Asian Journal of Law and Society (2023), **10**, 516–549
doi:10.1017/als.2023.9

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Neocolonial Digitality: Analyzing Digital Legal Databases Using Legal Pluralism

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Abstract

A prevalent assumption is that digital legal databases generate an exhaustive and inclusive archive for academics and legal professionals to use for gathering information. Bridging theories and methods from digital media studies and legal anthropology, I challenge this assumption and demonstrate how digitizing law is a politicized process that is tied to legacies of colonialism and modern epistemic frameworks of law and justice. Employing the concept of legal pluralism, I conduct a comparative study of urban secular state courts and rural Islamic/customary non-state courts (*shalish*) in Bangladesh to show how the construction of digital legal databases distorts and erases alternate frameworks of law and women's socio-legal experiences. I discuss two significant use of digital legal databases to highlight why it is important to study the gaps and prejudices: (1) they are central to generating new forms of archives—digital archives; (2) they provide the data sets to help train artificial intelligence and influence automated outputs. I develop the term "neocolonial digitality" to explain how power related to legacies of colonialism and other forms of discrimination are embedded in the digitizing process. This concept also holds space for the newer forms of hierarchies, exclusions, and power structures that digitality permits, focusing on the particular harms marginalized communities encounter in the Global South.

Keywords: digital database; legal pluralism; South Asia; AI Judge; Global South; Bangladesh

1. Introduction

A prevalent assumption is that digital legal databases generate an exhaustive and inclusive archive for academics and legal professionals to use for gathering information. Using theories and methods from digital media studies and legal anthropology, I challenge these assumptions and demonstrate how the process of digitizing law is connected to pre-existing social biases that are in part tied to the legacy of colonialism and modern epistemic frameworks of law and justice. This article examines legal pluralism in Bangladesh and conducts a comparative study of urban state courts and rural non-state courts known as *shalish* to show how the construction of digital legal databases is tied to elite practices of law, which distort and erase rural women's understandings of law and their socio-legal experiences. I develop the term "neocolonial digitality" to explain how the intersection of law and the digital is a site that reinscribes historical forms of discrimination that disproportionately harm marginalized communities in Bangladesh and, by extension, the Global South.

This article focuses on how *uthai nawa* (উঠায় নেওয়া) (also referred to as *tule nawa*) cases are handled in *shalish* and the Supreme Court of Bangladesh to demonstrate how the digitization of cases is closely tied to elite perspectives and practices, transnational

politics, and pre-existing social biases. *Uthai nawa* or *tule nawa* are common local Bangla phrases that mean "taking" or "picking up." The phrases are used by many rural communities to indicate that a man forcibly took a woman and married her against her will. However, the social context reveals that women and their families use this language of coercion even during consensual elopement. I explore how "*uthai nawa*" is also used as coded language in villages due to the gendered social climate of Bangladesh, where women cannot express desires such as romance and sexuality overtly. I explore how *shalish* has the local knowledge and scope to decode this coded language, which can help women, while the Supreme Court treats such cases as abduction, which results in harming women. Through the analysis of *uthai nawa* cases, this article demonstrates how Supreme Court records aid in constructing digital legal archives and highlights the stories and narratives from *shalish* that are omitted. This article notes how subaltern women's experiences and standpoints of law are erased as cases move from non-state courts to state courts, and then from state courts to digital legal databases.

In addition, I show how *shalish*, which is deemed as backwards and barbaric towards women by global NGOs and local urban elites, can grant women agency and cater to their standpoints of justice when the Supreme Court fails to do so, challenging the notion of superiority and universality of the (Eurocentric) modern rule of law in state courts. The point is not to glorify *shalish* and ignore its patriarchal and discriminatory tendencies, but rather to highlight the role of non-state law in the everyday lives of people on the ground. Elora Shehabuddin, who studied *shalish* and women's rights in Bangladesh, suggests that the Bangladesh state has limited reach in all parts of the nation, which then creates a vacuum for *shalish* to command law and steer legal matters.[1] Shehabuddin details how *shalish* is engrained within elite and gendered power relations, leading to violence on women, but also notes how rural women creatively resist dominant forms of power. In addition, the point of this article is not to claim that one legal system is better than the other—that is, I do not intend to pit *shalish* against state courts and reinforce pre-existing dichotomies. *Shalish* and state courts do not operate in isolation, but rather interact and influence one another. There are many scholarly discussions on how *shalish* is limiting and my goal is to also apply the same critical lens to modern state courts and note their limitations in ensuring women's rights in Bangladesh. A more nuanced approach to studying non-state courts such as *shalish* demonstrates how alternate legal systems that operate with different frames of justice can at times produce more equitable outcomes for marginalized communities, probing the question—why?

This article draws from and extends on the scholarship that complicates the role of consent/coercion in many abduction cases in Bangladesh and South Asia more broadly. For example, Dina Siddiqi, an expert on women's rights and alternate dispute mechanisms in Bangladesh, explores how law related to forced marriage and abduction cases in this region are tied to modern heteronormative ideologies of marriage where women's consent to sex outside of marriage is repressed:

> The law itself is infused with culturally specific meanings of female sexuality and agency, the unspoken assumption being that no woman would willingly have sex with a man unless she believed it was sanctioned by marriage. Law and culture are mutually constitutive of sexed subjectivity.[2]

In other words, consent for unmarried women in Bangladesh is complex, leading to consensual elopement events being treated as coerced abduction. Moreover, Sara Hossain, a barrister in the Supreme Court of Bangladesh, writes about cases in which the parents or

[1] Shehabuddin (2008).
[2] Siddiqi (2015), p. 520.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

guardians of daughters bring charges of abduction when they are against women selecting their own marriage partners and marrying without their approval.[3] Using abduction charges to control women and marriages is common in other parts of South Asia as well. For instance, Flavia Agnes writes about how patriarchy and familial control are reinforced through accusations of "forced" marriage, where women's consent is curbed under the guise of protection.[4] I contribute to this existing literature through extended ethnographic fieldwork studying the rural context—that is, I analyze *uthai nawa* cases by centring on *shalish* proceedings and directly engaging with community members in the villages. Second, studying how *uthai nawa* cases and *shalish* are being digitized or not digitized is a novel study. I use the concept of legal pluralism to note which legal systems and narratives are represented and recognized in digital legal databases to show how the digitizing of law is embedded in modern epistemic frameworks and dominant structures of power.

In other words, I study plural legal systems and show how digitizing law relies on recognizing only the modern rule of law as "real" law, and argue that this perspective is part of ongoing colonial legacies that continue to treat alternate legal systems as "not law." Digital legal databases in prominent research software such as HeinOnline, Manupatra, Westlaw Next, and LexisNexis reinscribe these biased perspectives by also marginalizing and excluding alternate legal systems, despite their prevalence on the ground. Through the analysis of what kinds of cases get digitized and who makes these decisions, this article counters the idea that digital databases are exhaustive and inclusive.

Studying the shortcomings of digital databases is significant because they influence how knowledge and power are mediated across the offline and online spheres. Analyzing databases provides a lens to understand how digitizing law has ideological and material consequences that can deepen communities' marginality in unexpected and perhaps unintended ways. Law is just one area of this emerging problem. Digital technologies are being implemented in all walks of life: employment, education, health, fitness, surveillance, governance, and so on. I explore the shortcomings of digital databases to more broadly unsettle the assumption that digital technologies are neutral and apolitical. Such technologies can reinforce historical forms of discrimination in inconspicuous ways. I call this "neocolonial digitality." Neocolonial digitality refers to how coloniality and legacies of colonialism explicitly and implicitly shape how digital technologies are designed, how they are perceived, who the intended audiences are, and what the intended/imagined uses of such technologies are. Note, I do not mean that marginalized communities do not resist dominant power, nor influence how digital technologies are designed and used.[5] With regard to temporality, the "neo" in neocolonial does not imply that power operates within fixed, rigid boundaries or historical stages. Thinking of power in terms of phases or stages reinforces the modern/traditional or old/new boundaries that this article seeks to undermine. Rather, neocolonial digitality promotes tracing the legacies of colonialism and other forms of discrimination that are embedded in the digitizing process, but also holds space for the newer forms of hierarchies, exclusions, and power structures that digitality permits. It is a complex blending of power from past, present, and future, which highlights the politics of knowledge embedded within the imagination, design, and intended use of digital technologies.

In this article, I explore "neocolonial digitality" in my analysis of digital legal databases; I show how digital technologies are not neutral, namely how they are embedded in racialized and gendered asymmetrical power relations that impact communities in the Global South in particular ways that are often overlooked in European and American academic research. Studying digital legal databases through the concept of neocolonial

[3] Hossain (2011).
[4] Agnes (2011).
[5] Oudshoorn & Pinch (2008).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

digitality provides new ways to rethink prevalent questions of post-colonial governance and feminist critical theory.

Moreover, it helps in rethinking the relationship between archives and epistemic biases. Digital databases require rapid adaptation to new inputs and constraints, and I draw attention to the processes and protocols by which records are created, maintained, and, where possible, modified. I argue that digital databases generate new forms of archives and archiving practices, disseminating knowledge that can materially and ideologically harm women in the non-West. Recent research has shown how colonial archives can recycle hegemonic narratives but also provide grounds for counter-narratives.[6] There is much less research, however, on how colonial/neocolonial power can operate through digital archives.

Moreover, it is important to study the biases of digital databases since they provide the data sets to help train artificial intelligence (AI). If AI is trained using biased data, then the automated outputs they generate will also be skewed. This article explores this point by analyzing AI Judges. Recently, there has been a push to use AI models to predict the verdict of cases and aid in legal decision-making. I show how the outputs generated by such models can produce discriminatory outcomes for rural women in Bangladesh. Thus, it is significant to draw attention to the different ways in which digital legal databases erase particular lived experiences and worldviews, and note how these erasures lead to the discrimination of marginalized communities in the Global South today, and possibly in the future.

2. Methods and research sites

In my study, I conducted archival research of Supreme Court records and employed discourse analysis to read with and against the grain. I also conducted unstructured and semi-structured interviews with diverse people involved in urban and rural legal settings to understand how state courts and *shalish* approach law. Some of these interviewees include Supreme Court lawyers, NGO workers, editors of law report books and journals, rural women, community leaders, religious leaders, respected elders, and local political figures.

I conducted 14 months of ethnographic fieldwork in Bangladesh, engaging closely with Supreme Court lawyers as well as those who run *shalish* in the villages. I worked as a research fellow and conducted participant observation at the legal aid NGO Bangladesh Legal Aid and Services Trust (BLAST) for eight months in-person in the capital city Dhaka. I selected this legal aid NGO since it is established and run by lawyers from the Supreme Court and working here helped me to understand legal proceedings in state law as well as to find networks within the legal community using the snowball-sampling method. For instance, I conducted semi-structured interviews with many editors of law report books and journals through my networks at BLAST who helped me understand how *uthai nawa* cases are currently being digitized or not digitized.

I also conducted ethnographic research outside the capital city Dhaka. I selected Madaripur as my second site since it has the Madaripur Legal Aid Association (MLAA), which is a district-level NGO and its founder, Fazlul Huq, is a significant figure who influenced the conceptualization and implementation of semi-state courts in Bangladesh. Semi-state courts adopt a *shalish* model to familiarize rural litigants with justice mechanisms to which they are accustomed, but also emphasize incorporating state law and formal legal procedures. I observed how MLAA workers attempt to bridge two different frames of justice—*shalish* and state courts. I engaged with Huq as well as their

[6] Spivak (1988); Guha (1988); Trouillot (2015); Gandhi (1998); Stoler (2010).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

core team to understand their perspectives on how *uthai nawa* or *tule nawa* operate in the villages in Madaripur.

Lastly, getting access to non-NGO-mediated *shalish* is difficult if one is not a community member. *Shalish* can occur spontaneously and are spread via word of mouth, which make it difficult for researchers to study. Most scholars who study *shalish* have only visited NGO-mediated ones, and there are many instances in which even NGO workers do not have access to *shalish* that occur within communities. Therefore, my last research site was Jamalpur district, where my own village is located. Having family and extended kin allowed me intimate access to *shalish* in different villages in this district. Being a community member allowed me to act as an insider/outsider researcher since I know the local dialect and am familiar with the background knowledge and sociopolitical context needed to study this space. Of course, there are still differences in power and positionality due to my affiliation with US academic institutions as well as primary addresses in Dhaka city. While I was self-reflexive during my observations, conversations, and note-taking, it is not possible to capture the exact experiences and voices of subaltern communities since this work relies on my interpretations and own epistemic framework.[7]

As part of my ethnographic data collection, I attended 31 *shalish*: seven are NGO-mediated ones and the rest are community-based proceedings held in *masjids*, *madrasas*, school yards, homes, and courtyards. All the names from *shalish* have been anonymized. I also omitted the names of the interviewees who wished to remain unidentifiable. Additionally, I did not mention any specific names of villages to maintain the safety and anonymity of the participants/informants of the research. This article focuses on heteronormative relationships of Muslim couples; it does not have the scope to explore LGBTQ+ communities, refugee communities, indigenous communities, non-Muslim religious groups, and other significant members of alternate legal systems in Bangladesh that must also be included in scholarship.

3. Plural legal systems in Bangladesh

As a post-colonial state, Bangladesh state law is influenced by the British common law, which was instituted and imposed during British colonial rule. The state legal structure thus replicates that of the UK, and legal actors require a law degree and need to pass the Bar exam to practise state law. Many lawyers in elite legal settings have degrees from the UK, which add prestige to their status. Bangladesh's Supreme Court, located in the capital and urban centre Dhaka, exercises authority and control over other courts.

There is much attention by local and global actors on how Bangladesh's alternate legal system—*shalish*—restricts women's rights and should be reformed significantly, but not much conversation on how state courts that are influenced by the modern rule of law and considered more liberating and "free" tend to curb women's rights. That being said, there have been active efforts by academics and lawyers in Bangladesh to decolonize the Supreme Court. For example, Cynthia Farid argues that the Bangladesh Supreme Court has been making efforts to decolonize its judicial review of administrative action. She says:

> The Court has been steadily attempting to disassociate its administrative jurisprudence from its colonial legacies, on the one hand, while on the other, innovating doctrinal principles, modalities of statutory and constitutional interpretation and broadening its reliance on international legal authorities. In a bid to evolve a system of adjudication that addresses socio-political problems unique to Bangladesh, the Court has diverged from conventional Euro-American approaches.[8]

[7] Geertz (1973); Bourdieu & Wacquant (1992).
[8] Farid (2021), pp. 290–1.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

Despite the attempt to detach from colonial legacies and Eurocentric frameworks of justice in many ways, the Supreme Court still reinforces legacies of colonialism and discrimination.

Most people in rural Bangladesh prefer to go to *shalish*, which existed prior to British colonial rule.[9] Tobias Berger defines *shalish* as "the practice of gathering village elders and local elites to resolve dispute";[10] these proceedings can range from trivial family matters to serious crimes such as murder. Dina Siddiqi states that while *shalish* may resemble non-state models of adjunctions such as Northern India's *khap panchayat* and Pakistan and Afghanistan's *jirga*, it differs in several ways:

> The composition of shalish is likely more fluid and unstable than that of khap panchayats, for instance, which are constituted of villagers of the same descent group. Further, unlike in India, debates on the legitimacy of nonstate law have not been cast in terms of pitting the rights of communities against those of the state.[11]

The concept of legal pluralism is useful for this study since it recognizes that legal systems and moral orders exist outside of state law or "official" law. Prominent legal pluralism scholars such as Sally Moore, Sally Merry, and Brian Tamanaha highlight the significance of decentring a state-centric perspective when studying law.[12] Unlike modern state courts, legal actors in *shalish* do not generally have either law degrees or legal education. Instead, *shalish* are usually run by a few notable figures such as community leaders, chairman and members of a union *parishad* (Union Council, the lowest form of government), elites, schoolteachers, religious figures, and so on; these figures running the *shalish* are referred to as *shalishkars* or *shalishdars*.[13] While there is a selected *shobhapoti* (president/leader) in almost all *shalish*, the decisions are discussed amongst the group of *shalishkars*. The *shobhapoti* and *shalishkars* are typically all men,[14] but the NGO-mediated *shalish* generally try to include women. Many urban lawyers tend to regard *shalishkars*, especially those in the villages and towns, as whimsical and prejudiced, while they themselves uphold "proper" legal norms. This article critically interrogates this view, highlighting instances in which *shalish* can recognize women's unequal positionality and decode the coded languages used in rural settings to grant women justice in ways that modern state courts do not.

While *shalish* decisions are not "formal" and legally binding, they are authoritative and hold weight in communities. Sally Folk Moore's concept of a "semi-autonomous social field" helps to elucidate why: this term suggests that non-state courts can have rules based on culture and community ethics that can be outside of state law and capable of being just

[9] Mollah (2016).

[10] Berger (2017), p. 64.

[11] Siddiqi, *supra* note 2, p. 513.

[12] Moore (1973); Merry (1988); Tamanaha (2008).

[13] In most courts that involve Islamic law or Muslim law, Islamic learned figures such as the *kazi/qazi/kadhi* is the judge or a primary figure. For instance, Katherine Lemons (2019) discusses how the *shari'a* courts in India that are known as *dar ul qazas* are run by *qazis* who are trained in seminaries. Lemons calls these courts *shari'a* courts; it is not my categorization. But in Bangladesh, the *shobhapoti* and other *shalishkars* are not required to be established religious figures. *Shalishkars* generally do not have training in law and legal education, nor do they have extensive knowledge about Islamic texts like *kazis* or *imams* do. Yet, these figures can be deeply immersed in the language of law and rights as well as the philosophies of Islam during *shalish.*

[14] However, I attended some non-NGO-mediated *shalish* during fieldwork, which included women. I also attended a couple of *shalish* with most women as *shalishkars*; these types of *shalish* usually handle topics that cannot be discussed in front of men. Some possible topics can be confronting a teenage girl having sex before marriage or confronting a wife who was having a secret affair. In the latter *shalish*, the women *shalishkars* tried to convince the wife to stop the affair before her husband and the elder male guardians found out because they would not be as "lenient" or as "forgiving."

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

as coercive.[15] This account is similar to Laura Nader's research in the Zapotec village, where she explores how social pressure from the community to maintain harmony can be just as coercive or sometimes even more impactful than state law.[16] Moreover, scholars who study law outside modern courts note how alternate legal systems can maintain authority through ties to religion and spirituality as well. Ziba Mir-Hosseini's work suggests that the rules in place in Islamic law or sharia are not necessarily those enforced by the state or other institutions, but rather those between the individual and God.[17] In other words, *shalish* operate within a wider global terrain of alternate courts that have the scope to operate under moral orders that might diverge from state law.

State and non-state courts are not discrete spaces, but rather interact and influence each other in multifaceted ways within various local and global power dynamics. For example, even if *shalish* are not formally recognized as part of state law, there is recognition of their operation in state law with acts such as the Code of Civil Procedure, 1908 Section 89A (Mediation).[18]

Moreover, there are subdivisions among *shalish* as well. A United Nations Development Programme (UNDP) report mentions three different types of *shalish* in Bangladesh: (1) traditional; (2) government-administered village courts; and (3) NGO-mediated.[19] I focus on what is popularly classified as "traditional" *shalish* and question the rhetoric of this categorization. Human rights groups and intergovernmental organizations such as UNDP, Amnesty International, and Human Right Watch frequently label *shalish* as "traditional," even identifying them as sharia courts.[20] Western NGOs and intergovernmental organizations have influence worldwide, and they commonly contrast the supposed "sharia" *shalish* with the presumed "secular" rule of law. These dichotomizing tendencies overtly and implicitly suggest that *shalish* are harmful for women because they are "too Islamic" and backwards. Anthropology scholarship on secular and Islamic law/legal thinking has demonstrated how these categories and frameworks are ambiguous and not universal.[21]

Many academics of Bangladesh who study *shalish* resist thinking about *shalish* as an Islamic or sharia court despite the popular label imposed by many global actors and institutions. There are many reasons for this. First, there is a global trend for non-White groups to have their cultures to be at the forefront of legal analysis. For instance, Leti Volpp suggests that culture is put front and centre in the discussion for non-White groups committing crimes in America, while culture is not mentioned when White Americans are charged with the same crime.[22] The "First World" or the West in general tends to view subaltern women from the Global South as lacking agency and in perpetual states of victimhood based on liberal ideologies of women's rights and empowerment; this perception of non-Western women promotes the saviour rhetoric, leading to justifications for Western interventions (via NGOs or otherwise) to elevate women's rights in post-colonial states.[23] Siddiqi states:

> On the subject of Muslim women, it is precisely the tendency at the transnational level to cast Islam as an obstacle or a thing, rather than as folded into shifting and contested structures of power that enables the obfuscation of some forms of power and the hypervisibility of others.[24]

[15] Moore, *supra* note 12.
[16] Nader (1990).
[17] Mir-Hosseini (2011).
[18] Bdlaws.minlaw.gov.bd (2021).
[19] Wojkowska (2006).
[20] Amnesty.org (1993); Hrw.org (2012).
[21] Asad (2003); Agrama (2012); Mahmood (2015); Ahmed (2015); Messick (2018).
[22] Volpp (2000).
[23] Kapur (2002).
[24] Siddiqi, *supra* note 2, p. 515.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

In other words, labelling the oppression of women in *shalish* as an Islamic or cultural problem invisibilizes the global and local actors and institutions that contribute to its discriminatory and oppressive tendencies, such as patriarchy, elitism, casteism, racism, ableism, heteronormativity, capitalism, neoliberalism, "First-World" nations' outsourcing of labour to Bangladesh, climate change, classism, authoritarianism, political instability, and so on.

Second, many scholars argue that labelling *shalish* as "Islamic" is failing to understand the nuances and particularities of this dispute mechanism. While *shalish* draw on Islamic language and Islamic philosophical frames, they are neither limited nor restricted to any specific religion. Moreover, religion and culture are not static, but develop over time through multiple influences. Historian Richard Eaton suggests that Islam in Bengal tends to have a syncretic practice[25]—that is, it has a long-standing tradition of merging different religious and cultural practices to adjust to societal changes.[26] In other words, there is evidence from historical research that shows how Islam in this region tends to adapt to new ideas with each new "foreign" encounter. Thus, thinking of *shalish* as "Islamic" and state courts as "secular" reinscribes and essentializes the secular/Islamic and modern/traditional frameworks onto spaces and communities/groups where they are not directly applicable. Bangladesh already has a complex internal history of conceptualizing law using the language of both Islam and secularism, and recent research has shown that drawing a sharp binary between the two is often part of a much more recent trend related to a politicized Euro-America-centric dichotomizing global discourse.[27]

4. Comparison of *uthai nawa* cases: *shalish* and the Supreme Court

4.1 Shalish

In the summer of 2019, I visited my village in the Jamalpur district of Bangladesh with three friends (all women) from Dhaka city. As soon as we arrived, family members and neighbours could not stop talking about a girl from a nearby neighbourhood who was in "trouble." When I asked what had happened, they informed us that Shanti[28] had been taken (*uthai nise*) by the local carpenter's son to another town. After a few months, he returned her to her home and abandoned her there. My three friends from Dhaka city were outraged. Friend-1 immediately responded with the following back-to-back questions: "How much did he ask for ransom? Did her parents pay anything? Why on earth did he return her? Wasn't he afraid of getting caught?" Friend-2 asked: "Did the police actually search for her when she was missing? Why did no one apprehend this guy when he returned her?" An elder aunt from the village responded with the rhetorical question "What are these girls asking?" and another aunt followed up with "I always knew Mokbul's son was bad. I told Shanti time and time again when I saw them speaking in front of Mamun's shop. Why did she have to go with him?" Friend-1 reacted in disbelief and anger: "Go with him??? How can she 'Go with him?' He was her kidnapper! Kidnapping happens by force, it's not like it was her choice!"

It took me some time to understand that my friends who grew up in Dhaka city and had very little engagement with Bangladesh's rural context could not decipher the meaning behind the coded language of coercion in this context: *uthai nawa*. Phrases such as "*uthai*

[25] Eaton (1993).

[26] Note, many scholars such as Tony Stewart argue that the problem of the concept of syncretism is its assumption of treating religions such as Hinduism and Islam as strictly monolithic and distinctive entities. The term can indicate that the identity of people belonging to either group is restricted to the set of values that one group must possess, contrasting with the other. Stewart (2001).

[27] Siddiqi (2018).

[28] All names are anonymized.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

nawa" (উঠায় নেওয়া) and "*tule nawa*" (তুলে নেওয়া) are local Bangla phrases, which literally translate as "taking" or "picking up." They are also common expressions used in Bangladeshi villages to indicate that a man coerced a woman to leave with him and marry her by force. On the ground, however, there is a shared understanding that this phrase is coded language and can also be used in cases of love affairs when women elope with their partners consensually under the impression that they will get married. In the above event, it was known by the community that Shanti had had an affair with Mokbul's son, Rahim. Yet my friends from Dhaka city could not comprehend why the aunties in my village alluded to Shanti being coercively taken while they also spoke as though Shanti consented to going with Rahim. They did not have the contextual knowledge to understand that this language of coercion—*uthai nawa* or *tule nawa*—is often how elopement cases are presented and talked about in this site as well as many other villages in Bangladesh.

This language of coercion is used due to the gendered social climate in Bangladesh where "good" and/or "moral" women are expected to be modest and naive about relationships and sex. Siddiqi states: "The legal realm, as much as the social, penalises those who contest social norms. In the prevailing landscape, a public admission of rape is considered less dishonorable than the acknowledgement that a young woman has had sex willingly."[29]

She also states:

> Since there is no "respectable" vocabulary for sexual relationships outside those sanctioned by marriage, it is less dishonorable to claim to be a victim of rape than to admit to consensual sex. The seduction/rape narrative assures individual women and their families a degree of social respectability and protection not afforded those who openly admit to exercising sexual agency in relationships outside marriage.[30]

Hence, when couples consensually elope in rural areas, the language of coercion is a common framing of such events.

In Shanti's case, Rahim "took" Shanti and married her in August 2018 because her family did not agree to their daughter getting married to a carpenter's son, as they were from a higher socioeconomic background. Most people in the community knew that Shanti eloped with Rahim consensually; some considered that she was seduced or duped by his charms. Some claimed it was due to "irrational passion." Her parents publicly disowned her and neither she nor Rahim was allowed to enter their house. In July 2019, less than a year after the elopement, Rahim fell in love with another woman and decided to divorce Shanti. He left her at her parents' home and stopped all forms of communication with her. Shanti was devastated and begged Rahim not to end their marriage. She was financially dependent on Rahim and, since her family had disowned her, faced economic precarity. Moreover, she knew the social stigma and ostracization she would face as a divorced woman in Bangladesh and publicly declared that she was fine with him having another wife as long he did not divorce her. Shanti's parents refused to let her stay with them after Rahim abandoned her since they felt "betrayed" by her choice and claimed that she had "dishonoured" them. Shanti stayed in a social worker's house and *shalish* was arranged by community leaders to solve "Shanti's problem."

In such cases, women usually go to *shalish* with certain expectations: they hope that the *shalishkars* will mediate the situation and convince their partners to not abandon them; in cases in which couples are married in customary rituals rather than formal state procedures, women expect *shalishkars* to help them formally register and legalize their marriage; if men are determined to leave their wives, women expect *shalish* to help them

[29] Siddiqi (2012), p. 178.
[30] Siddiqi, *supra* note 2, pp. 520–1.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

get compensation of some sort—be it monetary or symbolic—and help them mitigate social ostracization from the community.

Shanti and Rahim's *shalish* was held on July 2019 in the courtyard of a community leader whom both the couple knew and respected. Both parties were present along with their immediate and extended families, neighbours, friends, and other community members. Rahim's new romantic partner was not there, but the *shalishkars* did not expect her presence. In this *shalish*, Shanti explained how she was duped by Rahim into falling in love with him and how he forced her to go away with him when she did not want to: "*O amare jor kore uthai nise* /He took me by force." She said she wanted to wait and have some more time to convince her parents, but Rahim coerced her into rushing their marriage. She also mentioned that she wanted the court to convince Rahim to not leave her because she would be homeless, she could not re-marry as easily as he could, and she would have no source of income. Rahim responded with "*Ek haat etali bajena*," which is a popular saying in Bangladesh that translates as "You can't clap with just one hand." The line was used to indicate that Rahim did not forcibly take Shanti, that she had agency, and that she had had the choice to not fall in love with him and not go away with him. He told the *shalishkars* to check their phone messages and note that the "taking" was staged and that she knew and agreed with the plan beforehand.

After three hours of back and forth between different family members and related parties explaining their versions of the event, the *shalishkars* tried profusely to reunite the couple. They scolded Rahim for having an extramarital affair and deciding to leave his wife: "Your wife is even okay with you having a second wife. That is how much she loves you. If you do this, no one here will ever support you again." However, Rahim was determined to leave Shanti. The *shalishkars* reprimanded Rahim for his decision and publicly sided with Shanti: "This poor girl did nothing to deserve this. What was her fault in all of this? You are the devil Rahim for ruining a girl's life like this." The *shalishkars* explained it would be extremely difficult for Shanti to have a second husband because "our society is such that men don't want a divorced wife." Most community members that were present and watching this *shalish* also empathized with Shanti—that is, the public spectacle helped reduce some of the social ostracization that Shanti would face as a divorced woman in this community.

It is worth asking why the *shalishkars* did not emphasize the discrepancy of Shanti's claims that she was forcibly taken versus the text messages that revealed that there was no coercion. *Shalish* occur within the community; thus, the *shalishkars* had the prior knowledge of this couple's relationship and were embedded within the local context, allowing them to understand the shared meaning behind the coded language of coercion. The *shalishkars* themselves use this language to try and help women receive some form of compensation. For instance, the *shalishkars* decided that Rahim should not only pay full maintenance money and *kabin*[31] money for divorcing Shanti, but he should also publicly beg for her forgiveness as symbolic compensation for "taking" her against her will. They also stated they are aware that monetary compensation and a public apology can never fully compensate for her suffering, but it is the least that Rahim should offer her. In another case I observed in an NGO-mediated *shalish* in Madaripur district, there was a

[31] *Kabin* money is the local vocabulary that refers to *den mehr* money. It is the money that Muslim men are obligated to pay their wives by the first night of their marriage. The amount of money that the husband will give his wife is decided before the marriage is solemnized, and the amount is written in the *kabinnama* (marriage contract) before the couple signs the document. In Bangladesh, it is common for men to not pay the entire amount of *kabin* during their marriage. However, in the case of divorce, men are obligated to pay the full or remaining portion of the *kabin* that he owes his wife. On the ground, however, women tend to not get most of the *kabin* money that was promised to them during their marriage; nor do they receive all of it even after divorce.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

dispute in which the husband and his family criticized the wife for not helping much with household chores. The *shalishkar* used the language of coercion to side with the wife:

> You *took* her, and now you have the responsibility to ensure that she is happy in your house. It is your responsibility to make sure your parents are kind to her. It's the least you can do after what you've done.[32]

The same *shalishkar* also told the father-in-law: "Your son *took* a girl. How have you raised him? After what your son has done, you should be making sure that your daughter-in-law is happy and comfortable in your home instead of complaining that she doesn't work."

In other words, the *shalishkars* have the scope to recognize the asymmetrical gendered power relations and use the language of coercion that is already normalized and embedded in the existing social structures to flip the table and grant women justice in ways that are often overlooked by urban elites and global human rights organizations. While *shalish* have many problems, there are also many undocumented ways that *shalishkars* are aware of women's unequal position and seek to safeguard them in dispute mechanisms such as *shalish*. Bangladesh is not the only space with this perception of justice. Wael Hallaq argues that Islamic legal proceedings function with a moral logic in which social equity is at the centre and the "weak" or disadvantaged party is given special attention as opposed to the universality of the liberal rule of law, which focuses ideologically on equality and the individual's right.[33] Although *shalish* are not precisely sharia courts, they pull from several Islamic teachings and philosophies, which might have influenced the focus on noting positionality in *shalish*.

An unreconstructed and non-intersectional liberal feminist frame might imply that using the phrase *uthai nawa* or *tule nawa* treats women as passive and weak because their agency and consent are not recognized in these courts; however, anthropology scholarship shows that there are alternate frames of women's agency that the modern rule of law does not include in its model. For instance, Chandra Mohanty argues that there are hierarchies between "First-World" and "Third-World" women, where the latter are deemed as passive and lacking agency.[34] Moreover, Saba Mahmood highlights the need to rethink agency with regard to how a person is situated historically and socially within the wider structure of power in order to note alternate forms of women's agency in non-Western spaces.[35] My fieldwork suggests that during these *uthai nawa* cases, the language of coercion is used not to treat women as passive or naive, but rather to highlight women's positionality and the structural imbalance of power.

Moreover, Shanti was struggling to find a place to live as her parents refused to take her back into their home after she "dishonoured" them. The *shalishkars* considered it was part of their duty to convince Shanti's parents to forgive her and take her back into their home. It was perhaps easier for her family to take her back as they were asked to do so by a group of *shalishkars* who are authoritative members of the community and also since the *shalish* helped foster empathy for Shanti. The *shalishkars* asked the community members to support Shanti because she was already suffering and said that the community will be responsible if anything dire happens to her after this. The handling of this case might seem unconventional to those who are not familiar with the context, but this is extremely common in many parts of rural Bangladesh. I have observed other *shalish* with similar outcomes. However, communities and villages are not homogenous. Thus, the outcomes of

[32] NGO-mediated *shalish* in Madaripur district, 2021.
[33] Hallaq (2009).
[34] Mohanty (1995).
[35] Mahmood (2001).

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shalish might differ across Bangladesh based on the culture and practices of the particular group, village, community, and region.

To reiterate, I do not intend to glorify or romanticize *shalish*. There are many cases in which women are genuinely kidnapped and *shalish* force women to marry their abductors and rapists. In those instances, *shalish* play a significant role to reinforce gendered oppression and sexual violence. My work does not focus on those kinds of cases, nor deny their prevalence. Rather, I focus on providing instances from *shalish* that cater to women's expectations from courts but are not captured in legal records, scholarly research, or humanitarian reports.

4.2 Supreme Court

By the time *uthai nawa* or *tule nawa* cases reach the Supreme Court in Dhaka city,[36] they are treated and tried as "*opohoron*" (অপহরণ), which translates as kidnapping or abduction cases. Sometimes these cases can also be tried under rape if there is evidence of sexual intercourse. This places *uthai nawa* cases under criminal law even though the cases explored in the previous section are more closely related to family law. State courts, especially the higher courts in Dhaka, do not treat the coded language of coercion the same way as *shalish* do. It could be because urban legal actors are unfamiliar with the common use of the coded language of *uthai nawa*, or it could be that they are familiar with the context but still have to classify cases as per the available tools and frameworks of modern state courts. When a woman or their families bring a *uthai nawa* case (in which the women consented to leaving with the man) in state courts but claim that the man forcibly "took" her, the focus of the case becomes finding out whether there was consent or coercion. This negates the underlying reason why women tend to go to courts in the first place; they do not demand justice for why men abducted them, but rather hope for mediation, mitigating social ostracization, and compensation.

Rural families are generally not aware of how state courts will interpret their cases, and hence both litigants and their families can be stuck navigating an unwanted lawsuit for years. In many instances, rural communities are aware that abduction is a serious offence and attempt to use it to "scare" the men and their families. However, when these cases go to state courts, especially the higher courts, it is difficult for plaintiffs to withdraw cases at will. An advocate working in Dhaka told me:

> It is extremely difficult to withdraw criminal law cases. Very, very difficult. Even if the person who brought forth the case changes their mind and wants to withdraw the case, it is out of their hands because it is now a criminal case. This is a problem for many women and their families who foolishly file abduction cases because of a fight or out of spite. They don't understand the damage and problems they are causing. It's a problem for them, for the accused and his family, as well as for all of us. We could be working on actual problems, rather than this.[37]

Moreover, there are several cases in which it is not women but rather their families or guardians who go to courts to intervene in the couples' affairs. In the case *Jewel Miah and Ors* [2006],[38] Selena Akhter's maternal uncle Chan Miah lodged a case on behalf of her claiming that Jewel Miah and accomplices "forcibly abducted" his niece. The Supreme Court focused on finding out whether this was an abduction case or not, trying to locate consent/coercion. This case includes testimonies in Bangla script from the First Information Report (FIR) lodged at the police station. The following are witness

[36] There is only one Supreme Court in Bangladesh, located at the capital city—Dhaka.

[37] Interview, Face-to-Face, Dhaka, October 2021.

[38] *Jewel Miah and Ors* [2006]: LEX/BDHC/0186/2006; 2007 (15) BLT (HCD) 234.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

testimonies from the case judgment that the judges relied on to release Jewel Miah and the other accused parties who were sentenced to be imprisoned; all the statements refer to how Selena was in a relationship with Jewel and eloped on purpose—that is, she was not actually abducted.[39]

> *Witness Hafizuddin:* "ঘটনা সম্পর্কে জানি যে, আসামি জুয়েল এর সাথে ভিক্টিমের ভালবাসার সম্পর্ক ছিল."[40]
>
> *Translation:* "What I know from the incident is, accused Jewel and the victim had a romantic relationship."
>
> *Selena's uncle:* আমি সেলিনার ফুপা। সেলিনা এবং জুয়েলের মধ্যে ভালবাসা ছিল। সেলিনা প্রায়ই ইচ্ছা করিয়া জুয়েলের কাছে চলিয়া যাইত। সেলিনাকে আসামীরা জোর করিয়া নেয় নাই।[41]
>
> *Translation:* "I am Selena's uncle. Selina and Jewel had an affair. Selena often went to visit Jewel willingly. The accused parties did not take Selina through coercion."
>
> *Witness Siraj:* ১ বৎসর ৪ মাস আগের ঘটনা। ছেলে জুয়েলের সাথে সেলিনার প্রেম ছিল। উভয়ে একত্রে ঢাকা যায় এবং শুনেছি বিবাহ করিয়াছে। ৫/৯/৯৯ তারিখ রাত তিনটায় আসামীরা ভিকটিম সেলিনাকে অপহরণ করিয়া নিয়া যায় এই কথা ঠিক নয়।[42]
>
> *Translation:* "This incident happened 1 year 4 months ago. Jewel and Selena were in love. Both went to Dhaka willingly and I heard they got married there. The claim that the accused abducted Selena at 3 am on the night of 5/9/99 is not accurate."

This case is one of many in which the Supreme Court does not recognize the socio-gendered context that prevents women from expressing certain things candidly and openly in court. In the judgment, Selina Akhter is called "the so-called victim" and is treated as a liar.

The "messiness" of the situation and multilayered issues are simplified into questions of consent and coercion resembling early Western liberal feminism that understood women's oppression through binaries of consent/coercion and domination/resistance.[43] Women might elope with their partners under the assumption that they will get married and consent to sex, but if their partners refuse to marry them, what was consensual sex at one point can be understood as rape at a later point in time since sex and marriage are ideologically intrinsically tied to one another in this context; Siddiqi suggests this is due to heteronormative ideologies of marriage in which women's consent to sex outside marriage is culturally insubstantial:

> The woman/girl testifies that she has given consent on the understanding that marriage will follow or that it has taken place informally. Here, consent is a complex gendered, conditional, and temporal experience; its mark on the body is fluid rather than fixed. For it is only when (or if) the promise of marriage is violated that the gendered body experiences violation. What was understood as consensual sex at one point in time becomes culturally intelligible as rape at another point. Slippages between consensual sex and rape do not seem inconsistent or jarring in this light. This categorical confusion, I would argue,

[39] All Bangla statements are translated by me.
[40] *Jewel Miah and Ors*, *supra* note 38, s. 9.
[41] *Ibid.*, s. 12.
[42] *Ibid.*, s. 9.
[43] MacKinnon (2007).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

> is not accidental. There exists a degree of acceptability of sexual activity in villages but no sanction for women to exhibit desire visibly.[44]

In other words, there are many reasons why women or their families might frame their grievance under *uthai nawa* or *tule nawa*. If these cases are treated as kidnapping, women are bound to lose since there is ample evidence (witness testimonies, text messages, etc.) to suggest that women provided consent and that this "taking" was performative. When court records categorize and try these cases under "abduction," they distort the legal framing of these cases as intended by the parties on the ground. In Bangladesh's current legal structure, men who abandon women after consensual elopement face no consequences, while women and their families face social ostracism and harassment that in some cases may even lead to suicide. The modern rule of law's "win–lose" model is set such that women will undoubtedly lose these *uthai nawa* cases most of the time. It is worth noting that *shalish,* at least ideologically, operates with a "win–win" model that can be preferred by women in many instances; an NGO worker from MLAA states:

> *Shalish* has a "win–win" model and state courts have a "win–lose" model. Then, why are people surprised that people prefer to go to *shalish? Shalish* is not only about finding out who is the criminal or who is at fault. It also includes restoring peace and harmony in the community.

As seen from Shanti and Rahim's *shalish* in the previous section, helping Shanti receive symbolic compensation, mitigating her social ostracization in the community, and restoring her relationship with her family are all part of what constitutes as justice in *shalish*. Many women in rural Bangladesh agree that failure to accommodate to these other aspects of a woman's positionality is failing to provide justice for women.

It is also important to note that language and their meanings change as cases move from *shalish* to state courts; these changes have dire consequences, affecting the lives of rural women. Comparing terms, categories, and symbols across different sociopolitical contexts and economic backgrounds—namely identifying who says what, in which context, and its meanings—elucidates the legal frameworks of communities as well as the larger structures that produce and are produced by them. Our worldviews are shaped in part by the language we are habituated with and use every day,[45] and language does not mean simply word or grammatical structures, but rather the social context in which words are used.[46] Hence, state courts' decontextualizing "*uthai nawa*" fails to decode women's testimonies according to their standpoints and intentions. State courts and their legal records almost always filter and reframe rural communities' perspectives according to their own language and epistemic frameworks. Siddiqi argues that "how we understand the logic behind the crime determines how we approach possible interventions" and so "misnaming can lead to the misreading of the multiply layered and intersectional relations of power."[47] Rural courts rely on shared vocabulary and social understandings that are not easily translatable using modern legal categories.

Not all the legal actors in the Supreme Court are unaware of the social pressure that women face that limits them from saying certain things directly. For instance, in the case of *Abdul Mannan and Ors. v. State* [1985],[48] Akter Jahan Rina and her family accused Abdul Mannan and some of his friends of forcibly taking her against her will. In this case, the

[44] Siddiqi, *supra* note 2, p. 520.
[45] Whorf (2012).
[46] Silverstein (2000); Agha (2007).
[47] Siddiqi, *supra* note 29, p. 161.
[48] *Abdul Mannan and Ors. v. State* [1985], 2 BLC (1997) 1/.

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judge was aware that Rina might have used the language of coercion either to avoid social ostracization or to save her family's honour in society: "She also denied the suggestion that the accused persons did not kidnap her by force against her will and she was denying everything at the instance of her father and for fear of social condemnation."[49] Yet, this awareness is not enough since the case is tried under abduction and the sole focus is on whether she was taken by force or not. The case judgment concludes:

> In instant case, it seems to me, from evidence, which has in great detail been stated by my learned brother, that the victim girl Rina was in passionate love with accused Mannan and as a result of which she went out of the keeping of her parents and even she was ready to be rescued by her lover accused Mannan. This conclusion of mine gets support from the love letters written by Rina to Mannan which have already been referred to in the judgment of my learned brother. Therefore, it can be held that the accused persons did not exercise any sort of compulsion on the victim girl, Rina. She went of her own accord.[50]

The complexity of a woman's consent—that is, the gendered, conditional, and temporal experience based on personal promises between romantic partners—is absent in this approach to law. It also fails to situate the problem within its own gendered and testimonial context.

A Supreme Court lawyer unrelated to the above case told me that since kidnapping is a criminal offence, the punishment can be at least seven years of imprisonment with a fine. Even if judges are aware of the women's positionality, they consider this too extreme a punishment for men for such offences: "We are not doing any injustice because if a man did not kidnap a woman, why should he be punished for a kidnapping crime?"[51] *Uthai nawa* is an example that demonstrates how modern state courts are bound by the rigid categorizations and formal procedures that they have to abide by: "The minute a woman claims they have been kidnapped, we have to file a criminal charge. It is a very serious offence. We ask repeatedly if it's true and they are adamant. We have to follow the protocols accordingly." Hence, it is significant to bridge the disconnect between urban and rural spaces regarding the coded language of *uthai nawa* or *tule nawa*. This section demonstrates all the meanings that can be erased when cases move from *shalish* to state courts. The next section will explore how digitization of *uthai nawa* cases contributes to further erasures of women's experiences and their standpoints.

5. Digitization of *uthai nawa* cases: biases and erasures

When cases are digitized, they are put together in a database to be organized and managed. Cases can be organized by date, by location, by the name of the judge, and so on. Currently, most software relies on a database management system (DBMS). Relational databases usually consist of tables in which the rows and columns of data are grouped to identify relationships and for easy access. Tech companies promote the idea that digital databases provide the means for exhaustive research. Digital databases allow marginalized groups access to information that they might not have access to otherwise due to: lack of funding to travel to physical archives, biased visa procedures, infrastructure that prevents persons with disability from accessing certain buildings, and so on. For many, digitizing is a means to fight against centuries of erasure and institutional biases. For instance, the

[49] *Ibid*., s. 12.
[50] *Ibid*., s. 79.
[51] Personal Interview, Face-to-Face, Dhaka, November 2021.

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SHARIAsource software launched by Harvard Law Professor Intisar Rabb aims to include Islamic law resources online for easy access.[52]

There are, however, several drawbacks to drawing knowledge from digital archives. First, they give the impression of exhaustiveness, invisibilizing the unequal representation of minority communities. Second, digital legal archives are promoted as means to help lawyers improve their efficiency and save their time, but not much attention is paid to the harmful consequences that marginalized groups face due to their interests, languages, and frameworks not being included in the digitization of cases. While recent scholarship in various disciplines explores the biases and erasures in digital databases,[53] there is a gap in the literature exploring the anthropology of databases and the complex layers of power in the process of digitizing law. Tracing the digitization of *uthai nawa* cases from the ground up contributes to filling this gap, broadening scholarship on the biases of digital legal databases.

To understand the anthropology of databases, I analyzed how cases are represented in the legal research software Manupatra, which is widely used in South Asia and claims to hold the largest collection of the region's cases. Manupatra is produced by the private Indian company Manupatra Information Solutions Pvt. Ltd and its Bangladeshi case coverage includes records from the Supreme Court, statutes, ordinances, and some pre-1970 (pre-independence) documents. Apart from South Asia, Manupatra also contains cases from countries such as the UK and the US as well. BdLex is a cheaper product than Manupatra and is marketed to Bangladesh specifically since it includes all of Manupatra's Bangladesh cases as well as a select few from other countries such as India and Pakistan. Both BdLex and Manupatra operate similarly, and one version of the software is present in the elite law firms, NGOs, and academic institutions in Bangladesh. Manupatra is used in other parts of South Asia and across the globe so that researchers have easier access to legal information and case judgments of South Asia.

I ask: Are the cases available in legal research software representative of all communities? Or do they prioritize certain events and narratives over others? Which cases are erased in the digitizing process, and why does it matter? Using legal pluralism to note how law is represented and incorporated in the digital sphere provides new insight on how the intersection between law and the digital is a politicized space. Studying the digitization of shalish and *uthai nawa* cases exposes the limitations to the construction of digital legal databases. My research uncovered the following key omissions/distortions.

5.1 Elitism and selection bias in official legal archives

Digital legal databases in research software include cases from the Supreme Court archives, law report books, and academic journals. In South Asia, printed law report books and journals are the most significant sources for case judgments in digital legal databases. For instance, T. N. Chandrashekar, the CEO of the legal research software Sofist India, told me that its digital database is mostly collections from existing print texts such as books, law journals, and case reports.[54]

Elite lawyers and judges from the Supreme Court or legal academics decide which cases from the higher courts are "landmark" cases and worth including in law report journals. For instance, Dhaka Law Report (DLR) was the first law report book of Bangladesh[55] and it publishes cases from the Supreme Court—from both the high court and the appellate divisions. All the popular law report books—DLR, Bangladesh Legal Chronicles (BLC),

[52] Peterson (2022).
[53] Crawford (2021); Chun (2021).
[54] T. N. Chandrashekar, Personal Interview, email, 2019.
[55] DLR was established by a private enterprise in 1949 when Bangladesh was East Pakistan.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

Bangladesh Legal Decisions (BLD), Bangladesh Law Times (BLT), etc.—publish cases only from the Supreme Court. Hence, the digitizing of cases is based on a narrow selection of state law, namely the utmost elite version of it—the Supreme Court.

Moreover, it is worth noting which cases are included in law report books and who makes these decisions. My findings suggest that DLR is considered the most reputable law report book in Bangladesh's legal community. I spoke to the editor of DLR, an advocate of the Supreme Court, and he provided insight into how he selects which cases to include in DLR. He highlighted that the selection of cases has always been and continues to be a "one-handed job" and that he has one assistant to help him select cases. When asked about his selection process, he explained:

> The first choice is that the judgment should benefit a large number of lawyers and cases like preemption cases, like civil litigation such as bail matters—when is bail granted or when is bail not granted? I also consider whether it is applicable to both the subordinate courts and higher courts, like confessional statements. I also think about public interest litigation[56] cases. These cases are important that we want to include in DLR. Then we look for family dispute cases like custody of minor child. We also think about new interpretations of statutes and administrative functionaries. That adds a different perspective to law that we think is important.[57]

DLR's editor mentions that having judgments published in this prominent law report book adds prestige for the judges whose cases get selected for publication; hence, some judges try to convince the editors of such law report books to include their judgments and, if the editors do not select the requested judgments, they usually face resentment from those judges. DLR's editor assures that he is not affected by such pressures and only includes cases that are helpful for future cases and beneficial for the legal community and public wellbeing.

Moreover, most of the people who have the opportunity to be editors and can select cases for law report books are notable lawyers in the Supreme Court or legal academics in Dhaka city. Generally, they all know one another and are part of a close-knit professional and social network. For instance, BLC, which is a stand-alone law report book, is a "sister-concern" of DLR—that is, connected with those who own or run DLR. The BLC editor is an advocate of the Supreme Court and frequently speaks with DLR's editor for advice and suggestions about which cases to include in BLC because DLR's editor "is the senior and knows better than anyone."[58] BLC's editor also added: "We make decisions together." Hence, it is usually a small group of people within the same circle with similar pedagogies and understandings of law that make decisions on which cases get selected for law report books.

When asked about BLC's selection process of cases, the editor said that the lawyers and judges who are involved in noteworthy cases reach out to him if they think that the judgment should be published in BLC. He also mentioned that journalists who report on certain cases will also reach out to him if they have any suggestions. Lastly, he stated that there are assigned reporters who are lawyers and tasked with collecting cases that they think should be included and shortlisting a couple of cases for him to review and select. Most of these helpful informers are already in Dhaka city or they are affiliated with state law in some way.

[56] Public interest litigation cases are part of judicial activism and are popular in South Asia. They occur when a litigation is brought to court not necessarily by the aggrieved parties, but by third parties such as NGOs for the interest of the public. Examples include issues of minority rights or workers' rights.

[57] Personal Interview, Face-to-Face, Dhaka, 2021.

[58] Personal Interview, Face-to-Face, Dhaka, 2021.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

While the editors in Bangladesh's law report books work towards enhancing the rights of people in Bangladesh, their perspective on law stems from an elite and modern legal standpoint that does not consider *shalish* as law. It is worth noting that most legal actors involved in compiling cases for law report books are recognized as highly apt lawyers of the Supreme Court, who are celebrated because of their work to ensure justice for marginalized communities in Bangladesh. I do not intend to undermine what they do. Rather, I wish to draw attention to the particular legal narrative and epistemology that they operate within. Most of the elite lawyers from the Supreme Court might know about *shalish*, but they are not immersed on the ground enough to understand how they operate from a nuanced perspective. Perhaps that is why the complexities of the language of coercion in *uthai nawa* cases are not as obvious in these spaces, and why the mislabelled abduction framing is not questioned as much by the urban legal community who are involved in the legal proceedings of these cases as well as those who document them in official legal archives.

Note that most law report books, including the most popular DLR, do not digitize their cases; however, there are digitized copies of selected cases from such law report books in legal research software such as Manupatra. How Manupatra makes decisions on which cases they digitize is inaccessible to researchers. What we do know is that the court records in digital legal databases rely on annual law report books. Hence, understanding how law report books are constructed helps to note how the resources available in digital databases can be partial and skewed.

5.2 Transnational politics

Most of the cases from the popular Bangladeshi law report books and journals are not even included in the legal research software Manupatra and subsequently BdLex that are developed in India. Bangladesh law report books are not partnered with Manupatra; the editors of DLR and BLC said that, to their knowledge, Manupatra has not reached out to them or any other editor they knew regarding a partnership to include full collections of their law report journals and books. The librarian in an NGO in Bangladesh mentioned:

> From my experience, most cases in Manupatra and BdLex are from the Bangladesh Supreme Court online public archives, which include a select few judgments only. They don't include DLR or any of the other popular books we use. It would make all our lives much easier if they did.[59]

Manupatra's Bangladesh case collection does not include many court records despite the many law report books that publish new Supreme Court cases annually. This shows a lack of interest and investment from such companies to comprehensively build digital legal databases from this site.

Moreover, there are many external forces that prevent Bangladesh from fully launching and developing their own digital legal database. Bangladesh first launched its own digital legal database in 2008 called Chancery Law Chronicles (CLC). In an interview, the chief founder and editor of CLC explained that the intention behind launching CLC digitally was to ensure that lawyers from the lower courts, especially *mufassils* (towns), had access to view Supreme Court records and learn about law for free.[60] She also mentioned that Manupatra had approached her requesting a formal partnership, but she refused to monetize CLC and have the online resource site be transformed into a subscription model in which only elite institutions and those financially capable would have access to it. Over

[59] Personal Interview, Face-to-Face, Dhaka, 2021.
[60] Personal Interview, Zoom, March 2022.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

time, Manupatra had more staff and finances to overpower CLC and expand, while CLC was mostly funded by private donors and ran out of funders to continue building their online database. The lack of funds and non-subscription model restricted CLC's capacity to update their database regularly, but users can still access the site and view everything that was previously uploaded. The goals of Manupatra and CLC were different to begin with—"one aimed for profit and the other for non-profit," says the founder and editor of CLC.

Neocolonial digitality dismantles studying power relations from the binaries of West/non-West or North-South; due to India's higher socioeconomic position and political power, it could dominate Bangladesh's online legal research market, demonstrating the hierarchies within South Asia. While Manupatra and BdLex include much more information and cases from India, they are marketed and packaged as though the software is diverse and inclusive of South Asia. The transnational politics and economic power-play that lead to monopolizing digital platforms and resources are often veiled in techno-utopian narratives of the digitizing of law.

5.3 Exclusion of shalish

If one searches within the digital archives of legal research software, they will leave with the impression that Bangladesh only operates under state law. The significance and presence of *shalish* on the ground are not included in legal research software. This is because *shalish* are not considered as law. This view resembles colonial ideologies of treating *shalish* and similar alternate legal systems as backwards and outside the realm of "real" law. If one wants to know about *shalish* and their legal structure, they would have to read about it via other means such as the journals of anthropology, history, or gender studies. When it comes to official legal archives, it is only cases from state law that one can find in legal research software. Even if the digitizing of court records were expanded to include the lower courts such as district courts, *shalish* would still be excluded since they are not part of state law.

Legal professionals from the Supreme Court, NGO workers, and community members of the villages all agreed that *shalish* are the more popular legal system in Bangladesh. While the Supreme Court and Bangladesh's state law sideline *shalish* and hold themselves superior, they still recognize the existence of *shalish*. Not only legal actors, but also acts such as the Code of Civil Procedure, 1908, section 89A (Mediation) are often used by NGOs and *shalishkars* as a green signal from the state to run *shalish* in Bangladesh.[61] Yet, the presence and significance of *shalish* are entirely absent from Manupatra's digital database. Applying the concept of legal pluralism when studying the digitization of law reveals that offline elite prejudices and discrimination are embedded within digitization in subtle ways. It helps dismantle the singularity and universality of law, and marks the hierarchies and unequal representation of law in the digital realm. Including only state law while excluding alternate legal systems shows how the intersection between law and digitality is closely tied to legacies of colonialism and modern practices.

Moreover, since most *uthai nawa* cases operate in *shalish*, they are absent in the state's legal records, undermining the ideologies that digital databases provide exhaustive resources for researchers. Digital databases in legal research software rely on information that is from "authoritative" sources such as the state law's legal archives. *Shalish* are not only excluded from digital databases, but remain as an "non-credible" and "unreliable"

[61] Bdlaws.minlaw.gov.bd, *supra* note 18. In this Act, Part V Special Proceedings: Alternate Dispute Mechanism, 89(A):13(1) defines mediation as follows: "'Mediation' under this section shall mean flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the mediator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the terms of such compromise."

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source, lacking the legitimacy demanded by companies that produce legal research software. One can only cite Supreme Court records to strengthen their case, not cases from *shalish*. In addition, research software reinscribes hierachies and promotes the ideology of the "superiority" of elite courts. By including selected cases from the Supreme Court of Bangladesh, there is an implicit assumption that these cases are those that are the "best" and "most relevant" for research/citation. Easy access to these cases aids in recycling particular legal frameworks by lawyers, academics, and other researchers. This is an embodiment of neocolonial digitality.

In other words, the digital databases of Manupatra and other legal research software not only exclude cases from *shalish*, but the current digital structure does not have any space to include the complexity and interactions between state and non-state law. It is very rare that cases such as *uthai nawa* reach the Supreme Court. While the social meanings and language shift by the time they reach the higher courts, the cases take on another level of distortion when they are digitized. While the Supreme Court of Bangladesh might hold itself superior to *shalish*, it still recognizes the impact and influence of *shalish*. Legal research software exceedingly marginalizes alternate legal systems and the people who participate in them, as they do not recognize the significant role that *shalish* play in Bangladesh's legal landscape.

5.4 Oral legal systems

The concept of neocolonial digitality illuminates how the current practice of digitizing law holds no space for oral legal systems. Most legal archives comprise print media and electronic media, and there is a gap regarding cases that are conducted orally. *Shalish* are primarily mediated orally and there are rarely any formal recordings of their proceedings. In the databases of legal research software, print and digital technologies are much more closely intertwined, while orality is noticeably marginalized. I do not suggest that there are sharp demarcations of media forms—digital-print-orality—nor do I intend to suggest that alternate courts do not engage with print or digitality. Many scholars undermine colonial binaries that pit orality and literacy against one another. For example, Brinkley Messick and Jessica Marglin demonstrate how practices of orality and print closely interact with each another in Islamic courts.[62]

While *shalish* are mostly conducted orally, there are some documentation practices in *shalish* as well. For instance, in my fieldwork, I observed that some *shalishkars* take a blank piece of paper and ask all parties to sign the document before the *shalish* starts as a form of commitment that they will adhere to the decisions made by the *shalishkars*, even if they disapprove of them. After the *shalish* is complete, the *shalishkars* write a paragraph or two highlighting what the key problems were and solutions/advice provided by the *shalishkars*. One of the *shalishkars* generally keeps the document in case there is a future *shalish* with the same parties and same issue. While these documents are part of "formal" legal paperwork, they hold symbolic power within rural communities where state and non-state legal procedures are often blurred.

Moreover, *shalishkars* often take photographs and videos on their mobile phones. These photos and videos are usually taken after a successful mediation with the two parties either holding hands or hugging that are also stored either in some of the *shalishkars'* personal archive (phone, email) or a semi-public online archive (Facebook, WhatsApp group). Hence, it is significant to dismantle the idea that *shalish* operate only orally and that these courts do not engage with digitality. Digital photographs or videos taken on the *shalishkars'* phones are often used as records for references and future mediation proceedings.

[62] Messick (2002); Marglin (2017).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

A key question is: Should we advocate to record *shalish* so that it can be easier to digitize? My findings indicate that women in rural Bangladesh prefer their pain and vulnerable moments best forgotten by the public. An NGO worker said: "A divorce, no not even that, even a scandal, can end a rural women's current and future prospects. It can ruin her family's prospects. It can even impact her sister or daughter's marriage." Many women have expressed to me that they consider having a permanent record of one of the worst moments of their life as a violation of their basic human rights. This view is not restricted to Bangladesh. The right to be forgotten is an emerging conversation in Europe and America as well. It is worth noting that some NGO workers suggested that including *shalish* events by obscuring data and identification of the parties can lead to a more inclusive legal database to help researchers. My point is not debating whether *shalish* should be digitized or not. Rather, my goal is to note the exclusions within digital legal databases and the self-reflexivity that users of digital archives must have when they draw knowledge from such partial resources.

5.5 Silence and silenced: gendered digital archives

A critical component that current digital legal databases do not capture is a woman's silence. Silence plays a significant role in a woman's testimony. For instance, women in *uthai nawa* cases are silenced in overt and implicit ways in Bangladesh. In my field visits to MLAA, I observed cases in which women discussed their problems with MLAA workers and noted how the information of the case was written down in MLAA's forms. While expressing their sufferings, many women fell silent mid-sentence; the MLAA workers, who were predominantly male, filled in the silences with their own words—both verbally and in the forms they were taking notes on. In one case I observed in 2021, a young woman, Shejuti, who had eloped with her husband, now faced the risk of a divorce as her husband was having an extramarital affair. She came in with her small child and fell silent in the middle of telling her story: "And what about my babu [child], my husband doesn't even : : :." The MLAA worker filled in for her: "He doesn't even pay for your child, right?/*kono taka poisha, khoroj pati dei na baccha ke, tai to?*" Is this what Shejuti intended to say? Is there a way to document this silence? Do the MLAA employees and the rural women who seek legal aid have a shared vocabulary and worldview? Filling in the silences indicates that, from the very start of documentation, there are multiple layers of distortion with the words uttered and not even uttered by subaltern women.

In response to the MLAA worker's question, Shejuti responded:

> He pays for my babu's medical bills and some food but he doesn't pay for me. The money he sends is not enough for us. Do you see this *kameez* [indicating the outfit she was wearing]? He bought this for me a year and a half ago. He hasn't bought any new clothes for me for a year and a half, but he buys her [his mistress] clothes.

The MLAA worker asked: "So, he gives money but not any attention to your child?" She responded: "He calls me only when he wants to talk to babu. He never calls to talk to me." And then the MLAA worker said: "Did he visit your son recently?" to which Shejuti responded, "No, he hasn't come home for three months." The MLAA worker's narrative of this case focused more on how Shejuti's husband was having an affair and how he was an absent father who was not providing the expenses of his son and wife. Shejuti's concerns about her husband not paying her any attention or not buying her clothes did not make the cut in the formal documentation. It is possible the MLAA worker wanted to only include relevant information that would help her "win" her case or did not factor some of Shejuti's claims as worthy of being put into a legal file. While legal aid offices wish to fix family disputes through *shalish*, if cases go to state courts, their records become

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foundational documents for those procedures. These kinds of paperwork are at the front line of legal documentation. Women's experiences are not recorded according to their own words or standpoints, but rather according to the NGO worker who fills in their standardized paperwork or local police officer who files the FIRs.

Moreover, women can choose silence to enforce agency as well. As Mahmood suggests, agency is complex, and we must situate women within their social structures. Women who stay silent in *uthai nawa* cases might do so out of societal pressure and gendered asymmetry of power, but they might also do so as a strategic decision. In a *shalish* I observed in Jamalpur district, the woman in question did not utter a single word, even when questions were directed at her. The couple, Lopa and Sajid, were in a relationship and had eloped to get married against both their families' approval four years previously. After a fight with her husband, Lopa left his house, moved to her maternal grandmother's house, and wanted a divorce. A *shalish* was held to mediate this case and reunite the couple. The only time Lopa spoke was to say "no" when the *shalishkars* asked her to go back to Sajid's house and give their marriage another try. A few months later, a friend of Lopa's reflected to me:

> I spoke to Lopa. We all told her that you should have said something. What you did was disrespectful. But she kept on saying, "They will twist my words (*kotha pechabe*). Everyone always twists my words. They will find something wrong with what I said and would force me to go back to him. I know how these things work. They think that only they are clever. They can't twist a no." And now she's so happy that she's getting a divorce. We think she is having an affair, why else would she leave the man she was so crazy in love with?[63]

Lopa's silence was a strategic decision based on awareness of the barriers she would face in *shalish*: "I know how these things work." She employed silence as a form of agency because she knew that would be her best chance to reach her goal. Since court records rely on verbal testimonies, the messages and powerful meanings of silence are not documented. Lopa's silence played a central and powerful role in her desire to get a divorce and these forms of agency and legal competence employed by women are not reflected in offline records, and hence they have no scope to ever enter online legal records. In short, the ways in which rural women use silence to creatively construct their legal narrative do not enter digital databases.

The current erasures in digital databases about how silence is both a tool of oppression and emancipation for women leave out significant components of how women navigate around law and legal matters in Bangladesh; this is neocolonial digitality. Digital legal databases are gendered archives in which women have their perspectives filtered and rewritten according to the bounds of modern state law and its elite participants. The increase in the volume of digitized court records does not imply that the archive is expanding, inclusive, or diverse. There are overwhelmingly more Muslim judges and legal actors in Bangladesh who are men. Marginalized communities and groups such as women, Hindus, persons with disabilities, hijras, indigenous communities, non-Bangalis, and so on tend to have their stories and legal narratives recorded in print and electronic/digital forms from dominant voices and standpoints. Hence, the digital legal archives that are used to produce knowledge today are largely based on elite, heteronormative, ableist, and patriarchal versions of events.

5.6 Digitizing the demarcation of religion

Since documents are essential components of digital legal archives, it is important to note how religious perspectives are either disregarded or reframed in the documentation

[63] Personal Interview, Phone, May 2022.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

process by lawyers or NGO workers. A case in a district court I visited in 2019 involved a woman who claimed she was possessed by a *jinn* or some other external spiritual force that had made her kill some farm animals of her neighbour. The neighbours claimed that she was lying and that she had killed the animals out of animosity. Many people in the community believed that a *jinn* had possessed this woman, coercing her to act in a way that she would not have otherwise. Yet this component never made it into any of the lawyer's formal paperwork. Instead, it was recorded that the woman in question was jealous because she assumed that her husband was having an affair with her neighbour and so she killed the farm animals out of spite. When I asked the lawyer about the *jinn* testimony, he said: "I'm a lawyer. I might not work in Dhaka city or in America, but I know better than to include this rubbish/gibberish (*abul tabul*). We all know what the truth is."

In another case, a Muslim woman, Yasmine, went to a local legal aid NGO in Jamalpur district to ask for a divorce. Even though she had voluntarily eloped, she wanted a divorce now because her husband was an avid gambler and she did not want Allah's *naraz* (displeasure) to befall her and her family; she had had a miscarriage and considered that to be a sign to leave her "unholy" household. Khaleda, the local aid NGO officer handling this case, was a religious Muslim woman and agreed with Yasmine's reasoning of how gambling might lead to Allah's *naraz*. Khaleda later told me: "Poor Yasmine. It's good she's leaving him. Allah will never bless the household of a gambler." Yet, when Khaleda filed the paperwork, there was no mention of Allah's *naraz* as the main reason why Yasmine as well as others at the NGO-mediated *shalish* validated why she should get a divorce. The paperwork only indicated that the man was a gambler, did not return to his house many nights, and did not show any love or compassion towards his wife. When I asked Khaleda why she omitted the part of Allah's *naraz* in her report despite it being such a significant part of Yasmine's story, she was surprised and responded in an amusing tone: "You don't write these things in paperwork! The things you say (*ki jebolen, apa*)." I responded: "Won't it help her case?" She responded: "Everyone knows it. We don't have to write it." Khaleda was one of the *shalishkars* and, despite her personal view and advocacy in the *shalish* that Allah's *naraz* is a legitimate reason for divorce, this aspect of the event never made it into any written record.

These cases indicate that the formal paperwork of institutions requires a detachment from religious or faith-based practices to maintain legitimacy, and hence are subsequently unable to be part of the digital legal databases that rely on state legal records. In state and legal aid records, women's words and intentions have to be "rationalized." Sometimes paperwork might refer to religious remarks in the form of testimonies, but some of the early documents of state courts—NGO reports or police FIRs—must hold a "secularized" position. NGO documents are not included in the digital legal databases in legal research software, but many NGOs publish annual reports on their websites. These documents are significant because they can trickle up. FIRs are often referred to in the Supreme Court, and legal aid NGO documents are often submitted in the lower courts when the case moves from *shalish* to state courts. Hence, these types of writing practice add to the continuation of the writer being forced to secularize their voice and disassociate religion from formal paperwork, which contributes to print texts producing a particular narrative and erasing the legal reasoning and moral logics that can be driven by faith or religious proclivities. In doing so, this results in neocolonial digitality as the digitizing of cases inadvertently reproduces the religious/secular binary and circulating particular secularized narratives of events.

5.7 Data analytics: uthai nawa = *abduction*

When *uthai nawa* cases are included in Manupatra, they are never treated as the complex *uthai nawa* cases on the ground, but rather as abduction cases. All the messiness and nuances that were lost in the Supreme Court are reinscribed in digital databases through

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online tags and filters that mark such cases as abduction. Learning about *uthai nawa* cases that are labelled as kidnapping from digital archives is particularly critical because the coded language can be misunderstood even by those who speak Bangla. Such mistranslations reinforce neocolonial digitality and can generate further harm. For instance, mislabelling these cases as abduction creates false statistics in research software. It generates biased data analytics and crime patterning that suggest a village has a higher kidnapping rate than it does in reality. Research and studies that draw from such online resources can also be used to justify policing and surveillance by the state. These false statistics of kidnapping lead to the communities living in the villages to be treated as the "barbaric" and "backwards" others who need monitoring by the state, urban local elites, international NGOs, and intergovernmental organizations.

5.8 Exception: not the norm

The databases of legal research software record the exceptions, not the norms. Thus, can these records be used to generate normative statements about Bangladesh's law and legal scenarios? The Supreme Court's treatment of *uthai nawa* cases is not the norm in most parts of Bangladesh; it is the anomaly and exception. In addition, most consensual *uthai nawa* cases are handled within the community and never reach the Supreme Court. Hence, the cases in legal research software that are based on the Supreme Court are the anomalies that do not represent how most Bangladeshis approach law and experience legal proceedings in their everyday lives. Bangladeshi rural women's perspectives about law and their role in legality are only recorded in official legal archives at moments of disruption. These records often rely on moments of vulnerability and records of testimonies that are summarized and paraphrased by police officers, NGO workers, or lawyers.[64] Hence, legal judgments and research built on the exceptions slowly become normalized—the legal archive built from exceptional standpoints becomes the norm.

Moreover, archives have a complex role in blurring temporalities: past, present, and future. Michel-Rolph Trouillot states that archives play a crucial role in the production of history as they can silence people and erase historical events.[65] He further states that there is an asymmetry of power regarding who gets to write records and who gets to decide what kinds of sources are worth including in archives. Despite the power imbalance and partial narratives, Trouillot argues that these sources end up shaping historical facts that lead to current and future writings that supplement the existing dominant narrative. Hence, archives are not just physical or online locations that contain information of the past; they also play a significant role in shaping the idea of what will be or what could be in the future. Ann Stoler encourages scholars to think about "archives not as sites of knowledge retrieval, but of knowledge production"—that is, as "cultural agents of 'fact' production."[66]

Digital databases reinforce neocolonial digitality as they disproportionately disseminate knowledge that can marginalize communities such as rural women living in post-colonial states in the Global South, and yet they operate with the rhetoric that they are inclusive and beneficial for such communities. If the current *uthai nawa* case records are used as the primary sources for generating current and future digital legal databases, then, over time, they will help develop a linear legal archive that appears coherent in telling and retelling the same types of stories and generating a consistent narrative about events.

[64] The women are sometimes asked to provide a signature or fingerprint mark using a seal to verify that what is documented is true. There are many instances in which police officers, lawyers, and NGO workers do not think it is worth allowing the litigants to read the written testimonies that they wrote on behalf of the parties.

[65] Trouillot, *supra* note 6.

[66] Stoler (2002), p. 87.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

6. Automation and (supportive) AI Judges

Studying digital legal databases is essential because they provide the data sets to train AI. AI is assumed as neutral and outside the realm of human biases, but flawed databases will inadvertently lead to skewed AI outputs. Many tech companies, judiciary, and states have recently been advocating for using AI models to help generate verdicts to reduce time and backlogs of cases. Even though most nations and judiciaries agree that courts should not rely on AI to have complete control over the verdicts of cases, the use of tools such as "supportive" AI Judges as an additional resource to help judges is appealing for many. Tania Sourdin, Professor of Law in the University of Newcastle, suggests that there is a difference between supportive AI Judges and completely automated AI Judges. Supportive AI Judges are assistive tools for human judges while the latter are defined as "forms of AI that may mimic and completely replace human judges."[67] She suggests that supportive AI Judges are probably more likely to be used in the future, expanding on the current use of AI in law, which focuses primarily on gathering information. Supportive AI Judges can be used to "produce a draft judgment that is then checked over by a human judge" or, on the flipside, can be "used to review individual judicial decisions or to exercise a quality control function by identifying inappropriate biases in decision making."[68] There are increasing trends for developing and advocating for such AI models worldwide. Computer scientists Intisar Almuslim and Diana Inkpen explore the use of natural language processing (NLP) and deep learning (DL) to predict the appropriate outcomes of Canadian appeal cases.[69] Mumcuoğlu et al. explore how DL models can predict the rulings of the Turkish Constitutional Court and Courts of Appeal with "high accuracy."[70]

I argue that these supportive AI Judges can reproduce bias under the guise of neutrality. For instance, if AI Judges were used to help generate a draft judgment for the complex "consensual" *uthai nawa* cases in Bangladesh, then they would discriminate against rural women. This is because outputs provided by AI Judge models rely significantly on the decision-making pattern of the data they are trained on. As mentioned previously, the current digitized data for Bangladeshi cases are elite records, namely a small sample of Supreme Court cases from Dhaka where *uthai nawa* cases tend to be framed as abduction. If the current digitized data were to be used to train AI Judges, then these models would also probably frame *uthai nawa* as abduction and follow the consent/coercion path of legal reasoning, which is bound to discriminate against women in these circumstances. A model for an AI Judge is considered good based not on the kinds of outputs they provide, but rather on the extent to which they can replicate the verdicts of the case judgments that they are being trained on. In this process, the biases enforced by the elite state courts are reinscribed in the automation process since the model in its training stages will be tweaked until it has high accuracy in imitating the verdicts of the case judgments.

There are two points about AI Judges being used as supportive tools in court that I dispute. First, a successful AI Judge is supposedly one that can mimic human judges and replicate decisions similar to the data they were trained on. Even if AI Judges can replicate Supreme Court decision-making patterns verbatim, these training data are based on elite court records and only one version of law. There are a lot of effort(s) put in place for these models to align with a particular kind of legal reasoning and this reasoning might not align with rural communities and their frames of justice. In other words, a closer analysis of the

[67] Sourdin (2021), p. 132. Her work refers to it as Judge AI instead of AI Judge.
[68] *Ibid.*, pp. 132–3.
[69] Almuslim and Inkpen (2022).
[70] Mumcuoğlu et al. (2021).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

design, research, and modelling practices of AI Judges provides insight into how tools/programs for legal automation are embedded within broader gendered and racialized sociopolitical structures that are difficult to detect and can harm marginalized communities in the Global South in inconspicuous ways.

Second, I disagree with the popular perception that humans using supportive AI Judges will inevitably lead to improving the course of justice for all, namely the assumption that machines will check human bias and humans will check machine bias. In this view, AI Judges would provide a couple of draft judgment options for human judges to choose from. The response from the human judges would provide a feedback loop that helps train the AI Judge model on how to provide "better" options in the future. Analyzing the above assumption through *uthai nawa* cases demonstrates significant flaws in this line of reasoning. In the above perception, there is an implicit assumption that the state law, aka the Supreme Court, provides the ultimate form of justice. Having Supreme Court judges, who are elite legal professionals, confirm or modify these models adds further to training AI to abide by a certain form of legal reasoning. It provides the illusion that both AI and the Supreme Court came to decisions "naturally" and independently of one another. Since the AI Judge model will probably produce draft judgment(s) like previous Supreme Court decisions, the Supreme Court judge is reaffirmed that their reasoning is sound; after all, the machine does not have personal prejudice. If the AI Judge provides "wrong" answers, the human judge can modify the draft judgment to "teach" the model what the "correct" verdict is. That is why it is significant to highlight that the automated judgments provided by AI Judges are not neutral—that is, they are centred on matching the Supreme Court's decisions, and will constantly reproduce its biases.

AI Judges provide the illusion of neutrality and exhaustive reasoning, but they rely significantly on pre-existing social biases—that is, this complex online-offline relationship is closely tied with particular epistemologies that rely on British pedagogies of law and post-colonial legal structures that do not align in many cases with Bangladesh's rural context. In the current digital landscape, AI Judges do not have the scope to include alternate socio-legal experiences and standpoints of justice. The outputs they generate can discriminate against rural women and conceal the uneven scale of justice that such marginalized communities face. By relying solely on state law, elite records, and modern legal epistemic frameworks, AI models replicate legacies of colonialism and exclusion. But, on the other hand, these tools can also generate newer forms of hierarchies and power as they have much more limited scope and capacity to understand marginalized communities' positionalities and standpoints.

That is why it is important to unmask the rhetoric of neutrality and immateriality tied to digitality. This research acts as a forewarning of the dangers of succumbing to utopian ideologies of digitizing and automating law. It is important to study digital legal databases (and databases in general) and show the prominent role they play in automation. Digital legal technologies can embed racism, sexism, classism, and heteronormative assumptions that favour certain groups while harming others.

The idea of a supportive AI Judge is already developed in some countries. For instance, Sourdin mentions that Chinese local courts in Beijing and Shanghai have used the online case judgments from their regions to develop and use AI to help draft judgments:

> For example, Beijing High People's Court has developed and deployed a "Wise Judge" ("*Rui Fa Guan*" in Chinese) system. The system relies on nationwide judgment data drawn from China Judgments Online, which can apply to judges in the Beijing region involved in drafting judgments to ensure that "cases with similar facts received similar judgments". Similarly, in the criminal area, Shanghai High People's Court has developed the "Intelligent Auxiliary System of Criminal Case Handling" where mass judicial data (including that from China Judgments Online) is collected and used by

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

> Shanghai judges to ensure that judgments in "like" cases are in line with those delivered in the rest of the country.[71]

While Sourdin points out several issues of supportive AI Judges, namely in drafting judgments, she also highlights ways in which they could help assist judges in other areas, such as mapping financial information to determine compensation. Other researchers such as Fabrice Muhlenbach et al. explore how machine-learning tools/techniques can be used to predict a couple's divorce alimony in France.[72] Tara Vasdani, a lawyer in Canada, writes in support of Estonia's adoption of AI in minor cases and hopes that Canada will soon adopt similar procedures.[73] Several Bangladeshi academics and lawyers also consider AI as a supportive tool for judges instead of something that should/will replace humans.[74] AI Judges are not used in most of Bangladesh yet, but the current push for digitization by the state as well as from local and global tech industries and enterprises might lead to this path in the foreseeable future. Sourdin states that it is important for scholars to study supportive AI Judges, not necessarily because they are ideal, but rather because "the larger question is not if AI will reshape the judicial function but when."[75] Hence, it is important to note the shortcomings of AI Judges and the role that digital databases play in their construction before they are entrenched and normalized into society. AI Judges are just one example that demonstrates how digital legal databases are key to legal automation and it is an area that deems further research.

This research aligns with the emerging line of scholarship that studies the biases of automation in law. Ruha Benjamin's term "New Jim Code" explains how technologies and predictive analysis tools can lead to higher arrests for Black communities,[76] while Cathy O'Neil's concept of "Weapons of Math Destruction" helps in understanding how recidivism software that is intended to help predict who is more likely to commit a crime again are biased towards Black communities and lower-income groups.[77] Both these concepts are based on events primarily in the US and highlight how pre-existing social biases, racism, and structural inequalities are embedded in the design and encoding process of developing automated technologies. My concept of neocolonial digitality aligns with these other concepts but emphasizes the standpoints and lived experiences of marginalized communities in the Global South. In doing so, it provides a lens through which to recognize the other complex layers of discrimination that these technologies employ in the non-West. Moreover, studying the biases of legal automation through the concept of legal pluralism demonstrates how colonial legacies continue to permeate in the digital sphere and train AI to reinforce old and new forms of oppressive practices: hence, "neocolonial" digitality.

7. Conclusion/stakes

There are five main contributions of this article. First is the concept of neocolonial digitality, which is intended to be an accessible concept for academic and non-academic researchers from various disciplines studying digital technologies in relation to power, namely the question: What are the colonial continuities and what are new forms and means to enforce power? Where do they overlap and where do they diverge? Neocolonial

[71] Sourdin, *supra* note 67, p. 133.
[72] Muhlenbach, Phuoc, & Sayn (2020).
[73] Vasdani (2019).
[74] Karim (2017); Choyon & Hossain (2021).
[75] Sourdin, *supra* note 67, p. 137.
[76] Benjamin (2019).
[77] O'Neil (2016).

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digitality promotes the recentring of knowledge from the standpoints of marginalized communities, especially from the Global South since they tend to get pushed in the margins of European and American academic research. Neocolonialism is a term that was popularized by Kwame Nkrumah, a political figure and political theorist from Ghana, to think about how imperialism and capitalism are closely intertwined with one another, especially in sovereign nations that were previously colonized.[78] The concept of neocolonialism is embedded in unraveling how exploitation by "foreign" powers continue in nations that are supposedly sovereign and autonomous. Nkrumah argues that certain nations are coerced in a position where they require aid and support through economic ventures by former colonizers or other "First World" or "Developed" nations:

> The result of neo-colonialism is that foreign capital is used for the exploitation rather than for the development of the less developed parts of the world. Investment under neo-colonialism increases rather than decreases the gap between the rich and the poor countries of the world. The struggle against neo-colonialism is not aimed at excluding the capital of the developed world from operating in less developed countries. It is aimed at preventing the financial power of the developed countries being used in such a way as to impoverish the less developed.[79]

My concept of neocolonial digitality refers to when such conditions operate in societies where digital technologies are used as metrics of progress and coerced into societies (particularly in the Global South) by powerful nations and institutions with the rhetoric of helping the "lower ranked" nation. For example, global tech companies based in powerful nations often generate a "cheaper" version of their products and services claiming that this allows increased access to local communities. Yet, these acts are often imbued with economic and political imperatives. Foreign companies tend to "drive out" the local markets through monopolizing tendencies and promote the rhetoric that their digital products and services are mandatory for the nation to operate on par with the "First World" or "Developed" countries. These promotions leave out mentioning the unequal power relations involved with these transactions and the harms and discrimination that digitality can reinforce. Even when there are evidence of digital products and services leading to harmful consequences, the elite actors and institutions that develop and promote such tools tend to escape accountability.

This article uses the concept of neocolonial digitality to show how digital legal databases are tied to neo/colonial ideologies and elite sociopolitical structures. Power in this site is not limited to British colonial legacies and "Western" imperialism. There are hierarchies within the Global South and nations such as India and China also reinforce power in Bangladesh through various means. For instance, India's monopolizing of research software in South Asia and China's push towards legal automation are aspects that impact the digitization of law in Bangladesh. Studying Bangladesh demonstrates the additional layers of discrimination that marginalized communities face at the crossroads of law and digitality in the less powerful post-colonial states in the non-West/Global South.

Second, this article bridges digital media studies and legal anthropology to provide new insight into the multiple epistemic erasures and violence(s) that subaltern women face during the process of the digitizing of law. It highlights the dire consequences that marginalized communities can and do face due to the erasures. The concept of legal pluralism stemming from legal anthropology allows a more inclusive and broader understanding of law that is often lacking in digital media studies. For instance, there are several significant works that focus on the harms that marginalized communities face at

[78] Nkrumah (1965).
[79] Nkrumah (1965), x.

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the crossroads of law and digitality that I draw from,[80] but these works are limited to thinking about law only along the lines of state law. Broadening the scope of law by examining alternate legal systems and noting how cases are reframed by the time they reach state courts and then filtered again during the digitizing process provide new insight into how digitization is a politicized process tied to offline elite practices and dominant epistemic frameworks of law and justice.

Note, alternate legal systems are common in many parts of the world, not just the Global South. I push back on North-South binaries assuming that the socio-legal and sociotechnological issues that I discuss are only issues within the Global South or the so-called "Third World." In Canada, there is the First Nations/Indigenous Court (e.g. Gladue (Aboriginal Persons) Court); in the US, there are Rabbinical courts, the Court of Indian Offences (CFR Courts) (e.g. Albuquerque CFR Court); in Australia, there are many indigenous courts (e.g. the Koori Courts and the Nunga and Aboriginal Courts). Similar to *shalish*, these alternate legal systems are also recognized by their respective states and play a complex role in how the community navigates around plural legal systems. Hence, legal pluralism is an apt concept for studying justice in the digital realm globally; recognizing the plurality of law in scholarship that examines the intersection between law and technology in disciplines such as digital studies, information science, software studies, science and technology studies, and human–computer interaction decentres studying in/justice through Euro-American-centric and state-centred perspectives.

On the other hand, digital media scholars such as Cathy O'Neil, Nick Seaver, Wendy Hui Kyong Chun, Kate Crawford, Ruha Benjamin, Safiya Noble, and such explore the complex processes of digitality that are immersed in power politics and explain how the design and imagination of digital technologies are not neutral—that is, how the encoding process itself is immersed in offline social biases and capitalist ventures that inevitably lead to flawed outputs for marginalized communities. This article draws from this line of digital media scholarship and connects it to anthropological approaches to studying plural courts and demonstrating the biases from the ground up.

In addition, the concept of legal pluralism helps in understanding that non-state courts such as *shalish* are valid forms of law, and lack of their acceptance as law in the online realm generates erasures in new and (in some ways) more precarious ways. I argue that while state courts consider alternate legal systems such as *shalish* as inferior to them and constantly sideline them, their existence and prominence are still recognized by state courts; however, in the digital realm, the co-existence of plural legal systems in society is not reflected. Note, *shalish* might be mentioned in state court case judgments in passing; by erasure of *shalish*, I do not mean that they are not mentioned in the content of digitized court records. Rather, by erasure, I mean that the very mechanism of *shalish* as a valid and prominent form of legal practice does not exist in the digitization of law. For instance, there is no online tab to imply that Bangladesh might have alternate forms of legal practices other than state law to indicate to the researcher that state law is only one version of law. On the ground, *shalish* are so important that prominent NGOs such as BLAST have mediation attempts through *shalish*. There are many instances in which state legal actors ask litigants to mediate their issues in *shalish* instead of courts due to case backlogs and lack of time. Hence, it is important to apply legal pluralism to studying digital databases. In doing so, it reveals where alternate legal systems are located or not located in the digital sphere. I hope my research will prompt other scholars to study legal pluralism in relation to digitality.

Third, this article asks: Why are digital technologies such as AI Judges appealing to members of state courts? Another way to think about this question is: Why are such technologies more easily incorporated into "official" or "formal" law, while *shalish* is

[80] O'Neil, *supra* note 77; Benjamin *supra* note 76; Pasquale (2020); Crawford, *supra* note 53.

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

considered a hindrance and not compatible with state law? The most popular response is: the current backlog of cases in state courts prolongs the course of justice, and digitizing and automating law is a way to delegate some of the burdens of state courts and ensure that cases are resolved faster. Yet, in Bangladesh, *shalish* help to reduce the backlog of cases as they are community-based and can deliver decisions faster. Why is it easier for state courts to incorporate the decisions made by AI Judge models but not *shalish*? In my view, it is easier to accept AI Judge models because it is easier to shape the digital according to the will of the elite and those in power than it is to reconfigure communities and culture. That is not to say that humans have complete control over how to manipulate algorithms. The outputs generated by AI can be unpredictable.[81] Despite of that, the digital is still somewhat easier to "control" and design in a way that aligns to modern epistemic framework(s). As discussed in this article, AI Judge models are trained to mimic the decision-making patterns of particular elite cases and have the scope to be modified in real time by elite state actors. Unlike the explicit and implicit resistance to state law in *shalish,* AI Judge models are easier for state courts to train, manipulate, and "fix."

Currently, there is no way to check how states, private tech companies, and law firms construct their digital legal databases, and this obscurity aids in generating a black box—that is, creating an illusion of "textual abundance."[82] Bruno Latour's concept of "blackboxing"[83] helps in understanding how machines seem to operate "efficiently" when people only look at inputs and outputs without inspecting the inner mechanics of the technology itself. Hence, the more people think that technologies produce "successful" outputs, the more their inner workings become opaque and obscure for the public to scrutinize. These obscurities have become normalized to the point that Frank Pasquale calls today's society a "black box society."[84] Studying alternate legal systems from the ground up is a means to bypass limitations of blackboxing and explore neocolonial digitality to visibilize the complex webs of power in the process of digitizing law.

Fourth, this article calls for studying digital databases to note how they play a central role in generating bias in the digital realm. There are several reasons for investigating the shortcomings of digital legal databases. Digital legal databases generate newer forms of legal archives that are used by researchers worldwide to gather information about law. Academics might use this information to produce peer-reviewed books and journal articles, lawyers might use it to prepare their legal narratives and case citations, humanitarian and social activist groups might use it to write social commentaries and advocate for policy change. The use of digital legal archives from research software in particular has increased drastically since the pandemic when researchers had no other means to conduct research. Part of my fieldwork was working at legal aid NGOs in Bangladesh in 2021—that is, during pandemic lockdowns—and I witnessed first-hand how crucial it was to use online resources at that time. For instance, when I was a Research Fellow at BLAST, we had to find cases regarding bail and unlawful arrests to help marginalized communities and lower-income groups who were being arrested for violating lockdown protocols; Manupatra and BdLex were our only means to gain access to cases since we were not allowed to visit physical archives. Even though we have access to offline archives now, relying on digital archives for academic and professional research is becoming the new norm.

[81] Seaver (2019).

[82] I am influenced by Ramon Lobato's research on the design of the Netflix interface where he states: "The viewer is positioned as the sovereign navigator-user of an endless archive of screen content. Such design choices are carefully constructed to create the appearance of textual abundance and conceal limitations in what is finite Netflix catalog." Lobato (2019), p. 41.

[83] Latour (1999).

[84] Pasquale (2016).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

The digital legal databases in research software are considered reliable sources and they gain legitimacy as they are made by prominent tech companies. Moreover, these pieces of software are available in various elite institutions such as universities, libraries, state law firms, and NGOs, which further legitimizes their credibility. Research software acts as a key resource for research worldwide and using such technologies gives the ideological perception that a researcher has conducted comprehensive research.[85] There is increasing scrutiny on how online information can be biased, such as Safiya Noble's work on how the Google Search Engine can generate results that are racist and harmful towards Black women;[86] however, there is much less research scrutinizing the "credible" digital information systems that are used to gather information in prestigious institutions. Hence, it is vital for academics, lawyers, and other researchers who use research software to recognize the prejudice, selection bias, and omissions in these emerging digital archives.

In my study of digital databases, engaging with neocolonial digitality leads to understanding the epistemic biases and power politics engrained in digital archives, which then leads to methodological self-reflexive calls for both the designers/producers and users/consumers. For the designers/producers of digital databases, it is imperative to critically assess the resources they rely on to build their archives, recognize the omissions they might have made, and proactively expand them to include diverse narratives and standpoints. For users/consumers such as academics, researchers, and lawyers who engage with digital legal databases, self-reflexivity is vital. Researchers using "legitimate" digital archives should still acknowledge that their work relies on partial resources that are ingrained into complex local and global power structures and critically reflect on how these sources can be skewed for several reasons, such as the ranking of the search engine of the research software they use. Applying the concept of neocolonial digitality helps in noting the epistemic biases in digital archives that lead to discriminatory knowledge. Yet, recognition in the theoretical realm is not enough. That is why I emphasize the methodological call to recognize neocolonial power and the politics of knowledge embedded in digital archives from the get-go, rather than a reflective afterthought. Combining theory and method when/if possible is important, especially with regard to decolonizing knowledge as well as access to that knowledge.

One of the recurring questions I encounter is: "Are you advocating to digitize *shalish*? Would that solve the problem of exclusion?" This framework, once again, tries to fit inclusion through the Western liberal feminist approach of the participation model. Allocating resources to digitize *shalish* to include them in digital databases requires reframing the orality of *shalish* in a way that makes it digitizable. Instead, accepting plural mediations of law, engaging with alternate legal systems through their standpoints, and dismantling hierarchies of media (orality/print/digital) within law allow a more inclusive space for *shalish* than finding means on how to change them so that they can be recorded in a way that can be digitized. In addition, it is important to think about these problems outside rigid dichotomies of inclusion/exclusion. Many women in Bangladesh as well as other marginalized communities do not want their pain and vulnerable moments to be documented in any media form and it is important to respect those wishes. The goal of this article is to note that there are alternate experiences and worldviews outside of digital and print archives, and advocate for self-reflexivity and recognition of these gaps when engaging with such archives.

Fifth, it is imperative to study digital legal databases as they are critical in the construction of legal automation tools. When cases were initially being digitized, the intended goal was to increase access to information, build comprehensive online archives, and reduce time for finding resources; due to how technologies are developing, these digital databases play an unexpected role now in helping to construct automated tools

[85] Chassanoff & Altman (2020).
[86] Noble (2018).

https://doi.org/10.1017/als.2023.9 Published online by Cambridge University Press

such as AI Judge models. As introducing AI to support legal decision-making is gaining popularity worldwide, it is important to note how automated outputs can generate skewed results when AI is trained using biased data. Thus, it is important for scholars from various fields to contribute to interdisciplinary research on the relationship between digital legal databases and legal automation, which is an emerging issue for the future.

Acknowledgements. This research is funded by fellowships from New York University (NYU) and the Social Science Research Council's International Dissertation Research Fellowship (SSRC-IDRF). I am grateful to the editors of the *Asian Journal of Law and Society*, namely Professor Sida Liu and Dr Haozhou Lin. This research benefits from dialogue and feedback from Professor Arvind Rajagopal. Special thanks go to my family (namely ma and nanumoni), my extended kin and networks in rural Bangladesh, Professor Dina Siddiqi, Barrister Sara Hossain, lawyers Fazlul Huq and Ibrahim Miah, and all my interlocutors. Sally Merry introduced me to the concept of legal pluralism and her research, along with my conversations with her, influenced this piece. I am grateful to Professor Talal Asad for his supportive role in helping to develop this work. Thanks to the CUP team, Craig Willse, Kari Hensley, Ramon Resendiz, and Sam Kellogg for helping me edit this article, as well as all those who engaged with the working draft of the article in the various conferences and workshops I attended. Last, but not least, thank you to the review committee of the AsianJLS-ALSA Graduate Student Paper Competition (2021) for believing in me and the value of this work.

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Cite this article: Hoque ST (2023). Neocolonial Digitality: Analyzing Digital Legal Databases Using Legal Pluralism. *Asian Journal of Law and Society* **10**, 516–549. https://doi.org/10.1017/als.2023.9