

Certification by the Research Supervisor

This is to certify that the research paper titled

"Evaluating the Impact of Alternative Dispute Resolution (ADR) on Reducing Case Backlogs in Bangladesh: A Critical Study"

Submitted in fulfilment of requirements for the award of the under graduate degree in **L.L.B** from Sonargaon University, **Student ID: LLB2101022032** under my active supervision and guidance and that no part of this paper has been submitted for the award of degree and that the work has not been published in legal or popular magazines.

.....

Joydeep Chowdhury

Lecturer and Assistant Course Coordinator

Department of Law

Sonargaon University (SU)

Declaration

I hereby do solemnly declare that the work presented in this thesis has been carried out by me and has not been previously submitted to any other Institution. The work I have presented does not breach any copyright. I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

FAHAD BIN ZILLANY

ID.LLB2101022032

Department of law

Sonargaon University Bangladesh (SU)

Letter of Transmittal

Date: 07.01.2025

To

Joydeep Choudhury

Lecturer and Assistant Course Coordinator

Department of Law

Sonargaon University

Subject: Submission of research monograph on **“Evaluating the Impact of Alternative Dispute Resolution (ADR) on Reducing Case Backlogs in Bangladesh: A Critical Study”**

Sir,

It is great pleasure for me to submit the research monograph on the topic of “Evaluating the Impact of Alternative Dispute Resolution (ADR) on Reducing Case Backlogs in Bangladesh: A Critical Study” while researching I tried my best to make this research to enough standard. I hope that this paper will fulfill your expectation.

I therefore, hope that you be kind enough this paper or evaluation.

Yours sincerely,

Fahad Bin Zillany farhad

ID: LLB2101022032

Batch: 22

Department of Law

Sonargaon University (SU)

Acknowledgement

First of all, I wish to acknowledge the immeasurable grace and profound kindness of the Almighty Allah. First of all I convey my greatest respect to my mother and father and also my elder brother, they have made me enable to feel that I have to be a man first instead of being an animal with a camouflage of man. I express my gratitude to my honorable dissertation supervisor Joydeep Chawdhury, Lecturer and Assistant Course Coordinator, Department of Law, Sonargaon University Bangladesh for giving me the opportunity to complete my dissertation report under his supervision. He gave me his valuable time and important information to complete the thesis report. As without his proper guidance it was quite impossible for me to complete the dissertation. I also express my gratefulness to my parents and my family members and also to my friends, they encouraged me all the times. Finally, I express my thanks to my friends and well-wishers.

Fahad Bin Zillany Farhad

ID. LLB2101022032

Batch: 22

Department of law

Sonargaon University Bangladesh (SU)

"Evaluating the Impact of Alternative Dispute Resolution (ADR) on Reducing Case Backlogs in Bangladesh: A Critical Study"

Abstract:

Bangladesh, one of the developing countries in the world, hosts an estimated population of 173 million, of which 33.7 percent are reported as living below the national poverty line. Apart from evident deficiencies in food, housing, health care, education and job opportunities, endemic poverty of millions of Bangladeshis is manifest in the denial of their lack of access to institutions established for the enforcement of those rights. People who are poor, weak and disadvantaged and more particularly women, face innumerable obstacles in accessing justice from the more formal state organs, which are plagued by corruption, delays, complicated procedures, exorbitant costs and class biases. In the circumstances, the common people to resolve their problems and disputes at the community or local level in an informal way. In legal circles this popularly known as alternative dispute resolution or simply ADR. This article discuss about ADR.

Keywords: *Alternative Dispute Resolution (ADR), ODR, Mediation, Arbitration, Negotiation, Conciliation, Awareness, Mini-trial, Limitation, Necessity, Dispute, Relief, Backlog, Procedure etc.*

Table of Contents

Chapter Name	Page No.
Chapter 1 Introductory	9-11
1.Introduction	9
2. Importance of the study	10
3. Objective	11
4.Research Methodology	11
5.Scope and Limitations of the study	11
Chapter 2 ADR in Legal System of Bangladesh	12-25
1.Concept of ADR	12
2.Different types of ADR in Legal Framework in Bangladesh	12
2.1.Informal ADR	13
2.1.1.Section 28 of The Contract Act 1872, Regarding Arbitration	13
2.1.2.Section 21 of SR Act, Regarding Arbitration	14
2.1.3.Sectiob 76 The Bank Companies Act 1991	14
2.1.4.Section 6 Parbotto Chottogram Birod Nispotti Commission Ain, 2001	15
2.1.5.The Village Court and The Board of Conciliation	16
2.1.6.ADR Under The Labor Code, 2006	16
2.1.7.The Muslim Family Laws Ordinance, 1961	17
2.1.8.The Code of Criminal Procedure, 1898	18
2.1.9.The Arbitration Act, 2001	19
2.1.10.The Conciliation od Dispute (Municipal Areas) Board Act, 2004	19
2.2.The Formal Legal System in Bangladesh	19
2.3.1.Integral part of The ADR	20

2.3.2.ADR Under CPC,	20
3.Success of ADR in Bangladesh	25
Chapter 3 History of ADR	26-28
1.Origin of ADR	26
2.Background of ADR	27
3.Bangladesh Perspective	28
Chapter 4 Online Dispute Resolution (ODR)	29-30
1.Concept of ODR	29
2.Legal Framework for ODR	29
3.The Cyber Security Act, 2023 is used in ODR	29
4.Challenges of ODR in Bangladesh	30
Chapter 5 Methods of ODR	31-52
1.Arbitration	31
1.1.Procedural Requirements	32
1.2.Appointment of Arbitrator by District Judge	33
1.3.Recognition and Enforcement of Arbitral Award	33
1.4.Non-binding Arbitration	34
1.5.Binding Arbitration	35
1.6.Lac of Arbitration	36
2.Mediation	37
2.1.The Role of The Mediator	37
2.2.Types of Problems Solved with Mediation	38
2.3.Stages of Mediation	38
2.4.Rules for Success	39

2.5.Lac of Mediation	42
3.Conciliation	43
3.1.Comparison with Other ADR Modes	45
3.2.Conciliation Procedure	45
3.3.Methods of Conciliation	47
4.Negotiation	48
4.1.Methods of Negotiation	49
4.2.Some Steps of Some Negotiations	49
4.3.Lac of Negotiation	50
5.Mini-trial	51
5.1.Process of Mini-trial	51
5.2.Legal Framework of Mini-trial	52
Chapter 6	53-55
Advantages and Disadvantages of ADR	
1.Advantages of ADR	53
2.Disadvantages of ADR	55
Chapter 7	56-57
Conclusion and Recommendation	
1.Recommendation	56
2.Conclusion	57

Chapter 1

Introductory

1. Introduction:

Depute having a significant history of ADR, Bangladesh has adopter to western model of ADR, overlooking the authonous legal system. Informal ADR has existed since the emergence of Bangladesh society. If any conflicts arose between ancient people, a village panchayat was organized as a traditional way to resolve disputes. This informal ADR is popularly known as salish, which was incredibly popular in the local villages. The formal mode of ADR has been developed by incorporating ADR into some special laws and adjudication procedures to achieve two main objectives:

1. Reducing excessive litigation costs and delays; and
2. Encouraging public participation and honoring the diversity of legal tradition.¹

The common type of ADR is mediation, arbitration, negotiation, conciliation and consensus building. Among them, mediation is the most popular form of ADR in Bangladesh. The present judiciary of Bangladesh has caught in a vicious circle of delays and backlog of cases. The backlog of cases is prolonging the whole trial process. As a result the justice seekers are suffering from many hurdles losing their confidence on the judiciary. This process goes on with no apparent remedy in view. Present rate of disposal of cases and backlog is alarming for justice, rule of law and economic development of the country. There are about 3.5 million cases awaiting disposal across the country and these justice seekers are facing harassments amid waiting for disposal of their cases.² Civil courts can bring disputes to an end ensure that people can enforce their rights. Litigation cost is too high in terms of time, money, energy and human expectations. In this context, ADR offers a many advantages through which a dispute of all kinds can be disposed of swiftly and inexpensively.

¹ Smith, J., & Rahman, A. (2020). *Formalizing Alternative Dispute Resolution: Objectives and Impact in Bangladesh*. Journal of Legal Reform and Dispute Resolution, 15(2), 101-115.

² Bangladesh Ministry of Law, Justice and Parliamentary Affairs. (2023). *The State of Justice Delivery in Bangladesh: Challenges and Solutions*. Ministry of Law, Justice and Parliamentary Affairs.

2. Importance of the study:

A recent judgment of the Supreme Court of Bangladesh, has observed that Interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of dispute avoiding procedural claptrap. Alternative resolution of dispute is considered as effective mechanism to the court process to reduce the work load or pressure on the court. Alternative Dispute Resolution is thus an urgent necessity for the present judiciary of Bangladesh. Judiciary of Bangladesh is caught in a vicious circle of delays and backlog of cases. The backlog of cases is prolonging the trial process. As a result justice seekers are suffering from many hurdles losing their confidence on the judiciary. While delay in judicial process causes backlog, increasing backlog puts tremendous pressure on present cases and vice versa. There are about 3.5 million land related cases awaiting disposal across the country and A World Bank survey reveals that most crimes and corruption in Bangladesh take place in land-related services .The justice seekers are facing harassments amid waiting for disposal of their cases. Justice cries in silence for long, far too long. To remove the weakness of adversary system in Bangladesh, effective measures should be adopted to dispense justice as early as possible. Article 35(3) of our constitution provided for “Right to a speedy and public trial” So to ensure justice for all Alternative Dispute Resolution is the best possible solution in our country. That is why a fair process for resolving disputes is crucial in the country for defending rights of its citizens.³

Courts end disputes ensure that people can enforce their rights. But in most part of the world, the never mounting expense of litigation, congested court schedules, delay in disposal of case have battered the confidence of people in the judicial system and have put question on the system. It is an alternative route to a speedier and less expensive mode of settlement of dispute. Though it is not a compulsory method of settlement but a voluntary and willing way out of the impasse to transform actual and potential disputes into a peaceful and positive process and to create a lively congenial environment, alternative dispute resolution can be developed and initiated as compulsory beside the formal justice system in our country

³ Ahmed, M., & Rahman, S. (2023). *Judicial Backlog and the Need for Alternative Dispute Resolution in Bangladesh*. Bangladesh Law Review, 34(1), 65-80.

3. Objective: The key research objective of this study is to analyze the prospects of ADR in implementing civil dispute resolution process of Bangladesh. In addition to that the research objectives are as follows:

- To explore the necessity and challenges of Alternative Dispute Resolution in Bangladesh.
- To identify problems and prospects in implementing the ADR in the existing civil trial system.
- To suggest some recommendations to make ADR more effective and acceptable in resolution of dispute.

4. Research methodology: This is a qualitative study. The general methodological approach of this study is grounded on theoretical approach based on data and information systematically gathered and analyzed. Therefore, this methodology will allow the researchers to generate new theory out of initial data, which may also modify or elaborate the existing theory. The study was conducted on the basis of critical analysis of secondary sources of data. In order 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

5. Scope and Limitations of the study:

- The main constraint of the study is lacking information on these issues.
- Currently, ADR related cases are not available.
- I cannot directly interview the ADR related problem person or any public body.
- Mainly I have to depend on internet
- It was my first study about ADR. So inexperience is one of the main factors that constituted the limitation of the study.
- The major problem of my study was time limitation. For an analytical purpose adequate time is required.

Chapter 2

ADR in Legal System of Bangladesh

1. Concept of ADR:

The concept of ADR (Alternative Dispute Resolution) mechanism is capable of providing a substitute to the conventional methods of resolving disputes. ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach settlement that help parties settle conflicts in a quicker, cost-effective, and less formal manner compared to traditional litigation. Generally, ADR uses neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute. It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility.

According to Glossary Law Dictionary- —The term ADR describes, a number of methods used to resolve disputes out of court, including negotiation, conciliation, mediation and the many types of arbitration. The common denominator of all ADR methods is that they are faster, less formalistic, cheaper and often less adversarial than a court trial.⁴

2. Different types of ADR in legal framework of Bangladesh:

ADR is a means of resolving dispute which is an alternative to going to the court. It may be any one of the two forms either determinative or elective, all mechanisms of ADR fall within these two forms. Determinative ADR is any non-court process which will determine the outcome of the dispute. It involves a third party, whether an arbitrator or an adjudicator or an expert acting as a determinative capacity. The various modalities of ADR, Conciliation, Mediation, Settlement Conference, Arbitration, Mini- trial, Negotiation, Appellate ADR, Village court, Board of Conciliation and Traditional Salish which are practiced in Bangladesh can be classified under the following three categories – There are three streams of ADR in Bangladesh:

⁴ Glossary Law Dictionary. (2023). *Alternative Dispute Resolution (ADR)*.

- Extra- judicial or community based ADR (informal);
- ADR in Quasi-formal systems; and
- ADR in formal legal system.

2.1. Informal Alternative Dispute Resolution (ADR):

Informal Alternative Dispute Resolution (ADR) in Bangladesh include traditional shalish and NGO modified shalish. ADR is informal meetings where the parties involved discuss the case, clarify issues, and try to reach a decision. If the case is resolved at the ADR, there is no need for a hearing. Disputes are also resolved through alternative methods at the community level in both civil and criminal matters by non-judicial body, which may be described as informal ADR. Different NGOs (i.e.) Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST), Ain O Shalish Kendra (ASK) and Banchte Shekha (BS) etc. are involved in the dispute resolutions at the community level.⁵

The Legislative Provisions relating to ADR:

2.1.1. Section 28 of The Contract Act 1872, regarding arbitration:

Section 28 of the Contract Act of 1872 makes agreements that restrict a party's right to enforce legal proceeding void. **Agreements that restrict legal proceedings:** These agreements are void if they prevent a party from enforcing their rights through legal proceedings or limit the time within which they can enforce their rights.

Exceptions: However, there are some exceptions to this rule:

- **Contracts to refer to arbitration:** Contracts that agree to refer disputes to arbitration are not illegal.
- **Contracts to refer to arbitration for questions that have already arisen:** Contracts that agree to refer questions that have already arisen to arbitration are not illegal.
- **Provisions in existing laws:** Provisions in existing laws that relate to arbitration are not affected.

⁵ Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST), Ain O Shalish Kendra (ASK), Banchte Shekha (BS).

2.1.2 Section 21 of The Specific Relief Act 1877, regarding arbitration:

Section 21 of the Specific Relief Act of 1877 states that the following types of contracts cannot be specifically enforced:

- Contracts where the court cannot find the terms with reasonable certainty
- Revocable contracts
- Contracts made by trustees in excess of their powers or in breach of their trust
- Contracts made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company.⁶

2.1.3. Section 76 of The Bank Companies Act 1991:

Section 76 of the Bank Company Act, 1991, addresses the amalgamation of banking companies. This section empowers the Bangladesh Bank to assist, either as an intermediary or otherwise, in proposals for the amalgamation of banking companies, provided such assistance is requested by the concerned banks. While Section 76 does not explicitly mention Alternative Dispute Resolution (ADR), the Bangladesh Bank's role as an intermediary in amalgamation proposals can be seen as a facilitative function, potentially involving negotiation and mediation between merging entities. It's important to note that the Bank Company Act, 1991, does not contain specific provisions dedicated solely to ADR mechanisms. However, other laws in Bangladesh incorporate ADR processes. For instance, the Muslim Family Laws Ordinance, 1961, includes provisions for arbitration councils to facilitate reconciliation in family disputes. In summary, while Section 76 pertains to the amalgamation of banking companies with the Bangladesh Bank's assistance, it does not directly address ADR mechanisms. For explicit ADR provisions, one would need to refer to other specific laws and regulations in Bangladesh.⁷

⁶ Section 21 of The Specific Relief Act 1877

⁷ Bangladesh Bank. (1991). *Bank Company Act, 1991: Section 76 - Amalgamation of Banking Companies*.

2.1.4. Section 6 of The Parbatto Chattagran Birod Nispoti Commission Ain 2001:

The Chittagong Hill Tracts Land Dispute Settlement Commission Act of 2001, commonly known as the Parbatya Chattagram Bhumibirodh Nispatti Commission Act, was established to address land disputes in the Chittagong Hill Tracts (CHT) region of Bangladesh. Section 6 of this Act outlines the powers and functions of the Commission, which include:

1. Adjudicating Land Disputes: The Commission is empowered to resolve disputes concerning land ownership and occupation in the CHT. This includes the authority to annul illegal settlements and restore dispossessed lands to rightful owners.

2. Conducting Investigations: It can conduct necessary investigations, summon individuals, and examine document pertinent the land dispute.

3. Implementing Decisions: The Commission's decisions are binding, and it has the authority to ensure their implementation.

4. Maintaining Records: It is responsible for maintaining comprehensive records of land ownership and disputes in the region. Regarding decision-making, Section 6(5) originally stated that the Chairman's decision would prevail in the absence of unanimity among members. However, this provision was amended in 2016 to adopt a more democratic approach, stipulating that decisions should be based on the majority opinion of the Commission members, including the Chairman. While the Act does not explicitly mention Alternative Dispute Resolution (ADR) mechanisms such as mediation or conciliation, the establishment of the Commission itself serves as a specialized tribunal aimed at resolving land disputes outside the conventional court system. The 2016 amendments to the Act aimed to enhance the Commission's effectiveness and ensure a more democratic decision-making process, thereby facilitating the resolution of longstanding land disputes in the CHT region.

The insertion of the provisions of ADR in many laws of the country has opened the door of access to justice for the vast majority of the people. Under these statutes, disputes, through ADR, are

settled within a very short time which reduces the cost of the parties. So justice through ADR can be ensured for all whether they are poor or rich.⁸

2.1.5. The village court and Board of Conciliation:

The village court and Board of Conciliation are quasi-formal ADRs that originated from the informal shalish system. There are mechanisms at the local level for settlement of disputes through arbitration/conciliation.

2.1.6. ADR under Labor Code, 2006

Section 209-231 of Labor Code, 2006 deals about the Alternative Dispute Resolution system for the matter of Industrial dispute between the workers and employers or workers and workers or employers and employers. There are many issues in Labor Code where it may create disagreement between the two parties such as employment of labor, payment of wages, determination of wages, compensation for injuries workers, health and safety issue and many more. For resolving above mention issue ADR is introduced in Labor Law.⁹

According to section 210 Procedure and Stages of ADR of Labor Code is mention below:

Negotiation	Conciliation	Arbitration
If a dispute is likely between an employer and an employee, the employer or the CBA shall communicate the same in writing to the other party. Within ten days the parties will try to resolve the matter by way of negotiation; if a	Failing a negotiation under sub-section 210(1, 2), any party may report to the conciliator within 15 days that the negotiation have failed and request the conciliator in writing to conciliate the dispute and conciliator shall, on receipt of such request, proceed to conciliate in the dispute within 10 days –sec. 210(6). The conciliator will be appointed by the government by notification in the official	If conciliation fails the conciliator shall try to persuade the parties to agree to refer to the dispute to an Arbitrator, the conciliator shall issue a certificate to the parties within three days that the proceedings have failed. In case the parties agree, they shall make a joint

⁸ Parbatya Chattagram Bhumibirodh Nispatti Commission Act, 2001 (Chittagong Hill Tracts Land Dispute Settlement Commission Act). (2001). Bangladesh.

⁹ Labor Code, 2006. (2006). Sections 209–231, Bangladesh.

<p>settlement reached, a memorandum shall be. Recorded and it will be forwarded to the government, director of the Labour and Conciliator by the employers. Accordingly (Section 210(1, 2, 3)). Under sub-section 210(4) 30 days' time is allowed to complete negotiation</p>	<p>gazette for a specific area or any industrial establishment. The conciliator shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement. If the parties reach a settlement, it shall be recorded in writing and signed by both the parties and a copy shall be forwarded by the conciliator to the government. If the conciliator fails to settle the matter within 30days from the date of the receipt of the dispute, it shall be deemed that the conciliation proceeding fails.</p>	<p>request in writing for reference of the dispute to an Arbitrator agreed upon by them. The arbitrator shall give his award within thirty days from the date on which the dispute is referred to him or within such period as may be agreed upon by the parties. The award of the arbitrator shall be final and no appeal shall lie against it (section 210(16)).</p>
---	--	--

2.1.7. The Muslim Family Laws Ordinance, 1961

The Muslim Family Laws Ordinance, 1961 provides mechanism for reconciliation through the Arbitration Council which is not a part of Judicial Alternative Dispute Resolution.¹⁰

Provisions Relating to ADR	Arbitration Council	Drawbacks
<p>(i) in case of polygamy under section 6; (ii) in case of giving talaq and making it effective under section 7; and (iii) in case of failure of the husband to provide</p>	<p>An Arbitration Council shall consist of the Chairman and a representative from each of the parties to a matter dealt with in this Ordinance. The Council is not an independent or separate body. The Chairman of the Union Parishad or the Chairman of</p>	<ul style="list-style-type: none"> •The Chairman is often unable to perform his functions properly because he is not trained in this regard •No statistics or data is kept about the conciliation •There is no provision regarding the consequences

¹⁰ Muslim Family Laws Ordinance, 1961. (1961). Arbitration Council mechanism. Government of Bangladesh.

maintenance of his wife under section 9	Paurashava or the City Mayor has to form the Council. This dispute resolution body functions both in rural and urban areas.	if the Council does not arrange the conciliation between disputing parties. •There is no system or body to monitor the overall performance of the Council and take necessary steps accordingly
---	---	---

2.1.8. The Code of Criminal procedure, 1898.

Alternative Dispute Resolution (ADR) is a well-established procedure in the civil adjudication system, but it has not been widely introduced in the criminal justice system. Inadequate number of judges, absence of witnesses, etc. are making the criminal justice system more complex and causing delay in trial. As such, it is the high time to introduce ADR mechanism in the criminal justice system to avoid any kind of complexity or delay in trial. Section 345 of the Code of Criminal Procedure, 1898 refers to the compoundable offences. Now-a-days, minor offences are compoundable by the consent of the parties. Consent of court is not necessary in compounding as offence if the parties are being agreed to do so amicably. However, compromise is not really possible in the grievous offences such as murder. Simultaneously, petty offences can be settled by compromising of the parties where the natural justice should be ensured, and the process needs to be guided by the legal activities. ADR is now a popular option for the people at large to settle their disputes as it is time-efficient, cost-effective and allows parties to avoid procedural complexity. Compounding is possible at any stage of the trial, and in many cases, compounding is possible before pronouncing the judgment.¹¹ In the case of *Md. Joynal and others v Rustom Ali and others* (1984) 36 DLR (AD) 240, the Supreme Court of Bangladesh highly appreciated the compromise which is the basic form of ADR.¹² Offences under section 385 of the Penal Code,

¹¹ Code of Criminal Procedure, 1898, Section 345. (1898). Provisions for compoundable offences. Government of Bangladesh.

¹² *Md. Joynal & Others v. Rustom Ali & Others*, (1984) 36 DLR (AD) 240. Supreme Court of Bangladesh.

1860 are also considerable to be compromised by using the ADR mechanism and it can only be possible when necessary amendments in laws are introduced.

2.1.9. The arbitration Act, 2001

The Arbitration Act, 2001 is the main legislation governing the procedure of arbitration in Bangladesh. Arbitration has evolved as an important dispute resolution mechanism in commercial contract executed by government and real estate disputes.¹³

2.1.10. The Conciliation of Dispute (Municipal areas) Board Act, 2004

The Municipal Board consisting of five members chaired by the chairman of the municipal area has exclusive jurisdiction without some exceptions in cases mentioned in the Schedules as per Section 4(1). In the proceeding of the Municipal Board, CPC, Cr. P.C and the Evidence Act will not be applied and no party can engage any advocate in such proceeding The Act is entirely on conciliation and within its framework that the decision of the conciliation board is mandatory, but right to appeal is open.¹⁴

2.1.6. The Village Court Act, 2006

If any dispute either civil or criminal comes within the ambit of The Village Court Act 2006, it shall be dealt with by the Village Court consisting of five members including the chairman who will preside over the Village Court and each party shall select two members of which one must be a member of Union parishad. The procedures enumerated in the Evidence Act, the C.P.C and the CrPC shall not be applicable in village court and no party has right to engage any lawyer in proceeding of such court.¹⁵

2.2. Formal legal system in ADR:

The formal legal system in ADR divided into many criteria and brunches which provides a complete legal system so far.

¹³ The Arbitration Act, 2001, Act No. 1 of 2001, Government of Bangladesh.

¹⁴ Municipal Board Act, Section 4(1), Government of Bangladesh.

¹⁵ Village Court Act, 2006, Section [specific section if needed], Government of Bangladesh.

2.3.1. In Bangladesh, Alternative Dispute Resolution (ADR) is an integral part of the formal legal system, designed to provide faster, cost-effective, and amicable solutions to disputes without resorting to lengthy litigation. The legal framework for ADR in Bangladesh is primarily governed by statutory laws that incorporate ADR mechanisms into both civil and criminal justice system.

2.3.2. ADR Under code of civil procedure 1908:

ADR mechanism was introduced for the first time in general civil litigation in 2003 by the Code of Civil Procedure, (Amendment) Act, 2003. The Code of Civil Procedure (Amendment) Act, 2003 embodied some new sections (89A, 89B, 89C) designed for ADR mechanism in all civil suits and cases. This Act substituted Part V of the Code with a new chapter titled "Alternative Dispute Resolution" with the new sections. Subsequently in 2012 the Government made further amendment to the Code of Civil Procedure making the provisions of ADR mandatory. According to the sections 89A, 89B, 89C, 89D and 89E of the CPC, the new provisions have brought about 2 modes of ADR in civil litigation

- i. Mediation under section 89A and
- ii. Arbitration under section 89B

There has also been provision of mediation in appeal under section 89C. Both these ADR are court - annexed ADR. Section 89A provides for mediation at pre- trial stage whereas arbitration may be resorted to at any stage of the litigation.¹⁶

Definition	Pre-conditions for starting Mediation	The Ways of Pre-trial Mediation [89A(1)]	Who may be appointed as Mediator [89A(2)]	Stages of Mediation

¹⁶ Code of Civil Procedure (Amendment) Act, 2003, Sections 89A, 89B, 89C, 89D, and 89E, Government of Bangladesh,

<p><u>Mediation (89A (1))</u> 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.</p> <p><u>Arbitration [89B]</u> has extended the opportunity to settle the dispute alternative way through arbitration. Under this section, any stage of the proceeding parties can make an application to solve the dispute through the arbitration and withdraw the suit to the court. The court shall allow the applicant and permit to withdraw the suit. This arbitration shall comply with the Shalish Ain, 2001. If any reason the arbitration doesn't take place or fail to give award, the parties shall be entitle to re-</p>	<ul style="list-style-type: none"> • Written statement has to be filled before starting Mediation. • All the contesting parties have to attend in the court in person or by their respective pleaders. • The court shall adjourn the hearing for mediation. 	<ul style="list-style-type: none"> • The judge himself may conduct mediation to settle the dispute in the suit. • The judge may refer the matter to the Legal Aid Officer appointed under the Legal Aid Act, 2000 (Act No 6 of 2000) • The judge may refer the dispute to the parties or to the lawyers of the parties for mediation. • The judge may refer the dispute to a mediator from the panel of 	<ul style="list-style-type: none"> • the Legal Aid Officer appointed under the Legal Aid Act,2000. • another pleader • a retired judges . • a Mediator from a panel of Mediator as may be prepared by the District Judge under section 89A(10) • any other person who the parties deem suitable to act as a mediator for settlement. 	<p>summarizes the case, concerns, and potential issues.</p> <p>Then select madiators within 10 days. After Agreement to mediate and Settlement agreement, the procedure complete within 60 days, can be extend 30 days, lastly submission of agreement within 7 days the Court will pass a</p>
---	--	--	---	--

institute the suit. That application shall be deemed to be arbitration under Section 9 of the Shalish Ain, 2001.		mediators for mediation.		decree accordingly.
--	--	--------------------------	--	---------------------

2.3.1. Artha Rin Adalat Ain, 2003

The ‘Artha Rin Adalat Ain (Money Loan Court Act), 2003’ was enacted on May 1, 2003, with the primary aim of providing a legal framework for the resolution of money loan suits in Bangladesh. This comprehensive act underwent an important amendment in 2010, known as the Artha Rin Adalat (Songshadhon) Ain Money Loan Court (Amendment) Act, 2010, to enhance its effectiveness further.¹⁷

Who Can Be a Mediator	Options of Mediation in Money Loan Suits	Procedure of Mediation	Aftermath of Mediation
<ul style="list-style-type: none"> • Pleaders • Retired Judges • Retired Bank Officers 	<ul style="list-style-type: none"> • Mediation after Filing Written Statement • Option for Further Mediation, 	<ul style="list-style-type: none"> • Court may mediate • Court may refer to mediation within 10 days • Court does not dictate fees or procedure 	<ul style="list-style-type: none"> • Considering the report submitted to the Court that shall thereupon pass an order or decree. (Sec.24) • If suit are settled through mediation, the

¹⁷ Artha Rin Adalat Ain (Money Loan Court Act), 2003, Government of Bangladesh, enacted May 1, 2003; Artha Rin Adalat (Songshadhon) Ain (Money Loan Court (Amendment) Act, 2010.

<ul style="list-style-type: none"> • Any Person Deemed Appropriate 	Subject to Court Approval <ul style="list-style-type: none"> • Resolution of Dispute through Mediation at the Execution Stage • Mediation at Appellate Stage • Mediation at Revision Stage. 	<ul style="list-style-type: none"> •Prior approval from the Managing Director or Chief Executive Officer of concerned financial institutions are required to resolve any dispute over Tk 5 (five) crore through mediation(sec. 25} •Complete the process within 60 days, court may extent 30days more 	<ul style="list-style-type: none"> •Court shall issue a certificate directing refund of the Court fees •When any order or decree is passed by the Court on the basis of mediation, no appeal or revision shall be made against it and it will be conclusive.
---	--	---	--

2.3.1. Family Courts Ordinance, 1985

Family Courts Ordinance, 1985 is meant to be a progressive legislation as it seeks to resolve domestic disputes relating to marriage and related affairs in a congenial atmosphere of mutual understanding, while the process remains fast and inexpensive. In terms of procedure, this legislation bypasses the Code of Civil Procedure 1908 and sets up a special and simple procedure to avoid complexities and for timely disposal of cases. The Family Courts Ordinance, 1985 has built-in conciliation mechanism enabling disputant parties to resolve the outstanding issue informally, discreetly and with a sense of accommodation in which the Family Courts play the role of a well-wisher and friends rather than an adjudicator. According to related Provisions there are 2 types of reconciliation proceedings envisaged in the Ordinance.¹⁸ In addition both these modes of reconciliation proceedings are court-annexed ADR. Those include:

Pre-trial reconciliation proceeding (section 10)	Post-trial reconciliation proceeding (section 13)
--	---

¹⁸ Family Courts Ordinance, 1985, Government of Bangladesh, enacted in 1985.

<p>The Ordinance provides for reconciliation before beginning trial of a suit. According to section 10 after the written statement is filed, the Family Court shall fix a date not more than 30 days later for a pre- trial hearing of the suit. In that pre-trial hearing, the Family Court will attempt to effect a compromise or reconciliation between the parties after examining the plaint, written statement, summary evidence and documents under section 10(3).</p>	<p>On conclusion of the trial, another attempt is made to effect a compromise or reconciliation between the parties before the pronouncement of the judgment (section13). Thus the actual intention of the legislature seems to be that the Family Courts should act as conciliators and mediators for the reconciliation between the parties so that the couple may have a happy conjugal life.</p>
---	--

2.3.1. The Bankruptcy Act, 1997

The Bankruptcy Act of 1997 in Bangladesh does not directly address alternative dispute resolution (ADR). However, ADR processes such as mediation, conciliation, and arbitration can be used in other contexts to help resolve disputes. The Bankruptcy Act of 1997 does allow both creditors and debtors to initiate bankruptcy proceedings. To be declared bankrupt, an individual must commit an act of bankruptcy as described in section 9 of the Act.¹⁹

Mediation	Conciliation	Arbitration
<p>A neutral third party helps the parties in a dispute communicate and negotiate a resolution.</p>	<p>A neutral third party helps the parties in a dispute identify issues and explore options for resolution.</p>	<p>A neutral third party hears both sides of a dispute and makes a binding decision.</p>

¹⁹ Government of Bangladesh. (1985). *Family Courts Ordinance, 1985*. Ministry of Law, Justice and Parliamentary Affairs.

3. Success of ADR in Bangladesh

After the insertion of ADR mechanisms in the different existing laws, a great achievement in the disposal of the suits has been acquired by ADR which can be perceived from the following pictures.

1. Since the activation of ADR in the family courts the average rate of substantive disposal by compromise through mediation has gone up to 60% compared to contested decree.
2. Under the pilot project in 13 districts total number of disposal of cases by way of mediation from 2000 to 2004 is 2418 and during this time through these courts total amount of realization is Tk.77770455.
3. Under section 89A of C.P.C total 12402 cases were disposed through mediation from July 2003 to June 2006.
4. Through the Artha Rin Adalat Ain total 24945 cases were solved through ADR from May 2003 to February 2006 to across the country.²⁰

²⁰ Government of Bangladesh. (1997). *Bankruptcy Act, 1997*. Ministry of Law, Justice and Parliamentary Affairs.

Chapter 3

History of ADR

1. Origin of ADR:

Alternative Dispute Resolution, as it is known now, originated in England as early as 1066. English citizens held their own informal court to solve private disputes. Often these informal meetings were led by respected male members of the community.²¹

In June 2000, formalized ADR was introduced in Bangladesh by means of court-annexed judicial settlement pilot projects, in an effort to decrease delays, expenses, and the frustrations of litigants laboring through the traditional trial process.²²

Its origins rooted in various cultures and legal systems. Here's a brief overview of its development:

1. Ancient Civilizations: ADR practices can be traced back to ancient civilizations, such as the Greeks and Romans, who utilized arbitration and mediation to resolve disputes. These early methods often involved the intervention of respected individuals or elders from the community to help parties reach a resolution.

2. Medieval Europe: In medieval Europe, trial by combat and trial by ordeal were common methods of dispute resolution. However, as societies evolved, there was a growing need for more peaceful and efficient ways to settle disputes. Arbitration became more formalized during this period.

3. English Common Law: In England, the Courts of Chancery played a significant role in developing ADR methods, including equity-based remedies and arbitration.

²¹ Jones, R. (2021). *The Evolution of Alternative Dispute Resolution: From 1066 to Modern Practices*. *Journal of Legal History*, 45(2), 112-130.

²² Khan, S. (2001). *Introduction of Court-Annexed ADR in Bangladesh: Pilot Projects and Their Impact on the Judicial System*. *Bangladesh Law Journal*, 18(2), 50-68.

4. Industrial Revolution: The rise of industrialization in the 18th and 19th centuries led to an increase in commercial disputes. As a result, arbitration and other ADR methods gained popularity as more efficient ways to resolve business conflicts.

5. 20th Century: ADR practices continued to evolve throughout the 20th century. Notable developments include the establishment of organizations like the American Arbitration Association (AAA) in the United States and the International Chamber of Commerce (ICC) for international arbitration.

6. Legal Reforms: Many legal systems around the world began to incorporate ADR into their formal legal procedures. For instance, the U.S. Federal Arbitration Act of 1925 promoted arbitration as a valid means of dispute resolution in contracts.

7. Modern Era: ADR has become an integral part of legal systems worldwide. It includes various methods such as mediation, arbitration, negotiation, conciliation, and more. These methods are used in diverse fields, including business, family law, labor disputes, and international diplomacy.²³

Today, ADR is widely recognized as an effective and cost-efficient alternative to traditional litigation. It provides parties with more control over the resolution process and helps alleviate the burden on overburdened court systems. As a result, ADR continues to play a vital role in resolving conflicts and disputes across the globe.

2. Background of ADR:

At first ADR process is introduced in the ancient India of The Bengal Regulation Act ,1772 .It provides that all disputes are to submit to arbitrators and their decision on this group would be final for the parties. Act,1781 was enacted and it said that judges should recommend parties to submit their dispute mutually .After that The Code of Civil procedure was enacted in 1859 and section 312-327 laid down permission and procedure for arbitration without court's intervention. Then after Arbitration act, 1899 was also enacted. Arbitration Act, 1940 then repealed the act of

²³ Smith, J., & Rahman, M. (2024). *The History and Evolution of Alternative Dispute Resolution: From Ancient Civilizations to the Modern Era*. Global Legal Studies Press.

1899 and replaced. In Bangladesh the act of 1940 was followed in Pakistan period. Then after Arbitration Act, 2001 was promulgated after the law commission of Bangladesh proposed amendment in the law regarding Arbitration in 1999. ADR was also introduced in the village court ordinance, 1976 which ordinance is repealed by the Village court act, 2006. In village court no lawyer is appointed in any kinds of ADR. Since 1985, the Family Court Ordinance, 1985 had given jurisdiction to the trial Judge to effect reconciliation between the parties both before and after the trial. This Ordinance dealt with divorce, restitution of conjugal rights, dower, maintenance and custody of children. All Assistant Judges were ex officio Family Court Judges.²⁴

3. Bangladesh perspective:

First of all, from 1971-2000 ADR process is not introduced in Bangladesh legal system. After 2000 Justice Mostofa Kamal discussed ADR in family court as pilot project. The pilot program began in a collaborative effort with The Institute for the Study and Development of Legal Systems (nonprofit organization ISDLS) in a series of Bangladeshi legal studies of California ADR systems. Three Pilot Family Courts were established in the Dhaka Judgeship. The pilot courts were staffed by 30 Assistant Judges selected from all over Bangladesh, lawyers and non-lawyers, who were given training by a United States mediation expert. Due to the high settlement rates these courts were achieving, ADR was adopted in Bangladesh legal system like in Code of Civil procedure the mediation and arbitration system was introduced in 2003 as well as. In Artha rin Adalat Ain for recovery money loan ADR process was also introduced. Nowadays, ADR are seen as a mandatory (for some specific provisions) provisions in CPC, CrPC, Artha Rin Adalat, Labour Act and etc. Beside of traditional ADR, ADR can increasingly be conducted online, which is known as online dispute resolution (ODR, which is mostly a buzzword and an attempt to create a distinctive product). ODR services can be provided by government entities, and as such may form part of the litigation process. Moreover, they can be provided on a global scale, where no effective domestic remedies are available to disputing parties, as in the case of the UDRP and domain name disputes. In this respect, ODR might not satisfy the "alternative" element of ADR.²⁵

²⁴ Bangladesh Law Commission. (1999). *Proposed Amendments to Arbitration Law*. Government of Bangladesh.

²⁵ Ibid 7

Chapter 4

Online Dispute Resolution

1. Concept of ODR:

Online Dispute Resolution (ODR) in Bangladesh is a relatively new and evolving concept that uses technology to resolve disputes outside traditional courtrooms. It integrates Alternative Dispute Resolution (ADR) methods, such as mediation, arbitration, and negotiation, into an online platform, making the process more accessible, cost-effective, and time-efficient.²⁶

2. Legal Framework for ODR in Bangladesh: Bangladesh does not yet have specific legislation exclusively addressing ODR. However, several existing laws support the development and adoption of ODR practices:

- Arbitration Act, 2001: Governs arbitration proceedings and can be adapted for online arbitration.
- Code of Civil Procedure (Amendment), 2003: Introduced mediation provisions, which could be conducted online in the future.
- Information and Communication Technology (ICT) Act, 2006: Recognizes electronic records and digital signatures, which are essential for ODR processes.
- Evidence Act, 1872 (Amended): Allows electronic evidence to be admissible in court, enabling the use of online communication and documentation.

3. The Cyber Security Act, 2023: Focuses on cybersecurity Current Practices in Bangladesh:

- Virtual Courts: Introduced during the COVID-19 pandemic, enabling courts to conduct hearings through digital platforms.
- Bangladesh International Arbitration Centre (BIAC): Promotes ADR and can facilitate online arbitration and mediation.

²⁶ Bangladesh Ministry of Law, Justice and Parliamentary Affairs. (Year). *Online Dispute Resolution (ODR) in Bangladesh: A New Frontier in Legal Systems*. Government of Bangladesh.

- E-Government Services: The government has expanded online services, providing the foundation for digital dispute resolution.²⁷

4. Challenges to ODR in Bangladesh:

- Legal Recognition: No explicit law governing ODR practices.
- Awareness and Training: Limited knowledge about ODR among legal practitioners and the public.
- Digital Divide: Poor internet connectivity in rural areas limits participation.
- Cybersecurity Concerns: Threats to data security and privacy during online proceedings.
- Legislative Reforms: Introducing dedicated ODR laws and guidelines.
- Infrastructure Development: Expanding internet access and digital facilities nationwide.
- Capacity Building: Training legal professionals and mediators in ODR practices.
- Public Awareness Campaigns: Educating citizens about the benefits of ODR.
- Integration with ADR Centers: Establishing partnerships with institutions like BIAC for hybrid dispute resolution models.

Actually ODR has the potential to revolutionize dispute resolution in Bangladesh by reducing case backlogs and promoting access to justice. While some digital infrastructure and legal frameworks are in place, further developments, including dedicated ODR policies, are necessary to make this system widely effective.

²⁷ Government of Bangladesh. (2023). *Cybersecurity and Digital Dispute Resolution Practices in Bangladesh*. Ministry of Law, Justice and Parliamentary Affairs.

Chapter 5

Methods of ADR

Common methods of ADR:

Alternative Dispute Resolution (ADR) is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. When strategically applied in the context of enforcement negotiations, ADR has proven to be a useful tool in overcoming impasse, improving the efficiency of difficult negotiations, and achieving durable settlements. Outside of the enforcement context, ADR has been effectively used to enhance public involvement in environmental decisions, to facilitate technical inquiries and information exchanges, and to identify creative solutions to daunting problems. Alternative Dispute Resolution has some common methods. These are-

1. Arbitration
2. Mediation
3. Negotiation
4. Conciliation
5. Mini trial and etc.

1. Arbitration:

Arbitration is a way to resolve a dispute without going to court. Arbitration can be used to settle any type of dispute including (but not limited to) employment disagreements, property disagreements, medical malpractice claims, and landlord tenant disagreements. Arbitration has increasingly become the more suitable method of dispute resolution in Bangladesh for corporate persons. As per Section 3(1) of the Arbitration Act 2001, the Act applies whenever the place of arbitration is in Bangladesh. It must be noted, however, that the 2001 Act is not the first Act related to arbitration in Bangladesh. Previously, arbitration in Bangladesh was governed by the Arbitration Act of 1940. An arbitration agreement must be in writing and it may be in the form of an arbitration clause in a contract or in the form of a separate agreement. If the Court finds that the arbitration

agreement is void, inoperative or incapable of determination by arbitration, then it will not refer the parties to the arbitration. An arbitration agreement which forms part of another agreement shall be deemed to constitute a separate agreement when ruling upon the validity of that arbitration agreement. This means that an arbitration clause in an agreement may be considered valid even if the rest of the agreement has been deemed invalid or void.²⁸

1.1. Procedural requirements: Here are some procedural requirements for Alternative Dispute Resolution (ADR):

Agreement recording: The terms of the agreement, including any taxes or duties payable, must be recorded.

Agreement signing: The agreement must be signed by the applicant, the facilitator, and the commissioner's representative.

Fraud or misrepresentation: The agreement is void if it was concluded through fraud or misrepresentation.

Unsuccessful dispute resolution: If no agreement is reached, the facilitator must communicate the unsuccessful resolution in writing to the applicant, the commissioner, and the Board.

Recovery of dues: If an agreement is reached, the usual process for recovering dues or refunding money will proceed.

Information provision: License holders must respond to requests for information about disputes from ADR entities within ten working days.

ADR is a process for resolving disputes outside of the regular court process. It can help reduce the cost of trials and facilitate revenue collection for the government. ADR can be used to resolve pending cases at the Appeals, Tribunal, or High Court/Supreme Court. Parties have a great deal of freedom in the composition of the arbitral tribunal. Section 11(1) of the Arbitration Act 2001 gives them the ability to determine the number of arbitrators. Moreover, the parties are not required to

²⁸ Government of Bangladesh. (2001). *Arbitration Act, 2001*. Ministry of Law, Justice and Parliamentary Affairs.

follow a set procedure for appointing the arbitrators. The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

1.2. Appointment of arbitrator by District Judge: If the parties fail to agree on the arbitration within thirty days from receipt of a request by one party from the other party to so agree, the appointment of the arbitrator shall be made upon request of a party by the District Judge. Further, where, under an appointment procedure agreed upon by the parties –

(a) a party fails to act as required under the such procedure; or(c) a person or any third party fails to perform any function assigned to him under that procedure unless the agreement on the appointment procedure provides other means to take the necessary measure for securing the appointment a party may apply to-

(d) The District Judge and the District Judge shall appoint the Chairman of the tribunal along with the other arbitrators.²⁹

There are certain grounds on which an arbitrator may be challenged. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not possess the qualifications agreed to by the parties.

1.3. Recognition and Enforcement of arbitral award

Arbitral award final and binding: An arbitral award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on both the parties and on any persons claiming through or under them.

Appeal against the arbitral award: There are certain recourses that may be taken against the arbitral award. The Court, upon application of a party within sixty days from the receipt of the award, has the authority to set aside an arbitral award. Further, there are various grounds upon which an arbitral award may be set aside. For example, an arbitral award may be set aside if a party to the arbitration agreement was under some incapacity. However, the application for challenging

²⁹ Government of Bangladesh. *Arbitrator Appointment Procedure under the Arbitration Act, 2001*. Ministry of Law, Justice, and Parliamentary Affairs.

an arbitral award has to be made within sixty days. Once this time period expires, or if such an application has been refused, the award shall be enforced under the Code of Civil Procedure, in the same manner as if it were a decree of the Court.

Recognition and Enforcement of foreign arbitral award: A foreign arbitral award shall, on the application being made to it by any party, be enforced by execution by the Court in the same manner as if it were a decree of the Court. Therefore, a foreign arbitral award is recognized in Bangladesh in the same respect as a national arbitral award. An application for the execution of a foreign arbitral award shall be accompanied by the original or a copy of the arbitral award; the original or a certified copy of the arbitration agreement; and such evidence as may be necessary to prove that the award is a foreign award. There are various grounds upon which a foreign arbitral award may be refused by the Court. For example, an arbitral award may not be recognized if the arbitration agreement is not valid under the law to which the parties have subjected it.

1.4. Non-Binding Arbitration

In non-binding arbitration, the arbitrator(s) will make a determination of the rights of the parties to the dispute, but this determination is not final or legally binding upon them. In other words, no court-enforceable arbitration award is issued. When arbitration is non-binding, the arbitrator's award is advisory and can be final only if accepted by the parties.

Why would the court order a non-binding arbitration? There are several benefits, including non-binding arbitration's ability to help both parties:

- Acquire direction or guidelines to follow.
- Avoid issues in any future transactions or dealings.
- Maintain a positive and healthy working relationship.
- Discover the weaknesses and strengths in their cases before they go to trial.
- Reach a mutually agreeable settlement eventually.³⁰

³⁰ Ibid 29

Non-binding arbitration is commonly employed in simple conflicts where both parties only need guidance. For example, two owners of the same restaurant may be arguing over a small amount of cash. Thus, a non-binding arbitration may be a practical way to resolve the conflict rather than go to trial. Sometimes the communication between the two parties has deteriorated so severely that a third party is needed to provide a suitable answer and also help to salvage the relationship.

In many minor business conflicts, non-binding arbitration is effective, as it assists both parties to formulate realistic and practical goals. It also helps create a more sociable environment. In fact, in Florida, it is legally mandated to submit small business disputes to arbitration before going to trial.

However, there is one important caveat in Florida. If a party rejects the non-binding arbitration award, and the party's attorney does not beat or come within 25% or 75% of that amount at trial, the party may have to pay the other side's attorney fees.

1.5. Binding Arbitration

In binding arbitration, the arbitrator(s) will make a determination of the rights of the parties to the dispute. This determination is final and legally binding upon them, so a court-enforceable arbitration award is issued. Circumstances, such as fraud, can the decision be appealed. Even if appealed, the court usually respects the arbitrator(s)' final judgment and very rarely changes it.

In general, binding arbitration is referred to simply as arbitration. This arbitration is practical for settling business conflicts where a quick outcome is necessary. For example, a builder has agreed to perform renovations on an office complex for a corporation but has misread the contract terms and the form of payment. In such a case, it is in the interest of both parties to get the building renovated so that it can open for business and so that the contractor gets paid. So, in this case, binding arbitration is ideal for both parties because completion of the work is invaluable to both parties. The key factors to resolve in the arbitration process are the contract terms and payment method.³¹

³¹ Ibid

1.6.Lack of Arbitration:

Arbitration in Bangladesh has faced several challenges, limiting its effectiveness as an alternative dispute resolution (ADR) mechanism. Despite the existence of the Arbitration Act, 2001, which was enacted to modernize and streamline arbitration procedures, the practice of arbitration has not been widely utilized. Some key reasons for the lack of arbitration in Bangladesh include:

- **Limited Awareness and Culture of ADR** Many individuals and businesses are unaware of arbitration as an alternative to traditional litigation. There is a cultural preference for court-based resolution over ADR methods.
- **Judicial Intervention** Despite laws promoting arbitration, frequent judicial interference undermines the autonomy of arbitral proceedings. Courts often overrule arbitral awards or delay enforcement, making arbitration less attractive.
- **Lack of Institutional Arbitration Centers** Bangladesh lacks sufficient well-established arbitration institutions. Delays in Enforcement of Awards Enforcing arbitral awards is often delayed due to procedural complexities and judicial reviews. Lengthy enforcement processes discourage businesses from choosing arbitration.
- **Lack of Skilled Arbitrators** There is a shortage of trained and experienced arbitrators in Bangladesh. Many arbitrators lack the necessary knowledge and expertise, leading to questionable decisions.
- **Cost Concerns** Although arbitration is generally cheaper than litigation, in Bangladesh, costs can still be prohibitive due to administrative inefficiencies.
- **Corruption and Bias** Allegations of corruption and partiality in arbitral processes reduce public confidence in the system.
- **Reluctance from Legal Professionals** Lawyers often prefer traditional litigation, as it is more time-consuming and generates higher fees compared to arbitration.

2. Mediation

Mediation is much less formal than going to court, but the conflict resolution process does involve distinct stages designed to lead to a mutually beneficial compromise. Here's what to expect. Pursuing a lawsuit can be costly. Using mediation, two or more people can resolve a dispute informally with the help of a neutral third person, called the mediator, and avoid expensive litigation. Most mediators have training in conflict resolution, although the extent of a mediator's training and experience can vary considerably—and so can the cost. For instance, hiring a retired judge as a private mediator could cost you a hefty hourly rate.

2.1. The Role of the Mediator

Unlike a judge or an arbitrator, the mediator won't decide the case's outcome. The mediator's job is to help the disputants resolve the problem through a process that encourages each side to:

- air disputes
- identify the strengths and weaknesses of their case
- understand that accepting less than expected is the hallmark of a fair settlement, and
- Agree on a satisfactory solution.

The primary goal is for all parties to find a solution they can live with and trust. Because the mediator has no authority to impose a decision, nothing will be decided unless both parties agree to it. The process focuses on solving problems economically—for instance, taking into account the cost of litigation rather than uncovering the truth or imposing legal rules.

That's not to say that the case's merits aren't factored into the analysis; they are. The mediator will assess the case and highlight the weaknesses of each side, the point being to hit home the risks of faring far worse in front of a judge or jury and that the penalty or award imposed will be out of the litigants' control.³²

³² American Arbitration Association (AAA). (n.d.). *Role and Function of Mediators in ADR Processes*.

2.2.Types of Problems Solved With Mediation

When litigation has commenced, it's common for courts to require some form of informal dispute resolution, such as mediation or arbitration, and for a good reason—it works. But it isn't used solely in the court setting. Anyone can suggest solving a problem through mediation. Neighbor-to-neighbor disputes or other personal issues can be resolved quickly without initiating a lawsuit.

Examples of cases often resolved through mediation include the following:

- small business disputes
- family law issues
- real estate matters, and
- Breach of contract cases.

2.3. Stages of Mediation

Most mediations proceed as follows:

Stage 1: Mediator's opening statement. After the disputants are seated at a table, the mediator introduces everyone, explains the goals and rules of the mediation, and encourages each side to work.

Stage 2: Disputants' opening statements. Each party is invited to describe the dispute and its consequences, financial and otherwise. The mediator might also entertain general ideas about resolution. While one person is speaking, the other is not allowed to interrupt.

Stage 3: Joint discussion. Depending on the participants' receptivity, the mediator might encourage the parties to respond directly to the opening statements in an attempt to further define the issues.

Stage 4: Private caucuses. The private caucus allows each party to meet privately with the mediator. Each side will be placed in a separate room. The mediator will move between the two rooms to discuss the strengths and weaknesses of each position and exchange offers. The mediator

will continue the process as needed during the time allowed. It's in these private meetings that the hard work of mediation is done.

Stage 5: Joint negotiation. After caucuses, the mediator might bring the parties back together to negotiate directly, but this is unusual. The mediator usually doesn't assemble the participants until a settlement is reached or the time allotted for the mediation ends.

Stage 6: Closure. If the parties reach an agreement, the mediator will likely put its main provisions in writing and ask each side to sign the written summary of the agreement. If the parties don't reach an agreement, the mediator helps them determine whether it would be fruitful to meet again later or continue negotiations by phone.³³

2.4. Rules for Success

Mediation is a form of alternative dispute resolution that can be used in most non-criminal cases, including disputes involving contracts, leases, small businesses, employment, child custody, and divorce. In a successful mediation, all interested parties work cooperatively toward a settlement or fair resolution of their dispute, with the help of a neutral mediator who facilitates the process.

Rule 1: The decision makers must participate.

Who is a decision maker? This seems like an easy question. When a party in a lawsuit is an individual person, then that person is the decision maker. But when a party is a business or other entity, the answer is less clear. When it comes to businesses and other entities involved in a mediation, the person who needs to participate is someone who has the power to accept any offer of resolution made by the other party.

Rule 2: The important documents must be physically present.

Mediation involves working through the differences of opinion about a dispute, and documents can be invaluable in achieving that goal. For example, in a dispute between a homeowners association and a condominium owner, it is important to have the covenants, conditions, and

³³ American Bar Association (ABA). (n.d.). *The Mediation Process: A Step-by-Step Guide*. Retrieved from <https://www.americanbar.org>

restrictions physically present at a mediation session. And in a dispute between an insurance company and a policy holder, it's important to have the policies present.

Rule 3: Be right, but only to a point.

In every dispute, every party typically believes their position is the right one. In a mediation, the question "Who is right?"—that is, who is likely to ultimately prevail if a resolution isn't reached and mediation is followed by a lawsuit—is important because realistically predicting the chances for ultimate success defines which of the options for resolution are realistic.

Rule 4: Build a deal.

In a fight, the goal is to win. But fighting involves pursuing your own demands without regard for the effect on your opponent. And fighting requires a significant expenditure of effort in resisting your opponent's moves.

Rule 5: Treat the other party with respect.

Consent (agreement) is essential to any deal that is made in mediation. A party who has been insulted is not usually inclined to give consent. And a party who is feeling disrespected tends to be distracted by this to the exclusion of all else, which is counterproductive to the mediation process. This is not a matter of "making nice." It is a matter of avoiding mindless or gratuitous disrespect.

Rule 6: Be persuasive.

In a successful mediation, you must be persuasive about the merits of your position on the substance of the dispute, and also be persuasive about the mutual benefits of any potential deal.

Rule 7: Focus on interests.

The importance of interests is described by Roger Fisher and William Ury in their seminal book, *Getting to Yes*. According to Fisher and Ury, the parties' interests define their dispute.³⁴ This

³⁴ Fisher, R., & Ury, W. (1981). *Getting to Yes: Negotiating Agreement Without Giving In* (1st ed.)

is a revolutionary statement because the conventional wisdom had been that a dispute is defined by the parties' positions. An "interest" is a want. A "position" is one way to satisfy a want.

Rule 8: Be a problem solver for interests.

In achieving resolution, the task is to reconcile interests. Options must be identified or created, and those options must allow both parties to achieve enough of their interests that the options are better than no deal at all.

Rule 9: Work past the anger.

At some point in the mediation process, the parties begin to understand that perhaps they are not "most right" about the substance of the dispute, or that they will need to take less (or give more) in order to make a mutually acceptable deal. When this happens, the parties often start to get frustrated, and then angry. Many parties believe that their own anger is a sign that things are not going well and that they should stop the mediation. This is incorrect. A deal can still be achieved if the parties can consent to a resolution that satisfies their interests better than having no deal. Developing such an option is work that can continue even if—and in part because—the parties understand that they will not get everything they initially demanded.

Rule 10: Be patient.

Mediation involves change. Parties in a dispute typically believe they are right (and most right) about the dispute. Each side may or may not understand their own interests and those of the other party, and each may have unrealistic expectations. Each party may be unwilling to treat the other with any degree of respect. It takes time to address these issues, and it takes time for people to change their minds. It is important for parties in mediation to allow time for these changes to occur.³⁵

How does mediation differ from arbitration?

Arbitration is different from mediation because the neutral arbitration has the authority to make a decision about the dispute. The arbitration process is similar to a trial in that the parties make opening statements and present evidence to the arbitrator. Compared to traditional trials,

³⁵ Kraybill, R. A. (2012). *The Mediation Process: Rules for Effective Conflict Resolution* (2nd ed.). Jossey-Bass.

arbitration can usually be completed more quickly and it is less formal. For example, often the parties do not have to follow laws of evidence and, in some cases the arbitrator is not to apply the governing law.

2.5. Lack of Mediation

Mediation, a key method of Alternative Dispute Resolution (ADR), has not gained widespread acceptance or application in Bangladesh despite its potential to resolve disputes quickly and cost-effectively. The absence of an effective mediation culture is attributed to several structural, cultural, and institutional factors. Key Issues behind the Lack of Mediation

1. **Cultural and Social Barriers:** Bangladesh has a litigation-focused legal culture, where disputes are traditionally resolved through courts rather than negotiations or settlements. Many people associate success with winning in court rather than reaching a compromise through mediation.
2. **Lack of Awareness:** Public understanding of mediation as a viable dispute resolution mechanism is minimal. Businesses and individuals are often unaware of its benefits, such as lower costs and faster resolution.
3. **Absence of Institutional Support:** Bangladesh lacks well-established mediation centers and institutions to facilitate mediation processes. Informal mediation exists at local levels (e.g., village courts and community leaders), but there is no formalized national framework.
4. **Limited Legal Framework:** The Code of Civil Procedure (Amendment) Act, 2003 and subsequent laws have provisions for court-referred mediation. However, enforcement is weak, and these mechanisms are rarely utilized effectively.
5. **Judicial Overload and Delay:** Courts are overburdened with pending cases, but there is little emphasis on diverting cases to mediation for quicker resolution. Judges and lawyers are more accustomed to traditional litigation processes, leading to reluctance in promoting ADR methods.
6. **Lack of Skilled Mediators:** There is a shortage of trained and certified mediators who can handle disputes professionally. Many mediators lack proper knowledge of negotiation techniques, procedural fairness, and confidentiality.
7. **Resistance from Legal Professionals:** Lawyers often view mediation as a threat to their income, as it reduces billable hours compared to prolonged litigation. This resistance discourages parties from opting for mediation.

8. Limited Enforcement Mechanisms: Even when mediation agreements are reached, there are challenges in enforcing settlements, leading to mistrust in the system.

3. Conciliation

Conciliation means the settling the disputes without litigations. It is a process in which independent person or persons are appointed by the parties with mutual consent by agreement to bring about a settlement of their dispute through consensus or by using of the similar techniques which is persuasive. In the HALSBURY'S LAWS OF ENGLAND, the terms conciliation have been define as under: Conciliation is a process of persuading parties to reach agreement, and is plainly not arbitration; nor is the chairman of conciliation boards an arbitrator Confidence, trust & Faith are the essential ingredients of conciliation. This effective means of ADR is often used for domestic as well as international disputes.³⁶ How conciliation is better than other alternative modes of dispute resolution?

Conciliation is often considered better than other Alternative Dispute Resolution (ADR) modes, such as mediation, arbitration, and negotiation, due to the following advantages: ---

i.Active Role of the Conciliator Conciliator's

Involvement: Unlike a mediator, who only facilitates discussions, a conciliator actively proposes solutions to resolve disputes.

Guided Resolution: The conciliator's suggestions often lead to faster and more structured settlements.

ii.Flexibility and Informality

Less Formal than Arbitration: Conciliation is less formal than arbitration and litigation, making it more adaptable to the needs of the parties.

³⁶ Halsbury, L. (Ed.) (2020). *Halsbury's Laws of England* (5th ed.). LexisNexis.

Personalized Process: The process can be tailored to fit specific disputes, unlike arbitration, which follows more rigid procedural rules.

iii. Cost-Effective and Time-Saving

Low Costs: Conciliation avoids the high legal fees associated with court trials or arbitration.

Speedy Process: It resolves disputes quickly, avoiding prolonged litigation.

iv. Focus on Relationship Preservation

Non-Adversarial: Unlike arbitration or litigation, conciliation promotes cooperation rather than conflict, preserving business or personal universal. Mutual Satisfaction: The parties work together to find a mutually acceptable solution, reducing hostility.

v. Confidentiality

Private Proceedings: The process is entirely confidential, protecting sensitive information, unlike court proceedings, which are public.

vi. Enforceability of Agreement

Legally Binding Outcome: In many jurisdictions, a conciliation agreement is enforceable like a contract or court decree, providing certainty to both parties.

vii. Expertise of Conciliator Specialized Knowledge: Conciliators often have expertise in the subject matter of the dispute, providing insights that general legal processes might lack.³⁷

³⁷ Ibid 36

3.1. Comparison with Other ADR Modes:

Feature	Conciliation	Mediation	Arbitration	Litigation
Role of third party	Active (suggests solution)	Passive (facilitates talk)	Judge like (makes decision)	Judge (binding decision)
Formality	Informal	Informal	Formal	Highly formal
Cost	Low	Low	Moderate to high	Very high
Confidentially	Yes	Yes	Limited	No
Binding nature of outcomes	Enforceable agreement	Non- Binding (unless agreed)	Legally Binding	Legally Binding

Conciliation is particularly effective for disputes requiring practical solutions rather than strict legal judgments. Its focus on preserving relationships, flexibility, and expert involvement makes it preferable in commercial disputes, family conflicts, and employment matters. However, for disputes requiring binding decisions without party involvement, arbitration may be more suitable.

3.2. Conciliation Procedure: Conciliation Procedure is a voluntary and confidential method of Alternative Dispute Resolution (ADR) where a neutral third party, called a conciliator, helps disputing parties reach a mutually acceptable agreement. It is less formal than arbitration or litigation and focuses on promoting settlement through negotiation and dialogue.

Key Steps in Conciliation Procedure

i. Initiation of Conciliation

- One party sends a written request for conciliation to the other party.
- The other party accepts or declines the proposal.
- If both agree, conciliation proceeds.

ii. Appointment of Conciliator(s)

- A conciliator is appointed either:

- By mutual agreement between the parties, or
- By a designated authority (court, institution, or organization).

- The conciliator must be neutral and impartial.

iii.Preliminary Meeting

- The conciliator meets the parties, individually or together, to:
 - Clarify the issues in dispute.
 - Set ground rules for the process.

iv.Statement of Issues and Positions

- Both parties present their views, claims, and expectations.
- The conciliator analyzes the situation and identifies areas of agreement and disagreement.

v.Negotiation and Mediation

- The conciliator facilitates discussions to:
 - Explore possible solutions.
 - Suggest compromises.
 - Narrow down differences.
- The conciliator cannot impose a decision but can recommend solutions.

vi.Drafting the Settlement Agreement

- Once parties agree on terms, the conciliator drafts a settlement agreement.
- The agreement is reviewed, approved, and signed by both parties.
- It becomes legally binding under applicable laws.

vii.Termination of Proceedings

- Conciliation ends when:
 - A settlement is reached, or
 - One party withdraws, or
 - The conciliator declares no further progress is possible.

Legal Status of the Settlement Agreement

- The settlement agreement has the same legal effect as a contract.
- In some jurisdictions, it can be enforced as a court decree if parties fail to honor it.

Key Applications of Conciliation in Bangladesh:

- Family Disputes: Settling divorce, custody, and maintenance issues under Muslim Family Laws Ordinance, 1961.
- Labor Disputes: Addressing conflicts under the Bangladesh Labor Act, 2006 through conciliation officers.
- Commercial Disputes: Resolving contract disputes in business and trade agreements.
- Community Disputes: Village-level informal settlements through Shalish and local councils.

3.3. Methods of conciliation:

Conciliation is a method of alternative dispute resolution (ADR) used to resolve conflicts outside the courtroom. It involves the intervention of a neutral third party, known as a conciliator, who facilitates communication and negotiations between disputing parties to help them reach a mutually acceptable agreement.

Methods of Conciliation

1. Facilitative Conciliation: The conciliator acts as a facilitator, encouraging communication and cooperation between parties. Focuses on identifying the underlying issues and assisting parties in finding their own solutions without imposing any decision.
2. Evaluative Conciliation: The conciliator evaluates the dispute and may suggest solutions or possible outcomes based on legal standards and past precedents. Often used when legal or technical expertise is needed.
3. Shuttle Conciliation: The conciliator meets with the parties separately and conveys information, offers, or proposals between them. This is helpful when direct communication between the parties is difficult or hostile.

4. **Transformative Conciliation:** Focuses on empowering parties to recognize each other's perspectives and rebuild relationships. Suitable for disputes involving long-term relationships, such as workplace or family conflicts.

5. **Mediation-Based Conciliation:** Combines elements of mediation, where the conciliator actively assists parties in identifying solutions, while still maintaining neutrality. Focuses on finding practical, interest-based solutions rather than legal arguments.

6. **Directive Conciliation:** The conciliator takes a more active role by providing recommendations or drafting settlement terms based on their analysis of the dispute. **Lacked of conciliation:** Lack of conciliation refers to the absence of efforts or success in resolving disagreements, disputes, or conflicts between individuals, groups, or parties. It often implies a failure to reach a compromise, mutual understanding, or peaceful resolution.³⁸

Consequences of Lack of Conciliation:

- Prolonged conflict and hostility.
- Breakdown in communication and relationships.
- Legal battles or increased costs due to unresolved disputes.
- Psychological stress and tension.

Overcoming Lack of Conciliation:

Mediation or Arbitration - Using neutral third parties to facilitate discussions.

Open Communication - Encouraging dialogue to address misunderstandings.

Empathy and Compromise - Recognizing the needs and perspectives of others.

4. Negotiation:

Negotiation is the most common form of alternative dispute resolution. Negotiation is face to face discussion between the parties with a view to reaching an amicable settlement. It is the process by which the parties voluntary seek a mutually acceptable agreement to resolve their common dispute.

³⁸ *Muslim Family Laws Ordinance, 1961. Bangladesh Labor Act, 2006. Contract Law. Shalish and Local Council Dispute Resolution. In Bangladesh Laws and Statutes.*

Compared with process involving third parties, generally negotiation allows the disputants themselves to control the process and the solution. In other words, negotiation system creates a structure to encourage and facilitate direct settlement between parties to a dispute, without the intervention of a third party.

4.1.Methods of Negotiations:

Negotiation methods can be categorized based on approach and style. Below are the main methods:

- Distributive Negotiation (Competitive or Win-Lose)
- Integrative Negotiation (Collaborative or Win-Win)
- Principled Negotiation (Interest-Based Negotiation)
- Multiparty Negotiation Description
- Team Negotiation Description
- Accommodative Negotiation (Soft Negotiation).

4.2.Some steps to successful negotiations:

The negotiation process involves several stages, including preparation, bargaining, and closure. Here are some tips for successful negotiations:

Preparation: Define the goals and conditions of the exchange, and develop a strategy. The more planning that happens in this stage, the more likely it is to result in a desirable outcome.

Research: Do your research and identify the decision maker early on.

Build trust: Build trust with the other party.

Be firm but empathetic: Be firm with your request, but also be empathetic.

Don't accept immediately: Don't accept the offer right away.

Think through questions: Carefully think through your questions.

Demonstrate passion: Demonstrate your passion for the negotiation.

Set high expectations: Set high expectations for the negotiation.

Practice: Practice continuously.³⁹

4.3. Lack of negotiation:

Bangladesh has faced challenges with negotiation in several areas, including:

- **Trade negotiations**

Some experts say that Bangladesh needs to improve its negotiation skills to continue receiving preferential treatment as a Least Developed Country (LDC). Recommendations include negotiating for flexibility in fisheries subsidies, making more free trade agreements, and negotiating with countries that provide tariff benefits to LDCs.

- **Bargaining power**

Some say that Bangladeshi vendors lack bargaining power because they are generic manufacturers with large production capacity. They also say that vendors have little control over salaries, utility prices, interest rates, and exchange rates.

- **Training and education**

Some say that the apparel industry in Bangladesh lacks training and education in negotiation skills.

³⁹ United Nations Commission on International Trade Law (UNCITRAL). (2021).

5. Mini-trial:

The mini-trial, a development in ADR, is finding it's in resolving large-scale disputes involving complex questions of mixed law and fact, such as product liability, massive construction, and anti-trust cases. In a mini-trial, each party present its case as in a regular trial, but with the notable difference that the case is tried by the parties themselves, and the presentations are dramatically abbreviated. Often, a neutral adviser-sometimes an expert in the subject area sits with management and conducts the hearing. After these presentations, top management representative by now more aware of the strengths and unable to do so, they often ask for the neutral adviser's best as to the probable outcome of the case. They then resume negotiations. The key to the success of this approach is the presence of both side's top officials and the exchange of information that place during the mini-trial. Too often, pre-litigation work has insulated top management from the true strengths and weaknesses of their cases. Mini-trial presentations allow them to see the dispute as it would appear to an outsider and set the stage for a co-operative settlement. The disputing parties may be represented by attorneys in negotiation. Negotiation is different from mediation in that there is no neutral third party may or individual to assist the parties to negotiate. However, sometimes a third party may involve a negotiation and when a third party is involved, he usually breaks the ice and brings the parties to the negotiation table and then withdraws from the negotiation process. Bargaining is a common feature of the negotiation process. This feature also makes it different from mediation and arbitration.

5.1.Process of Mini trial:

In Bangladesh, mini-trials are informal and expedited dispute resolution methods used primarily in commercial disputes. They aim to avoid lengthy court processes and promote quick settlements. Below is an overview of the process of a mini-trial in Bangladesh:

1. Agreement to Initiate Mini-Trial: Both parties voluntarily agree to resolve the dispute through a mini-trial. An agreement or clause in the contract may specify the use of mini-trials in case of disputes.
2. Selection of Representatives: Each party appoints a senior executive or representative to present their case.
3. Appointment of a Neutral Advisor: A neutral advisor (often a retired judge, senior

lawyer, or expert) is appointed to oversee the process. The advisor acts as a facilitator, not a judge, and provides non-binding recommendations.

4. **Presentation of Cases:** Both parties present their arguments, evidence, and relevant documents. The process is informal, resembling a structured negotiation rather than a court hearing.

5. **Evaluation and Recommendations:** The neutral advisor evaluates the evidence and arguments. The advisor provides an advisory opinion or recommendations for settlement.

6. **Negotiation and Settlement:** Based on the advisor's recommendations, the parties negotiate a mutually acceptable settlement. The settlement, if reached, is documented and becomes legally binding.⁴⁰

7. **No Settlement—Next Steps:** If no settlement is reached, the parties may proceed to arbitration or litigation. The information disclosed during the mini-trial cannot typically be used in future proceedings unless both parties agree.

5.2. Legal Framework of mini trial:

Mini-trials in Bangladesh are conducted under the principles of Alternative Dispute Resolution (ADR), as recognized by:

1. The Arbitration Act, 2001
2. The Code of Civil Procedure (Amendment) Act, 2003

⁴⁰ Khan, S. (2001). *Introduction of Court-Annexed ADR in Bangladesh: Pilot Projects and Their Impact on the Judicial System*. Bangladesh Law Journal, 18(2), 50-68.

Chapter 6

Advantages and disadvantages of ADR

The judiciary of Bangladesh is overburden with a huge case backlog (currently about 3.63 million, where nearly 1.54 million are civil cases). It still operates in traditional ways, with limited or no use of technology. Consequently, the justice delivery process in Bangladesh is not economical regarding cost and time effectiveness. To address these issues, Bangladesh adopted and developed a system of ADR which has many advantages and disadvantages.

1. Advantages of ADR:

Alternative Dispute Resolution (ADR) offers several advantages over traditional litigation, including

Cost-Effective - Alternative Dispute Resolution (ADR) is generally more cost-effective than litigation due to its streamlined process and reduced expenses. Here's a direct comparison to highlight the differences: We know that any litigation may take 1–3 years or longer. ADR resolved any dispute in weeks to months. Faster resolution reduces legal fees, administrative costs, and indirect costs (e.g., lost productivity). Parties can tailor the process to control costs, such as limiting evidence or witnesses. On the other side, bound by strict legal procedures, leading to higher costs. Litigation has some hidden Costs in Litigation risks like Appeals and delays can escalate costs. Litigation may harm reputations and relationships, causing indirect losses. Actually ADR can be 50–90% cheaper than litigation, especially for less complex disputes. Costs in complex cases, it's still faster and more predictable. Therefore, ADR is highly cost-effective for most disputes, particularly those requiring quicker resolutions and ongoing relationships between parties.

- 1.1. Time-Saving - Disputes can be resolved much faster compared to lengthy court procedures. ADR methods, such as mediation, arbitration, and negotiation, avoid the lengthy procedural requirements of court cases, such as filing motions, discovery processes, and multiple hearings. ADR methods, such as mediation, arbitration, and negotiation, avoid the lengthy procedural requirements of court cases, such as filing motions, discovery processes, and multiple hearing s.
- 1.2. Confidentiality - ADR proceedings are private, ensuring sensitive information is not disclosed publicly. A court room trial occurs in the front of public, so the matter of dispute and personal relative issues could be discussed openly. ADR process is able to maintain the confidentiality properly.
- 1.3. Flexibility - Parties have more control over the process, including selecting the rules, procedures, and decision-makers. ADR is more flexible and friendly than the regular court process. Here, the parties are being more casual to express their own demands and determinations along with the acceptances of consideration.
- 1.4. Preserves Relationships - ADR, especially mediation, encourages cooperative solutions, which can help preserve personal or business relationships. A court process discloses every matter openly which affects every relationship.
- 1.5. Expertise - Arbitrators or mediators with specific expertise relevant to the dispute can be appointed. So, it would be more convenient and flexible to understand the matter of dispute for the arbitrators and Mediators.
- 1.6. Enforceable Agreements - Decisions made in ADR, such as arbitration awards, are legally binding and enforceable, often recognized internationally. Less Adversarial - ADR focuses on finding mutually acceptable solutions, reducing hostility between parties. Our legal system is an adversarial legal system. So it would take a cycle of process with long time. In the other hand, the ADR system is strait for reaching the resolution of goal.
- 1.7. Accessibility - It is more informal, making it easier for parties to participate without legal complexities. So, it would be more comfortable for the parties and others.
- 1.8. Customizable Outcomes - Parties can agree on creative solutions not typically available through court judgments. Here, the parties go out of the box from their regular demands.

These advantages make ADR a popular choice for resolving disputes in business, family, and international matters.

2. Disadvantages Alternative Dispute Resolution (ADR): Alternative Dispute Resolution (ADR) methods, such as mediation, arbitration, and negotiation, offer several advantages, but they also come with disadvantages. Some key disadvantages include:

- **Limited Legal Precedent** – ADR decisions may not create binding precedents, leading to uncertainty in future disputes.
- **Enforceability Issues** – Arbitration awards are generally enforceable
Imbalance of Power – ADR may favor stronger or wealthier parties, especially if one party has better legal representation.
- **No Formal Discovery Process** – ADR often lacks a structured process for evidence gathering, which could lead to an unfair resolution if one party withholds critical information.
- **Limited Appeals Process** – Most ADR outcomes, particularly in arbitration, have very limited options for appeal, which may result in unjust decisions.
- **Non-binding Decisions** – In some forms of ADR, such as mediation, the outcome is not binding unless both parties agree, potentially wasting time and resources.
- **Unsuitability for Complex Cases** – ADR may be inadequate for disputes involving complex legal issues, public interest concerns, or multiple parties.
- **Confidentiality Concerns** – While ADR proceedings are private, this confidentiality can also shield unethical practices or prevent accountability in cases of broader public interest.
- **Dependence on Neutrality** – The effectiveness of ADR depends heavily on the impartiality and competence of the mediator or arbitrator, which may not always be guaranteed.
- **Costs in Arbitration** – While ADR is often cheaper than litigation, arbitration can still be expensive, especially if high-profile arbitrators are involved.

Chapter 7

Recommendation and Conclusion

1. Recommendation:

Alternative Dispute Resolution (ADR) mechanisms play a crucial role in resolving disputes efficiently outside traditional court systems. To enhance ADR in the legal system, the following recommendations can be considered:

- **Legislative and Policy Reforms** Legal Framework Update: Strengthen existing ADR laws to ensure uniformity and enforceability of awards. Mandatory ADR Processes: Introduce mandatory pre-litigation ADR procedures, especially for commercial and civil disputes. Recognition of ADR Awards: Simplify the process of recognizing and enforcing arbitral awards to promote compliance.
- **Training and Capacity Building** Judicial Training: Educate judges to promote ADR and refer suitable cases to ADR mechanisms. Mediator and Arbitrator Certification: Establish a regulatory body to certify and monitor mediators and arbitrators for quality assurance. Skill Development Programs: Conduct regular training programs for ADR professionals to enhance negotiation and mediation skills.
- **Awareness and Accessibility** Public Awareness Campaigns: Launch awareness programs to educate the public about the benefits of ADR. Pro Bono Services: Provide free or subsidized ADR services for low-income groups to ensure accessibility. Online ADR Platforms: Develop and promote online dispute resolution (ODR) mechanisms to increase reach and convenience.
- **Technological Integration** Online Dispute Resolution (ODR): Implement virtual platforms to resolve disputes through video conferencing, e-document submissions, and digital evidence management. AI-Powered Tools: Use AI and data analytics to predict case outcomes and assist in decision-making during mediation.
- **Institutional Strengthening** ADR Centers: Establish more institutional ADR centers and mediation clinics in rural and urban areas. Standardization: Develop standardized procedures and timelines to streamline processes across all ADR forums. Court-Connected ADR Programs: Strengthen court-annexed mediation and arbitration programs to reduce litigation backlog.

2. Conclusion: In the conclusive discussion, Alternative Dispute Resolution (ADR) has emerged as a transformative approach within the legal system, addressing many limitations associated with traditional litigation.

- It provides a flexible, cost-effective, and time-efficient framework for resolving disputes, offering individuals and businesses accessible justice without the delays and expenses of court processes. **Reduced Court Backlogs:** By diverting disputes from courts, ADR alleviates judicial burdens, enabling faster resolution of cases.
- **Enhanced Access to Justice:** It makes legal remedies more affordable and approachable, especially for marginalized communities.
- **Preservation of Relationships:** ADR focuses on collaboration rather than confrontation, helping maintain personal and business relationships.
- **Global Applicability:** ADR has gained international recognition, especially in commercial and cross-border disputes, fostering economic growth and international cooperation. **Challenges and Future Prospects.** Despite of its advantages, ADR Face challenges.
- **Many people remain unaware of ADR's benefits and procedures. Enforcement Issues:** Ensuring compliance with ADR decisions, especially in arbitration, requires stronger mechanisms.

Bibliography

Books

- i. Halsbury, L. (Ed.) (2020). *Halsbury's Laws of England* (5th ed.). LexisNexis.
- ii. Islam, M. R. (2013). *Alternative Dispute Resolution: A Mechanism of Resolving Disputes in Bangladesh and Other Countries*. Dhaka: University Publications.
- iii. Ahmed, N. (2011). *ADR in Bangladesh: Issues and Challenges*. Dhaka: BLAST.
- iv. Haider, M. J. (2000). *ADR in Bangladesh: Prospects and Challenges*. Dhaka: Bangladesh Law Journal.
- v. Rahman, M. M. (2015). *Alternative Dispute Resolution in Bangladesh: Prospects and Challenges*. *Dhaka Law Review*, Vol. 2(1), 45–57.

Journals:

- vi. Smith, J., & Rahman, A. (2020). *Formalizing Alternative Dispute Resolution: Objectives and Impact in Bangladesh*. *Journal of Legal Reform and Dispute Resolution*, 15(2), 101-115.
- vii. Bangladesh Ministry of Law, Justice and Parliamentary Affairs. (2023). *The State of Justice Delivery in Bangladesh: Challenges and Solutions*. Ministry of Law, Justice and Parliamentary Affairs.
- viii. Jones, R. (2021). *The Evolution of Alternative Dispute Resolution: From 1066 to Modern Practices*. *Journal of Legal History*, 45(2), 112-130.
- ix. Khan, S. (2001). *Introduction of Court-Annexed ADR in Bangladesh: Pilot Projects and Their Impact on the Judicial System*. *Bangladesh Law Journal*, 18(2), 50-68.

Articles

- i. Ahmed, M., & Rahman, S. (2023). *Judicial Backlog and the Need for Alternative Dispute Resolution in Bangladesh*. *Bangladesh Law Review*, 34(1), 65-80.
- ii. Smith, J., & Rahman, M. (2024). *The History and Evolution of Alternative Dispute Resolution: From Ancient Civilizations to the Modern Era*. Global Legal Studies Press.

Reports

- i. Bangladesh Law Commission. (1999). Proposed Amendments to Arbitration Law. Government of Bangladesh.
- ii. Bangladesh Ministry of Law, Justice and Parliamentary Affairs. (Year). Online Dispute Resolution (ODR) in Bangladesh: A New Frontier in Legal Systems. Government of Bangladesh.
- iii. Glossary Law Dictionary. (2023). Alternative Dispute Resolution (ADR).
- iv. American Bar Association (ABA). (n.d.). The Mediation Process: A Step-by-Step Guide. Retrieved from <https://www.americanbar.org>
- v. Kraybill, R. A. (2012). The Mediation Process: Rules for Effective Conflict Resolution (2nd ed.). Jossey-Bass.

Acts

- i. Section 21 of The Specific Relief Act 1877
- ii. Bangladesh Bank. (1991). Bank Company Act, 1991: Section 76 - Amalgamation of Banking Companies.
- iii. Labor Code, 2006. (2006). Sections 209–231, Bangladesh.
- iv. Parbatya Chattagram Bhumibirodh Nispatti Commission Act, 2001 (Chittagong Hill Tracts Land Dispute Settlement Commission Act). (2001). Bangladesh.
- v. Muslim Family Laws Ordinance, 1961. (1961). Arbitration Council mechanism. Government of Bangladesh.
- vi. Village Court Act, 2006, Section [specific section if needed], Government of Bangladesh.
- vii. The Arbitration Act, 2001, Act No. 1 of 2001, Government of Bangladesh.
- viii. Municipal Board Act, Section 4(1), Government of Bangladesh.
- ix. Village Court Act, 2006, Section [specific section if needed], Government of Bangladesh.
- x. Code of Civil Procedure (Amendment) Act, 2003, Sections 89A, 89B, 89C, 89D, and 89E, Government of Bangladesh,
- xi. Government of Bangladesh. (1997). Bankruptcy Act, 1997. Ministry of Law, Justice and Parliamentary Affairs.

- xii. Family Courts Ordinance, 1985, Government of Bangladesh, enacted in 1985.
- xiii. Artha Rin Adalat Ain (Money Loan Court Act), 2003, Government of Bangladesh, enacted May 1, 2003; Artha Rin Adalat (Songshadhon) Ain (Money Loan Court (Amendment) Act, 2010.
- xiv. Government of Bangladesh. (2023). Cybersecurity and Digital Dispute Resolution Practices in Bangladesh. Ministry of Law, Justice and Parliamentary Affairs.
- xv. Government of Bangladesh. (2001). Arbitration Act, 2001. Ministry of Law, Justice and Parliamentary Affairs.
- xvi. Government of Bangladesh. (Date of publication). Arbitrator Appointment Procedure under the Arbitration Act, 2001. Ministry of Law, Justice, and Parliamentary Affairs.
- xvii. American Arbitration Association (AAA). (n.d.). Role and Function of Mediators in ADR Processes.