



ACCESS TO JUSTICE IN BANGLADESH SITUATION ANALYSIS

SUMMARY REPORT 2015



Justice Sector Facility Project
Law and Justice Division
Ministry of Law, Justice and Parliamentary Affairs
Government of the People's Republic of Bangladesh



Access to Justice in Bangladesh Situation Analysis

Summary Report
2015

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Access to Justice in Bangladesh
Situation Analysis: Summary Report

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Note: This report is an executive summary of a much longer 'Full Report' that provides considerably more detail and can be found on the following website:

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ASSM Zahirul Haque

Secretary, Law and Justice Division
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Foreword

On behalf of the Ministry of Law, Justice and Parliamentary Affairs of the Government of Bangladesh, I am pleased to introduce the report "Access to Justice in Bangladesh: A Situation Analysis" which has been produced under the Justice Sector Facility, a project directly implemented by the Law and Justice Division in cooperation with the United Nations Development Programme and the UK's Department for International Development.

This landmark nationwide study provides a clearer evidence-based picture of the status of the justice sector in Bangladesh, including how people resolve legal disputes and the challenges they face in doing so, across both the formal and informal justice systems.

The study spanning the justice system as a whole, canvasses the perceptions and experiences of more than 4,500 citizens, including justice service recipients, from a range of societal groups and geographical regions all over Bangladesh - via both a general household survey, as well as more specific assessments conducted with justice experts and those who have come into contact with the informal and formal justice systems.

The key findings produced and the recommendations generated will inform without any doubt relevant legal policy reform initiatives aimed at improving timely, affordable and accessible justice delivery in Bangladesh and increasing trust and confidence of the citizenry in our justice system.

I would like to convey my sincere appreciation and thanks to our international development partners, the Department for International Development of the United Kingdom and United Nations Development Programme, for their valued and continued support in strengthening the justice system of the country as well as Data Management Aid for completing with competence and commitment this study.

ASSM Zahirul Haque

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Survey Area

Bangladesh



Abbreviations

DfID	Department for International Development (UK)
JSF	Justice Sector Facility
NGO	Non-governmental organisation
NLASO	National Legal Aid Services Organisation
Tk	Bangladeshi Taka
UNDP	United Nations Development Programme
UP	Union Parishad

1. Background

Bangladesh has a dual legal system, with the formal system based on the laws, rules, procedures, traditions and trappings of the former colonial power (save for family law, which is governed by the religious laws of the disputing parties), and a less formal system based on traditional justice mechanisms and role players (including village-based mechanisms and religious and cultural leaders) that have traditionally helped to resolve various civil and criminal disputes and conflicts while, more recently, non-governmental organisations (NGOs) have provided and continue to provide mechanisms and services for resolving disputes. Both the formal and informal justice systems are perceived to include barriers to justice, particularly for the poor, women and other vulnerable groups.

The current study was commissioned by the Justice Sector Facility (JSF) to attempt to gauge levels of access to justice and the barriers that might exist.¹ Access to justice should always be considered from the perspective of the users of the system – the ordinary men and women who are litigants in civil disputes, suspects in criminal trials, and victims and witnesses of crimes and their families. Thus this report focuses primarily on users' knowledge, understanding and perceptions of key role players in both the formal and informal justice systems operating in Bangladesh rather than providing a detailed evaluation of each institution and the problems it faces.

2. Methodology

The study took place from April to December 2014 and included: a "light touch" evidence based assessment of the core justice sector agencies (police, courts, prosecutions, prisons, legal aid); a household public perception survey involving 4,795 respondents from around Bangladesh – both rural and urban areas – an equal proportion of men and women, and representatives of all walks of life chosen randomly; a users' survey of 1,633 people who had actual experience of either the formal or informal justice systems – either as 'litigants' in civil disputes or as accused or victims of crime (or close family members of such); and a questionnaire based survey of the views of 400 senior members of justice sector service providers (referred to throughout the report as the 'experts').

1. *The JSF was established in July 2012 with the support of the United Nations Development Programme (UNDP) and the United Kingdom's Department for International Development (DfID). It is implemented as a project by the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs, with the overall objective of improving justice sector outcomes through strengthened communication, coordination and cooperation between agencies.*

3. Institutions and stakeholders surveyed

The formal justice system includes all role players in criminal justice - the police, prisons, prosecutors, ministries, National Legal Aid Services Organisation (NLASO), lawyers and the criminal courts – and those involved in civil justice, including primarily lawyers and the civil courts.

At the informal level, justice is provided primarily by traditional Shalish (a mix of mediation and arbitration, often administered by the Union Parishad Chair), Arbitration Councils² religious, customary and other leaders, and NGO-led mediation, often based on traditional Shalish but modified to be fairer to women and other vulnerable groups, and often referred to as NGO-led Shalish.

Since it is not possible to focus on each and every role player in the justice system, in this report we focus on the most commonly used Courts in Bangladesh – the District Courts – as well as the police, prisons, the NLASO, lawyers and those NGOs providing legal aid to people in the formal system as representative of the formal justice system. We then focus on Traditional and NGO-led Shalish to represent the informal system.

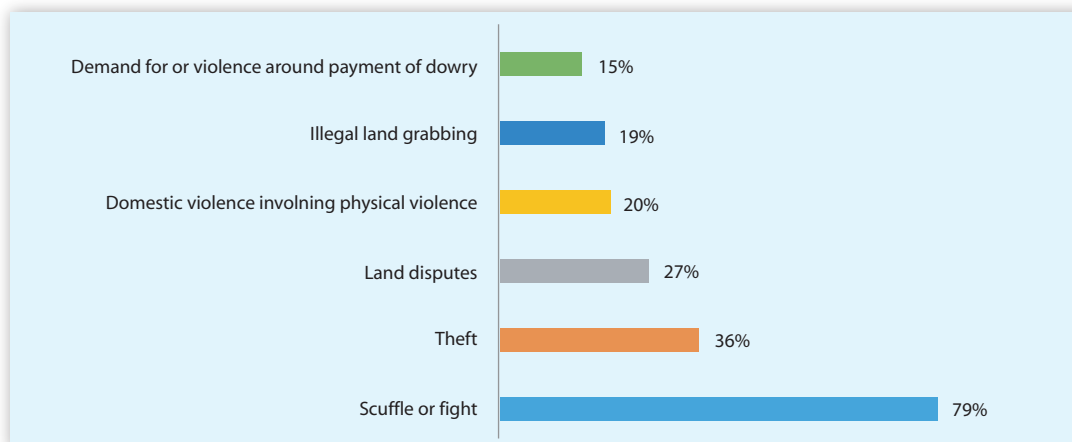
More recently, **Village Courts** have also been created by the Village Courts Act of 2006 and are meant to be established in each Union Parishad (UP) to bring justice close to where people live and work. While part of the formal justice system, the Village Courts are based on traditional Shalish with important differences in the composition of the Court adopted from the NGO approach. They are empowered to deal with both minor civil and criminal matters primarily through mediation and, as such, they bridge the gap between the formal and informal systems and are also

4. Crimes and conflict

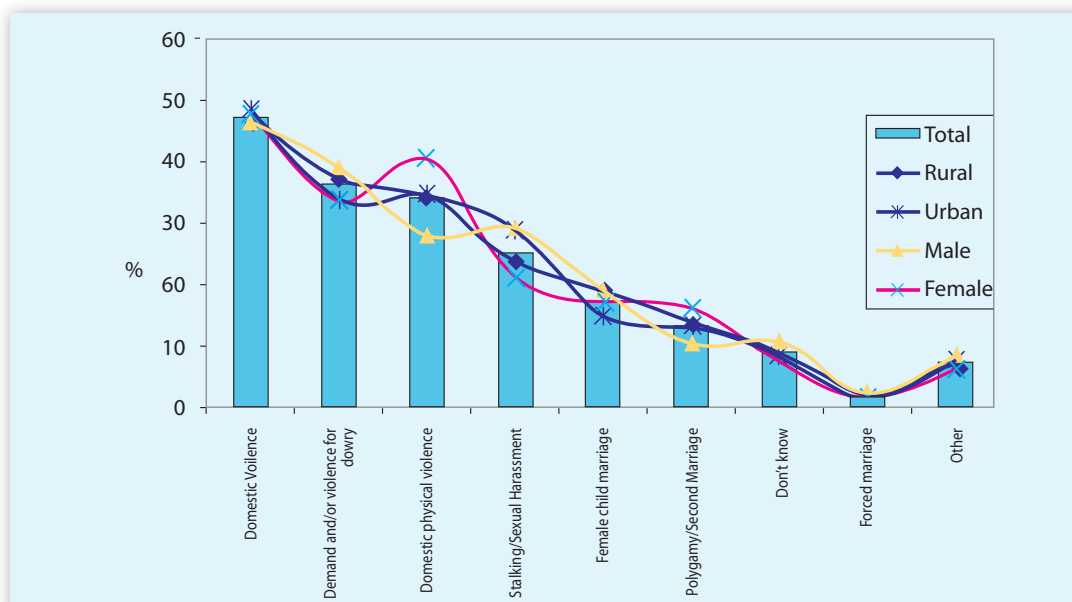
a. Crime

Predictably, relatively minor offences (affray and theft) and crimes and conflicts related to land (illegal land grabbing and land disputes generally) are the most commonly experienced crimes and conflicts in Bangladesh while crimes against women - particularly domestic violence and demand for or violence around the payment of dowry – score worryingly high when people are asked to list the most common offences generally – Figure 1.

2. *Originally established under the Muslim family law ordinance, these hear and resolve family disputes including divorce, polygamy and maintenance.*

Fig. 1: Most common crimes

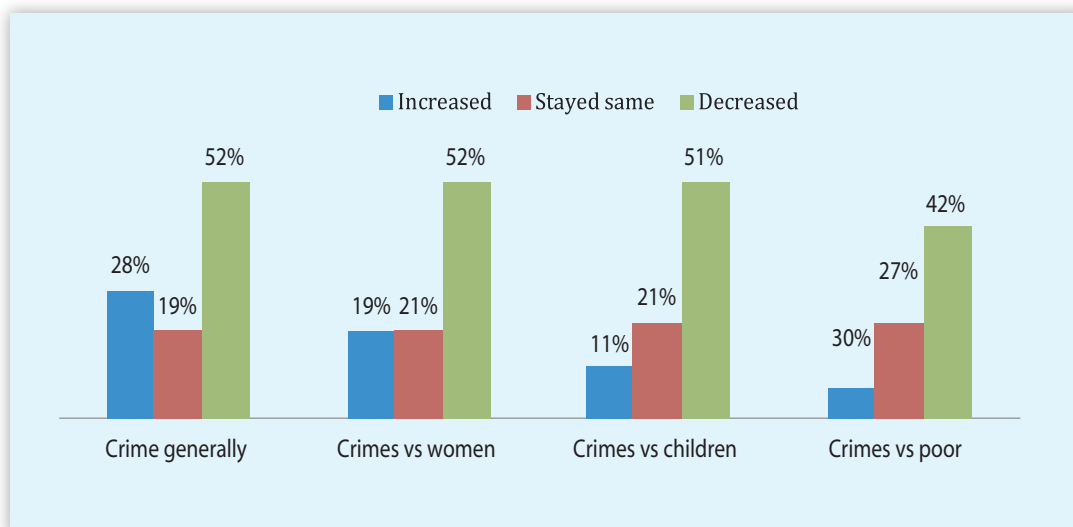
Although all groups experiences are similar, women and children are obviously more likely to face certain crimes than others. When it comes to women, despite laws outlawing domestic violence, dowry, child marriage and other forms of violence against women and children, and despite special courts being established to deal with these, all were identified as common crimes that women and children continue to face – Figure 2.

Fig. 2: Major problems faced by women

Other vulnerable groups are perhaps more at risk of certain crimes and conflicts than others. For example, severe overcrowding in camps for **Rohingya refugees** reportedly contributes to high levels of domestic violence and abuse while people with disabilities are also more at risk generally, given social attitudes towards them. Girls with hearing and speech disabilities are at an increased risk of rape and sexual violence based primarily on their difficulty in reporting to the police and the difficulties in giving evidence in court that often leads to acquittals and a further level of impunity.

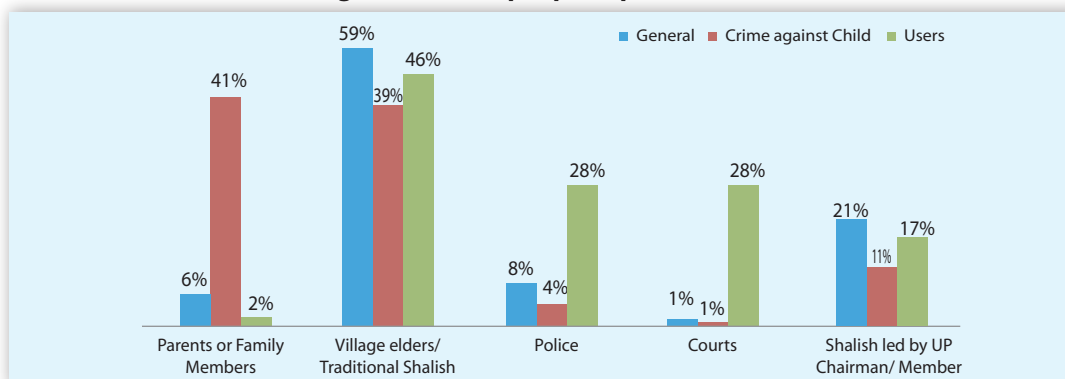
There is some perception that crime is decreasing, with 52% of respondents in the household survey of the opinion that crime generally has decreased in the past three years. Similar results were found when respondents were asked whether the levels of crime involving particular vulnerable group have increased or decreased, as illustrated below. Nonetheless, nearly half of the respondents were of the opinion that levels of crime have remained the same or increased in the same period – Figure 3.

Fig. 3: Has crime increased or decreased over the past three years?



Where do people report crime? As can be seen from Figure 4, most people are likely to report crimes generally to a traditional Shalish or village elder or to the parents of the child in the case of crimes against a child.

Fig. 4: Where do people report crime?



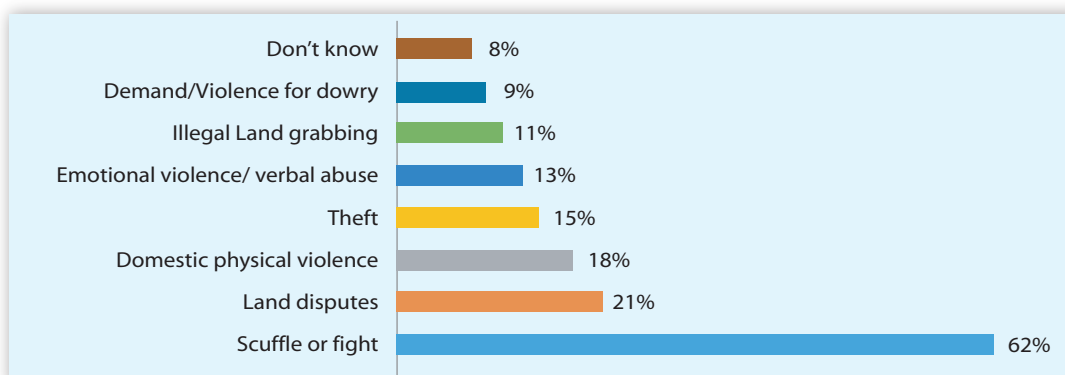
Of course, this is partly attributable to the fact that people would prefer the compensation that a Shalish might order rather than imprisonment or a fine for the perpetrator, especially in minor criminal cases. But it is quite possible that people face barriers when trying to use the formal system.

The perception that people rarely report crimes to the police was supported by the experts surveyed, most of whom agreed that people are more likely to report crime to the informal system – and when they do report to the formal system, they are more likely to report to the courts than to the police. These opinions were also partly borne out by the ‘users’ that took part in the survey, although equal numbers of these had reported to the court as to the police.

b. Civil conflicts and disputes

When respondents in the household survey were asked to identify the most common conflicts and disputes in their communities other than crime, crimes still featured high on the list - Figure 5.

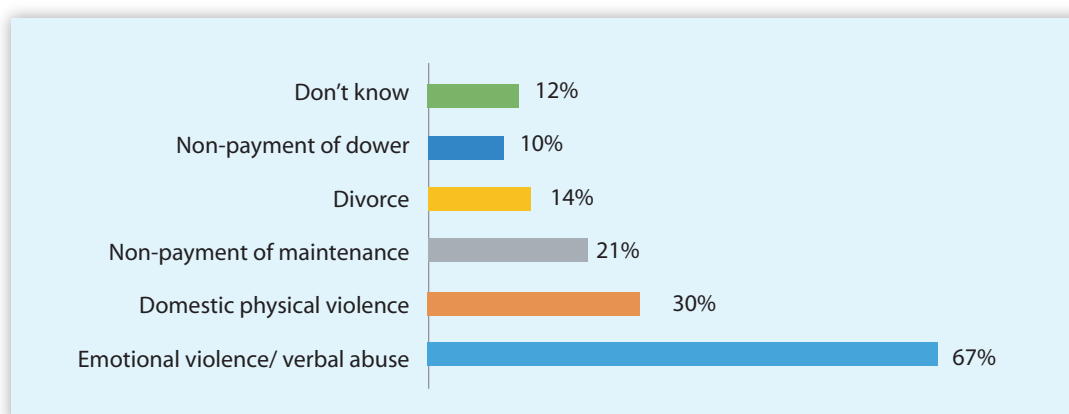
Fig. 5: Most prevalent disputes and conflicts



The most obvious reason for this is that all of the crimes listed also give rise to civil claims (for damages, injuries or return of stolen property) and non-lawyers do not necessarily distinguish between ‘crimes’ and ‘disputes’.

When asked which conflicts affect women in particular, emotional violence / verbal abuse by family members (67%), domestic (physical) violence (30%), non-payment of maintenance (21%) and divorce (14%) were most commonly mentioned – Figure 6.

Fig. 6: Most common disputes and conflicts for women



Reflecting the fact that people do not necessarily distinguish crime and civil conflict, and the fact that traditional mechanisms are favoured for both, when asked where people would go for help in resolving a dispute or conflict, most people would choose a village elder or a Shalish led by a village elder Chair of a Union Parishad.³

5. Access to justice in the formal justice system

a. The Police

The police play a critical role in criminal justice in Bangladesh and are the part of the system that people are most likely to encounter in their daily lives. Most people (67%) have access to a police station less than 10 Km from their homes, although people in urban areas are more likely to be close to a police station than those in rural areas, and it is also relatively inexpensive to access their

3. Although many users actually appear to have used the courts, it should be remembered that the ‘users’ surveyed included those accused of crimes and victims who might have had no say in which forum was selected by the police to deal with the matter.

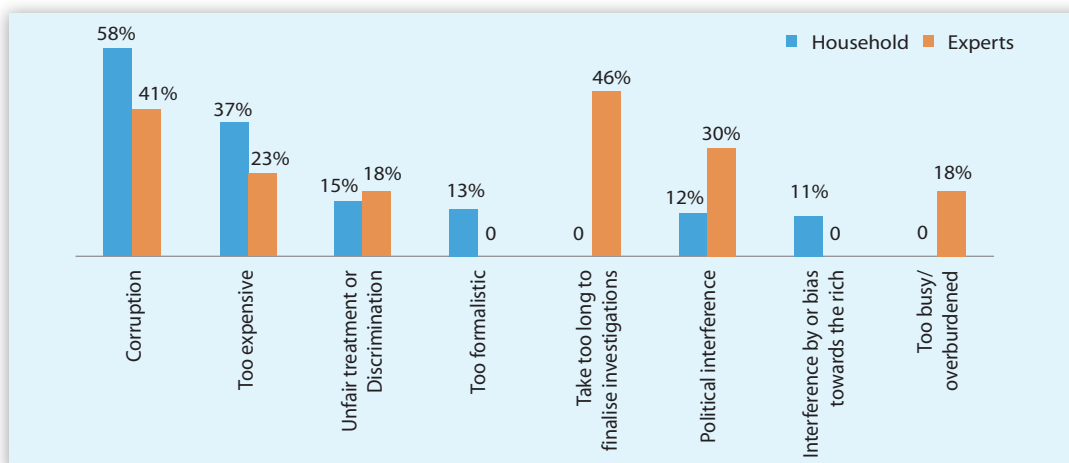
services. Public knowledge and understanding of the police's role and functions is good and, as illustrated below, at least some people believe the police are doing relatively well when it comes to arresting criminal, enhancing public safety and preventing crime; while some experts believe they are well trained, experienced and have good investigative skills. However, in no case were any of these strengths mentioned by more than 50% of respondents.

Table 1: Strengths of the police

In which areas are the police doing well? (Household survey)	What are the main strengths of the police? (Experts survey)
• Arresting criminals (49%)	• Well trained (45%)
• Enhancing public safety (26%)	• Experienced (33%)
• Preventing and reducing crime (24%)	• Good investigations skills (30%)

Even so, it is of some concern how few people would rely on the police when exposed to crime most preferring to rely on the informal justice system. While there are good reasons for doing so (it is quicker and has better prospects of compensation), it is clear that levels of corruption create a significant barrier to using the police. In fact, most members of the public and most experts would point to this as the biggest barrier of all⁴ – Figure 7.

Fig. 7: Main problems people experience dealing with the police

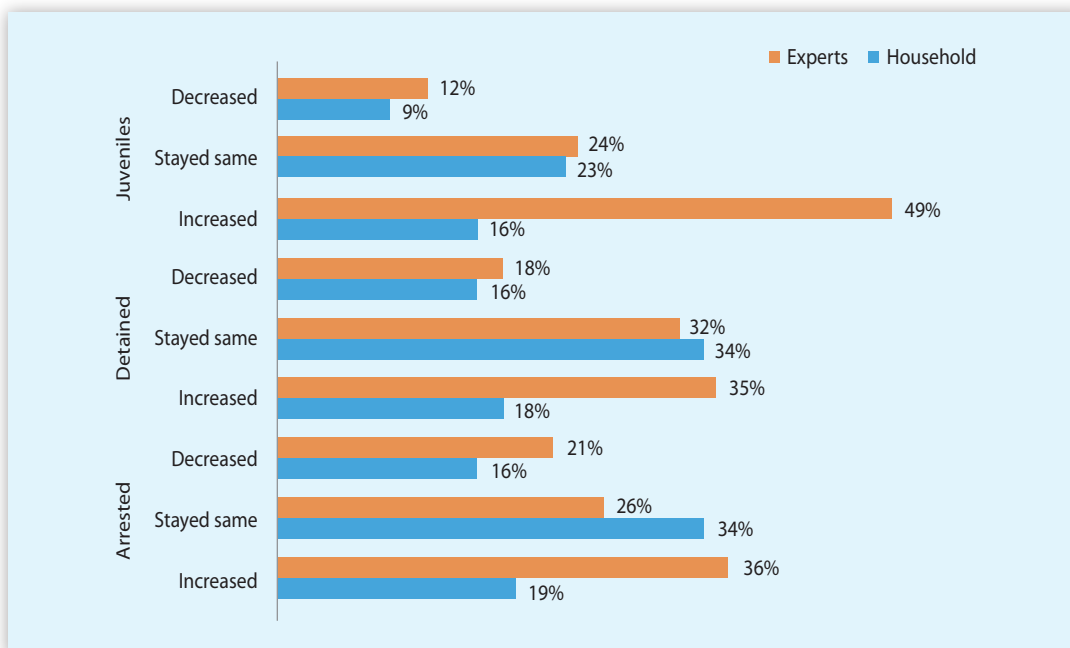


4. Corruption was mentioned by 58% of respondents in the household survey and 41% of experts when they were asked to list the main problems people face when dealing with the police. Many respondents also mentioned that using the police is 'expensive', which suggests that people might have been referring to bribes that have to be paid – both by suspects to avoid charges being brought against them, but also by victims before the police will investigate their complaints.

There are numerous reasons why high levels of corruption are found amongst the police in most countries in the world such as low salaries and the huge potential to subsidise these with bribes given the power the police wield and the desire of those who have transgressed to avoid arrest at all costs. But this is clearly an area that needs urgent attention. Corruption is also closely linked to trust and while more than half of respondents in the household survey (58%) trust the police a bit or completely, 38% don't really trust them – the main reasons being that the police are corrupt, that they require payment for their services, that they represent the interests of the rich, and fear of police harassment or violence.

Respect for the rights of 'users' of the police (accused and detained people and victims and witnesses) is also an area where improvement is required with many people of the opinion that the Police's respect for the rights of arrested people, those in detention and juvenile offenders has declined over the past three years – although experts were more likely to see improvements in this regard – Figure 8.

Fig. 8: Respect for rights

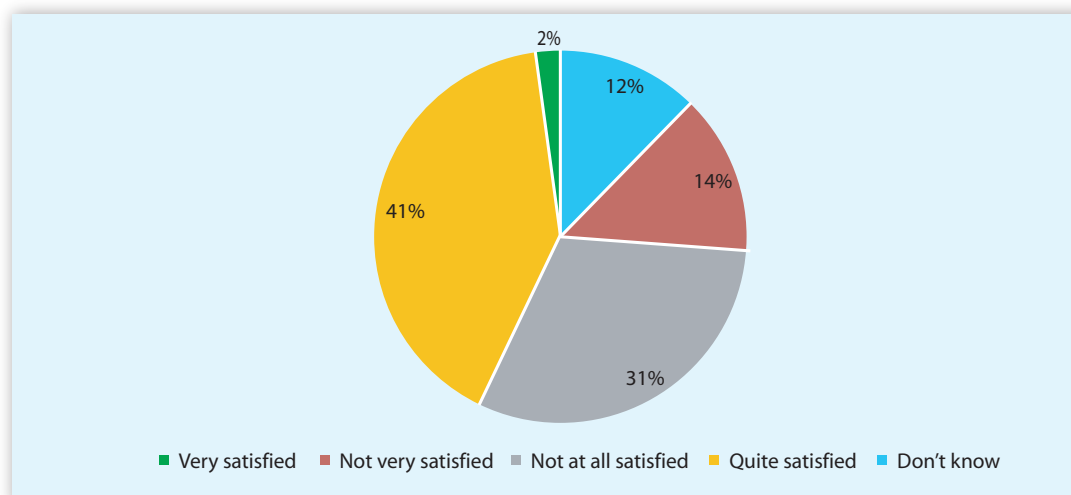


Perhaps the biggest area of concern in this area is that despite the recently passed Torture and Custodial Death (Prevention) Act, which aims to prevent torture by setting punishments and ordering compensation for victims of torture and death in police custody as a result of torture, perceptions remain that torture by the police continues. This would seem to be the experience of those who took part in the users survey as well, where a quarter of those who had been arrested (25%) reported some type of torture or abuse by the police – the most common forms being beatings or rough behaviour by the police generally.

Although few people were able to list any victims' rights, there was a perception that this has improved. However, these results were skewed by the low numbers of respondents in the household survey able to answer the question and the overwhelming number of police experts stating that there have been improvements. When asked what problems victims face, the most commonly mentioned were again corruption, that the police are 'too expensive', and that it takes too long to finalise investigations. When it comes to vulnerable groups, the same list of problems were mentioned – corruption, too expensive, and discrimination. Women victims in particular face barriers in the form of gender bias while poorer victims are more likely to be adversely affected by corruption and related practices than the wealthy. Religious minorities, people with disabilities and Dalits are also faced with problems when reporting crime that lead to a level of impunity amongst those who commit crimes against them and place them at increased risk.

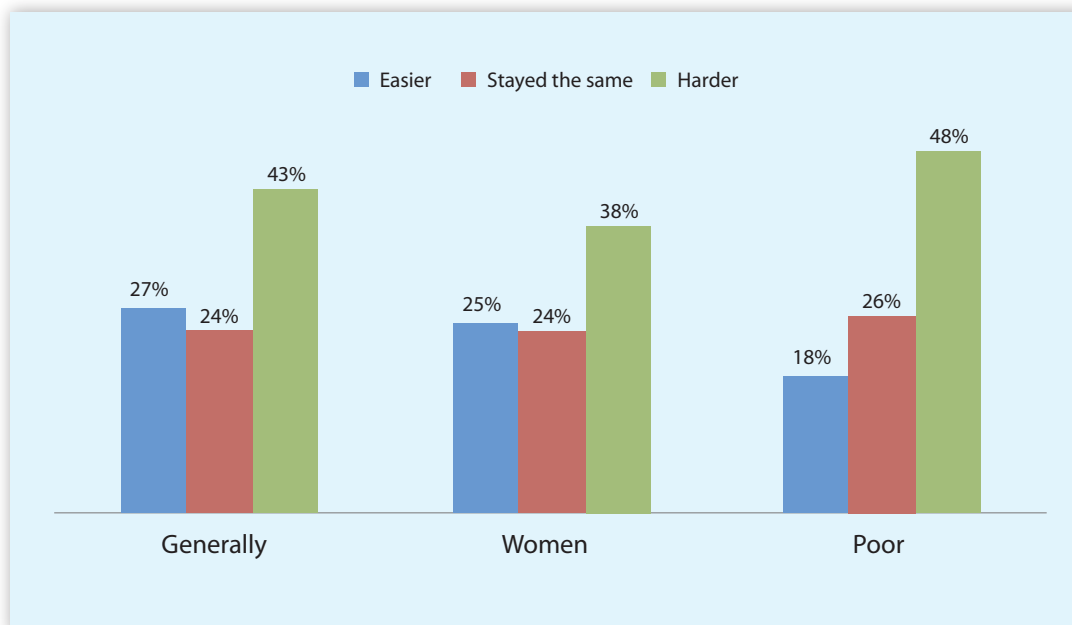
Slightly more than half (53%) of users who had reported the matter to the police were either very or quite satisfied with how they were treated by the police, while a little less than half (45%) were either not at all satisfied or not very satisfied – Figure 9.

Fig. 9: Level of satisfaction the way the police treated the victim (user survey)



When asked whether it has become easier or harder to get justice from the police over the past three years, most people believe there has been no improvement or that it has become harder for people generally, and for women and the poor – Figure 10.

Fig. 10: Has it become easier or harder to access justice in relation to the police?

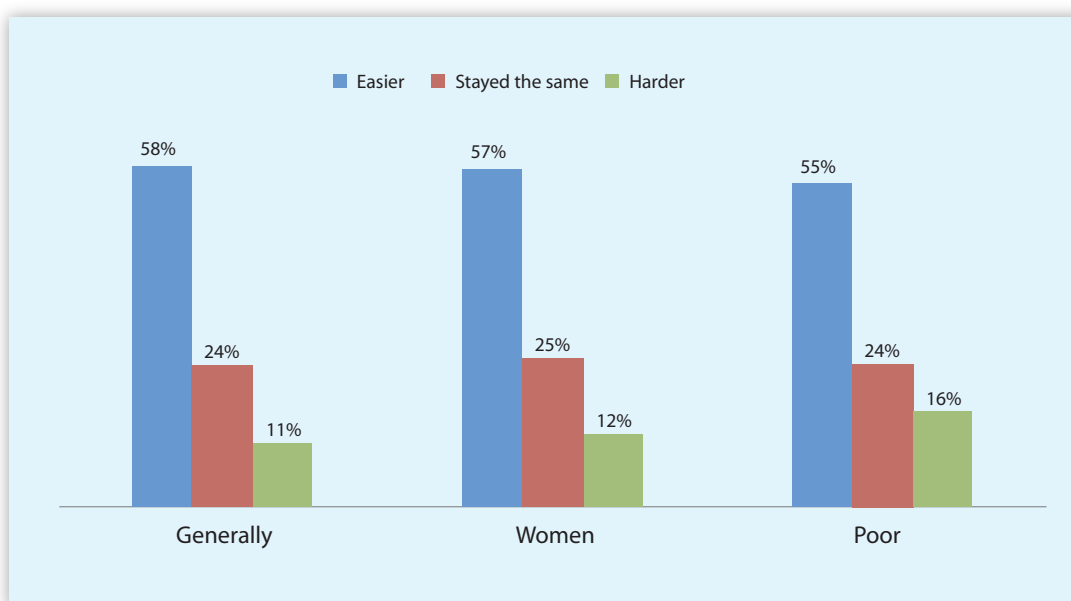


b. Village Courts

Village Courts are established by the Village Courts Act of 2006 (as amended in 2013) and empowered to deal with a wide range of minor criminal matters and civil disputes using conciliation, mediation and arbitration and with the power to award compensation of up to Tk. 75,000. In addition to being easy to reach (technically, every Union Parishad is entitled to establish and run a Village Court on the request of an aggrieved party), comparatively few are actually functional (although Government is currently running a project, with the support of the European Union and UNDP, to assist UPs to establish and operate them). Where the Courts are operating effectively, access is good for vulnerable groups and most respondents were of the opinion that women and the poor, victims of crime and those accused of crimes encounter no particular problems when accessing justice in these courts. If they do encounter any, these are most likely to be the same problems as anyone else - discrimination or unfair treatment, interference by or bias

rich. Respondents in the survey who were aware of the Courts reported their judgments and processes are fair (58%), matters are dealt with quickly (55%) and inexpensively (53%), and levels of corruption are low (only 9% mentioning this as a problem). In addition, most respondents believe it has become easier to access justice in these courts over the past three years generally, and also for women and the poor - Figure 11.

Fig. 11: Has become harder or easier to access justice in Village Courts?



The majority of those who knew of these courts (88%) trust them completely or a bit while only 6% don't trust them. Slightly over half (eight out of 15) of those who had actually used the Courts to resolve a criminal matter, and 5 out of 6 who had used them to resolve a civil dispute, were satisfied with the result.

When it comes to barriers to justice, most of the respondents in the household survey who were aware of the Village Courts were of the opinion that there are no problems at all (70%). Of those who listed problems, the three most commonly listed (all with very low percentages) were discrimination or unfair treatment (11%), corruption (9%) and interference by or bias towards the rich (8%) and politically connected (5%). When compared to the traditional Shalish, their major advantage is that their decisions are legally binding and enforceable. But the biggest problem when it comes to accessing justice in these courts is the fact that many Courts have yet to be

established while some that have are not functioning properly. This is a pity since, although their monetary jurisdiction is limited, they have the capacity to provide a level of accessible and affordable justice for women and the poor, especially when compared to the slow, expensive and remote District Courts.

c. District Courts

Note: Although the Courts at the District level that deal with criminal matters are technically called Court of Sessions, the term District Court is generally understood by non-lawyers as the Court in the district that hears serious criminal and civil matters and so the term District Court is used in this report to cover both District Courts (civil) and Courts of Sessions (criminal) at the District level.

Based at district level, District Courts are relatively accessible in terms of distance and costs to get there, although less so for those in rural areas. Awareness of the roles and functions of District Courts is fairly good amongst the public generally (given that few people have actual experience with these) and at least some people believe their procedures and judgments are fair and that they dispose of cases quickly. Even then, the percentages listing these were all way below 50% in each case. Experts on the other hand were much more familiar with the District Courts and listed the following as the main advantages of these courts in resolving **civil and criminal matters**:

Table 2: Main advantages of District Courts

Advantages of District Courts		
Generally (household survey)	In civil matters (experts)	In criminal cases (experts)
Don't know (37%)	Trained Judges (68%)	Trained Judges (63%)
Judgments are fair or good (36%)	Judgments can be appealed (45%)	Judgments can be appealed (25%)
Fair processes - 30%.	Both sides are given a fair hearing (45%)	Both sides are given a hearing (33%)
None (12%)	Highest authority of law (26%).	Efficient (19%)
Quick disposal of cases (9%).	Fair (25%)	Fair (26%)

Levels of trust in District Courts are high with 73% of respondents in the household survey trusting them a bit or a lot and there is some perception that respect for rights is improving, including for women and other vulnerable groups (although most would struggle to access these), but not perhaps for the rights of the accused.

There would also seem to be consensus amongst experts and the general public that the quality of justice has improved in the District Courts over the past three years.

When it comes to barriers faced, the Courts are relatively far from where people live and work (when compared to Shalish and Village Courts), cost more to reach and take bigger chunks out of people's productive or work hours as a result. Although not mentioned as a barrier by any significant percentages of those surveyed, the backlog of 2.8 million cases in the formal system, increasing annually and mostly in the District Courts, clearly puts strain on the entire justice system that creates barriers and leads to additional costs and barriers for all users. They are also generally more expensive to use, require lawyers and are perceived as very formalistic. And perceptions of corruption are also high, which impacts on the poor and women in particular - as illustrated by the table below:

Table 3: Main barriers in District Courts (household survey)

Main problems in District Courts (Household Survey)		
Generally	For the poor	For women
Too expensive (33%)	Too expensive (41%)	Too expensive (33%)
Corruption (31%)	Corruption (35%)	Corruption (30%)
Discrimination or unfair treatment (11%)	Too complicated (11%)	Don't know (27%)
Need for lawyers (23%)	Need for lawyers (11%)	Need for lawyers (18%)
Too formalistic (12%)	Too formalistic (15%)	Too formalistic (14%)

People with physical, hearing, speaking and sight related disabilities also face particular challenges when it comes to attending and giving evidence in court while women victims in particular pointed to inadequate facilities at court for women and that many were physically attacked and beaten or otherwise harassed by the accused or members of their families whilst at

court. Lack of protection for victims and witnesses was also highlighted by experts when they were asked whether victims of crime are becoming more reluctant to attend trials and why this was the case. Other barriers to witnesses attending that were specifically mentioned were the delays in finalising cases, frequent adjournments, and the number of times they were expected to appear before testifying.

Table 4: Time in court – criminal trials

	Where case finalised %	Where case not finalised %
Less than a year	42	36
Between 1-2 years	21	15
2-3 years	18	18
3-4 years	11	8
More than 4 years	9	23

Table 5: No. of adjournments – criminal trials (victims)

No. of adjournments	% of victims
0	15%
1-5	30%
6-10	14%
11-20	17%
21-30	7%
More than 30 times	16%

The biggest barriers faced by those accused of crime in the District Courts (including women, the poor and juvenile offenders) are essentially the same as those everyone else: cases take too long, it is expensive, there are too many adjournments (as evidenced by the table above, although those accused of crime were not asked this question), procedures are complicated and there is a need for lawyers. Interestingly though, only relatively small numbers of experts listed corruption, lack of legal aid and the fact that bail is not awarded as barriers to accused people.

Causes of delays

To get a sense of what causes delays, experts were asked in both the expert survey and in key informant interviews to list these. The most commonly mentioned were the case backlog and that there are not enough Judges and Magistrates to deal with this. Lawyers ask for numerous adjournments as a way of earning more fees, most of which are granted so that Courts can at least clear their roles for the day. Judges and Magistrates are also relatively poorly paid when compared to other countries and there is insufficient infrastructure so that they are required to share office space and courts and are only able to sit for a few hours each day. There is also limited use of diversion options (allowed for compoundable offences by the Criminal Procedure Code) although referrals of minor matters to Village Courts reportedly happens more frequently where these have been properly established.

When it comes to civil trials, these too take a long time to finalise (in many cases, more than four years) and include numerous adjournments (often more than 30):

Table 6: Time taken to finalise – civil trials

Time taken to finalise by Court	% of respondents
Less than a year	13%
1-2 years	19%
2-3 years	21%
3-4 years	7%
More than 4 years	41%

Table 7: No. of adjournments – civil trials

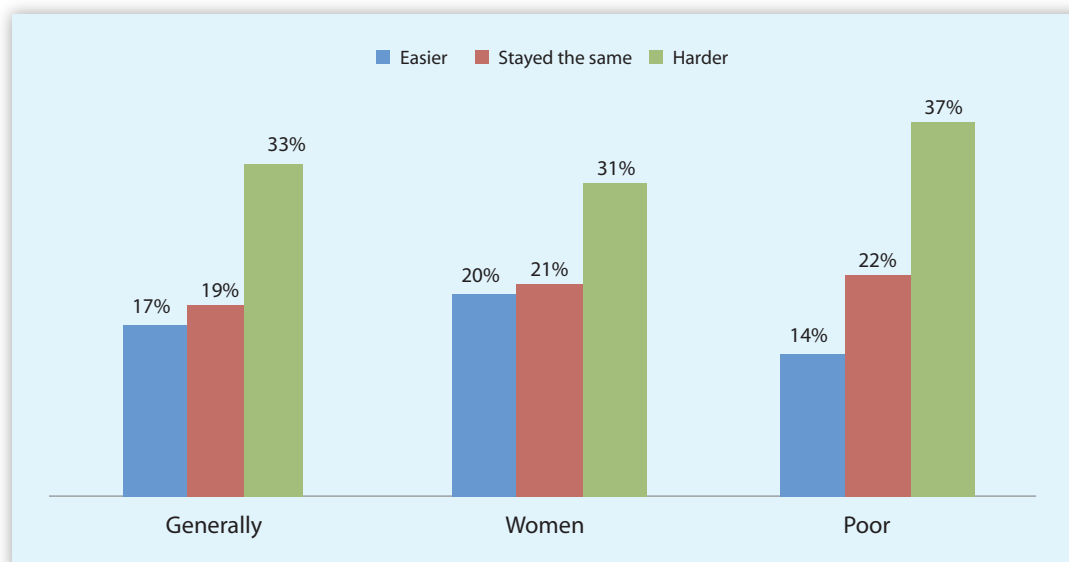
No. of adjournments	% of respondents
0	2%
1-5	21%
6-10	16%
11-20	16%
21-30	10%
More than 30 times	34%

Perceptions of corruption at District Court level are high amongst the general public with 28% of respondents of the view that corruption amongst judicial officers has increased over the past three years and 36% that it has increased amongst court officials. Experts tended to agree, with 21% of the opinion that it has increased amongst judges and magistrates and 40% that it has increased amongst court officials over the past three years. Many users also reported being asked to pay a bribe to a judge, magistrate, prosecutor or court official but most of these requests came from 'agents' or lawyers and so it is not certain who asked for or received the bribe.

Rates of conviction are also low – no more than 24% - which, according to the High Court Judges surveyed, can be attributed at least in part to the fact that prosecutors are badly trained and that they face overwhelming case-loads. Suspicions also exist that they delay matters or perform badly as a result of bribes from the accused (supported by the comments of users) – some of which proceeds are then used to offset the bribes prosecutors have had to pay to Ministry officials to secure their positions.

Worryingly, a third (33%) of respondents in the household survey believe it has become harder to access District courts generally, with similar answers received when respondents were asked whether it has become easier or harder for women and the poor to find justice here – Figure 12

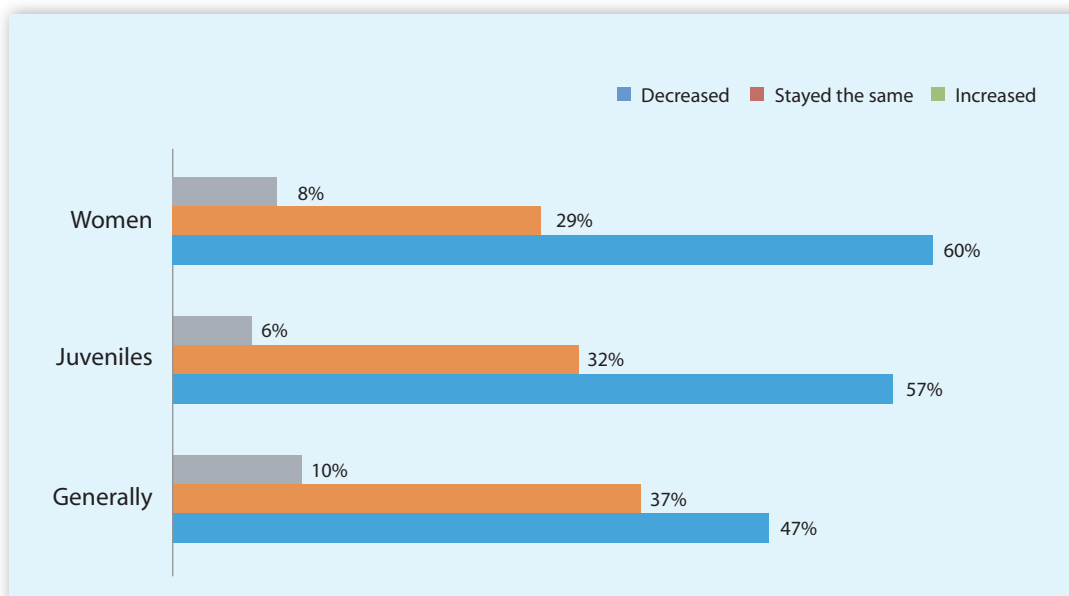
Fig. 12: Has it become harder or easier to access justice in the District Courts?



d. Prisons

Although it was not possible to reach sufficient numbers of prisoners to constitute a sample in a household survey, those who might best be placed to discuss these issues were canvassed during the qualitative aspects of the survey as well as during the experts survey. Based on these it would seem that their main strengths are that they are safe and secure and allow the free practice of religion. In fact, most experts would say that they are doing better generally when it comes to protecting and respecting the rights of prisoners – including young prisoners under the age of 18 years – Figure 13.

Fig. 13: Respect for rights prisoners



The main problems reported relate primarily to overcrowding, caused mainly by the large number of awaiting trial prisoners and the length of time it takes to complete trials that compound the problem. Overcrowding itself leads to a range of problems for inmates, including limited access to decent food, exercise, health care and medical staff; young prisoners (under 18) often being kept with older prisoners; and additional delays when prisoners are left behind when required at court or simply fall of the system. There is also some concern that incidents of torture in prisons are not seen to be decreasing and nearly one-fifth of respondents (19%) believe the incidence of torture and inhumane treatment has increased.

e. Access to lawyers and legal aid

Given the complexities in both the law and procedures in the formal system, and the fact that those under arrest and in custody are at a great disadvantage with rights that need to be protected, access to justice in the formal sector is closely linked to people's access to lawyers and to legal assistance when they cannot afford them.

Predictably, lawyers in private practice are too expensive for the majority of Bangladeshis, and cost is obviously the biggest barrier to people being able to access their services. The limited number of women lawyers also creates a specific barrier for women. And while the perception is that they are well trained and experienced, it is clear that people also regard them as rude and abusive. There is also a perception amongst both the general public and Judges that lawyers deliberately delay matters since it is in their financial interests to do so. This is confirmed by the experiences of users of the District Courts who reported numerous adjournments, often at the request of the lawyer, and by the experts, nearly two-thirds of whom would agree (64%) with the statement 'lawyers in private practice often delays cases as a way of earning more money'. It was also pointed out by experts that the Bar curriculum is outdated and academic training at universities poor.

To attempt to address the fact that most people cannot afford a lawyer, legal aid is provided under the Legal Aid Services Act 2000 (and its Regulations) and is implemented by the National Legal Aid Services Organisation (NLASO), District Legal Aid Committees established in every district, and local legal aid committees established in around half of the Upazilas and Union Parishads.⁵ The creation of Committees at the Supreme Court, Labour Court and Chowki Court is also currently underway. The 'threshold' level has also recently been increased, making it considerably more accessible to people, while it was reported (and reflected in actual statistics from the NLASO) that despite these limits, requests are almost always granted.⁶

The scheme uses lawyers in private practice who are paid for their services according to stipulated and fairly low tariffs, which inevitably means that only the less experienced or less successful lawyers are available and willing to work for these rates. Nonetheless, satisfaction with services was high amongst users and most experts were of the opinion that the quality of services provided by legal lawyers has improved over the past three years.

5. *In practice, full-time District Legal Aid Officers have only been appointed in 19 out of 64 districts by 2012, with Judges acting part time as Legal Aid Officers in other districts.*

6. *The amounts have been increased to an annual income of less than Tk 1,500,000 for applicants with matters in the Supreme Court and Tk 1,000,000 for those with cases in other courts.*

But awareness of government legal aid offices and committees is extremely low, with 97% of respondents (95.5% of men and 97.5% women) in the household survey unaware of any such office or committee. Of those who were aware of it, few seemed to understand what its role was and who would qualify. The NLASO is aware of the lack of awareness at grass roots level, but has limited resources to address this. And so while it is currently granted in almost all cases, the situation may change considerably as awareness increases and more and more people apply.

Numerous non-governmental organisations (NGOs) in Bangladesh also provide legal aid and assistance to people involved in matters in the formal justice system. They have well trained staff, including fully trained lawyers, and provide services free of charge. And since many of these have a focus on one or more vulnerable groups, members of these groups are often specifically supported, increasing their chances of finding justice in the formal system. But while they are relatively close to where people live and work in those areas where they exist, the biggest barrier to their services is clearly their limited outreach.

6. Access to justice in the informal justice system

a. Traditional Shalish

The traditional Shalish system is the most commonly used method of dealing with both civil and criminal conflicts in Bangladesh and informal dispute resolution committees of one type or another exist in both rural and urban areas. These have always dealt with civil disputes amongst people and although they have no legal authority to do so, Shalish committees also deal with a multitude of minor criminal matters in practice. Many criminal matters have a civil aspect to them, which allows the Shalish to deal with these and order the payment of compensation by the guilty party, increases access to justice, and reduces the burden on the formal system.

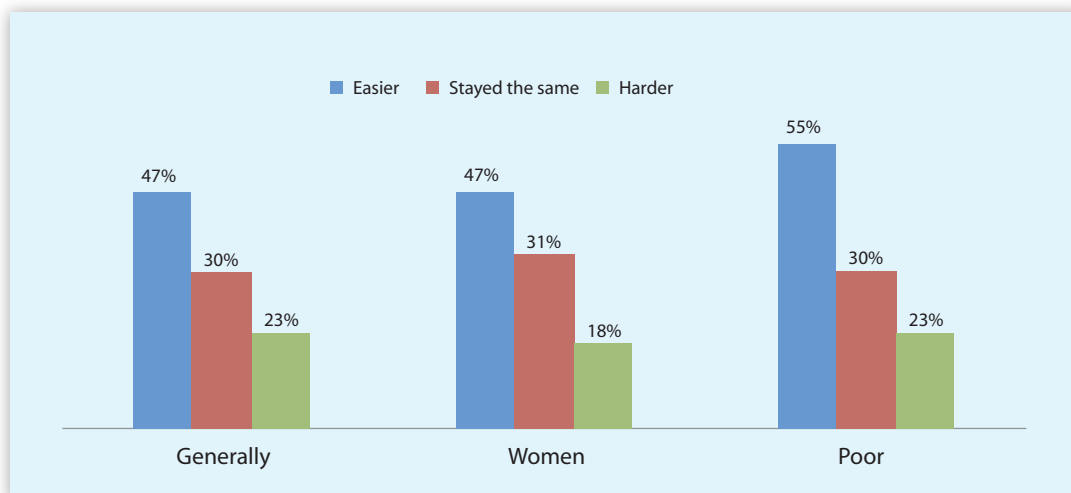
Almost all Bangladeshis (97%) are aware of the traditional Shalish and understand its roles. The most commonly mentioned strengths and advantages during survey were the fairness of processes and 'decisions', the proximity of the Shalish to where people live (since they take place at village level), the speed with which matters are disposed of (taking less than a year for 71% of users in criminal matters and 67% of users in civil matters), and of course the fact that they are very inexpensive when compared to other mechanisms.

Table 8: Main advantages of traditional Shalish

Advantages of traditional Shalish		
Generally (household survey)	In civil matters (experts) ⁷	In criminal cases (experts)
Fair or good judgments (50%)	Give both sides a hearing (57%)	Give both sides a hearing (50%)
Quick disposal of cases (45%)	Courts deal with matters quickly (57%)	Deal with matters quickly (47%)
Cheap (49%)	Judgments are appealable (35%)	Can appeal judgments (29%)
Close to where people live (35%)	Can appeal sentences (15%)	Can order compensation (16%)
Fair processes (31%)	Decisions can be enforced (14%)	Fair (20%)

Being cheap and close by, traditional Shalish offers access to justice for vulnerable groups, especially women and the poor. Significantly, 85% of respondents in the household survey trust the traditional Shalish completely or a bit and almost half of the respondents in the household survey (47%) were of the opinion that the quality of justice in traditional Shalish has increased over the past 3 years. This was borne out by the users survey where very high levels of satisfaction with the services offered by the Shalish were found - nearly three-quarters (74%) of users of this system for dealing with criminal matters and civil matters (73%) reported that they were either quite or very satisfied with the way they were treated by traditional Shalishkars. Levels of corruption also appear to be comparatively low and nearly half of respondents (47%) believe it has become easier to find justice in a traditional Shalish over the past three years. Similar responses were found when participants were asked whether it has become easier or harder for women and the poor - Figure 14.

7. Some of these answers are slightly problematic and suggest that experts might have been confused by the question. There is no sentence at the end of a civil dispute and although a Shalish may make a 'decision' when applying arbitration in both civil and criminal matters, there is no decision after mediation and there is no mechanism for appealing decisions or agreements at all. The answers only make sense if one reads in that what was really meant is that, where parties cannot agree during a mediation or where a decision is taken after an arbitration that one or both parties disagree with, they are entitled to take the matter to court.

Fig. 14: Has it become harder or easier to access justice in traditional Shalish?

As might be expected given the number of advantages respondents identified, most of those in the household survey listed no problems or barriers with these at all. Of the small percentage who did, unfair treatment to women and the poor, corruption and interference or bias towards the rich were most frequently mentioned. Similar views were found amongst experts, although they were less inclined to believe that these were without any problems than others:

Table 9: Main barriers in traditional Shalish

Barriers in traditional Shalish		
Generally (household survey)	In civil matters (experts)	In criminal cases (experts)
None (60%)	Bias towards the rich (30%)	Bias towards the rich (27%)
Discrimination / unfair treatment (23%)	Political interference (26%)	Political interference (26%)
Corruption (19%)	Patriarchal bias (20%)	Discrimination / unfair treatment of the poor (25%)
Interference by / biased towards the rich (13%)	None (22%)	Corruption (23%)

When it comes to access to justice for women, there is a widely held opinion that the all male Shalishkars discriminate against women, it is interesting to note that there may be some evidence that the situation may be improving for women, with 62% of males and 61% of females answering that women face no specific problems in a traditional Shalish. Nonetheless, significant percentages

in both the household and experts surveys were of the opinion that women, the poor and other vulnerable groups continue to face barriers – particularly bias towards the rich, interference by the politically connected, and the possibility of corruption. There is also some evidence to suggest that sexual minorities, and particular LGBT members of society face problems with the attitude of older members of society towards them that can lead to bias and discrimination against them.

Finally, although it is advantageous to parties to a minor criminal dispute to have the matter resolved in a Shalish rather than a court, and while this reduces the burden on the formal system, allegations are made that Shalishkars sometimes go beyond orders of compensation and order punishment, often in the form of public humiliation or even banishment orders or whippings. Such practices should clearly be stamped out since they violate the rights of people and limit their access to justice.

b. NGO-led Shalish

Bangladesh is home to some of the largest NGOs in the world, many of which have developed a form of NGO-led mediation based on traditional Shalish and often referred to as NGO-led Shalish.⁸ These use mediation rather than arbitration (which is the more common approach in a traditional Shalish) and are more participatory than a traditional Shalish. Levels of trust are very high, with 93% of those who were aware of them trusting them completely or a bit, while all six users who had used an NGO-led Shalish to deal with a criminal matter, and all four who had used them for a civil dispute, were satisfied with the services they received – although the number of users is too low to draw any real conclusions from.

Yet despite the quality of services these provide and the skills and experience of their staff and the speed and quality of the services they offer, their outreach is limited and so access to these too is limited to those living in areas where they operate.

8. Examples include the Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (Blast), Ain-o-Salish Kendra (ASK) and Swanirvar Bangladesh.

7. Overall conclusions and ideas for improvement

a. Overall conclusions

While the police and Village Courts are close to where people live, District Courts are much less accessible in terms of distance, particularly for those in small towns and rural areas, and the entire formal justice system uses complicated legal language that non-lawyer members of the public find difficult to understand. The Police, Judiciary and Prisons are seriously understaffed and underfunded and limited levels of cooperation and collaboration between role players, particularly in the criminal justice system, lead to delays and knock on effects across all institutions. Costs and corruption in all parts of the system and interference by the political and more powerful members of society make it difficult for the poor and vulnerable groups to access justice, while delays with investigation by the police and frequent court adjournments increase the cost both in terms of lawyers fees but also in terms of lost work and productive hours and travel and related costs. Limited use of compensation in criminal matters and lengthy delays in civil matters mean that people wait sometimes years to recover their losses and many people therefore tend to rely on the informal system when victims of crime or needing compensation for damages. The Village Courts have the potential to provide speedy, affordable and accessible justice and have the power to deal with both civil and criminal matters, but few have as yet been established are functioning effectively.

Although there has been some legislative reform (such as the new Child Act and anti-torture legislation) that has sought to improve access to vulnerable groups such as women, children in conflict and in contact with the law and the poor, many of the laws in the formal system are extremely outdated. And while there are prospects for restorative justice in the formal system, including diversion options for compoundable criminal cases and those involving child offenders, the CrPC is terribly outdated in this regard and allows for both minor offences and those that might have seemed minor to a late 19th century mind but which are in reality serious crimes against women that should really be dealt with in the formal system rather than allow for them to be settled through compromise, especially when the offender and victim are not in the same bargaining position. The entire process is extremely outdated and could feasibly be revised to reduce the prospects for delay while nonetheless ensuring fair and equitable justice for all.

There is clearly some progress being made in increasing access to legal aid by government, which needs to be both recognised and applauded. While the quality of lawyers is lower than ideal, the same can be said for any legal aid service anywhere in the world and it is encouraging how many people are of the opinion that the quality of lawyers provided is good and improving. Again, NGOs provide excellent legal aid and assistance, but their services are limited to the areas in which they operate. Lawyers in private practice provide very good services in some cases but they are expensive and out of the reach of most people. Again, this is not uncommon in other parts of the world, but there is clearly a need for greater control over the number of adjournments granted at the request of lawyers and lawyers are generally regarded as aloof and rude. Guidelines and rules in this regard might help to reduce the number of adjournments but it would seem too that the Bar needs to exert greater control.

Given that access to justice in the formal system is difficult for most people, the majority of Bangladeshis continue to rely on the informal system when faced with a conflict or dispute, and even when the victim of a crime. In this regard, the traditional forms of Shalish remain the most commonly used and provide a cheap, fast and relatively simple means of justice for most in the country. Of course, the traditional Shalish is not without its problems and is still regarded as being discriminatory towards women, the poor and other vulnerable groups and richer and more powerful members of society clearly are able to exert some level of control over the outcome. Since arbitration is used more often than mediation, this can lead to levels of unfairness although, in reality, even mediation is susceptible to manipulation by those with money and power who are usually able to get people to agree to much less than what they would hope for. NGO-led Shalish is generally regarded as fairer for all concerned, but the limited outreach of NGOs means that these services are not really available to all.

b. Ideas for improvements in access to criminal and civil justice

Experts were asked what needs to be done to improve access to criminal justice:

- Greater accountability for police, lawyers and the judiciary.
- Improving the services provided by the police.
- Greater access to legal aid.
- Improved case management at courts.

- Develop witnesses and victim protection schemes.
- Increase access to social security and services.
- Provide women-friendly facilities and staff and access to emergency shelters.

When asked how cooperation between the various criminal justice service providers could be improved, the following were suggested:

- Appoint dedicated personnel to manage and improve coordination.
- Improve systems.
- Develop communication, cooperation and coordination mechanisms at District and local levels.

When it comes to improving access to civil justice, the following were suggested:

- Increase accountability for lawyers and the judiciary.
- Greater use of alternative dispute resolution.
- Greater access to legal aid.
- Improved case management at courts.
- Increase access to social security and services.
- Provide women-friendly facilities and staff and access to emergency shelters.

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