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Examining the Effectiveness of Legal Empowerment as a Pathway out of Poverty: A Case Study of BRAC

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Examining the Effectiveness of Legal Empowerment as a Pathway out of Poverty: A Case Study of BRAC

Akhila Kolisetty[1]

Abstract

This piece examines the current status of justice and dispute-resolution mechanisms in Bangladesh, ranging from the formal justice system to the traditional *shalish* (a form of dispute resolution), and focuses on the costs and benefits of utilizing nongovernmental organization (NGO)-led legal services programs as an alternative form of justice delivery and dispute resolution for the poor, with a focus on women and girls. In particular, this paper takes a closer look at a the Human Rights and Legal Aid Services (HRLS) program of BRAC, a leading NGO that works to empower the poorest and most vulnerable in Bangladesh and eleven other countries across the world. HRLS provides a combination of BRAC-led shalish, human rights community-based education, community mobilization through a corps of community-based outreach workers (known as *shebikas*), and recourse to the courts via a network of panel lawyers if needed. This paper will examine the successes of this model in rural Bangladesh as well as the challenges it faces in making an impact on solving the justice problems of the poor and contributing to gender equity. Ultimately, it aims to present a case study that illustrates the strengths and challenges of a legal empowerment model that is quickly gaining traction around the world.

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I would like to thank all the staff members of BRAC's HRLS program, who hosted me kindly in Bangladesh while I conducted this research during the summer of 2012. In particular, I would like to thank Faustina Pereira, Director of HRLS, for providing feedback and support as I researched and wrote this piece. Furthermore, I would like to thank Arefeen Ahmed, Ishita Islam, Dilshad Mahmud, and M. Zakaria for answering many of my questions about HRLS's programs and Bangladesh's legal system. I thank Morshed Imam and the Field Organizers at BRAC's Faridpur offices for facilitating my research trip. Finally, I thank Steve Golub and the World Bank for reviewing and providing constructive recommendations on this paper.

[1] J.D. Candidate 2015, Harvard Law School.

1. Introduction[2]

Ferdousy is only 19 years old and already divorced. In rural Bangladesh, social customs and poverty pushed her into child marriage at age 13. Soon after her marriage, her husband traveled to Saudi Arabia as a migrant worker. Upon his return three years later, she found that he had remarried secretly and no longer wanted her as his wife. Her husband ceased to provide her with maintenance—required by Islamic law—and never consulted her before taking a second wife.[3] What power does Ferdousy, a poor Bangladeshi girl with only a 10th grade education, have in this relationship? What hope does she have of moving on and living a productive life?

Ferdousy did have certain legal remedies. Under Muslim personal law, she had the right to *mehr*, or dower, money given to the wife by the husband upon divorce, or upon claim by the wife during the marriage.[4] However, like much of Bangladesh's rural poor, Ferdousy did not know her rights and did not have access to a lawyer to enforce them. Few developing countries have adequate justice sector infrastructure to provide widely accessible legal services, and private lawyers tend to be scarce and far too expensive for the poor. Nonprofits and international development organizations do provide legal aid and advice, but these services are often underfunded and cannot accommodate the vast need.[5] In addition, lawyers, judges, prosecutors, and police in these countries sometimes lack the training, funding, and support they require to properly implement the law, process large caseloads, and respond appropriately to community needs.[6] In Bangladesh, without access to legal services, men and women languish in pretrial detention, sometimes for years without seeing the inside of a courtroom; women may not be informed of their rights to maintenance upon divorce or rights over their children; and the landless are often unable to secure titles to their land, cannot sustain possession of it even if they have title, or are evicted by powerful land grabbers.

In a country like Bangladesh, the time, expense, and effort involved in attempting to access the courts push many poor people to use traditional, customary, or local justice systems. Unfortunately, pronouncements handed down by customary institutions may not follow national or international human rights laws, and can even further violate individual rights, especially those of women, who frequently receive unjust verdicts due to patriarchal social norms, which often favor the already influential.[7]

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[2] This paper is primarily based on research conducted in summer 2012, when the author spent two months in Bangladesh with BRAC's Human Rights and Legal Aid Services program. During this time period, research was carried out on legal empowerment and BRAC's programs in Dhaka, with travel to Faridpur to interview BRAC's shebikas, clients, odhikar shebis, and lawyers.

[3] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh (all names in this report have been changed to preserve the anonymity of clients).

[4] Obaidul Huq Chowdhury, *Handbook of Muslim Family Laws* (Dhaka: Al-Yakub Press, 2005), 17.

[5] Based on personal interviews conducted by the author in June and July 2012 throughout Bangladesh.

[6] Maurits Barendrech and Maaike de Langen, "Legal Empowerment of the Poor: Innovating Access to Justice," in *The State of Access: Success and Failure of Democracies to Create Equal Opportunities*, ed. Jorrit de Jong and Gowher Rizvi (Washington, DC: Brookings Institution Press, 2008), 254–58.

[7] Amadea M Goresh, "Paving the Road to a More Free World: ADR as Sustainable Development - A Look at Bangladesh," *Pepperdine Dispute Resolution Law Journal* 9, no. 2 (2009): 263.

This paper will explore the possibility of using a legal empowerment approach—that is, using grassroots legal outreach workers, human rights education, and a network of accessible legal aid and justice service clinics that provide holistic and low-cost legal and dispute-resolution services to the poor—as a recognized and complementary solution to protecting the rights of the vulnerable, alleviating poverty, combating violence against women and girls, and resolving disputes, alongside the state's justice delivery mechanism. By examining the efforts of BRAC, a nongovernmental organization (NGO) working to provide legal aid and a range of other social and justice services to empower the poor and most vulnerable in Bangladesh, and with a particular focus on BRAC's community-based Human Rights and Legal Aid Services (HRLS) program, this paper aims to shed light on the benefits and challenges of implementing legal aid and justice programs through development organizations and NGOs.

BRAC, founded in 1972 to provide relief and rehabilitation operations following Bangladesh's War of Liberation, initially stood for the Bangladesh Rehabilitation Assistance Committee and later changed to the Bangladesh Rural Advancement Committee. After launching programs in other countries, it dropped its former name but retained the acronym as its official name.

BRAC's HRLS program in Bangladesh was selected as the focus of this case study due to several unique features that set it apart from many other legal empowerment organizations around the world. First, HRLS's size and scale is unique; in its 27th year of operation, it is possibly the largest NGO-led legal advice and empowerment program in the world as it operates 517 legal aid clinics in 61 of 64 districts in Bangladesh, has more than 3.8 million graduates of its legal education classes, and has more than 6,000 community-based outreach workers (known as *shebikas*).[8] Secondly, HRLS also stands apart because it is not simply a legal aid program, but is part of a holistic development organization that also works with the poor in areas as diverse as education, health, microfinance, water and sanitation, disaster relief, and agriculture. HRLS is thus unique as its clients benefit from cross-linkages across program areas, which many other legal empowerment organizations across the world do not have. Third, HRLS benefits from sustainability; although HRLS does receive donor funding for some specialized projects, the organization as a whole benefits from funds raised by its own social enterprises and investments, thus allowing it to be more stable over the long-run compared to many other NGOs. Finally, HRLS is a prime candidate for this case study because of the organization's commitment to research and evaluation of its programs, as evinced by its online Research and Evaluation (RED) website which hosts numerous studies on the successes and shortcomings of its programs. Not only is this data and analysis rich and useful for the purpose of developing this case study, but it also illustrates that BRAC is open to honest critiques and recommendations for improvement.

By examining BRAC's unique model, it will be seen that although significant obstacles remain, this model of legal empowerment offers hope that the poor – and women and girls in particular – can act to enforce their rights and begin lifting themselves out of poverty. Indeed, Ferdousy's situation improved. She was brought to BRAC's legal aid clinic through her friendship with one of BRAC's shebikas and with BRAC's help, received assistance with her divorce and recovered Tk 120,000 (about $1,540) in dower and maintenance from her ex-husband.[9] Her story is just starting, but at least she can begin her journey anew with a sense of security and stability.

[8] BRAC, "Human Rights and Legal Aid Services (HRLS) Programme," http://hrls.brac.net/images/pdf/1056855.pdf.
[9] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.

2. The Context in Bangladesh: Key Human Rights Issues

Despite significant gains since independence in 1971, Bangladesh continues to face numerous development challenges. As of 2010, approximately 43 percent of the population lived on less than US$1.25 per day,[10] and the country remains vulnerable to recurrent natural disasters such as flooding and cyclones that further exacerbate poverty.[11] In response to this persistent poverty and as well as violence and impunity, several development NGOs and legal aid organizations have emerged in Bangladesh to address issues related to poverty and violence including women's rights, family law, and property rights.

2.1. Violence and Discrimination Against Women

Bangladesh has made great strides in gender equity in recent decades. In particular, indicators on girls' education, maternal mortality and fertility have shown substantial improvement. The fertility rate has decreased dramatically,[12] and in many parts of Bangladesh, secondary school attendance for girls is higher than for boys.[13] The gender gap in infant mortality has largely closed, and due to better economic opportunities, many more women now work outside the home.[14] The laws, too, are changing; in 2010, Bangladesh's Parliament passed the *Domestic Violence (Prevention and Protection) Act*, which defines domestic violence as physical, psychological, sexual, or financial abuse by a family member.[15]

Despite this progress, Bangladeshi women continue to face pervasive violence and discrimination due to patriarchal social norms. According to the 2007 Bangladesh Demographic and Health Survey, 49 percent of married women have experienced physical spousal violence.[16] Marriage of boys below age 21 and girls below age 18 is prohibited under the *Child Marriage Restraint Act 1929*. Yet, Bangladesh has one of the highest child marriage rates in the world at 66 percent,[17] and 76 percent of adolescent girls report experiencing domestic violence within the previous twelve months.[18] Furthermore, dowry paid by the wife—although illegal under the *Dowry Prohibition Act* of 1980—has become increasingly prevalent.[19] The 2006 World Bank Gender Norms Survey (WBGNS) showed that while only 7.7 percent of older women exchanged

[10] World Bank, "2005 World Development Indicators," World Bank, http://data.worldbank.org/sites/default/files/wdi05fulltext.pdf.
[11] "Bangladesh: Cyclone Shelters – for Livestock Too," IRIN News, October 16, 2012, available at http://www.irinnews.org/report/96555/BANGLADESH-Cyclone-shelters-for-livestock-too.
[12] United Nations Development Programme (UNDP), *Human Development Report 2011*: *Sustainability and Equity: A Better Future for All* (New York: Palgrave Macmillan, 2011), 8.
[13] World Bank, "Whispers to Voices: Gender and Social Transformation in Bangladesh," Bangladesh Development Series Paper 22 (Dhaka: World Bank, 2008), 3.
[14] Ibid.
[15] South Asians for Human Rights, "Domestic Violence: Offenders to be Jailed up to 6 Months," October 6, 2010, available at http://www.southasianrights.org/?p=1794.
[16] National Institute of Population Research and Training (NIPORT), Mitra and Associates, and Macro International, "Bangladesh Demographic and Health Survey 2007" (Dhaka and Calverton, MD: NIPORT, Mitra and Associates, and Macro International, 2009).
[17] United Nations Children's Fund (UNICEF), "Bangladesh: Statistics," UNICEF, available at http://www.unicef.org/infobycountry/bangladesh_bangladesh_statistics.html#94.
[18] NIPORT and others, "Bangladesh Demographic and Health Survey 2007," 6.
[19] Sajeda Amin and Lopita Huq, "Marriage Considerations in Sending Girls to School in Bangladesh: Some Qualitative Evidence," Poverty, Gender, and Youth Working Paper 12 (New York: Population Council, 2008), 7–8.

dowry, over 46 percent of younger women paid it upon their marriages.[20] Dowry demands have also been linked to violence against women whose families are unable to afford the promised dowry amounts.[21] Sexual harassment is also common. According to a study of women in Dhaka, 100 percent of day laborers, 84.7 percent of garment workers, and 28.9 percent of school teachers report experiencing workplace harassment.[22] Finally, since the 1980s, approximately 300 acid attacks against women have been reported per year.[23]

Although Bangladesh has a number of laws to protect women's rights, including the *Domestic Violence Act*, the *Prevention of Cruelty to Women and Children Act*, the *Acid Crime Control Act*, the *Child Marriage Restraint Act*, and the *Dowry Prohibition Act*, implementation remains a challenge, including due to a lack of funding, inadequate access to the formal justice system, and the poor training of professionals such as police, lawyers, judges, social workers, and doctors.[24]

2.2. Family Law

Women also face a series of discriminatory religious personal laws that govern family relations in Bangladesh. For instance, Muslim men have the automatic right to divorce at will, called *talaq*.[25] Muslim women, however, do not have that right unless their husbands "delegate" this right to them.[26] Muslim women can seek divorce through the *Dissolution of Muslim Marriages Act 1939*, but only on limited grounds. Muslim wives also have the option of seeking a *khula* divorce, but this requires that the wife pay the husband a substantial sum.[27] Some Muslim women in other countries have more legal rights than do those in Bangladesh, since Islamic law may be applied differently across countries. Unfortunately, there is no provision for divorce in Hindu personal laws. Christian wives can petition for divorce, but again, based only on certain highly specific grounds.[28] Due to such severe restrictions in Bangladesh, many women must remain in abusive marriages.

Muslim women are entitled to dower.[29] Upon divorce, the wife is entitled to at least half the amount specified in the marriage contract.[30] Under Islamic law, women also have a right to maintenance during marriage and during the *iddat* period, which lasts for up to three months after divorce, or until the child's birth if the wife is pregnant at the time of divorce.[31] Furthermore, Muslim personal laws allow men to have up to four wives at the same time

[20] World Bank, "Whispers to Voices," 115.
[21] Sajeda Amin, "Reforming Marriage Practices in Bangladesh," Promoting Healthy, Safe, and Productive Transitions to Adulthood Brief 31 (New York: Population Council, 2008), 1–3.
[22] Saleh Ahmed, Maqbul Bhuiyan, Mirza Hassen, Sara Hossein, and Greg Moran, "Perceptions, Attitudes and Understanding: A Baseline Survey on Human Rights in Bangladesh," (Dhaka: National Human Rights Commission of Bangladesh, 2011), 44.
[23] Ibid., 43.
[24] Ibid., 39.
[25] The Muslim Family Laws Ordinance (Ordinance no. 8 of 1961), Section 7.
[26] The Muslim Family Laws Ordinance (Ordinance no. 8 of 1961), Section 8.
[27] Chowdhury, *Handbook of Muslim Family Laws*, 9.
[28] Divorce Act, 1869 (Act no. 4 of 1869), Chapter III.
[29] Chowdhury, *Handbook of Muslim Family Laws*, 17.
[30] Ibid., 11.
[31] Ibid., 20–25.

provided certain conditions are met[32] and they have obtained the consent of the existing wife or wives.[33] In reality, few husbands actually secure such consent or fulfill the necessary conditions. Hindu wives can seek a separate residence and maintenance from the husband, but only based on one of seven grounds,[34] and this right can be revoked if the woman is found to be "unchaste" or if she converts to a different religion. In addition, Hindu men can take an unlimited number of wives without fulfilling any procedural requirements.[35] Christian women have the right to alimony of one-fifth of the husband's average net income,[36] though this right can also be revoked if the wife is not "chaste."[37] [38]

In reality, few women in Bangladesh know their legal rights, have the financial resources to file in court in order to claim those rights, or are able to assert their rights due to customary norms.

2.3. Property Rights

In Bangladesh, where 72 percent of the population lives in rural areas and 48 percent[39] of the employed work in the agricultural sector, land rights are of utmost importance. Indeed, "for the villager, land is…a hedge against bad economic times and can serve as collateral for survival loans and loans for other productive enterprise."[40] Due to the importance of land, unresolved property disputes often lead to violence, assault, and even murder.[41] In a national survey, 47 percent mentioned land-related disputes as some of the most prevalent conflicts in their communities.[42]

Land grabbing is a significant threat to the security of the rural poor, as politically influential elites forcibly take land from smallholders and farmers by falsifying documents proving ownership and employing violence as a tool of intimidation. While the government provides free ownership of one to three acres of *Khas* (government-owned fallow) land to the landless, securing rights to this land can prove a lengthy and difficult process, and one

[32] Faustina Pereira, *The Fractured Scales: The Search for a Uniform Personal Code* (Dhaka: University Press Limited, 2002), 14.
[33] The Muslim Family Laws Ordinance (Ordinance no. 8 of 1961), Section 6.
[34] 1946 *Hindu Married Women's Separation and Maintenance Act*, Section 2.
[35] Shahnaz Huda, "Combating Gender Injustice: Hindu Law in Bangladesh" (Dhaka: South Asian Institute of Advanced Legal and Human Rights Studies, 2011), 31.
[36] Divorce Act, 1869 (Act no. 4 of 1869), Section 36.
[37] Pereira, *The Fractured Scales*, 51.
[38] According to the 2011 census, Sunni Muslims make up 90% of the population, Hindus make up 9.5%, and Christians and Buddhists make up most of the remaining 0.5%. There are also smaller populations of Shia Muslims, Bahais, animists, and Ahmadiyya Muslims. See United States Department of State, Bureau of Democracy, Human Rights, and Labor, "Bangladesh 2012 International Religious Freedom Report," available at http://www.state.gov/documents/organization/208636.pdf, 2.
[39] World Bank, "2008 World Bank Development Indicators," World Bank, available at http://siteresources.worldbank.org/DATASTATISTICS/Resources/WDI08supplement1216.pdf.
[40] Ian Smillie, *Freedom from Want: The Remarkable Success Story of BRAC, the Global Grassroots Organization That's Winning the Fight Against Poverty* (Sterling, VA: Kumarian Press, 2009), 41.
[41] Stephen Golub, "Non-state Justice Systems in Bangladesh and the Philippines" (London: Department for International Development, 2003), 2, available at http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/GolubNonStateJusticeSystems.pdf.
[42] Activating Village Courts in Bangladesh Project, "Baseline Survey Report on Village Courts in Bangladesh" (Dhaka: Activating Village Courts in Bangladesh Project, 2010), iv.

fraught with corruption and conflict. The landless have received only an estimated 11.5 percent of the distributed *Khas* land, while the majority has fallen into the hands of powerful elites. Registering land is equally complicated, requiring numerous steps and a fee of 10 percent of the value of the property.[43]

Conflict also arises over ownership of *char* lands, which is new land arising from riverbeds and river sediment. *Char* lands are usually occupied by the landless and are highly susceptible to erosion and flooding. Conflict results when powerful elites use violent tactics to gain control of these lands[44] and law enforcement agencies attempt to evict the inhabitants.[45] However, securing a title is a complex process, as *char* lands are usually not properly recorded and the poor have difficulty completing the required steps, including conducting surveys and obtaining verifications.[46]

Women and property rights

Approximately 68 percent of employed women in Bangladesh work in the agricultural sector,[47] yet women face considerable discrimination when attempting to access their property rights. The Constitution of Bangladesh guarantees every citizen the right to own property, but in practice, few women own land and assets; in 2005, women owned only 2.5 percent of farm holdings.[48] The 2006 WBGNS found that less than 10 percent of women have their names on marital property documents (for example, a title or a deed).[49] Under the 1984 *Land Reform Ordinance* and a 1986 government notification, if two acres of land are distributed to a landless family, one acre should be given to the husband and another to the wife. In practice, most families report that the government has granted land solely in the name of the male head of household.[50]

Women's property rights are further weakened by discriminatory religious personal laws, in which Muslim women are generally entitled to inherit only half of what male family members receive.[51] A Hindu woman has limited rights over any property she inherits, and a Hindu daughter cannot inherit *any* property from her father if she has a brother.[52] Upon divorce or separation, Muslim and Hindu women do not have the legal right to claim any land

[43] U.S. Agency for International Development (USAID), "Bangladesh – Property Rights and Resource Governance Country Profile" (Washington, DC: USAID, 2010), 6–8, available at: http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Bangladesh_Profile.pdf.

[44] Selim Raihan, Sohani Fatehin, and Ifthekharul Haque, "Access to Land and Other Natural Resources by the Rural Poor: The Case of Bangladesh," MPRA Paper 38621 (Munich: Munich Personal RePEc Archive, 2009), 28, available at http://mpra.ub.uni-muenchen.de/38621/1/Bangladesh_Land_Study_SR.pdf.

[45] Rezaul Islam, Shahorin Manzoor and Md. Golam Sarwar, "Women's Rights to Land in Bangladesh: Roles, Limitations and Transformation," (Dhaka: Unnayan Oneshan, 2007): 19, available at http://www.unnayan.org/reports/Women_Land_Right_in_Bangladesh.pdf.

[46] Ibid.

[47] World Bank, "2008 World Bank Development Indicators."

[48] Raihan and others, "Access to Land and Other Natural Resources," 21.

[49] World Bank, "Whispers to Voices," 12.

[50] Islam and others, *Women's Rights to Land*, 21.

[51] Pereira, *The Fractured Scales,* 35–44.

[52] Huda, "Combating Gender Injustice," 26–27.

belonging to their husbands.[53] In addition to the constraints of these laws, studies show that women do not usually claim their share of property unless it is expressly offered to them. Instead, women often give up their property interests in return for support from brothers or the opportunity to visit their parental home.[54] This unspoken trade off is often referred to as the "good sister syndrome."[55] Thus, civil laws often mean little in rural Bangladesh, where customs and religious laws dictate reality.

3. The Legal Empowerment Approach: an Introduction

Traditionally, there have been two core approaches to expanding access to justice for the poor in developing countries. The first method, which is more state-centered, seeks to strengthen the formal justice system and government institutions, particularly the judiciary. Termed "rule of law orthodoxy," this approach includes trainings for lawyers, judges, prosecutors, and police; the financing of justice sector budgets; the drafting of improved legislation; and the construction of physical infrastructure such as prisons and courthouses.[56] In theory, improving the formal justice system and other institutions from the top-down will eventually improve government accountability to citizens and the justice sector's capacity to provide quality legal services to the poor. However, in practice, these efforts have often not "trickled down" to poor communities, and the demand side remains unaddressed. In addition, this approach emphasizes the formal justice system and methods generally favored in Western contexts, which research has shown may not be the most appropriate or accessible forums for dispute resolution by the poor in developing countries.[57]

A second approach, termed "legal empowerment," is more community based, with an emphasis on legal education and legal services at the grassroots level, frequently through legal advice clinics and paralegals who conduct outreach within poor communities. According to Vivek Maru, legal empowerment organizations frequently "combine a small corps of lawyers with a larger frontline of community paralegals who, like primary health workers, are closer to the communities in which they work and employ a wider set of tools."[58] At the grassroots level, legal empowerment focuses on concretely solving a community's problems and conflicts.[59] Legal empowerment recognizes that along with the supply side (provision of legal aid and advice), it is vital to nurture the demand side by empowering marginalized groups with knowledge of their rights and encouraging them to come forward to claim those rights.[60] Thus, legal empowerment

[53] Islam and others, *Women's Rights to Land*, 25.
[54] Jeffrey Hatcher, Laura Meggiolaro, and Catia-Isabel Santonico Ferrer. *Cultivating Women's Rights for Access to Land* (Rome: Action Aid International, 2005), 19.
[55] The Economist, "Women and Property Rights: Who Owns Bangladesh?" http://www.economist.com/blogs/banyan/2013/08/women-and-property-rights.
[56] Stephen Golub, "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative," Carnegie Endowment Working Paper 41, Rule of Law Series (Washington, DC: Carnegie Endowment for International Peace, 2003), 5.
[57] Ferdous Jahan, *From Rule of Law to Legal Empowerment of the Poor in Bangladesh: Towards an Agenda for Change* (Dhaka: BRAC University, 2005), 1.
[58] Vivek Maru, "Allies Unknown: Social Accountability and Legal Empowerment," *Health and Human Rights* 12, no.1 (2010): 83.
[59] Ibid.
[60] Ibid.

programs often include efforts to raise awareness of legal rights through community law libraries, print and broadcast media, and community-based legal education and training.[61]

The Asian Development Bank defines legal empowerment as "the ability of women and disadvantaged groups to use legal and administrative processes and structures to access resources, services, and opportunities."[62] The Commission on Legal Empowerment of the Poor, previously an independent organization but now an initiative of the United Nations Development Program, focuses on legal empowerment as a method to increase the integration of the poor into the economy by using effective legal tools to protect against injustices suffered and to expand poor people's opportunities to access society and the economy.[63]

Stephen Golub defines legal empowerment as "the use of law specifically to strengthen the disadvantaged." The approach involves empowerment in that "it aims to build such populations' capacities to act on their own."[64] In Golub's view, legal empowerment organizations are rights based, grassroots, and community driven, and integrated into mainstream socioeconomic development efforts. Attorneys support and serve the poor as partners, non-legal strategies are often employed, and informal justice systems favored by communities are often utilized.[65] Golub believes that legal empowerment should be "integrated into many mainstream socioeconomic development efforts that generally do not address [rule of law] or the legal needs of the poor."[66]

Legal empowerment, as the phrase reflects, focuses on empowering individuals to realize their rights and voice their demands more actively.[67] Indeed, it is "more about power and freedom than it is about law. It is about protecting assets and resources…and securing a voice for bargaining and negotiation."[68] Going beyond simple service delivery or resolution of individual disputes, legal empowerment programs seek to build power among marginalized communities.[69] In addition, the term legal empowerment clearly indicates "the use of the law, but legal empowerment initiatives frequently include activities that are not inherently law-oriented, such as community organizing or livelihood development."[70]

Legal empowerment stands apart from the dominant "rule of law orthodoxy" in a number of ways. While attorneys serve and support the poor as partners, the poor themselves play a role in setting priorities according to their needs. Non-legal strategies that transcend traditional, narrow

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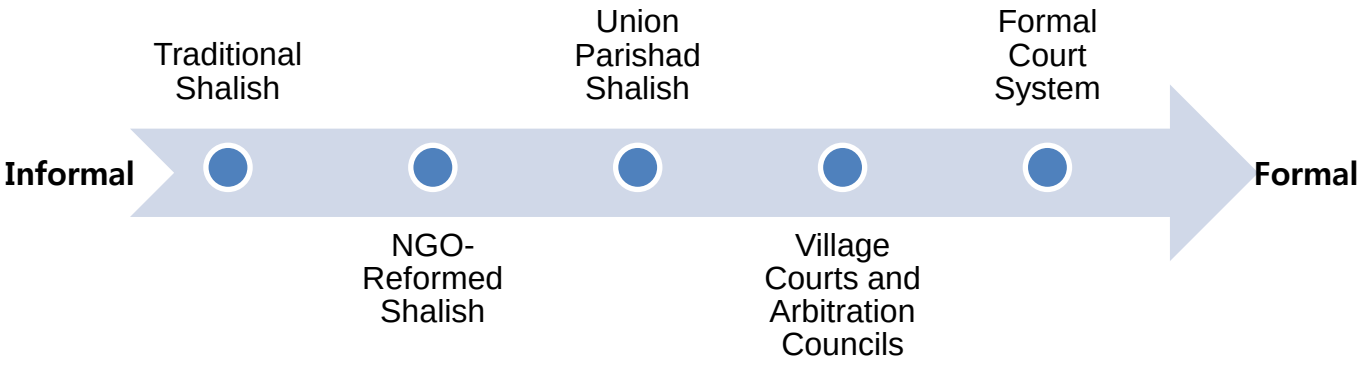
[61] Barendrech and Langen, "Legal Empowerment of the Poor," 262 (see n. 6).
[62] Asian Development Bank (ADB), *Legal Empowerment for Women and Disadvantaged Groups* (Mandaluyong City, Philippines: Asian Development Bank, 2009), viii.
[63] Barendrech and Langen, "Legal Empowerment of the Poor," 263.
[64] Stephen Golub, "What is Legal Empowerment? An Introduction," in *Legal Empowerment: Practitioners' Perspectives*, ed. Stephen Golub and Thomas McInerney (Rome: International Development Law Organization, 2010), 13.
[65] Golub, "Beyond Rule of Law Orthodoxy," 3.
[66] Ibid.
[67] ADB, *Legal Empowerment*, viii.
[68] Sumaiya Islam, "Legal Empowerment as a Pathway Out Of Poverty: Examining BRAC's Human Rights Strategy in Tackling Poverty," (Conference Paper, "Ten Years of War Against Poverty," Manchester, UK, September, 8-10, 2010), 4, available at http://www.chronicpoverty.org/publications/details/legal-empowerment-as-apthway-out-of-poverty.
[69] Maru, "Allies Unknown," 84.
[70] ADB, *Legal Empowerment*, 9.

approaches within the justice sector are frequently employed, and the law is often only one component of an integrated set of services.[71] Legal empowerment programs strive to expand access to the formal justice sector, but also place an emphasis on informal justice systems and forms of non-judicial representation such as counseling, mediation, negotiation, and arbitration.[72] It recognizes that poor communities often have more familiar ways of resolving disputes, and strives to improve upon existing systems to guarantee better access to justice.

Ultimately, legal empowerment's key contribution lies in attempting to enforce laws and rights that have largely remained confined to the books. Though certainly not a comprehensive solution to the problems faced by the poor nor issues of gender equity, legal empowerment can play a role in extending basic rights and resolving disputes when the formal justice system is out of reach.

4. Justice and Dispute Resolution in Bangladesh

In Bangladesh, individuals attempt to resolve conflicts and seek justice through a variety of formal and informal mechanisms. A recent survey by the National Human Rights Commission of Bangladesh revealed that of those who reported incidents of abuse or discrimination against female members of their household, 57 percent reported the incident to a community leader, 45 percent to a village Chairperson, Union Parishad (UP, the most local government body) member, or local member of parliament, and 35 percent to the police. In addition, 71 percent reported that a *shalish* (a form of informal dispute resolution, see below) took place. Of these, 63 percent attended traditional shalish, 31 percent participated in a UP led shalish, and 31 percent went to the village court. Most respondents did not report the abuse to the formal justice system, with 53 percent stating that going to court was too expensive, 25 percent viewing the abuse as a family matter, and 17 percent believing that community leaders did not support reporting the abuse to the courts.[73]



4.1. Traditional shalish

Shalish is an informal process of resolving disputes within the community with the help of influential local elites. It can take the form of arbitration (where both parties agree to abide by

[71] Golub, "Beyond Rule of Law Orthodoxy," 4.
[72] Jahan, *From Rule of Law*, p. 2.
[73] Ahmed and others, *Perceptions, Attitudes and Understanding*, 38.

the decision of a panel), mediation (mutual discussion among both parties to come to a settlement agreement), or a combination of the two.[74] Traditional shalish is generally not free, and although it is quite affordable for the average individual, it may be costly for the extreme poor.[75] Shalish is not a calm, orderly process; rather, it is usually a loud, heated discussion between the two parties, with input from many spectators from the community. The process can continue for weeks or even months, with many informal negotiations among family members continuing outside formal proceedings.[76] However, disputes can often be resolved quite quickly, within one to three sessions.[77] Although *shalishkars* (mediators) cannot enforce the settlement legally, the parties often feel pressured to submit to the shalish decision as negotiations are held in public and decisions are issued by local elites. The emphasis is on taking into account the interests of the broader community, and also on restorative justice rather than punitive or retributive justice.[78] There are a number of benefits to shalish, including that it is located within the village and close to home, is usually the cheapest option, is conducted in a familiar language and setting, and can often resolve disputes quickly.[79] On the other hand, some studies have shown that traditional shalish suffers from corruption, biased pronouncements issued by influential elites, and discrimination against the poor, landless, and women.[80]

4.2. NGO-reformed shalish

To reform shalish sessions and make them fairer for marginalized groups, civil society organizations (CSOs) frequently add women to the shalish panel,[81] provide training to shalishkars on law and human rights, and connect parties to legal services if desired.[82] At the same time, NGO services tend to be free or available for a very minimal cost, thus making shalish more accessible to the poor. NGOs in Bangladesh that provide reformed shalish include the Madaripur Legal Aid Association, Ain o Salish Kendra, BRAC, the Bangladesh Legal Aid and Services Trust, Banchte Shekha, and Nagorik Uddyong. Estimates show that NGO-reformed shalish reaches approximately 30 percent of Bangladesh's population.[83] An Asia Foundation report concluded that NGO-led shalish is generally "far more equitable in their treatment of women than the traditional and UP shalish." The study found much higher satisfaction rates with shalish led by civil society groups in comparison to traditional or UP shalish.[84] (More detail about NGO-led shalish can be found in section 6.5 below).

[74] Maitreyi Bordia Das and Vivek Maru, "Framing Local Conflict and Justice in Bangladesh," Policy Research Working Paper 5781 (Washington, DC: World Bank, 2011), 8.
[75] Dilruba Banu, "BRAC-Ain o Shalish Kendro Joint Legal Aid Programme: A Comprehensive Review," Research and Evaluation Division (Dhaka: BRAC, 2003), 18.
[76] Golub, "Non-state Justice Systems," 4 (see n. 42)
[77] Dina Siddiqi, "Paving the Way to Justice: The Experience of Nagorik Uddyog" (London: One World Action for a Just and Equal World, 2003), 10.
[78] Ibid., 5.
[79] Ibid., 10.
[80] Goresh, "Paving the Road to a More Free World," 263 (see n. 7).
[81] Goresh, "Paving the Road to a More Free World," 273.
[82] Begum Shamshad, "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 (2006): 74–75.
[83] Das and Maru, "Framing Local Conflict," 12–13.
[84] Golub, "Non-state Justice Systems," 10.

4.3. Union Parishad shalish

There are 4,500 UPs in Bangladesh, each representing an average of 27,000 people and covering an area of 30 square kilometers.[85] UP shalish sessions are conducted by influential local elites, UP members, or UP chairmen. UP members view the mediation of disputes as a method of maintaining and strengthening their influence; thus, decisions are often politically motivated.[86] UP members typically do not know the law well and tend to give low priority to the rights of women and girls in family conflicts. However, there are moves toward greater gender equity in the UP shalish, due to increasing numbers of female UP members serving as mediators.[87]

4.4. Village courts and arbitration councils

Each UP has the authority to operate a village court under the 2006 *Village Courts Act*. Village courts are run by the UP chairperson and have jurisdiction over minor offences (such as assault and theft) and well as civil disputes involving amounts up to Tk 25,000 (about $320).[88] Village courts cannot imprison or fine parties, but they can award injunctions and compensation; they can also issue binding decisions, while shalish depends on mutual agreement. Village courts are exempt from the *Evidence Act*, the *Criminal Procedure Act*, and the Civil Procedure Code.[89] Although village courts can be more difficult to access than local shalish, they are still cheaper and more convenient than going through the formal court system. In one survey, 10 percent of UP members reported charging less than Tk 10 ($0.13), 6 percent Tk 20-25 ($0.26-$0.32), 8 percent Tk 50–100 ($0.64-$1.28), and 20 percent said no fee is charged. Eight percent of UP members stated that chairmen paid the fees themselves, although this is admittedly a biased sample.[90] Unfortunately, it is unclear to what extent village courts are functioning throughout Bangladesh. In a nationwide survey, 75 percent of respondents were not aware of village courts,[91] while only 30 percent reported that the courts were active in their UP.[92] In addition, many village courts are being run without a budget, and many UP chairmen are not paid to supervise the courts.[93] Finally, village courts are limited by their pecuniary jurisdiction of Tk 25,000 as many disputes do not fall within this ambit.

According to the *Muslim Family Ordinance* of 1961, Arbitration Councils can also settle family law conflicts. Each UP has an Arbitration Council. The UP chairperson usually oversees these councils, and the panel also includes two other individuals, one selected by each party.[94]

[85] Daphne Keevil Harrold, "Legal Empowerment Strategies in Bangladesh. Empowering Women and Poor People through Legal Means," Research and Evaluation Division (Dhaka: BRAC, 2007), 9.
[86] Das and Maru, "Framing Local Conflict," 13–14.
[87] Golub, "Non-state Justice Systems," 8–9.
[88] Activating Village Courts, "Baseline Survey Report," 21–23.
[89] Das and Maru, "Framing Local Conflict," 15–21.
[90] Activating Village Courts, "Baseline Survey Report," 60.
[91] Ibid., 33.
[92] Ibid., iv.
[93] Ibid., v.
[94] Das and Maru, "Framing Local Conflict," 16.

4.5. Formal justice system

The formal justice system encompasses a range of justice institutions, including the courts, police, correction institutions, and prosecutors. The formal court system is composed of civil and criminal courts divided into two levels: the Supreme Court and subordinate courts.[95] Subordinate courts include district courts, which deal with both criminal and civil matters. Below this, magistrate's courts take cases dealing with crimes punishable by imprisonment of up to five years, and courts of assistant judges resolve minor civil matters. Magistrates are not members of the judicial service and are not considered judges, but belong to the administrative service.[96] The formal justice system is the least utilized by the poor in Bangladesh, for whom accessing the courts can be a stressful process. Further, even getting to court can be a challenge, particularly for people in rural communities who live hours from a courthouse, since most people live in villages and the lowest court is located at the district level.[97] On the other hand, judgments handed down in court have the benefit of an enforcement mechanism, at least in theory. (A more detailed analysis of the problems facing the formal justice system is below in section 7.2.)

5. BRAC's HRLS Interventions in Bangladesh

Having worked for years with village organizations (VOs)[98] through its programs in community empowerment, microfinance, health, sanitation, and education, it was natural for BRAC to begin within the community—rather than taking a top-down approach—in tackling women's rights, land rights, and local disputes. In 1986, BRAC founded HRLS, which works to protect and promote the human rights of the poor and marginalized through legal empowerment.[99] Today, HRLS is one of the largest nongovernmental legal empowerment programs not just in Bangladesh but in the world, having provided rights-based legal education to more than 3.8 million individuals and having received and addressed more than 200,000 legal complaints in the past 27 years through its 517 legal clinics nationwide.[100]

HRLS's model centers on three pillars: legal education, legal aid, and community mobilization. While legal education initiatives spread the awareness needed to mobilize communities to raise their voices against injustice, the provision of legal aid services ensures that the demand is met with concrete mechanisms through which the poor can claim their rights. Finally, community

[95] Ahmed and others, *Perceptions, Attitudes and Understanding*, 62.
[96] Jahan, *From Rule of Law*, 3.
[97] Siddiqi, "Paving the Way to Justice," 5.
[98] BRAC began its work with the rural poor by creating village organizations (VOs) composed of 35-55 members and divided into several committees: management committee, social action committee and law implementation committee. Villagers were organized into VOs by BRAC in order to enable the poor to participate in development activities, to build the capacity of the rural poor, develop a system of accountability, and to encourage women's participation. See Shah Ased Ahmed, Tapon Kumar Dus, Md Fazlul Haque, SM Alamgir Hossain, and Mohammad Rafi, "Small Groups and Performance of Village Organizations in Rural Development Programme of BRAC," (Dhaka: BRAC, 1999): 1-2.
[99] Sharin Shajahan Naomi and Seikh Tariquzzaman, "Modifying Human Rights and Legal Education Course for Human Rights and Legal Services, BRAC," Research and Evaluation Division (Dhaka: BRAC, 2011), 4.
[100] BRAC, "Human Rights and Legal Aid Services (HRLS) Programme," http://hrls.brac.net/images/pdf/1056855.pdf.

mobilization garners support for basic rights from community members and key leaders, helping to shift social norms over time.[101]

5.1. Legal Education

HRLE shebikas

A *shebika*, also referred to as a "barefoot lawyer," is a BRAC legal aid educator operating at the community level. BRAC has trained more than 12,000 shebikas to teach human rights and legal education (HRLE) courses, of whom over 6000 are fully active on the ground. Shebikas are paid an honorarium of roughly US$11 to teach each HRLE course. They are also encouraged to connect community members with legal advice, representation, and mediation services. Shebikas do not receive monetary compensation for reporting violations to the legal aid clinic.[102]

Considering it is completely voluntary, it is extremely encouraging that 63 percent of shebikas report taking action against human rights abuses.[103] Shebikas investigate disputes and speak directly with perpetrators to convince them to stop the violation (for example, speaking to parents about an impending child marriage), discussing their actions in relation to the law as well as the consequences of violating the law. In some cases, shebikas themselves initiate a shalish along with others from the community, such as members of the *Polli Shomaj* (a BRAC led ward-level institution of the poor, especially women), who can provide support. Perpetrators are often angered by being called to attend shalish and sometimes do not behave well toward shebikas.[104] Most often, however, shebikas bring clients to the legal advice office, where BRAC staff organize a shalish to reconcile the two parties, or take the case to court as a last resort.[105] The most common violations against women observed by shebikas are dowry (71 percent), domestic violence, and child marriage.[106]

Human rights and legal education classes

Through HRLE classes, shebikas educate (mainly) women about their legal rights. The classes help to empower women with a basic understanding of their rights and the laws, the first step in seeking justice. Traditional HRLE classes take place through 22 sessions over 30 days, covering seven main laws: Muslim and Hindu family law, Muslim and Hindu inheritance law, constitutional law, land law, and criminal law. A new curriculum, which has just been rolled out, covers the course through 12 sessions.[107] Top performing HRLE graduates become part of a Law Implementation Committee (LIC) and work with shebikas to encourage others to participate in HRLE classes and to bring rights violations in their locality to the attention of BRAC staff. Active and dynamic LIC members are often given the chance to become shebikas later on. HRLS's new Property Rights Initiative (PRI) includes a curriculum focusing on property rights. While the traditional HRLE classes are focused on educating women, the PRI classes are also

[101] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.
[102] Based on personal interviews conducted by the author in June 2012, in Dhaka and Faridpur, Bangladesh.
[103] Abdul Alim and Mohammad Rafi, "An Assessment of HRLE Shebika with a Focus on their Effectiveness," Research and Evaluation Division (Dhaka: BRAC, 2011), 23.
[104] Ibid., 22.
[105] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.
[106] Alim and Rafi, "An Assessment of HRLE Shebika," 23–24.
[107] BRAC Blog, "Legal Literacy: From Pedagogy to Reality," available at http://blog.brac.net/2013/07/legal-literacy-from-pedagogy-to-reality/.

open to poor men, including sharecroppers and indigenous minorities who struggle with land disputes.[108] As of July 2013, 165,139 HRLE courses have been held, with a total of 3,820,821 graduates.[109]

Odhikar shebis

BRAC has also trained a cadre of selected community leaders to be known as '*odhikar shebis' ('justice service providers')*. Odhikar shebis are women shebikas and men sheboks who have undergone an advanced 12-day training where, in addition to sessions dedicated to understanding key laws, six days are spent learning land measurement and surveying techniques from government-certified institutions. Odhikar shebis do not teach classes, but utilize acquired skills in land measurement to obtain a source of sustainable livelihood as well as to help the poor resolve land-related conflicts and gain legal rights over their property, including *Khas* land. In addition, odhikar shebis are responsible for informing BRAC offices of human rights violations, bringing potential clients to the legal aid clinic and encouraging them to file cases in court, ensuring that serious violations are not resolved through shalish. They also help in registering births, deaths, marriages, and divorces, and work closely with government and nongovernmental offices at the UP level. Their work with BRAC on monitoring and reporting human rights violations is unpaid, though they are generally able to significantly increase their salaries by using their newfound skills to conduct land surveys and measurement.[110] More than 13,800 odhikar shebis have been trained. About 2,900 are working as land entrepreneurs, having measured the land of 530,161 individuals. Odhikar shebis have brought a total of 49,886 clients to BRAC's legal aid clinics.

Land entrepreneurs

As part of the Property Rights Initiative, piloted in two districts thus far and expanded to four others, a group of land entrepreneurs undergo a more intensive month-long training focusing on land measurement and facilitating access to justice services such as birth, marriage and death registrations and reporting human rights violations. They receive a government certification, allowing them to provide land measurement services and assistance in land offices.[111] As of August 2013, LEs had assisted over nearly 21,000 clients with land measurements, and among them 7% received free land measurement services.[112]

5.2. Community Mobilization

Since HRLS provides an alternative to traditional shalish, BRAC often encounters opposition from UP members and local elites, who have an incentive to promote their own mediation services and expand their influence within the community. To mitigate this problem, BRAC works closely with community members and leaders through a number of programs.

Local community leaders' workshops

Local community leaders' workshops aim to increase gender and human rights awareness among village leaders and to encourage collaboration with BRAC's programs. Participants include

[108] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.
[109] BRAC HRLS MIS Data, July 2013.
[110] Based on personal interviews conducted by the author in June 2012, in Dhaka and Faridpur, Bangladesh.
[111] Ibid.
[112] BRAC HRLS MIS Data, August 2013.

HRLS staff, UP members, religious leaders, marriage registrars (*qazis*), teachers, journalists, NGO staff, panel lawyers, odhikar shebis, HRLE shebikas, and the chairperson of the Gram Daridro Bimochon Committee (GDBC).[113] Participants learn about existing laws, common human rights and property rights issues, and HRLS' services.[114]

Human Rights Implementation Committee

Following local community leaders' workshops, attendees form a Human Rights Implementation Committee (HRIC) and commit to promoting human rights and the proper implementation of laws throughout the region. This ensures that workshops are not just one-off events, but result in longer-term collaborations between key community elites.[115]

Popular theater and courtyard sessions

HRLS utilizes street theater, a popular community outreach tool, to promote behavioral change and create community acceptance for the poor to access property rights. The Property Rights Initiative uses real client stories to illustrate scenarios where property rights conflicts arise and the subsequent steps taken to resolve them.[116] Courtyard sessions are community-based discussions bringing together non-BRAC members and participants in BRAC's forums such as *Polli Shomaj*, the ultra poor committee, Gram Daridro Bimochon Committee, and the Law Implementation Committee. The sessions, facilitated by BRAC staff, focus on helping communities translate the knowledge gained in legal literacy classes into practice.[117]

Legal Rights Implementation Committee

Legal Rights Implementation Committees (LRICs) encourage diverse actors to work together to prevent human rights violations in their communities. The LRIC group generally includes four UP members (including one female member); two teachers; three progressive imams; two Gram Daridro Bimochon Committee members, former members or retired teachers; six Law Implementation Committee members; one *qazi*; and one odhikar shebi.[118] Each LRIC is tasked with informing the nearest BRAC office if human rights violations occur in their communities, bringing survivors to the closest legal aid office, attempting to stop shalish in cases of serious violations, encouraging survivors to go to court rather than participate in illegal shalish, participating in BRAC's alternative dispute resolution (ADR), and opposing child marriage, dowry, and polygamy.[119]

[113] The Gram Daridro Bimochon Committees were formed by BRAC's Targeting the Ultra Poor (TUP) program, which provides training and livelihood support for the extreme poor. There is one committee for a cluster of villages where the program is active, and the committees are composed of respected elites in the village in order to garner support for BRAC's programs. See Ashrafuzzaman Khan, Mohammad Rafi, and Mrinmoy Samadder, "The Life Cycle of a *Gram Daridro Bimochon Committee*," (Dhaka: BRAC, 2013): 3.

[114] Debasish Kumar Kundu, Sharin Shajahan Naomi, and Mrinmoy Samadder, "Revisiting Group Dynamic and Legal Rights," Research and Evaluation Division (Dhaka: BRAC, 2010), 1–3.

[115] Ibid.

[116] Internal grant applications prepared by BRAC HRLS.

[117] Ibid.

[118] Kundu and others,, "Revisiting Group Dynamic and Legal Rights," 2.

[119] Ibid., 2–3.

5.3. Legal Aid

The cornerstones of BRAC's HRLS program are the 517 legal aid clinics in 61 of Bangladesh's 64 districts, which provide ADR, legal advice, and legal representation in court. At these "one-stop shops," complainants have their questions answered and obtain assistance in pursuing their claims. Many clients are brought to the legal aid office by shebikas and odhikar shebis, or hear of BRAC through word of mouth. BRAC's field staff work with clients to guide them through the process of filing a case or resolving disputes through shalish, and assist them in accessing needed social services.[120] Each clinic, located at the *upazila* level, is managed by one field organizer (FO) or *upazila* manager, who manage legal clinic days, mediate disputes, and supervise shebikas. BRAC also has district and divisional staff lawyers who oversee several offices.[121]

Civil cases

In civil cases, such as property or family disputes, the FO first investigates by visiting the area where the incident occurred and speaks with the parties, neighbors, and any other community members who are aware of the dispute. Even prior to bringing the issue to the legal aid clinic, the FO often attempts to resolve the matter through ADR at the community level.[122] If it is impossible to resolve the dispute informally, the FO attempts to bring the parties together for a shalish at the BRAC office. The FO acts as a mediator, and each party is entitled to bring witnesses, representatives, and family members. In shalish, both parties speak and voice their demands. BRAC shalish is usually in the form of binding arbitration (the arbitrator—the FO—issues a binding decision) or mediation-arbitration (both parties agree that any issue not resolved in mediation will be resolved by arbitration). It normally takes between one and five shalish sessions to fully resolve a dispute.[123]

If the shalish is unable to resolve a dispute, or if the defendant does not respond after several follow-ups, the client has the option of pursuing a solution through the formal system. If the client agrees, one of BRAC's network of 400 panel lawyers is notified to file the case in court.[124] Panel lawyers have their own private practices but represent BRAC clients on a part-time basis and receive a nominal fee for their services. While many cases can be resolved through shalish, a number must be taken to the formal system.[125]

Criminal cases

BRAC does not arbitrate or mediate criminal cases such as acid attacks, rape, human trafficking, and murder, but takes them to court. In reality, however, parties often do make compromises out

[120] Based on personal interviews conducted by the author in June 2012, in Dhaka and Faridpur, Bangladesh.
[121] Based on personal interviews conducted by the author in June 2012 near Faridpur, Bangladesh.
[122] Shuburna Chodhuary and others, "Exploring Legal Aid Services of BRAC HRLS Programme in Cox's Bazar," Research and Evaluation Division (Dhaka: BRAC, 2012), 8.
[123] Ashrafuzzaman Khan, Debasish Kumar Kundu, and Mrinmoy Samadder, "Understanding Alternative Dispute Resolution for the Rural Women in Bangladesh: Some Illustrations from BRAC HRLS Programme," Research and Evaluation Division (Dhaka: BRAC, 2007), 5–12.
[124] Tariq Omar Ali and Abdul Alim, "NGO-Shalish and Justice-seeking Behaviour in Rural Bangladesh," Research and Evaluation Division (Dhaka: BRAC, 2007), 34.
[125] Based on personal interviews conducted by the author in June 2012, in Dhaka and Faridpur, Bangladesh.

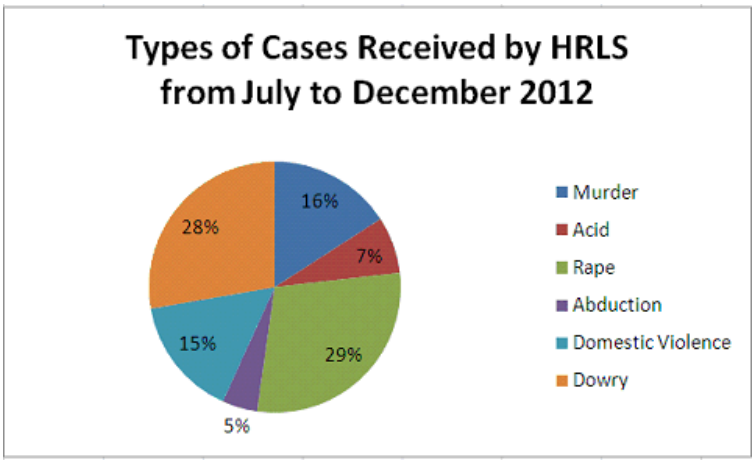
of court and without the consent of BRAC rather than seeking legal assistance. For instance, due to social stigma, survivors of crimes such as rape are often coerced into marrying the accused.[126]

In a criminal case involving crimes of violence against women, the FO first ensures the health and safety of the survivor, taking her to the hospital and working with partner organizations if she, or her family, needs safe shelter.[127] The FO then begins investigation, which includes visiting the crime scene, arresting the suspect, collecting evidence, questioning the accused and other witnesses, and writing a case diary.[128] The FO also contacts a panel lawyer for the case.[129]

In gender-based violence cases, a lawyer is crucial in securing a medical examination and report to corroborate the survivor's statement in court, helping a victim file a police complaint (known as a First Information Report), ensuring that the police give the magistrate judge a charge sheet recommending prosecution, filing a *naraji* petition to appeal a decision not to pursue prosecution, providing representation at court hearings and trials, and appealing the decision from the lower court to the High Court. Many of these steps are complicated and bribes are often demanded; having BRAC's support can often reduce the level of corruption.[130]

The results

As of April 2012, HRLS had received 175,205 complaints and resolved 94,804 through ADR. In total, 31,601 cases (27,662 civil and 3,935 criminal) have been filed in court and 20,798 judgments have been received. Of these judgments, 15,734 were in favor of BRAC clients and 2,301 judgments were not. Most of the remaining cases are ongoing.[131] Overall, BRAC has managed to secure total monetary compensation of Tk 757,304,207 for its clients, which is equivalent to more than $9 million.[132]



The majority of cases and complaints brought to the legal aid clinics relate to family conflicts and property rights disputes. In Cox's Bazar, for instance, a coastal area of Bangladesh, almost 90 percent of cases related to domestic violence. The remaining cases involved murder, acid throwing,

[126] Sharin Shajahan Naomi, "The Legal Challenges on the Way to Judicial Remedy in Rape Cases: The Role of Human Rights and Legal Services Programme of BRAC," Research and Evaluation Division (Dhaka: BRAC, 2009), 28.
[127] Ibid., 23.
[128] Ibid., 28.
[129] The majority of BRAC's criminal cases appear to involve violence against women, and there is limited data on criminal cases involving other crimes.
[130] Ibid., 19.
[131] BRAC HRLS MIS Data, May 2012.
[132] BRAC HRLS MIS Data, April 2012.

rape, trafficking, dowry and polygamy, and land disputes.[133] In another study, of twenty-four ADR sessions observed, all the claimants were married women, and the perpetrators were all the husbands of complainants. Most of the disputes related to family law matters and involved domestic violence.[134]

In dower cases, BRAC has been especially successful, with 93 percent of judgments in favor of BRAC clients. Moreover, 88 percent of decisions in restitution of marriage rights, 81 percent in divorce and trafficking, 79 percent in dowry, and 78 percent in polygamy cases have been in favor of BRAC clients. However, acid throwing judgments are in favor of BRAC clients only 53 percent of the time, and rape has the lowest conviction rate at just 41 percent, pointing to the difficulty of securing evidence and battling an often corrupt system.[135] [136]

6. BRAC's Legal Empowerment Model

This section will lay out some characteristics that allow BRAC's HRLS program to contribute to the legal empowerment of the poor—especially women—in Bangladesh. This will be followed in the next section by an outline of the challenges of this grassroots, nongovernmental approach.

6.1. Grounded in the Grassroots

Halima, a middle-aged woman from Char Bhadrashan, Faridpur, owns a shop that sells household items. Initially, Halima learned of BRAC when she took a microfinance loan to expand her business. She soon joined a HRLE class in her community and was the top-scoring student. She became part of the Law Implementation Committee and was eventually invited to be a shebika. Today, she teaches an HRLE class and is extremely active in her community. She has brought 15 clients to the closest legal advice office. Seven of those cases have been resolved through BRAC shalish and the families are living peaceful lives. In seven other cases, BRAC assisted women in obtaining a divorce and securing their rights to dower and maintenance; in one case, the client received Tk 200,000, or about $2,570 (in comparison to an average monthly salary of approximately $62 or Tk 4,825).[137] The final case is ongoing in the court system. Halima constantly monitors her community for human rights violations, counsels women about their family disputes, and accompanies clients to the local legal aid clinic. She mentions that being a shebika has enriched her own life; she has become close friends—practically sisters—with the women in her class. After the HRLE class, the group comes together to sing and dance. She cares about these women and girls personally as it is not just a professional obligation for her.[138]

[133] Chodhuary and others, "Exploring Legal Aid Services," 14.
[134] Khan and others, "Understanding Alternative Dispute Resolution," 9, 12.
[135] Naomi, "The Legal Challenges," 5.
[136] For data in figure above, see BRAC HRLS MIS Data, July–December 2012.
[137] World Bank, "2013 World Bank Development Indicators," World Bank, available at http://data.worldbank.org/data-catalog/world-development-indicators.
[138] Based on interview with BRAC Shebika in Char Bhadrashan, Faridpur, June 2012.

Vivek Maru notes that paralegals are "closer to the communities they serve," while lawyers are "frequently outsiders and elites."[139] This is precisely why shebikas like Halima can be particularly effective. Many shebikas transform into community leaders after years of human rights work and are well respected in the villages they work and teach in. Ultimately, shebikas come from the very communities BRAC seeks to serve—they are women, many of them from poor backgrounds themselves. Indeed, about 21 percent of the shebikas' households had a financial deficit throughout the year, 34 percent had a deficit at times, and only 27 percent sometimes had a surplus.[140] The average annual household income for shebikas is Tk 75,409 (approximately $900, or $2.47 per day).[141] Many shebikas have also been victims of physical, mental, or emotional abuse. More than 50 percent of shebikas surveyed had been threatened with divorce or had income taken from them by relatives. What is more, 47 percent of shebikas had experienced physical domestic violence, and 28 percent had experienced sexual harassment. Most shebikas reported experiencing some sort of family conflict.[142]

For these reasons, shebikas themselves are part of the community, as they are no strangers to poverty and domestic violence. They do not have to study the needs of the community, because they have lived those experiences themselves. Thus, shebikas are likely to know the most effective arguments to use in resolving local disputes. For instance, shebikas have been able to convince family members that domestic violence would negatively impact the family's social status and reputation, affect the health of their young children, and might even cause divorce—which would mean even greater loss of prestige for the family. In 91 percent of successfully prevented child marriage cases, shebikas managed to persuade both parties that child marriage is illegal and could lead to health problems if the bride became pregnant too young.[143]

Since shebikas are drawn from the same group as the women they serve and have similar experiences with domestic abuse, they are better able to empathize with the plight of women in their village and more readily able to come up with realistic solutions to their problems. The shared experience of poverty and abuse often creates solidarity among poor women and shebikas, bringing them together to fight injustice. It is thus a shared struggle, not a one-sided provision of aid from donor to beneficiary. This grassroots approach, almost a form of organizing in itself, has been utilized by BRAC as a powerful paradigm shift from traditional aid giving to genuine social change at the community level. By shifting power to the poor – especially marginalized women –this approach recognizes their agency to shape their own lives and allows legal empowerment to take place.

By virtue of being part of the community, shebikas are also far more accessible than BRAC panel lawyers, and thus serve as key access points for complainants. Shebikas support poor women, accompanying them to BRAC clinics and court, providing encouragement, helping them negotiate with family members, and treating them like friends and sisters. Like Halima, shebikas uplift the lives of fellow women through their classes by laughing, gossiping, singing, and

[139] Vivek Maru, "Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide," *Yale Journal of International Law* 31 (2006): 470.
[140] Alim and Rafi, "An Assessment of HRLE Shebika," 10.
[141] Ibid., 15.
[142] Ibid., 46.
[143] Ibid., 30–31.

dancing. These classes serve not just as places to learn, but as safe spaces to gather and share personal struggles. HRLE classes serve as social spaces too; women, often isolated in the house, can form close bonds and develop deep friendships. Eventually, the connections forged transform into stronger social networks, which are vital for women going through struggles involving domestic violence. The increased knowledge of the law paired with a valuable social support system can prove to be a powerful intervention for women in times of need. These social bonds are also important because shebikas may be more motivated to take action against violations when it is a friend or neighbor who is being affected, rather than a stranger. Furthermore, clients feel more comfortable with someone they perceive as a peer, rather than going to a male lawyer or legal aid office outside the community. In addition, shebikas are less rushed than lawyers, and thus can spend more time with each complainant and on facilitating the resolution of each dispute.[144] Finally, shebikas can employ their familiarity with the culture and language to teach HRLE classes in a more accessible and thus more effective manner. For instance, to make lessons more interesting and to make complex legal issues easy to understand for students, shebikas often utilize humor, stories, songs, and local dialect in their classes.[145]

One concern is whether shebikas from lower economic strata are actually able to wield the influence necessary to challenge injustices in their communities. A report by BRAC's Research and Evaluation Division has revealed that shebikas from higher socioeconomic backgrounds had higher levels of social capital and were thus better able to challenge violations.[146] Quite simply, people listened to them. BRAC has worked to mitigate this challenge by linking shebikas closely with FOs. Due to their positions with BRAC, their past work experience, higher socioeconomic class, and literacy levels, FOs can usually garner significant respect within the community; they can act on information provided by shebikas and take action to resolve disputes, even challenging village elites if needed.

Ultimately, BRAC's grassroots approach is not necessarily seen as outside aid, but as another method of local dispute resolution. This perception is enhanced by BRAC's significant presence and visibility throughout Bangladesh and in other sectors, which fosters trust in the BRAC brand.

6.2. Size and Scale

As mentioned above, BRAC's HRLS program covers 61 of Bangladesh's 64 districts and has reached over 3.8 million women through its HRLE classes alone. With almost 6,000 shebikas, 8,300 odhikar shebis, and 517 legal aid clinics, BRAC manages to reach large swathes of the population. Still, in a nationwide survey, only 19 percent of participants stated that legal aid services were available in their area. Of these respondents, 26 percent mentioned BRAC legal services, 21 percent mentioned UP representatives, and 12 percent stated that teachers and religious leaders were the main sources of legal aid in their communities.[147] These survey results illustrate that for those who *are* aware of legal services in their area, BRAC's programs seem to be a real option among the array of possible dispute resolution mechanisms.

[144] Sharin Shajahan Naomi and Mrinmoy Samadder, "Legal Empowerment Through Human Rights and Legal Education Course: Observations and Recommendations from Field Visits," Research and Evaluation Division (Dhaka: BRAC, 2012), 11.
[145] Ibid.
[146] Ibid.
[147] Activating Village Courts, "Baseline Survey Report," iv.

One reason the HRLS program has been able to have such a reach is the size of BRAC as a whole. Indeed, BRAC's overall philosophy emphasizes launching projects on a grand scale after models have been tested and proved effective.[148] The organization currently funds 73 percent of its overall development programs through surplus from its range of social enterprises—and relies less each year on donor funding.[149] This benefits the legal services program as well, allowing it to expand without relying solely on donor funds. HRLS' size sets it apart from most civil society legal aid programs in Bangladesh, which are generally piloted on a smaller scale and often with fewer paralegal workers or concentrated in one particular region of the country, and largely dependent on donor funds. In other countries, too, most programs that provide legal services do so at a smaller scale, often focusing on one community or region. One exception is Timap for Justice, which has covered much of Sierra Leone through 19 paralegal offices.[150]

This is important for one reason: accessibility of services. If NGO legal aid clinics are few and far between, they will not prove to be a much better alternative than the formal system due to lack of accessibility. With the addition of a large number of "barefoot lawyers" and legal clinics at the *upazila* level, BRAC has been able to make its legal services more accessible to the poor, and thus a realistic option for those who cannot access the formal court system for reasons of distance, time, cost, or unfamiliarity. Second, BRAC is set apart from the traditional and customary dispute resolution mechanisms in Bangladesh by virtue of it being free (excepting a Tk 10 nominal fee), as opposed to bribes that may be extracted from local elites, and less biased.

6.3. Pairing Rights Literacy with Legal Aid

BRAC's HRLS program combines legal literacy with legal aid. First, BRAC's legal literacy initiatives increase informed justice-seeking behavior in those whose rights have been violated. This is bolstered by other horizontal community empowerment initiatives across BRAC, such as the use of popular theatre to push certain messages and raise critical questions. Then, BRAC provides hands-on, strategic legal services through the formal and informal justice systems.

Each year, HRLS has reported that there is at least a 10 percent increase in the number of complaints filed. Although the increase could result from a variety of factors, this data may suggest that justice-seeking behavior can be increased as individuals become better informed of their rights and the services available to assist them through legal literacy programming.[151] Without provision of legal aid, legal literacy programs provide only empty promises of rights; without legal literacy, individuals will not know when they should attempt to access justice.

6.4. Non-Legal Tools and the "Shadow" of the Law

As Vivek Maru notes, "A wide set of tools — including community education, organizing, local advocacy, and mediation — allows for constructive and cost-effective solutions, while the sparing, strategic use of litigation and high-level advocacy backs frontline efforts with greater

[148] Naomi Hossain and Anasuya Sengupta, "Thinking Big, Going Global: The Challenge of BRAC's Global Expansion," Working Paper 339 (Brighton: Institute of Development Studies, 2009), 27.
[149] BRAC, "BRAC Enterprises,'" available at http://enterprises.brac.net/.
[150] Timap for Justice, "Program Description," available at http://timapforjustice.org/work/.
[151] Islam, "Legal Empowerment as a Pathway Out Of Poverty," 7 (see n. 70).

power of enforcement."[152] Indeed, the formal justice system is usually the last resort for BRAC's staff. In criminal cases such as rape, the formal justice system is the only option used. However, in most other situations, BRAC staff attempt to resolve disputes through out of court justice strategies, such as shalish or courtyard meetings.

Maru argues that a key benefit of paralegals generally is that they can creatively employ such out of court methods and adapt flexibly to circumstances, rather than turning to "formalistic legal solutions" as a default.[153] Likewise, BRAC's volunteers utilize a range of informal justice strategies. Shebikas teach legal education classes, conduct mediations, and negotiate with families. Odhikar shebis measure land, advise community members on land rights, assist the poor in securing rights to *Khas* land, report human rights violations, and register marriages, births, and deaths. Land measurement at a reasonable cost (free for the extreme poor) is also a powerful tool for resolving property rights disputes and ensuring that vulnerable groups gain their share of land.

Shebikas, odhikar shebis, and FOs frequently use creative non-litigation methods, such as simply speaking to parties and using persuasive arguments that invoke the law to prevent or stop violations. Shebikas regularly work with village elites and UP members in attempts to build momentum to oppose violations or resolve disputes. Finally, BRAC employs shalish as a common strategy to resolve individual and community-wide disputes more cheaply and quickly than would be possible through the court system. Since the formal justice system can be intimidating to many of the rural poor, the "shadow" of litigation can deter many parties from resisting BRAC facilitated shalish.[154]

6.5. Culturally Relevant Informal Justice Mechanisms

As mentioned above, the traditional or UP shalish tend to be the most readily accessible forums for justice and thus the most popular and familiar methods favored by rural Bangladeshis. As Maru writes of his work in Sierra Leone,

> We do not wish to supplant either customary or formal dispute mechanisms. To the contrary, much of our work involves helping clients to access and navigate both sets of institutions. But by offering a free and fair alternative for the mediation of conflicts, we may provide healthy competition and achieve some dilution of the authority that is presently concentrated in the community's big persons.[155]

Similarly, BRAC's shalish may seem to replicate existing structures, but it is a useful addition to the local justice landscape. As discussed, the traditional shalish—dominated by powerful village elites—simply cannot guarantee equitable outcomes for most of the rural poor.[156] BRAC works to augment and support existing structures, rather than import a completely alien process into a community. To that end, although BRAC has modified traditional shalish to make it more

[152] Maru, "Allies Unknown," 85 (see n. 60).
[153] Maru, "Between Law and Society," 469–70.
[154] Based on personal interviews conducted by the author in June 2012, in Dhaka, Bangladesh.
[155] Maru, "Between Law and Society," 449.
[156] Goresh, "Paving the Road to a More Free World," 263.

equitable for poor and vulnerable people,[157] it remains in a form still highly familiar to villagers and in line with social norms. At the same time, it is enhanced with a greater measure of justice standards and improved gender and class equity through its supervision by BRAC.

The value of NGO-led shalish: accessibility, cost, efficiency, and user participation

At this point, a further analysis of some of the positive aspects of NGO-led shalish in Bangladesh is warranted. As mentioned, NGO-led shalish provides some measure of justice to the poor, who cannot afford to take their cases to court. NGO shalish is usually very inexpensive or free, thus making access to justice affordable to those who would otherwise have, at most, the option of traditional shalish. Further, NGO shalish is usually much quicker than cases filed in court, which can take years to resolve with no protection in the meantime. Finally, NGO shalish—only if replicated at a truly large scale—can be accessible and handled within the community.[158]

Shalish also allows HRLS to work with clients to come to a better outcome for all parties involved. ADR gives clients a voice, and engages their full participation in stating their demands for a better life.[159] The HRLS shalishkar is not making decisions for the client, but encouraging the individual to make his or her own choices. Unlike the court system, where the client often has little say in the judicial process, NGO-led shalish thus makes a greater effort to recognize the agency of the poor and marginalized, and to give them the opportunity to tell their stories.[160]

Cultural relevance

ADR may be a more culturally familiar forum than the courts when it comes to resolving disputes. Shalish emphasizes restorative rather than retributive justice, focusing on reconciliation rather than punitive measures.[161] Restorative justice "involves communication between the victims, perpetrators, and other stakeholders involved in the injustice or crime in an effort to right the wrong created by the injustice."[162]

In the context of an abusive relationship where divorce may lead to social stigma, for example, restorative justice proves to be a realistic, if imperfect, solution.[163] The "dialogue between victims, community members, families, and perpetrators is supposed to deter the perpetrator from repeating the offense or injustice through reintegrative shaming."[164] The reality is that mediation often cannot end violence, but may be able to reduce it – or at least name it or frame claims around it.[165] The question remains: is there such a thing as an "acceptable" or "tolerable" level of violence against women? And if the answer is no, the solution must be to scale up and deepen measures to begin changing social norms, reducing the stigma faced by divorced women,

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[157] Based on personal interviews conducted by the author in June 2012, in Dhaka, Bangladesh.
[158] Shamshad, "The Impact of ADR," 77–78 (see n. 87).
[159] Susan Landrum, "The Ongoing Debate About Mediation in the Context of Domestic Violence: A Call for Empirical Studies of Mediation Effectiveness," *Cardozo Journal of Conflict Resolution* 12 (2011): 447.
[160] Shamshad, "The Impact of ADR," 77–78.
[161] Siddiqi, "Paving the Way to Justice," 5.
[162] Harrold, "Legal Empowerment Strategies in Bangladesh," 32 (see n. 83).
[163] Lena Hasle, "Too Poor for Rights? Access to Justice for Poor Women in Bangladesh," *The Bangladesh Development Studies* 29, no. 3–4 (2003): 126, available at: http://www.bids.org.bd/bds/29-3&4/XXIX%203&4%20Lena%20Hasle.pdf.
[164] Harrold, "Legal Empowerment Strategies in Bangladesh," 32.
[165] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.

preventing violence in the first place, and ensuring a social safety net for divorced women and their minor children.

More just outcomes than traditional mechanisms

BRAC (like other NGO-led) shalish usually provides better outcomes for many clients than the traditional mechanisms of dispute resolution such as the local shalish, the UP shalish, and the village courts. Indeed, in some cases it has been seen that clients tend to treat the BRAC system like an appeals mechanism for those who do not find justice through these other means or remain unsatisfied or aggrieved. The village courts are extremely limited, as they can only take cases involving monetary value of up to Tk 25,000 (about $321). Many disputes fall outside this pecuniary range; BRAC frequently obtains dower amounts of at least Tk 80,000 (about $1,028) for its clients,[166] cases that could never be fully resolved through the village courts. In addition, the UP Chairman is in charge of the village courts, and he may be biased in favor of his supporters and constituency members.[167]

More commonly, most of BRAC's clients have first tried to resolve their problems through local or traditional shalish. Although traditional shalish is quick and easy to access within the village, it often fails due to cost, lack of enforcement, or inequitable outcomes for the primary complainant. BRAC members have reported that traditional shalish can be expensive, as village elites often use mediation as a key source of income. Thus, some of the poorest simply cannot afford it.[168] Furthermore, powerful elites may issue "judgments" that serve to strengthen their influence within the community, or solicit bribes from parties in return for a favorable verdict.[169] In one survey of 2,400 individuals, 27 percent had to pay fees to resolve a dispute through the local shalish, and 56 percent specified that the "fee" was in fact a bribe.[170]

In addition, as shalishkars are usually male elders who may have patriarchal views that influence their decisions,[171] traditional shalish "judgments" often enforce patriarchal and customary social norms. Thus, mediation, if left untouched, tends to perpetuate existing power dynamics. Decisions may not follow human rights standards and are likely to further oppress marginalized parties. For example, in cases of premarital or extramarital relations, a local or traditional shalish may require the two parties to marry or undergo degrading punishment; the latter may involve public canings, beatings with shoes, head shavings or being paraded naked through the village, which grossly violate human rights laws.[172] In the most extreme cases, religious leaders such as mullahs have influenced shalish panels to carry out *fatwas* against women, lashing or even stoning them to death for violating social norms.[173] Furthermore, although the professed focus is on achieving consensus, the results are often pronouncements that regulate and suppress the conduct of women, forcing them to accept patriarchal results for the sake of harmony.[174]

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[166] Ibid.
[167] Activating Village Courts, "Baseline Survey Report," 21–23.
[168] Banu, "BRAC-Ain o Shalish Kendro," 13 (see n. 77).
[169] Golub, "Non-state Justice Systems," 5 (see n. 42).
[170] Ibid., 14.
[171] Siddiqi, "Paving the Way to Justice," 11.
[172] World Bank, "Whispers to Voices," 89 (see n. 14).
[173] Ali and Alim, "NGO-Shalish and Justice-seeking Behaviour," 3 (see n. 127).
[174] Siddiqi, "Paving the Way to Justice," p. 11.

An example illustrates how traditional shalish outcomes can be biased against the weaker party. In one case, a wife wanted a divorce after being continually subjected to physical abuse. She came to BRAC for assistance and BRAC organized a shalish, through which her husband first agreed to give her Tk 60,000 ($770) in dower and maintenance. However, not wanting to pay this full amount, her husband asked for assistance from the UP Chairman, who sought to mediate the case at his own home instead, telling BRAC that he would require the husband to provide only Tk 30,000 ($385) in dower and maintenance. As this would have been an unjust outcome for the wife, BRAC's FO told the chairman that BRAC would handle it, and that they had already come to an agreement. Ultimately, the husband did pay Tk 60,000 due to BRAC's efforts and continued persistence.

Similarly, there is no appropriate local or traditional avenue for the landless who seek rights over *Khas* land. Often, this land has been grabbed by local elites, and it is unlikely that a poor individual can find justice through the elite-dominated traditional shalish system.[175]

In other cases, local shalish does not work due to the lack of an enforcement mechanism and absent follow-up. For example, a client named Parvin had a dowry dispute with her husband. Her father had promised her husband a visa to Saudi Arabia and Tk 30,000 as dowry. He provided the money, but passed away before he could procure a visa. Parvin's husband began beating her and demanding a visa, but Parvin had no way of securing one. They went to the traditional shalish, and her husband agreed not to physically abuse her. However, the shalish did not enforce its judgment and the abuse continued. She then left his home and came to BRAC for help.[176]

The difficulty of enforcing agreements points to the limitations of shalish as a tool for dispute resolution. However, as noted above, BRAC has been able to utilize the "shadow" of litigation to obtain greater levels of compliance with its shalish judgments, and it also takes steps to ensure that the agreement is upheld. For instance, if a husband agrees not to beat his wife, BRAC's FO will visit the home at regular intervals to ensure that abuse is not occurring. If a husband agrees to give a set amount to his ex-wife for dower and maintenance, BRAC will directly collect the money from him. If the terms of the settlement are not followed, BRAC works with the client to either organize another shalish or take the matter to court with the client's consent.[177]

Facilitating the formal system's work

NGO facilitated shalish, by relieving the caseloads on the formal justice system, may also help to enhance the formal system's functioning by reducing some of the backlog of cases.[178]

6.6. Client Empowerment

Maru comments that a "conventional legal aid approach tends to treat people merely as clients — or perhaps victims — who require a technical service. Wherever possible, legal empowerment efforts should seek to cultivate the agency and power of the people with whom they work."[179]

[175] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.
[176] Ibid.
[177] Based on personal interviews with BRAC staff conducted by the author in June 2012, near Faridpur, Bangladesh.
[178] Shamshad, "The Impact of ADR," 77.
[179] Maru, "Allies Unknown," 85.

HRLS views the people it serves not simply as victims of poverty or abuse, but as agents of empowerment. Rather than making decisions for clients, BRAC makes a sincere attempt to work *with* them to come to better solutions. First, the HRLE courses taught by shebikas contribute to empowerment because community members are educated on the laws and develop some of the basic skills and knowledge needed to identify and resolve common disputes. By receiving education, these individuals are themselves empowered to apply their understanding of the law to their own lives, and to the lives of friends and family. The content of the HRLE course, also focused on taking action by preventing, protesting, and protecting human rights, encourages "active citizenship through learning and group forming."[180] By encouraging course participants to take an active role in addressing disputes, the HRLE courses take an empowerment-oriented approach. Ultimately, rights-based education is a key part of empowerment; it results in communities being able to peacefully solve their own disputes, and to assert their rights in the face of injustices. Furthermore, being a student in an HRLE class can be empowering because students can eventually become shebikas themselves, and can address rights violations and teach classes in their communities. Many shebikas are survivors of domestic abuse themselves[181] and have been BRAC clients in the past. Taking a leadership role can prove to be a transformative and empowering experience for survivors of abuse or extreme poverty.

Furthermore, in shalish, as mentioned earlier, simply being given the space to come forward and articulate demands may contribute to the empowerment of all clients, but women in particular.[182] The knowledge that someone is listening to them, supporting them, and willing to take action on their behalf can be motivating.[183] For women in particular, the provision of various options—such as resolving a dispute through shalish or through court—can be a powerful experience. BRAC provides women with more choices compared to traditional shalish. For instance, "in a situation where a husband is beating his wife, the traditional shalish would likely rule that the woman be offered two saris by her husband as a symbol of their truce. In contrast, in an NGO shalish the woman would at least be told of the different options available to her and could ask the shalish to ensure that her husband does not continue to beat her, rather than accept material compensation. By providing choice, NGO shalish is unique as compared to the traditional shalish."[184]

HRLS's client workshops at the legal aid office are another example of its empowerment approach. At these events, clients come together and discuss their problems and successes, as well as their experiences in the formal and informal justice systems. FOs and district lawyers follow up with clients about their cases, encouraging them to tell their stories. In addition, both current clients with ongoing cases and previous clients who have resolved their cases through BRAC are invited. Those who have benefited can explain the advantages of legal aid, clear up concerns about the process, share criticisms or challenges, and impart advice to current clients. Through the sharing of knowledge, clients past and present are able to connect with one another and gain a forum to voice their thoughts. Clients are asked what they want for the future, and the

[180] Naomi, "Legal Empowerment Through Human Rights," 8.
[181] Alim and Rafi, "An Assessment of HRLE Shebika," 46.
[182] Shamshad, "The Impact of ADR," 77–78.
[183] Susan Landrum, "The Ongoing Debate About Mediation," 447.
[184] Harrold, "Legal Empowerment Strategies," 33.

opportunity to voice demands and to provide feedback on the legal aid process can be empowering.[185] Thus far, more than 111,000 clients have participated in these workshops.[186]

6.7. Holistic Integration with Mainstream Development Efforts

BRAC's HRLS makes significant efforts to create a holistic legal model, viewing legal empowerment as a pathway out of poverty. Many access to justice programs lack integration with mainstream development interventions and overall social service delivery. However, focusing simply on the legalistic aspects of legal aid cannot truly solve the root cause of many clients' problems: poverty and social vulnerability. For instance, women may be provided with assistance in obtaining a divorce but receive little attention for the non-legal problems they face, such as healthcare, housing, or employment opportunities. In a land rights case, where a tenant farmer is attempting to secure the title to a piece of land, he and his family likely would be more successful if they also receive training and assistance in agriculture, financial management and healthcare. Thus, while legal empowerment can play a role in poverty alleviation, it must be paired with a more holistic perspective.[187] Yet, many non-profit legal aid programs both in Bangladesh and other developing countries lack linkages to other social services, and also have significant limitations by taking only very specific types of cases.

On the other hand, HRLS rarely turns away a client and does not limit itself to specific types of cases. The organization engages in all levels of legal services, from ADR to court-based legal aid, to Public Interest Litigation (PIL). HRLS cases relate to a wide variety of legal issues, including domestic violence, divorce, separation, child custody, inheritance, abduction, trafficking, murder, acid attacks, rape and property disputes. There is thus room for the resolution of a vast array of cases and disputes through HRLS's infrastructure.[188] Furthermore, as noted, HRLS works toward the holistic development of each client. This means that BRAC's legal aid staff, shebikas, and odhikar shebis provide clients not just with legal advice, but also with assistance with other issues they may face, such as social stigma, family conflicts, education, health, safe shelter, and employment.[189]

The HRLS program is only one component of an integrated, holistic set of development interventions that constantly intersect when it comes to improving the lives of the poor. With an annual income of $521 million in 2012 and 18 social enterprises, BRAC's programs in addition to legal empowerment span the vast spectrum of development work, including education; health; water, sanitation, and hygiene; community empowerment; microfinance; agriculture and food security; gender justice; disaster, environment, and climate change; advocacy and policy reform; safe migration; and road safety.[190] The HRLS program benefits from its linkages with BRAC's other programs; clients are frequently also involved in taking microfinance loans, raising livestock obtained for free, accessing health care, or sending their children to one of BRAC's

[185] Based on personal interviews and observations by the author in June 2012, near Faridpur, Bangladesh.
[186] BRAC HRLS MIS Data, April 2012.
[187] See, for example, Golub, "Beyond Rule of Law Orthodoxy," 35–36 (see n. 58).
[188] Based on personal interviews and observations by the author in June 2012, near Faridpur, Bangladesh.
[189] Ibid.
[190] BRAC, "Annual Report 2012" (Dhaka: BRAC, 2013), 63, available at: http://www.brac.net/sites/default/files/BRAC-Annual-Report-2012.pdf.

schools. In severe cases of violence against women, BRAC also provides immediate financial assistance to families and connections to medical treatment and safe shelter.[191]

A client, Sabina, is one of many who have benefited from this holistic approach. Sabina had been married at age 12, and had two sons. However, Sabina's husband married again without her consent and stopped providing financial support for her and her children. At a shalish held by BRAC, HRLS secured Tk 250,000 ($3,212) from her husband in dower and maintenance for Sabina and her children. As she was literate, HRLS staff helped her apply for a job with BRAC Health. She is now employed there, receives regular maintenance payments, and is living a stable life. Here, a holistic perspective considered her desire for productive employment in order to move forward from her divorce.[192]

Interactions with staff lawyers, FOs, and shebikas confirmed the many cross-program linkages that exist within BRAC, as well as the strong desire among staff to contribute to the overall well-being of clients, rather than solely advance their cases using narrow legal strategies. At one client workshop, the district staff lawyer discussed with divorced clients what their future plans might include, mentioning options for them to continue their education and ways in which BRAC could support them. Clients had a chance to speak about their circumstances and voice their desires for the future.[193] These interactions illustrated that although BRAC views legal empowerment as an entry point through which to address client needs, service delivery does not end there.

6.8. Diverse Groups Working Toward Community Goals

Through Human Rights Implementation Committees (HRICs), BRAC strives to work closely with community members and leaders to garner support for the implementation of its programs, and to encourage communities to come together to fight human rights violations collectively.

The HRIC in particular presents an interesting model because it is made up of community members from diverse socioeconomic and religious groups. Approximately half of the members are from poor backgrounds, while the other half are middle and upper class. Women make up half of the HRIC. In one HRIC, 83 percent of the women were from lower-income backgrounds.[194] The opportunity for such a diverse group to gather and make decisions together is quite unique. Convening such a group can disrupt traditional power dynamics at the village level, allowing even poor women to voice their opinions and be heard by UP members and imams.[195] This committee enhances the legitimacy of all participants; interestingly, one UP member remarked that it "adds something to [his] image which would be treated as an effective tool to gain popularity."[196] Similarly, poorer members gain social capital by participating in the HRIC, giving them a greater say in community affairs.

[191] Based on personal interviews conducted by the author in June 2012, near Faridpur, Bangladesh.
[192] Ibid.
[193] Based on personal observations and interviews conducted by the author in June 2012, near Faridpur, Bangladesh.
[194] Kundu and others, "Revisiting Group Dynamic and Legal Rights," 7–12.
[195] Ibid., 13.
[196] Ibid.

Rather than pitting community members against one another, the HRIC brings them together to work toward a common goal. For instance, in one group, the *qazi* was aware of the problems related to early marriage; however, he had difficulty acting on this knowledge due to social pressure from families to marry off their daughters below age 18. He mentioned that "[a]ll the members of the group have to take the responsibility of helping me to implement the legal rights."[197] Thus, the HRIC functions as a way for members to garner support from the community in opposing rights violations.

By bringing together diverse actors, including poor men and women and influential elites, and placing them in tangible roles to prevent rights violations, BRAC is able to generate community support for legal aid and give the poor, especially women, a voice in their communities.

6.9. Learning

BRAC considers itself a "learning organization" because it constantly recognizes its mistakes and innovates solutions to improve its programs. In 1980, one of BRAC's earliest employees, David Korten, identified BRAC's strength in this regard, noting that the organization had an "unusual capacity for rapid learning through the constant identification, acknowledgement, and correction of its own errors."[198] In his book about BRAC, Ian Smillie writes that one of BRAC's strengths is "its acknowledgment of failure as part of the learning process."[199] As Smillie comments in *Freedom from Want*, BRAC was, even at the organization's founding,

> …brutally honest about what had been achieved and about what they had learned. They also demonstrated a clear ability to roll with the punches, adapting to new circumstances and better understanding. The average aid recipient would shrink from the idea of describing so many setbacks to its primary donor. But this kind of report would be typical of the BRAC approach over time. The idea was not to prove that they had all the answers before they started, but to find out what worked and apply the lessons.[200]

A quick look at reports published by BRAC's Research and Evaluation Division (RED) reveals that the organization is often self-critical, using data to monitor and evaluate its programs. BRAC RED's reports, available to the public, purposely point out the gaps in service delivery and suggestions for improvement, thus exemplifying the organization's keenness to learn and innovate. BRAC employees have observed that senior management is often eager to hear criticisms of their programs and fresh outside perspectives, welcoming feedback from field staff about what is working and what is not.[201] Although the HRLS program is not perfect, the fact that staff members take a critical perspective to their work is likely to be extremely useful.

In 2003, for example, an evaluation by Dilruba Banu, Senior Staff Sociologist with BRAC RED, of the BRAC-ASK Joint Legal Aid Programme, pointed out several recommendations for improvement. Banu suggested such steps as asking shebikas to follow up on cases, appointing

[197] Ibid., 14.
[198] Hossain and Sengupta, "Thinking Big, Going Global," 30.
[199] Smillie, *Freedom from Want*, 38 (see n. 39).
[200] Ibid., 32.
[201] Hossain and Sengupta, "Thinking Big, Going Global," 30.

separately trained program organizers for the legal aid program, holding more workshops at the village level to improve acceptance by village elites, and clarifying the duties of panel lawyers and BRAC staff.[202] Today, these programs have largely been refined and put in place according to Banu's recommendations. Shebikas and community mobilization workshops have been scaled up as core parts of the program, and local government officials are much more likely to support BRAC's programs. In addition, BRAC has trained FOs and *upazila* managers extensively and placed them in charge of legal aid offices. Finally, the duties of staff and services clients can expect to receive have been clearly defined and are posted on the walls of BRAC's legal aid clinics.[203]

A more recent example of BRAC's innovation and learning is through the new Property Rights Initiative. Having observed that almost 70 percent of HRLS cases are related either directly or indirectly to property matters, BRAC realized that there was a significant unmet need for legal assistance in property cases. However, this area had remained largely unaddressed due to the cost of filing property rights cases in court, the risk of violent attacks from opposing parties, and the length of these cases. To remedy the situation, HRLS secured donor funding and launched the pilot Property Rights Initiative in Rangpur and Gaibandha districts. The program includes a new HRLE curriculum, community outreach that focuses more intensively on property rights, and training on land measurement for a new cadre of land entrepreneurs. BRAC also learned that although it had trained odhikar shebis to conduct land surveying and measurement, they were not able to effectively compete with government land surveyors due to a lack of Government recognized certification. Thus, the new land entrepreneurs undergo a month-long training and are duly certified.[204]

As part of the learning process, HRLS also realized it needed to shift its HRLE curriculum from a purely legal literacy focus to one of rights articulation. While the previous HRLE course focused on simply disseminating information, the new curriculum includes a discussion of a scenario and the laws, policies, and procedures related to obtaining access to justice in that situation. The classes are also made more interactive, with exposure visits to police stations or land offices in their subdistricts that help demystify government bureaucracy and procedures essential to accessing legal support. In addition, while HRLE classes have traditionally been for women, HRLS is beginning to include some men who suffer rights violations or have been denied property rights, such as sharecroppers and indigenous groups.[205] By embracing innovation and learning, and being willing to tackle criticism, HRLS is able to better address the needs of its clients and improve the outcomes of its legal empowerment program over time.

7. Challenges for the HRLS Program

Despite many successes, BRAC's HRLS program—and more broadly, the legal empowerment approach—faces a number of challenges. These are outlined below, with a focus on how HRLS

[202] Banu, "BRAC-Ain o Shalish Kendro," 28–30.
[203] Based on personal interviews with BRAC HRLE staff conducted by the author in June 2012, and personal observations of legal aid clinics in Faridpur, Bangladesh.
[204] Ibid.
[205] Ibid.

as well as organizations employing similar strategies not just in Bangladesh, but around the world, could build upon their work and effectively address these challenges.

7.1. Lack of Enforcement Mechanism for NGO Shalish Decisions

One of legal empowerment's strengths may also be one of its greatest weaknesses. As mentioned briefly above, since most cases are resolved out of court through arbitration and mediation, HRLS has no ability to formally enforce those decisions arrived at mutually by the parties, either in or out of court.[206] Nevertheless, a study on access to justice for women in Bangladesh found a number of key circumstances that can assist in the enforcement of NGO-reformed shalish decisions: the perception of the NGO as powerful within the community, the threat of court action, and the respect for due process.[207]

This is the case for HRLS, which is often well known in communities where it has established robust links with local UP members, village police, and other key stakeholders. This can translate into influence that may help in enforcing its decisions. In addition, HRLS most commonly relies on the "shadow of the law"—including the threat of filing in court—to enforce its shalish resolutions.[208] Studies have shown that the threat of court action often works to persuade individuals to accept a shalish ruling, primarily because many poor defendants are afraid of involvement in the formal justice system due to their poverty, inability to afford a lawyer, and the reputation of the system as corrupt, and thus requiring bribes or political influence to win a case.[209] Further, respect for due process may play a role; the fact that NGO-reformed shalish is seen as accessible fair, and fast may encourage individuals to respect decisions.[210]

Despite the positive factors encouraging enforcement, some defendants may still refuse to follow HRLS shalish decisions, as there is no strict penalty for those who do not abide by BRAC outcomes. In some cases, the opposite party may not be deterred by the threat of litigation, especially if clients themselves do not wish to pursue a matter in court. Powerful defendants might threaten BRAC staff or attempt to gain the support of local elites, which often leads to conflict within the community and prolongs cases. Finally, NGO shalish decisions may be seen as more "liberal" forms of justice that do not comport with traditional customary norms, such as gender norms and roles, and thus may not be as widely followed.[211] Thus, increased follow-up and monitoring by BRAC staff and continued efforts to strengthen relationships with local government leaders and police to promote positive social pressure may help to better enforce shalish decisions. Ultimately, however, more quantitative research into the issue of enforcement is needed to properly diagnose the extent of the problem and propose solutions.

[206] Goresh, "Paving the Road to a More Free World," 267.
[207] Hasle, "Too Poor for Rights?" 116–17.
[208] Goresh, "Paving the Road to a More Free World," 267.
[209] Hasle, "Too Poor for Rights?" 117–18.
[210] Ibid., 119.
[211] Ibid., 120.

7.2. Need to promote reform in the formal justice sector

As noted, the closest one may be able to get to an enforceable decision within the current system is to take a case to the formal justice sector. Where defendants refuse to attend or abide by shalish decisions, or in criminal cases, there remains little choice but to take the case to the courts. Yet, as already detailed, the formal system is physically distant from the poor, often procedurally unfamiliar, expensive for those who do not have NGO assistance, and regularly riddled with corruption.[212]

A survey confirmed that most individuals do not use the formal justice system because of the costs and complexity of the process, corruption, harassment by lawyers, and the fact that the justice system is intimidating.[213] Many women who have filed domestic violence complaints have had their cases dismissed when their husbands bribed officials to escape prosecution. The process can also be extremely lengthy due to court backlogs. As of 2005, there were approximately 473,000 cases pending in civil courts and 569,017 in criminal courts;[214] in one study, 85 percent of households who had filed court cases reported that their cases were pending.[215] In fact, a civil case takes an average of five years to be completely resolved.[216]

Furthermore, physically going to court can be a challenge; while most people live in villages, the lowest formal court is located at the district level, thereby requiring lengthy travel for most.[217]

Reporting an incident to the police can also pose problems, as many police are poorly trained, do not conduct thorough investigation, or refuse to look into domestic violence complaints that they perceive to be "family matters."[218] In many situations, the police, court orderlies, and clerks demand bribes.[219] In addition, exorbitant fees, corrupt officials, and a complex bureaucracy prevent the poor from claiming their rights to *Khas* land.[220]

In court, too, women in particular face serious problems such as gender discrimination and patriarchal attitudes of the mostly male judges who issue judgments on their cases, often interpreting the language of personal religious laws that are in themselves discriminatory.[221] Finally, the form of "justice" dispensed by the court may not be acceptable to many, as the formal justice system often focuses on what is legal, rather than the social, economic, and cultural implications of a particular judgment on the individual complainant. Many from poor communities consider the formal system to be an elitist institution primarily for the rich.[222]

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[212] Siddiqi, "Paving the Way to Justice," 5–7.
[213] Ahmed and others, *Perceptions, Attitudes and Understanding*, 62.
[214] Jahan, *From Rule of Law*, 9.
[215] Ali and Alim, "NGO-Shalish and Justice-seeking Behaviour," 3.
[216] Siddiqi, "Paving the Way to Justice," 7.
[217] Ibid., 5.
[218] Ahmed and others, *Perceptions, Attitudes and Understanding*, 63.
[219] Banu, "BRAC-Ain o Shalish Kendro," 13.
[220] USAID, "Bangladesh," 6–8 (see no. 44).
[221] Siddiqi, "Paving the Way to Justice," 7.
[222] Jahan, *From Rule of Law*, 6-8.

The key benefit of the formal system is that it hands down judgments, which are technically legally enforceable and which can be especially useful for women seeking finalized decisions on divorce, alimony, or child custody, as well as for property rights disputes where the court can issue a final judgment on property boundaries and land ownership. Still, the formal system needs to be reformed if judgments are to be issued quickly with a non-biased outcome, and to be truly enforceable. This, of course, is a long-term challenge, with no easy solution. In order to improve access to justice for the poor, BRAC must somehow address these broader issues. Although working outside the system is often easier, it is ultimately necessary to work *with* the government to reform the formal justice sector.

7.3. Threat of Violence in the Mediation of Domestic Violence Disputes

As previously mentioned, many scholars argue that mediation should never be employed for family disputes where domestic violence is present. This is because it can place victims in situations where they are more likely to be pressured into an agreement that does not reflect their true interests or the interests of their children, due to the inherent power imbalance in such relationships.[223] Some advocates argue that threats made prior to the mediation session, or even a "look" during the session, "can force victims to give up rights and remedies to which they are entitled, in exchange for the illusion of safety."[224] Thus, the outcome of mediations where domestic violence has been present may not be "fair" in any sense. Other scholars, however, have argued that women should not be deprived of the option to engage in mediation, which can be convenient and inexpensive, and should have the ability to make that choice for themselves.[225]

Another concern is that the mediation process may actually exacerbate violence in the future. Some advocates believe that mediation actually increases the victim's chance of being abused in the future, citing research results.[226] One study conducted in the U.S., for example, showed that more than 40% of men continued their abusive behavior within 4.5 months after the mediation was concluded.[227] Advocates also cite other studies from the U.S. finding that mediation is more likely than litigation to result in custody and visitation agreements that give abusers more access to victims, thus increasing the chance of abusive behavior. Critics of mediation are additionally concerned that victims may be physically intimidated and endangered during, before, and after the mediations, which put abusers and victims in the same room.[228]

Others, however, feel that the risk of future violence is actually less in mediation than if the victim goes through the court process.[229] Researchers cite studies showing that mediation can reduce the risk of future physical, verbal and emotional abuse more than litigation. Advocates of

[223] Landrum, "The Ongoing Debate about Mediation," 438.
[224] Ibid., 443.
[225] Ibid., 435–36.
[226] Ibid., 444.
[227] Sarah Krieger, "The Dangers of Mediation in Domestic Violence Cases," *Cardozo Women's Law Journal* 8 (2002): 252.
[228] Lauri Boxer-Macomber, "Revisiting the Impact of California's Mandatory Custody Mediation Program on Victims of Domestic Violence Through a Feminist Positionality Lens," *St. Thomas Law Review* 15 (2003): 885-86.
[229] Ibid., 444.

mediation explain these results by arguing that the process of mediation helps to reduce future abuse because it teaches participants healthy ways to peacefully resolve conflicts and empowers victims to feel more in control of decision-making.[230] Further, these scholars assert that the litigation process is inherently adversarial, and can thus exacerbate conflicts. They also believe that well-trained mediators are often better equipped to identify and deal with imbalances within relationships. Finally, abusers may be more likely to agree to attend therapy or counseling treatment through mediation rather than litigation, which encourages batterers not to admit their abusive actions due to fear that the court will penalize them for their behavior.[231] Another author, who examines California's mandatory mediation system, explains that the risk of physical abuse and intimidation during and immediately after the mediation can also be lessened through appropriate frameworks to protect victims, including an intake and screening process and the training of mediators to check-in with clients to ensure their safety. Further, California allows separate mediation, where the mediator speaks to each party separately and in different locations. The state also connects victims to social services that aid in their protection and well-being.[232]

Unfortunately, much of the research on mediation and domestic violence has been conducted in the United States, where the legal system is far better equipped to closely monitor court-ordered mediations and institute provisions to protect victims against any violence that may later arise. To better understand the scale of the problem and realistic solutions for countries like Bangladesh with more limited legal enforcement and where the social, cultural, and customary context is vastly different from that in the United States and European countries, more studies into the complexities of conducting mediations where domestic violence is present need to be carried out. As previously noted, in Bangladesh, social norms often make it extremely difficult for women to divorce, and court procedures for maintenance, dower, or child custody can be expensive, time consuming, and inaccessible. In Bangladesh, most women are largely dependent on their spouses for their livelihood, and lack the education needed for formal employment.[233] In such a context, many women have no real choice but to stay in an abusive relationship.[234] Mediation thus may be one of the only options for reconciliation and redress for poor Bangladeshi women.[235]

Yet, there may be ways to minimize the risks associated with mediating domestic abuse disputes. As mentioned above, some advocates suggest training mediators to handle the dynamics of family law mediations in such contexts,[236] and to recognize subtle signs of violence and intimidation.[237] Others suggest that mediators should abandon their neutral role and support the victim.[238] HRLS shalishkars often do take on a more biased role and seek to ensure that the HRLS client gets a fair settlement; although this means the mediators are no longer neutral, it

[230] René L. Rimelspach, "Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation program," Ohio State Journal on Dispute Resolution 17 (2001): 102-03.
[231] Ibid., 101-02.
[232] Boxer-Macomber, *Revisiting the Impact*, 888-90.
[233] United Nations Children's Fund (UNICEF), "Early Marriage," available at http://www.unicef.org/bangladesh/children_4866.htm.
[234] Hasle, "Too Poor for Rights?" 126.
[235] Ibid., 127.
[236] Landrum, "The Ongoing Debate about Mediation," 444–45.
[237] Ibid., 440.
[238] Ibid.

may be the best possible short-term solution. Beyond this, further research is needed to develop appropriate recommendations on how to minimize unintended harm within the shalish framework.

7.4. Threats to Clients and Continued Physical Danger

As mentioned in the previous section, clients who file complaints against their husbands or attackers can be in real physical danger. Women who have taken cases of rape or acid burns to court sometimes face harassment, threats, and attacks from opposing parties who want them to withdraw their complaints.[239] Studies of other NGO shalish programs have reported that some women who pursue cases in court are seen as bringing dishonor to their family and going against accepted social norms.[240] In such a context, women who file cases while still married may actually be at risk of increased abuse at home while the case is ongoing.

Although HRLS helps some survivors find safe shelter through ASK, there is a need to work with police and local authorities to implement the 2010 *Domestic Violence (Prevention and Protection) Act* and to create a more streamlined procedure to ensure client safety. Legal empowerment organizations like HRLS around the world should be mindful of the impact that pursuing a court case can have on a woman's life in the home, and should consider means to minimize the resulting harm. There may be ways to incorporate creative solutions in this area, such as engaging community members in accompanying and checking up on women in abusive situations, training the local police to intervene in a sensitive manner, training advocates to conduct safety planning sessions with women, or developing plans with the government for the creation of women's shelters in cases of serious emergencies. Clearly, these solutions will have to be gender-sensitive and mindful of the local context, but just as clearly, this is a key area that needs to be addressed to minimize the violence that women face daily.

Furthermore, protracted violence has often resulted from clashes over rights to land, in some cases killing and injuring numerous people and burning dozens of homes.[241] When encountering such situations, HRLS's coercive power may prove insufficient to reduce or meaningfully address such high levels of violence and conflict. Again, working in conjunction with police, including training and monitoring police as needed to prevent further abuse by the authorities themselves, may prove more fruitful to address such disputes and prevent continued violence and retribution.

7.5. Biases of Local Government Officials

UP officials and local elites often accept bribes in return for biased "verdicts" through the UP shalish. UP members have also pressured survivors of violence or poor landholders to withdraw their cases from BRAC or from the court after receiving bribes. Some village leaders feel their legitimacy and power has been eroded as more people go to the BRAC legal aid clinic instead of

[239] Banu, "BRAC-Ain o Shalish Kendro," 16.
[240] Hasle, "Too Poor for Rights?" 127.
[241] See, for example, Amnesty International, "Indigenous Land Dispute Turns Deadly in Bangladesh," available at http://www.amnesty.org/en/library/asset/ASA13/003/2011/en/0e39431c-934e-4fb8-8c23-efa1e42a3cf5/asa130032011en.html.

coming to the traditional or UP shalish; thus, some elites are more likely to oppose the BRAC shalish.[242] Some local elites even socially ostracize those who take the conflict out of the community by going to BRAC or to the courts rather than using traditional ADR methods.[243]

Although HRLS is currently working with government officials through workshops, it may prove helpful to have more frequent meetings of the rights implementation committees, more defined roles for members of the committees, better collaboration with UP members, closer monitoring of local shalish decisions, and a more vigorous provision of incentives to UP members to encourage them to support HRLS's services, along with clear recognition of those who do.

7.6. Need for Increased Holistic Program Integration

Although HRLS makes a good faith effort to connect its clients to an integrated set of social services as described above, there is no streamlined method of connecting women or the landless with BRAC's other programs, leading to inconsistent results. Currently, many—but not all—clients are assisted with securing employment, safe shelter, or microcredit loans. Especially motivated and resourceful FOs currently connect clients with such opportunities, but there is no HRLS policy in place making such program integration mandatory.

In addition, there appears to be limited provision of health care, mental health counseling, connections to government-provided social or health services, or assistance in securing safe long-term housing for women who have faced domestic abuse. A clearly defined, systematized process through which legal aid clients are connected to a whole host of desired services, either through BRAC or a partner organization, including healthcare, employment, microcredit, mental health treatment, and housing, is necessary if clients are to truly be lifted out of poverty.

7.7. More Community-Wide Legal Empowerment Programming

While HRLS engages in legal education and mediation effectively, there is room for much more community organizing. Community organizing can be a potent tool for empowerment, and helps take legal aid beyond the resolution of individual disputes to address community-wide issues, such as corruption or land-grabbing, that affect entire villages.[244]

For instance, Maru writes that the legal empowerment organization he co-founded in Sierra Leone, Timap for Justice, often uses organizing as a tool to bring people together and solve issues facing an entire community. Maru describes one incident in Bumpeh-Gao Chiefdom, where two NGOs had promised to build a complex of houses for amputees and their families, install water wells, and provide monthly stipends, clothing and toiletries, vocational training, and start-up capital to create small businesses. The NGOs built the homes and provided training, but failed to provide the remaining items; it had subcontracted to local men, who took the money and escaped. Timap paralegals wrote letters to the NGOs and met with them, and eventually used Timap's own car to bring some of the promised items to the amputees. After Timap threatened the contractors and the NGOs involved with legal action, the wells were eventually built and the

[242] Banu, "BRAC-Ain o Shalish Kendro," 16–18.
[243] Harrold, "Legal Empowerment Strategies in Bangladesh," 34.
[244] ADB, *Legal Empowerment,* 9 (see n. 64).

subcontractor supplied the start-up kits to the amputees. This whole process empowered the amputees to believe that they could work together to redress the injustices they faced.[245]

In the same way, HRLS and similar legal empowerment organizations in Bangladesh and elsewhere may benefit from employing community organizing in their daily work. Organizing women or the landless and encouraging them to devise creative solutions to shared community problems could be fruitful, and may contribute more to empowerment and social change than can individual service delivery alone.

7.8. Better Support for Shebikas

One of the key features of the HRLS program model is the grassroots, community-based legal educators and outreach workers: the shebikas. Shebikas are very often the first points of contact for community members, especially women, seeking legal services. Shebikas are mainly social volunteers and rather than receiving a salary, their income from various BRAC related programs is subsidized. At the moment, the HRLS shebikas' subsidized income from BRAC is a modest US$11 for a course spanning 22 days of classes. They should be compensated for supporting clients or bringing human rights violations to the attention of the legal aid center. Shebikas should be fairly compensated for their work, perhaps through a full-time workload, or payment based on the number of disputes they help resolve. An increased payment and a BRAC ID badge would give shebikas a greater incentive to take action against human rights abuses and would also improve their social status, allowing them to have greater influence in the community and be more successful in preventing and protesting rights violations.

In addition, as previously mentioned, many shebikas themselves are survivors of abuse and come from poor households.[246] HRLS and similar organizations should study the impact of domestic abuse and poverty on shebikas. How are they affected by their experiences with abuse? Do they feel powerless, depressed, or overwhelmed? It is worth considering whether it is feasible to expect shebikas to advocate tirelessly on behalf of others for free when they are struggling themselves. It may be possible to alleviate some of these effects through the provision of higher wages, counseling, healthcare, or support groups for shebikas, services that can help ensure that they are able to effectively assist others.

7.9. Financial Sustainability

HRLS funding, until very recently, primarily came from BRAC's core funding. Currently, BRAC financially supports 73 percent of its programs through "surplus" from its social enterprises—and relies on donor funding for the remaining amount. These social enterprises include areas such as dairy, fisheries, poultry rearing, retail clothing, sanitary napkins and birthing/delivery kits, among others.[247] In addition BRAC HRLS also obtains small amounts of funding for specific, discrete projects, for instance, from the Omidyar Network for the Property Rights Initiative,[248] or from GIZ for its work on overcrowding in prisons and release of under-trial prisoners, though such funding makes up a relatively small portion of HRLS's budget.

[245] Maru, "Between Law and Society," 459–60.
[246] Alim and Rafi, "An Assessment of HRLE Shebika," 10.
[247] BRAC, "BRAC Enterprises,'" available at http://enterprises.brac.net/.
[248] Based on interviews with BRAC staff in June 2012 in Dhaka, Bangladesh.

Most legal empowerment initiatives around the world do not benefit from the kind of funding capacity BRAC has, and cite the lack of financial sustainability as one of the key barriers to growth, scale, and long-term implementation. Since legal empowerment often takes years to result in tangible results, financial sustainability over the longer term is key.[249] Most legal empowerment programs are piloted by NGOs or CSOs that do not have a social enterprise component that allows them to generate revenue. While some NGOs have long-term donors, many others are not so fortunate and must continuously fundraise. This can, however, be difficult for local NGOs based in developing countries that are constrained for time, resources and linguistic capability, and can distract organizations from focusing on improving their programs.[250] Further, donors often have narrow priorities and fund only certain types of projects, rather than providing core funding for the long-term sustainability of organizations.

One solution has been to employ the services of private practitioners to provide *pro bono* services, thus cutting down on the funding required to hire legal staff.[251] HRLS does this as well, retaining private attorneys when cases need to be filed in court and paying them a nominal fee. While this can be useful, "such efforts are…of more limited value to the process of empowerment and unlikely to meet the wider needs of marginalised populations and tackle systemic drivers of poverty."[252] However, retaining pro bono attorneys can certainly be a good method for smaller NGOs and CSOs to expand representation for their clients in discrete areas (for example, criminal defense or family law), though it does not lend itself to broader community-based and community-organizing efforts.

Further, donors and government agencies themselves can commit to providing more sustainable, core funding for legal empowerment programs and organizations that have been known to work effectively. Rather than short, one-year funding for discrete projects, moves can be made toward funding legal empowerment organizations for the longer term.

Nevertheless, NGOs and CSOs, as well as government agencies, should be hesitant to charge user fees or rely on voluntary community involvement in order to ensure program sustainability, since studies have shown that such programs (especially in the health arena) have had a substantial negative impact on demand.[253] However, some programs have charged individuals nominal or minimal fees and still succeeded.[254] HRLS, for instance, charges each client Tk 10 or $0.13 (regardless of which avenue the clients pursue, whether it is shalish or legal representation in court), simply to ensure clients are invested in the success of their case. Although this nominal fee is affordable to most, it does not generate much revenue for the program, so it is likely of limited utility compared to the operational needs of HRLS. Ultimately, it may be worthwhile for NGOs to experiment with social enterprise models as well, generating revenue from other

[249] Robin Neilsen, "Sustaining Legal Empowerment in Initiatives to Support Local Land Rights" (London: International Institute for Environment and Development, 2012), 17–18, available at: http://pubs.iied.org/pdfs/G03513.pdf.
[250] Ibid.
[251] Ibid.
[252] Ibid., 17.
[253] Michael Kremer and Edward Miguel, "The Illusion of Sustainability," *The Quarterly Journal of Economics* 122, no.3 (2007: 1008–09, 1052, 1060–61, .
[254] Neilsen, "Sustaining Legal Empowerment," 19–20.

projects that can then be funneled into legal empowerment initiatives, or to try to develop public-private partnerships to involve the government and ensure long-term sustainability.

7.10. Stronger Linkages to Government Programs

In Bangladesh, the government's direct involvement with legal empowerment NGOs (for instance, in assisting in the creation of programs) has often been relatively limited, although the government has often cooperated with and encouraged some NGO intervention more generally.[255] There have been some pushes by government officials and agencies to formalize local dispute-resolution mechanisms at the village level, and thus create local courts. This could solve some of the problems with the enforcement mechanism, but perhaps might reduce the efficiency and informality of the system that currently attracts many.[256]

In the context of BRAC, it has often been said that the government and BRAC run in parallel, and that BRAC strives to work in places that the government does not reach. For instance, in its educational programs, BRAC targets students who have never enrolled in or who have already dropped out of government schools and are in need of reintegration into varying levels of education.[257] At the same time, HRLS finds that working with government agencies is crucial for its success, particularly when it comes to referring human rights violation cases. In cases of rape or acid violence, HRLS legal clinic staff refer victims to government-run health facilities for needed medical treatment. Links to government officials are also found through local community workshops, where HRLS staff work closely with UP Chairmen and village police. Finally, HRLS provides legal aid services to juveniles languishing in state-run correctional facilities in order to secure their release, and also assists them in contacting their families and obtaining post-release counseling.[258] After the devastating Rana Plaza garment factory disaster in April 2013, several of BRAC's programs, including HRLS, have brought together their programmatic strengths to provide rehabilitation and compensation assistance.

Many studies of legal empowerment go further to review programs that work to improve government delivery of services in areas such as health, education, clean water, and sanitation. One project in Pakistan, for instance, created committees to monitor the provision of local health care and ensure its adequacy, and informed communities about their rights to social services.[259]

HRLS and other similar NGO-led legal empowerment programs worldwide could do more to inform people about socioeconomic rights and empower them to demand better service delivery from local governments. By placing pressure on the government to improve its service delivery, HRLS can also improve outcomes for its clients and the communities in which they live. NGOs alone cannot single handedly provide healthcare or education to all of Bangladesh's people; thus, holding the government accountable is critical to ensuring the provision of services for everyone.

[255] Goresh, "Paving the Road to a More Free World," 277–78.
[256] Ibid.
[257] Rifat Afroze, "How Far BRAC Primary Schools Admit Students Following the Set Criteria?," Research and Evaluation Division (Dhaka: BRAC, 2012), 9.
[258] Based on information provided by BRAC staff, February 2013.
[259] ADB, *Legal Empowerment for Women*, 21–22.

Through its new HRLE curriculum piloted in Rangpur and Gaibandha, HRLS has tried to address this issue a bit by discussing the relations between the state and its citizens.[260] Yet, a study found that HRLE students were more familiar with laws pertaining to family and domestic relations than with laws relating to individuals' socioeconomic rights in relation to the state (e.g. in health or education), in part because more interactive case studies were not utilized in this section of the curriculum.[261] By improving the curriculum's focus on basic socioeconomic rights and training shebikas and citizens on how to demand enforcement of these rights by the government, HRLS and similar NGOs can make headway into improving government service delivery.

8. Summaries and Conclusions

In the final analysis, the strength of BRAC's Human Rights and Legal Aid Services program lies in its community-development model, which engages community members at every level. Shebikas, HRLS's frontline human rights workers, are deeply grounded in the population BRAC serves. In addition, workshops, committees, popular theater shows, and courtyard sessions bring local leaders together and effectively engage the entire community in preventing and addressing human rights violations. Odhikar shebis, FOs, and even *upazila* managers are laypeople, able to think creatively and utilize a range of non-legal strategies that ultimately contribute to empowerment, rather than isolated service delivery. By virtue of being so close to the community, culturally relevant tools of dispute resolution such as mediation and arbitration have been employed to resolve disputes at a lower cost and with positive results. HRLS is also holistic, employing an integrated set of development programs to lift its clients out of poverty.

For all these reasons, HRLS (and similar non-profit legal aid programs across the developing world) may prove to be a better alternative for the poor than traditional shalish, which is dominated by influential elites who are easily persuaded to issue pronouncements in favor of wealthy supporters. The HRLS program, though using a similar tool of shalish, provides less biased decisions that respect the law and attempt to promote gender equity.

Finally, BRAC utilizes the shadow of litigation to encourage compliance with its shalish decisions. When BRAC does go to the formal justice system, this too results in better outcomes for clients than when they are unrepresented. Without a lawyer, it is almost impossible for the poor and illiterate to navigate the complex, highly corrupt court system, and most clients cannot afford the bribes required to shift the balance in their direction. With a lawyer, however, the poor have a chance of collecting the required evidence, avoiding corruption, and winning their cases. In the end, BRAC is also a viable option due to its scale and reach within Bangladesh, as well as its guaranteed financial sustainability, whereas smaller NGOs – in Bangladesh and elsewhere – must rely heavily on unstable donor funding.

Despite the many challenges, BRAC's model, combining grassroots legal educators, community engagement, and a vast network of legal advice offices providing mediation services and access to the formal justice system, offers valuable lessons for legal empowerment organizations worldwide.

[260] Naomi, "Legal Empowerment Through Human Rights," 8.
[261] Naomi, "Legal Empowerment Through Human Rights," 14.

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