institutions.”⁵⁰ The ADB found that an accessible and responsive legal system furthers good governance, and that legal empowerment is essential to reducing poverty.⁵¹

Justice is inaccessible to the poor in South Asia because the poor are uneducated regarding the law and their rights under it.⁵² Even if knowledge and information were readily available, the poor would still be unlikely to utilize the formal legal system due to their lack of trust regarding enforcement of any judgment.⁵³ Moreover, the literal language of the law may create another problem by blocking effective access, particularly where laws are drafted or court cases conducted in a language not understood by the majority of the population.⁵⁴ Problems of inaccessibility of the legal system are exacerbated by inadequate dissemination of legal information.⁵⁵ Laws are amended or changed, judicial decisions are made, yet no system currently exists to disseminate this information to the general public.⁵⁶

In many societies, attitudes and practices of the legal profession place further constraints on access to justice.⁵⁷ The poor, women, ethnic minorities, and other potentially disadvantaged groups often face longstanding social attitudes, cultural mores, and religious values which create further impediments to information and resources. For instance, most lawyers have minimal contact with the disadvantaged.⁵⁸ Furthermore, organizations such as bar associations may limit alternative legal services as they potentially reduce laypersons’ dependence on lawyers.⁵⁹ Also, free or

49. *See id.* at 26.

50. *See id.*

51. *See* ASIAN DEVELOPMENT BANK, *supra* note 31, at 29.

52. *Id.* at 31.

53. *Id.* at 32.

54. *Id.*

55. *Id.*

56. *Id.*

57. *See* ASIAN DEVELOPMENT BANK, *supra* note 31, at 36.

58. *Id.* at 33.

59. *Id.* at 34. According to the report, there is a tension between wanting to inform citizens of their rights regarding alternative legal services and not doing so. *Id.* Namely, while educating people may result in more business for lawyers, such knowledge may also prevent legal problems from occurring in the first place. *Id.* Moreover, the recent establishment of paralegals and alternative dispute resolution procedures where citizens can participate without formal legal education, discussed *infra*, may inhibit lawyers from acting too readily to disseminate this knowledge as it may undermine their professional business interests. *Id.*

subsidized legal services are difficult to find, further limiting access to justice for the poor.⁶⁰

IV. ADR IN BANGLADESH

To combat the numerous problems the disadvantaged face in gaining access to the judiciary, Bangladesh became one of many developing nations, which increasingly focused attention and resources to utilize alternative ways to resolve disputes outside of the traditional court system.⁶¹ Different countries use different terms relating to alternative dispute resolution (ADR) depending upon the community culture.⁶² The ADR-specific concepts of “arbitration”, “mediation” and “conciliation/negotiation” are often used interchangeably and without precision.⁶³ ADR has been hailed by various international organizations as an “empowering option” for providing justice and ultimately aiding in the processes of good governance, poverty reduction, and sustainable development.⁶⁴

While courts certainly play an important role in legal empowerment, other forums, notably those relating to ADR, may be even more crucial because they have proven to be more accessible and friendly for the masses.⁶⁵ For the United States Agency for International Development-Bangladesh (USAID-Bangladesh), participation at the local level, particularly by women, is a strategic objective; and improved ADR results.⁶⁶ USAID-Bangladesh’s decision to initiate ADR programs was driven by two factors: first, funding ADR programs is one way to reduce poverty; second, the local and international NGO community has recognized the value that

60. *Id.* at 33. “This is partly due to the prevailing culture of legal education and the legal profession in Asia.” *Id.* While “some countries [do] have national legal aid systems that are administered by their governments or bar associations, many of these are under-funded or constrained by operational difficulties.” *Id.*

61. See generally CENTER FOR DEMOCRACY AND GOVERNANCE, BUREAU FOR GLOBAL PROGRAMS, FIELD SUPPORT, AND RESEARCH, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, ALTERNATIVE DISPUTE RESOLUTION PRACTITIONERS’ GUIDE 5 (1998), available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacb895.pdf. Examples of specific country cases cited in this technical paper include: Bangladesh, Bolivia, Costa Rica, South Africa, Sri Lanka, and Ukraine. *Id.*

62. Alim, *supra* note 19, at 15.

63. *Id.*

64. CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at 6; see also ASIAN DEVELOPMENT BANK, *supra* note 31, at 46.

65. See ASIAN DEVELOPMENT BANK, *supra* note 31, at 46.

66. CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at app. B1.

ADR programs bring to their other programming activities.⁶⁷ In this sense, ADR is seen as one way to tackle broader social issues, namely justice for the poor and the women's empowerment.

A. *Shalish*

The foundation of proposed solutions to the problems within the judicial system all stem from an ancient practice to resolve disputes, unique to Bangladesh, known as *shalish*.⁶⁸ *Shalish* is a social system developed in Bangladesh for the informal adjudication of both civil and criminal disputes by local leaders⁶⁹ or adjudicators.⁷⁰ *Shalish* as a process is supposed to beget conciliation since it addresses socially relevant issues to the poor, including crime and security, protection of people's entitlements, and local dispute resolution.⁷¹ Decisions made as a result of *shalish* are not recognized by state law as official and subsequent enforcement actions have no legal force,⁷² although decisions are generally followed, which will be discussed infra.

While *shalish* has existed on the subcontinent for centuries, the British colonial rulers moved to set up more formal village courts to deal with petty offenses under the supervision of local elected chairmen.⁷³ In 1961, Pakistan, of which Bangladesh was part at this time, promulgated the Muslim Family Law Ordinance and the Conciliation Courts Ordinance so that local village courts could deal with minor offenses such as those related to marriages, polygamy, land disputes, and inheritance.⁷⁴ In 1976, the government of Bangladesh constituted village courts to settle minor criminal

67. *Id.* app. at B7. The *other programming activities* include microfinance, healthcare, and education.

68. See Alim, *supra* note 19, at 7. *Shalish* may also be referred to as *salish* by some organizations. See, e.g., SOHELA NAZNEEN, GENDER RELATIONS IN BANGLADESH: THE HOUSEHOLD AND BEYOND DOWRY, WOMEN'S PROPERTY RIGHTS AND SALISH (2004), available at <http://www.carebd.org/Gender%20Relations%20in%20Bangladesh.pdf>.

69. Local leaders are known as *matbars*. See Kamal Siddiqui, *In Quest of Justice at the Grass Roots*, 43 J. OF ASIATIC SOC. OF BANGL. 1, 1 (1998). A *matbar* is a village elder (male) who belongs to the rentier class, meaning he can live upon rent from the land and thus, he has a vested economic interest in village proceedings. See NAZNEEN, *supra* note 69, at iv, 27. Local elite play a significant role in mediating judicial and political events within the community and at the same time maintaining stability at the intra-village levels as protectors of customary norms and values. See Alim, *supra* note 19, at 14.

70. Adjudicators are known as *shalishkars*. See Siddiqui, *supra* note 70. A *shalishkar* can be a man or woman, although usually it is a man. See NAZNEEN, *supra* note 69, at 28.

71. See Alim, *supra* note 19, at 21-22.

72. See *id.* at 16.

73. See Siddiqui, *supra* note 70, at 2-4.

74. See *id.*

and civil disputes.⁷⁵ The main objective of the village courts was not to determine right and wrong and thus, punish the wrongdoers; rather, it was to find an amicable settlement of the disputes.⁷⁶ [V]illage leaders emphasize harmony within personal relationships and within the larger community, which *shalish* aims to maintain.⁷⁷ Leaders say that “resolving disputes informally enable[s] the community as a whole to remain peaceful[,]” and villagers to “avoid embarrassment in the court.”⁷⁸ According to one surveyed village head, “our goal . . . is to act as a mediator and conciliator, to find a harmonious solution, not where one side wins and the other loses.”⁷⁹

Litigation is most often seen not as resulting in resolution, but further encouraging enmity among the disputants and divisiveness within the community.⁸⁰ Because villages are close-knit communities with strong relational ties, it makes sense that villagers perceive informal negotiation as less socially disruptive than using the formal legal system.⁸¹ Village leaders emphasize the importance of harmony in the community, but the fear of revenge also remains a deterrent to using a formal court system.⁸² Many offenses originate from land disputes and family disagreements, which may lead to violence or murder, but even in criminal matters, *shalish* may be used to avoid litigation.⁸³

Shalish is not a typical form of ADR in that it does not use purely arbitration, mediation, or negotiation methods.⁸⁴ Rather, *shalish* uses a blend of arbitration and mediation.⁸⁵ While disputants generally may choose to use mediation or arbitration, arbitration is the more common choice.⁸⁶ The *shalish* form of arbitration involves a process whereby officiating members (generally community elders) make unilateral decisions to decide the dispute; this is juxtaposed to mediation which engages opposing parties

75. *See id.*

76. *See id.*

77. Alim, *supra* note 19, at 24.

78. *Id.*

79. *Id.*

80. *See id.*

81. *See id.*

82. *Id.*

83. *See* Alim, *supra* note 19, at 30; *see also* Siddiqui, *supra* note 70.

84. *See* Alim, *supra* note 19, at 29.

85. *Id.*

86. *Id.* at 26.

in a competitive dialogue to reach mutually satisfying solutions.⁸⁷ Mediation is not coercive, but rather it is a voluntary means by which parties can reach an accord.⁸⁸ Mediation is superior to litigation as it encourages parties to discuss their issues and interests in order to reach some sort of compromise agreement, thus avoiding the inherent adversarial nature of more formal legal actions.⁸⁹ Disputants become more psychologically and emotionally bound to a resolution in mediation because the opponents actively participated in the agreement's formulation.⁹⁰

The World Bank's study of Bangladesh highlights additional merits of NGO-facilitated mediation. The study found that "[t]he most tangible gain from mediation services is the lesser cost in disposing of disputes," benefiting individual disputants immensely, as most are extremely poor.⁹¹ The quicker timeline for resolution of the dispute in mediation is a further advantage of mediation over traditional litigation.⁹² This, in turn, benefits the courts by actually reducing their caseloads which are already overburdened with lawsuits.⁹³ Truly, the community as a whole benefits from mediation services.⁹⁴ When effective, meaningful relief can be obtained through a community support system, which is relatively inexpensive and accomplished in a prompt manner, a disputant is more likely to rely upon the community rather than resort to self help.⁹⁵ Moreover, a dispute resolution mechanism entwined within a communal environment instills a sense of responsibility and kinship amongst community members, thereby providing for additional safety as well.⁹⁶ The increased efficiency and cost benefit of mediation, in addition to its procedural informality, and practical clarity make mediation an attractive alternative to conventional litigation.⁹⁷

Both mediation and arbitration have proven to be effective tools to resolve village disputes. In either case, *shalish* starts with interrogation of the parties to find out the facts of a given dispute.⁹⁸ Afterwards, the *shalishkars* give their recommendations for solution and take the opinions of

87. *Id.*

88. *See id.* at 15.

89. ASIAN DEVELOPMENT BANK, *supra* note 31, at 115.

90. *Id.*

91. *Id.* at 116.

92. *Id.*

93. *Id.*

94. *Id.*

95. ASIAN DEVELOPMENT BANK, *supra* note 31, at 116.

96. *Id.*

97. *Id.*

98. Siddiqui, *supra* note 70.

the disputants before they finally reach a decision.⁹⁹ There are local variations on the *shalish* process, depending upon customs and traditions of the area.¹⁰⁰

The *shalish* system is not without its problems, however. “Corruption and abuse of power, biases in judgment, non-compliance with international human rights standards, lack of inclusiveness, and lack of accountability” are all accusations the system has traditionally faced.¹⁰¹ Powerful community leaders may implement arbitrary solutions or may be swayed by personal allegiances.¹⁰² Occasionally, the “solutions” presented in *shalish* are seen as based less on civil or other law than on subjective judgments designed to ensure the continuity of a leader’s position, to strengthen relational alliances, or to uphold the perceived cultural norms and community biases.¹⁰³ Where parties of unequal social or economic status are involved in a dispute, it is often cited that judgments invariably favor the dominant group.¹⁰⁴ Bias seems to be “particularly pronounced in the case of the poor.”¹⁰⁵ Furthermore, the rulings of *shalish* are not impervious to nepotism and the pressures of political patronage, and the language of consensus becomes a powerful tool for suppressing dissenting views within the community.¹⁰⁶ As such, various NGOs have sought to fill the void between the traditional and customary justice systems.

B. NGOs and *Shalish*

Even with the drawbacks associated with the *shalish* system, in most of the country, particularly the rural areas, it still remains the dispute resolution

99. *Id.*

100. *Id.*; see also CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at 36-37 (stating that in some areas, NGOs may need to converse with traditional community leaders who wish to retain their jurisdiction over community disputes). “Some local traditions of mediation require multiple mediators, widespread participation in the community, or extensive rituals.” *Id.* “Other traditions and community norms may limit the gender or status of those who will be accepted as mediators.” *Id.* Generally in Bangladesh, village mediation committees are composed of a minimum of three members for each mediation which comports with tradition and helps limit corruption or bias. *Id.* at 43.

101. Alim, *supra* note 19, at 27.

102. *Id.*

103. *Id.*

104. *Id.* at 28.

105. *Id.*

106. *Id.*

mechanism of choice. To aid in the improvement of *shalish*, NGOs in recent years have worked diligently to refashion the traditional system.¹⁰⁷ Seeking to fill a need unmet by the traditional court system, NGOs have attempted to set up their own means of resolving disputes by using a retooled version of the system most familiar to their members.¹⁰⁸ Because Bangladesh is such an impoverished nation, NGOs are very prevalent and well-known in the country by the general populace.¹⁰⁹ Due to the limited resources of the Bangladeshi government, juxtaposed with the extensive network of various prominent NGOs,¹¹⁰ these NGOs have gained respect and authority by both the government and the people. In their effort to reduce poverty and ensure a sustainable future, many NGOs have begun to use the *shalish* system as an integral part of their relief efforts.¹¹¹

In conducting a *shalish*, NGOs are conscious of the prime need to ensure neutrality, non-imposition, and attaining a win-win situation in the mediation process.¹¹² A priority is training the *shalishkars*, who are mostly volunteers, on the legal issues and mediation processes.¹¹³

Many Bangladeshi NGOs rely heavily on community mediation by adapting *shalish* for family disputes, land issues, and other local problems.¹¹⁴ The Bangladesh study found that this approach encourages communication between parties, facilitates the identification of areas of dispute and controversy, and assists the parties to achieve a resolution that is

107. See Siddiqui, *supra* note 70.

108. See Janice H. Lam, *The Rise of the NGO in Bangladesh: Lessons on Improving Access to Justice for Women and Religious Minorities*, 38 GEO. WASH. INT'L L. REV. 101, 116 (2006), available at <http://www.allbusiness.com/legal/1086335-1.html>. Lam states that mission agencies first began to occupy a niche between the state and society because they were able to provide services that the state could not, such as social-development programs like schools and orphanages. *Id.* Accordingly, NGOs now occupy the same unique status as they play a vitally important role in the lives of rural Bangladeshis. *Id.*

109. See *id.*, stating NGOs in Bangladesh have multiplied quickly since the late 1970s. "Few countries have witnessed the dramatic growth of NGOs as much as Bangladesh, which currently has a total of 26,000 officially registered NGOs." *Id.* "According to one estimate, Bangladesh has 3.5 NGOs per square mile, the greatest number of foreign NGOs per square mile of any country." *Id.*

110. The Bangladesh Rural Advancement Committee (BRAC), Maduripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST) and Banchte Shekha are the nation's most prominent legal-related NGOs and will be discussed later. See generally ASIAN DEVELOPMENT BANK, *supra* note 31, at app. B.

111. See Lam, *supra* note 109, at 123 ("NGOs in Bangladesh have taken on an increasingly broad role in addressing legal and political issues beyond their traditional focus, such as strengthening economic and social programs").

112. See Siddiqui, *supra* note 70.

113. See *id.*

114. Alim, *supra* note 19, at 16.

reached and defined by the parties themselves.¹¹⁵ Participation and success in village *shalish* implies *empowerment* of the people.¹¹⁶

V. NGOS IN BANGLADESH

Bangladesh offers several NGO-facilitated ADR models through which community residents engage in modified versions of the traditional village dispute resolution procedures. The following section outlines several prominent NGOs and the particular methods each is using to revitalize *shalish* while meeting the needs of the local community they serve.

A. BRAC

Since 1998, BRAC, also known as the Bangladeshi Rural Advancement Committee, has had an enormous presence throughout Bangladesh as the nation's and world's largest poverty relief agency.¹¹⁷ It has been intervening in the villages by developing "federations," called *Polli Shomaj*,¹¹⁸ by which "members aim to achieve high awareness of their social and political conditions, increase their ability to undertake and manage social and economic action, and develop the ability to solve their own disputes through informal justice."¹¹⁹ The federations tend to consist of between fifteen and twenty-five members,¹²⁰ and uniquely, these groups are made up solely of women.¹²¹ Between 2003 and 2006, BRAC set up about 500 federations as part of its attempt to "re-focus on social mobilisation [sic] efforts and to strengthen local level institutions."¹²² The main objective of *Polli Shomaj* is to give a political voice to poor women and ensure their voice is heard.¹²³ The BRAC federation system is designed to deliberately complement the functioning of *shalish*.¹²⁴ BRAC creates a collective action system whereby

115. See ASIAN DEVELOPMENT BANK, *supra* note 31, at 115.

116. Alim, *supra* note 19, at 12; see generally ASIAN DEVELOPMENT BANK, *supra* note 31.

117. See BRAC.net, About BRAC, <http://www.brac.net/about.htm> (last visited Jan. 15, 2009).

118. See BRAC.net, Socio Political Assets Text, http://www.brac.net/coreprogs_files/sociopoliticalassetstext.htm (last visited Jan. 15, 2009).

119. Alim, *supra* note 19, at 6-7.

120. *Id.* at 41.

121. BRAC.net, *supra* note 118.

122. *Id.*

123. *Id.*

124. Alim, *supra* note 19, at 7.

members are able to organize themselves into federations which can then communally demand access to justice.¹²⁵ To do this, BRAC employs program staff workers who provide assistance to community members whose rights are being infringed.¹²⁶ BRAC also assists women particularly in seeking the help of a lawyer, legal aid clinic, or the police.¹²⁷

Furthermore, BRAC does advocacy work and networking with other NGOs, and mobilizes government resources.¹²⁸ BRAC's federations "have addressed such issues as illegal divorce, dowry, under-age marriage, polygamy, and injustice within communities."¹²⁹ Moreover, BRAC cites that its *Polli Shomaj* members are "participating in greater numbers in resolving social conflicts through local" *shalish*.¹³⁰ BRAC notes that one of its major achievements is the creation of a new generation of female leaders among the poor.¹³¹

Another one of BRAC's core programs is the Human Rights and Legal Service (HRLS) Programme, a central component of the NGO's Social Development Program.¹³² First introduced in 1986, it notifies women members of their basic rights under the Bangladeshi Constitution and gives members access to information about the law.¹³³ The Local Community Leaders (LCL) workshop is another tool BRAC uses to educate the poor about their legal rights.¹³⁴ In a one-day workshop held at the BRAC Area Office, representatives from the community are taught by trained facilitators regarding areas of the law pertinent to their lives.¹³⁵

125. *Id.* at 13.

126. *See* BRAC.net, *supra* note 118.

127. *See id.*

128. *See* BRAC.net, *supra* note 119. These government resources can include such things as: Vulnerable Group Development cards, old age pension cards, Khash land and ponds, roads and embankments. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* It is important to note that it is very unusual for women to assume such formal leadership positions within the community. *Id.* Thus, BRAC has had some measure of success in being able to change gender stereotypes, gender roles, and divisions of power within communities. *Id.*

132. *See* BRAC.net, Human Rights Text, http://www.brac.net/supportprogs_files/humanrightstext.htm (last visited Jan. 15, 2009).

133. *See id.*

134. *See id.*

135. *See id.* The website goes on to describe the meetings, stating:

The participants include the current UP chairman, ex-chairmen, UP members, the local Quazi (marriage registrar), Imam (Muslim religious leader), teachers, journalists, local leaders and influential people. The HRLE Shebika, the Polli Shomaj Chairperson, the Social Development PO, the Area Coordinator (AC) and the Area Manager also participate in this workshop.

BRAC also works with the organizations Ain o Shalish Kendra (ASK) and Bangladesh National Women's Lawyers Association (BNWLA), called the BRAC/ASK and BRAC/BNWLA Joint Legal Aid Programs respectively, to develop a legal aid clinic for the poor.¹³⁶ ASK and BNWLA are partner NGOs with BRAC.¹³⁷ The free clinics assist BRAC members in resolving their conflicts either through *shalish* or through the formal legal system.¹³⁸ BRAC's work in this area has impacted the traditional justice system which traditionally discriminates against the poor and marginalized. Because of the BRAC legal aid clinics, women, in particular, have gained an enormous amount of bargaining power; while traditionally, decisions were simply imposed upon them by elite males, women can now enforce laws which were established to protect their rights in the first place.¹³⁹ BRAC is not a legal system, thus it has no formal power to bind parties to agreements made during arbitration; however, parties do know that formal action could be brought for non-compliance with the terms of the informal arbitral agreement.¹⁴⁰ At times, arbitration fails. When this occurs, BRAC sends the complaints to ASK lawyers who then take any necessary action, such as filing in the local court.¹⁴¹

B. BLAST

The Bangladesh Legal Aid and Services Trust (BLAST) has emerged in less than a decade "as the largest specialized legal services organization in Bangladesh."¹⁴² A donor funded NGO, it is connected to the country's bar

Issues discussed include an overview of the laws covered through HRLE classes and ways to ensure the implementation of these laws within the local community. Existing social practices that go against the law and ways to change these are also discussed. The main objective of the workshop is to involve influential local community members in the process of changing existing social practices that go against the law.

Id.

136. BRAC.net, Legal Aid Text, http://www.brac.net/coreprogs_files/legalaidtext.htm (last visited Jan. 15, 2009).

137. *Id.* These organizations will be discussed below.

138. *Id.* "The legal aid program deals with issues like dowry, dower and maintenance, polygamy, divorce, physical torture, land related matters, money related matters, rape, acid throwing, kidnapping, trafficking and fraud." *Id.*

139. BRAC.net, *supra* note 137; see also Alim, *supra* note 19, at 29.

140. BRAC.net, *supra* note 137.

141. *Id.*

142. See BLAST.org, History, <http://www.blast.org.bd/history.html> (last visited Jan. 15, 2009).

association.¹⁴³ Begun in 1994, the Board of Trustees includes “eminent jurists, lawyers, and former judges of the Bangladesh Supreme Court.”¹⁴⁴ BLAST’s mission is to create easier access to the legal system for the poor and disadvantaged.¹⁴⁵ BLAST combines “legal counseling, case litigation, mediation, and policy advocacy and public interest litigation.”¹⁴⁶ BLAST has developed expertise in protecting the rights of people in areas like “labor rights, violence against women, trafficking, child rights, legal counseling and training for community awareness.”¹⁴⁷ In recent years BLAST has helped a greater number of deprived and aggrieved workers, especially from the labor-intensive garments industry.¹⁴⁸ BLAST has created a niche for law based mediation or *shalish* and tries to utilize this method before accessing the formal court system.¹⁴⁹

143. ASIAN DEVELOPMENT BANK, *supra* note 31, at 33. “BLAST initially received financial support from the Ford Foundation and the Asia Foundation, and now does so from DFID, NORAD, OXFAM, NOVIB and DANIDA.” BLAST, *supra* note 143.

144. *See* BLAST, *supra* note 143.

145. BLAST.org, Vision/Mission, <http://www.blast.org.bd/vision.html> (last visited Jan. 15, 2009).

146. ASIAN DEVELOPMENT BANK, *supra* note 31, at 61. BLAST objectives include:

To secure that the operation of the legal system promotes access to justice and in particular to provide free legal aid by suitable scheme or in any other way and to ensure that opportunities for securing justice are not denied to any citizen or person by reason of economic or other disabilities . . .

To administer a Trust Fund for establishing and maintaining legal aid and services Units, to be supported by the grants from the Trust; . . .

To establish legal aid/assistance and human rights protection Units in the Bar Associations and in different localities of the country, including rural areas . . .

To conduct special training programs through which relevant skills and expertise can be imparted to lawyer, activists and others . . .

To co-ordinate the works of the Units with other bodies, including NGOs working in related fields . . .

To publish books on various legal subjects, law journal/s containing amongst others, original research article on the various legal subjects, and /or bulletins which may contain reports about such activities of the Bar Council and Bar Associations and other matters which are useful to lawyers; . . .

To promote improved legal education, in particular which would promote awareness of lawyers responsibilities to providing legal aid to the poor and disadvantaged and to promote, establish and maintain national institutions for legal education and/or training institutes to impart legal education and training; . . .

To organize seminars, symposiums, extension lectures on various law subjects for advocates, teachers, law students and advocates and their participation in international conferences, workshops and training and educational programs.

BLAST vision, *supra* note 146.

147. BLAST.org, Legal Aid, <http://www.blast.org.bd/legalaid.html> (last visited Jan. 15, 2009).

148. *Id.*

149. *Id.*

C. *Banchte Shekha*

The women's NGO Banchte Shekha's purpose is "to challenge actions or omissions of individuals, local elites, and public authorities that threaten the rights of women."¹⁵⁰

Banchte Shekha, which means "learning to live," operates in western Bangladesh with a membership of over 20,000.¹⁵¹ The organization provides poor and abused, rural women the opportunity to learn marketable skills and training.¹⁵² Banchte Shekha's activities are diverse and range from economic programs to literacy, health, and legal advocacy, thereby reflecting the organization's commitment to enabling women to be more self-sufficient.¹⁵³ Banchte Shekha members form groups.¹⁵⁴ Through this, they learn to act collectively, whether it is to save money, to take out loans, or seek redress of grievances.¹⁵⁵

Even when a woman can contribute financially to her family, her social mobility is often limited by traditional Asian societal and cultural values.¹⁵⁶ Banchte Shekha has provided its members newfound economic freedom through livelihood initiatives; this, in turn has allowed women an increased ability to assert their rights—far greater than most Bangladeshi women.¹⁵⁷ Banchte Shekha's collective action strategy provides women a defense from being beaten, cheated, or taken advantage of,¹⁵⁸ which is why Banchte Shekha has made such an impact. One particular project Banchte Shekha has undertaken is to conduct videotape interviews to help poor women in *shalish* sessions.¹⁵⁹ Begun in 1992, the organization conducts video

150. ASIAN DEVELOPMENT BANK, *supra* note 31, at 16. Banchte Shekha operates in "the conservative district of Jessore, despite the legal and physical threats which the organization encountered from the start of its work" in the 1980's. *Id.* at 81. Banchte Shekha provides a comprehensive integrated development strategy which combines "legal services with healthcare, education, income generation, micro-credit, and voter education activities." *Id.* at 93.

151. Jim Mullins & Alice Boatwright, Banchte Shekha: Women Helping Women in Bangladesh, <http://www.jim-mullins.com/Bangladesh.html> (last visited Jan. 15, 2009).

152. Communication for Change, Bangladesh: Banchte Shekha, *available at* <http://www.c4c.org/banchte.html> (last visited Jan. 15, 2009).

153. *Id.*; *see also* Mullins & Boatwright, *supra* note 152.

154. Communication for Change, *supra* note 153.

155. *Id.*

156. ASIAN DEVELOPMENT BANK, *supra* note 31, at 88.

157. *Id.*

158. *See id.* at 69.

159. Communication for Change, *supra* note 153.

workshops to train about ten women in each session to use equipment.¹⁶⁰ These women then go to their villages and film particular cases which need urgent care—namely for women experiencing trouble coping with early marriage, spousal abuse, abandonment, or enormous financial hardship.¹⁶¹ These videos are either used to educate other women, or are used in informal mediation sessions “with the intention of generating negative public sentiment” against the perpetrators of abuse.¹⁶² Banchte Shekha’s legal assistance program first began as a program to address conflict between its members and their husbands.¹⁶³ In a situation where a husband is accused of spousal abuse, Banchte Shekha members publicly gather to collectively denounce him.¹⁶⁴ Further, members often prompt the accused to sign a written agreement promising not to harm his wife in the future.¹⁶⁵ In the situation where a husband is accused of attempting to desert or divorce his wife, or take a second wife (all socially unacceptable actions in Bangladesh), Banchte Shekha members unite to oppose him, using both their collective authority and their understanding of Bangladeshi law.¹⁶⁶

Banchte Shekha initiated a paralegal program in 1987 with help from The Asia Foundation.¹⁶⁷ The program has been hailed as “one of the most innovative paralegal programs in the country” and “also the only one run entirely by women.”¹⁶⁸ The program trains village women in Muslim family law, teaching them about issues such as dowry, marriage, divorce, and inheritance, so that they can assist members of their village without the need of hiring a lawyer.¹⁶⁹ The volunteer village paralegals are trained to not only provide legal information to fellow villagers, but also to participate in the

160. *Id.*

161. *Id.*

162. *Id.*

163. Mullins & Boatwright, *supra* note 152.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

The Asia Foundation is a non-profit, non-governmental organization committed to the development of a peaceful, prosperous, just, and open Asia-Pacific region. The Foundation supports programs in Asia that help improve governance, law, and civil society; women’s empowerment; economic reform and development; and international relations. Drawing on more than 50 years of experience in Asia, the Foundation has been at work for more than fifty years now, and it collaborates with private and public partners to support leadership and institutional development, exchanges, and policy research.

The Asia Foundation, About the Asian Foundation, available at <http://www.asiafoundation.org/About/overview.html> (last visited Jan. 15, 2009).

168. Mullins & Boatwright, *supra* note 152.

169. *Id.*

shalish process.¹⁷⁰ The paralegal program has greatly improved the position of women in the *shalish*, who, until recently, were not able to have any representation, even in high-risk situations.¹⁷¹ At present, Banchte Shekha has trained three hundred and fifty women paralegals.¹⁷² Evaluators of the paralegal program have found it very effective with women presenting their clients' cases in a poised and confident manner before the *shalish*.¹⁷³

Banchte Shekha uses integrated ADR strategies combining "mediation, legal counseling, literacy training, micro-enterprise development, group formation, and other work in a comprehensive empowerment strategy that substantially changes the balance of gender power in the communities in which it operates."¹⁷⁴ The work of Banchte Shekha "illustrates that alternative dispute resolution functions best in the context of an integrated legal empowerment strategy."¹⁷⁵ By using an integrated approach, Banchte Shekha challenges established social norms which traditionally relegate women to an inferior status within the community.¹⁷⁶ The societal changes which have resulted from Banchte Shekha's efforts have affected the male-female balance within the organization's own mediations and dispute settlements.¹⁷⁷ Women have gained a sense of empowerment as a result of Banchte Shekha's work; thus, "women enter mediation sessions on much firmer footing than they do those carried out by many other Bangladeshi NGOs."¹⁷⁸

D. MLAA

Bangladesh's leading NGO facilitator of mediation is the Madaripur Legal Aid Association (MLAA).¹⁷⁹ With MLAA, respected village elders

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. ASIAN DEVELOPMENT BANK, *supra* note 31, at 62.

175. *Id.* at 66.

176. *Id.* at 66-67.

177. *Id.* at 66.

178. *Id.*

179. "MLAA was established in 1978 as a legal aid foundation." CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at app. B2. It began filing cases in court on behalf of clients in 1981, but, because of dissatisfaction with results and treatment of the poor, MLAA began to focus on alternative means of resolving disputes, namely mediation, beginning in 1988. *Id.* The procedures that MLAA uses are based upon the traditional *shalish* method. MLAA has expanded

facilitate a modified version of community mediation.¹⁸⁰ MLAA has tried to combat the perception that local leaders are more susceptible to special interests within *shalish*.¹⁸¹ To do so, MLAA engages women and other disadvantaged groups to actively participate in mediators' roles.¹⁸² The MLAA serves the million-plus residents of Madaripur District by recruiting community leaders to serve on mediation committees.¹⁸³ It provides them with very basic legal training and encourages them to apply a combination of law and common sense principles of dispute resolution rather than deign to local elite pressure or traditional gender biases.¹⁸⁴ MLAA also employs paid staff as mediation workers.¹⁸⁵ These staff members respond to citizen requests for assistance by organizing *shalish* sessions or by referring them to other MLAA staff for help.¹⁸⁶ MLAA selects local mediators, then trains and supervises them while working with local officials, religious leaders and community elders.¹⁸⁷ Bangladeshi NGOs such as MLAA use the ADR process to address local, commonly divisive, issues like domestic violence and illegal dowry.¹⁸⁸ Another common use of NGO facilitated mediation is for land and inheritance disputes for farmers and other marginalized rural workers.¹⁸⁹

The mediation process is relatively simple. A poor person finds the mediation worker in his or her village, and the mediation worker then assists

from solely providing legal aid and mediation services to doing so directly for rural populations, and as of 1996, it offers training to other NGOs interested in incorporating mediation into their projects. *Id.* Sixty percent of MLAA's budget comes from the Ford Foundation while another thirty plus percent comes from The Asia Foundation and USAID. *Id.*

180. ASIAN DEVELOPMENT BANK, *supra* note 31, at 115.

181. *Id.*

182. *Id.*

183. CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at app. B4. MLAA's structure includes a head office in Madaripur, with three district offices located in Shariatpur, Gopalganj and Madaripur. *Id.* at app. B2. Within each district office there are smaller offices which oversee the "union level" offices which comprise 10-15 villages each. *Id.* There are about 140 total staff members at MLAA but this does not include the volunteers which make up all mediation committees. *Id.* at app. B2-B3.

184. *Id.* at app. B3-B4.

185. *Id.* at app. B3. Staff workers are required to be from the union (area) which they serve and must have at least an 11th grade education. *Id.* A worker is required to travel at least 15 days per month and must be present at all mediations as he or she maintains all records as well as the calendar of all mediations within the union he or she serves. *Id.*

186. *Id.* at app. B3. The forms generally include information regarding education and income of the disputant so that the MLAA can keep track of records corresponding to their own records and those of USAID. *Id.*

187. *Id.* at app. B1.

188. ASIAN DEVELOPMENT BANK, *supra* note 31, at 47.

189. *Id.*

the claimant in filling out any necessary paperwork.¹⁹⁰ Then, the mediation worker sends a letter to the opposing party to set forth the date and time of the mediation session.¹⁹¹ Once the mediation session begins, the worker explains the process to both parties and notifies them that they have a right to pursue their case within the traditional court system.¹⁹² Mediation is before a committee, of which a village elder is often given the honor of presiding.¹⁹³ Clients are allowed to bring anyone they choose to the mediation and have some say as to who is on their committee.¹⁹⁴ Clients share their sides of the story and mediation committee members conduct their own inquiries as to the events that occurred and led to the mediation proceedings.¹⁹⁵

Local committees usually convene about twice each month to mediate all village disputes; their services provided free of charge.¹⁹⁶ The MLAA currently mediates around 5,000 disputes annually, resolving two-thirds of them successfully.¹⁹⁷ A mediation typically takes at least three months to fully resolve a land dispute, while only one month to resolve a family dispute.¹⁹⁸ Satisfaction with the program is high and most users of the program prefer it to the traditional *shalish* system and to the courts.¹⁹⁹

VI. NGO IMPROVEMENTS UPON *SHALISH*

Bangladeshi NGOs are increasingly involving more women in the mediation process, while *shalish* continues to be a male dominated procedure.²⁰⁰ Certain female community leaders are involved in *shalish* as committee members, often due to their highly respected professions, such as teaching.²⁰¹

190. CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at app. B3.

191. *Id.*

192. *Id.*

193. *Id.* at app. B3-B4.

194. *Id.* at app. B3.

195. *Id.* at app. B3-B4.

196. CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at app. B1.

197. *Id.*

198. *Id.* at app. B4.

199. *Id.* at app. B1.

200. ASIAN DEVELOPMENT BANK, *supra* note 31, at 47.

201. *See id.* at 115.

The Legal Empowerment Study in *The Impact of Legal Empowerment on Selected Aspects of Knowledge, Poverty and Governance in Bangladesh*, commissioned by the ADB, analyzed three local NGOs on citizen knowledge, governance, and poverty, and found significant evidence that legal empowerment contributed to good governance and reduction of poverty in Bangladesh.²⁰² The study considered the legal empowerment work of Banchte Shekha, Samata,²⁰³ and the MLAA.²⁰⁴ The control populations exhibited slightly higher levels of education and affluence, however, all of the “intervention” (NGO) beneficiaries scored higher in four critical areas: “general knowledge of law; engagement and confidence in citizen advocacy; positive perceptions of gender equity and the role of women in governance; and confidence in the value of law and good governance.”²⁰⁵

NGOs have had an extensive impact with regards to legal empowerment, exemplified by Banchte Shekha’s effectiveness in restraining the widespread but illegal practice of dowry.²⁰⁶ A finding that holds potential implications for poverty reduction shows that “NGO sample populations report dramatically less reliance than control groups on community elites for legal assistance, particularly MLAA beneficiaries, who take advantage of alternative avenues for relief.”²⁰⁷ NGOs add value to *conventional* judicial sector-oriented reform projects through the training and education they provide to judges, lawyers, and other government officials.²⁰⁸ NGOs provide trainees with useful current information along with a wide array of perspectives, especially regarding disadvantaged populations.²⁰⁹

202. *Id.* at 17.

203. Samata specializes in land rights advocacy but has an integrated development strategy which also includes legal services, education, livelihood development and facilitating member-beneficiary access to government agricultural services. See Samata India.org, <http://www.samataindia.org/> (last visited Feb. 28, 2008). “Samata started working in a small tribal village in 1987 with a group of youth in order to mobilize tribal communities against exploitation by outsiders and by the government.” *Id.* In 1990, “Samata formally registered as a non government organization.” *Id.* Because Samata primarily operates in India and western Bangladesh, it will not be discussed more in depth in this paper.

204. ASIAN DEVELOPMENT BANK, *supra* note 31, at 18.

205. *Id.*

206. *Id.* “Dowry is the payment of money, livestock, or material goods by the bride’s family to the groom’s in order to secure a marriage.” *Id.* at n.9.

207. *Id.* at 18-19.

208. *Id.* at 23.

209. *Id.* at 23-24.

Most NGOs now use what is known as an integrated approach to accomplish their goals of poverty reduction and development.²¹⁰ A study, conducted by the Asian Development Bank in 1995, “found that population management efforts by family planning NGOs in Bangladesh were strengthened by integrating them with legal services and vice versa.”²¹¹ Once NGO staff members received legal training they were able to then teach the populations to which they minister at low or no cost.²¹² NGOs also coordinated mediation sessions for entire villages and communities, when beneficial, in addition to their other, more personalized, law oriented services.²¹³ Because family planning NGOs had long established such a good report with various communities, they were able to leverage this good will to stimulate acceptance of women’s legal rights and to foster greater gender equity within the communities and especially in traditional *shalish* proceedings.²¹⁴

NGOs have brought vast improvements to the *shalish* system. Traditionally, in situations of power imbalance, ADR often perpetuated rather than negated inequalities. For example, *shalish* often exposed female parties to the same gender biases and community pressures that they would encounter in a conventional court case and the resolution may have been no more satisfactory than if the woman had taken the case to court, or done nothing.²¹⁵ For many NGOs, mediation services are used as a compliment to the legal aid services which they were already providing.²¹⁶ Integration of myriad development techniques, such as merging mediation with gender equality or micro-credit, has allowed NGOs like Banchte Shekha to transform particular communities by creating a more conciliatory environment and a more equal dispute resolution system.²¹⁷

Besides helping individuals gain access to the legal system, conferences and events organized by ADR minded NGOs have exposed legal professionals to new ways of thinking on topics ranging from land management to human rights to the environment.²¹⁸ “In Bangladesh,

210. ASIAN DEVELOPMENT BANK, *supra* note 31, at 62-64.

211. *Id.* at 64.

212. *Id.*

213. *Id.*

214. *Id.*

215. ASIAN DEVELOPMENT BANK, *supra* note 31, at 66.

216. *Id.*

217. *Id.* at 67.

218. *Id.* at 75-76.

interaction initiated by the Bangladesh Environmental Lawyers Association, the Madaripur Legal Aid Association, and Aid O Shalish Kendra²¹⁹ helped broaden the perspectives of senior judges, paving the way for successful test case litigation . . .”²²⁰ NGOs have on various occasions successfully engaged the government in their interventions.²²¹ The governmental-NGO interaction indicates that the state is viewing NGOs in a more positive light and is truly wanting to work with NGOs as partners in development, particularly for “poverty reduction, micro-credit, health and environmental issues, law enforcement and protection of citizens’ rights.”²²² The ADB stated that “[b]etter coordination between NGOs and the government is essential for sustainable [development].”

A. Focus on Educational Methods

Because Bangladesh is predominantly a rural society, despite the large number of national level NGOs, these organizations are often limited in their capacity to address all local legal needs.²²³ Thus, it is typical for NGOs to tend to focus efforts on educational programs.²²⁴ Printed materials are most commonly used throughout Asia to disseminate information on legal topics to targeted groups.²²⁵ As an example, “Bangladeshi NGOs post anti-domestic violence posters on the walls of community meeting places, including locations where the NGOs conduct mediation sessions . . . in an effort to combat traditional gender bias and lack of awareness of women’s

219. “Ain o Salish Kendro (ASK), is a legal aid and human rights resource centre.” Ain o Salish Kendro, Statements, available at <http://www.askbd.org/index.php> (last visited Jan. 15, 2009). “It provides free legal aid to the poor- women, workers and child workers.” *Id.* “Besides providing free legal aid, ASK seeks to create awareness of legal and human rights so as to empower citizens to negotiate their rights.” *Id.* “It is committed to campaigning for reform of discriminatory and repressive laws to eliminate systemic social, legal and political discrimination.” *Id.* The organization provides free legal service to the disenfranchised, particularly to poor women, workers and working children. See Banglapedia, Ain o Salish Kendro, available at <http://www.boimela.com/banglapedia/ViewArticle.asp?TopicRef=130> (last visited Jan. 15, 2009). Legal support is provided through counseling, mediation and litigation, if necessary. The organization has four on-site clinics. *Id.* The head office and these clinics undertake cases following media reports, investigation reports and referrals from its various units. *Id.* For example, in pursuing women’s empowerment in Dhaka, Ain o Salish Kendra relies much more on its own staff to mediate and negotiate on behalf of clients. *Id.*

220. ASIAN DEVELOPMENT BANK, *supra* note 31, at 76.

221. *See id.*

222. *Id.*

223. *See id.* at 35.

224. *See id.*

225. *Id.* at 42.

legal rights.”²²⁶ As a specific example, the MLAA conducts human rights training programs for schoolteachers, who then share their knowledge with their students.²²⁷ The training doesn’t limit itself to simply imparting knowledge, but rather strives to stimulate actual change. The goal in educating minorities and the poor is two-fold: one, to ensure they will not be passively taken advantage of by unfair laws or unscrupulous persons, and two, to help them enforce sound laws in an equitable manner.²²⁸

B. Government Involvement

In Bangladesh, government involvement in the development of the ADR program has been quite limited. While the Division of External Resource Development of the Ministry of Finance (ERD) was consulted when initial programming began, the government felt that it did not have the resources or experience to oversee work in democracy and governance, thus, they recommended project implementers USAID-Bangladesh and the Asia Foundation to use NGOs as service providers.²²⁹ The partnership continues to consult and inform government officials of the progress of the program and shares results with them.²³⁰

As the success of ADR programs increases in rural areas, government and justice officials are pushing to institutionalize dispute resolution within villages, which would result in “grameens” or local courts.²³¹ “This would create a formal link between the mediation services currently delivered by NGOs and/or people they train and the official justice system.”²³²

NGO-initiated meetings have led to new ideas regarding issues “ranging from human rights to the environment.”²³³ “In Bangladesh, interaction between the Bangladesh Environmental Lawyers Association, the MLAA, and Ain o Shalish Kendra has helped to broaden the perspectives of some of the nation’s most senior judges . . .”²³⁴ There are many occasions where the

226. See ASIAN DEVELOPMENT BANK, *supra* note 31, at 42.

227. *Id.* at 44.

228. *Id.* at 45.

229. See CENTER FOR DEMOCRACY AND GOVERNANCE, *supra* note 62, at app. B5-B7.

230. See *id.* at app. B7.

231. *Id.* at app. B9.

232. *Id.*

233. ASIAN DEVELOPMENT BANK, *supra* note 31, at 75.

234. *Id.* at 75-76.

NGOs and the government have been successful in their interventions.²³⁵ This cooperation and partnership is an indication that the government's view of NGOs is becoming increasingly more positive in the areas of "poverty reduction, micro-credit, health and environmental issues, law enforcement and protection of citizens' rights."²³⁶ This cooperation is crucial for sustainable impact.²³⁷

C. Family Courts

The greatest influence that NGOs have had on the traditional judicial system is the governmental implementation of a formal ADR program within the nation's Family Courts.²³⁸ The Bangladesh Legal Study Group, involving Bangladeshi and American judges and lawyers, began in 1999 to propose that Bangladesh implement specific reforms.²³⁹ Legal reform initiatives began to be engineered by Bangladesh's then Chief Justice, Mostafa Kamal, along with the Institute for the Study and Development of Legal Systems (ISDLS) of the United States.²⁴⁰ Because there are different jurisdictional categories of suits such as civil, commercial, family, loan recovery, and bankruptcy, the Study Group's recommendations came up with different means to address each situation.²⁴¹

The Family Courts were chosen for recommendation of a pilot program because conflict resolution necessitates the "direct participation of the parties in dispute."²⁴² Parties in Family Courts are required to meet together confidentially with a third party neutral who is trained in facilitating conflict resolution.²⁴³ Settlement options are eventually discussed privately, but in Family Court, parties have the opportunity to voice their interests and concerns in a joint session before the judge meets with parties individually.²⁴⁴ "Often, the mediator shares with parties studied predictions

235. *Id.* at 76.

236. *Id.*

237. *Id.* at 76.

238. *See generally* Hasan, *supra* note 20.

239. *Id.* at 2-4.

240. *Id.* at 2-3. Judge Clifford Wallace of the Ninth Circuit Court of Appeals, "who is credited with the introduction and success of Alternative Dispute Resolution in twenty five [c]ountries," led the project. *Id.* at 3. He, along with the ISDLS, brought members of Bangladesh's judiciary and national bar association to the United States to demonstrate "new techniques to court administration and case management . . . including alternative means of resolving disputes." *Id.* at 4.

241. *Id.* at 6.

242. *Id.* at 5-6, 8.

243. *Id.*

244. *See* Hasan, *supra* note 20, at 5-6, 8.

of the outcome of the litigation.”²⁴⁵ Due to the mediator’s experience and recommendations, parties gain a better understanding of their options, and what possibilities exist if they pursue litigation.²⁴⁶ In a conservative society like Bangladesh, this process provides “a great opportunity for an aggrieved person,” particularly a woman, “to directly participate in the dispute resolution process and voice her grievance.”²⁴⁷ Because Bangladeshi culture is very traditional, aggrieved women often either choose not or are not allowed to even go to court.²⁴⁸ The new procedures for mediation within Family Court remove the risks women face by allowing them to settle disputes without being socially condemned.²⁴⁹ “Direct participation of the female parties to the dispute has thus, to a great extent, facilitated and contributed to the success of the project.”²⁵⁰

Judges of the Family Courts, and lawyers as mediators of disputes within the Family Courts, were provided with comprehensive training upon implementation of the pilot project.²⁵¹ Participants in the training program included judges selected from different Family Courts across the country and legal practitioners including representatives from various NGOs.²⁵² The trainee judges learned how to become true neutrals, with the ultimate goal of settlement of the dispute without any further court action.²⁵³

One of the judges that has implemented ADR within his court noted: “it is our experience that rarely parties to a mediation get involve[d] in further litigation for breach of terms of mediation settlement. The compromise attitude seems to persist long after mediation settlement.”²⁵⁴ Women are especially benefited by the mediation process because they may receive financial recovery immediately, as opposed to the several years it may take with a trial.²⁵⁵ Furthermore, with recovery, the women often receive training on how to save or invest the money for their future.²⁵⁶

245. *Id.*

246. *Id.* at 8-9.

247. *Id.* at 9.

248. *Id.*

249. *Id.*

250. *See Hasan, supra* note 20, at 9.

251. *Id.*

252. *Id.*

253. *Id.* at 9-10.

254. *Id.* at 15-16.

255. *Id.* at 18.

256. *Id.*

D. Domestic Business Matters

The use of ADR has transitioned from traditional *shalish* to NGO-facilitated *shalish* to the Bangladeshi Family Courts to most recently, use in business matters. Bangladesh's Federation of Bangladesh Chambers of Commerce and Industries (FBCCI) launched an arbitration council on April 25, 2001, for quick settlement of business disputes.²⁵⁷ The Chambers of Commerce wrote: "[c]onsidering the huge backlog of cases, sufferings and woes of the litigants, waste of money and energy and unreasonable delay in our adversarial and formal justice system . . . [the Bangladesh Council of Arbitration (BCA)] would resolve commercial disputes through a 'simple, harmonious, cost effective and speedy process.'"²⁵⁸ Bangladesh's government created the Arbitration Act of 2001 which consolidated the law relating to both domestic and international commercial arbitration.²⁵⁹ The new law's approach is "based on the rationale that it strikes 'an appropriate balance between the need for preventing obstruction with dilatory tactics and the desire of avoiding unnecessary waste of time and money.'"²⁶⁰ Under the Act, any award of the Council stands as the final and binding judgment on all parties.²⁶¹ The BCA also maintains "a panel of arbitrators comprising many dignitaries and personalities having sufficient experience in different fields and ample knowledge on arbitration."²⁶²

Section 22(1) of the Arbitration Act "manifests a typical Asian approach to dispute resolution."²⁶³ It provides, "It shall not be incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute otherwise than by arbitration and, with the agreement of all the

257. News Today, *FBCCI Launches Arbitration Body to Settle Business Disputes*, NEWS FROM BANGLADESH, Apr. 26, 2004, available at <http://www.bangladesh-web.com/view.php?hidRecord=6990>. It is important to note that arbitration is not a separate, free-standing system of justice. See generally A. F. M. Maniruzzaman, *The New Law of International Commercial Arbitration in Bangladesh: A Comparative Perspective*, 14 AM. REV. INT'L ARB. 139, 172-73 (2003). It is a system established and regulated pursuant to law, and it necessarily bears a close relationship to a nation's system of justice. *Id.* Under the laws that govern arbitration, the courts have a critically important role to play in making systems of arbitration work. *Id.*

258. News Today, *supra* note 259.

259. Maniruzzaman, *supra* note 259, at 140.

260. *Id.* at 145.

261. News Today, *supra* note 259.

262. *Id.*

263. Maniruzzaman, *supra* note 259, at 159. Adversarial litigation is the primary American dispute resolution mechanism which exemplifies Western values. Julia Ann Gold, *ADR Through A Cultural Lens: How Cultural Values Shape Our Disputing Processes*, 2005 J. DISP. RESOL. 289, 302. The adversarial system does not necessarily mimic a more *Asian* approach, which is generally seen as "collectivist" in nature, and places an emphasis upon participation and community. See generally *id.*

parties, the arbitral tribunal may use mediation, conciliation or any other procedures at any time during the arbitral proceedings to encourage settlement.”²⁶⁴ Settlement is highly encouraged, and it is settlement for which the arbitral tribunal is tasked.²⁶⁵ “In many other Asian countries the combination of conciliation, mediation and arbitration in the same proceeding subject to the parties’ consent, seems to be a common trend.”²⁶⁶ Passage of the Act shows a desire to participate in a globalized economy, as it is essential for businesses to have assurances of legal protection and remedy when the need arises.²⁶⁷

In a World Bank study of Bangladesh, the report found that the nation benefits by ensuring equality and accessibility to the justice system.²⁶⁸ Because formal courts have been plagued by various problems and abuses, alternative dispute resolution mechanisms have continued to evolve. “The new methods of dispute settlement have many advantages, chief among them being informality, speed, absence of backlog, economy, privacy, harmony, and easy accessibility.”²⁶⁹ The U.S. State Department has agreed, commenting that “ADR provides a timely, cost effective, and in some

264. Maniruzzaman, *supra* note 259, at 159.

265. *Id.*

266. *Id.* at 160. “An alternative to arbitral litigation is formal mediation.” Thomas W. Wälde, *Efficient Management of Transnational Disputes: Mutual Gain by Mediation or Joint Loss in Litigation*, 22 *ARB. INT’L L.* 205, 206 (2006). “While mediation is an expanding industry in domestic legal systems, its potential still remains to be unlocked in relation to transnational disputes.” *Id.*

267. *See generally* Maniruzzaman, *supra* note 259, at 171.

In a globalizing economy, this basic framework of investment treaties may be seen as a key instrument to promote the flow of investment between countries party to these agreements. Or they may be seen as legal mechanisms standing in the way of international legal diversity based on the sovereignty of each host state. From a systemic point of view that sees foreign investment as a key component to promote growth and reduce poverty, bilateral investment treaties are an agreed set of rules that serve to attract foreign investment by reducing the space for unprincipled and arbitrary actions of the host state and thus contribute to good governance, which is a necessary condition for the achievement of economic progress in a host state.

Rudolf Dolzer, *The Impact of International Investment Treaties on Domestic Administrative Law*, 37 *N.Y.U. J. INT’L L. & POL.* 953, 953-54 (2005). “[T]he jurisprudence of investment tribunals as a whole contains ingredients of a growing system of international administrative law for foreign investment.” *Id.* at 970.

268. *See generally* Shahdeen Malik, *Access to Justice: A Truncated View from Bangladesh*, in *COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: TOWARD AN AGENDA FOR A JUST AND EQUITABLE SOCIETY IN THE 21ST CENTURY* 93, 93 (Rudolf V. Van Puymbroeck ed., 2001).

269. *See generally* M. Shah Alam, *A Possible Way Out of Backlog in Our Judiciary*, *THE DAILY STAR*, Apr. 16, 2000, available at http://ruchichowdhury.tripod.com/a_possible_way_out_of_backlog_in_our_judiciary.htm.

instances, participatory and community sanctioned alternative to the formal court system.”²⁷⁰

VII. CONCLUSION

“Research suggests that a combination of efforts to raise disadvantaged populations’ knowledge of law and to assist them to act on this knowledge to advance their rights and interests constitute an effective legal empowerment strategy.”²⁷¹ Legal empowerment leads to more rights and less frequent abuses of women, the poor, and disenfranchised minorities. The government of Bangladesh should continue working with the various national NGOs to continue improved modifications to the *shalish* system. Because ADR is successfully curbing corruption within the courts while also helping to alleviate backlog from heavy case dockets, it should continually be integrated into the formal court system. ADR is aiding in the resolution of disputes for individuals, domestic businesses and foreign corporations; thus, it will continually play a dominant role resolving disputes in all levels of society. International organizations such as The World Bank, the Asian Development Bank, the UN, and the USAID should continue to monitor the progress Bangladesh is achieving through implementation of ADR, work towards further strengthening existing programs, and seek to replicate them in new environments. ADR is a pivotal component of a successful legal empowerment strategy. Legal empowerment, in turn, is helping pave the road to a more sustainable future, and consequently, a more free world.

270. ASIAN DEVELOPMENT BANK, *supra* note 31, at 11.

271. *Id.* at 50.