Elusive Justice: The Story of a Woman Justice Seeker

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DEDICATION

To the women struggling for justice in the Arbitration Councils in rural Bangladesh
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INTRODUCTION

The Arbitration Council System is a state-led semi-formal rural justice system in Bangladesh, which deals with family disputes relating to marriage, divorce, polygamy, dower and maintenance of wives. How gender relations, power relations, and law interplay in the process of decision making in the Arbitration Council System was the subject matter of research in my PhD study. As a part of the study, I did an ethnographic fieldwork for two years in between 2009-2011, when I studied sixty Arbitration Councils' cases. Some of these cases moved me seriously. This is just one story of a woman justice seeker in the Arbitration Council System in rural Bangladesh.

I should give you some more information to help understand the story. The Arbitration Council System functions in association with rural local government authorities called the Union Parishad. A Union Parishad is responsible to administer justice through the Arbitration Council system, among other services, in around twenty-five villages.

Introduced in 1961, the rural justice system deals with the matrimonial disputes among the Muslim population of the country. It follows the Muslim Family Laws Ordinance 1961 to deal with the cases before it.

An Arbitration Council is composed of a Chairman (who is usually the head of the local government body) and a representative of each of the parties to a dispute. It hears the parties, examines the evidences and witnesses produced, makes investigations, if needed, and then comes to a decision as to the dispute before it.
1 THE GRIEVANCES

On 3 May 2010, a Muslim wife, aged 23, made an application to the Chairman of Kansat Union Parishad seeking justice through the Arbitration Council System.

In the application, she stated that her husband, aged 28, married second time without any permission from her or from any Arbitration Council (which is prerequisite for a polygamous marriage). They had a 3-year-old daughter. Before the second marriage, the husband used to torture her, and wanted to marry again. After the second marriage, the husband’s torture on her increased. The husband obliged her to stay with the second wife. Then, the plaintiff wife, with her father’s assistance, filed a case in a district court (a formal court) against the husband on the ground of wife battering under Women and Children Repression Prevention Act, 2000. Consequently, police arrested the husband and the court sent him to jail. Thereafter, he was in jail for three months. After the husband came out of jail on obtaining bail in the wife battering case, the husband’s family arranged for a shalish (informal community based mediation) to settle the issue. The issue was settled in the shalish with a number of conditions that: (a) the husband would not torture her anymore; (b) he would not compel her to live with the second wife, that is, he would not make both the wives
to stay together in the same house; (c) he would give Taka 100,000 (Bangladesh Currency) to the first wife as a compensation for the mental and physical torture she had already suffered, and (d) he would take the first wife immediately to his house from the wife’s parents’ house. In consideration of all these, the plaintiff wife would withdraw the case from the formal court.

After the shalish, the wife withdrew the case in the formal court against the husband, and went to her husband’s house (in law’s house, as it was a joint family). She was, however, tortured again both physically and mentally by her husband, and mentally by the other family members of the husband. Then she returned to her father’s house again, and after one month of stay at her father’s house, she made this application to get justice from the Arbitration Council System.
2 THE TRIAL

The Chairman of the Union Parishad registered the case, and sent notices to the defendant husband to appear before the Chairman and appoint his representative. On 9 May 2010, both parities appeared before the Chairman and appointed their representatives. The plaintiff wife appointed her paternal uncle as her representative. The defendant husband appointed a senior male relative as his representative. Thus, an Arbitration Council was constituted.

On 19 May 2010, the hearing of the case started. The plaintiff wife gave her statement before the Arbitration Council. She complained about her husband’s second marriage without her permission. She detailed her experience of physical and mental torture by her husband and in-laws. The Arbitration Council adjourned the hearing of the case for that day.

The hearing started for the second day on 2 June 2010. The defendant husband started giving his statement. He denied all the allegations of torture made by the wife. In addition, he told that he had taken oral permission from the (first) wife for his second marriage.

All his statements were severely contested by the wife’s representative. He told to the Arbitration Council
that everyone knew the ‘nature’ and ‘activities’ of the
husband. He claimed that there were hundreds of
people, who had witnessed the husband’s ‘bad
activities’ and torture on the wife. Then, the husband
was going to tell something, but the representative of
the wife stopped the husband by asking, ‘who will
believe that she (the wife) has permitted you to get
second marriage? Are we insane people? Are you
thinking we are mad people?’

The representative of the husband protested such
questions of the wife’s representative. The defendant
husband told in a high voice, ‘Yes, I tortured. What can
you do? Go to court. I don’t accept this council’s
decision.’

The Chairman tried to calm both the parties by
adjourning the hearing for that day, and fixed the next
date for hearing. After that day’s hearing, the husband
did not appear before the Arbitration Council on the
next four consecutive dates fixed for hearing. Nor was
his representative present.

After several notices sent to the defendant
husband, he appeared before the Arbitration Council
on 18 August 2010. Both parties started formal talk to
come to a solution, but that discussion ultimately
turned to a quarrel, nobody was listening to nobody’s,
there were complaints and counter complaints by both
the husband and wife parties. The Chairman again
adjourned the hearing, gave the parties time to think
about a solution they could reach by informal
discussion among themselves, and then let the Council
know it in the next date.

On 25 August 2010, the Arbitration Council met
again. The representatives of both the parties informed
that they had discussed the issues and come to a
decision that the husband would take the wife to his
house within the next fifteen days and they would try to
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live a happy conjugal life. The Chairman heard the decision, and after a short discussion with the representatives endorsed the decision as the decision of the Arbitration Council, and thus the case was disposed off.
3 AN EVENING WITH THE WIFE’S FAMILY

After the final session was over, when the parties were standing in the Union Parishad premises and preparing for leaving the place, I wanted to talk to the husband, but he denied talking to me.

A member of the Union Parishad, who worked as one of my informants, asked me to let him go.

Then I went to the wife, who was standing a few yards distance from the husband, to talk to her. The wife too denied talking to me as the husband was standing nearby, but she told me in a lower voice that she would like to talk to me at her father’s house.

In an evening two days later, I met the plaintiff wife. She requested me to come at that time of any day, because she worked in a cottage industry as a worker, and returned home only in the evening. After going to their home at the pre-fixed time, I found several other senior relatives of the wife waiting for me.

My wife accompanied me. I took my wife willfully so that she could talk to the wife and extract more information. I knew that the shy village wife would not talk to me easily, and frankly.

After talking to the plaintiff wife and the senior people of the house, I learnt some background information of the parties, which helped clarify many
issues related to the case. It was revealed that the husband was not much educated. Some family members told that he studied up to class VIII, some told up to class IX. By profession, he was a TV cable operator. Through this cable business, he used to earn well enough to maintain his family. A family member of the wife told me that, ‘see, there is no specific reason for his doing so (the second marriage). There is no fault of the wife. He (the husband) has now earned a lot of money, and that money has made him mad. He does not know how to spend the money. Therefore, when he has a good wife and a little daughter, he married again. He could live a good family life, but he did not do it.’

But why did he do that? How could he ignore his responsibility to the wife, to the family, as desired by the society? Was it just because he earned well?

When I asked these questions specifically to a member of the Union Parishad who acted as a representative in the Arbitration Council for the case, he replied:

Well. I can give you some internal information. This will help you understand the situation. You see, in such cases, a family’s role is very important. That is, how a family is reacting to such a case. In this case, you see, the wife and the husband are cousins in pre-marriage relationship (It was very useful information that I did not know earlier). The fathers of the wife and the husband are two consanguine brothers. The two brothers, that is, the two families had a good relationship, when they put their children to marriage; but after marriage, the relationships of the two brothers and the two families deteriorated. There were different reasons, one of which involved the share of family property. This affected the relationship of the husband and the wife as well. The husband started torturing the wife, so that the wife wants a divorce, and the families no longer become linked with each other anyway. As the wife’s
family is financially weak than the husband’s family, the husband’s family knows that the wife’s family cannot do anything against the torture. The fact is that the husband’s family has full support to the husband’s activities (i.e. torture). If the husband’s family did not support the husband, he could not do anything, because he is in a joint family with his parents. When the husband married second time, his family accepted it, or you can say the family helped him marry second time.

The father of the wife did not deny the deterioration of the relationship of the two brothers, rather he added that, the deterioration was the main reason, and now his brother was taking revenge by using his son (i.e. the husband) to torture his daughter (i.e. the wife). In addition, a local political leader was the husband’s patron, who always supported the husband in his ‘bad’ activities. The leader had good relationships with police administration, court officers, lawyers, and he had assisted the husband in every way to defend the case the father of the wife filed in the formal court on the ground of wife battering.

I asked the father of the plaintiff wife that when the husband had married second time without any permission from his daughter or from any Arbitration Council, why he did not file a case for this illegal second marriage, and instead why he filed a case on the ground of wife battering case.

The father explained the reason very frankly that he was an uneducated man, and he did not understand all these legal things. He had discussed with some of the well-wishers about what to do in those the situations. They suggested filing a case on the ground of wife battering, because, a woman battering case was a ‘strong’ one. According to his explanation, a strong case was in which he court and police would
take rapid action. Because of the women rights campaigns and government policy to deal with the cases of domestic violence seriously and speedily, usually courts took rapid action on domestic violence cases.

The father, however, claimed that if he went to the court on the ground of illegal second marriage, the court would tell them to settle the case by themselves. They would not deal with the polygamy cases seriously. I asked whether he or anyone familiar to him had any such experience that the court did not deal with it seriously, he replied in the negative, and told that: ‘we know what will happen. We can guess. Moreover, no one goes to a court for a polygamy case. There are many people (wives) who go to courts with false allegations of wife beating or torture. At least my case was genuine. I went to the court because my daughter was really tortured.’

I also learned that after coming out of jail on bail, the husband’s family arranged for a *shalish*. The wife’s family participated in the *shalish*. The issues were settled on some conditions including the wife family would withdraw the court case against the husband; the husband would take the wife to his house, and would treat her well. Accordingly, the wife’s family withdrew the case, but the husband did not comply with the conditions. Rather after taking the wife to his house, he tortured her again.

I wanted to learn from the father of the wife that how he would explain these things.

The father explained that that *shalish* arranged by the husband party was a tactics only, which he did not realise at that time. It was a strategy so that the wife withdrew the court case against the husband. Since the prime objective of the wife’s family was to settle the issue and to help their daughter live a happy conjugal
life, they comply with the decision of the shalish. They withdrew the cases against the husband within a few days after the shalish. The husband party too came and took the wife to the husband’s house. However, just after a few days they realised that the shalish was a strategy only. After taking the wife to her in-laws house, the husband started torturing her, and this time the torture was intense than earlier. Since the husband was landed in the jail as a result of the wife’s case, it severely hit his ego, and created huge resentment in him, and he wanted to take revenge by torturing the wife. In addition, the above said powerful political leader and the husband’s family had full supports in the torture.

My wife talked to the plaintiff wife, and the wife gave all the harrowing account of the physical and mental torture she suffered. My wife asked the wife that what she was thinking to do against such torture in future. The wife responded that as the Arbitration Council had decided the cases and the husband had promised that he would take the wife at his house within fifteen days, and would behave well with the wife, she was just expecting something positive in future.

The wife was, however, doubtful that her husband would change positively. She told that if the husband took her and behaved well with her following the Arbitration Council’s decision, she would forgive everything and would start a life afresh. She told that she did not care about herself, about her life, but she was thoughtful about her three and half years old daughter.
After a few weeks of my visit to the wife’s family, I learnt from an employee of the Union Parishad that the husband had not taken the wife according to the Arbitration Council’s decision.

Then I met the representative member of the Union Parishad in the wife’s case and asked him whether he knew any development about the case. The member informed me that the wife’s family had asked the husband about it, the husband replied that he would not take the wife anymore. He would divorce the wife.

After this development, the wife and her family became helpless again, because they had no other alternative before them. The wife’s family had no financial ability to take the case before a formal court again. Moreover, they had no confidence that they could successfully fight against the husband in a court of law, because the husband had all the power to appoint good lawyers to deal with his case. He could influence the investigation process by bribing police officers. Hence, going to the formal court was not an alternative for them.

Thereafter, the wife’s family was trying to arrange for another shalish to settle the issue. However, the people who had been involved in the shalish earlier did not show interest to participate in another shalish, because they thought that arranging another shalish would be useless. The husband had bypassed the
decisions of all the previous *shalish*. He had not complied with the decision of the Arbitration Council too. Therefore, there was no guarantee that the husband would comply with any future decision of another *shalish*.

A member of the Union *Parishad* had made a comment, which in fact summarised the whole problem: ‘The man (husband) is beaadob (ill-mannered, unsocial). We the society people cannot do anything against him. Only the police and court can do something against him. Then who will go to the court? The wife’s father does not have that capability.’

Just before a week of my return from the fieldwork, I enquired about the case, and learnt that the husband had already sent a divorce notice to the wife through the Union *Parishad*, but no Arbitration Council was formed until then to deal with the divorce case.
ABOUT THE AUTHOR

The author, Dr Zahidul Islam, is a lawyer practicing in the Supreme Court of Bangladesh since 2007. His main practice areas include constitutional and administrative law, criminal justice, employment law, human rights law, and family laws in Bangladesh.

The author is also an independent legal anthropologist, who did his PhD in law and anthropology from the Centre for the Study of Law & Governance, Jawaharlal Nehru University, New Delhi, India. As a legal anthropologist, he works in the areas of rural justice, informal dispute resolution, legal pluralism, criminal justice culture in the lower courts, and family justice in Bangladesh. His upcoming project is an anthropological study of the constitutional laws and politics of Bangladesh.