

DAFFODIL INTERNATIONAL UNIVERSITY



Research Monograph
On
The Role of Collaborative Law in Resolving Family Disputes:
Impact of ADR Mechanisms

Course Title: Research Monograph
Course Code: LAW (0421-814)

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ACKNOWLEDGMENT

My days at Law at Daffodil International University are memorable, among many, for at least one reason. Thanks to Daffodil International University the Department of law, here I got my first experience with how to do sociocultural research and knew about research. In this regard, I would like to express my thanks and gratitude to my supervisor, Mr. Mohammad Badruzzaman sir, for his guidance and great support. His suggestions and affection showed me the way. Then thanks to Our head Kudrat-E-Khuda Babu sir for showing me how to think out of the box and helping us to know about research in a short time. Heartfelt thanks to My Father for his critical appreciation of my study and thanks to my mother who always gave me confidence.

Special thanks to my All-professor who helped me. And Last but not least, I express my thanks to my best friend Sajnin Sraboni gave me inspiration and support to make my work a success. Also, special thanks to my sister who always stayed by my side.

Finally, the views and any errors in the study remain my own.



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LETTER OF TRANSMITTAL

To
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Subject: Submission on “The Role of Collaborative Law in Resolving Family Disputes: Impact of ADR Mechanisms.”

Honorable Sir,

It is a great pleasure for me to submit the dissertation on the topic of “*The Role of Collaborative Law in Resolving Family Disputes: Impact of ADR Mechanisms.*” To prepare the dissertation, I tried to maintain the required standard. I hope this dissertation will fulfill your expectation.

I, therefore, pray and Hope that you would be kind enough to grant this dissertation for evolution. I am available for any further clarification of this paper at your convenience.

Thanking you.



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LETTER OF APPROVAL

This is to certify that the work is done “The Role of Collaborative Law in Resolving Family Disputes: Impact of ADR Mechanisms.” is a real work done by Mahajabin Sultana ID: 0242310008133020; Department of Law, Daffodil International University, done under my supervision in the partial fulfilment for the research work for.



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CERTIFICATION

This is to certify that the dissertation report on “The Role of Collaborative Law in Resolving Family Disputes: Impact of ADR Mechanisms.”. An Appraisal is done by Mahajabin Sultana in partial fulfillment of the requirements for the Degree of LL.M. from Daffodil International University. This dissertation report has been carried out by my guidance and as a record of the bona fide work carried out successfully.

Thank You



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DECLARATION

I hereby do solemnly declare that the work presented in this dissertation report has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breaches any copyright.

I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

Thank You.



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DEDICATION
Dedicated to My parents.

LIST OF ABBREVIATION

ADR = Alternative Dispute Resolution

AD = Appellate Division

BLD = Bangladesh Legal Decisions

DLR = Dhaka Law Report

HCD = High Court Division

FCO = The Family Courts Ordinance

MFLO = The Muslim Family Law Ordinance

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ABSTRACT

This research article delves into the significant role of Collaborative Law in resolving family disputes, focusing on its impact within Alternative Dispute Resolution (ADR) mechanisms. Through a comprehensive analysis of Collaborative Law's principles, processes, and outcomes, this study elucidates its effectiveness in fostering amicable resolutions while minimizing adversarial confrontations. Drawing upon empirical evidence and case studies, the research explores the nuances of Collaborative Law, highlighting its advantages over traditional litigation methods. Furthermore, it examines the broader implications of integrating Collaborative Law into the family dispute resolution framework, emphasizing its potential to enhance client satisfaction, preserve familial relationships, and alleviate the burden on the judicial system. By shedding light on the evolving landscape of family law practice, this article underscores the importance of embracing collaborative approaches to address the complex dynamics of familial conflicts.

Keywords:

Collaborative Law, Family Disputes, Alternative Dispute Resolution (ADR), Mediation, Negotiation, Client Satisfaction, Adversarial Confrontations, Judicial System, Amicable Resolutions, Empirical Evidence.

Chapter-I

Introductory Chapter

1.1. Introduction

Alternative dispute resolution (ADR) is an umbrella term encompassing various methods for resolving disputes outside of traditional litigation. Sometimes the "A" in ADR is interpreted as "appropriate" instead of "alternative," emphasizing the search for the most suitable way to resolve disputes. In some cases, the acronym is shortened to just "dispute resolution," indicating that all approaches to dispute resolution are considered. Regardless of the interpretation, ADR focuses on expanding the available tools for resolving conflicts.

Beyond merely grouping approaches, ADR is also seen as a philosophy. Many ADR proponents believe that utilizing different conflict resolution methods serves a larger purpose. For instance, some view ADR as a means to promote world peace or heal fractured communities. Others appreciate ADR for achieving results beyond what courts can order, enhancing the equality of disputing parties, or offering economic benefits for courts, parties, and society. Although not all ADR participants or program developers consciously endorse such lofty ideals, there is often an underlying, though unspoken, set of beliefs driving ADR efforts.¹

In Bangladesh, court-based ADR was first introduced in the Family Court Ordinance, 1985, but it remained largely inactive until the early 2000s. Under the leadership of former Chief Justice Mustafa Kamal, pilot projects were initiated in selected family courts in Dhaka, demonstrating unprecedented success. This prompted the government to incorporate ADR provisions into the Code of Civil Procedure (CPC), 1908. Initially optional, these provisions became compulsory for all civil courts with the addition of sections 89A and 89C through the Civil Procedure (Amendment) Act, 2012. ADR provisions are also included in the Labor Act, 2006, and the Artha Rin Adalat Ain (Money Loan Court Act), 2003.

Court-based ADR is now firmly established in Bangladesh, as in many parts of the world. However, widespread support does not eliminate the need to evaluate the process's effectiveness. Observations indicate that ADR has had little impact on the efficient resolution of civil suits. Evaluating the efficacy of the current legal framework for court-based ADR and identifying key challenges is crucial. This evaluation systematically considers the relationship between ADR and traditional court processes.

1.2. Title of the Research

¹<https://www.lawyernjurists.com/article/comparative-study-on-alternative-dispute-resolution-adr-in-family-court-in-bangladesh/> (accessed on 22.04.2024).

1.3. Statement of the Problem

Access to justice encompasses various dimensions beyond simply engaging with the legal system. It involves factors such as the parties’ objectives, resources, and socio-economic and cultural contexts. Effective access includes interaction with lawmakers, lawyers, and law enforcement, as well as the ability to afford legal services.

In Bangladesh, mediation is emerging as a popular alternative dispute resolution method. This voluntary process involves a neutral facilitator helping parties reach a mutually acceptable agreement. Mediation is typically more cost-effective and quicker than traditional litigation. Unlike court proceedings, mediation does not involve a judge or imposed decisions, and it maintains confidentiality—offers or admissions made during mediation cannot be used unless a settlement is reached.

Despite its benefits, mediation is not yet widely embraced by the general population, who continue to endure the complexities and delays of court-based litigation. According to Article 27 of the Constitution of the People’s Republic of Bangladesh, “All citizens are equal before law and are entitled to equal protection of law.” However, many Bangladeshi citizens cannot afford to access legal services and thus fail to benefit from the protections and remedies provided by the law.²

Litigation costs in Bangladesh are often inflated by the need to pay bribes. In fact, 63 percent of parties find themselves forced to bribe court officials to expedite their cases. Delays further exacerbate these costs, as repeated court appearances increase the total fees paid to lawyers. According to the Transparency International Global Corruption Report 2007, Bangladesh has only 77 Supreme Court judges and 750 subordinate court judges for a population of nearly 150 million. Institutional training on ADR in Bangladesh remains limited, with existing laws focusing primarily on the procedural aspects of ADR. Therefore, practical guidance on conducting effective mediation would be a valuable asset for practitioners in this field.³

Access to formal justice in Bangladesh is severely limited by a significant backlog of cases and delays in their resolution. Enforcement of legal orders is another critical measure of access to justice. If court decrees cannot be enforced, victories in court do not translate into real-life wins. Delays in both resolution and execution are particularly burdensome for the poor, especially women, who often rely on husbands for financial support. Until women can realize their post-separation entitlements, they may lack any means of support. Thus, delays in enforcement, or “execution of the decree,” significantly hinder real access to justice.

In Bangladesh, the legal process is often cumbersome, time-consuming, and costly, particularly for the poor who may struggle with the complex and unfamiliar procedures for pressing

² <https://bdlawdigest.org/adr-and-mediation-in-bangladesh.html> (accessed on 22.04.2024)

³ Chowdhury J.A. ADR THEORIES AND PRACTICES: (London College of Legal Studies, 2018), (accessed on 22.03.2024).

charges. The administration of justice faces two main issues: the laws are difficult for the poor and illiterate to understand, and law enforcement tends to favor those with money and political influence. Additionally, the high costs of legal services make the formal legal system inaccessible to average citizens. Consequently, economic disadvantage is a significant barrier to accessing justice, often resulting in a system that favors those with greater resources or societal power.

1.4. Research Questions:

This research aims to explore the prospects and challenges of Alternative Dispute Resolution (ADR) in family courts. ADR is a process of settling disputes outside the formal judicial system through mutual compromise and agreement, either personally or through representatives. Essentially, ADR resolves disputes without court intervention, avoiding the negative publicity, acrimony, high costs, and technical complexities often associated with litigation. ADR is particularly suitable and necessary for family matters due to the unique nature of these disputes, which require a specialized approach to dispute resolution. The Bangladeshi government has successfully incorporated ADR policies to ensure justice. There are several reasons for integrating ADR into Bangladesh's judicial system.

A primary reason for incorporating ADR is to avoid the judicial system's delays. Currently, more than 50 percent of litigation cases are pending, and cases that should be resolved within one or two years often take nine to ten years. Consequently, many victims do not receive timely justice. ADR was introduced to address this issue. Additionally, most Bangladeshi citizens live below the poverty line and cannot afford the high costs of litigation, which discourages them from seeking justice in court. ADR schemes aim to reduce these costs.

While this research seeks to identify effective and efficient methods for achieving justice through ADR, there are certain loopholes that may hinder the realization of ADR's objectives.

1.5. Objectives of the Study

The objective of this research is to compare the ADR system of Bangladesh with other systems. Although Bangladesh is relatively new to ADR, the government is striving to integrate it into the judicial system effectively.

The objectives of the study are as follows:

- i. To analyse the ADR system in Bangladesh, identify its shortcomings, and propose solutions to address these issues.
- ii. Find out the real loopholes regarding the ADR in family laws and litigations of Bangladesh.
- iii. To discuss the scope how to acknowledge people more and more about the ADR process in rural areas.

- iv. To discuss whether the number of family courts of Bangladesh are enough ensuring the ADR process among the people.

1.6. Background of the Study

The history of alternative dispute resolution (ADR) in Bangladesh includes traditional informal methods like the panchayet and salish, which have been used in village settings for resolving disputes. Statutory ADR, introduced more recently, aligns with the formal legal system. The British established the panchayet system in 1870 for minor disputes. The Muslim Family Laws Ordinance (MFLO) of 1961 created 'Arbitration Councils' for family disputes, and specialized family courts incorporating conciliation processes were established in 1985. Despite these efforts, traditional courts faced challenges due to ineffective mechanisms. A significant advancement in ADR came in 1999 with the formation of the Bangladesh Legal Study Group (BLSG) under Justice Mustafa Kamal, marking a key development in the evolution of ADR in Bangladesh.⁴

The pilot project clearly demonstrated that the success rate of dispute resolution and claim realization through mediation was significantly higher and more effective than through regular trials. ADR successfully altered the mental attitudes of judges, lawyers, litigants, and even critics. Justice K.M. Hassan highlighted the potential of ADR in Bangladesh, noting that the success of mediation in family courts is just the beginning. He expressed optimism for the future, envisioning the introduction of ADR mechanisms in other courts, such as Commercial Courts. The positive experiences in family courts have laid a strong foundation for implementing ADR across various types of cases.

All three of the pilot programs were up and running by January 2001. As judges started reaching settlements in court, the initiative progressively spread to more courts across the nation. By the conclusion of the first year, 16 pilot family courts spread over 14 districts in Bangladesh had implemented the legal dispute resolution process for family conflicts. In 2002, the Law Minister organized a symposium to raise awareness of the remarkable settlement rates attained by these courts. A comparable credit system was established for cases resolved by mediation, since Bangladesh employs a system of judicial credits for the professional progress of judges (depending on the quantity of cases concluded by trial).⁵

1.7. Scope of the Study

⁴<https://www.coursehero.com/file/103193006/Application-of-ADR-in-Family-Court-A-Critical-Analysis-Under-Legal-Framework-and-Practice-in-Banglad/> (accessed on 24.05.2024).

⁵<https://www.lawyersnjurists.com/article/comparative-study-on-alternative-dispute-resolution-adr-in-family-court-in-bangladesh/> (accessed on 24.04.2024).

This study examines Court-Based Alternative Dispute Resolution (ADR) in Bangladesh, highlighting that it includes a variety of ADR mechanisms rather than a single process. The focus is on how the court system is adapting ADR and how ADR itself is evolving within this framework. It reviews existing ADR provisions, assesses their effectiveness in resolving disputes, and specifically looks at civil and family law matters. By analyzing secondary data, the study evaluates the impact of ADR on civil suits and explores potential improvements to the current ADR framework.

This research aims to identify the major challenges facing court-based ADR in Bangladesh and propose solutions to enhance its success. The study employs both primary and secondary research methods, including analysis of relevant legal provisions and examination of stakeholder opinions. By exploring the myths, perceptions, and practices of stakeholders, the study identifies the main barriers to achieving ADR goals. It asserts that the challenges of ADR in family courts can be overcome through feasible and effective solutions.

Through thorough analysis of legal provisions and stakeholder opinions, this research seeks to identify potential improvements within current laws and practices. The goal is to enhance the legal system's capacity to resolve family disputes through alternative methods, ensuring better mechanisms and greater success in the ADR process.

1.8. Limitation of the Study

Despite the wealth of information available in textbooks, journals, and on the internet, it remains insufficient for the present study's objectives. Considering time and cost constraints, this research, conducted as part of the LL.M honours requirements, had to be completed within a tight timeframe of four months. Additionally, the research is confined by a prescribed word limit, leaving limited scope for a comprehensive study. Despite these challenges, the study aims to achieve its objectives to the best of its ability. While unavoidable limitations and shortcomings may exist, efforts were made to fulfil the study's aims.

1.9. Methodology

There are two types of methodology, which are generally used for making research on any topic:

- Primary and
- Secondary

Primary methodology is one where the research is made by researching in field level or laboratory. On the other hand, the secondary methodology is one where the research is made by collecting data from internet, magazine or books.

Here, the researcher uses secondary methodology for making this research because here the researcher has collected information from text books, articles and website. This study would be based among other or secondary sources such as books, articles, journal, case materials and

internet sources. Beside this, from the point of view of the application and explanation of the data and information, a research is of two types.

- Qualitative research
- Quantitative research

Furthermore, my field research, which combined both formal and informal methods of investigation, was conducted over a span of several months. While quantitative data are essential for gauging the prevalence of a phenomenon, qualitative study delves into its complexities, focusing on internal aspects of respondents' lives. This research follows a qualitative method, aiming to gather extensive information to address the research questions effectively.

1.10. Literature Review

Court-based Alternative Dispute Resolution (ADR) involves courts redirecting certain cases to ADR mechanisms instead of proceeding to trial. This occurs after parties have presented their case in court, and the court refers the matter to an ADR process for resolution.

The Universal Declaration of Human Rights (UDHR) of 1948, adopted by the UN General Assembly, emphasizes the right to recognition as a person before the law in Article 6: "Everyone has the right to recognition everywhere as a person before the law."

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) aims to ensure social rights for individuals. Its provisions are crucial for guaranteeing access to justice for all members of society.⁶

Chowdhury, Dr Jamila A. (2013) in the book entitled "ADR THEORIES AND PRACTICES" highlights primarily designed for courses on ADR with reference to theories of ADR, some key aspects and its modes of practice in Bangladesh.

Haque, Dr.Muhammad Ekramul (2015) in the book entitled " MUSLIM FAMILY LAW" highlights family laws and relevant statutory provision of Bangladesh. Analysis of modern reforms around the world and the discussion on important case laws regarding family laws.

1.11. Conclusion

The implementation of Alternative Dispute Resolution (ADR) mechanisms in Bangladesh has been a remarkable and successful development in resolving disputes through alternative means. When disputes are amicably resolved, saving time and costs for litigants. The inclusion of compulsory ADR provisions in the Family Court and certain sections of the Code of Civil Procedure, 1908 has significantly expanded access to fair justice for all citizens, particularly

⁶ Chowdhury Dr. Jamila. ADR THEORIES AND PRACTICES: (London College of Legal Studies, 2018), 27. (accessed on 24.04.2024).

for marginalized and disadvantaged groups. These recent provisions have opened doors for access to justice, especially for those who are poor and illiterate.

As a result, both the Civil court and the Family Court have achieved considerable success in their respective fields through ADR. This article highlights the effectiveness of ADR mechanisms and the efficient outcomes they have produced in Bangladesh. Therefore, considering the contents of this article, it is evident that ADR plays a crucial role in improving justice by circumventing procedural complexities and providing accessible avenues for dispute resolution.

Chapter – II

General Concept of ADR

2.1. Introduction

Alternative Dispute Resolution (ADR) has garnered significant attention as a method for alleviating both the financial and emotional burdens associated with litigation. By shifting cases away from the courts and the adversarial process, it often leads to quicker resolutions and greater satisfaction among the parties involved. Disputes arise when the interests of multiple individuals clash, and they are an inherent part of life. To address this global challenge, various countries have incorporated different methods into their legal systems in the form of ADR. ADR is not intended to replace adjudication but rather serves as a complementary mechanism to alleviate the workload and pressure on the courts. It is important to note that the use of ADR does not imply that it is inferior to court proceedings. As described by Mr. Justice Mustafa Kamal, ADR's novelty lies in its purpose: “The purpose of alternative dispute resolution is not to substitute consensual disposal for adversarial disposal or to abolish or discourage informal.”⁷

Alternative Dispute Resolution (ADR) is a tangible, pragmatic, and time-honored approach to resolving disputes outside the courtroom. It saves both time and money, utilizing the simple common sense of ordinary people within society, guided by experts in the field. ADR respects the beliefs and values of communities, striving to maintain peace and harmony among parties involved. It involves the assistance of neutral individuals and encompasses a variety of processes, including negotiation, mediation, arbitration, conciliation, ombudsman services, and even malpractice screening panels as deemed appropriate. By introducing an innovative dimension to the legal profession, ADR enhances the overall effectiveness of the justice delivery system.⁸

⁷<https://www.thedailystar.net/chief-justice-mustafa-kamal-iconic-legal-giant-of-bygone-age-64016> (accessed on 28.05.2024).

⁸ <http://bdlawdigest.org/adr-and-mediation-in-bangladesh.html> (accessed on 28.05.2024).

2.2. How It Comes

The adoption of the ADR system presents an alternative approach rather than a substitute for traditional litigation methods. In areas where complex questions of fact and law arise, the adversarial system may remain necessary. However, there exists a vast area of litigation where consensual dispute resolution methods are more appropriate, despite potential legal complexities within this realm.

Consensual dispute resolution entails a shift in mindset for judges, lawyers, and the litigant public, requiring them to gradually adapt to a collaborative approach to resolving disputes. Unlike the passive role of a judge in an adversarial system, consensual methods involve active participation from judges, lawyers, litigants, and outside mediators or evaluators. This approach is characterized by informality, confidentiality, speed, and cost-effectiveness. Importantly, it preserves the jurisdiction of the trial court to adjudicate the case on its merits in the event that ADR fails.⁹

2.3. Object of the ADR

The object of Alternative Dispute Resolution (ADR) is to provide an alternative means of resolving disputes outside the traditional courtroom litigation process. ADR methods, such as mediation, arbitration, negotiation, and conciliation, aim to resolve conflicts more efficiently, cost-effectively, and amicably. The primary objectives of ADR include:

1. **Reducing Time and Costs:** ADR often resolves disputes faster and at a lower cost compared to litigation.
2. **Maintaining Relationships:** ADR encourages cooperative problem-solving and can preserve or even improve relationships between the parties involved.
3. **Confidentiality:** ADR processes are usually private, helping to keep sensitive information out of the public domain.
4. **Flexibility:** ADR allows parties to tailor the process and solutions to their specific needs, unlike the rigid procedures in court.
5. **Control Over the Outcome:** Parties have more control over the outcome in ADR, as they can negotiate settlements rather than having a decision imposed by a judge.
6. **Reduced Formality:** ADR processes are generally less formal than court proceedings, making them more accessible and less intimidating for the parties involved.

In summary, the object of ADR is to provide a more effective, private, and less adversarial means of resolving disputes.

⁹ <https://www.lawyersnjurists.com/article/comparative-study-on-alternative-dispute-resolution-adr-in-family-court-in-bangladesh/> (accessed on 18.05.2024).

2.4. Advantages of ADR

For a number of reasons, proponents of alternative dispute resolution (ADR) contend that it is preferable to litigation. First off, alternative dispute resolution (ADR) is typically less expensive and speedier than regular court proceedings. It encourages the disputants to participate directly instead of submitting to the state, advocates and courts. The disputants typically get the chance to specify the procedure they will follow and the parameters of any agreements they achieve. This type of participation is seen to improve adherence to the agreements established and raise satisfaction with the results.

The exorbitant costs associated with any dispute resolution system or mechanism can severely hinder the ability of disputants to access justice, which is the cornerstone of a fair legal system. This issue is particularly acute in family matters, where many victims, often jobless housewives, may struggle financially. In contrast, out-of-court mediation, including initiatives led by NGOs, can alleviate this financial burden. For instance, organizations like Bangladesh Legal Aid and Services Trust (BLAST) and Ain O Shalish Kendro (ASK) offer mediation services free of charge. Additionally, the Bangladesh National Women Lawyers' Association (BNWLA) only charges a nominal registration fee of 20 BDT.¹⁰

In family matters, Alternative Dispute Resolution (ADR) systems typically operate without complex procedural or evidentiary rules, as they are primarily focused on facts and actions, and are inherently person-oriented. This simplicity and absence of the need for legal representation significantly reduce costs associated with ADR. Additionally, ADR practices help minimize the likelihood of case delays, ensuring quicker resolution.

Furthermore, ADR mechanisms in family matters can play a crucial role in delivering justice to the poor and other disadvantaged individuals. They have a particularly significant impact on protecting women's rights both within the family and in broader society. Due to its affordability and accessibility, ADR allows individuals to address dispute issues at a nominal cost that they can afford. This has led to a shift in attitudes among men, who increasingly recognize the importance of treating women equitably.¹¹

2.5. Achievements of ADR

Since July 1, 2003, civil courts have integrated mediation for non-family disputes. A survey conducted following the introduction of mediation into the civil justice system revealed that by July 31, 2004, a total of 3,432 non-family litigations had been resolved through this approach. Additionally, in cases involving money loans, the loan court successfully disposed of 13,157

¹⁰ Chowdhury, J. A. (2013). 145 ADR Theories and Practices (accessed on 18.05.2024).

¹¹ Khair, S. (2004). P 87 Alternative Dispute Resolution: How It Works in Bangladesh. The Dhaka University studies Part F, 15(1), 59-92. (accessed on 18.05.2024).

cases between May 1, 2003, and July 31, 2004. During this period, the loan court recovered Tk 996 crores and 5 lakhs from defendants, which was then transferred to the plaintiffs, mainly banks and financial institutions. This recovery amount is noted to be ten times greater than what had been achieved through execution cases over the previous decade. Mr. Justice Mustafa Kamal aptly remarked, "The wind is blowing in the right direction, as ADR is capturing the imagination of the people."¹²

The following details demonstrate how much success has been achieved in the resolution of various instances through the implementation of ADR schemes:

1. Approximately 60% of disputes resolved in family courts have been reached through compromise through the mediation procedure.
2. From 2000 to 2004, more than 2418 disputes under the pilot initiative were resolved through mediation.
3. From 2003 to 2006, more than 12402 cases under sections 89A and 89C of the Code of Civil Procedure, 1908, were resolved by mediation.
4. ADR was used to settle over 24945 disputes in the Artha Rin Adalat Ain between 2003 and 2006.¹³

2.6. Disadvantages of ADR

While Alternative Dispute Resolution (ADR) offers several potential benefits, critics raise valid concerns about its drawbacks. Some argue that ADR outcomes may be perceived as inferior or "second-class justice," particularly because those unable to afford court proceedings are more likely to resort to ADR. This could result in compromised victories due to the collaborative nature of ADR. Furthermore, ADR may not be suitable for every dispute, particularly if it occurs prematurely without sufficient information. Parties may also face costs such as fees charged by neutrals and, if ADR fails, traditional legal expenses like attorney's fees. Several loopholes exist within the ADR system that hinder its effectiveness:

- 1) Inadequate institutional frameworks.
- 2) Insufficient training for mediators and arbitrators.
- 3) Lack of public education about ADR.
- 4) Negative perceptions of ADR among legal professionals.
- 5) Limited awareness among the public.
- 6) Optional non-adherence to ADR in certain cases.
- 7) Presence of corruption within ADR mechanisms.
- 8) Absence of a dedicated legal code for ADR.
- 9) Lack of accountability for judges, mediators, and arbitrators.

¹² <https://www.lawyersnjurists.com/article/comparative-study-on-alternative-dispute-resolution-adr-in-family-court-in-bangladesh/> (accessed on 18.05.2024).

¹³ <https://www.researchgate.net/publication/331973324> The effectiveness of alternative dispute resolution in Bangladesh A critical analysis (accessed on 18.05.2024).

Despite its efficiency, ADR's effectiveness is impeded by these loopholes, posing barriers to achieving its objectives.

2.7. Development of ADR in Bangladesh

Professor M Shah Alam characterizes the substantial backlog of cases facing Bangladesh's judiciary as "eating away at Bangladesh Judiciary." This backlog leads to frustrating delays in the adjudicative process, further exacerbating the issue. The current pace of case disposal is alarming, undermining the principles of justice and hampering the country's economic growth. Unfortunately, a clear solution to this problem is not readily apparent.

The people of Bangladesh have lost faith in the court system's ability to address their grievances within their lifetime due to excessive delays during proceedings. Civil suits, which should ideally be resolved within one to two years, often linger on for a decade or more. In many cases, by the time a judgment is delivered, its relevance has diminished. The prolonged delays in case disposal have transcended mere inconvenience, evolving into a form of injustice and a violation of human rights.

In response to this pressing issue, three pilot programs were established and fully operational by January 2001. These programs aimed to expedite case resolution by empowering judges to settle disputes efficiently. Following successful implementation, the initiative gradually expanded to additional courts nationwide. By the end of the inaugural year, 16 pilot family courts across 14 districts had effectively introduced judicial settlement procedures for family disputes. The high success rates achieved by these courts prompted the Law Minister to convene a conference in 2002 to raise awareness about these achievements.

Recognizing the significance of case settlements through mediation, Bangladesh introduced a credit system akin to the one used for judges' career advancement based on the number of cases resolved through trial. This initiative underscores the government's commitment to promoting alternative dispute resolution methods to alleviate the burden on the judicial system and expedite the delivery of justice.¹⁴

2.8. Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) encompasses a diverse array of methods for resolving conflicts outside the formal court adjudication process. These initiatives, including court-related endeavors, aim to streamline the administration of justice and mitigate delays inherent

¹⁴ <https://www.lawyersnjurists.com/article/comparative-study-on-alternative-dispute-resolution-adr-in-family-court-in-bangladesh/> (accessed on 18.05.2024).

in traditional court procedures. ADR processes can operate independently of litigation, either before or after formal legal action has commenced, and are particularly valuable for resolving disputes where parties are disinclined to pursue court proceedings. Despite their varying approaches, all aim to reduce court backlog, cut costs and delays, and provide more efficient and satisfactory resolutions. ADR offers a range of methods, allowing parties to choose approaches that best fit their needs, which enhances the potential for favourable outcomes and improves the quality of justice and public perception.

2.9. The scope of the Arbitration Act, 2001

The Arbitration Act 2001 serves as the primary legislation governing arbitration in Bangladesh, drawing inspiration from the United Nations Commission on International Trade Law (UNCITRAL) Model Law of 1985. However, unlike the Model Law, which has undergone revisions to reflect evolving trends in global arbitration practices, the Arbitration Act 2001 has not seen similar updates. Consequently, its limitations have become increasingly apparent, leading to widespread criticism and scrutiny.

One contentious aspect of the Arbitration Act 2001 revolves around its scope of application. Section 3(1) of the Act stipulates that it applies exclusively to arbitrations conducted within Bangladesh. This provision seemingly precludes the application of the Act to arbitrations taking place outside the borders of Bangladesh. This limitation has been a subject of debate and critique within the legal community, highlighting a significant gap in the legislation's efficacy and adaptability to international arbitration standards.¹⁵ The limited application of the Arbitration Act 2001 poses significant challenges, particularly regarding the inability to obtain interim measures from Bangladeshi courts for arbitrations conducted outside the country. This limitation creates practical hurdles for parties seeking urgent relief during international arbitrations.

Moreover, Section 3(1) of the Arbitration Act 2001 has sparked conflicting interpretations from different benches of the High Court Division of the Supreme Court of Bangladesh. This discrepancy has exacerbated the confusion surrounding the application of the Act. One notable case illustrating this confusion is the HRC case, which arose from a dispute concerning the shipment of goods governed by a charter agreement. In this instance, HRC fulfilled its contractual obligations by shipping cargo in 53 containers from Bangladesh to Sri Lanka.¹⁶ The unfortunate incident involving the ship being struck by a tsunami resulted in the loss of some cargo, which fell into the sea. HRC argued that the loss was not solely due to the tsunami but also resulted from the negligence of the ship's crew. Consequently, HRC initiated an Admiralty Suit in the Bangladeshi courts seeking compensation and damages.

¹⁵ <https://www.biac.org.bd/arbitration-act-2001/> (accessed on 18.05.2024).

¹⁶ <https://lawhelpbd.com/business/the-scope-of-the-arbitration-act-2001/> (accessed on 18.05.2024).

However, Defendant Nos 5 and 6, relying on the arbitration clause within the charter agreement, initiated arbitration proceedings in London. They subsequently applied for the Bangladeshi suit to be stayed under Section 10 of the Arbitration Act 2001. This scenario highlights the interplay between the Arbitration Act 2001 and the jurisdiction of Bangladeshi courts in cases involving arbitration agreements, raising questions about the Act's scope and applicability.

2.10. Conciliation

The analysis suggests that mediation is still evolving as an alternative dispute resolution mechanism in Bangladesh. Despite its current limitations, it undeniably plays a crucial role in delivering justice to the public. Given the overwhelming caseload burdening Bangladeshi courts, there is a growing recognition of the importance of alternative dispute resolution methods like mediation.

It is time to acknowledge and embrace the concept of mediation fully. This entails not only amending existing laws but also ensuring their effective enforcement. The increasing prevalence of NGO mediations, court-connected mediations, and legal provisions pertaining to mediation indicates a promising future for dispute resolution in Bangladesh.

By fostering a supportive environment for mediation, Bangladesh can pave the way for a more efficient and accessible justice system. Embracing mediation as a primary tool for resolving disputes holds the potential to alleviate the strain on the judicial system and enhance access to justice for all.

CHAPTER- III

ADR Applicable in Family Courts

3.0. Introduction

ADR, or Alternative Dispute Resolution, primarily applies to civil cases. However, the conventional process within a competent court jurisdiction often results in significant delays and inefficiencies. Typically, the initiation of a civil case involves prolonged service of process, defendants frequently exceeding the statutory period for submitting written statements, and a lack of initiative in screening out frivolous cases during initial hearings. Additionally, procedural tools aimed at expediting cases, such as Orders XI and XII of the Code of Civil Procedure (CPC), are often underutilized, leading to protracted proceedings.

Issues further compound as cases take years to reach a settlement date, with overcrowded hearing schedules causing delays and disruptions. Moreover, the frequent transfer of presiding judges and the involvement of multiple judges throughout the case proceedings can lead to inconsistencies and inefficiencies in the adjudication process.

In contrast, ADR offers a range of resolution methods, including negotiation, conciliation, mediation, arbitration, and hybrid procedures. While arbitration yields binding decisions, conciliation fosters consensual dispute resolution with the assistance of a neutral third party. Negotiation allows parties to explore non-binding settlement options independently, while mediation involves a third-party mediator facilitating decision-making to reach mutually acceptable outcomes.

One significant advantage of ADR is its potential to minimize conflict escalation and preserve relationships between party's post-settlement. By facilitating constructive dialogue and collaborative decision-making, ADR aims to achieve resolutions that are acceptable to all parties involved.¹⁷ When it comes to ease of use, quickness, adaptability, and accessibility, "Alternative Dispute Resolution" procedures outperform the current legal system.

3.1. Analysis of ADR on Family Matters in Bangladesh

Though the precise period cannot be determined, ADR in Bangladesh may have emerged with the development of several traditional informal judicial systems, such as panchayet or local salish. Salish is a customary informal method of resolving conflicts that is primarily used in rural areas.¹⁸ Statutory ADR represents a recent addition to the formal justice system, aligning with traditional methods of dispute resolution in Bangladesh. The British government introduced the panchayet system in 1870 to amicably resolve minor disputes, particularly those related to revenue collection, reflecting a common practice in India.

In 1961, the Muslim Family Laws Ordinance (MFLO) established quasi-formal local bodies known as 'Arbitration Councils' to settle family disputes among couples. Following independence, Bangladesh established specialized family courts in 1985, integrating

¹⁷ Sinha, SNP, and Mishra, Dr PN (2004) p.300 A Dire Need of Alternative Dispute Resolution System in a Developing Country Like India. INDIAN BAR REVIEW. (accessed on 18.05.2024).

¹⁸ Halim, M. A. (2008). Constitution, Constitutional Law and Politics (accessed on 18.05.2024).

conciliation processes within different stages of trial proceedings. However, due to inefficiencies within the legal system and the rudimentary nature of trial procedures, resolving disputes in a timely and diligent manner remained challenging for the courts.

A significant breakthrough occurred in 1999 with the initiation of a forward-thinking initiative led by then Justice Mr. Mustafa Kamal. The establishment of the Bangladesh Legal Study Group (BLSG), under Justice Kamal's guidance alongside other esteemed jurists, marked a turning point. This collaborative effort aimed to address the shortcomings of the legal system and explore innovative solutions for expediting dispute resolution processes in Bangladesh.

3.2. Suitability of ADR on Family Suits

First off, the primary tenet of justice—the ability of disputants to get justice—may be hampered by the high expenses of any conflict resolution method or procedure. Because the majority of victims in family problems are housewives without jobs, this issue is particularly serious. In contrast, individuals might not be required to pay for such expenses in the event of non-profit and out-of-court mediation. For instance, Bangladesh Lawyers Association (BNWLA) charges a mere 20 BDT for registration, whereas Bangladesh Legal Aid and Services Trust (BLAST), Ain O Shalish Kendro (ASK), and others provide free mediation services. Prof. Sumaya Khair correctly notes that "the least tangible benefit from mediation services is the reduced cost of resolving the disputes."¹⁹ After considering the aforementioned points, it can be concluded that ADR is a desirable and useful technique when it comes to family affairs.

Secondly, the facilitators of ADR in family matters are not bound by complex procedural or evidentiary rules, as the focus is on facts and actions rather than strict adherence to legal protocols. A good ADR mechanism prioritizes the individuals involved, emphasizing simplicity and accessibility. This simplicity, coupled with the absence of a requirement for legal representation, reduces costs associated with ADR and minimizes the likelihood of case delays.

Thirdly, the ADR system in family matters holds the potential to ensure justice for the poor and other disadvantaged individuals, particularly women. By offering a cost-effective and straightforward means of resolving disputes, ADR empowers individuals to address issues that affect their rights and well-being within the family and society. The accessibility of ADR mechanisms facilitates the dissolution of disputes at a nominal cost, promoting equitable treatment of women and fostering a shift in societal attitudes towards gender equality.

Moreover, for victims from rural areas, accessing formal court systems may be stigmatized, and the adversarial nature of trials can clash with traditional family values and prestige. In

¹⁹ Khair, S. (2004).p 85 Alternative Dispute Resolution: How It Works in Bangladesh. The Dhaka University studies Part F, 15(1). (accessed on 18.05.2024).

contrast, ADR mechanisms prioritize privacy and respect the cultural sensitivities of disputants, providing a more conducive environment for resolving family matters discreetly.

Additionally, the informal nature of ADR imbues it with a unique character, characterized by flexibility and party autonomy. Parties have the freedom to tailor the resolution process to their specific needs, resulting in a less stressful and more collaborative experience compared to litigation in court.

Finally, unlike adversarial trials where one party typically emerges as the winner, successful ADR often yields win-win outcomes. By fostering nonviolent dispute resolution, ADR helps parties maintain harmonious relationships and facilitates ongoing cooperation. The ability to select decision-makers and customize proceedings further enhances the likelihood of reaching mutually beneficial resolutions, contributing to long-term relationship stability.

3.3. Manifestations of ADR in Family Court Trial

The intricate, protracted, and expensive dispute settlement system in Bangladesh creates barriers to justice for the poor and the general populace. However, Alternative Dispute Resolution (ADR) alleviates formal complexities, unnecessary delays, and cumbersome procedures, particularly in addressing sensitive family matters. Thus, ADR is imperative for ensuring effective and desirable outcomes, especially in delicate family affairs. The Bangladeshi legal framework has endeavored to integrate ADR mechanisms for resolving family disputes.

The establishment of family courts in Bangladesh under the Family Courts Ordinance (FCO) of 1985 marks a significant governmental decision. Prior to the enactment of the FCO, family-related litigations were adjudicated in ordinary civil courts. This often resulted in formalities, prolonged proceedings, and expenses that placed justice beyond the reach of many. Additionally, the Muslim Family Laws Ordinance (MFLO) exclusively applied to Muslim communities, limiting ADR procedures to citizens of Islamic faith and excluding others. Therefore, a separate comprehensive law was necessary to address family disputes uniformly across all religious communities.²⁰ The Family Courts Ordinance (FCO), 1985, includes provisions for alternative dispute resolution (ADR) through pre-trial, pre-judgment, and post-judgment mediation as detailed in Sections 10, 13, and 23. Section 5 of the FCO addresses key family disputes such as marriage dissolution, restitution of conjugal rights, dower, maintenance, and child guardianship and custody.

3.4. Pre-Trial Conciliation

²⁰ file:///F:/Research%20Sample/Application-of-ADR-in-Family-Court_A-Critical-Analysis-Under-Legal-Framework-and-Practice-in-Bangladesh.pdf (accessed on 11.05.2024).

Section 10 of the Family Courts Ordinance (FCO) outlines the procedure for pre-trial conciliation in family disputes. Upon the filing of the defendant's written statement, the family court is mandated to schedule a pre-trial hearing within 30 days. During this hearing, the court thoroughly examines the plaint, the written statement, and any accompanying documents filed by the parties. Additionally, the court may choose to hear the parties if it deems necessary.

The provision for Alternative Dispute Resolution (ADR) is explicitly stated in Section 10(3) of the FCO 1985. At the pre-trial hearing, the court is tasked with identifying the points of contention between the parties and endeavouring to facilitate a compromise or reconciliation. If the parties agree to mediate, the presiding judge typically convenes a session in their chambers. While lawyers may or may not be permitted to attend, it is common practice for family court judges to exclude lawyers from the conciliation session in most cases.

3.5. Pre-Judgment Conciliation

Section 13 of the Family Court Ordinance 1985 outlines the provision for pre-judgment mediation. In the event that pre-trial mediation proves unsuccessful, and after the completion of the trial proceedings but before delivering judgment, the judge shall inquire about the parties' willingness to resolve the dispute through mediation. If the parties mutually agree, the court will issue a compromise decree.

A notable aspect of family court mediation is its mandatory nature, as stipulated in both Sections 10 and 13 of the ordinances.

3.6. Post-Judgment Arbitration

Under Section 23 of the Family Courts Ordinance (FCO), post-judgment mediation is initiated when a divorce decree is issued. The judge sends the decree to the chairman of the Union Council or Municipality, who then follows Section 7 of the Muslim Family Laws Ordinance (MFLO) by starting mediation. An Arbitration Council, formed within 30 days of the notice, mediates between the parties. If successful, the divorce is revoked and the marriage reinstated; if unsuccessful, the divorce is finalized 90 days after the decree is received by the chairman, or after the wife's pregnancy ends, whichever is later.

3.7. Statutory Limitations and Practices of ADR in Family Courts

Initially, there were uncertainties and ambiguities regarding the applicability of the Family Courts Ordinance (FCO) 1985 based on religion. However, these ambiguities have been clarified through judicial decisions. Initially, there was a contention that the FCO only applied to Muslims and not to individuals of other religions. This issue was addressed in the case of

Krisnapada Talukder vs. Geetasree Talukder.²¹ The question arose regarding whether a Hindu female could claim maintenance under the Family Courts Ordinance (FCO). Initially, the High Court Division held that the FCO was only applicable to individuals belonging to the Islamic religion, thereby excluding people from other religions from seeking remedies under the ordinance. However, this view was later overturned in the case of Pochon Rikssi Das Vs Khuku Rani Dasi and others, resolving the confusion.

In this case, it was clarified that the FCO does not infringe upon the personal rights of litigants from any faith. The ordinance applies to all litigants, regardless of their religious affiliations. Consequently, Family Courts have jurisdiction over all citizens covered by Section 5 of the FCO 1985.²²

Family Courts are empowered to offer alternative dispute resolution methods in lieu of conventional court processes. When parties agree to mediate, the presiding judge typically convenes a session in their chambers. However, it's commonly observed that family court judges exclude lawyers from the mediation session, which can hinder the parties' ability to reach a mutually agreeable resolution. The essence of mediation is for parties to express their grievances and actively participate in reaching reconciliation. However, time constraints, lawyer unwillingness, and non-facilitation from judges often impede this process. Despite satisfactory legal provisions for mediation in the Family Courts Ordinance (FCO), practical outcomes are often subpar due to ground-level practices.

Regarding post-judgment reconciliation by Arbitration Council, concerns arise from statutory limitations and practices. The Muslim Family Laws Ordinance (MFLO) mandates the chairman to establish an arbitration council, but does not specify consequences if the chairman fails to do so. Consequently, the scheme of arbitration councils has become optional rather than mandatory. Even if an arbitration council is constituted, there are no provisions for remedying situations where effective steps are not taken to reconcile the parties. This ambiguity in the MFLO contributes to the frustration of reconciliation efforts.²³ Furthermore, chairmen of Union Parishad do not do their obligations in the reconciliation process in a neutrally good manner given the socioeconomic reality of Bangladesh. Legal Obstacles to ADR Implementation.

3.8. Findings and Recommendations to Subdue Roadblock

Addressing the existing challenges within family affairs Alternative Dispute Resolution (ADR) requires adopting appropriate policies and practical measures, as indicated by the following research findings:

²¹ (BLD 1994 HCD, p. 415) (accessed on 11.05.2024).

²² (50 DLR (AD), p. 47) (accessed on 11.05.2024).

²³ Huda, S. (2004). P 227 Personal Laws in Bangladesh: The Need for Substantive Reforms. The Dhaka University studies Part F. (accessed on 11.05.2024).

- Family disputes resolved through ADR are often sensitive and complex, necessitating a higher level of impartiality and neutrality from personnel involved in the process.
- It is imperative that individuals associated with ADR processes maintain impartiality to ensure optimal outcomes.
- Given that decisions reached through ADR are binding, it is crucial to uphold a higher standard of transparency throughout the process.
- Many mediators and arbitrators lack sufficient knowledge and skills regarding ADR, highlighting the need for enhanced training and education in dispute resolution methods.
- Awareness about the importance of ADR among rural populations is low, leading them to prefer formal trials over ADR methods.
- Institutional arrangements and necessary resources for ADR are limited and inadequate, despite efforts by some NGOs.
- Lawyers can play a vital role in facilitating ADR in family disputes by encouraging parties to consider ADR options.

3.9. Conclusion

In conclusion, the idea of resolving family disputes through ADR is significant, and Bangladesh has made efforts to incorporate ADR mechanisms into legislative provisions from the Muslim Family Laws Ordinance, 1961, to the Family Courts Ordinance, 1985. While some positive outcomes have been achieved, challenges persist, including statutory limitations, existing practices, lawyer and judicial reluctance, party ignorance, and systemic mismanagement. Overcoming these obstacles is crucial to realizing the full potential of ADR in resolving family issues in Bangladesh.

CHAPTER- IV

The Legal Provisions of ADR

4.0. Introduction

From the analysis conducted, it's evident that mediation is still evolving as an alternate dispute resolution mechanism in Bangladesh. Despite its limitations, it plays a crucial role in ensuring access to justice for the public. With the overwhelming number of claims inundating the courts of Bangladesh, the increasing prevalence of NGO-mediated and court-connected mediation, along with legal provisions promoting mediation, signals a promising future for ADR in the country.

Considering the challenges of the formal court system and the socioeconomic context of Bangladesh, mediation emerges as a promising alternative for ensuring access to justice, particularly for the marginalized, such as the poor and women. This informal approach has the potential to alleviate the financial burden and ensure timely justice, circumventing excessive delays common in traditional litigation.

Moreover, mediation provides a platform for women to access justice while respecting social customs in Bangladesh. By offering confidential mediation sessions, women can address personal family matters without fear of social stigma or repercussions. This confidentiality fosters a conducive environment for open dialogue and resolution.

Furthermore, the cost of litigation in Bangladesh is exacerbated by bribery, with a significant portion of litigants resorting to bribery to expedite case disposal. Delays in case resolution, exacerbated by a shortage of judges, contribute to increased legal fees incurred by parties. As of 2017, a substantial backlog of cases was reported across various court levels, highlighting the urgent need for alternative dispute resolution mechanisms like mediation to alleviate the burden on the formal court system.

In conclusion, while challenges persist, mediation presents a viable solution to enhance access to justice in Bangladesh, offering a more efficient, cost-effective, and culturally sensitive approach to dispute resolution.²⁴

4.1. The Muslim Family Laws Ordinance, 1961

The Muslim Family Laws Ordinance, 1961 introduced provisions to grant women equal opportunities to dissolve marriages extrajudicially. It emphasized reconciliation in divorce cases, aligning with the principles of the Quran and Sunna. Chairmen of City Corporations or Union Parishads were entrusted with the authority to initiate reconciliation procedures between disputing parties upon receiving notice. The purpose of serving notice of talaq to the Chairmen and the wife was to discourage hasty dissolution of marriages and provide an opportunity for reconciliation, beneficial to both parties. If reconciliation efforts fail, talaq becomes effective

²⁴https://imimmediation.org/2019/05/30/mediation-in-bangladesh-makes-justice-accessible/?_cf_chl_captcha_tk (accessed on 11.05.2024).

after a 90-day waiting period from the date of notice, as per Section 7 of the Muslim Family Laws Ordinance, 1961.

Section 7 of the ordinance established a unified method for dissolving marriages, treating all talaqs by the husband as single revocable talaq. It also empowered wives to dissolve marriages through procedural laws similar to those available to husbands.

The Muslim Family Laws Ordinance of 1961 offers limited provisions for women's rights. It mandates that husbands must officially notify their wives through proper channels before initiating a talaq, or divorce. Additionally, husbands must seek their wives' permission before entering into a second marriage, thus restricting polygamy. While polygamy is a concern for other communities as well, this ordinance specifically addresses it within the Muslim community.

Under this ordinance, any disputes pertaining to Muslim family law are to be resolved by an arbitration council. Section 6 of the Muslim Family Laws Ordinance stipulates that no man, while his existing marriage is still valid, can contract another marriage without prior written permission from the Arbitration Council. Marriages entered into without such permission are not eligible for registration under the Muslim Marriages and Divorces (Registration) Act of 1974.

4.2. The Family Courts Ordinance, 1985

Established in 1985, Family Courts handle issues like marriage dissolution, conjugal rights, dower, maintenance, and child custody. Mediation is a key component, as highlighted in two provisions of the Family Courts Ordinance, 1985. Section 10 requires a pre-trial hearing within thirty days of filing a written statement. During this hearing, the Court reviews documents and evidence and may listen to the parties. If mediation fails to resolve the dispute, the Court proceeds with framing issues and scheduling evidence recording, but mediation remains an option throughout the process.

Section 13 of the Ordinance further emphasizes mediation by requiring the Family Court, after the close of evidence from all parties, to make another attempt to effect a compromise or reconciliation between the parties. Only when this final effort proves unsuccessful does the Court proceed to pronounce judgment, leading to the issuance of a decree.²⁵

Although divorce is discouraged in Islam, it does occur, and often Chairmen of Union Parishads receive notices of divorce. Sections 7 and 8 of the Muslim Family Laws Ordinance of 1961 empower these Chairmen to facilitate reconciliation between disputing parties without court intervention. Similarly, the Family Courts Ordinance of 1985 allows for conciliation

²⁵https://www.academia.edu/3578736/The_Practice_of_ADR_in_Bangladesh_Challenges_and_Opportunities?auto=download(accessed on 11.05.2024).

during court proceedings. However, these statutory provisions have not been fully understood or practiced.

The Family Court's jurisdiction is limited to civil matters related to family law, such as divorce, restitution of conjugal rights, and custody of children. It applies to all citizens regardless of religion, preserving the rights of all litigants. The Family Courts Ordinance incorporates a conciliation mechanism, allowing disputants to resolve issues informally and amicably, with the court acting as a facilitator rather than an adjudicator.

4.3. The Village Courts Ordinance 1976

The Village Courts Ordinance of 1976 allows for the trial of certain cases in rural areas. Parties to a dispute can apply to the Chairman of the Union Parishad for the constitution of a Village Court to hear their case. A Village Court consists of a Chairman and two members nominated by each party, with one member from each party being a member of the Union Parishad. Typically, the Chairman of the Union Parishad serves as the Chairman of the Village Court.’’²⁶

A Village Court has jurisdiction over cases where parties reside in the union where the issue arose. Decisions are binding and enforceable if made unanimously or by a majority of four to one. If decided by a majority of three to two, any party can petition the Assistant Judge or Sub-divisional Magistrate for review within thirty days. The authority may refer the case back to the Village Court for reconsideration. Once resolved, a matter cannot be retried in any other court, including another Village Court.

4.4. The Conciliation of Disputes (Municipal Areas) Ordinance 1979

The Conciliation of Disputes (Municipal Areas) Ordinance of 1979 outlines procedures for resolving certain cases through conciliation in municipal areas. When a case falls under this Ordinance and requires settlement via a Conciliation Board, any party involved may apply to the Commissioner for the ward where the dispute arose to establish a Conciliation Board. Upon receipt of the application in the prescribed format, the Commissioner must promptly constitute the Conciliation Board according to the prescribed procedures and within the specified timeframe. Each Conciliation Board consists of a Chairman and two members nominated by each party, with one member from each party being a commissioner of the relevant Pourashava (municipal area). The Commissioner who receives the application serves as the Chairman of the Conciliation Board.

If a Conciliation Board reaches a unanimous decision or a majority decision of four to one, it becomes binding on the parties and enforceable under the Ordinance. However, if the decision is reached by a majority of three to two, any party can petition the Assistant Judge or Sub-divisional Magistrate within thirty days to set aside or modify the decision. The authority has

²⁶ Section 6 of the the Village Courts Ordinance,1976 (accessed on 16.05.2024).

the discretion to review the decision and may choose to modify or reverse it if it determines that an injustice has occurred. Alternatively, the matter may be referred back to the Conciliation Board for further consideration. Importantly, any case resolved by a Conciliation Board under this Ordinance cannot be subject to trial in any other court at that time, regardless of other existing laws.

4.5. The Code of Civil Procedure 1908

The Code of Civil Procedure (Amendment) Act of 2003 introduced provisions for alternative dispute resolution (ADR) into The Code of Civil Procedure 1908. Sections 89A and 89B outline the framework for mediation and arbitration as alternative means of settling disputes.

Mediation:

Section 89A stipulates that after the filing of the written statement, if all contesting parties or their representatives are present in court and express willingness to attempt settlement through mediation, the court may adjourn the hearing and facilitate mediation to resolve the disputes. Alternatively, the court may refer the disputes to a mediator selected from a panel prepared by the District Judge. Mediation under this Act is defined as a flexible, informal, non-binding, confidential, non-adversarial, and consensual process, wherein the mediator facilitates compromise between the parties without imposing terms.

Within ten days of the court's referral to mediation, the parties must inform the court in writing of their decision to attempt mediation and provide the name of the mediator. If the parties comply, the mediation process must be concluded within sixty days, with the possibility of a thirty-day extension upon the court's or parties' request. However, if the parties fail to inform the court of their decision to mediate, the suit will proceed to hearing.

If a mediation attempt initiated by the court fails to resolve the dispute, the suit cannot be heard by the same judge who led the mediation. Instead, it must be heard by another court with competent jurisdiction.²⁷

Arbitration:

According to The Code of Civil Procedure (Amendment) Act 2003, Section 89B, if the parties to a legal action request the court to withdraw the complaint at any point during the litigation process with the goal of sending the issues to arbitration for resolution, the court must grant the request and permit the lawsuit to be withdrawn. Then the disagreements will be resolved in line with the terms of the 2001 Arbitration Act. However, the parties reserve the right to reopen the withdrawn complaint if the arbitration proceedings are dropped for any reason or if an arbitral award is not made.

²⁷ Section 89A (9) The Code of Civil Procedure (Amendment) Act, 2003. (accessed on 14.05.2024).

4.6. The Artha Rin Adalat Act 2003

The Artha Rin Adalat Act of 2003 also provides opportunities for alternative conflict resolution, including arbitration and settlement conferences. But only one of these approaches may be used to resolve disputes; the other cannot be explored if one approach is tried and is unsuccessful.

In accordance with Section 21(1) of the Act, following the defendant's written statement, the Court may, if it thinks it suitable, hold a Settlement Conference in order to continue the lawsuit's procedures. The goal of the Settlement Conference is to find a different way to settle the conflict. The Settlement Conference, which will be presided over by the Judge of the Artha Rin Adalat, may be required to be attended by the parties, their representatives, and their attorneys by the Court.

A "Settlement Conference" is defined as a conference chaired by the Judge of the Artha Rin Adalat, attended by the parties, their attorneys, and representatives, for the purposes of this Act. With everyone's participation and understanding, this meeting seeks to resolve the lawsuit in an amicable, non-binding, private, and non-adversarial way. The Court's role in this procedure is that of a facilitator only.

Arbitration:

Section 22(1) of The Artha Rin Adalat Act 2003 stipulates that in cases where no decision has been made to settle the dispute through a Settlement Conference, the Court may, subsequent to the submission of the written statement, defer all subsequent proceedings and refer the suit to the lawyers representing the parties, or to the parties themselves in the absence of legal representation, for arbitration. If the parties consent to resolving the dispute through arbitration, the Court is obligated to refer the suit for arbitration.

Following the suit's referral, the parties and the attorneys representing the parties may consult to choose an arbitrator. The chosen arbitrator may be a retired judge, a lawyer representing neither party in the lawsuit, a retired official of a bank or other financial institution, or any other qualified person. Those who occupy profit-generating positions in the Republic's administration, however, are not qualified to be appointed Arbitrators. In order to protect the parties' confidentiality, the arbitrator must update the court on the status of the arbitration process. In the event that the dispute is settled, the terms of the settlement are recorded in a formal contract that is seen by the arbitrator, the parties, and their lawyers. Based on this report, the Court issues an order or decree in accordance with The Code of Civil Procedure 1908. If the disagreement is arbitrated, there is no higher court to hear an appeal or revision of the court's decision. In the event that the arbitration initiative is unsuccessful, the Court returns to the prior phase of the hearing, treating it as though no attempt at arbitration had been undertaken.²⁸

²⁸ Section 22 (8), *ibid* (accessed on 11.05.2024).

4.7. Major Issues on the ADR Agenda

In Bangladesh, the legal system often perpetuates the vulnerability of marginalized groups by reinforcing power dynamics based on factors like age, gender, and class. While there are laws in place, their effective implementation remains a significant challenge. Factors such as lack of awareness, poverty, and the complex and expensive legal procedures serve as barriers for impoverished citizens in accessing justice. Women, in particular, face multifaceted vulnerabilities within the legal framework, with issues like land disputes and marital conflicts dominating the agenda of Alternative Dispute Resolution (ADR) activities.

Among ADR mechanisms, mediation emerges as a popular method for resolving disputes at the grassroots level. It aims to achieve local resolution within a reasonable timeframe, focusing on mutually beneficial outcomes. Mediation is favored by rural communities for its impartiality and efficiency in reaching decisions that satisfy both parties. Given the predominance of poverty and illiteracy in Bangladesh, mediation services offer impoverished individuals access to free legal assistance.

Non-Governmental Organizations (NGOs) play a crucial role in providing mediation services alongside legal aid, particularly in cases where legal expertise is lacking. Through partnerships with legal organizations, these NGOs ensure that citizens, especially the marginalized, have access to justice and can exercise their rights effectively.

CHAPTER- V

Challenges of ADR in Bangladesh

5.0. Introduction

ADR programs in Bangladesh continue to encounter both longstanding and emerging challenges, reflecting the evolution and institutionalization of these programs within the court system. Here are some common challenges across various domains:

5.1. Disconnect between the rules and reality

In numerous courts, there exists a rule permitting the utilization of ADR methods for cases brought before the court, yet this rule is seldom invoked. This disconnection can be attributed to various factors, including a lack of active encouragement for ADR by some judges. Judges play a pivotal role as the primary drivers of new or voluntary ADR initiatives, as these programs rely on judges for case referrals.²⁹

5.2. Cooperation of the Lawyers

The legal community may resist the implementation of ADR because they perceive it as a threat to their market share. One significant factor contributing to case delays is the use of dilatory tactics by lawyers, often through repeated requests for extensions of time. A lawyer who effectively conducts mediations is likely to attract new clients seeking this alternative dispute resolution method, who might otherwise have avoided court proceedings.³⁰

5.3. Resistance from the bar

In certain jurisdictions, attorneys may oppose the adoption of ADR or fail to advocate for its use with their clients, particularly in cases where ADR could be beneficial. This resistance is partly due to a lack of understanding about ADR processes. For example, some lawyers might not fully understand the key difference between mediation and arbitration, particularly regarding the role of the neutral party. In mediation, a neutral third party, known as the mediator, helps the parties work toward a mutually agreeable solution. In contrast, during arbitration, the arbitrator has the power to make a final, and often binding, decision.³¹

5.4. Lack of public awareness

²⁹ Brazil, W. D. "Court ADR 25 Years After Pound: Have We Found a Better Way?" 18 Ohio State Journal on Dispute Resolution 93, 1998 (accessed on 11.05.2024).

³⁰ K. M. Hasan, former CJ, A Reporter on Mediation in the Family Courts: Bangladesh Experience, Published by BLAST in March, 2008 (accessed on 11.05.2024).

³¹ McAdoo, B., and A. Hinshaw, "The Challenge of Institutionalizing Alternative Dispute Resolution: Attorney Perspectives on the Effect of Rule 17 on Civil Litigation in Missouri," 67 Missouri Law Review 473, 2002 (accessed on 09.01.2020).

In numerous regions, the broader public remains unfamiliar with ADR, thus litigants often depend on their attorneys to suggest its utilization. Even those who opt for ADR may lack a clear understanding of the process, sometimes anticipating the mediator to "rule" on the case or possess the same authority as a judge. Consequently, these litigants might feel discontented with the process due to unmet expectations.

5.5. Need for program evaluation

Court ADR programs frequently undertake evaluations to assess program quality and showcase adherence to court-established objectives. These objectives vary across different courts but commonly entail reducing caseloads, cutting transaction expenses, saving time, expanding litigant choices, and enhancing client contentment.³²

5.6. Correction of Legal Shortcomings

The inclusion of ADR provisions in the Code of Civil Procedure (Amendment) Act, 2003 suggests that prior to this amendment, due consideration may not have been given to similar provisions in laws of neighbouring countries. These oversights are hindering the success of ADR, and it's imperative for the government to address them promptly.

5.7. Risks to quality control

In times of limited resources, particularly in funding ADR administrators, many court programs face challenges in ensuring the quality of services and enforcing ethical standards for neutrals and attorney representatives. While some courts employ staff neutrals, others rely on an external panel of neutrals to deliver dispute resolution services. These neutrals may either be compensated or volunteer pro bono.

In various courts, the reputation of a mediation program can be significantly affected by a single negative experience, which may discourage the legal community from embracing mediation as a whole. Program administrators strive to prevent such incidents and uphold the program's reputation for delivering high-quality services. To achieve this, they take measures to appoint and retain well-qualified mediators for the court's panel. These measures typically involve establishing criteria for panel membership, mandating advanced training, conducting interviews with potential mediators, collecting participant feedback through surveys, and observing mediation sessions.

³² Wissler, R. L. "The Effectiveness of Court-Connected Dispute Resolution in Civil Cases," 22 Conflict Resolution Quarterly 55, 2004 (accessed on 09.01.2020).

5.8. Retaining mediations core values

Many advocates of mediation within the court system initially envisioned it as a favorable alternative to the adversarial, formal, and potentially estranging justice system. Nonetheless, certain ADR programs have gradually adopted numerous adversarial aspects that they were originally designed to circumvent. Experts express worry that in certain courts, mediation has started resembling settlement conferences more closely, prioritizing settlement over offering litigants the chance to collaboratively resolve their disputes.³³

5.9. Lack of funding

Many courts face challenges in securing and augmenting their budget allocations to offer ADR services. Court ADR programs often find themselves in competition for funding with other conventional court services, a competition in which ADR programs frequently find themselves at a disadvantage. This disadvantage has become more pronounced in recent years, with reductions in state and federal budgets for non-essential programs. Courts have explored various funding avenues, such as filing fees, user fees, and certification fees, but the funding for numerous programs remains uncertain.³⁴

5.10. Requiring good faith

In certain states, court rules mandate that parties engage in mediation with "good faith." Administering these rules has posed challenges for court programs, as courts struggle with interpreting the requirements for good faith. Experts advise that programs should be developed with input from stakeholders to mitigate issues arising from the good-faith requirement.³⁵

CHAPTER- VI

ADR in Criminal Justice System of Bangladesh

6.0. Introduction

³³ Senft, L. P., and C. A. Savage, "ADR in the Courts: Progress, Problems, and Possibilities," 108 Penn State Law Review 327, 2003 (accessed on 11.05.2024).

³⁴ Skove, A. E. State Appropriations and Other Funding Sources for Court-Connected ADR. Williamsburg, VA: National Center for State Courts, 1998 (accessed on 16.05.2024).

³⁵ Lande, J. "Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs," 50 UCLA Law Review 69, 2004 (accessed on 15.05.2024).

Alternative Dispute Resolution (ADR) has emerged as a legal mechanism aimed at expediting the resolution of disputes. Particularly in countries like Bangladesh, where the judicial system is burdened with a high volume of cases, ADR has gained popularity as a means to alleviate this pressure. However, as the law continually evolves, there is a need for more efficient tools to reform the current structure of our criminal justice system.

Compounding of offences and plea bargaining are two prominent phases that could be integrated into our criminal justice system as ADR mechanisms to facilitate the swift resolution of criminal disputes. Nevertheless, it's imperative to recognize that ADR also carries certain drawbacks, and its implementation must be carefully managed to avoid adverse effects on our justice system.

While the introduction of ADR in criminal cases may initially reduce case backlog and expedite resolutions, its hasty implementation could potentially undermine the integrity of our justice system. It's crucial to ensure that ADR is integrated in a manner that maintains the balance of power in society and upholds the principles of justice.

6.1. How ADR can be used in Criminal Justice System

In the realm of criminal cases, there exist two avenues through which the concept of Alternative Dispute Resolution (ADR) can be applied: Compounding of Offence and Plea Bargaining.

Compounding of Offence

Alternative Dispute Resolution (ADR) essentially offers an alternative avenue for resolving disputes that would otherwise undergo court procedures. Thus, ADR encompasses a diverse range of resolution mechanisms, which have increasingly become necessary for both society and the legal system. While ADR has long been established for civil cases, its recognition in criminal cases is not explicitly acknowledged.³⁶

Section 345 of the Code of Criminal Procedure (CrPC) outlines offenses under the Penal Code that can be settled through compounding, which refers to a compromise or amicable settlement. According to Mahua Gulfam, compounding involves an agreement where a person agrees not to report or prosecute a crime in exchange for money or other considerations. The CrPC distinguishes between two types of compounding:

- Section 345(1) lists minor offenses that can be compounded without the court's permission, such as hurting religious feelings, wrongful confinement, and forced labor. These offenses typically carry a maximum punishment of one year in prison or a fine.
- Section 345(2) lists more serious offenses, like rioting with deadly weapons and assault with intent to outrage a woman's modesty, which require the court's permission for

³⁶ Akhtaruzzaman, Md. (2011) Concept and Laws on Alternative Dispute Resolution and Legal Aid (Shabdakoli Printers, 4th ed) 173. (accessed on 11.05.2024).

compounding. Punishments for these offenses range from two to seven years of imprisonment, along with fines.

Plea Bargaining

While punishing offenders who acknowledge their guilt and express regret, plea bargaining also offers a forgiving perspective on them. Plea bargaining generally comes in two flavors: charge bargaining and sentence bargaining. A charge bargain typically provides the accused with a chance to bargain with the prosecution in order to get the quantity of charges against him lowered. In contrast, a sentence deal informs the accused in advance of the punishment he would get should he enter a guilty plea. Thus, a sentencing compromise ensures that the accused will not receive the highest punishment permitted by law while enabling the prosecutor to secure a conviction on a significant crime. Therefore, to put it succinctly, plea bargaining is the process of negotiation in which an offender acknowledges their offense and bargains for fewer criminal charges.

6.2. Advantages of ADR in Criminal Justice System

Criminal trials in Bangladesh are often delayed, with many cases not starting on time, leading to accused individuals remaining in custody. The legal system is burdened with overcrowded courts, lengthy litigation processes, and high costs. In 2006, over 769,000 criminal cases were pending in lower courts, handled by a limited number of judges and magistrates. This backlog is a significant concern for both the state and the affected individuals. Introducing alternative dispute resolution (ADR) mechanisms, such as compounding, could help reduce this overwhelming number of unresolved cases.³⁷

The issue of torture in remand and police custody persists as an ongoing phenomenon in Bangladesh, with successive governments failing to effectively address it. Despite constitutional provisions aimed at protecting citizens from torture, such abuses continue, often overlooked by authorities.

In addition to constitutional safeguards, the Penal Code of Bangladesh recognizes torture as a criminal offense, with provisions for punishment. However, the practical enforcement of these laws remains a challenge.

One commonly cited issue is the misuse of legal provisions such as section 54 of the Code of Criminal Procedure, which grants police broad powers to arrest individuals without a warrant and detain them. This lack of accountability, coupled with inadequate training for law enforcement personnel, contributes to the persistence of torture in custody.

³⁷ Amnesty International's Report on Bangladesh, Death in custody, torture, arbitrary arrest and other human right violations routinely ignored by government (2003)

Moreover, the absence of independent investigative bodies exacerbates the problem, leaving victims without proper recourse. The misuse of laws like the Special Powers Act further compounds the issue, undermining efforts to combat torture effectively.

Given these systemic challenges within the traditional legal system, there is growing recognition of the need to explore alternative approaches, such as alternative dispute resolution (ADR), even in criminal cases. By offering a pathway to expedited justice and bypassing the shortcomings of the existing system, ADR holds promise as a means to ensure greater accountability and fairness in addressing cases of torture and other human rights abuses in Bangladesh.³⁸

Victims and prosecutors alike gain from the use of alternative dispute resolution in the criminal justice system. The prosecutor is released from the drawn-out process of legal nuances, lengthy arguments, and proof thanks to the ADR mechanism. In order to expedite the criminal justice system and eliminate the ambiguity around the outcome of a contested trial, judges and the prosecution can both use alternative dispute resolution. Depending on the circumstances of the case, the victim may also find it upsetting to have to spend time providing evidence in court in order to feel that justice has been served. Consequently, in the sense that an accused person is ultimately found guilty, albeit with a less sentence and in a shorter amount of time, the process of ADR also benefits the victims.

6.3. Disadvantages of ADR in Criminal Justice System

Introducing plea bargaining as a form of alternative dispute resolution in Bangladesh's criminal justice system may present certain drawbacks if not carefully implemented. One significant concern is the possibility of innocent individuals being coerced or pressured into pleading guilty by prosecutors or government authorities. Without robust safeguards to ensure transparency and fairness in the judicial process, there is a risk that plea bargaining could lead to wrongful convictions and undermine the rule of law.

The effectiveness of plea-bargaining hinges on the assumption that individuals accused of crimes will only plead guilty if they believe they cannot prevail in court. However, in a system lacking proper adherence to the rule of law, innocent individuals may feel compelled to accept plea deals out of fear or coercion, rather than genuine culpability. This could result in miscarriages of justice and erode public trust in the legal system.

To mitigate these risks, it is imperative to uphold the principles of the rule of law and ensure that procedural fairness is maintained throughout the plea-bargaining process. Transparency, accountability, and legal representation for all parties involved are essential elements to safeguard against wrongful convictions and ensure the delivery of justice.

³⁸ Humann, Milton. (1981). *Plea Bargaining: The Experiences of Prosecutors, Judges and Defense Attorneys*. The University of Chicago Press, 1st edition, 47. (accessed on 11.05.2024).

While plea bargaining has the potential to expedite trial proceedings and alleviate case backlog, its implementation must be guided by principles of fairness and adherence to legal standards. By upholding the rule of law, plea bargaining can serve as a constructive mechanism for resolving cases efficiently and fairly within Bangladesh's criminal justice system.³⁹

6.4. Recommendations in case of ADR in Criminal Justice System

It is crucial that we ensure the rapid access to justice offered by alternative dispute resolution (ADR) does not serve as a means of establishing social control.

In order to preserve the legal system, alternative dispute resolution (ADR) is the appropriate tool that should be used in criminal cases.

However, there are specific guidelines that outline how to include ADR into our criminal justice system in order to guarantee its proper application.

First, we must include alternative dispute resolution into our criminal justice system by putting more of our current legislation into practice, which provide us the chance to use the mechanism already in place.⁴⁰

Ensuring that Alternative Dispute Resolution (ADR) does not serve as a means of consolidating power within society is a critical responsibility.

In order to preserve the legal system, ADR is the appropriate tool that should be used in criminal cases.

In order to guarantee appropriate ADR implementation, a few guidelines outlining its introduction into our criminal justice system are provided.

Prior to implementing more of the current legislation, which provide us the chance to use the mechanism already in place, we must first incorporate alternative dispute resolution into our criminal justice system.⁴¹

Secondly, by expanding the reach of Section 345 of the Code of Criminal Procedure, the possibility of alternative dispute resolution (ADR) in criminal cases might be raised.

Thus, before integrating ADR in our criminal justice system, it is important to raise awareness via learning about, practicing, and putting into practice its right function. This will ensure that justice is served.

³⁹ Maynard, D.W. (1984). Inside Plea Bargaining: The Language of Negotiation (Plenum Press, 1st edition. 87 (accessed on 12.01.2020).

⁴⁰ Kottak, Conrad Phillip. (2002). Cultural Anthropology. McGraw Hill, 10th edition. 77 (accessed on 11.05.2024).

⁴¹ Samad, Md. (2013). A Text Book on ADR and Legal Aid. National Law Publications. (accessed on 11.05.2024).

6.5. Conclusion

As emphasized earlier in this paper, the evolution of law reflects society's fundamental needs, with its institutions and mechanisms adapting over time to serve those needs effectively. Alternative dispute resolution (ADR) has emerged as one such mechanism, fulfilling a vital role in ensuring the proper functioning of the judicial system, particularly in societies like Bangladesh.

While ADR has already been implemented in civil litigation in Bangladesh, there is a compelling case for its introduction into the criminal justice system. Doing so could enhance the delivery of justice, expedite dispute resolution, and alleviate case backlog.

However, the introduction of ADR into the criminal justice system must be approached with caution and careful consideration. Before implementation, it is crucial to heed the recommendations outlined in this paper to ensure its proper execution. Rushing into ADR without adequate preparation and safeguards could have detrimental consequences for the integrity of the justice system and potentially exacerbate existing power imbalances in society.

Therefore, a thoughtful and deliberate approach is necessary to integrate ADR into criminal cases effectively, balancing the imperative for swift dispute resolution with the imperative for fairness, transparency, and adherence to the rule of law.

CHAPTER- VII

Concluding Remarks

7.0. Introduction

The legal landscape of alternative dispute resolution (ADR) in Bangladesh has indeed evolved significantly in recent years, carving out a distinct role in the resolution of disputes. However, upon closer examination of the ADR provisions embedded within various laws of the country and their practical implementation, it becomes evident that court-based ADR mechanisms have not consistently delivered the anticipated outcomes.

While court-based ADR was envisioned to expedite the resolution of disputes and aid in case management, its efficacy has often fallen short of expectations. It is essential to recognize that while ADR can complement traditional judicial processes, it should not overshadow or compromise the constitutional mandate of the judiciary.

Maintaining the integrity of the judiciary's constitutional role is paramount, and any integration of ADR within the legal framework must be carefully calibrated to preserve this principle. While ADR mechanisms can serve as valuable tools for resolving disputes expeditiously, they should not encroach upon the core functions of the judiciary or blur the boundaries between judicial and non-judicial services. Balancing these considerations is crucial to safeguarding the public interest and upholding the rule of law.

7.1. Findings

The findings presented emphasize key strategies for addressing the challenges within the realm of Alternative Dispute Resolution (ADR) in family affairs. The recommendations are grounded in research and stakeholder opinions, aiming to enhance the effectiveness, fairness, and accessibility of ADR mechanisms in family disputes. Here's an elaborate explanation of each finding, along with additional considerations to further strengthen ADR in family affairs:

1. Enhancing Impartiality and Neutrality

Explanation:

Family disputes are often deeply personal and emotionally charged, making impartiality and neutrality critical in the ADR process. It is vital that mediators and other ADR personnel do not take sides or let their personal beliefs influence their decisions. Ensuring neutrality involves more than just avoiding bias; it requires creating an environment where all parties feel their voices are equally heard and respected.

Practical Measures:

- **Comprehensive Training Programs:** ADR personnel should undergo rigorous training that includes modules on maintaining impartiality and neutrality, cultural sensitivity, and handling emotional stress. This training should also cover ethical standards that guide their conduct during mediations.
- **Ethical Standards and Monitoring:** Establishing a robust code of ethics for mediators and ADR personnel can help ensure neutrality. Regular monitoring and evaluation of their performance, perhaps through peer reviews or feedback from parties involved, can help maintain these standards.

Additional Considerations:

- **Conflict of Interest Checks:** Implementing strict procedures to check for any potential conflicts of interest before assigning mediators to a case can prevent bias. For example, a mediator should disclose any personal or professional connections to the parties involved.
- **Diversity in ADR Personnel:** Encouraging diversity in the pool of mediators can help address potential biases related to race, gender, or cultural background, fostering a more inclusive ADR process.

2. Active Involvement of Lawyers

Explanation:

Lawyers are crucial advocates for ADR in family disputes. Their active involvement can help parties understand the benefits of ADR, such as faster resolution times, lower costs, and the ability to maintain more amicable relationships post-dispute. Lawyers can guide clients towards ADR as a first step before resorting to litigation.

Practical Measures:

- **Lawyer Training and Awareness:** Lawyers should be educated about the advantages of ADR and how to effectively counsel their clients on its use. This could be achieved through continuous legal education (CLE) programs focused on ADR practices.
- **Incentivizing ADR Advocacy:** Bar associations and legal institutions could offer incentives, such as recognition or certification, to lawyers who frequently and successfully use ADR in their practice.

Additional Considerations:

- **Incorporating ADR into Legal Advice:** Legal frameworks could mandate that lawyers discuss ADR options with clients before proceeding with litigation in family matters. This requirement could be formalized through a "duty to inform" provision in family law statutes.
- **Collaborative Law Approaches:** Encourage the use of collaborative law, where both parties' lawyers agree to work together towards a settlement without going to court, unless absolutely necessary.

3. Stakeholder Awareness

Explanation:

For ADR in family matters to be effective, all stakeholders, including judges, lawyers, mediators, and the disputing parties, must be well-informed about the ADR process. Awareness is key to ensuring that ADR is utilized effectively and that parties are willing to engage in the process.

Practical Measures:

- **Educational Programs:** Develop targeted educational programs and workshops for different stakeholders. For example, judges and lawyers might need training on the legal aspects of ADR, while parties involved in disputes might need information on what to expect during mediation.
- **Outreach Campaigns:** Public campaigns to raise awareness about ADR in family disputes can help demystify the process and encourage its use. These could include informational brochures, online resources, and community seminars.

Additional Considerations:

- **Integration into Legal Curriculum:** Incorporating ADR into the curriculum of law schools ensures that future legal professionals are well-versed in these methods from the start of their careers.
- **Stakeholder Forums:** Regular forums or roundtables involving judges, lawyers, mediators, and civil society organizations can foster dialogue and collaboration on improving ADR practices.

4. Appointment of Well-Trained Mediators

Explanation:

The success of ADR in family disputes is heavily reliant on the skill and experience of the mediators. Well-trained mediators are better equipped to handle the sensitive and complex dynamics of family disputes, guiding parties towards mutually satisfactory resolutions.

Practical Measures:

- **Certification and Accreditation:** Establishing a formal certification process for mediators in family disputes ensures that only those who have met rigorous standards are permitted to mediate these cases.
- **Continuous Professional Development:** Ongoing training opportunities, such as advanced courses and workshops, help mediators stay updated on best practices and new developments in the field.

Additional Considerations:

- **Mentorship Programs:** Experienced mediators could mentor newer mediators, providing them with guidance and helping them build their skills through practical experience.
- **Feedback and Evaluation:** Implementing a system where parties can provide feedback on their mediation experience can help identify areas for mediator improvement.

5. Transparent Provisions for ADR

Explanation:

Transparency in the ADR process is essential for building trust among the parties involved. When ADR provisions are clear and accessible, parties are more likely to engage with the process confidently and without fear of being disadvantaged.

Practical Measures:

- **Clear Guidelines:** Courts and legal institutions should publish clear, easily understandable guidelines on how to access ADR services, including what parties can expect during the process and how decisions are made.
- **Visibility of ADR Options:** ADR options should be prominently presented at the onset of legal proceedings, perhaps during the initial consultation or filing of a case.

Additional Considerations:

- **Standardized ADR Clauses:** Including standardized ADR clauses in family law contracts and agreements can help normalize the use of ADR in resolving disputes.
- **Transparent Reporting:** Regular public reporting on the outcomes of ADR processes (while maintaining confidentiality) can help build public confidence in the system.

7.2. Expression of the writer

The incorporation of ADR mechanisms from the Muslim Family Laws Ordinance, 1961 to the Family Courts Ordinance, 1985 aimed to expedite the resolution of family disputes in a peaceful manner. While Bangladesh has seen some positive outcomes from ADR in family courts, the full potential of the system has yet to be realized due to various challenges.

Statutory limitations, existing practices, the reluctance of lawyers and judges, and the lack of awareness among parties have hindered the effectiveness of ADR mechanisms in family matters. There is a tendency among stakeholders to shift responsibility to others, with lawyers blaming the courts and vice versa.

To overcome these challenges, all stakeholders, including policymakers, implementing authorities, lawyers, and judges, must collaborate effectively. Introducing a credit-based approach for settling disputes through ADR, where judges are incentivized to utilize ADR methods, could be a promising solution. This approach would encourage judges to actively consider ADR as a viable option in family disputes, leading to more widespread adoption and better outcomes.

7.3. Recommendations

To enhance the effectiveness of the ADR mechanism in Bangladesh and ensure access to fair justice for all citizens, several recommendations can be implemented:

- a) ***Establishment of Institutional Framework:*** The government should establish a robust institutional framework dedicated to ADR.
- b) ***Enactment of Separate Code:*** A separate legal framework specifically addressing ADR should be enacted to streamline the process.
- c) ***Establishment of Mediation Courts:*** Specialized mediation courts should be established at the Thana or Upazilla level to facilitate ADR processes.
- d) ***Expansion of ADR in Criminal Cases:*** ADR should be more widely applied in criminal cases to expedite dispute resolution.
- e) ***Training for Judges and Lawyers:*** Proper training programs should be provided to judges and lawyers to equip them with the necessary skills for effective ADR implementation.
- f) ***Public Awareness Campaigns:*** Public awareness about ADR should be raised through government projects, NGOs, research, and various media channels.
- g) ***Expansion of ADR in Criminal Cases:*** ADR should be extended to cover a wider range of criminal cases beyond C.R. (Criminal Revision) cases.
- h) ***Regulation of Fees:*** The fees charged by conciliators, mediators, and arbitrators should be standardized and regulated by the legal framework.
- i) ***Formation of Statutory Body:*** A statutory body should be established to formulate rules, plan, and monitor the entire ADR system.
- j) ***Promotion of Positive Impressions:*** Efforts should be made to promote positive perceptions among lawyers regarding ADR and its benefits.
- k) ***Combating Corruption:*** Measures should be taken to eliminate corruption from ADR schemes to ensure fairness and integrity.

Additional Recommendations for Strengthening ADR in Family Disputes

1. Integration of Technology:

- **Online Dispute Resolution (ODR):** The integration of technology through ODR platforms can make ADR more accessible, especially in regions where physical access to courts or mediators is limited. ODR can facilitate mediation sessions via video conferencing and provide digital tools for document sharing and case management.
- **Digital Awareness Campaigns:** Utilizing social media and online platforms to disseminate information about ADR and its benefits can reach a broader audience, particularly younger generations.

2. Support for Vulnerable Parties:

- **Special Provisions for Vulnerable Groups:** ADR processes should include special provisions for children, the elderly, and individuals with disabilities to ensure that their interests are adequately represented and protected during family dispute resolutions.

- **Access to Legal Aid:** Providing legal aid or low-cost legal assistance to underprivileged parties can ensure that ADR is accessible to all, regardless of their financial situation.

3. Monitoring and Evaluation of ADR Programs:

- **Data Collection and Analysis:** Establishing a robust system for monitoring and evaluating ADR outcomes in family disputes can help identify trends, successes, and areas for improvement. Data collection could include case outcomes, time taken to resolve disputes, and participant satisfaction.
- **Regular Review of ADR Policies:** Periodic reviews of ADR policies and practices, informed by data analysis and stakeholder feedback, can ensure that the ADR framework remains responsive to evolving needs and challenges.

By implementing these recommendations and additional measures, the ADR process in family disputes can be significantly improved, leading to more efficient, fair, and amicable resolutions that benefit all parties involved.

In conclusion, the adoption of ADR mechanisms in Bangladesh has significantly contributed to resolving disputes efficiently and affordably. However, certain barriers and loopholes exist that need to be addressed through concerted efforts and effective implementation of the recommendations outlined above. Despite some criticisms against ADR, its effectiveness in improving access to justice and reducing procedural complexities cannot be overlooked.

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