

A LEGAL ANALYSIS OF THE SUITABILITY OF ALTERNATIVE DISPUTE RESOLUTION (ADR) AS A RURAL DISPUTE MECHANISM IN BANGLADESH

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ABSTRACT

Almost every nation in the world has integrated ADR into its justice delivery system by reducing administrative and legal barriers and strengthening oversight processes, Bangladesh is fast adopting the mechanism. Recently, Bangladesh has placed a renewed focus on Alternative Dispute Resolution programs as a method of avoiding contentious hearings in formal litigation and ensuring universal access to justice in an efficient manner. Rural conflicts are generally characterized as social issues because these stem from misunderstandings, misperceptions, and long-held traditional attitudes regarding specific themes. The purpose of this paper is to find out the present loopholes like; no appropriate panel to specify the protocol, or no well-defined norms to ADR. Moreover, there is no provision to impose sanction for refusal of negotiation without genuine explanation. This paper recommends some possible solutions like: proper monitoring, review board for implementing verdict, to protect the parties from high cost, time, and energy.

Keywords: ADR, Artha Rin Adalat Ain, European Commission, justice, United Nations Development Programme (UNDP), Union Parishod.

INTRODUCTION

Alternative Dispute Resolution (ADR) is a word that refers to a set of strategies and procedures for settling conflicts without resorting to litigation. ADR is an all-encompassing term which refers to multiple non-judicial methods of handling conflict between parties.¹ Examples of ADR are mediation, arbitration, neutral evaluation, negotiation, and conciliation.

Due to ADR's ability to make decisions more quickly and economically, it has gained significant popularity among commercial and social parties worldwide. While those techniques have drawbacks, the benefits are widespread and widely regarded as the most effective. The major forms of ADR and their characteristics are well-known to law practitioners and lawyers

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alike. Thus, ADR plays a critical role in resolving a dispute or conflict.

Justice Mustafa Kamal has long been concerned about the increasing backlog of cases, which has hampered court judgments and deprived many people access to justice. J. Mustafa Kamal founded The Bangladesh Legal Study Group (BLSG) shortly after retirement as Chief Justice in Bangladesh, with the purpose of integrating Alternative Dispute Resolution (ADR), specifically mediation, within Bangladesh's legal and judicial processes.² In the years that followed, he made the initiative to introduce ADR to Bangladesh. From the beginning, Justice Mustafa Kamal has been devoted to promoting the benefits of mediation and other kinds of alternative dispute resolution in order to reduce case backlogs and make justice more accessible to the citizen of our country³.

If we look at world history, we can see numerous civilizations that lacked legal institutions for ensuring social order, peace, and harmony. At the time, an alternative dispute resolution system was developed in order to avoid the complexities of the formal justice system. During that time period, some civilizations employed an alternative dispute resolution system⁴. For instance:

- The Sumerian Civilization (emerged about 4000 B.C)
- The Babylonian Civilization (developed about 2123 to 2081 B.C)
- The Egyptian Civilization (developed around 3200 B.C.)
- The Persian Civilization
- The Chinese Civilization (emerged around 3000 B.C.)
- The Greek Civilization
- The Roman Civilization

After this civilization era, the development of the ADR system in present day Bangladesh can be divided into three segments⁵. Such as:

The latest segment that means ADR in Modern Bengal can also be discussed into three periods. Namely:

- ADR in British Era
- ADR in Pakistan Era
- ADR after independence of Bangladesh.

As modern justice systems have grown overburdened, expensive, time-consuming, and unable to offer people with the justice they expect, the Alternative Dispute Resolution system has emerged as a court-annexed method to provide people with rapid and inexpensive justice.

Literature Review:

The process of identifying, reading, and evaluating the extent of literature in a particular area of interest is known as a literature review. A review of concepts and theories, as well as past study findings, is referred to as a literature review.

Professor Dr. Jamila A. Chowdhury in her work has categorized the practice of Alternative

Dispute Resolution mechanisms into three parts, namely: Formal ADR Practice in Bangladesh, Quasi-formal ADR Practice in Bangladesh, Informal ADR Practice in Bangladesh.⁶ In the informal portion of ADR practice, she discusses the application of ADR processes under *Shalish* in the rural village, many modalities of ADR practice, the obligations of *Shalish* rulings, and the flaws in the *Shalish* process. Additionally, author mentions the *Shalish* NGO process as follows:

- Madaripur Legal Aid Association (MLAA)⁷
- Bangladesh Legal Aid and Services Trust (BLAST)⁸
- Bangladesh National Women Lawyer's Association (BNWLA)⁹
- Ain o Shalish Kendro (ASK)¹⁰
- Bachte Sekha (BS)¹¹

To restore peace and harmony in rural areas through the ADR process, author offers several approaches in her writings, including the following: to establish the binding nature of conflicts that are resolved outside the courtroom. She provides two examples to substantiate this assertion. For example, in Japan, spouses mutually agree on their divorce through a discussion process and then register the divorce with their local authority to give it a binding nature. In Egypt, spouses may end their marriage status and even establish custody of their children with mutual permission.

However, she makes no reference to or clarification of any recommended ADR model for institutionalization. In other words, the establishment of any obligatory responsibilities for rural area residents has not been formulated. In this paper, it is intended to offer set of rules for alternative dispute resolution with the goal of implementing the intrinsic meaning or purpose of the ADR system and lowering the backlog of cases in our formal judicial system.

Dr.A.B.M. Mahmudul Hoque, in his writings regarding the ADR, has identified some classifications namely: Formal or Judicial ADR, Quasi-formal or Statutory ADR, Informal or Non-formal ADR.¹²

In informal ADR process, he intends to implement of ADR mechanisms in the village arena through the local government bodies, the NGOs and so forth. He also refers that there is a lacuna of distinct infrastructure or institutional establishment in our present legal system. Moreover, the village court members do not pursue the procedural rules of the state. The biases towards the relatives and members of the local area are a common matter in the rural area. Finally, he suggests using an ADR model to settle rural issues at the Union or Upazila level.

In reality, the enforceability of agreements reached through mediation is non-existent. There is no attempt to bind the parties in any way. There is no mechanism through which the authority can create an environment devoid of political influence for the parties. As a result, in this paper, an attempt has been made to find out loopholes & set up rules in which the enforceability mechanisms and the impact of political influence are given top attention.

Md. Habib Alam discusses the emergence of the implications and practice of Alternative Dispute Resolution (ADR) for the purposes of implementing civil justice and eradicating suit

backlogs in Bangladesh's dispute resolution system.¹³ He states in the section on informal justice system that the adjudication process under *Village Court Act 2006* is based on the informal traditional *Shalish* system, which is considered to be an ADR. In contrast to formal judicial adjudication, the Village Court is not bound by evidence law or other procedural law. As a result, there does not appear to be any difficulty in providing simple and expeditious rural justice through these forums, which may be viewed as forums of alternative dispute resolution¹⁴.

However, he fails to clarify or mention any mechanisms for enforcing the rules and regulations governing the ADR process. That is why, once the mediators' decision is finalized, the people are unable to follow the order. In this paper, it has been proposed to have implementation mechanisms of enforceability.

Bashir Ahmed and Mohammad Tarikul Islam have discussed the effectiveness of the existing local justice system in the rural sector in their writings ADR¹⁵. They mention the prevalent impediments to *Shalish* in rural Bangladesh, as well as undue influence in the name of patron client relations, political parties, and social prejudice, the village court may be a viable alternative for facilitating local arbitration and ensuring a level playing field for contending parties.

The formal legal system in Bangladesh is clearly overburdened, with inadequate officials and employees to appropriately manage the task. As a consequence, a half-million cases languishing in multiple courts indicate the inefficiency of existing procedure. He also mentions that the practice of creating village courts has grown in popularity and those locally elected officials are far more receptive and interested in doing so. The Ministry of Local Government Division (LGD), the United Nations Development Programme (UNDP), and the European Commission partnered on a project called "Activating Village Courts in Bangladesh" which assists the justice system in 500 Union Parishads (UP) across the country¹⁶.

Though they discuss the traditional *Shalish* system, the NGO-based *Shalish* system, the village court system, the effects of undue influence, and the capability of judicious judgment; the agreements reached through mediation are not enforceable. There is no attempt made to bind the parties, no way for the authority to create an environment free of political influence. This paper proposes monitoring mechanisms of enforceability and independence from political influence to minimize such deficiencies¹⁷.

Research Objectives:

- (i) To identify the challenges of existing ADR mechanism in Bangladesh;
- (ii) To study the existing Alternative Dispute Resolution (ADR) mechanisms in Bangladesh for promoting Access to Justice;
- (iii) To analyze the effectiveness of ADR system as rural dispute resolution process for reducing caseload in Bangladesh.

Research Questions

- (a) What are the challenges in practicing the Alternative Dispute Resolution (ADR) system in Bangladesh?

(b) What are the existing Alternative Dispute Resolution mechanisms in Bangladesh?

(c) To what extent Alternative Dispute Resolution (ADR) system can be an effective way as rural dispute mechanism for reducing caseload in Bangladesh?

Scope of the Research

With some improvements, the long-serving traditional *Shalish* system can be trusted to reconstruct the local level justice dispensing mechanism. The ADR technique has been effectively employed in financial, commercial, revenue-related, and family-related conflicts. Its utility in petty civil and criminal disputes in rural areas is undisputable. The institutionalization of village level ADR in Bangladesh is less explored in the academic setting. Because this is a new and exploratory study, participants are drawn from a variety of backgrounds, including *Shalish* stakeholders, practitioners, experts/academicians, and people's representatives, as well as members of the policymaking and implementation sides. The cross-validation of responses from a wide range of people may help to speed up the process of institutionalizing *Shalish*¹⁸.

Among these, the following concerns have been given consideration for the goal of reviewing the overall legal structure of Village Court,¹⁹ namely-

- Access to Justice
- Institutionalizing the ADR system in rural area
- Separation of Judiciary
- Restorative Justice
- Socio-economic condition and
- Domestic Violence

THE CHALLENGES OF EXISTING ADR MECHANISM IN BANGLADESH IN RURAL AREAS

Existing Alternative Dispute Resolution (ADR) Mechanisms

There are three primary kinds of Alternative Dispute Resolution practices in Bangladesh, each of which may be characterized as follows: (i) Formal or Judicial ADR, (ii) Statutory ADR or Quasi Formal, (iii) Informal ADR or Non-Statutory ADR²⁰.

Status of ADR	Relevant Legislation	Relevant Sections	Methods Applied	Major Role
Formal or Judicial ADR	The Code of Civil Procedure (Amendment) Act, 2003	Sec 89A, 89B, 89C	Arbitration or Mediation	The court itself or a third-party mediator may mediate a dispute.
	Artha Rin Adalat Ain, 2003	Sec. 21-25	Mediation	The court itself or a third-party mediator may mediate a dispute.
	The Family Courts Ordinance, 1985	Sec.10 (3), (4), 13	Reconciliation	By the court itself

Statutory ADR or Quasi Formal	The Village Court Act, 2006	Sec. 1, 2	Civil and criminal adjudicatory jurisdiction in specified area	Union Parishad
	Arbitration Act, 2001	Sec. 23	Arbitration	Arbitration Tribunal
	The Muslim Family Laws Ordinance, 1961	Sec. 2(a), 6, 7(4), 9(1)	Arbitration	Union Parishad and Paurashava
Informal ADR	The Local Government	Sec. 14(j)	<i>Shalish</i> or Mediation	Union Parishad and Paurashava
	Informal ADR by NGOs in Civil & compoundable Criminal offences		Mediation or moderate <i>Shalish</i>	NGO Mediators
	Criminal Procedure Code, 1898	Sec. 345		Compounding of complaints

Administrative Challenges:

- To maintain the rule of law is the main hurdle to ADR in Bangladesh. Alternative dispute resolution(ADR) strategies are used to settle disagreements. The rule of law is mostly missing or non-existent. Because it is mainly concerned with resolving conflicts, it may deal with comparable challenges in various ways. And the due process of law is not followed in alternative dispute resolution.²¹
- In a culture where there is a power imbalance between the warring parties, it is one of the most difficult components to ensure that ADR is effectively implemented and made functional. Even if the imbalance is not due to discriminatory cultural norms at the time, alternative dispute resolution systems will fail to protect the legal and procedural rights of the weaker parties. Stronger parties with more money and power may compel the weaker party to accept a less desirable outcome.
- In the case of a multi-party conflict, it is difficult to include all interested parties in an alternative dispute resolution mechanism. In a land dispute, ownership is a critical fact to consider, and the party in possession, whether right or wrong, is often disinterested in alternative conflict resolution since he derives pleasure from the property's productive capacity. As a consequence, involving the party with larger possession in alternative dispute resolution is very difficult.
- The vast majority of land litigants, especially those in rural areas, are illiterate and uninformed about the nature and advantages of alternative dispute resolution. For ADR to be successful in Bangladesh's rural areas, it is critical that the public be made aware of its existence.

- It is one of the most typical causes for litigation delays because lawyers use dilatory strategies. It is critical to include the interested parties' pleaders in the resolution of conflicts via formal or informal alternative dispute resolution (ADR), however the role of legal professionals in settling disputes outside of the court system is currently underdeveloped in Bangladesh.

Legal Challenges:

- According to the **Code of Civil Procedure 1908**, when all the contending parties come before the court, the court must mediate the disagreement or submit the matter to the Legal Aid Officer, the parties' pleader, or the mediators from the panel to mediate, whichever is appropriate. However, if either of the parties fails to come before the court, there is no option for the court to force them to do so.²²
- The court will choose the technique to be used, whether it is a legal assistance officer, a pleader, or panel mediators. The panel will set the procedure for the mediation process, whether it is conducted by an attorney-assisted mediator, a pleader, or panel mediators. There are no defined norms, laws, or systems in place to ensure the mediation process is performed appropriately.
- In accordance with **sections 89A and 89C of the Civil Procedure Code**, mediation is permitted throughout the pre-trial and appellate phases, but not after the trial has concluded and prior to the pronouncement of the verdict. However, it is possible that parties will realize the merits of their argument after the trial has concluded.²³
- If the mediation fails, Section 89A(7) specifies that the action must be reopened from the place where it was before the referral for mediation. It is also uncommon for parties to resign from mediation without giving any explanation, leaving the mediator with little alternative except to send the matter to court. This prolongs the litigation, but there is no provision in the agreement that punishes the party that purposefully withdraws from mediation.
- In most situations, attorneys are opposed to ADR since it means their revenue will be lowered if the dispute is resolved. In many cases, lawyers misdirect or prevent their clients from exploring alternative dispute resolution, but there is no provision in the law assuring the lawyer's liability in the event of ADR failure due to the lawyers' reluctance.
- The restriction of jurisdiction in village court is the most significant obstacle in the path of alternative dispute resolution. Land disputes in which the value of the property does not exceed Tk. 75,000 may be addressed via mediation. It does not have jurisdiction over each and all land-related conflicts that may arise.

Identifying the ancient rural era's Difficulties

Since ancient times, the headmen of villages or localities have been tasked with settling conflicts among the residents of their respective communities. The adjudication methods that they followed were nearly identical to those used in mediation and arbitration. One of the most distinguishing characteristics of this historic system is that it was a recognized system

of administration of justice, rather than just a substitute for the official court system as is the case now. During the ancient time, there were various difficulties with relation to the alternate conflict settlement procedure.²⁴ As an example:

Unawareness About the Situation

Without widespread awareness of alternative dispute resolution (ADR) and its procedures among the public, prospective employers and customers are significantly less inclined to hire the field's emerging experts.

Uncertainty Regarding Entry Paths

When recruiting professionals are unfamiliar with alternative dispute resolution (ADR) and the practical, multidisciplinary skills that ADR practitioners can provide, this may be very challenging.

Insufficiency of Infrastructure

It was discovered that there was no distinct office for the village courts and no designated location for the performance of judicial activities during that ancient period.

Identifying the Difficulties Being Faced in the Modern Era

It is not new in Bangladesh to resolve disputes outside of the court system; non-judicial and indigenous conflict settlement techniques have been employed by the society for a very long time. However, the most significant issue is that there is no consistent alternative dispute resolution statute in Bangladesh. Different dispute resolution techniques and procedures have been mandated by different pieces of law in order to resolve the disagreement. For the individual who serves as a neutral mediator or conciliator, this presents a dilemma, since all processes change in various situations. When persons who are participating in an ADR process are not adequately trained, they may lack the necessary knowledge and skills to effectively supervise and persuade the disputants to reach a settlement. It is because of this that the vulnerable party does not get adequate justice.²⁵

THE EXISTING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN BANGLADESH PROMOTING ACCESS TO JUSTICE

3.1 Legal Analysis of existing ADR Mechanisms in Bangladesh

Several methods of Alternative Dispute Resolution (ADR) that are employed in Bangladesh may be divided into following three broad groups:

- Judicial or Formal ADR
- Statutory ADR or Quasi-Formal ADR
- Informal ADR

Judicial or Formal ADR:

This type of alternative dispute resolution refers to conflict settlement methods that are outlined in legislation and are carried out by a court of law or by a third party. It may also be broken down into three sections. As an example:

- The **Code of Civil Procedure (Amendment) Act of 2003²⁶**- The **Code of Civil Procedure in 2003** was changed to include mediation under **Section 89A**, arbitration under **Section 89B**, and mediation in appeal under **Section 89C**. All these methods have been annexed to the court system and have been made applicable in all types of non-family litigation. **Section 89A** allows for mediation to take place prior to a trial, while arbitration may be used at any point of the litigation process²⁷.
- The **Artha Rin Adalat Ain of 2003²⁸**: The *Artha rin Adalat Ain* also known as Money Loan Recovery Act was passed in 2003 with built-in options for alternative dispute resolution. The procedure consisted of a settlement conference, which was presided over by a trial judge and conducted in closed session. The details of the proceedings were being kept under wraps. As this system proved ineffectual, the current administration revised the legislation in 2010 to enable mediation in lieu of a settlement conference, which was previously prohibited. As a result, additional restrictions were inserted into the Loan Recovery Act, 2003, namely sections 22 and 23.
- The **Family Courts Ordinance of 1985**: The Family Court Ordinance establishes a system for reconciliation via the use of judges as a crucial aspect of the legal process in family court cases (court annexed ADR). It contains a built-in conciliation process that enables disputing parties to address the remaining problem informally, inconspicuously, and with a feeling of accommodation, in which the family Courts act as a well-wisher and friend rather than as an adjudicator, rather than adjudication.²⁹ In the case of **Khudeza Begum vs. Md. Abdul Jalil**, the victim deprived from dower & maintenance for herself and child. Afterwards the victim filed a suit to the concerned court. The court, in the ADR segment, sent it for compromise. And ultimately the parties succeeded to solve the matter through ADR³⁰.

Statutory or Quasi-Formal ADR

Quasi-formal or Statutory Alternative Dispute Resolution is defined as those cases in which the application, jurisdictions, and procedural methods relating to dispute resolution are regulated by a statute but are conducted by another judicial body that is not a part of the formal judicial structure of the country in question.³¹ It is further subdivided into the following industries. As an example:

- The **Village Court Act of 2006**: The **Village Court Act of 2006**(Amendment 2013) which makes reference to the phrase ‘village court’ for the first time. The Chairman of the Union Parishad, who would create a village court with a total of five members, will hear any issue brought before him by any party to the conflict. The Chairman of the Union Parishad will preside over the village court, and each political party will choose two members from among themselves, one of whom must be a member of the Union Parishad. The court’s judgment is made on the basis of a majority of the votes cast. Unless otherwise mentioned in the schedule, the court has jurisdiction over all small civil and criminal issues. The court does not have the authority to sentence someone to jail. In the event of a land conflict,³² it has jurisdiction only if the subject-matter has a value of less than **TK 75,000**/(sec 07) and it has the authority to order compensation for property damage caused by cattle as well as

the restitution of immovable property in certain circumstances. A pleader could not be hired by a party in order to represent them at the village court.³³

- **The Arbitration Act of 2001:** The Arbitration Act of 1940 was in effect in Bangladesh until the Arbitration Act of 2001 was adopted, which took effect in 2002. According to Section 23 of the Arbitration Act 2001, the arbitration process that must be followed under this Act is explained in detail. It was primarily created to facilitate the conduct of commercial and international arbitration proceedings. Other types of domestic arbitration, on the other hand, are permitted to be conducted under this Act. According to Section 89 B of the Civil Procedure Code, the Arbitration Act of 2001 may also be utilized to resolve civil issues that have been submitted to arbitration.³⁴
- **The Muslim Family Laws Ordinance of 1961:** In accordance with the Muslim Family Law Ordinance of 1961, provision for reconciliation via an arbitration council, which is not a component of judicial alternative dispute resolution but is administrative under character, has been made in three instances,³⁵ that includes inter alia, (i) polygamy as defined by Section 6. (ii) dissolution of marriage (divorce) and the imposition of the divorce decree according to Section 7. (iii) husband's inability to pay for his wife's upkeep as required under Section 9.

Informal ADR

Alternative Dispute Resolution techniques, such as informal and non-formal methods, are used in criminal cases as well as at the community level in both civil and criminal cases. Informal and non-formal methods are used to settle disputes in both civil and criminal cases. Furthermore, it may be divided into the following categories³⁶: For example:

- **The Local Government-** Bangladesh is divided into six territorial administrative divisions, each of which contains 64 districts and more than 85,650 villages. These numbers are significant because a significant number of informal dispute resolutions occur in Bangladesh, with local government members playing a key role in the process. **Section 14(j) of the Local Government (Gram Parishad) Act, 1997** entrusts the duty of amicably settling local conflicts to the members of the local government.³⁷
- **Informal ADR by non-governmental organizations (NGOs) on civil and compoundable criminal offences-** In general, non-governmental organization (NGO) mediation is carried out by NGO employees who have been educated in legal and social justice knowledge as well as mediation abilities. Feminist mediators are actively sought after by non-governmental organizations (NGOs) to participate in their mediation programs particularly in situations concerning women's rights, family conflicts, and other concerns of gender equality. A broad variety of civil problems as well as different criminal concerns are covered by these mediations, which are permitted under Bangladeshi law to be resolved by negotiation or mediation.³⁸
- **The Criminal Procedure Code of 1898-** There are a large number of criminal cases that are compoundable under the law. However, there was no institutional venue or organization in our nation to resolve those matters that were compoundable. Sometimes the plaintiffs

in criminal cases are unable to locate a formal or informal venue in which to resolve their case, and as a result, they are sentenced to many years in prison for a relatively minor offence, or even for not having committed any crime at all.³⁹ As stated in **Md Joynal and ors vs. Md Rustam Ali Mia and ors**⁴⁰, the Appellate Division of the Bangladesh Supreme Court held that:

- “*Our Criminal Administration of Justice encourages the compromise of certain disputes and even the compounding of certain offences as provided by Section 345 of the Criminal Procedure Code. Shalish, also known as a compromise, has been used in the settling of disputes in this subcontinent from the beginning of time*”.
- ADR may take on a variety of forms, including hybrid forms. These hybrid modes were created by improvising a combination of three fundamental kinds of ADR. Negotiation, mediation, and arbitration are the three types of dispute resolution. In order to keep up with the developments, hybrid types of ADR are being developed over time. So, it is not feasible to explore all of the many hybrid ADR forms that may occur in the actual world at the present time. The following are examples of hybrid versions of ADR⁴¹: early neutral evaluation, fact finding, Med-Arb, mini-trial procedure, settlement conference, negotiated rule making, and private judging.

ADR systems across the World

The use of Arbitration for the settlement of business disputes has been used throughout history, but it was not until the mid-1980s that it was recognized as a contemporary dispute resolution mechanism, first in the United States and later in Canada. Due to the high expense and unpredictability of the legal system at the time, it happened as a consequence. Because of this, the firm has had constant growth around the world since its inception in 1908.

ADR in the United States of America (USA)

As a court-ordered process, mediation is used in the United States by the American Courts, the American Bar Association, and other organizations. This method has been found to be effective in a variety of cases, including simple money claims, sexual harassment complaints, and disputes regarding custody battles in the case of divorcing couples who have filed for divorce.⁴²

ADR in the United Kingdom

ADR arose in the United Kingdom partially as a result of issues arising from the cumbersome and costly process of civil litigation, and partly as a result of difficulties arising from lawyer-dominated arbitration. Among the techniques extensively employed in the United Kingdom are international mediation with standard forms, mini-trial, and executive tribunal, mediated settlement leading to a consensual arbitration award, med-arb and a variety of other options. The Centre for Dispute Resolution (CEDR) is a newly founded organization that provides mediation services to businesses in the United Kingdom.⁴³

ADR in Canada

There are many similarities between Canada's judicial system and that of both America and the United Kingdom. In Canada, there are two separate and distinct judicial systems: Federal

and provincial governments, for example. A movement towards alternative conflict resolution is emerging in Canada as a result of the high cost and protracted nature of traditional dispute settlement. Alternative dispute resolution techniques, such as mediation and arbitration, are increasingly being utilized to handle business and non-commercial issues, rather than going to court. Most of the time, such alternate procedures is voluntarily implemented.⁴⁴

ADR in India

Because Indian courts are slow, ADR methods are rapidly emerging. In the mid-1980s, the Indian government established Lok Adalat under the Legal Service Authorities Act to institutionalize ADR. It was formed to employ conciliation and negotiation to settle disagreements. It takes matters pending in conventional courts within its jurisdiction that may be settled via conciliation and compromise. It is chaired by a judge or retired judge, with two additional members who are usually a lawyer and a social worker and is open to the public. There is no court fee to pay. Even though the lawsuit has already been filed in the conventional court, the Lok Adalat may be able to address the matter. In this case, the fee is refunded.

ADR in International Fora

ADR is also practiced in the following locations, which are listed in a brief chart⁴⁵.

Convention	Provisions	Types of ADR	Conducted By
UN Charter	Article 33	Negotiation, Mediation, Arbitration & Conciliation	The Security Council
ICCPR	Article 42	Conciliation	Conciliation Commission
WTO	Section 08	Arbitration	Arbitration Panel
WIPO	Rule 01-02	Negotiation, Mediation & Arbitration	WIPO Arbitration & Mediation Centre

Access to Justice

Justice delayed is justice denied. As a result, effective justice should be delivered as quickly as possible. Not only should accessible justice be quick, but it should also be inexpensive. In order to be considered accessible justice, criteria should be to make justice more easily accessible, simpler to grasp, faster to provide, and more certain⁴⁶.

- **Access to Justice under the Constitution of Bangladesh-** Obtaining justice is emphasized in several articles of the **Constitution of the Bangladesh**⁴⁷, which serves as the ultimate law of the nations and is referred as such, “the right to seek justice”. All citizens, according to **Article 27** of the Constitution of the United States, are equal before the law and are entitled to equal protection of the laws. A basic right to equal protection under the law is guaranteed by Bangladesh’s Constitution, which states in **Article 31** that every citizen of the nation has the fundamental right. Despite the fact that the term ‘access to justice’ is not defined directly in these Articles, the substance of the phrase is merged with the phrases ‘equal protection under the law’ and ‘protection of the law’ to form the phrase ‘*access to justice*’. When the two Articles are read together, it is plausible to assume that people’s right to seek justice is non-alienable and equal regardless of their socioeconomic level or

income, which is consistent with the Constitution.⁴⁸

- **Access to Justice under the UDHR, 1948-** Upon unanimous approval by the **United Nations General Assembly on December 10, 1948 in Paris, the Universal Declaration of Human Rights (UDHR)** was formally adopted and became known as the Universal Declaration of Human Rights (UDHR). The Universal Declaration of Human Rights states that “everyone has the right to be recognized as a person before the law, regardless of “wherever he or she may be”. As a further measure, the Universal Declaration of Human Rights prohibits any kind of discrimination in the administration of justice to any individual, regardless of race or ethnic origin⁴⁹.
- **Access to Justice under the ICCPR, 1966-** According to the **International Covenant on Civil and Political Rights (ICCPR)**, “Everyone should have the right to be recognized as a person under the law wherever he or she may be located”.

The Barriers of Access to Justice and the Notion of ADR

In Bangladesh, the protracted duration of judicial processes continues to be a significant impediment to access to justice. Another element that makes it difficult for individuals to get justice is the high expense of the dispute resolution procedure. In part, this is due to the fact that we live in a “*system in which money often counts more than qualities*”. To give an example, while more than 50% of family court lawyers charge fees greater than taka 10,000 to resolve cases through litigation, it can be said that in such cases, more than 95 percent of cases involving alternative dispute resolution can be resolved through a lawyer charging a fee equal to or less than taka 5,000⁵⁰. Many poor and disadvantaged individuals in Bangladesh continue to be unable to access the legal system via the established channels, making it important to develop other methods of ensuring that impoverished people have access to justice. At the moment, great attention is being dedicated to methods in which conflict resolution procedures might be made more efficient. The current resurgence of interest indicates the need for conflict resolution methods that are up to date with the times, which are now lacking. This interest is primarily the result of the constant worries of attorneys, judges, governments, and the general public about ensuring that conflicts are settled in the most efficient manner possible. Instead of using the traditional judicial system to resolve disputes, the industrialized nations established alternative procedures for settling disputes peacefully. As a result, this movement is gaining traction throughout the globe, and the general public is becoming more interested in settling issues via Alternative Dispute Resolution methods in order to expedite the resolution of disputes.⁵¹

EFFECTIVENESS OF ADR SYSTEM AS RURAL DISPUTE RESOLUTION PROCESS FOR REDUCING CASE LOAD IN BANGLADESH

Effectiveness in Rural Area

The Village Court Act is being revised. It is practically imperative that the regulations of village court be reviewed and amended for the court to become more effective and efficient as the one and only operational judicial system in rural regions. In this context, the report calls for the following reforms:

- Increase the number of members on the judge panel from 5 to 10. The panel would be composed of one chairman (the UP chairman), one vice chairman (a woman member of UP who would serve on a one-year rotating basis), three members nominated by each service seeker party (at least one member from each party will be a member of the UP), one permanent member (appointed by the state as civil service employer), and one local school teacher (nominated by the UNO)⁵².
- This composition might be a policy to reduce the biasness and undue influence of the chairman over the VCs in the organization. The village court's adjudication authority should be expanded, particularly in financial matters.
- In addition to VC, a review mechanism for animus judgments, as well as a review board for verdict, should be implemented in the informal settings to complement VC. In reviewing VCs' decisions, the review board will function similar to a High Court division, with the following members: two persons from NGO working in the concerned Upazila Parishad, two members from the Upazila Parishad (nominated by the Upazila Chairman), and two retired public service officers. The review board should have a three-year term and should submit its findings to the chairman of the Upazila Parishad. If the review board's decision is not upheld, the party may file an appeal in accordance with Section 8 of the Village court law of 2006.

The Role of Village Court on Effectiveness of ADR system as rural dispute resolution:

- **Manpower and logistical support in sufficient quantities-** The Village Court should have full logistical assistance from the government to accomplish the desired outcome. Every village court should have its own courtroom, with extra conveniences like a computer for archiving documents and internet connection. A standard training package (including on-the-job training) that provides proper legal knowledge of the village court procedure may assist all parties. The government may appoint a secretary and a court assistant to manage the village court's official business. It is recommended that a separate budget structure be established for village court in order to sustain all of these items.
- **In order to provide a proper and systematic monitoring system-** In order to guarantee openness and accountability, the village court must have a robust and systematic monitoring mechanism, which is currently not in the required shape or character to perform its functions effectively. A monitoring cell under the supervision of the Upazila Administration may be established, which will have exclusive power for holding a three-monthly review meeting on the affairs in the presence of all VC bodies in the affected region. This cell will serve as the local point of contact for VC. The ministry will also get a report from the unit, which should include information on difficulties arising with regard to VC. If the cell discovers anything out of the ordinary, it should have the authority to take urgent action while consulting with the ministry as soon as possible.
- **A system of cooperation between the Village Court and the Law Enforcement Agencies:** The law enforcement forces of Bangladesh, particularly the police, are not very cooperative with the village court. The VC does not have the ability to compel the parties to take their summons into consideration, and as a result, parties are frequently unwilling

to appear in court. The coordination between the village court and the law enforcement authorities takes on a much-needed formality in this instance. Upon refusal of a court summons by a party, the court will make a record of the refusal and forward it to the police station. Following receipt of the notice, the police will take the necessary steps to assist the court in this matter⁵³.

The role of ADR In Reducing Caseload in Bangladesh

The major goal of the ADR movement is the avoidance of vexatious legal process, expenditure, and delay, as well as the promotion of the concept of universal access to justice. Listed below are some scenarios in which Alternative Dispute Resolution (ADR) may be used effectively to minimize the number of cases filed in Bangladesh⁵⁴:

Backlog Litigation and Solution to the Problem:

ADR processes aid in the reduction of the burden of the courts, allowing them to devote more time and attention to matters that should be determined by the courts. In an ideal world, Bangladesh's courts of law would only deal with constitutional concerns, such as writ proceedings, difficult civil and serious criminal offences, and appeals, with no authority to intervene. Arbitration, conciliation, and other dispute resolution procedures should be used for any other matters⁵⁵.

Speed and economy are important considerations:

ADR is distinguished by its efficiency and rapidity. Party autonomy may also result in a speedier process since parties are allowed to create the most effective dispute resolution processes for their situation. This may result in a reduction in material costs. As a result, alternative dispute resolution techniques may save the parties both time and money.

Use of Single Procedure

An agreement to settle a dispute involving intellectual property that is protected in many jurisdictions may be arrived via Alternative Dispute Resolution (ADR). This avoids the price and complexity of multi-jurisdictional litigation, as well as the danger of uneven outcomes⁵⁶.

Informality

The Alternative Dispute Resolution procedure takes place in a more casual and relaxed environment. It is not governed by a sophisticated set of rules or by formal rules of evidence, as might be expected. The relaxation of the norms of evidence often results in a more relaxed environment⁵⁷.

Win-Win Situation Provided by Alternative Dispute Resolution (ADR):

When a lawsuit is filed, one party wins and the other loses the case. In ADR, on the other hand, there are no losers or winners. It is a win-win scenario for both the parties. As a consequence, many alternative dispute resolution methods do not end in the extreme outcome of litigation, where one party receives everything and the other receives nothing, but rather result in a settlement that benefits both parties⁵⁸.

The Role of Some NGOs for reducing backlog in Bangladesh

Nowadays, one can observe that several non-governmental organizations (NGOs) are working in the legal field, and they have a variety of programs to assist impoverished and distressed individuals in obtaining justice. Some of them have Alternative Dispute Resolution (ADR) programs, particularly mediation programs, and some of them also have legal aid schemes to assist the poor and those in trouble. The actions of non-governmental organizations (NGOs) in mediation are described as follow⁵⁹:

- **The Bangladesh Legal Aid and Services Trust (BLAST)** - BLAST started operating in 1993 and now has offices in all major Bangladeshi cities and towns. This includes labor law, family law, and governmental maltreatment of prison inmates. When a client's effort at mediation fails, BLAST often provides legal support and advocacy services. BLAST offers a people-centered modal mediation technique that also adheres with the jurisprudence standards of the countries in which it works.⁶⁰
- **The Bangladesh National Women Lawyers' Association (BNWLA)** - BNWLA is a grassroots organization that works to protect and promote women's rights via legal assistance and non-governmental organization mediation. Furthermore, the Bangladesh National Women's Law Association (BNWLA) participates in many national awareness-raising activities to improve access to justice in the community, and it publishes topics relating to domestic and state violence on a regular basis.⁶¹
- **Ain-o-Shalish Kendro (ASK)**- ASK is another well-known human rights organization that not only offers mediation services but also works on other human rights issues. However, via its Gender and Social Justice Project, it also raises awareness of the issue of women's rights violations among local government officials and law enforcement officers. ASK also works to establish relationships amongst local residents, particularly journalists and attorneys, who are responsible for monitoring human rights enforcement mechanisms. As a result, ASK is trying to change the attitudes of society toward women so that they may get more benefits from the execution of the legislation.⁶²
- **Madaripur Legal Aid Association (MLAA)** - The MLAA was founded in 1978 and is generally recognized as a pioneer in introducing non-judicial conflict settlement in Bangladesh (NGOs). In order to provide more fair justice for everyone, local elites, comprising primary school teachers and madarasa (religious school) students, formed a mediation committee (World Bank). 2001 MLAA-trained para-legals also observed mediation sessions to ensure women were actively engaging. Since its inception in 1978, the MLAA has helped local communities settle issues via mediation while simultaneously performing *Shalish* locally.⁶³
- **Bachte Sekha (BS)** - The non-governmental organization Bachte Sekha was founded in 1982. It operates in the Bangladeshi districts of Jessore and Khulna and employs a variant of traditional *Shalish* that places a strong focus on empowering women throughout the *Shalish* process, according to the organization. To do this, Bachte Sekha established an 11-member village mediation committee, with seven of the members appointed being women⁶⁴. The legitimacy of the mediation process Because of this, the MLAA and Bachte Sekha both question the validity of the village committee that was constituted to facilitate

mediation.

FINDINGS & CONCLUSION

With reference to Challenges⁶⁵:

Regardless of whether the mediation process is managed by a legal aid officer, a pleader, or mediators from the panel, the court may set the procedure to be followed, and the panel may specify the protocol to be followed. However, there are no well-defined norms, regulations, or systems in place at the present time. It is provided in Section 89A (7) which stipulates that in the event that the mediation procedure fails the action must be reopened from the point at which it was prior to the referral for mediation being made⁶⁶. In fact, the defaulting party refuses to negotiate and withdraws from mediation without providing a genuine explanation, leaving the mediator with no alternative except to transfer the matter to the relevant legal system. However, there is no provision in the agreement that imposes a sanction or penalty on the party that purposefully withdraws from mediation, despite the fact that this strategy extends the time frame for the case. The limitation of jurisdiction in village court is the most major impediment to the adoption of alternative conflict resolution methods in rural areas. Mediation may be used to resolve land disputes wherein the value of the property does not exceed Tk. 75,000. It should not have jurisdiction over all land-related problems that may emerge in any given situation.

Extant Mechanisms⁶⁷:

The village court has the authority to hear cases involving both civil and criminal matters of a financial value of up to Tk.75000. However, many individuals do not go to the local court as a first step. Even in the case of a minor disagreement, they prefer to take it to official court rather than to informal court. The propensity underlying this goal might include the desire to punish and torment the other person, as well as the fear of not receiving justice, among other things. However, the fundamental reason for this is a lack of trust in the village court. Apart from that, the authority does not conduct the adjudications in village court in a proper and legal manner⁶⁸.

Effectiveness⁶⁹

Government should provide the village court with any and all sorts of logistical assistance necessary in order to attain the maximum anticipated outcome. Every village court should be required to have a separate courtroom, as well as supplementary facilities such as a computer for storing information and internet connection, in order to function effectively. In order to ensure transparency and accountability, the village court should have a rigorous and systematic monitoring apparatus, which does not presently exist or is not in the proper shape or character to carry out its tasks efficiently. Since the VC lacks the authority to force the parties to consider their summons, they are usually unable to coerce them into attending court. In this scenario, the collaboration between the village court and the law enforcement agencies takes on the appearance of a much-needed officialy.

RECOMMENDATIONS

- (i) To cope up with the present perspective, except with some area wherein land is flooded or any other cause, the pecuniary jurisdiction of the Village Court should be increased

as compared to the usual court proceedings considering the skyrocketing land prices. Moreover, it would require codified Law.

- (ii) As many of the village peoples especially the Chairman and members of Union Parishod lack of proper knowledge of law regarding the Alternative Dispute Resolution, monitoring system through the TNO and proper training mechanisms with supporting staffs should be increased.
- (iii) In most of the cases at the village area (Union Parishod), one can see that Parishod has not have any distinct courtroom to solve the dispute matters and there is no skilled computer operator to save the data in their computer storage with good internet access.
- (iv) Women related issues like marriage, divorce, and rape, which are usually conducted by the Chairman and members of a Union Parishad, are applying very old process. To cope with the present perspective, there is a need to reform.
- (v) The present administration, via the Ministry of Law and Justice, may embrace the idea that ADR should be mandatory for all consumer sectors. Legislation is required to do this. Workers in the ADR sector ought to be trained.
- (vi) Community mediation supported by the non-governmental organizations (NGOs) may be a useful tool in keeping up with the dynamism of society.

CONCLUSION

From the above discussion, it's apparent that the existing Alternative Dispute Resolution (ADR) mechanisms are not sufficient to provide proper justice in the society especially in the rural area. There are lot of challenges in the existing system for monitoring properly. For such reason, a codified law is required to serve the utility of ADR mechanisms for reducing the undue burden of cases in our court system. Usually, in rural area one can see that the common people want to get easy, quick and inexpensive justice through the respective village headmen or leaders or such people who are generally involved in solving the dispute matters, but they are not concerned or adept in the legal knowledge. The government should be positive by taking proper steps to codify a law such as Village Compromise Court Model⁷⁰ and monitoring this system to ensure justice.

ENDNOTES

(Endnotes)

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