

IMPORTANCE AND CHALLENGES OF RURAL ARBITRATION SYSTEM IN BANGLADESH

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Abstract

Salis plays an important role to minimize conflicts in the rural area of Bangladesh. People living in rural areas hesitate to face a court, which is burdened with complexities of procedural laws, inadequate number of personnel including judges, supporting staff and specially curses of touts. There is an old saying- Let a judicial cause haunt you. In both *Dewani* and Criminal courts the role played by the police and other concerned people are come extend corrupted. Here comment is to be added that the problem with the legal court hamper the potentially of justice .different types of pressure on justice usually make seeking people reluctant towards going to court. This situation, in fact dooms the spontaneous motion of the courts. In fact, the reality suggested that judgement of court is not available and access able to the common people of rural area. So, *Salis* is a reliable and affordable institution of implementing justice in rural Bangladesh though it has many limitations. In this article, the utility as well as reality and limitation of *Salis* have been presented along with its structural and functional aspects.

Introduction

Judgments and *Salis* are two separate concepts and these two concepts are neither complement nor alternative of each other. However, this concept and process is used to mitigate or minimize the social disharmony alternatively from the time immemorial in rural Bangladesh. Successful *Salis* ensure a win- win situation between the conflicting persons or groups.¹ Where the formal institutional or adversial judicial system brings a win-lose situation and sometimes this situation creates another hazards in the society which is not expected. In fact, this system creates hazards of ensuring justice in the society. In this respect, *Salis* is considered very important

institution in the socio-economic perspective of Bangladesh since it is easy access able to the poor and illiterate people of the country. On the other hand, adversial judicial system is expensive, time killing and very often, painful to the common people of rural Bangladesh.

Social Perspective of Rural *Salis*

It is note worthy that the people of this land was self- reliant from the ancient period in all activities of their socio-cultural life including the arbitration system. The aged people of rural area were very much active regarding the development of their locality. They play the role of catalyst in minimizing the conflict among the village people. But the British ruler hampered many traditional institutions including the *Salis* system in Bangladesh. After the independence of India, considering the necessity and usefulness of rural *Salis* system in field of social harmony economic development and, Indian Government established strong and effective village *Ponchayat* system in their constitution and their legal framework.²

The traditional Village *Ponchayat* system plays a significant role in rural *Salis* system. This rural *Salis* system is equally important in Bangladesh. However, the government of this land was not active in establishing strong and effective local administrative as well as arbitration system. The rural elite and the civil society along with the human rights groups bargaining for strong and effective local government and rural arbitration system. But the government fails to response timely and effectively. As a result, the suffering of village people is increasing gradually and social disharmony gear up rapidly. In the meantime, many social thinkers, researchers and development workers alone with human rights organizations conducted research, publishing articles and arranging seminar symposium for ensuring effective rural arbitration system for institutionalizing human rights and social justice.

But still, there is no satisfactory result regarding this issue. Social conflict and chaos are inavoidable phenomena in our village life. So effective as well as proper means (institution) is essential to mitigate this inavoidable social phenomenon.

Method

This article has been mainly written on the basis of analytical approach of various socio-economic dimensions. However, observational approach has been presented in descriptive manner. The elements of the article has been collected and presented from both primary and secondary sources.

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¹. Arens Jeneke and Joseph Van, *Jagrapur: Poor Parents and Women in a Village in Bangladesh* (Birmingham: Third World Publication, 1977) P. 137.

². A.H.M Zahedul Karim, *The Pattern of Rural Leadership in an Agrarian Society: A Case Study of the Changing Power Structure in Bangladesh*. (New Delhi: Northern Book Centre, 1990). P. 83

Concept of *Salis*

Salis is the rural court which is an important social institution as well as mechanism for reducing social conflict and also imposing certain norms about morality, social behavior, religious piety and property rights felt to be desirable by the leadership of the society.³ In fact, the leadership which is constituted by the social elite is single most important factor in materializing *Salis* in the context of other stakeholders

It is clear that *Shalis* or rural arbitration system is a traditional institution in rural Bangladesh. It has significant role in socio-economic life of rural Bangladesh; however this institution was not always effective in the past even today; it has to face many challenges, which collapsed the social harmony of the society. Consequently its mal-functioning affects economic development and social stability. The Major Challenges of Rural Arbitration In order to realize the practical challenges of rural *Salis*; it is important to analyze the power structure of village society and to realize its functional aspects along with its key factor-rural elite.

The concept of power structure is to be understood in a broad sense. It is to be identified in terms of power and politics, which are related, with *Salis*. However, the present study is concerned with understanding the nature of power in the traditional social organization. It examines how the elites apply their power in *Shalis* and also in the village politics of Bangladesh.

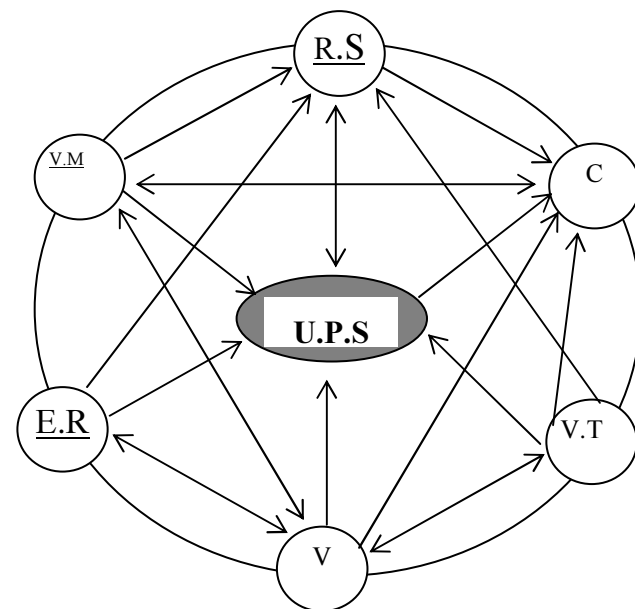
Two categories of rural elites i.e., traditional and positional are found in rural society.⁴ Traditional elites are those who apply their power by dint of heredity in *Salis* and politics. *Gushti* (lineage) and landed property are the main components to gain the power of the traditional elites in Bangladesh. On the other hand, positional elites are those who make their positions of authority in *Salish* and local politics by dint of education, popularity, religious piety as well as their exploiting power in the society.

There is clearly a change in power structure and the qualities of elites of rural Bangladesh as well as a shift in the individuals who are the members of different groups in case of holding power. The new elites are the younger descendants of the traditional elites who have obtained positions in the power structure (i.e., the positions of authority in the Union *Parishad*, local politics and *Salish*, etc.) by dint of their education and their access as well as linkages to the local bureaucracy which has widened their power base from intra-village to the inter village higher forums.

Major Factors of Rural *Salis*

Though the offenders and the grievous person or groups are mainly key component in rural *Salis*, a number of factors are involved in implementing rural society.

Following Diagram shows the Nature of Union *Salis*.



V = Villagers. E.R = Elected Representatives. V.M = village Matabbars. R.S = Rural *Salis*, C = Court. V.T = Village Tout. U.P.S = Union Parishad *Salis*.

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Rural Elites

According to Ann-Lisbet, "An intelligent farmer with the necessary resources, in the form of land, money and sons, at his disposal; a man who

³. Haiden Muhinuddin, *Village Level Integration Population Education: A Case Study of Bangladesh*. (Washington: University Press of Anisice. 1982). P. 67

⁴. Joseph Van, *Jhagrapur Village in Bangladesh* (England: Paupers Press Cooperative Limited, 1976). P. 33.

wants to secure the future of his family is called rural elite.⁵ Due uses the term 'rural elite' to mean "Mostly people coming from higher status groups and high income, some education and urban contacts, and who play an effective role in the village politics as decision-makers. According to S.S. Sharma. "Rural elites are the individuals who dominate the village scene as leaders, spokesmen, Representatives of the village and who make important decisions in regard to village problems. In the present study rural elites are those who used to participate and play the role in *Salish* as well as in the local politics.⁶

Village Matabbars in rural Salis

In the present study, those who have been identified as village *Matabbars* are usually involved in the activities of *Salish* and play an important role in it. However, when a conflict occurs in the village, the villagers try to solve their problems through the *Matabbars*. The means of minimizing conflict is the *Shalish*. However, their rule in rural society is not always positive as we found in Jharapur-a study report of rural Bangladesh.⁷

Mass People and Rural *Salish*

Mass people's attitude towards *Salish* is found positive. Most of the people of them enthusiastically participate in *Salish*. Some villagers obeyed the *Matabbars* in the past but at present, some of them do not want to obey the decision of *Matabbars* that they gave in *Salish*. There has been a change in the monopoly of power of a single *Matabbar*. Earlier the *Panchayats* (*Samaj*) were single units of administration covering relatively wider areas. But now-a-days the *Panchayats* system in Bangladesh is fragmented that give rise to several sub-*Panchayats* with sub-matabbars. And the *Matabbars* are competent each other to enhance their domain of influence. Eventhen, the mass-people still hold positive opinion about *Salish*

Fatwa and its impact of Rural *Salis*

'*Fatwa*' is still in practice in rural society. It is observed that religious leaders often try to minimize a *Salish* by imposing '*Fatwa*' on the victim. In such cases, punishment with '*Durra*', throwing stones to the victim are forced in *Salish*. However, giving '*Fatwa*' is frequently given not only by the religious leaders but also by other *Matabbars*. In such situation, religious leaders as well as the *Matabbars* usually refer to the Holy Quran and *Hadis* which they interpret according to their own wishes

Problems and Prospects of Rural *Salish*

In rural area, most of the conflicts are solved through *Salish*. However, rural *Salish* is an old process of minimizing social conflicts and it has been playing an effective role in our rural societies, so, rural *Salish* is an essential system of rural Bangladesh but it is not free from limitations. We will discuss the problems as well as prospects of rural *Salish* in the following sections.

It has also been mentioned earlier that most of the conflicts of the study area arise among the lower class people. These poor and illiterate persons are not aware of law. They do not even know the consequences of going to the court of law. Thus many of them, being instigated by village touts, defy the decision of the *Salish* and go the court of law. They are also instigated to go for Union Parishad *Salish* which is to the court of law.⁸ They are also instigated to go for Union Parishad *Salish* which is to some extent formal. The dominance of *Matabbar* as a single man in the village is no more a reality. Several persons have emerged in the political stage of the village that exerts power and influence. In such a situation it has become easy for many villagers to defy the decision of the *Salish* and go to the court of law. In doing so the villager always gets an influential power of the village in his side.

Rahman mentions that wealth, family traditions, age, popularity, and education are the main components to gain power in the rural area.⁹ He also mentions that wealth is the main source to gain the positions of authority in the rural societies. On the other hand, it is observed in the present study that landless and illiterate rural elites an important element of *Salish* who play vital role in it. The financial condition between rich and poor elites generates some problems in social life. The rivalry between them becomes extended among other that touches different sphere of social life including the *Salish*.

The local government structure of Bangladesh is always changing. It changes with the change of government. For this reason, the government elected in our country usually changes the local government structure and tries to maintain it which can serve the interest of the ruling party. It, therefore, appears that the rural *Salish* of our country is used for the political interest. Most of the rural elites of the study area are directly or indirectly involved in the political parties and they try to play their role in

⁵. Lisbet Ann, *The Indian Village Community* (London: Longmans Greenland Co, 1896). P. 36.

⁶. S.S. Sharma, *Religion Caste and Family Structure: A Comparative Study of the Indian Joint Family*. (Chicago: Aldine 1968). P. 134.

⁷. Arens, *op.sit*, P. 32.

⁸. Zulfikar Ali Sarkar, *Village Arbitration in Bangladesh: A Case Study of Baraigram Union in Natore District*, Master of Philosophy Thesis (2000), Rajshahi University.

⁹. See, M Abdur Rahaman., *Arbitration System of Oran Community of Bangladesh*, Ph.D Thesis (2002), IBS, Rajshahi University.

accordance with greater politics.¹⁰ For developing their own groups and making their positions of authority in the villages, rural elites usually make the partiality in *Salsih*. Thus rural *Salish* fails to play the neutral role.

In the joint family structure of our country, the head of the joint family usually played the vital role in *Salish* for a long time. But the joint family became loose because of poverty, urbanization, degradation of social values, as well as the cultural evolution. In the present study, it is observed that the elites of the single family have made their positions of authority in the rural power structure and they strongly apply their personal influences in the activities of *Salish* as well as in the local politics. Thus the emergence of single family in place of joint family also contributes to the emergence of multiple leaders in the locality in place of a strong single leader. This also weakens the role of *Salish* as because the various leaders or elites are contending with each other to establish their own power base.

Village Touts and Village Salis

Village *touts* are also influential in rural *Salish* and they strongly involve and play their role in it. It is observed that village touts usually instigate the villagers to go to thana (Police station) and to the court of law. For this reason there is a tendency among the villagers not to depend on *Salish*.¹¹ But in general the villagers do not like the activities of the village touts. Even then, the villagers, being illiterates and ignorant of many things, are to depend on these touts for so many reasons. And the village touts make a best use of the situation in their political and personal favour.

Conflicts in the villages of Bangladesh are increasing day by day because of poverty, illiteracy, and ruin of social values as well as over population.¹² Such increase of various social conflicts leads to the necessity of more *salsih*. Accordingly more *Salish* come into being. But the *Salish* is not always coming to solve the conflicts. Rather it becomes a tool of the rural elites to complete each other and to secure their own political and personal interest. In many cases the elite try to harass the villager who is not working in his favour.

Rural *Salish* plays an effective role in case of the socio-economically the weaker parties of disputes but it fails to play an effective role in case of the

socio-economically strong parties. So, rural *Salsih* is usually used to save the strong parties and make an injustice for the weaker section of the population. The villagers of the study area are deceived from their rights and they are losing their faith towards rural *Salish*. The rural elites favour the strongest to gain their power and that is why rural *Salish* is going to fail to play an effective role to minimize conflicts in rural Bangladesh.

Having all these limitations rural *Salish* is still a minimization process outside the court. For developing the activities of rural *Salish*, several non-government organizations of Bangladesh are working to make it a useful tool for minimizing conflicts. The Legal Aid Association is one of them.¹³ Legal Aid Association as commonly understood is assistance in legal matters both in and outside the courts to the poor litigants.

In the present study, prospects of rural *Salish* have been felt in many ways. Rural *Salish* has its problems as well as prospects. It is mentioned earlier that the feasibility of bribe in rural *Salish* is increasing. Then it is felt in the present study that an institutional framework of rural *Salish* may halt the tendency of taking bribe. However, administrative setting-up in the thana Parishad does not provide all the legal Aid facilities to the rural people of village area. In addition, many of them living in the area hesitate to face police as well as legal court? And they ultimately find their interests in rural *Salish*. Moreover, the presence of *Matabbars* is identified in the study area. In other words, the prospect of rural *Salish* is at the hands of the *Matabbars* because they think that rural *Salish* is a way of practicing authority in the society. Besides these, religious leaders usually support the existing system of rural *Salish* because of their interest in providing *Fatwa*. In the present study, it is observed that the political leaders try to convince both the parties as well as to humiliate opposition through the malpractice of rural *Salish*. So, political leaders want rural *Salish* to continue. From the above discussion, it is felt that rural *Salish* will survive in the study area. However, to make it more effective the mass-media such as the TV, Radio, Newspapers etc., can play a vital role to educate the rural people.¹⁴

The political situation of the rural area is very much unhealthy. There is a section of people who are always misguided the illiterate poor villagers as well as administrative and executive authority very cunningly which create a complex situation in the rural life in Bangladesh. The poor and illiterate

¹⁰. Md. Moksuder Rahman, *Local Self Government in Bangladesh* (Rajshahi: Rajshahi University Text Book Board, 1993), p. 27.

¹¹. A.H.M Zehadul Karim, *Rural Elites and the Power Structure in Bangladesh: A Case Study of Puthia Union in Rajshahi District*. Unpublished M A Thesis (1983), Syracuse University, Department of Anthropology, P. 121.

¹². See, M. Shamsur Rahman, *Role of Elites in Rural Development Programs: A Case Study of Puthia in the District of Rajshahi*, (1980).. Rajshahi: Rajshahi University.

¹³. Atiar Rahman, *Rural Power Structure: A Case Study of Three Union Parishad Leaders* (Dhaka: Bangladesh Books International, 1981). P. 123.

¹⁴. Alam Ali and Baruc, *A Report on Gram Sarkar in Three villages of Bangladesh* (Dhaka : Antora Press Ltd., 1980). P.36

people are not aware of law. They do not even know the consequences of going to the court of law. Thus, many of them being instigated by village touts defy the decision of the *Salis* and go to the court of law. They are also instigated to go for *Union Parishad Shalis*, which is to some extent formal. The dominance of *Mattabbar* as a single man in the village is no more reality. Several persons have emerged in political stage of the village that exerts power and influence. In such a situation it has become easy for many villagers to defy the decision of the *Salis* and go to the court of law.

In doing so the villager always gets an influential power of the village in his side. On the other hand, this *Tout* people provide wrong information to the lawmaker administrator executive body and even they influence the judge by providing bribes and adopting others unfair means.

The structure and function of rural court is not well established as other criminal and civil court. These courts have no specific and permanent structure. Though it does not mean it is not well established. There is a specific structure and functional aspect in the legal framework. However in practice, it does not always function according to its legal framework.

The judgment of rural court always performs after the consent of conflicting groups. In this regard the village court is very much democratic other aspect of this court is almost same to the formal court. However, it cannot function properly due to unethical influence of the village tout and so call rural elite.

Conclusion

In most causes, rural *Salis* plays important role in minimizing conflicts. Some village *Mattabbar* of the area use *Salish* to gear up their positions of authority in the village. So, rural *Salish* is used for the individual interest. This contributes to weaken *Salis*. It was observed that most of the conflicts are of the villages are created by the villagers themselves. But in some cases villagers are also influenced by the village touts who are involved with conflicts. Some villagers of our country do not abide by decision of *Salis*. Being instigated by some of the *Matabbars* and / or touts some villagers depend on the Union *Salish* and the court of law for minimizing conflicts. It was also found that the elected representatives of the Union Parishad are found to be influential in the *Salish* and also in the local politics. So, rural *Salis* is raised as a media of some elected representatives to gain their positions and develop their positions and develop their own groups in the

villages. Therefore, the rural *Salis* of Bangladesh is not free from the political influences in *Salis* and also imposes *Fatwa* upon the villagers.¹⁵

In this study, an attempt has been made to analyze the nature of rural *Salis* and its activities in the rural areas along with rural elites. *Salis* as an institution is still a tradition of rural communities in the rural communities. When conflicts crop up among the villagers, *Salis* becomes essential.

The *Matabbars* usually try to settle disputes through *Salis*. But some *Matabbars* take bribe from the dispute parties and make partiality in *Salish*. They perform their role in *Salis* in such a way that could enhance their domain of influence. Religious leaders also play role in *Salish* and impose *Fatwa* upon the villagers. The village touts of the area are seen in *Salish*. Sometimes they try to instigate the villagers to be involved in the Union *Salish* and in the court of law. The young groups also associate themselves in *Salish*. It was observed that most of the young people willingly participate in *Salis* and try to play a neutral role in it. The attitude of the mass people of Bangladesh regarding *Salis* is found to be very positive. Thus rural *Salis* is a prospective social institution in Bangladesh. In order to get the satisfactory benefit from this institution on the government and other concerned social organization should be more interested and liable. However this important social institution rural *Salis* is the sole business of rural elite who are not accountable to the government and government is not liable to formulate any process of improving rural *Salis* system.

¹⁵. Zosep Roy, *Village politics* (New Delhi; Basic Book Ltd., 1973). P. 41.