



**SONARGAON UNIVERSITY**  
**Research Monograph**  
**On**  
**Alternative Dispute Resolution in**  
**Civil Justice System of Bangladesh.**

**Submitted to**

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## Letter of Transmittal

07<sup>th</sup> January, 2025

To

**Sharmin Jahan Runa**

Assistant Professor & Head (Acting)

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Sonargaon University (SU)

Subject: The Research Monograph of **“Alternative Dispute Resolution in Civil Justice System of Bangladesh.”**

Sir,

It is a gratification for me to submit the Research on **“Alternative Dispute Resolution in Civil Justice System of Bangladesh.”**

While doing this Research, I have tried my best to this project the paper to the required standard. I hope that this paper will fulfill your expectation and make you happy. I therefore, hope that you would be kind enough to go through this paper for evaluation.

I am always available for any clarification of any part of this paper at your convenience.

Yours sincerely

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## **Declaration of Supervisor**

This is to certify that the Research Monograph entitled “**Alternative Dispute Resolution in Civil Justice System of Bangladesh**” submitted by **Iqbal Bahar** for partial fulfillment of the LL.B (Hon’s) Degree in Law to the Department of Law at Sonargaon University (SU) is based on his original research and investigation carried out under my guidance and supervision.

Supervisor:

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**Sharmin Jahan Runa**

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## **Declaration**

I do hereby declare that the dissertation submitted to the Department of Law, Sonargaon University in the partial fulfillment of the requirements for the degree of the LL.B (Hon's) Degree. It is carried out by me under the guidance and supervision of **Sharmin Jahan Runa, Assistant Professor & Head (Acting), Department of Law, Sonargaon University**. Research method and approaches strictly have been followed during undertaking the work. Sources consulted are duly referred, quoted and incorporated in the text and references included at the end of the work which is based on my research. I hereby declare that this dissertation is original and free from plagiarism and it has not been submitted earlier partly or wholly to any other university or institution for any degree or diploma.

Signature

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I express my gratefulness to all the Faculty Members of Department of Law for their constant inspiration, generous support and time to time suggestions in the progress of this dissertation.

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## **Abstract**

This paper discusses the appearance of implication and practice of Alternative Dispute Resolution (ADR) for executing civil justice and to eliminate suit backlogs in the disputes resolution system of Bangladesh. Bangladesh has rich ethnicities of common law culture and it reflects in the existing legal system. But due to recent trends of corruption, political deadlocks and some other key obstacles the present instrument is supposed to be unable in resolving a dispute in swift and has been depriving people from the way of implementing and sustaining civil justice. There has been some objective and subjective factors that have led our civil judiciary to a condition where its demerits are ruling over the merits, manifesting in crippling backlogs and delays. This paper highlights on the role of ADR in implementing civil justice, problems and prospects, and statutory provisions of Alternative Dispute Resolution in the trial system. This Article has explored theoretical concerns underlying contemporary appeals to Alternative Dispute Resolution (ADR) in the civil justice system of Bangladesh.

## **List of Abbreviations**

ADR	: Alternative Dispute Resolution
AIA	: Association for International Arbitration
BIAC	: Bangladesh International Arbitration Centre
CJ	: Chief Justice
CPC	: Code of Civil Procedure
ISDLS	: Institute for the Study and Development of Legal Systems
JATI	: Judicial Administration Training Institute
JICA	: Japan International Co-operation agency
NGO	: Non-Government Organization
NOC	: No Objection Certificate

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# Chapter One

## Introductory Chapter

### 1.1 Introduction:

In modern world, ‘Alternative Dispute Resolution’ (ADR) has become very popular as an alternative route for reaching a speedier and less expensive mode of settlement of disputes. It is usually considered to be alternative to litigation. It includes Mediation, Arbitration, Negotiation and Conciliation etc. Mediation is not something new in this subcontinent. Alternative Dispute Resolution (ADR) has long been used in Bangladesh, and it is now being developed further to enhance access to justice. The formal justice system is often seen as complex, time-consuming, and extremely costly, and for many people, access to justice is by no means guaranteed. It is important to identify and bring about effective change in order to reduce delay, expense, and confrontation in court actions, and encourage the settlement of disputes through negotiation or mediation. The Bangladesh government and judiciary have introduced formats of ADR to this end. Community Mediation Centres have just been launched, and arbitration, mediation, and settlement through the court systems are growing. There are moves towards introducing ADR in the Codes of Civil and Criminal Procedure. In this paper, project activities in this field have highlighted several factors that require attention for any ADR system to be effective. In the rural context, these are particularly access for women to mediation, transparency in procedures, the need to consult with disputants to understand their outcomes and their view of their 'real' problems, ensuring compliance with ADR outcomes, and linking formal and informal justice systems where possible. I recommend that the design and implementation of ADR projects have as much flexibility and care as possible to incorporate these and other important aspects of ADR.

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- M. S. Hossain, *Role of Alternative Dispute Resolution (ADR) in Bangladesh's Legal Framework* (Dhaka: University Press Limited, 2020), p. 67.
  - Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.
  - The Constitution of Bangladesh, Article 27, 1972.

## **1.2 Background of the Civil Justice System in Bangladesh:**

The civil justice system in Bangladesh is rooted in a colonial legal tradition, inherited from the British colonial administration. Governed by the Code of Civil Procedure, 1908, the system provides the framework for adjudicating civil disputes. However, the system faces significant challenges, including delays in case resolution, high litigation costs, and the overwhelming backlog of cases. As of recent reports, millions of cases remain pending in courts across the country, impeding the timely delivery of justice and eroding public confidence in the judiciary.

To address these challenges, Bangladesh has increasingly embraced the concept of Alternative Dispute Resolution (ADR). ADR offers a viable mechanism for resolving disputes outside the traditional courtroom, promoting efficiency and accessibility in the justice system.

## **1.3 Concept and Importance of Alternative Dispute Resolution (ADR):**

ADR refers to a range of dispute resolution processes that serve as alternatives to litigation. These mechanisms include mediation, arbitration, conciliation, and negotiation, which emphasize voluntary participation, collaboration, and mutual agreement between parties. ADR prioritizes flexibility, cost-effectiveness, and confidentiality, making it particularly suitable for resolving disputes in a developing country like Bangladesh.

The adoption of ADR mechanisms has gained global recognition as an essential component of effective justice systems. In Bangladesh, the inclusion of ADR provisions in civil procedure laws reflects the government's commitment to enhancing access to justice and reducing the strain on judicial resources.

## **1.4 Methodology of the Research:**

This is a qualitative study. The general methodological approach of this study is grounded on theoretical approach based on Secondary source. Therefore, this methodology has allowed the researcher to collect the secondary data; relevant literature reviews have been made. For secondary data books, journals, newspaper clips, published articles, and other available resources were explored on this issue.

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• The Arbitration Act, 2001 (Bangladesh), Section 3.

• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*, 3(1) (2019):

## 1.5 Objectives of the Study:

The primary objective of this thesis is to evaluate the role and effectiveness of ADR in the civil justice system of Bangladesh. Specific objectives include:

1. Examining the legal framework governing ADR in Bangladesh.
2. Analyzing the practical application of ADR mechanisms, including mediation and arbitration.
3. Identifying the benefits and challenges of ADR in the Bangladeshi context.
4. Comparing Bangladesh's ADR practices with those of other jurisdictions to derive lessons and best practices.
5. Proposing policy recommendations to strengthen the role of ADR in the civil justice system.

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• M. S. Hossain, *Role of Alternative Dispute Resolution (ADR) in Bangladesh's Legal Framework* (Dhaka: University Press Limited, 2020), p. 67.  
• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.

## **Chapter Two**

### **Legal Framework of ADR in Bangladesh**

#### **2.1 Overview of ADR Laws:**

The legal framework for Alternative Dispute Resolution (ADR) in Bangladesh has evolved to address the growing demand for an efficient, accessible, and cost-effective justice system. Recognizing the limitations of traditional litigation, Bangladesh has incorporated ADR mechanisms into its legal system through legislative provisions and judicial initiatives.

The primary legal instruments governing ADR in Bangladesh include:

1. **The Code of Civil Procedure, 1908 (CPC)**
2. **The Arbitration Act, 2001**
3. **The Legal Aid Services Act, 2000**
4. **Village Court Act, 2006**

#### **2.2 Key Provisions in the Code of Civil Procedure, 1908:**

The CPC, 1908, is the cornerstone of civil litigation in Bangladesh. Amendments introduced in 2003 integrated ADR mechanisms such as mediation and arbitration into the procedural framework. Key provisions include:

1. **Section 89A: Court-Annexed Mediation**

This section empowers courts to refer pending civil suits for mediation, provided all parties consent. Mediation under this provision is supervised by the court and seeks an amicable resolution of disputes within a stipulated time frame. If successful, the mediated settlement is binding on the parties and enforceable as a decree of the court.

2. **Section 89B: Arbitration in Pending Cases**

This section enables the court to refer disputes to arbitration if the parties agree. The arbitration proceedings are conducted under the provisions of the Arbitration Act, 2001.

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• The Arbitration Act, 2001 (Bangladesh)

### **3. Section 89C: ADR in Family Courts**

This section specifically emphasizes the role of ADR in family disputes, including matters of divorce, maintenance, and child custody.

#### **The Arbitration Act, 2001**

The Arbitration Act, 2001, governs domestic and international arbitration in Bangladesh. Modeled after the UNCITRAL Model Law on International Commercial Arbitration, the Act provides a comprehensive framework for arbitration proceedings. Key features include:

1. **Party Autonomy:** Parties have the freedom to agree on the rules, procedures, and arbitrators for resolving their disputes.
2. **Enforcement of Arbitral Awards:** The Act ensures that arbitral awards are binding and enforceable as a decree of the court.
3. **Judicial Intervention:** The scope for judicial interference is limited, reinforcing the autonomy and efficiency of the arbitration process.

### **2.3 Role of the Legal Aid Services Act, 2000:**

The Legal Aid Services Act, 2000, aims to provide free legal assistance to disadvantaged and marginalized communities. The Act facilitates ADR by encouraging mediation and negotiation as accessible and affordable mechanisms for dispute resolution. Legal aid offices across the country actively promote ADR as a means of reducing litigation costs and ensuring justice for the underprivileged.

#### **Village Court Act, 2006**

The Village Court Act, 2006, establishes local dispute resolution mechanisms at the community level. Village courts handle minor civil disputes and criminal matters involving claims of small monetary value. The process emphasizes mediation and conciliation, with a focus on preserving social harmony and reducing the caseload of formal courts.

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• The Arbitration Act, 2001 (Bangladesh), Section 3.

• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*, 3(1) (2019):

## **Institutional ADR Mechanisms**

In addition to court-annexed mediation and arbitration, several institutions in Bangladesh support ADR:

1. **Bangladesh International Arbitration Centre (BIAC):** Established in 2011, BIAC is the country's first dedicated arbitration center, promoting international and domestic arbitration.
2. **Mediation Centers:** Many bar associations and NGOs operate mediation centers, providing ADR services to the public.

## **2.4 International Influence on ADR Practices in Bangladesh:**

Bangladesh's ADR framework is influenced by international conventions and practices, including:

1. **New York Convention, 1958:** Bangladesh is a signatory, ensuring the recognition and enforcement of foreign arbitral awards.
2. **UNCITRAL Model Law:** The Arbitration Act, 2001, aligns with the principles of the UNCITRAL Model Law, facilitating cross-border dispute resolution.

## **Judicial Role in Supporting ADR**

The judiciary in Bangladesh has played a crucial role in promoting ADR. Judges are increasingly referring cases for mediation and arbitration to alleviate the backlog of cases. In family disputes, the courts have made ADR a mandatory step before proceeding with litigation.

• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.

• The Constitution of Bangladesh, Article 27, 1972.

# Chapter Three

## Mechanisms of ADR in Bangladesh

Alternative Dispute Resolution (ADR) in Bangladesh encompasses several mechanisms that provide alternatives to traditional court-based litigation. These mechanisms prioritize flexibility, efficiency, and amicable settlement, making them suitable for resolving a variety of disputes. The primary ADR mechanisms in Bangladesh include mediation, arbitration, conciliation, and negotiation.

### 3.1 Mediation:

Mediation is the most widely practiced form of ADR in Bangladesh. It involves a neutral third party, known as a mediator, who facilitates dialogue between disputing parties to reach a mutually acceptable solution.

#### Key Features of Mediation:

- **Voluntary Process:** Both parties must agree to participate in mediation.
- **Confidentiality:** Discussions during mediation are confidential and cannot be used in subsequent litigation.
- **Mediator's Role:** The mediator does not impose a decision but guides the parties toward a settlement.

#### Applications in Bangladesh:

- **Court-Annexed Mediation:** Under Section 89A of the Code of Civil Procedure, 1908, courts can refer civil cases to mediation during the trial process. This has been particularly effective in resolving family disputes, property disputes, and commercial matters.
- **Community-Based Mediation:** NGOs and local organizations often facilitate mediation for minor disputes, especially in rural areas. These efforts are crucial in promoting access to justice for marginalized communities.

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• The Arbitration Act, 2001 (Bangladesh).

• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*, 3(1) (2019):

### **Advantages:**

- Reduces the burden on courts.
- Preserves relationships between parties.
- Provides a faster and cost-effective solution.

### **3.2 Arbitration:**

Arbitration is a formal ADR mechanism where parties agree to resolve their disputes through an arbitrator or an arbitration tribunal. The arbitrator's decision, known as an arbitral award, is binding and enforceable as a court decree.

#### **Key Features of Arbitration:**

- **Formal Procedure:** Arbitration proceedings follow rules agreed upon by the parties or as specified in the Arbitration Act, 2001.
- **Binding Decision:** The arbitral award is final and binding on the parties.
- **Neutral Forum:** Arbitration provides a neutral forum, especially in cross-border disputes.

#### **Applications in Bangladesh:**

- **Commercial Disputes:** Arbitration is commonly used in resolving disputes related to contracts, construction, and trade.
- **Institutional Arbitration:** The Bangladesh International Arbitration Centre (BIAC) facilitates arbitration services, particularly for businesses and international parties.

### **Advantages:**

- Efficient resolution of complex disputes.
- Limited scope for judicial interference.
- Suitable for cases requiring technical expertise.

### **3.3 Conciliation:**

Conciliation is similar to mediation but involves a more proactive role for the conciliator, who may suggest solutions to the parties. Unlike arbitration, the outcome of conciliation is not binding unless both parties agree to it.

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• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh

### **Applications in Bangladesh:**

Conciliation is less formal than arbitration and is used in various contexts, including labor disputes, family conflicts, and small business disputes. It is particularly effective in fostering goodwill between parties.

### **Advantages:**

- Flexible and informal process.
- Encourages creative solutions to disputes.
- Preserves relationships between parties.

### **3.4 Negotiation:**

Negotiation is the simplest and most informal ADR mechanism, where parties resolve their disputes through direct discussions without the involvement of a third party.

### **Applications in Bangladesh:**

- Frequently used in resolving minor disputes, especially at the family or community level.
- Common in commercial disputes where parties seek to preserve long-term relationships.

### **Advantages:**

- No additional costs or formalities.
- Provides complete control to the parties over the outcome.
- Can be used as a preliminary step before exploring other ADR mechanisms.

### **5. Village Courts and Shalish**

In rural Bangladesh, traditional dispute resolution mechanisms such as **Shalish** (informal mediation by village elders) and **village courts** play a significant role in resolving minor disputes. These systems emphasize social harmony and community involvement.

### **Features of Shalish:**

- Informal and community-driven.
- Decisions are often influenced by local customs and traditions.
- Non-binding unless accepted by the disputing parties.

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• M. S. Hossain, *Role of Alternative Dispute Resolution (ADR) in Bangladesh's Legal Framework* (Dhaka: University Press Limited, 2020), p. 67.

• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.

### **Role of Village Courts:**

- Established under the Village Court Act, 2006.
- Deal with disputes involving small monetary claims or minor offenses.
- Provide accessible and affordable justice for rural populations.

### **Challenges with Shalish and Village Courts:**

- Risk of bias or favoritism.
- Decisions may conflict with formal legal principles.
- Limited enforceability of outcomes.

### **Hybrid ADR Mechanisms**

Hybrid mechanisms, such as Med-Arb (Mediation followed by Arbitration), are also gaining recognition in Bangladesh. These approaches combine the flexibility of mediation with the enforceability of arbitration, offering a comprehensive solution to complex disputes.

### **Technological Advancements in ADR**

The integration of technology into ADR, known as Online Dispute Resolution (ODR), has the potential to revolutionize the dispute resolution landscape in Bangladesh. With the growing use of digital platforms, ODR can:

- Facilitate virtual mediation and arbitration sessions.
- Provide access to justice for remote and underserved areas.
- Reduce costs and logistical barriers.

Although ODR is still in its infancy in Bangladesh, its adoption could address many challenges in the current ADR framework.

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• The Constitution of Bangladesh, Article 27, 1972.

## Chapter Four

### Benefits of ADR in the Civil Justice System

The adoption of Alternative Dispute Resolution (ADR) mechanisms in the civil justice system of Bangladesh has brought several benefits, particularly in addressing the inefficiencies and challenges posed by traditional litigation. ADR mechanisms offer an accessible, efficient, and cost-effective alternative for resolving disputes, which is crucial for a developing country like Bangladesh.

#### 4.1 Speed and Efficiency:

The lengthy delays in the civil justice system often discourage parties from pursuing litigation. ADR mechanisms, particularly arbitration and mediation, provide a faster resolution to disputes:

- **Time-Bound Processes:** Court-annexed mediation must be completed within a stipulated timeframe, ensuring efficiency.
- **Streamlined Arbitration:** Arbitration proceedings are tailored to the specific needs of the parties, avoiding unnecessary delays.

#### 4.2 Cost-Effectiveness:

Litigation in Bangladesh can be expensive due to prolonged proceedings and legal fees, making it inaccessible to many individuals. ADR offers a more economical alternative:

- **Lower Costs:** Mediation and conciliation involve fewer procedural requirements, reducing legal and administrative expenses.
- **Accessible for the Underprivileged:** Community-based mediation and village courts provide a cost-effective means of resolving disputes, especially for marginalized populations.

#### 4.3 Preservation of Relationships:

Unlike adversarial litigation, ADR emphasizes collaboration and mutual understanding, which helps maintain and even improve relationships between parties:

- **Mediation:** Encourages cooperative problem-solving, making it particularly suitable for family disputes, landlord-tenant conflicts, and business partnerships.
- **Conciliation and Negotiation:** Foster goodwill and promote amicable settlements, preserving social and commercial relationships.

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• The Arbitration Act, 2001 (Bangladesh).

#### 4.4 Accessibility to Justice:

In a country like Bangladesh, where a significant portion of the population resides in rural areas, ADR mechanisms such as **Shalish** and village courts provide accessible justice:

- **Proximity:** Village courts and community-based mediation take place within the community, minimizing travel and associated costs.
- **Cultural Compatibility:** These mechanisms align with traditional practices, making them more acceptable to rural populations.

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• M. S. Hossain, *Role of Alternative Dispute Resolution (ADR) in Bangladesh's Legal Framework* (Dhaka: University Press Limited, 2020), p. 67.

• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.

• The Constitution of Bangladesh, Article 27, 1972.

## Chapter Five

### Challenges in Implementing ADR in Bangladesh

Despite the numerous benefits of Alternative Dispute Resolution (ADR), its implementation in Bangladesh faces several challenges. These obstacles hinder the full realization of ADR's potential in reducing the backlog of cases, ensuring access to justice, and fostering efficient dispute resolution.

#### 5.1 Lack of Public Awareness:

One of the primary challenges is the limited awareness of ADR among the general population:

- **Knowledge Gap:** Many individuals, especially in rural areas, are unaware of ADR mechanisms and their benefits.
- **Preference for Litigation:** Due to a lack of understanding, people often view litigation as the only legitimate way to resolve disputes.

#### 5.2 Inadequate Training for Mediators and Arbitrators:

The quality of ADR proceedings often depends on the competence of mediators and arbitrators. In Bangladesh, there is:

- **Lack of Skilled Professionals:** Many mediators and arbitrators lack formal training and expertise in dispute resolution techniques.
- **Inconsistent Standards:** The absence of a standardized certification process for mediators and arbitrators leads to varying levels of professionalism.

#### 5.3 Cultural and Social Barriers:

Cultural norms and social attitudes also pose significant challenges to ADR in Bangladesh:

- **Preference for Authority Figures:** In rural areas, people often rely on informal dispute resolution through village elders or local leaders, which may not align with formal ADR practices.
- **Gender Inequality:** Women often face discrimination in accessing ADR, particularly in rural and conservative communities.

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• The Arbitration Act, 2001 (Bangladesh), Section 3.

• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*, 3(1) (2019):

## 5.4 Institutional Weaknesses:

The institutional support for ADR in Bangladesh is still developing:

- **Limited Infrastructure:** There are few dedicated mediation and arbitration centers outside major urban areas.
- **Inconsistent Implementation:** Court-annexed mediation programs are not uniformly implemented across the judiciary.

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• The Arbitration Act, 2001 (Bangladesh), Section 3.

• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*, 3(1) (2019):

## Chapter Six

### Comparative Analysis with Other Jurisdictions

To understand how Bangladesh can address the challenges of implementing ADR, it is essential to examine the practices of other countries where ADR has been successfully integrated into the civil justice system. This comparative analysis provides valuable insights and highlights best practices that can be adapted to the Bangladeshi context.

#### 6.1 ADR in India:

India shares many socio-legal similarities with Bangladesh, including a common-law legal system and a heavily burdened judiciary. ADR mechanisms in India, particularly arbitration and mediation, have been strengthened through proactive legal and judicial initiatives.

##### Key Features in India:

- **Mandatory ADR in Certain Cases:** Under Section 89 of the Code of Civil Procedure, 1908 (amended), courts are required to explore ADR options, such as arbitration, conciliation, mediation, or Lok Adalat, before proceeding with litigation.
- **Lok Adalat (People's Court):** This system of informal dispute resolution is recognized under the Legal Services Authorities Act, 1987. It provides free and expeditious justice, particularly for small claims and family disputes.
- **Mediation Centers:** Many courts in India, including the Supreme Court and High Courts, have established dedicated mediation centers to encourage court-annexed mediation.
- **Arbitration and Conciliation Act, 1996:** This Act aligns with the UNCITRAL Model Law and has been amended to streamline arbitration processes and limit judicial interference.

##### Lessons for Bangladesh:

- Institutionalizing mandatory ADR for specific categories of cases could significantly reduce judicial backlog.
- Establishing Lok Adalat-style mechanisms could complement village courts and provide an efficient resolution of small disputes.
- Enhanced training and certification programs for mediators and arbitrators can ensure professionalism and consistency.

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• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.

• The Constitution of Bangladesh, Article 27, 1972.

## 6.2 ADR in the United Kingdom:

The United Kingdom has effectively integrated ADR into its legal system, encouraging its use through court-annexed schemes and strong legal frameworks.

### Key Features in the UK:

- **Pre-Action Protocols:** Parties in certain types of disputes must explore ADR options before filing a case in court.
- **Family Dispute Resolution:** Mediation is mandatory in family disputes, such as divorce and child custody, before proceeding to litigation.
- **Technology in ADR:** The UK has embraced ODR for small claims, making dispute resolution more accessible.
- **Government Support:** Public awareness campaigns and subsidies encourage the use of ADR.

### Lessons for Bangladesh:

- Adopting pre-action protocols for civil disputes could encourage ADR as the first step in the resolution process.
- Strengthening government and judicial support for ADR through awareness campaigns and funding could increase adoption rates.
- Expanding the use of ODR for minor disputes can improve access to justice.

## 6.3 Lessons for Bangladesh:

### 1. Legislative and Policy Reforms:

- Mandatory ADR for specific disputes, as in India and the UK, could improve adoption rates.
- Clearer enforcement mechanisms, such as those in Singapore and the US, would enhance confidence in ADR outcomes.

### 2. Institutional Strengthening:

- Developing institutions like BIAC into world-class ADR centers could boost domestic and international confidence.
- Expanding community-based ADR mechanisms, similar to Rwanda's Gacaca courts, could enhance rural access to justice.

### 3. Capacity Building:

- Investing in training programs for mediators and arbitrators, as seen in the US and Singapore, would ensure professionalism and consistency.
- Incorporating ADR training into law schools and professional organizations would create a skilled workforce.

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Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*, 3(1) (2019)

**4. Technology Integration:**

- Adopting ODR practices from Singapore and the UK could make ADR more accessible and cost-effective, particularly for remote areas.

**5. Public Awareness and Accessibility:**

- Awareness campaigns and subsidies, similar to those in the UK, could increase public understanding and acceptance of ADR.

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• M. S. Hossain, *Role of Alternative Dispute Resolution (ADR) in Bangladesh's Legal Framework* (Dhaka: University Press Limited, 2020), p. 67.  
• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.  
• The Constitution of Bangladesh, Article 27, 1972.

# Chapter Seven

## Role of the Judiciary in Promoting ADR

The role of the judiciary in promoting Alternative Dispute Resolution (ADR) is pivotal in ensuring its successful integration into the justice system. In the context of Bangladesh, where judicial backlog and delays are persistent challenges, the judiciary's involvement in advancing ADR can significantly alleviate the burden on courts and provide quicker access to justice. Here's an outline of how the judiciary can and does play a role in promoting ADR:

### 7.1 Court-Annexed Mediation Programs:

Court-annexed mediation programs are mediation processes integrated within the court system to resolve disputes amicably before or during litigation. These programs are designed to alleviate the burden on courts, reduce litigation costs, and provide quicker and mutually agreeable resolutions for the parties involved. Here's an overview of their features and relevance:

#### Features of Court-Annexed Mediation

1. **Integration with Court Proceedings:**
  - Mediation is offered as an alternative to traditional litigation during specific stages of a case.
  - It may be voluntary or mandatory, depending on jurisdictional policies.
2. **Role of Mediators:**
  - Neutral third-party mediators, often trained professionals or court-appointed individuals, facilitate discussions between disputing parties.
3. **Flexibility and Confidentiality:**
  - Parties have more control over the outcome than in litigation.
  - The process is confidential, and discussions during mediation cannot be used in court.
4. **Time and Cost Efficiency:**
  - Mediation typically requires less time and fewer resources than litigation, benefiting both the judiciary and litigants.
5. **Focus on Mutual Benefit:**
  - The goal is to achieve a win-win solution, preserving relationships where possible.

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• M. S. Hossain, *Role of Alternative Dispute Resolution (ADR) in Bangladesh's Legal Framework* (Dhaka: University Press Limited, 2020), p. 67.

• Karim, S., "ADR in South Asia: Bangladesh's Perspective," *Journal of South Asian Legal Studies*, 4(2) (2018): 46.

• The Constitution of Bangladesh, Article 27, 1972.

## **Benefits of Court-Annexed Mediation**

1. **Reduced Case Backlogs:**
  - Mediation reduces the burden on courts, allowing them to focus on cases requiring formal adjudication.
2. **Empowerment of Disputants:**
  - Parties actively participate in creating solutions, which increases satisfaction and compliance with outcomes.
3. **Enhanced Accessibility:**
  - These programs often make dispute resolution more accessible, especially for individuals with limited means.
4. **Flexibility in Solutions:**
  - Unlike rigid court decisions, mediation allows creative and tailored resolutions.

## **7.2 Role of Judges in Encouraging Settlement:**

### **1. Promoting ADR Mechanisms**

Judges are instrumental in directing parties toward ADR options such as mediation, arbitration, or negotiation. Under the Code of Civil Procedure (Amendment) Act, 2003 in Bangladesh, courts have the authority to refer disputes to ADR with the consent of the parties. Judges can emphasize the benefits of ADR, such as confidentiality, cost-effectiveness, and time efficiency, during pre-trial hearings.

### **2. Facilitating Pre-Trial Settlements**

At the pre-trial stage, judges can encourage litigants to explore settlement opportunities. This includes actively engaging with lawyers and parties to identify common ground and suggesting mediation or negotiation sessions. The judge's role here is not to impose a solution but to create an environment conducive to compromise.

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### **4. Acting as Mediators**

In some cases, judges themselves can act as mediators, provided they maintain neutrality and refrain from pressuring parties. For example, the judiciary in Bangladesh has experimented with court-led mediation programs to promote settlements.

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The Arbitration Act, 2001 (Bangladesh), Section 3.

## **5. Monitoring ADR Proceedings**

Judges play a supervisory role by ensuring that ADR processes are conducted fairly and efficiently. They may monitor timelines and address any procedural obstacles that arise during the settlement process.

## **6. Incorporating Settlements into Judgments**

When settlements are reached, judges formalize them by recording the terms in the form of a court order or judgment. This ensures enforceability and finality, reducing the likelihood of future disputes.

## **Judicial Attitudes and Training**

The success of judicial efforts in encouraging settlements largely depends on the attitudes and skills of judges. Training programs aimed at improving judges' understanding of ADR techniques, negotiation dynamics, and mediation practices are essential. Additionally, judges must be mindful of maintaining impartiality while encouraging settlements.

## **7.3 Recent Case Studies:**

Alternative Dispute Resolution (ADR) mechanisms have been increasingly utilized in Bangladesh to address civil disputes more efficiently and amicably. Here are some notable case studies highlighting the application of ADR in the country:

### **1. Village Shalish System in Madhukhali Upazila**

The traditional Shalish system, a community-based ADR mechanism, has been instrumental in resolving disputes in rural Bangladesh. A study conducted in Madhukhali Upazila of Faridpur evaluated its effectiveness. Findings indicated that villagers rely heavily on Shalish for quick, cost-effective, and amicable dispute resolution. The process involves local leaders (Matobbor) and community participation, fostering social cohesion and preventing the escalation of conflicts.

MedCrave Online

### **2. Industrial Dispute Resolution in the Apparel Sector**

In the industrial sector, particularly within apparel factories, ADR has been employed to manage labor disputes. A study assessing the effectiveness of ADR in this context found that both employers and employees favored ADR over adversarial legal processes. The research highlighted that familiarity with ADR processes increased with the longevity of company operations, suggesting that sustained engagement enhances dispute resolution outcomes.

### **3. Domestic Violence Cases in Sylhet**

ADR has also been applied to address domestic violence cases among underprivileged women in Sylhet. An initiative involving mediation provided a platform for battered women to voice their grievances publicly. While ADR offered these women an opportunity to be heard, the study noted limitations in delivering lasting and just solutions, emphasizing the need for a more robust framework to support victims effectively.

### **4. Chittagong Hill Tracts Land Dispute Resolution Commission**

Established in 1999, the Chittagong Hill Tracts Land Dispute Resolution Commission aims to resolve land disputes in the region through ADR mechanisms. Despite its potential, the commission has faced challenges due to the lack of operational rules, resulting in a backlog of unresolved cases. Efforts are ongoing to enhance its effectiveness in delivering justice to the indigenous communities.

### **5. Bangladesh International Arbitration Center (BIAC)**

Founded in 2011, BIAC serves as the country's first arbitration institution, facilitating ADR in commercial disputes. It has played a pivotal role in promoting arbitration and mediation as viable alternatives to litigation, contributing to a more efficient civil justice system in Bangladesh.

These case studies illustrate the diverse applications of ADR in Bangladesh's civil justice system, highlighting both successes and areas requiring further development to ensure equitable and effective dispute resolution.

## Chapter Eight

### Policy Recommendations for Strengthening ADR

To fully harness the potential of Alternative Dispute Resolution (ADR) in Bangladesh, it is essential to address the challenges and implement strategies that align with both the country's socio-economic realities and international best practices. Below are key recommendations for strengthening ADR mechanisms in Bangladesh:

#### 8.1 Increasing Public Awareness through Campaigns:

Raising awareness about the benefits and processes of ADR is crucial for its widespread adoption.

- **National Campaigns:** Conduct nationwide awareness campaigns through media, NGOs, and local government bodies to educate people about ADR mechanisms.
- **Community Outreach:** Use community leaders and NGOs to promote ADR in rural areas, emphasizing its cost-effectiveness and efficiency.
- **Workshops and Seminars:** Organize workshops for businesses, legal professionals, and community leaders to build trust in ADR processes.

#### 8.2 Enhancing Training and Accreditation Programs:

The quality of ADR outcomes depends heavily on the competence and professionalism of mediators and arbitrators.

- **Training Programs:** Organize regular training programs and workshops for mediators, arbitrators, and judges on ADR techniques and legal principles.
- **Standardized Certification:** Establish a certification system for ADR practitioners to ensure consistency and professionalism.
- **Incorporating ADR in Legal Education:** Introduce ADR as a mandatory subject in law schools to equip future lawyers with the necessary skills.

#### 8.3 Legislative Reforms:

A robust and comprehensive legal framework is essential for the effective implementation of ADR.

- **Mandatory ADR Provisions:** Amend the Code of Civil Procedure to make ADR mandatory for specific categories of civil cases, such as family disputes, labor conflicts, and small claims.

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The Arbitration Act, 2001 (Bangladesh), Section 3.

- **Clarifying Enforcement Mechanisms:** Strengthen provisions in the Arbitration Act, 2001, to streamline the enforcement of arbitral awards and mediated settlements, reducing judicial delays.

**International Conventions:** Ratify and implement the **Singapore Convention on Mediation** to enhance the enforceability of cross-border mediated settlements.

#### **8.4 Strengthening Institutional Support:**

Strengthening existing institutions and creating new ones will enhance the accessibility and credibility of ADR mechanisms.

- **Enhancing BIAC:** Transform the Bangladesh International Arbitration Centre (BIAC) into a regional hub for commercial dispute resolution by improving infrastructure, attracting foreign experts, and adopting advanced arbitration practices.
- **Establishing Mediation Centers:** Set up dedicated mediation centers in all districts and attach them to district courts to encourage court-annexed mediation.
- **Promoting Village Courts:** Expand and strengthen village courts and Shalish mechanisms, ensuring they are fair, transparent, and free from local power dynamics.

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# Chapter Nine

## Conclusion and Future Prospects

### 9.1 Summary of Findings:

The civil justice system of Bangladesh faces significant challenges, including overwhelming case backlogs, high litigation costs, and limited access to justice, particularly for vulnerable and rural populations. Alternative Dispute Resolution (ADR) offers a pragmatic solution to these issues by providing cost-effective, efficient, and accessible mechanisms for resolving disputes outside traditional courtrooms. Despite its inclusion in the legal framework, the implementation and effectiveness of ADR in Bangladesh remain limited due to a range of challenges, including lack of awareness, weak institutional support, and cultural and procedural barriers.

This thesis has critically examined the current state of ADR in Bangladesh, identifying both its strengths and shortcomings. Comparative analyses with other jurisdictions, such as India, Singapore, and Rwanda, highlight the potential for Bangladesh to adapt best practices in institutionalizing ADR, leveraging technology, and fostering public trust. The study also recognizes the importance of aligning ADR mechanisms with local cultural norms and traditions, while ensuring inclusivity and fairness.

### 9.2 The Way Forward for ADR in Bangladesh:

To address these challenges, this study has proposed a series of actionable recommendations. These include:

- Strengthening the legal framework by mandating ADR in specific cases and simplifying enforcement mechanisms.
- Enhancing institutional support through the expansion of ADR centers and the transformation of existing organizations like BIAC.
- Building capacity through professional training, standardized certifications, and integration of ADR into legal education.
- Promoting awareness through national campaigns, community engagement, and targeted outreach to marginalized groups.
- Leveraging technology to implement Online Dispute Resolution (ODR) and digitize ADR processes.

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• The Arbitration Act, 2001 (Bangladesh), Section 3

• Rahman, M. M., "ADR Mechanisms in Civil Litigation: Progress and Challenges in Bangladesh," *Dhaka Law Review*,

The successful implementation of these recommendations requires a collaborative effort among the government, judiciary, legal professionals, NGOs, and the private sector. By fostering a culture of dispute resolution that prioritizes dialogue, efficiency, and equity, ADR can significantly contribute to the realization of access to justice for all in Bangladesh.

### **9.3 Potential for Technological Integration in ADR:**

As Bangladesh continues to strive for a more effective and inclusive justice system, ADR represents not just an alternative but a complementary pathway toward achieving this vision. Its success will depend on a collective commitment to reform, innovation, and the empowerment of all stakeholders involved. This concludes the thesis on "Alternative Dispute Resolution in the Civil Justice System of Bangladesh." Would you like assistance in formatting, citations, or further elaboration on any section.

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