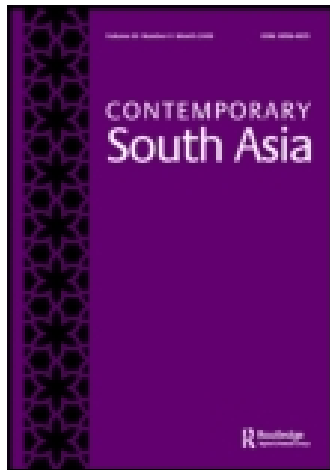


This article was downloaded by: [115.85.25.194]

On: 31 March 2015, At: 20:22

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Contemporary South Asia

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/ccsa20>

### Domestic violence made public: a case study of the use of alternative dispute resolution among underprivileged women in Bangladesh

Laila Ashrafun<sup>ab</sup> & Minna Säävälä<sup>ac</sup>

<sup>a</sup> Department of Social Research, University of Helsinki, Helsinki, Finland

<sup>b</sup> Department of Sociology, Shahjalal University of Science & Technology, Kumargaon, Bangladesh

<sup>c</sup> Population Research Institute, Väestöliitto, Helsinki, Finland  
Published online: 14 Apr 2014.



CrossMark

[Click for updates](#)

To cite this article: Laila Ashrafun & Minna Säävälä (2014) Domestic violence made public: a case study of the use of alternative dispute resolution among underprivileged women in Bangladesh, *Contemporary South Asia*, 22:2, 189-202, DOI: [10.1080/09584935.2014.899983](https://doi.org/10.1080/09584935.2014.899983)

To link to this article: <http://dx.doi.org/10.1080/09584935.2014.899983>

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the "Content") contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms &

Conditions of access and use can be found at <http://www.tandfonline.com/page/terms-and-conditions>

## Domestic violence made public: a case study of the use of alternative dispute resolution among underprivileged women in Bangladesh

Laila Ashrafun<sup>a,b</sup> and Minna Säävälä<sup>a,c\*</sup>

<sup>a</sup>Department of Social Research, University of Helsinki, Helsinki, Finland; <sup>b</sup>Department of Sociology, Shahjalal University of Science & Technology, Kumargaon, Bangladesh; <sup>c</sup>Population Research Institute, Väestöliitto, Helsinki, Finland

Disputes within the family and cases of domestic violence in Bangladesh have traditionally been resolved either among kinsmen or in village *panchayats* where young women have had less opportunity to be heard. This article describes a third-sector initiative in alternative dispute resolution (ADR) in cases of domestic violence in Sylhet, Bangladesh. Data from 20 case studies of female victims of domestic violence, interviews with six lawyers, and participant observation in 10 mediations in a counselling centre are used to examine how this kind of social innovation affects the bargaining position of battered women in a kin-based, patrilineal and patrilocal society. The battered women involved in these mediations were rural or urban, less educated, and economically disadvantaged. The findings illustrate the limitations of ADR in cases of domestic violence. ADR as practiced in Sylhet, Bangladesh provides poor women a chance to be publicly heard in mediations of their domestic crises. However, ADR often fails to deliver lasting, just, and socially progressive solutions. The adoption of ADR practices should not be considered as an alternative to the development of the formal judicial system, because it lacks the power to enforce agreements and supports the hegemonic status quo, leaving the battered woman and her natal family with very limited options.

**Keywords:** counselling centre; domestic violence; legal support; mediation; social innovation

### Introduction

As in other parts of South Asia, in Bangladesh gender-based violence has been recognized as one of the most blatant manifestations of gender asymmetry (UNICEF 2011). Estimates of the prevalence of married women's experiences of domestic violence in a lifetime range between 32% (Steele, Amin, and Naved 1998) and 72% (BIDS 2004).<sup>1</sup> Domestic violence is aggravated by poverty, poor living conditions, and lack of resources. A recent study found that the prevalence of reported past-year physical spousal violence in Dhaka, Bangladesh is higher in slums (35%) than in non-slums (20%) (Sambisa et al. 2011).

The problem of domestic violence against women has been acknowledged by international and national developmental agencies as well as the government of Bangladesh. Many organizations<sup>2</sup> and the Bangladeshi Ministry of Social Welfare are working to

---

\*Corresponding author. Email: [minna.saavala@vaestoliitto.fi](mailto:minna.saavala@vaestoliitto.fi)

combat domestic violence (Ameen 2005; Chowdhury 2011; Jahan 1994). Third-sector organizations have tried to stop the trafficking in women and children and they provide legal counselling and training in community awareness against domestic violence (Chowdhury 2011).

The judicial system still does not render justice to underprivileged female victims of domestic violence in Bangladesh (Ashrafun 2013). Resolving cases of domestic violence has been assigned either to the community level via kin groups or local communities or to the formal legal arena governed by state institutions. The legal process is often expensive, slow, and unpredictable and consequently does not work well in cases of family disputes, whereas the local community may be heavily biased towards the interests of the power holders, i.e. elders and men.

This article examines how women in socially vulnerable groups make use of an alternative dispute resolution (ADR) process in a collaborative project between a judicial body and a third-sector agent in Sylhet, Bangladesh. By presenting ethnographic and interview data on cases of domestic violence against women of the lower socio-economic strata and on mediation sessions, we will seek an understanding of how informal mediation affects the bargaining position of the battered women. Can such socially innovative mediation alleviate their situation and does it lead to sustainable solutions? Do women get a chance to express their views in the legal arena and obtain justice to establish their rights? We argue that ADR in the form that it is practiced at this particular counselling centre actually leaves the women in a very vulnerable position.

ADR was developed in the USA in the 1970s and 1980s, particularly as a court reform project (Cohen 2006; Nader and Grande 2002) to provide an alternative way of reconciling civil disagreements. ADR refers to dispute resolution mechanisms such as negotiation, mediation, arbitration, conciliation, early neutral evaluation, and mini-trial mediation (Cohen 2006). It is a social innovation developed for resolving disputes with the aim of enabling disagreeing parties to reach agreement without lengthy and costly litigation. The US-style ADR includes the involvement of a neutral third party, a mediator, who facilitates the resolution process, although she or he does not impose a resolution on the parties.

ADR has travelled from the USA to other parts of the world and has been adopted as a common component of development projects intended to modernize and rationalize state judicial systems, for example, by USAID and the World Bank (Capulong 2012; Cohen 2006; Maru 2010). Nader and Grande (2002) view the effects of the US-based ADR as so penetrating that they speak of a 'global ADR revolution' in the justice field. When the original model has been adopted in vastly different socio-economic and developmental contexts, it has, however, not remained unchanged: 'Mediation changes as it travels; its instantiation anywhere is subject to local variation and invention as it makes contact with state and customary law, politics, and social struggles' (Cohen 2006; see also Nader and Grande 2002). Here, we will examine the practical application of ADR when adapted to a kin-based Bangladeshi society in the context of domestic violence.

Although ADR as a distinct social innovation was developed in the USA only a few decades ago, forms of community mediation as an informal social process of delivering justice has long historical roots. It has been present in some form in all societies prior to the introduction of formal legal institutions. In South Asia, village elders or *panchayats* have traditionally acted as mediators or arbiters in the place of formal legal bodies (Sharma 2004). Informal mediation, *shalish*, is a very common practice in Bangladesh. A *shalish* committee typically consists of elderly, honourable and influential members of a community; thus, there is no neutral arbiter or mediator in the case, unlike in the ADR systems. The resolution is made from the perspective of community interest, not the

individual interest of the parties involved, unlike in the US-type ADR. To enforce its resolution, a *shalish* committee uses monetary fines and social boycotting of the offender's family, which are both absent in ADR. Basically, in traditional *shalish* processes, women are not allowed to be present during the arbitration even if their own case is under scrutiny. They are usually represented by their male relatives. Therefore, this alternative justice system may favour men over women (Jahan 2005) and the interests of the community power holders.

Introducing the US-style ADR in South Asia has been an innovation in the sense that it occupies a space between the judiciary and civil society. In India, ADR has been an institutionalized part of the legal system since the Arbitration and Conciliation Act of 1996 and even prior to that, based on other acts (Sharma 2004). In Bangladesh, where the formal legal system has been built on the same colonial legacy as in India, ADR does not yet have a similar level of institutionalization. Following the model provided by the Canadian, American, and Indian judicial systems, ADR has been tried out in some Bangladeshi courts as an alternative to formal legal procedures (Kamal 2004).

The global exportation of ADR has been based on its image as an apolitical and neutral social innovation that can benefit citizens in conditions of poorly functioning state-level judicial systems. Since the 1990s, a growing number of scholars have raised their voice to oppose the universal advocacy of US-style ADR on grounds of social justice, arguing that mediation may end up serving the interests of legal and social elites and diminishing opportunities for social change (e.g. Cohen 2006; Grillo 1991; Nader and Grande 2002).

### Data and methodology

The data in this article derive from a wider qualitative study on domestic violence in Sylhet, Bangladesh (Ashrafun 2013). Here we have examined in detail the cases of 20 poor young female victims at a Bangladesh Legal Aid and Services Trust (BLAST) counselling centre in the city of Sylhet. The aim is to provide an in-depth representation of the family life of and domestic violence perpetrated against young women by their affines<sup>3</sup> and the effectiveness of *shalish* as a form of dispute resolution. The women in the case studies are young wives aged between 15 and 28 years. Apart from a couple of women who had attended school till the 9th grade, the women have very little or no education and are housewives or labourers. The most common perpetrator of violence is the husband, but there are also cases of the women's mother-in-law, father-in-law, or other affine being the aggressor.

The district court in Sylhet has adopted a cooperative initiative between the court and an NGO, the BLAST, to mediate in family disputes such as cases of domestic violence and divorce. BLAST is a prominent legal services organization in Bangladesh, currently operating in 19 districts across the country. BLAST's mission is to make the legal system accessible to the poor and marginalized by providing free services. The majority of those who come to BLAST prefer mediation to litigation due to the reduced cost and time involved. If the parties fail to settle the dispute through mediation, the advocates of the counselling centre take the case to the court and represent the client free of charge.

Through informal mediation, the NGO tries to give the underprivileged women an opportunity to have their voices heard with the support of their natal family members, kin, acquaintances, and advocates. As a result of the mediation, the husband and wife are either reunited, the parties sign a bond to abide by an agreement, or a divorce takes place along with a settlement for the maintenance and custody of children.

The data consist of interviews with 20 women with a mediation case as well as six advocates, observation of 10 mediations, and informal talks with other participants in the

mediations. The case study interviews with the women, whose cases of domestic violence and arbitration this article analyses, were conducted in privacy to maintain confidentiality. No tape recorder was used in these discussions with the female victims due to the emotional crisis which required a particularly sensitive and personal environment (Liamputtong 2007). Copious notes were taken and transcribed in greater detail following the interviews with the women. The interviewees were informed about the study and its objectives and their voluntary oral consent was secured prior to their inclusion in the study. The interviews were carried out in the local Bengali language by a married female national, Laila Ashrafun. Conversations with the women about their problems were lengthy, lasting three hours or more.

With the cooperation of the advocates of BLAST, Laila Ashrafun observed 10 mediations. The participants in the mediations were asked for their consent for the researcher's presence. The coordinator of the counselling centre heading the sessions explained the role of the researcher and sought the participants' consent for her presence and the use of the *shalish* as research data. In none of the mediations did the clients refuse the researcher's presence or object to the use of their mediation as research data. Individual consent was sought from the guardians of the young female victims (usually a father or mother) and from the main negotiators of the offenders' party. There were typically numerous participants, from 6 to 12 people, in each mediation session.

For the sake of confidentiality, all personal data that could lead to recognition is omitted or transformed and pseudonyms are used. The counselling centre is inevitably identifiable, as there are few such centres in Sylhet, but the cases depicted are not recognizable. The translations from Bengali to English were done by the author and the originals are securely stored.

The researcher responsible for data collection, Laila Ashrafun, is native to Bangladesh and a resident of Sylhet. Her fluency in the local language and dialect and her cultural knowledge were a great advantage in data collection and in building rapport with the interviewees. However, being of middle-class background and a highly educated woman, but not a lawyer made her position ambivalent. Her motives in participating in the mediations and in interviewing the female victims required elucidation, so that she was not mistaken for a representative of the NGO or court personnel. Collecting data in a situation such as mediation, extremely stressful for the participants, turned out to be emotionally taxing also for the researcher.

Case studies are seen as appropriate when the purpose is to 'understand some special people, particular problem or unique situation in great depth' (Patton 1990, 54) and where one can identify cases rich in information – rich in that a great deal can be learned from a few exemplars of the phenomenon in question (Patton 1990, 54). The aim of case studies is the precise description or reconstruction of a case. Cases that are taken as samples should be significant for the research question (Flick 2006). In this article, the case of a young married woman, Lipa, is given extended attention in order to provide an ethnographically layered perspective on the situation of battered women and the mediation processes.

After participating in the mediations, expert interviews (Flick 2006, 165) with six lawyers were conducted. A particular point of interest in these interviews was to establish the interrelationship between the role of expert and private person, as the mediators' personal views on gender roles may affect the mediation process.

### **The genealogy of domestic violence**

The most evident sociocultural factor affecting the practice of mediation is the social legitimacy of the violence perpetrated by husbands and in-laws against young wives. A man has

the option of controlling his wife through verbal or physical abuse if she does not succumb to his wishes and this is widely accepted by both men and women (Bates et al. 2004; Sambisa et al. 2011; UNICEF 2011). The accounts of the interviewed women, who lived in slums, reflected this in such comments as: 'I have to bear all the torture of my husband if I want to eat from his income' or 'Everybody will say I am bad if I hit my husband or leave my husband's family because of violence' (Ashrafun 2013). However, the slum women studied did not accept severe domestic violence perpetrated against women. In their everyday life they shared their conjugal problems with each other, although they did not usually interfere in others' domestic disputes unless someone's life was in danger (Ashrafun 2013).

The genealogy of Lipa's experiences of domestic violence and the mediation of her case through the NGO highlight the dynamic of domestic violence among underprivileged women and the process of mediation. Lipa is an illiterate 22-year-old Muslim housewife. She was born in a slum of Sylhet, where her parents had migrated 25 years earlier. Lipa was married when she was 19 to an illiterate three-wheeler driver 10 years her senior. Following marriage Lipa moved to live with her husband's family members in another slum of Sylhet.

Just after one year of marriage, Lipa's husband had kicked her in her abdomen when she had been two months pregnant. She had immediately miscarried and become unconscious, but Lipa's affines had not even called a doctor. When they did not manage to bring Lipa to her senses, Lipa's sister-in-law had finally called her parents on her mobile phone. After having received the bad news they had rushed to Lipa and called a doctor, but Lipa's husband and mother-in-law had requested that they keep silent about the violence. Because of their request they had hid the true nature of the incident from the doctor by lying and saying that Lipa had fallen into a well while bathing. Lipa's elder sister and mother had borne all the expenses for her treatment and had taken her home with them and Lipa had lived with them for two months. Then, her mother-in-law had come to take her back. However, even after this serious incident Lipa's husband had kept on beating and disparaging her. As a result, she had lost her mental balance. Now, Lipa's sister sternly said, 'Lipa was beaten by her husband like a cow. This man should be punished'.

According to Lipa, the fundamental cause of the trouble was her husband's extramarital relationships and inability to provide food for his wife and child. Describing her vulnerability in her affinal home, she said that her mother-in-law was also in the habit of abusing her by using foul language and blaming her for her husband's extramarital relationships, calling her a worthless wife. On a few occasions also her father-in-law had slapped (*chor*) her because of his son's extramarital relationships. One day he had rebuked his son in front of her so that her husband had become very angry due to the humiliation and had consequently hit her later with a thick stick. Everyone in her marital family had witnessed this torture but no one had stopped her husband. Lipa had felt ashamed (*lojja*) and in pain (*kosto*).

In the mediation, the husband denied having had any extramarital relationships. He explained that Lipa was insolent and quarrelled (*jhagra*) with him so he often lost his temper. Lipa's husband claimed that he was without fault (*dosh*) and blamed Lipa for all the problems. He tried to rationalize his use of violence by stating that because he was a man he could not tolerate any questioning and arguments, so there were quarrels between them, and he hit Lipa as any normal man with an insolent wife would justifiably act.

Husbands' extramarital relationships and their polygyny, dowry demands, and drug and alcohol addiction play a significant role in the picture of domestic violence among slum

dwellers in Sylhet (Ashrafun 2013). The marital problems relating to a husband's extramarital affairs or use of sex workers' services, like in Lipa's case, are common. Among the 20 cases examined in detail here, there were eight cases of husbands with extramarital affairs and numerous cases that included pressure on the young wife's parents to provide more dowry and repeated dowry violence towards the young wife.

### **Economic and sociocultural constraints**

Underprivileged young women's vulnerability is commonly related to household economic insecurity: food insecurity, shelter insecurity, job insecurity, or physical insecurity. In poor households, material constraints include poverty or material deprivation caused by loss of agricultural land and employment due to the changing socio-economic structure or natural calamities such as river erosion, drought, flood, or tornado, migration from rural to urban areas, or death or serious illness of the primary earning member in the family.

The gendered income distribution among labourers was one of the contextual factors that reduced women's options in cases of domestic violence. Because women earn less than men, it was very difficult for Lipa's mother to take her daughter and granddaughter to live permanently with her. Lipa was now in a vulnerable situation. She had been living for the last six months with her elderly mother. As Lipa's mother works as a domestic helper, it is not economically possible for her to look after her daughter and granddaughter for a long time and Lipa's mental and physical condition was too weak for her to engage in full-time employment. Apart from the economic hardship, the social condemnation of a woman living without a male guardian makes such a choice undesirable for women. The women themselves consider a house without a man as vulnerable to break-in, sexual abuse, and loss of honour (Ashrafun 2013).

The practice of early marriage and dowry, women's limited property and inheritance rights, obstacles to women working outside the home due to norms of propriety, and social stigma related to marital separation or divorce all contribute to a structural situation in which uneducated, poor women's options are limited when they encounter domestic violence. Behind these phenomena, we find the patrilineal, patrilocal kinship system in which wife-givers are structurally subservient to wife-takers even in cases of homogamy (Fruzzetti [1982] 1990). According to the fieldwork in two slums in Sylhet, kin relations are governed by the values of patriarchy, although some women have begun to engage more in wage-earning employment and some exceptional women are living without a male guardian (Ashrafun 2013). Although patrilocality and female dependence on males is the prevalent norm, it is not unmitigated.

In mediation, most of the young wives presented themselves as helpless victims. The women emphasized their role as a 'devoted wife' who has virtuously fulfilled her duties. Marital maladjustment is a shame for a woman, as it violates the ideals of dependency of younger women on their husbands and senior affinal kin and of unity between a man and wife. The popular Bengali concept of *ardhangini* refers to the wife as the other half of her husband's body (Rozario 1992; Uusikylä 2000). Whatever the reasons for domestic problems, the woman is often blamed for it, as in the case of Lipa when she was blamed for her husband's extramarital relationships.

### **Domestic problems always involve in-laws of both sides**

In Bangladesh and elsewhere in South Asia, domestic violence tends to involve both kin groups and not only the perpetrator and the victim. However, due to the structural



asymmetry in most South Asian kinship systems between wife-givers and wife-takers, the wife's kin is the underdog that tries to succumb to the demands of the husband's kin and to derive prestige from fulfilling this virtuous, subordinate role.

The mediation practiced by the NGO is kin-based. Kin groups come to seek resolution for the marital problems of their members together, as a collective. The problems are understood as being part of wider kin relations. That is why it is considered essential and natural for relatives to be present at the mediations. When domestic violence is involved, it is evident that in some cases the aggressors are also other affines than the husband, for example, the mother-in-law, sister-in-law, or father-in-law. A daughter-in-law is a member of the affinal kin group and thus mediation cannot be described as successful unless the in-laws are prepared to accept her back, even in situations where the young couple lives separately from the husband's parents.

In 13 of the 20 cases, violence was perpetrated against the young wife both by in-laws and the husband. Among these cases, some women suffered from repeated dowry demands, some from the husband's extramarital relations, and others from the domination of mothers-in-law, sisters-in-law, and fathers-in-law. In four cases, it was found that the woman's mother-in-law and sister-in-law were the main instigators of violence against the young wife due to dowry demands, disappointment following the birth of a girl child, the young bride's alleged maladjustment, or general hostility. In seven cases, the husband was the sole perpetrator of domestic violence against his wife.

Lipa's current mediation was the third time her family had come to the counselling centre, this time with an appeal for a divorce, dower, and maintenance costs for the child. Lipa's husband and his father considered Lipa's mother and sister as the true culprits and liars. They accused Lipa's mother for taking her from the affinal home too frequently and not letting her return for several months. If they went to fetch Lipa back they were allegedly insulted (*opoman*). Such accusations are grave in a society where the wife-givers are expected to yield to the wife-takers and to provide courtesy, gifts, and allegiance. Lipa's father-in-law shifted the attention in the mediation away from the alleged violence perpetrated by his son to Lipa's family's disrespectful and shameless behaviour. This turn in the argumentation underlines how kinship structures leave the battered wife's side in a dependent and vulnerable situation morally, socially, and economically.

When Lipa's father-in-law continued to accuse Lipa's natal family members for being the true culprits in the case, Lipa's elder sister became agitated and jumped from her chair, accusing Lipa's father-in-law of being a liar. Lipa's sister brought up the fact that this man's son had kicked her sister in early pregnancy and that Lipa could have died. She regretted that foolishly they had not kept any evidence of this violent act and had then told a lie to the doctor in order to protect Lipa's marriage. She expressed regret that they had acted according to the allegiance expected from wife-givers and had not involved the judiciary system by making a police complaint. If they had done that, they would have now been in a strategically better position to negotiate for Lipa's future.

### **Avoiding divorce at all cost**

Despite some legal reforms, there are still numerous shortcomings in the judicial system in Bangladesh when it comes to women's issues in general and domestic violence in particular. The criminal laws and family laws, taken together, are insufficient and too weak to solve the problems women face, when taking into account women's position and the prevalent structural barriers. The general criminal law has no specific laws on domestic violence against women although some specific acts address issues such as dowry violence, trafficking, and

acid throwing. Dealing with 'ordinary' domestic violence against women requires going through criminal law or in case of divorce, through family law. One of the shortcomings is that criminal law does not protect a woman by guaranteeing a right to a 'matrimonial home', nor does it offer her shelter during the proceedings (Ashrafun 2013).

Although some legal avenues are available to battered women, economic and cultural constraints can impede women's access to them. First, the economic resources needed for a legal process are way beyond most socio-economically underprivileged women. Second, women rarely have the social and cultural capital to engage in litigation. And third, the burden on the courts and routine corruption translate to a very slow process and an unpredictable outcome, even if the women should receive monetary and practical support from an organization (cf. in India: Aura 2008; Vatuk 2006). Moreover, women are reluctant to proceed through the criminal court because evidence is hard to gain as witnesses do not corroborate in domestic violence.

In Lipa's two earlier mediations at the counselling centre, nothing had changed despite the in-laws' conciliatory words and agreements. Despite severe violence, Lipa and her natal kin had never reported any incidents to the police. The two advocates acting as mediators still expected that the *shalish* would deter Lipa's husband and in-laws from being abusive, although they knew that two earlier mediations and agreements had not been successful. It was evident that the perpetrators had not considered the mediations a matter of great importance, as they had made no serious effort to change the situation. There was no social pressure or other sanctions to encourage them to abide by the agreement.

In her third *shalish*, Lipa's advocate asked what her own wishes were concerning the case. Lipa replied in a low voice that she did not want to go back to her affinal home. She pointed out that her affines had promised in the counselling centre twice before that they would not beat her or insult her but had not kept their promise. According to Lipa, they were 'hypocrites' (Lipa began to cry). Her sister and mother also burst into tears and became furious. They pointed to Lipa's husband and said, 'One day he will kill Lipa. We will not let her go; we do not want her dead body'.

The male advocate for Lipa's husband pointed out that once again the couple should rearrange their conjugal life because they were not alone: the decision also affected others. He reminded that they had a two-year-old daughter who needed her father. According to the advocate, a woman's life without a husband is very hard, so Lipa should reconsider her wish to divorce and give the in-laws a chance to make good on their word. The advocates are always beside her, he said, and if Lipa's husband makes any more mistakes or acts violently against her they would not hesitate to initiate litigation proceedings.

Also Lipa's own advocate tried to make her understand that she had to think about her daughter's future. She was reminded that as a Muslim woman she could have a divorce whenever she wished, but if she did so she could not return to her conjugal life any longer, even if she felt remorse. The advocate told Lipa that she should not concentrate on other people's (meaning Lipa's mother and sister) emotions, because she was married and she had feelings for her husband and for the whole family of in-laws. The female advocate pointed out that it was a well-known characteristic of Bangladeshi women to want to live in a family (*sangsar*). Lipa's mother might find work for her but how long could she look after both of them, the advocate asked. Her elder sister's husband might not let Lipa live with them, as such an arrangement would be considered shameful in Bangladeshi society. Thus, also her own advocate recommended that Lipa should return to her husband and give him and the parents-in-law one more chance.

In their argumentation, the advocates brought forth a wide spectrum of rationalizations for why Lipa should continue living with her violent husband and abusive in-laws: if she

was a virtuous mother and family member who thought of others and not only selfishly of herself, she would yield. Even the national character of women was used as a justification for not leaving her husband. The advocates pointed out the practical, social, and economic difficulties that Lipa and her daughter would face as a divorcee and a divorcee's daughter. The whole gamut of rationalizations placed Lipa's need for personal safety and mental and physical integrity as secondary on the agenda. The need for harmonious kin relations overrode both the need to punish the perpetrators of violence (which was expressed in the mediations by Lipa's mother and sister) and the need for a solution that secured Lipa's future and safety (the concern expressed by Lipa and her mother and sister).

After the two advocates' argumentation, Lipa remained adamant. The advocates continued to persuade her to yield and finally they succeeded. Lipa was under tremendous pressure in the mediation from the two advocates and her in-laws and in practice she was forced to agree to return to her husband. When she agreed, her mother expressed her sadness by exclaiming that this time she feared for her daughter's life. The two advocates harshly intervened and told Lipa's mother to stop forcing Lipa to break her marital vow because, according to them, in Bangladesh society it was very hard for a young woman to live without a husband. Their message was that society did not encourage this practice and the advocates had over the years seen the sufferings of divorced women. Their argumentation builds on the idea that remaining in marriage would secure a woman's health, well-being, and economic security, although this is not the case in practice.

Lipa's case is an example of how a *shalish* does not necessarily end the misery of an abused woman. Lipa relied upon the procedure of *shalish* and did not directly file a litigation case against her husband and in-laws, as she initially did not want to jeopardize her marriage. At the outset she simply wanted the violence to stop and for her husband to give up any extramarital relationships. But as the two previous *shalish* resolutions failed to protect her from frequent abuse she became physically and mentally ill and finally ended up wanting a divorce.

Lipa's was not the only case among the 20 mediations observed in which the battered or maltreated woman was not willing to return to married life, while the advocates, in-laws, or natal relatives pressured her to do so. In another mediation case, Nasrin (a 23-year-old Muslim woman from a slum) clearly expressed her choice for a divorce in a strong voice in the same manner as Lipa above. However, her parents and elder brothers several times requested she recant her decision in order to avoid subjecting herself and the natal family to a very vulnerable situation. In Lipa's case the natal relatives supported her desire to divorce, while in Nasrin's case the natal relatives felt that divorce would jeopardize both her and her children's future.

In some other cases, women had internalized the impossibility of divorce and did not even consider it as an option. In the cases examined here, most of the women and their natal families looked for reconciliation and remedy from domestic violence; they did not want a separation, divorce, or legal punishment for a violent husband or in-laws. Sakina (a 21-year-old Muslim woman from a slum, a mother of two) had been granted a divorce but in a repeated *shalish* she wanted to return to her affinal home for the sake of her two children and due to poverty. Similarly, even after experiencing severe physical torture by her husband and mother-in-law related to continuous dowry demands, Ronjita (a 25-year-old Hindu village woman, a mother of three sons) did not want separation from her husband. She only wanted remedy from dowry violence through the mediation.

The ideals of submissive womanhood, asymmetry between the wife-givers and wife-takers in Bengali kinship, the practical difficulties in arranging a living, and the insecurity of women living without men all lie behind the advocates' and often also natal relatives'

and in-laws' attempts to convince wives like Lipa who want a divorce to give up this desire. This pushes women to remain in violent relationships in which the perpetrators rarely face any ramifications. Although divorce is an option according to Islamic laws, in practice it is also simultaneously considered unacceptable in Bangladeshi society for both Hindus and Muslims (Ali 2002; Ameen 2005; Bhuiyan 1991).

### **Class barrier**

In the interviews with the six advocates who engaged in ADR processes, it emerged that they tended to have rather rigid ideas about the interests of the underprivileged women they served in mediations. The organization does not have sufficiently trained staff to counsel victims of domestic violence and only helps them by providing legal advice in the mediations. The advocates have not been sensitivity-trained to reflect on gender asymmetries or to question their own values and conceptions of a woman's position in the family. They were rarely conscious of the need to find out how the female victims themselves saw their situation and instead concentrated on finding a way to convince the woman to return to her affinal family and on creating goodwill in the affines so that they would stop maltreating the young wife. The advocates took for granted the culturally hegemonic view of the wife-takers as the ones entitled to make demands on the young wife and her kin.

Some of the advocates interviewed at the counselling centre expressed the belief that as poor and uneducated, the female victims were incompetent to make rational decisions, whereas they themselves were educated people and as lawyers competent to decide for them. They did not see the class difference and power asymmetry between themselves and their clients as an impediment to interaction and cooperation. However, in the observed *shalishes* class and power difference self-evidently created difficulties for the clients' ability to communicate their own interest in the situation. In a number of the 10 mediations examined the women's voices were suppressed and they were unable to make their point of view heard. The patronizing and at times even chauvinist tone that was evident in some advocates during the interviews and in the mediations may be problematic from the perspective of delivering justice and securing social agency for female victims of the underprivileged class.

### **Discussion**

We have examined above whether semi-official ADR in the form of mediation, *shalish*, used by an NGO in Sylhet, Bangladesh helps to provide relief in cases involving domestic violence against young wives. The example of Lipa's *shalish* and the other cases examined point to numerous problems in the Bangladeshi legal system and also in an ADR as practiced in cases of domestic violence.

In light of the qualitative data examined in this study, ADR does not appear to work to further the interests of the battered, underprivileged women in Sylhet. This is due to three issues: the fundamental problems related to using mediation as a method of dispute resolution in cases of domestic violence; the shortcomings of the judicial system and the limited resources of the third sector in a developing country like Bangladesh; and the gendered and generational imbalance of power in society generally, and its intersections with class, which are manifested in the mediations.

Although we have here examined only one particular NGO and some 20 cases of domestic violence, we have good grounds to believe that as long as ADR is executed along the same lines as in the case of this NGO, the problems inherent in the process will be relatively

similar in other parts of Bangladesh and even in other parts of northern South Asia. This is because the widely shared South Asian patrilineal and patrilineal kinship system largely dictates the attitude to domestic disputes and their resolution. The colonial legacy of the judicial system is also shared within the larger region, affecting the ways people seek justice through the formal and informal legal system and the police.

### *The use of ADR in cases of domestic violence*

The use of mediation in domestic violence cases has raised growing objections in Euro-American societies where it is no more recommended in cases of domestic violence. Issues of safety, justice, power imbalances, and the rights of the battered woman when mediation is used instead of court litigation have been brought up as causes of apprehension (Grillo 1991; Salem and Milne 1995; Vestal 2007).

However, such misgivings have not emerged in the use of ADR in family disputes in South Asia, where it is common for the entire families to be involved in the mediation and where reconciliation is strongly recommended over divorce or legal proceedings (Goel 2005). The South Asian hegemonic idea that women are responsible for creating and maintaining harmony in kin relations is manifested in the belief that mediation is a justified method for resolving cases of domestic violence.

The mediators stand for harmony against justice and for a status quo in which young women and wife-givers have fewer rights than men, older women, and wife-takers. The use of ADR should not be continued in cases of long term and severe domestic violence in South Asia.

### *The shortcomings of the legal process*

The shortcomings of the legal system mean that mediation may represent the only real opportunity to reach a solution when poor women face domestic problems. As long as the courts are potentially corrupt, inefficient, and take years to reach a verdict, there is no hope for economically disadvantaged and uneducated battered women to obtain justice through formal procedures. The idea underlying the use of mediation in cases of domestic violence in Bangladesh and elsewhere in South Asia is that such violence is not punishable under criminal law in the same way as other forms of personal violence, but should instead be mediated or reconciled.

Unlike in the traditional mediation practices in Bangladesh and South Asia and beyond, women are heard in the process and can present their own case together with their natal kin. However, unlike in 'traditional' mediation, the mediators are outsiders to the community and consequently do not fully understand the social realities or the options available to their clients. Instead, they represent the educated middle-class national elite, with its own particular ideas of class, gender, and the nation. They stand in a terrain in-between civil society and the judicial system, using their authority to persuade women to abstain from separation and from filing police complaints.

It is characteristic to the ADR process that it lacks enforcement mechanisms and sanctions on the parties involved and instead relies on goodwill and trust (Merry 1982; Nader and Grande 2002). Whenever the perpetrators of violence assure their willingness to give up their destructive behaviour or promise to provide maintenance, there is no sanction involved for those who do not abide by the agreement. The only option for the victim, if the agreement is violated, is to bring the case back to mediation.

Carrying out mediation successfully and in a manner that would benefit the interests of the battered young wives requires resources that are limited in the third sector. The NGO examined here is understaffed and very limited in the services it can offer to its clients. The facilitators are not always well trained to deal with victims and offenders; as lawyers, they are usually knowledgeable about the system of legal regulations, but lack training in human psychology and couple relationships. The importance of securing continued funding from foreign donors leads to a situation in which satisfying donors' administrative targets is a top priority, even if it happens at the expense of clients' needs. This donor-oriented culture drives the legal aid workers primarily to fulfil their allocated quota and ensure the following year's funding (cf. Chowdhury 2011).

### *The gender and kinship system*

ADR's impact depends on the structure of power relations within which it operates (Merry 2002). Accommodating culture in the process has the effect of privileging existing social relations and thus privileging and strengthening existing forms of domination (Cohen 2006). The gendered power imbalance in Bangladesh leads to a situation in which divorced women face grave difficulties in arranging their safety and livelihood (cf. in Bangladesh: Ali 2002; Ameen 2005 and in India: Aura 2008; Vatuk 2006). Due to this imbalance, the advocates rarely consider divorce an option for a battered woman, leaving her to cope in a domestic situation that may be dangerous for her health and survival.

A better functioning ADR process would require that the local community be more actively engaged in the proceedings. For example, a women's local collective could act as a pressure group towards the perpetrators of domestic violence to prevent the violation of agreements (cf. Cohen 2006). Negotiation requires conditions of relatively equal power; otherwise, a negotiation becomes a smoke screen for enforcing power over the powerless (Nader and Grande 2002). The use of ADR should not be an alternative to creating a functioning and just legal system: negotiating without the back-up force of law will not work. The force of a just law has to be available as a last resort (Nader 1979; Nader and Grande 2002). Particularly in cases of domestic violence, there must be a viable option of starting a criminal process at any point of the mediation process.

### **Acknowledgements**

This work was supported by the Academy of Finland [grant number SA138232] and CIMO in Finland. We would like to thank the funding agencies for their generous support. We would also like to thank the two anonymous reviewers for their insightful comments and suggestions.

### **Notes**

1. Other estimates of female victims include, e.g. 70% (Rahman 1999, 2001), 43% (Khan, Rob, and Hossain 2001), 42% (Koenig, Ahmed, and Mozumder 2003) and 67% (Bates et al. 2004).
2. E.g. Ain-O-Shalish Kendro, Bangladesh National Women Lawyers' Association, Women for Women, BLAST.
3. 'Affine' refers to persons related by marriage, i.e. marital relatives.

### **References**

- Ali, S. 2002. *Violence Against Women in Bangladesh, 2001*. Dhaka: Bangladesh National Women Lawyers' Association.

- Ameen, Nusrat. 2005. *Wife Abuse in Bangladesh – An Unrecognised Offence*. Dhaka: The University Press.
- Ashrafun, Laila. 2013. "Seeking a Way out of the Cage: Underprivileged Women and Domestic Violence in Bangladesh." PhD diss., Publications of the Department of Social Research 3, The Helsinki University Press, Helsinki.
- Aura, Siru. 2008. "Women and Marital Breakdown in South India. Reconstructing Homes, Bonds and Persons." PhD diss., Research Series in Anthropology, University of Helsinki, Helsinki.
- Bates, Lisa M., Sidney Ruth Schuler, Farzana Islam, and Md. Khairul Islam. 2004. "Socioeconomic Factors and Processes Associated with Domestic Violence in Rural Bangladesh." *International Family Planning Perspectives* 30 (4): 190–199.
- Bhuiyan, R. 1991. *Aspects of Violence Against Women*. Dhaka: Bangladesh Institute of Democratic Rights.
- BIDS (Bangladesh Institute of Development Studies). 2004. *Baseline Survey for Assessing Attitudes and Practices of Male and Female Members and In-Laws Towards Gender Based Violence (Final Report)*. Dhaka: United Nations Population Fund.
- Capulong, Eduardo R. C. 2012. "Mediation and the Neocolonial Legal Order: Access to Justice and Self-Determination in the Philippines." *Ohio State Journal on Dispute Resolution* 27 (3): 641–681. [http://scholarship.law.umt.edu/faculty\\_lawreviews/84](http://scholarship.law.umt.edu/faculty_lawreviews/84)
- Chowdhury, Elora Halim. 2011. *Transnationalism Reversed: Women Organizing against Gendered Violence in Bangladesh*. Albany: State University of New York Press.
- Cohen, Amy J. 2006. "Debating the Globalization of US Mediation: Politics, Power, and Practice in Nepal." *Harvard Negotiation Law Review* 11 (1): 295–353.
- Flick, U. 2006. *An Introduction to Qualitative Research*. Thousand Oaks, CA: Sage.
- Fruzzetti, Lina. [1982] 1990. *The Gift of a Virgin: Women, Marriage, and Ritual in a Bengali Society*. Delhi: Oxford University Press.
- Goel, Manju. 2005. "Successful Mediation in Matrimonial Disputes: Approaches, Resources, Strategies & Management." *Delhi Judicial Academy Journal* 4 (i): Delhi Mediation Centre, District Courts of Delhi. <http://www.delhimediationcentre.gov.in/articles.htm#introducing>
- Grillo, Trina. 1991. "The Mediation Alternative: Process Dangers to Women." *Yale Law Journal* 100 (6): 1545–1610.
- Jahan, Roushan. 1994. *Hidden Danger: Women and Family Violence in Bangladesh*. Dhaka: Women for Women, A Research and Study Group.
- Jahan, Ferdous. 2005. "Gender, Violence, and Power: Retributive Versus Restorative Justice in South Asia." PhD diss., University of Pennsylvania.
- Kamal, Mustafa. 2004. "Introducing ADR in Bangladesh." *Delhi Judicial Academy Journal* 3 (ii). Delhi Mediation Centre, District Courts of Delhi. <http://www.delhimediationcentre.gov.in/articles.htm#introducing>
- Khan, M. E., Ubaidur Rob, and S. M. I. Hossain. 2001. "Violence Against Women and Its Impact on Women's Lives – Some Observations from Bangladesh." *Journal of Family Welfare* 46 (2): 12–24.
- Koeing, M. S., M. Hossain Ahmed, and A. Mozumder. 2003. "Women's Status and Domestic Violence in Rural Bangladesh: Individual and Community Led Effects." *Demography* 40 (2): 269–288.
- Liamputtong, P. 2007. *Researching the Vulnerable*. Thousand Oaks, CA: Sage.
- Maru, Vivek. 2010. "Access to Justice and Legal Empowerment: A Review of World Bank Practice." *Hague Journal on the Rule of Law* 2 (2): 259–281.
- Merry, Sally Engle. 1982. "The Social Organization of Mediation in Non-Industrial Societies: Implications for Informal Community Justice in America." In *The Politics of Informal Justice Vol. II, Comparative Studies*, edited by Richard L. Abel, 17–44. New York: Academic Press.
- Merry, Sally Engle. 2002. "Moving Beyond Ideology: Critique to the Analysis of Practice. 'From the Trenches and Towers' Commentary." *Law & Social Inquiry* 27 (3): 609–611.
- Nader, Laura. 1979. "Disputing Without the Force of Law." *Yale Law Journal (Special Issue on Dispute Resolution)* 88 (5): 998–1021.
- Nader, Laura, and Elisabetta Grande. 2002. "Current Illusions and Delusions about Conflict Management in Africa and Elsewhere." *Law & Social Inquiry* 27 (3): 573–595.
- Patton, M. Q. 1990. *Qualitative Evaluation and Research Methods*. Newbury Park, CA: Sage.
- Rahman, Aminur. 1999. "Micro-Credit Initiatives for Equitable and Sustainable Development: Who Pays?" *World Development* 27 (1): 67–82.

- Rahman, Aminur. 2001. *Women and Microcredit in Rural Bangladesh – An Anthropological Study of Grameen Bank Lending*. Boulder: Westview.
- Rozario, S. 1992. *Women and Social Change in a Bangladeshi Village*. London: Zed Books.
- Salem, P., and A. Milne. 1995. "Making Mediation Work in a Domestic Violence Case." *Family Advocate* 17 (1): 34–38.
- Sambisa, W., G. Angeles, P. M. Lance, R. T. Naved, and J. Thornton. 2011. "Prevalence and Correlates of Physical Spousal Violence Against Women in Slum and Non-slum Areas of Urban Bangladesh." *Journal of Interpersonal Violence* 26 (13): 2592–2618.
- Sharma, M. K. 2004. "Conciliation and Mediation." *Delhi Judicial Academy Journal* 3 (ii). High Court of Delhi. <http://www.delhimediaioncentre.gov.in/articles.htm#introducing>
- Steele, F., S. Amin, and R. T. Naved. 1998. "The Impact of a Micro-Credit Programme on Women's Empowerment and Fertility Behavior in Rural Bangladesh." Policy Research Division Working Paper No. 115, Population Council, New York.
- UNICEF (United Nations International Children's Emergency Fund). 2011. *A Perspective on Gender Equality in Bangladesh. From Young Girl to Adolescent: What Is Lost in Transition? Analysis Based on Selected Results of the Multiple Indicator Cluster Survey 2009*. Dhaka: UNICEF.
- Uusikylä, H. 2000. "The Other Half of My Body: Coming into Being in Rural Bangladesh." PhD diss., Research Reports No. 236, Department of Sociology, University of Helsinki.
- Vatuk, Sylvia. 2006. "Domestic Violence and Marital Breakdown in India: A View from the Family Courts." In *Culture, Power, and Agency: Gender in Indian Ethnography*, edited by Lina Fruzzetti and Sirpa Tenhunen, 204–226. Kolkata: Stree.
- Vestal, Anita. 2007. *Domestic Violence and Mediation: Concerns and Recommendations*. <http://www.mediate.com/articles/vestala3.cfm>