

Shalish (Mediation) for Rural Bangladesh

M S Siddiqui

Legal Economist and WMO Fellow

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The concept of legal pluralism refers to a situation of coexistence of several legal systems. It means the simultaneous existence of a formal legal system of statutory laws with customary principles or informal rules.

Different laws deal with different matters, for example, formal laws are meant to regulate commercial, criminal or constitutional aspects of human life, while civil and personal matters are governed by the local customary laws or religious laws. The religious personal laws of Bangladesh's various religious communities govern matters within the private sphere, including marriage, divorce, custody, inheritance and so on.

Muslim marriage and sharing of paternal properties are governed by the Islamic law but the Marriage Registration act 1961 imposes some optional conditions. There was no law on marriage of Hindu community until 2012.

Bangladesh Constitution declares equal rights for men and women in all spheres of public life. For centuries, women have been in total subjugation in male-dominated patriarchal societies. It has been a "natural law" to regard women as the inferior sex and for them to submit to male authority for the "smooth functioning" of society in its day to day progress. Many men do not agree with women acquiring equal rights as men because of religious reasons.

Salish (village mediation and arbitration) and fatwa (religious edict) are but common features in rural Bangladesh. These have assumed the status, albeit unofficially, of parallel courts in dealing with marriage, properties and small offences. The social system is still under the control of local elites and religious leaders who prefer Sharia Committees, or Islamic Societies with the objective of establishing their unquestioned dominance. Awarding brutal punishment, including caning, whipping and beating, in local Salish by persons devoid of judicial authority constitutes violation of the constitutional rights.

A 'fatwa' is an opinion, more particularly a legal opinion. Fatwas can include the decision as to when a holiday is to begin based upon the sighting of the moon, or an opinion on a religious issue. Being one's opinion, a fatwa in Islamic jurisprudence is fundamentally non-binding. According to fatwa, when a Muslim man divorces his wife by uttering the Arabic word "Talaq" three times, his wife must be married to another person, even if he later decides to withdraw that pronouncement and it is irrevocable and no opportunity of reconciliation. The only alternative is Hila marriage. It is an

"interim" marriage or a marriage in between two marriages with same person. It is practised in rural Bangladesh as well as in other Muslim countries.

In Islamic law, for an opinion to be appropriately termed as 'fatwa', it must come from a mufti. The word mufti is derived from 'afta' which means deciding a point of law. But a mufti's fatwa is not binding as per the law of Bangladesh. Fatwas commonly deal with marriage and divorce, and award punishments for perceived moral transgressions too.

In a fatwa, issued during arbitration by some local religious leaders, Hena, a 14-year-old rape victim in rural village of Bangladesh, was ordered to receive 100 lashes, while the alleged rapist was roaming freely. The girl fainted halfway through the punishment and later died. In another fatwa issued by Darul Uloom Deoband, the leading Islamic university founded in 1866 in northern India, Muslim women have been debarred from traveling more than 48 miles from their homes without being accompanied by a male relative. The followers of Deoband are available in Bangladesh, Pakistan and India.

The High Court of Bangladesh ruled all fatwas illegal. In the landmark 2001 judgment, the High Court declared that the "legal system of Bangladesh empowers only the courts to decide all questions relating to the legal opinions on the Muslim and other laws as in force in Bangladesh." However, the judgment was stayed following a Supreme Court order and the procedural actions took long ten years until the Supreme Court finally sought the opinion of Islamic scholars on the status and application of fatwa or Islamic religious edicts.

The people of rural Bangladesh are ignorant and are perennial victims of lack access to justice. It is not easy to stop this. People in villages go to the village clerics all the time to seek guidance on various religious and social matters.

Hindus, Brahmos, Jains, Sikhs and their different castes, sub-castes and sects are governed by the existing principles of Hindu law. But in matters of marriage amongst them, this customary law has so far prohibited intermarriages. The spouses of such marriages and their offspring are facing various legal difficulties in respect of legitimacy of children, inheritance, adoption, right of maintenance etc.

In 2012, the government enacted a new law of registration of marriage aiming to provide legal and social protection to Hindu women from marriage-related cheating but has kept the provision of marriage registration optional. There is no provision of separation of their religion and also woman has no right on paternal or husband's property. Hindu man can get re-married but a Hindu widow cannot get remarried. Hindu women suffer in the hands of her in-laws and do not get legal support.

Hindu family laws do not permit divorce under any circumstance although the decision regarding divorce is mutual. As per the Hindu Marriages Disabilities Removal Act 1946, Hindu women can file cases with courts to only regain the right to conjugal life. Besides, Hindu women can file cases under Family Court Ordinance 1985, Dowry Act 1980 and Women and Children Repression Act 2003. But these laws are too inadequate to protect Hindu women's rights due to conservative social system. A new law is in card of

the present Bangladesh government making the registration of Hindu and re-marriage of girls. This proposed law also opposed by conservative Hindu leaders.

There are many new laws in India to protect the rights of Hindu women such as Widow Marriage Act 1856, Racial Inability Remission Act 1850, Child Marriage Prevention Act 1929 (Amendment 1938), Earned Property Affairs Act 1930, Inheritance Act 1925 and Hindu Women's Rights to Lands Act 1937. Besides, new laws have been made in India after independence in 1947.

It is obvious that in rural Bangladesh, some quarters, in order to establish their personal authority, are involved in the practice of issuing fatwas. Punishment in the name of fatwa is against the Constitution

Pluralism in respect of law is contrary to Bangladesh constitution, although practices of Salish and Fatwa are still prevalent in the country. The society should try to enforce the constitutional provision of equal rights for all and gradually introduce existing laws in the private sphere, including marriage, divorce, custody, inheritance, and maintenance. The best alternate is formal or informal Mediation (locally known as Shalish) to deal with personal and family disputes.