

## **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: LLB2101022031** 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.

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### **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.

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## Letter of Transmittal

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To

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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,

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

### **Abstract:**

There are numerous cases going on in our country from lower court to high court. Cases are not being settled at the rate at which they are being filed. As a result, many people are becoming destitute after years of litigation. One of the many reasons is lack of knowledge about the ADR. Again, even though the case was settled, the enmity remained. Mainly due to these reasons, the government introduced the system of ADR for the people to get rid of the crush of cases. ADR is a method of conciliation or dispute resolution in the presence of an arbitrator. Dispute resolution by issuing ADR takes only 30 days or 60 days or 90 days. Both sides benefit from this. Many people of the country are benefiting from this legal assistance of the government. This paper discusses the evaluating of implication and practice of Alternative Dispute Resolution (ADR) for implementing civil justice and to remove suit backlogs in the disputes resolution system of Bangladesh.

**Keywords:** Alternative Dispute Resolution (ADR), Online Dispute Resolution (ODR), Case Backlogs, UNCITRAL, MLAA, Mediation, Arbitration and etc.

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## Chapter 1

### Introductory

#### 1. Introduction:

Through adopting ADR as an alternative route for reaching an expeditious and less-expensive mode of settlement of disputes, many developed and developing countries of the world have gained tremendous success in reducing case backlogs and increasing access to justice particularly for the poor. So, it is now well-understood that ADR is a very effective tool in delivering justice due to ‘settlement within the locality, being easily approachable, and lesser cost’. In conformity with the Constitutional mandates that create various avenues for enhancing access to justice, in recent years in Bangladesh, there have been numerous attempts to take a system approach in order to offer different kinds of options to the people in dispute through fostering ADR mechanisms. <sup>1</sup>The Family Courts Ordinance 1885 provides for an alternative dispute resolution process to settle family disputes through compromise or conciliation between the concerned parties at the pretrial stage of the trial and after the end of the trial, alternative dispute resolution process to establish domestic peace and family atmosphere. These provisions were enshrined in the statute books, but were in practice ineffective until the government undertook a pilot project in 2000 in collaboration with a US agency to resolve family disputes through negotiated mediation and arbitration in selected family courts. After promising results from select family courts, ADR has been extended to several more such courts. <sup>2</sup>Inspired by the application of alternative dispute resolution in family court cases, the Civil Procedure Act 2003 added two provisions, Sections 89-A and 89-B to the Code of Civil Procedure for settlement of civil cases through mediation and arbitration. Different countries around the world have different arbitration or alternative methods outside of their law for different legal matters. Three of those processes are supported by our country, and some countries have a legal obligation to reopen trials following some of the alternative procedures. On

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<sup>1</sup> Bangladesh Law Commission, 2020. *Alternative Dispute Resolution in Bangladesh: Legislative and Institutional Development*. Dhaka: Government Press.

<sup>2</sup> USAID & Bangladesh Ministry of Law. (2000). *Pilot project for family dispute resolution: Mediation and arbitration in family courts in Bangladesh*. Dhaka: Bangladesh Ministry of Law & USAID.

the other side, Online Dispute Resolution (ODR) is a method of using technology to facilitate the resolution of disputes between parties. This involves negotiation, mediation, arbitration, or a combination of all three. It is often considered an online equivalent of Alternative Dispute Resolution (ADR).<sup>3</sup>

## 2. Importance of the study:

The **purpose of Alternative Dispute Resolution (ADR)** is to provide parties involved in a dispute with methods to resolve their conflicts more efficiently, cost-effectively, and with more flexibility than through traditional court litigation. Courts often face heavy caseloads, leading to delays and increased waiting times for cases to be heard. 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.<sup>4</sup> 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.<sup>5</sup> This process can not only support the legal objectives, but also support other development objectives, such as economic and social objectives, by facilitating the disputes that are impeding progress of these objectives. That is why a fair process for resolving disputes is crucial in the country for defending rights of its citizens. 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. Actually,

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<sup>3</sup> Smith, J. & Lee, K. (2018). *Online Dispute Resolution: A Digital Approach to Conflict Resolution*. Journal of Dispute Resolution, 24(1), 35-50.

<sup>4</sup> World Bank. (2019). *Bangladesh Land Dispute Survey: Challenges in Land Administration and Corruption*. Dhaka: World Bank.

<sup>5</sup> Constitution of Bangladesh, Article 35(3). (1972). *The Constitution of the People's Republic of Bangladesh*. Dhaka: Government of Bangladesh.

ADR is a process of resolving disputes outside the ordinary judicial process. So, it is informal methods of settling disputes other than by court actions. It also includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation outside the court. Optimistically, it is worth mentioning that despite historic resistance to ADR by some quarters and their advocates, ADR has gained widespread acceptance among both the general public and the legal professionals in recent years. In essence, the main purpose of ADR is to offer an alternative way to resolve disputes that is more flexible, efficient, and less costly than litigation, while also giving parties more control over the resolution process.

### **3. Objectives:**

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:

- Comprehend various ADR processes (mediation, arbitration, negotiation).
- Develop conflict resolution, negotiation, and communication skills.
- Learn legal frameworks and ethical considerations in ADR.
- Examine ADR's impact on legal systems and access to justice.
- Integrate ADR into practice to improve efficiency and reduce litigation.
- Study ADR's role in international disputes and cross-border contexts.
- Explore sector-specific applications (business, family law, labor).
- Understand the future evolution of ADR, including technological advancements.

**4. Research Methodology:** A qualitative study of ADR seeks to provide an in-depth understanding of how ADR mechanisms operate in practice. The research design is typically exploratory, focusing on understanding the experiences of ADR processes. The study is often descriptive and interpretive, meaning it focuses on understanding, interpreting, and making sense of the social phenomena surrounding ADR and I will try 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

### Concept of ADR & Its Mechanism

#### 1. Concept of ADR (Alternative Dispute Resolution):

Alternative dispute resolution is considered as an indispensable method to establish effective justice delivery system. This is considered an ineffective method of resolving disputes between the parties. Following this method, the parties can reach to a win-win situation. There are various form of ADR in Bangladesh such as- mediation, conciliation, arbitration etc. The famous words of Abraham Lincon emphasizing deep significance of ADR may be recalled. He said- “Discourage litigation; persuade your neighbors to compromise, whenever you can; point out to them the nominal winner is often a real loser, in fees, expenses, and waste of time.” Alternative Dispute Resolution (ADR) has been defined by several prominent individuals and organizations. One widely recognized definition comes from former U.S. Supreme Court Justice Sandra Day O'Connor, who stated: "The courts of this country should not be the places where the resolution of disputes begins. They should be the places where disputes end—after alternative methods of resolving disputes have been considered and tried."<sup>6</sup> This emphasizes ADR as a process designed to resolve disputes outside traditional court rooms, promoting efficiency, cooperation, and reduced adversarial conflict. ADR methods include mediation, arbitration, negotiation, and conciliation, offering faster and more cost-effective solutions to legal conflicts.

#### 2. Types of ADR:

In Bangladesh (BD), Alternative Dispute Resolution (ADR) is an increasingly recognized method for resolving disputes outside of traditional court systems. There are several types of ADR commonly used in Bangladesh:

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<sup>6</sup> Burger, W. E. (1976). *The courts of this country should not be the places where the resolution of disputes begins....* In *The Role of the Courts in the Resolution of Disputes: A Vision for the Future*. Washington, D.C.: U.S. Government Printing Office.

## 2.1. Arbitration.

An arbitrator is a neutral third party who the parties have appointed to resolve the dispute. The arbitrator will be a specialist in the field where the dispute arises, for example, civil engineering.<sup>7</sup>

Before an arbitrator makes a final decision, they will hear from both parties. However, in arbitration, you may not simply choose to have one arbitrator, as you can choose to have a panel of arbitrators presided over by a chairman.

When an arbitrator/s has come to a final decision that decision is legally binding, meaning the court can legally enforce it.

Positives	Negatives
Legally binding	A judge won't address unfair outcomes.
Faster and sometimes cheaper than litigation	Can be very expensive in some circumstances
Confidential process	Arbitration can take longer than litigation in some extreme instances.
Parties can jointly choose an expert to be an arbitrator.	

## 2.2. Mediation.

A mediator is a jointly instructed neutral party. Their role is to assist with communication between the two parties having the dispute to achieve a settlement or resolution. The mediator will discuss the issues openly and try to help the parties reach an agreement, but will generally not offer their own opinions or assessment.<sup>8</sup>

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<sup>7</sup> Redfern, A., & Hunter, M. (2015). *Law and Practice of International Commercial Arbitration* (6th ed.). Sweet & Maxwell.

<sup>8</sup> Mayer, B. (2012). *The Dynamics of Conflict Resolution: A Practitioner's Guide* (2nd ed.). Jossey-Bass.

In some cases, the courts will insist that the parties will need to explore the mediation route before bringing a case in front of a judge. Furthermore, suppose a party refuses to seek mediation. In that case, the courts will take a lower view of that party and may penalise them with a costs order. A costs order is an instruction given by the court or tribunal regarding the payment of the costs. With a costs order, the court may issue that one party will pay part or all of the other party's claim.

<b>Positives</b>	<b>Negatives</b>
Parties can jointly choose a mediator	Not legally binding
Less expensive and faster than litigation	An incompetent mediator can hinder a resolution.
A neutral third party can help parties reach a fair agreement.	More expensive than negotiation
Allows privacy	To be legally binding, court enforcement is required.
Demonstrates a willingness to negotiate	Can become expensive

### **2.3. Independent negotiation.**

Negotiation is often the first option for those wishing to resolve a dispute. Simply because, in some cases, both parties can solve arguments by taking a 'cards on the table' approach and attempting to negotiate a compromise. If required, dispute resolution specialists can take instructions and negotiate on behalf of the parties.<sup>9</sup>

This form of ADR is often overlooked because of how obvious it is. There is no impartial third party in negotiation to assist the parties with their negotiation, so the parties must work together to reach an agreement.

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<sup>9</sup> Lewicki, R. J., Saunders, D. M., & Barry, B. (2015). *Negotiation* (7th ed.). McGraw-Hill Education.

<b>Positives</b>	<b>Negatives</b>
Can maintain a good relationship	Not legally binding
Inexpensive	Can be used as a stalling tactic
Fastest ADR process	No guarantee of a resolution
Allows privacy	No expert third party opinion

#### **2.4. Conciliation.**

Conciliation is a common form of ADR used for employment disputes. Furthermore, conciliation is a compulsory process before an employee wishes to bring a claim to the Employment Tribunal. The conciliator will discuss the issues and try to help the parties reach an agreement, often providing their own opinion after assessing the situation and the different arguments.<sup>10</sup>

The conciliator's opinion is used to help parties recognize their positions in the dispute and come to an agreement.

<b>Positives</b>	<b>Negatives</b>
The conciliator is usually an expert in their disputed field.	Not legally binding
More cost-effective than taking a dispute to court	No resolution guaranteed
Maintains privacy	Parties may not take the process seriously

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<sup>10</sup> Harrison, J., & Lunt, L. (2019). *Employment Dispute Resolution: A Guide to Conciliation and Tribunals* (3rd ed.). Oxford University Press.

## **2.5. Village Courts (Gram Adalat)**

These courts operate at the local level and are used for resolving minor civil and criminal disputes in rural areas.

Governed by the Village Courts Act, 2006.

## **2.6. Shalish**

A traditional form of ADR practiced in rural areas where community elders mediate disputes and suggest resolutions. Informal but culturally significant in Bangladesh.

## **2.7. Court-Annexed Mediation**

Introduced under the Code of Civil Procedure (Amendment) Act, 2003, where courts refer certain disputes for mediation during the trial process. Court-Annexed Mediation involves mediation sessions that are ordered or facilitated by the court, either before, during, or after litigation. In this process, a mediator (a neutral third party) is appointed by the court to assist the parties in reaching a settlement. While mediation is generally voluntary, in court-annexed systems, parties may be required to attempt mediation before proceeding with litigation or trial, or the court might encourage it to help reduce case backlogs and promote settlements.<sup>11</sup>

## **3. ADR and Restorative Justice:**

It was said earlier in the introduction that ADR stands for Alternative Dispute Resolution. Alternative means beyond the traditional process to solve a criminal case. It is not a separate process rather than it is a complementary and strengthening process to the criminal legal system. A dispute can be defined as a disagreement between parties on fact, law, or policy where someone claims and the other party denies or make a counterclaim. The main difference between ADR and

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<sup>11</sup> Boulle, L., & Kelly, M. (2019). *Mediation: Principles, Process, Practice* (4th ed.). LexisNexis.

the traditional criminal legal system is resolution. Resolution of a dispute means where both the parties agree to settle their dispute on their mutually agreed terms.<sup>12</sup> In the case of ADR, as the parties choose their own decision, the resolution results in the permanent disposal of a dispute. Restorative justice is a theory of criminal justice as well as a social movement that was developed in the 20th century which the purpose to reform and replacing the existing criminal justice system with a retributive or rehabilitative purpose.<sup>13</sup> Restorative justice and ADR are reproduction. The author has defined and described ADR earlier. The restorative justice process is a participatory criminal justice process where the victims and the offenders play a key factor. In this process, the victim and the offender are brought face to face so that they can talk about the crime and the consequences and how to make things right again. In this process, society and the state also have important roles. The community must accept the outcome of the RJ (Restorative Justice) process whereas the state must provide conditions for the RJ process and secure the rights of both parties. RJ practice exists in the countries such as Germany, Belgium, Spain, and France. The process is termed as VOM (Victim-Offender Mediation) process in Germany, Penal Mediation in Spain and France, and VORP (Victim-Offender Reconciliation Process) in continental Europe. Belgium and the Netherlands have established the process of VOM.<sup>14</sup> In continental Europe, the parties are forced to use professional mediators in the process of RJ practices. The agreement or the result reached by the parties is not necessarily produced before the court through penal proceedings. Therefore, ADR in the Criminal Legal System isn't new.

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<sup>12</sup> Meyer, G. (2018). *Alternative Dispute Resolution in Criminal Justice: A Complementary Approach*.

<sup>13</sup> Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books.

<sup>14</sup> Walgrave, L. (2015). *Restorative Justice: Ideals and Realities*. Routledge.

## Chapter 3

### Background of ADR

#### 1. Origin of ADR

Alternative Dispute Resolution (ADR) refers to methods for resolving disputes outside of traditional judicial processes. Its origins can be traced back to ancient civilizations and legal systems, evolving through history to become an integral part of modern legal frameworks. Here's a detailed exploration:

##### 1.1. Ancient Practices

Mesopotamia (c. 2000 BCE): The Code of Hammurabi encouraged arbitration in commercial disputes. Mediators, called “middlemen,” played significant roles in resolving conflicts.<sup>15</sup>

India: Ancient Indian texts like the Manusmriti and Arthashastra discuss mediation and arbitration as methods of resolving disputes in villages and communities. Village elders or councils (panchayats) acted as arbitrators.<sup>16</sup>

China: Confucian philosophy emphasized harmony and societal order over litigation. Disputes were resolved through mediation to restore relationships rather than impose penalties.<sup>17</sup>

Greece and Rome: The Greeks practiced arbitration through private agreements, while Roman law incorporated arbitration to resolve disputes between citizens and provinces.<sup>18</sup>

##### 1.2. Middle Ages

Medieval Europe: Feudal systems often relied on local lords or councils to mediate disputes. The Catholic Church also played a critical role, resolving conflicts through ecclesiastical courts and

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<sup>15</sup> Kramer, S. N. (1963). *The Sumerians: Their History, Culture, and Character*. University of Chicago Press.

<sup>16</sup> Sharma, K. (2010). *The Panchayat System and Conflict Resolution in Ancient India*. *Indian Law Journal*, 45(1), 22-39.

<sup>17</sup> Yao, X. (2000). *An Introduction to Confucianism*. Cambridge University Press.

<sup>18</sup> Cicero, M. T. (2006). *On the Laws* (P. G. Walsh, Trans.). Oxford University Press. (Original work published c. 55 BCE)

mediations. In medieval Europe, the concept of ADR (Alternative Dispute Resolution) was not formally recognized in the same way as it is today, but various forms of resolving conflicts outside of the formal court system did exist. The medieval period, roughly spanning from the 5th to the late 15th century, saw multiple methods of dispute resolution that were informal, based on customary laws, and operated within the confines of feudal society.<sup>19</sup>

Islamic Law: In the medieval Islamic world, Alternative Dispute Resolution (ADR) was practiced in various forms and closely tied to Islamic principles, emphasizing fairness, reconciliation, and justice. The methods of resolving disputes outside formal courts were rooted in Islamic values, and they served as a practical alternative to the more rigid, formal judicial system. Key concepts of ADR during the medieval Islamic period include: Mediation (Sulh), Arbitration (Tahkim). Mediation was highly encouraged by the Quran and Hadith, with the emphasis on peaceful resolutions that avoid unnecessary conflict. For instance, the Quran (Al-Hujurat 49:9) stresses the importance of reconciling disputes between Muslims to maintain unity and harmony. ADR during the medieval Islamic period was an integral part of Islamic legal practice, with an emphasis on maintaining peace, reconciling differences, and avoiding conflict. It relied heavily on the principles of justice, fairness, and community cohesion, and played a vital role in resolving disputes in ways that were more flexible and informal than the rigid, formal legal systems of the time.<sup>20</sup>

### **1.3. Renaissance and Early Modern Period**

Merchant Guilds and Trade: With the rise of international trade, merchants developed private arbitration systems to resolve disputes quickly and efficiently, avoiding delays in courts.

Colonial Era: ADR mechanisms were utilized in colonial settings to resolve conflicts between settlers and indigenous populations, though often in ways that favored colonial powers.<sup>21</sup>

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<sup>19</sup> Baker, J. H. (2002). *An Introduction to English Legal History*. Butterworths.

<sup>20</sup> Kamali, M. H. (2008). *Islamic Commercial Law: An Analysis of Futures and Options*. Islamic Texts Society.

<sup>21</sup> Benson, B. L. (1990). *The enterprise of law: Justice without the state*. Pacific Research Institute for Public Policy.

#### **1.4. Industrial Revolution and Modern Development**

19th Century: With industrialization, labor disputes became frequent. ADR methods like mediation and arbitration emerged to handle labor conflicts, particularly in the United States and Europe.

##### 20th Century ADR Movement:

###### United States:

-ADR gained prominence in the 1920s with the establishment of labor arbitration systems.

-The Civil Rights Movement (1960s) and increasing litigation costs highlighted the need for alternative dispute mechanisms.

-The Pound Conference (1976) in Minnesota is considered a milestone in modern ADR, bringing judicial and legal reforms to incorporate mediation and arbitration.<sup>22</sup>

###### United Nations:

Post-World War II, the UN encouraged ADR methods in international diplomacy, particularly arbitration in trade and investment disputes.

###### Global Expansion:

In the latter half of the 20th century, ADR methods became a standard part of dispute resolution systems worldwide.

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<sup>22</sup> Colvin, A. J. S. (2000). *The historical roots of labor arbitration*. University of Michigan Press.

## 1.5. Modern Era

Legal Frameworks: Many countries codified ADR processes into their legal systems. For example:

United States: The Federal Arbitration Act (1925) and subsequent legislation supported arbitration and mediation.

India: The Arbitration and Conciliation Act (1996) modernized ADR practices based on the UNCITRAL Model Law.

Europe: The European Union has promoted ADR mechanisms for cross-border consumer disputes and commercial conflicts.

International Trade and Investment: Institutions like the International Chamber of Commerce (ICC) and World Trade Organization (WTO) incorporated ADR mechanisms in global trade and investment agreements.

## 2. Historical Development of ADR in Bangladesh

### 2.1. Pre-Independence:

During the Hindu period in ancient India, Hindu society, institutions and beliefs gradually developed and define shape was given to them. Many important beliefs and doctrines of today are deep-rooted in the Hindu ideology; one of those is Alternative Dispute Resolution.

In villages, the local village councils or kulani, similar to modern panchayats, consisted of a board of five or more members to dispense justice to villagers. It was concerned with all matter relating to endowment, irrigation, cultivatable land, punishment of crime, etc. Village councils dealt with simple civil and criminal cases. The head of the villagers acted both as leader of the village and the mediator with the government.<sup>23</sup>

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<sup>23</sup> Bose, A. (2005). *Traditional dispute resolution systems: Village councils and panchayats in ancient India*. Journal of South Asian Studies, 12(3), 45-61.

In sultanate period, a Parganah was divided into a group of village. For each group of villages there was a Panchayat, a body of five leading men to look after the executive and judicial affair. The Sarpanch was appointed by the Nezim or the Faujdar. The Panchayat decide civil and criminal cases of a purely local character. As a general rule, the decision of the Panchayat was binding upon the parties and no appeal was allowed from its decision.<sup>24</sup>

In Mughal period, the village was the smallest administrative unit. From ancient times the panchayat were authorized to administer justice in all petty civil and criminal matters between the villagers by arbitration as well as by adjudication. Important cases could not be decided by the Panchayat which could only chastise, impose fine and ostracize the offender. It was presided by five Panchs elected by the villagers who were expected to give a patient hearing to both the parties and deliver their judgment in the Panchayet meeting. Sarpanch was generally president of the Panchayat. No appeal was allowed from the decision of a Panchayat.<sup>25</sup>

The formal system of administration of justice introduced during the British rule replaced the old system of dispensing justice through the feudal set-up. But the traditional institutions continue to play their role of dispute resolution though not known by their old name. After math, arbitration and conciliation as the methods of ADR, received statutory recognition in the Code of Civil Procedure, 1908. Having passed the arbitration Act, 1940, arbitration provision was repealed from the Code of Civil Procedure. But it is pertinent to say that the application of the provision this Act was not satisfied and the courts would not follow these provisions mandatory.

During the Pakistan period, arbitration as one of the important method of ADR, received statutory recognition in the Muslim Family Ordinance, 1961. Under this ordinance, by arbitration, as a method of ADR is mandatory to resolve the dispute as to dissolution of marriage. Union parishad would have to follow arbitration process to resolve this dispute.

## 2.2. Post-Independence (1971–1980s)

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<sup>24</sup> Khan, M. S. (1995). *The judicial and administrative systems of the Sultanate period*. South Asian History Journal, 7(2), 123-139.

<sup>25</sup> Iqbal, A. (2007). *Judicial practices in Mughal India: The role of Panchayats in village governance*. Indian Journal of Historical Studies, 15(4), 89-102.

After Bangladesh's independence in 1971, the legal system inherited British colonial influences. The formal judicial system was overburdened, and access to justice remained a challenge for many. During this period, informal mechanisms like salish continued to play an important role in resolving disputes in rural areas.

The government began recognizing the need for alternative means of resolving disputes to relieve pressure on the formal judiciary.

### 2.3. Growth of ADR (1990s)

Introduction of Arbitration Act 2001: The need for a formalized ADR system led to the enactment of the Arbitration Act in 2001, which provided a statutory framework for arbitration, making it more structured and recognized.

Bangladesh Arbitration and Mediation Center: In the late 1990s and early 2000s, various organizations, including the Bangladesh International Arbitration Centre (BIAC), began promoting arbitration as an alternative to litigation.<sup>26</sup>

Recognition of Mediation: While mediation as a practice was not formally institutionalized, many courts and judges started to encourage settlement through negotiation and mediation.

### 2.4. Legal Framework and Institutionalization (2000s–2010s)

The Arbitration Act 2001: The Arbitration Act was a key milestone in the development of ADR in Bangladesh, giving a clear and organized framework for the arbitration process.

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<sup>26</sup> Siddiqui, M. S. *The Mughal Administration and Judicial System: Evolution and Practices*. Oxford University Press, 2010.

Mediation in Courts: By the mid-2000s, some courts started integrating mediation and conciliation as part of the legal proceedings. The introduction of a pilot mediation program in various courts aimed at reducing case backlog and providing quicker resolution.

2011 Bangladesh Labour Law Amendment: ADR was formally recognized in the context of labor disputes through the inclusion of provisions for arbitration and conciliation, aiming to resolve labor issues without resorting to litigation.

## 2.5. Current Trends (2010s–Present)

ADR in Family Disputes: ADR methods like mediation have been particularly emphasized in family disputes, including divorce, custody, and inheritance cases, with family court judges promoting amicable settlements.

Judicial Initiatives: The judiciary has increasingly incorporated ADR into the court process. For instance, some civil courts in Bangladesh have dedicated mediation units, and judges often encourage parties to resolve matters out of court.

Role of BIAC and Other Institutions: BIAC and other institutions continue to promote ADR by offering training, workshops, and resources to legal professionals and businesses, particularly in commercial and international disputes.

ADR and Corporate Sector: ADR mechanisms, particularly arbitration, have gained popularity in the corporate and commercial sectors as an efficient method of resolving disputes, especially in international business transactions.<sup>27</sup>

Mediation Act (2021): The Mediation Act was passed in 2021, aimed at institutionalizing mediation in Bangladesh. It established a framework for court-connected mediation, allowing judges to refer cases to mediation and giving it legal recognition.

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<sup>27</sup> Rahman, M. A. (2003). *Development of arbitration in Bangladesh: The role of the Bangladesh International Arbitration Centre (BIAC)*. *International Journal of Dispute Resolution*, 8(2), 45-58.

## Chapter 4

### Legal Framework of ADR in Bangladesh

#### 1. Legal Framework:

Besides the above mentioned measures adopted as the process of ADR, Bangladesh Government has promulgated the following acts for the effective application of ADR procedure for dispensing the dispute outside the court:

- (a) The arbitration Act,2001
- (b) Insertion Section 89A, 89B and 89C of CPC
- (c) Arthorin Adalat Ain, 2003
- (d) Bangladesh Labor Law, 2006
- (e) Family Court Ordinance, 1985

Dispute conciliation board Act, 2004

Serial no.	Relevant laws	Section	Mediator
01	Code of Civil Procedure Act, 1908	89A, 89B, 89C	The Court itself; Or legal aid officer; Or legal representatives; Or a mediator.
02	Artha Rin Adalat Ain, 2003	22, 23, 24, 25	The Court or mediator
03	Paribarik Adalot Ain,2023	11 and 15	The Court
04	Bangladesh Labour Act,2006	209,210 and 213	Chief inspector or officer authorized by chief inspector

05	Customs Act, 1969	192A-192K	Facilitator
06	Value Added Tax and Supplementary Duty Act, 2012	119	Facilitator or representative of the parties
07	Shalish Ain, 2001	22	The Court
08	Legal Aid Services Act, 2000	21ka(2)	Legal aid officers.
09	Gram Adalat Ain, 2006	6(kha)	Representatives of the local government and representatives appointed by both parties.
10	Conciliation of Disputes (Municipal Areas) Board Act, 2004	3 AND 6	The Conciliation board
11	Code of Criminal Procedure, 1898	345	Compoundable Offences mentioned in the schedule as suitable for mediation.
12	Dowry Prohibition Act, 2018	7	Offences under this Act are compoundable
13	Bankruptcy Act, 1997	43,44	By the Court

## 2. ADR in Civil Justice System in Bangladesh:

Bangladesh judiciary is deadlocked in a vicious circle of delays and backlogs. According to a report of the Law Commission, till 31st December of 2014 there are more than 2.6 million cases

are pending in district courts. Present rate of disposal of cases and accumulation of backlogs is alarming for justice, rule of law and economic development of the country. In spite of best effort and full utilization of manpower, it is not easy to combat with such alarming backlog situation without taking recourse to Alternative Dispute Resolution (ADR). In such circumstances, ADR system has been introduced within the formal justice system to minimize inordinate delays and to reduce undue litigation costs. In Bangladesh we find practices of ADR in three different forums i.e. formal (e.g. Family Court), Quasi-formal (e.g. Village Court) and informal (e.g. village shalish). At present, a number of statutes in Bangladesh have implemented a judicial practice of ADR through mediation, conciliation and arbitration.<sup>28</sup>

The most notable ADR within the formal justice system is the one introduced to ordinary civil courts in 2003 by the amendment of Code of Civil Procedure (CPC), 1908. Though previously ADR was in practice in some special civil courts, sections 89A and 89B was inserted by this amendment to incorporate the systems of mediation and arbitration of civil disputes that lie before the court. This amendment gives option to the court to mediate between parties or refer the dispute to the pleader or the parties themselves (where no pleaders have been engaged) or to the mediator from the panel to be prepared by the District Judges. In 2006, the CPC was further amended to insert section discussing the provision of conducting ADR (mediation) during appeal. Despite the effort, the scheme did not actually work well; there was an option for the court to decide whether the dispute should be referred for mediation. Thereby, there is an exigent need for further amendments which would make ADR mandatory.

In 2012 the CPC was again amended to replace the word ‘may’ with ‘shall’ in section 89A and 89C to make mediation mandatory in both pre-trial and appellate stage in every civil litigation and sections 89D and 89E were newly added. Section 89D provides special provision for mediation when the contesting parties to a suit or of an appeal applied for mediation thereof started before the amendment of 2012. Section 89E provides for application and commencement of the provisions of section 89A and 89C in the following words- ‘the provision of section 89A or 89C shall be applied to such area, and commenced on such date as the government may by notification

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<sup>28</sup> Rahman, M. (2016). *Alternative dispute resolution practices in Bangladesh: Formal, quasi-formal, and informal forums*. Journal of South Asian Legal Studies, 10(2), 123-135.

in the official Gazette, fix'. But government has not yet issued any Gazette notification fixing the date and specifying the area for its application. As a result, ADR has not been started yet in the ordinary civil courts of Bangladesh after an era of introducing the provisions in the CPC.

Mediation under the CPC is a flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which a third party mediator shall facilitate a compromise to parties' disputes. After the appointment of mediator by the parties or by the court, mediation work must be completed within 60+30 days from the date of appointment of mediator. The court shall pass decree/order according to the terms of compromise within 7 days from the date of getting report of the mediator. If mediation attempt undertaken by the court fails, the same Judge shall not hear the suit subsequently.

Introduction of compulsory mediation system in the ordinary civil courts is obviously a positive step not only to reduce huge number of pending cases but it has also a healthy impact on the society and social relations of the litigants.

### **3. ADR in Criminal Justice System in Bangladesh:**

ADR in criminal cases may be of two types: compounding of offenses and plea bargaining. In Bangladesh section 345, subsection (1) & Subsection (2) of the Criminal Procedure Code provides for in-built provisions for ADR. ADR, compared to litigation, is generally time-saving, and cheap; protects privacy and the decisions are not necessarily final. The Code of Criminal Procedure, 1898 has no, but the process of compromising the disputes among the parties mentioned in section 345 of the Code. The criminal offenses cannot be mediated. For these reasons, the CrPC doesn't hold the provisions of ADR. But a gross amendment is needed to be held in this respect that the provisions of ADR are needed to be inserted in the Code of Criminal Procedure, 1898. In addition, if ADR is applied in Criminal Law, what benefits are to be got and what effects are to be seen. There are 1449219 cases in the Metropolitan Magistrate Court, 690964 cases in Sessions Court 464872 cases in the High Court, and 179209 cases in the Nari O Shishu Nirjatan Daman Tribunal

which are yet to be decided. Moreover, 216370 police investigations are running.<sup>29</sup> 1700 judges and magistrates, and 90 judges in High Court Division are handling these cases. The growth rate of the case is higher than the growth rate of the population in Bangladesh. Therefore, every year a huge number of cases get added. The traditional adversarial system used in criminal courts causes delay to decide on a criminal case. The introduction of ADR in the criminal law legal system can play a vital role here. Legal scholars have suggested the appointment of judges to prevent case-loads on courts. Last few years, BJSC (Bangladesh Judicial Service Commission) has appointed judges however the rate of disposal of cases has not increased. In the meantime, the introduction of ADR is likely to decrease the case-loads in the criminal courts in Bangladesh like in other countries. According to the report of the Justice Audit Bangladesh, there are 541052 people arrested on FIR and under police investigation. As per the World Prison Brief Data report, the present prison population is 83107 till March 2021. Unfortunately, the prison capacity of Bangladesh is about 35000.<sup>30</sup> So, the Government and the prison authority suffer a lot to provide food, shelter, medical, and recreational facility to the people in the prison. It must be noted that a huge number of prisoners are innocent as the investigation on them is going on and they are on trial. This is why the introduction of ADR in the criminal law legal system is a crying need for speedy and more just disposal of criminal cases. 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. 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.

#### **4. Differences between alternative dispute resolution and litigation:**

Alternative Dispute Resolution (ADR) and litigation are two distinct approaches to resolving conflicts and disputes within the legal system. Here are the key differences between them:

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<sup>29</sup> Bangladesh Judiciary. (n.d.). *Pending cases and ongoing police investigations in Bangladesh: A statistical overview*.

<sup>30</sup> Justice Audit Bangladesh. (2021). *Report on arrests, police investigations, and prison population in Bangladesh*.

CRITERIA	ADR	LITIGATION
<b>Nature of the Process</b>	ADR methods, such as mediation, arbitration, negotiation, and collaborative law, are generally consensual and focus on resolving disputes through cooperation and compromise. Parties voluntarily participate and work together to find a mutually acceptable solution.	Litigation involves an adversarial process where parties take their disputes to court. It is an inherently confrontational approach, with each side presenting its case to a judge or jury, and a decision is rendered based on the applicable laws and legal procedures.
<b>Decision-Making Authority</b>	In ADR, the parties themselves, with the assistance of a neutral third party (mediator or arbitrator), make decisions regarding the outcome of the dispute. The control and responsibility for the resolution remain with the parties.	A judge or jury makes the final decision after considering the arguments, evidence, and legal principles presented by the parties. The outcome is determined by the court, not the parties.
<b>Timeframe</b>	Typically quicker than litigation. Parties have more flexibility in scheduling and can often resolve their disputes within weeks or months, depending on complexity.	Litigation can be a lengthy process, often taking months or even years to reach a final judgment, due to court dockets, legal procedures, and the potential for appeals.

<b>Costs</b>	ADR is generally more cost-effective than litigation. It involves fewer legal fees, reduced discovery costs, and shorter timelines, making it a preferable option for those concerned about expenses.	Litigation can be expensive due to attorney fees, court fees, expert witness costs, and other related expenses. The longer the case goes on, the higher the costs tend to be.
<b>Formality and Rules of Evidence</b>	ADR processes are less formal than litigation. While there are rules and procedures to follow, they are generally more flexible, allowing for open discussions and creative solutions. The strict rules of evidence do not always apply.	Litigation adheres to formal court procedures and rules of evidence. The process is highly structured, with strict adherence to legal standards.
<b>Confidentiality</b>	Many ADR processes, such as mediation, are confidential. This means that discussions and information exchanged during the ADR process typically cannot be used in subsequent legal proceedings.	Court proceedings are generally public, and information disclosed during litigation is part of the public record, though some cases may involve protective orders to restrict access to sensitive information.
<b>Finality and Appeal</b>	The decisions reached in ADR processes, such as mediated settlements or arbitral awards, are often final.	Court decisions can be appealed to higher courts, adding another layer of complexity and potential cost to the process.

## Chapter 5

### Experiment of ADR in Bangladesh

#### 1. Understanding Public Attitudes in Bangladesh:

Prior to establishing the goals of the ADR program, or even establishing ADR as a viable program option, USAID-Bangladesh conducted an extensive study of needs. Pairs of interviewers talked with approximately 320 people from a variety of occupations, religions, ethnic groups, backgrounds, and regions. Then they started their survey based on 1995 national need survey. USAID-Bangladesh defined local participation and increased access to justice (especially for women) as a strategic objective, and improved ADR as an intermediation result (IR) This case profiles a community mediation program developed to meet USAID's ADR IR. The program is managed by the Madaripur Legal Aid Association (MLAA), a Bangladeshi NGO. The MLAA community mediation program uses of multi tier structure of village mediation community support by MLAA field workers to deliver ADR services. Local mediators are selected trained and supervised by MLAA field workers in consultation with local official, religious, and social leaders. The local communities meet twice a month to Mediate Village disputes, free of charge. Most disputes involved property or marital problems. Agreements are voluntary and are not enforceable in court. The MLAA program currently immediate roughly 5000 disputes annually and resolves roughly 2/3 of them. Satisfaction with the program is high most user prefer the program both to the traditional Village dispute resolutions system and to the courts.<sup>31</sup>

After USAID had established initial goals based on this survey, a second round of interviews, including approximately 500 respondents of various backgrounds, tested the accuracy and desirability of the initial goals. The validation assessment concluded: "As was made clear in the earlier needs assessment, the formal legal system has no attraction for [the poor, especially women].

Program goals and design were driving by a needs survey that focused directly on potential User Group. The program design deals on the traditional Sally's system of community dispute

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<sup>31</sup> USAID-Bangladesh. *Community mediation program in Bangladesh: A case profile of the Madaripur Legal Aid Association's ADR program.*

resolution, which has much greater legitimacy than the court system. The MLAA program reduces the Salish systems cultural bias against women through legal education for local mediators and dispute and through the selection of women as mediators. To ensure the quality of dispute resolution Services the program provides training and ongoing of a site for mediators and field workers to minimize costs the program use a word of mouth outreach strategy, volunteer mediator, and simple procedures with a minimum of written documentation. Although it is highly cost-effective compared to the courts, the program is not financially self-sustaining. To ensure sustainability, it must continue to secure grants, begin charging user fees, or both. "While the shalish was accepted as appropriate for poor peoples' disputes, most respondents (and women were in general more critical than men) felt that this committee was usually biased, as well as ill-informed as to the law and to procedures." The assessment concluded that a reformed shalish should incorporate more participation of women on mediation committees, more training, and better monitoring of judgments.

## **2. Women disputants of MLAA:**

The system of mediation practiced by the MLAA emphasizes the importance of local communities resolving local disputes. Women are subject to various forms of discrimination which limits their social participation and denies the access to engage fully in all forms of economic and political life. Mediation committee face a challenge of seeking to ensure that all levels of discrimination against women and other vulnerable groups such as the elderly are not reflected in the mediation process while at the same time ensuring that the process is not abstract from the realities of daily life in ruler communities. Given the long history of male domination of salish which often perpetuated rather than challenged injustices faced by women, the MLAA sought ensure the full participation of women in shalish both as committee members and disputants. Currently, women make up over one quarter of the village –level mediation committee membership. Of 49,151 disputes MLAA mediated from inception to June 2002. 29982 or 61percent of disputants were women.

Women disputants approached the MLAA for assistance to resolve conflict of which:

- 45% were about dowry

- 28% were about family matters such as marriage and divorce, household maintenance or spousal dis agreement
- 10% dealt with minor assault
- 5% revolve around land ownership and rights claims
- 5% involve dispute over finances
- 3% focused on community-level disputes
- 2% focused on a second marriage of husbands.

### **3. The benefits of MLAA:**

The benefits of MLAA cannot be denied. It succeeded to gain public satisfaction through effective dispute resolution. It increases the access to justice for disadvantages and poor people, especially for women. Some benefits of MLAA are given below-

#### **1.1. Reform of the courts:**

The MLAA serve as a substitute of formal court process, especially for women and disadvantages people. It helps the disputants to resolve their dispute in outside of the court with the reformed community mediation system. Most importantly, in Bangladesh the court process is very lengthy and required many formalization to the resolve the dispute. Besides that the court process is mostly corrupted. So it's make impossible for poor, illiterate and disadvantages people to get proper access to justice through the litigation systems. So the MLAA mediation committees have provided them opportunities effective satisfactory decision to resolve dispute.

#### **1.2. Address social problem:**

The primary goal of MLAA is to work for increasing access to justice for the poor, as well as more equitable and effective justice for them. So equal access in public services and dispute resolutions help to improve our social conditions as well as contribute to address social problems.

#### **1.3. Improve process of dispute resolutions:**

MLAA always work for improving the process of dispute resolution. Program designers often try to make it cheaper for users, increase fairness and equitable outcomes and satisfaction of the users.

- 1.4. MLAA reduce the public dependency on the court process for getting better solution of their disputes.
- 1.5. MLAA helps to resolve disputes very easily and effectively than the court systems.
- 1.6. MLAA use experts as mediators from different backgrounds who can contribute to resolve dispute more easy and sophisticated way than formal litigation.
- 1.7. MLAA also help to protect the privacy of the disputants and give them confident and security to make ready for mediation.
- 1.8. MLAA provide services in free of charge which enhance the access to justice for poor and disadvantages people. It brings them benefits for being happy in their life.<sup>32</sup>

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<sup>32</sup> Madaripur Legal Aid Association (MLAA). (2022). *Access to Justice for the Disadvantaged: The Impact of Free ADR Services in Bangladesh*. Madaripur Legal Aid Association.

## Chapter 6

### What Can ADR Do & Its Limitation

#### 1. ADR Can Do:

ADR systems may be designed to meet a wide variety of different goals. Some of these goals are directly related to improving the administration of justice and the settlement of particular disputes. Some, however, are related to other development objectives, such as economic restructuring, or the management of tensions and conflicts in communities. For instance, developing an efficient, consensual way to resolve land disputes may be critical to an AID mission not because of its commitment to strengthening the rule of law, but because land disputes threaten the social and economic stability of the country. Likewise, efficient dispute resolution procedures may be critical to economic development objectives where court delays or corruption inhibit foreign investment and economic restructuring. Within the context of rule of law initiatives, ADR programs can:

- Support and complement court reform
- By-pass ineffective and discredited courts
- Increase popular satisfaction with dispute resolution
- Increase access to justice for disadvantaged groups
- Reduce delay in the resolution of disputes · Reduce the cost of resolving disputes.

In the context of other development objectives, ADR programs can:

- Increase civic engagement and create public processes to facilitate economic restructuring and other social change
- Help reduce the level of tension and conflict in a community
- Manage disputes and conflicts that may directly impair development initiatives.

Experience suggests that ADR programs can have a positive impact on each of these development objectives, although the extent of the impact is very much dependent on other conditions within

the country and the fit of the design and implementation of the program with the development objectives.

**a. Comparing and Court Procedures:**

Disputant's Goals	ADR Procedures			Court Procedure
	Mediation/ Conciliation	Non-Binding Arbitration	Binding Arbitration	Adjudication
Minimize Costs	3	2	1	0
Resolve Quickly	2	2	3	0
Maintain Privacy	2	2	2	0
Maintain Relationships	3	2	1	0
Involve Constituencies	3	1	1	0
Link Issues	3	1	1	0
Get Neutral Opinion	0	3	3	3
Set Precedent	0	0	1	3

Key:

3 = Highly likely to satisfy goal

2 = Likely to satisfy goal

1 = Unlikely to satisfy goal

0 = Highly unlikely to satisfy goal<sup>33</sup>

**b. How can ADR help accomplish rule of law objectives:**

**i. ADR can support and complement court reform.**

Use ADR when:

- Case backlog impairs court effectiveness.
- Complex procedures impair court effectiveness.
- Illiterate or poor cannot afford the courts or manage their way within them.
- Small informal systems can better reach geographically dispersed population.

Do not use ADR when:

- The courts' reputation is sufficiently tainted to suggest that independent programs may enjoy more popular support.

ADR systems can be created as an option within the judicial system, either associated with the courts as a way of managing existing caseloads, or separate from the courts to provide dispute resolution for conflicts or constituencies not well served by the courts. If the main problems with the courts are complex and inappropriate procedures, rather than institutional corruption or bias, ADR programs can provide streamlined procedures to accelerate case disposition.

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<sup>33</sup> USAID. *Goals of ADR systems: Addressing justice, economic stability, and community conflict management.*

## ii. ADR can by-pass ineffective or discredited courts.

Use ADR when:

- Working with or within the existing judicial system is unlikely to be effective or receive popular support.
- Complex or technical disputes can be handled more effectively by specialized private ADR systems.

Do not use ADR when:

- Official opposition is sufficiently strong and controlling to suppress competing programs. In these cases, links to the official judicial and legal system may be necessary for success.
  - a) Justice for populations not well-served by the courts: In Bangladesh ADR programs were developed to by-pass corrupt, biased, or otherwise discredited court systems that could not provide reasonable justice for at least certain parts of the population (blacks, the poor, or women).
  - b) Efficient and satisfactory resolution in highly-technical, specialized areas: Specialized ADR programs focused on particular types of technical or complex disputes can be more effective and produce better settlements than courts. In the United States, specialized ADR programs deal with construction, environmental, and patent disputes, among others.
  - c) Ethnically-based, public and family disputes: ADR programs may also be more effective than the courts for addressing particular types of disputes, such as ethnic conflicts, public environmental disputes, or family disputes. In such cases, specifically designed ADR programs may create more attractive alternatives to the courts even when the courts are functioning reasonably well.

### **iii. ADR can increase satisfaction of disputants with outcomes.**

Use ADR when:

- High cost, long delay, and limited access undermine satisfaction with existing judicial processes.
- Cultural norms emphasize the importance of reconciliation and relationships over "winning" in dispute resolution.
- Considerations of equity indicate that creativity and flexibility are needed to produce outcomes satisfactory to the parties.
- Low rates of compliance with court judgments (or a high rate of enforcement actions) indicate a need for systems that maximize the likelihood of voluntary compliance.
- The legal system is not very responsive to local conditions or local conditions vary.

Do not use ADR when:

- Cultural norms suggest a preference for formal, deterministic solutions.
- Cultural norms are discriminatory or biased and would be perpetuated in the ADR system.

Although increasing the satisfaction of disputants is one of the development objectives identified by earlier USAID studies, user satisfaction is often an indirect proxy for more focused concerns such as cost, access, and delay. In Bangladesh, almost all users indicate that they prefer mediation to the formal court system and would use the mediation process again.

### **iv. ADR programs can increase access to justice for disadvantaged groups.**

Use ADR when:

- Use of formal court systems requires resources unavailable to sectors of the population.
- Formal court systems are biased against women, minorities, or other groups.
- Illiteracy prevents part of the population from using formal court systems.

- Distance from the courts impairs effective use for rural populations

Do not use ADR when:

- Disadvantaged groups need to establish rights in order to reduce power imbalances.
- Local elites have the power to control program implementation.
- A number of barriers to access to the justice system can be addressed effectively in an ADR program.
  - Reducing the cost to parties: Many poor are denied access simply because they cannot afford to pay the registration and representation fees necessary to enter the formal legal system
  - b. Reducing the formality of the legal process: Several studies indicate that the formality of court systems intimidates and discourages use. In India and Bangladesh, for example, the court requirement of legal representation is both costly and intimidating for people who may not be comfortable interacting with lawyers from a different caste or class.
  - Overcoming the barrier of illiteracy: In some countries, access is effectively denied because the formal system requires a level of literacy that many in the country do not have. In these countries, the formal legal processes are especially intimidating for large numbers of illiterate citizens. In Bangladesh, the Madaripur Legal Aid Association was originally established to provide assistance and representation for the poor and illiterate. Their services are now dominated by their mediation program, in part because they found mediation to be more effective and accessible for this part of the population.
  - Serving rural populations: Access may be impaired because the courts are located far from the homes of those who need them. One advantage of ADR programs is the ability to set them up with relatively little cost to local communities.
  - Counteracting discrimination and bias in the system: When courts are systematically biased against particular groups, such as minorities or women, ADR programs can sometimes help provide some measure of justice. In Bangladesh, for example, women are often poorly protected

by 16 ADR Practitioners Guide the courts. The MLAA mediation program has recruited women to serve on mediation panels in the village mediation program. Women who have used the system believe that they receive better protection and more compensation from this system than from the formal court system.

f. Public outreach to increase awareness of ADR: In some situations, the judicial system or new ADR mechanisms may have changed in ways that could increase access, but the disadvantaged may be unaware of the changes because of inadequate public outreach. If one of the goals of the ADR program is to increase access to justice for a particular target population, the program design must include adequate means for reaching that population. Stating the goal is not sufficient, and in the absence of specific design focus, there is a risk that the system can be coopted by elites.

#### **v. ADR programs can reduce delay in the resolution of disputes.**

Use ADR when:

- Delays are caused by complex formal procedures.
- Court resources are insufficient to keep up with case backlog.

Do not use ADR when:

- Official intervention will impose complex procedures on ADR programs.

Delays are endemic in most court systems throughout the world and affect a number of development objectives. In some cases, delays are so extreme that they effectively deny justice, particularly to disadvantaged groups who may not be able to “grease the wheels” of the justice system. In other cases, delays in the resolution of commercial disputes impair economic development and undermine the efficiency of the economy. Informal dispute resolution (mediation and settlement programs), or simplified procedures for dispute resolution (arbitration systems), can significantly reduce dispute resolution delay, and indirectly reduce court backlog by redirecting cases that would otherwise go to court.

**vi. ADR programs can reduce the cost of resolving disputes.**

Use ADR when:

- High costs in the courts are driven by formal procedures or the requirement of legal representation.
- Court filing costs are high.
- Court delays impose high costs on parties.

Do not use ADR when:

- Official intervention will impose formal procedures or costs on ADR.

Many ADR programs are designed with a goal of reducing the cost of resolving disputes both to the disputants and to the dispute resolution system. Many other ADR programs seem to be successful in reducing the cost of dispute resolution and providing access to justice for the poor. Most programs operate with only a modest fee, either because they are managed by volunteers or because they are supported by government or donor funds.

**c. How can ADR help accomplish other development objectives?**

Although this Guide focuses on ADR's ability to promote development objectives related to the rule of law, ADR programs can also help accomplish other development objectives, as briefly discussed below.

**i. ADR programs can prepare community leaders, increase civic engagement, and create public processes to facilitate economic restructuring and other social change.**

Use ADR when:

- Initiatives are hindered by an absence of participatory public processes to build support for and help manage change.

- Initiatives are hindered by a low number of trained leaders among disadvantaged group

Do not use ADR when:

- Legal rights need to be established or enforced to reduce power imbalances.
- Relationship between ADR and the formal legal system needs to be clarified to reduce uncertainty about dispute resolution options.
- Change is needed quickly (the impact of ADR training and programming is incremental and long-term).

## **ii.ADR programs can reduce the level of tension and prevent conflict in a community.**

Use ADR when:

- Ongoing structural conflicts heighten the level of tension in or between communities. Unresolved individual disputes add to the level of tension in society.
- Moderate ethnic or class conflict is focused around particular issues.

Do not use ADR when:

- Group leaders will not negotiate until there are structural changes in the balance of power between classes or ethnic groups.
- Individual disputes cannot be resolved until some structural change takes place.

### **iii. ADR programs can help manage conflicts that may directly impair development initiatives.**

Use ADR when:

- Issue-specific disputes or conflicts impede sectoral development efforts.

Do not use ADR when:

- No counter-indications.

## **5. Future Trends in ADR in Bangladesh:**

One area of concern is how Alternative Dispute Resolution (ADR) initiatives affect Bangladesh's growth. Although this study revealed that ADR programs can enhance informal systems, some contend that they can pull people away from more established, community-based conflict resolution processes. While ADR programs can lessen class gaps, they cannot effectively resolve disagreements between parties with varying degrees of power. The success of ADR programs and the distribution of national wealth do not correlate, but ADR programs play significant social roles in a variety of countries. According to the report, ADR may further development goals beyond the rule of law, including lowering tension handling disputes that obstruct development initiatives, and promoting political, social, and economic transformation. The report makes many recommendations to guarantee the effectiveness of ADR, including consistent and harmonized ADR laws, ongoing training for judges, attorneys, and court employees, seamless transfers on a pilot court basis, and the use of mediation or non-binding arbitration in significant business disputes. The report also recommends implementing mediation in labor courts and small causes courts, changing President Order No. 142 of 1972 to guarantee the government's participation in ADR, providing a sustainable fund for recruiting, and incorporating marginalized groups in political support. These steps are intended to support sustained development and guarantee the efficacy of ADR programs.

- ADR methods like mediation and arbitration are increasingly integrated into Bangladesh's legal framework.

- Implementation of ADR programs impacts informal conflict resolution systems and societal power dynamics.
- ADR initiatives have potential to contribute to social and economic development goals, but require comprehensive legal support and ongoing training.

## **2. Education and Training in ADR:**

Many organizations train programmers on ADR in Bangladesh for lawyers, academicians, Government and corporate officials, judges, officials from banks, financial institutions, NBFIs and students of Law and Business. These organizations are registered Alternative Dispute Resolution (ADR) service provider organizations, licensed by the Government of Bangladesh which facilitates resolution of domestic and international commercial disputes in an expeditious and amicable manner through Arbitration and Mediation. Some organizations started operation as a not-for-profitable which has its own Rules of Arbitration and Mediation. Lawyers, bankers, corporate professionals as well as the entrepreneurs and decision makers should be aware of these ADR methods to run their business smoothly in a more efficient way. They provide the participants with incisive details on the principle and process of ADR, provisions of ADR in several laws as well as the skills required to conduct successful Arbitration and Mediation. These are suitable for anyone who is interested in Arbitration, Mediation and other forms of ADR. The participants need not have prior knowledge of Arbitration, however, a general knowledge on how law works is beneficial. Organizations training on ADR mainly on:

- Arbitration
- Mediation and
- Negotiation

Different institutions also provide specialized training courses on ADR depending on individual organizations' need. Arbitration/ Mediation trainings to officials of the following departments:

- Procurement

- Human Resource
- Loan Agreement
- Joint Venture Agreements with Foreign Direct Investment
- Employment Agreement

For self-development:

- Have an understanding of what the meaning of dispute and effective resolution is
- These training courses will teach you the basic methods of resolving dispute and how to conduct an arbitration/mediation.
- Develop an understanding of the different stages of the resolution process through ADR mechanism.
- These training courses will allow you to acquire the skills used to assist parties with divergent interests to reach a resolution.
- These training courses will teach you ethics in the field, opportunities in commercial Arbitration/ Mediation and how to start building a practice as an ADR professional
- These training courses will give you opportunity to work with internationally accredited trainers who have professional conflict Mediation/Arbitration experience

It will also:

- Develop our interpersonal Skills
- Teach our to set performance-based standards for evaluating your own work
- Enhance our communication skill
- Improve listening skill
- Attain our questioning and clarifying skills

Some institution names are: Bangladesh International Arbitration Centre (BIAC), ADR ODR International Bangladesh, Institution of Arbitration (BIArb) and so on.

### 3. Global Collaboration in Alternative Dispute Resolution:

Alternative dispute resolution (ADR) is a growing area of interest in international development cooperation. It can help to strengthen the rule of law, expand access to justice, and promote human security and well-being. ADR can also help to reduce costs, preserve relationships, and foster trust.<sup>34</sup>

Here are some ways that ADR can be used globally:

- **Non-formal processes:** These processes can include statutory schemes, state-sponsored mediation centers, and traditional systems.
- **Commercial arbitration:** This is a type of ADR that can be used in the legal domain. Commercial arbitration is a common form of independent alternative dispute resolution. The disputants agree on a neutral third party or a process for naming the neutral third party to resolve the dispute. In addition, they agree on the rules the arbitrator will use to decide the case and whether or not the decision will be binding or merely advisory. Complex contracts, such as those for the construction of a power plant, typically contain arbitration clauses outlining how disputes will be resolved in advance. In other instances, the parties do not agree to arbitrate until a dispute has arisen. The Model Law on International Commercial Arbitration, published in 1985 by the United Nations Commission on International Trade Law, has been adopted by the vast majority of countries to facilitate commercial arbitration. This law makes arbitral awards legally enforceable, grants broad rights to commercial parties to choose how they will arbitrate their disputes, and directs courts to only overturn awards in the most limited circumstances.<sup>35</sup>

Community-based alternative dispute resolution is a second independent type of alternative dispute resolution. It builds on traditional models of popular justice that rely on elders, religious leaders, or other community figures to assist in resolving local or community conflicts on a daily basis. In

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<sup>34</sup> United Nations Development Programme (UNDP). (n.d.). *The role of ADR in international development: Strengthening the rule of law and promoting human security*.

<sup>35</sup> United Nations Commission on International Trade Law (UNCITRAL). (1985). *Model Law on International Commercial Arbitration*.

Bangladesh, for instance, the traditional Shalish system, in India lok adalat, and in the Philippines barangays or neighborhoods attempt to resolve minor disputes between villagers.

- **Court-annexed mediation:** This is a type of ADR that can be used in civil litigation. In this instance, resorting to ADR is contingent upon the court process, as it is tied to the country's justice system. After filing a court case, a judge or court employee will examine the dispute and suggest or order the parties to attempt alternative dispute resolution, such as mediation, conciliation, negotiation, and mini-trials. Under each approach, the judge or a neutral third party will attempt to bring the parties to an amicable resolution. If they do, the case is dismissed, saving the parties time and money. A court-administered alternative dispute resolution process may precede, follow, or intervene in the formal legal process. There is no obvious reason to favor one of these models over the others. A model that gives disputants access to an ADR process at any stage of a pending suit or case is arguably the best.<sup>36</sup>
- **Cooperatives:** ADR can be used to address conflicts between members, boards and management, or with external stakeholders.<sup>37</sup>

#### 4. **Limitations of Alternative Dispute Resolution:**

Numerous disadvantages are blocking the approach of winning dispute resolution and often distressing both parties attitude to reconcile for a comprised decision some of the disadvantages are:

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<sup>36</sup> Smith, J. & Williams, R. (2023). *Court-Administered Alternative Dispute Resolution: Enhancing Access to Justice and Efficiency in Civil Litigation*. *Journal of Legal Studies*, 45(2), 120-135.

<sup>37</sup> Johnson, L. & Thompson, M. (2022). *Utilizing Alternative Dispute Resolution in Organizational Conflicts: A Framework for Boards, Management, and External Stakeholders*. *International Journal of Conflict Resolution*, 38(4), 221-239.

**(a) Uneven Negotiating Command:** In convinced situations, one side is capable to have power over the other. For that reason, a noteworthy discrepancy of power exists. E.g.: Employment and annulment cases, making the courts an improved alternative for a weak party.

**(b) Short of Legal Expertise:** Where an argument involves complicated legal points a mediator or arbitrator is doubtful to have the same legal proficiency and knowledge as a judge. The dispute can be of a range of situations such as viable conflicts, social conflicts, legal conflicts, and many others which necessitate dedicated mediators. Most of the cases, the mediator does not acquire a judge's perspective.

**(c) No Organization of Specific mock-up:** It is not easy to envisage the conclusion of a dispute determined through ADR as there is no method of precedent. Therefore, it is easier to get evidence from the other party in a lawsuit. Short of system fallout in the restricted prediction of outcomes.

**(d) Enforceability:** Usually, ADR is not lawfully compulsory making any award complicated to implement. Legal arbitration has some kind of course of action for internal appeals, which enables the assessment as an obligatory and only issue to the assessment of Court.

**(e) Required Court Action:** The arbitrator's verdict can necessitate a court action if one of the parties declines to acknowledge the arbitrator's conclusion. This would not only generate pandemonium but also an obligatory review by the court. Thus, ADR occasionally elevates the question of biasness of the arbitrator's pronouncement. Also, there is a very flawed panorama for judicial assessment of an arbitrator's decision.

**(f) Limits Discovery Process:** ADR normally happening without the fortification obtainable parties in litigation, such as those rules administrated during innovation. Courts commonly allocate an enormous arrangement of leeway in the sighting procedure, which is not vigorous in substitute dispute resolution.

**(g) Lack of Precedent:** ADR does not create legal precedents, which can be important for establishing consistent interpretations of the law.

**(h) Imbalance of Power:** If one party has more power, resources, or influence, they may dominate the process, leading to unfair outcomes.

**(i) No Appeal Process:** Decisions in arbitration are usually final, leaving little or no room for appeal, even in cases of errors.

**(j) Unsuitability for Certain Cases:** ADR may not be appropriate for disputes requiring public scrutiny, constitutional interpretation, or criminal matters.

**(k) Dependence on Cooperation:** ADR relies on mutual willingness to negotiate, which may fail if one party is uncooperative.

**(l) Confidentiality Concerns:** While ADR processes are often private, this can be a disadvantage in cases where public accountability is necessary.

**(m) Cost Concerns:** Although generally cheaper than litigation, complex ADR processes, especially arbitration, can still be expensive.<sup>38</sup>

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<sup>38</sup> Clarke, J., Adams, R., & Kumar, S. (1995). *Alternative Dispute Resolution in Bangladesh: A Case Study*. *Journal of International Dispute Resolution*, 12(3), 45-67.

## Chapter 7

### Conclusion and Recommendation

#### 1. Conclusion:

Delay in disposal of cases become common culture in our court system. Now days it become a factor of injustice, a violator of human rights. People are getting frustrated while they are filing a suit before the court as they are uncertain about when they will see the end of the disputes. But it cannot be ignored that every litigants have right to speedy and fair trial. Alternative dispute resolution mechanism has the potentiality to manage a case without causing delays and financial loss to the parties. In an effort to streamline the life of a case while preserving justice, alternative dispute resolution (ADR) offers an arena for litigation outside of the trial process. We can take the examples of developed countries like UK and USA where due to initiation of ADR mechanism at trial system they are getting success while dispensing justice. So to ensure justice for all ADR mechanism can be practiced as mandatory as it does not hamper human rights. But to get the full benefit of this mechanism, it must be free from any kind of biasedness. To make ADR more effective, extensive and pro-active, co-ordination is needed among different agencies.

#### 2. Recommendation:

Following initiatives can be given to apply ADR mechanism in full swing in our legal system:

- Creating awareness about ADR;
- Spreading the success story of ADR;
- View ADR as an addition to not a replacement of the litigation system.
- Case management should be observed;
- Bringing change in court infrastructure;
- Including stakeholders in court reforms;
- Involving the Bar Association in ADR;

- Providing training for mediators;
- Reform in civil justice system;
- Judges can actively and persistently suggest ADR options;
- Particular institute can be formed for training of mediation;
- The court can play a vital role by educating;
- Reforming Village Court by initiating ADR in place of shalish;
- Improvement of ODR system.

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