

Research Monograph
On
“Alternative Dispute Resolution and Access to Justice: Combatting
Jurisdictional Conflicts”



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Letter of Transmittal

To

Dr. S.M. Saiful Haque

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Subject: Submission of research paper on “**Alternative Dispute Resolution and Access to Justice: Combatting Jurisdictional Conflicts**”

Respected Sir,

It is a matter of satisfaction for me to present the research monograph on “**Alternative Dispute Resolution and Access to Justice: Combatting Jurisdictional Conflicts**” in partial fulfillment of Master's Degree in Law. While doing this research, I have tried my best to maintain the required standards. I hope this thesis meets your expectations.

So, I pray and hope you will be kind enough to this dissertation on evolution. I am always available for further clarification on any part of this research paper for your convenience.

Thank You

Sincerely Yours



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Declaration

It is hereby declared and confirmed that the research monograph entitled “**Alternative Dispute Resolution and Access to Justice: Combatting Jurisdictional Conflicts**” is an original work done by me and the quotations are taken with due references. The work I have presented does not infringe any copyright.

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

Thank You.

Rakib Al Mahmud

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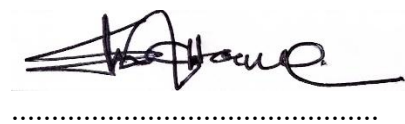
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Certification

Dissertation report on “**Alternative Dispute Resolution and Access to Justice: Combatting Jurisdictional Conflicts**” by Rakib Al Mahmud certified in partial fulfillment of the requirements for a law degree from Daffodil International University. The research report is guided by our guidelines and as a record of the true work completed successfully.

Thank You



.....

Dr. S.M. Saiful Haque

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Dedication

First of all, I express a lot of respect and gratitude to Allah. I would like to express my gratitude to my parents for their encouragement and giving me the opportunity of higher education.

Acknowledgment

To start off with, I desire to acknowledge the startling grace and propound compassion of the Almighty Allah. I would like to show my gratitude to the Department of Law, Daffodil International University where I have learned a lot and got the opportunity to carry out this thesis. I'm particularly grateful to my supervisor Dr. S.M. Saiful Haque sir, Associate Professor & Head of Department of Law, Daffodil International University, for all kinds of help and cooperation throughout the thesis and also for giving me the freedom to commence the exploration work as per my passion. His intellectual guidance and absolute support from the initial phases of framing ideas and designing structure have helped me to design the final product of my thesis. I must thank him for accepting me as a fellow and for his sincere and laborious efforts in editing with valuable critics and finalizing the thesis within a short span of time.

To complete the thesis, I have taken facilitation from a number of advisors, friends and organizations. I would not be able to prepare this thesis without their corroboration during different phases of conceptualizing and writing process. I have to acknowledge their contribution.

I admit all the repliers, and I acknowledge all the respondents and the key informants I interviewed and whom I canvassed which helped me to write down the thesis. Finally, I extend thanks to my friends and well-wishers.

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Abstract

This research evaluates the functioning and potentiality of Alternative Dispute Resolution (ADR) in relation to family law in Bangladesh. ADR (i.e. mediation, arbitration, negotiation, and conciliation) can provide displaced, a source of alternative to ordinary litigation. ADR also facilitates timely, cheaper, and simpler resolutions of conflict or dispute. Although ADR is included under several important legal frameworks such as the Muslim Family Laws Ordinance 1961 and the Family Courts Ordinance 1985, the public's unfamiliarity with the ADR process, the absence of trained lawyers and lack of institutional endorsement and structures in the legal system of Bangladesh, greatly curtails the effectiveness of Alternative Dispute Resolution (ADR). This research utilized both analytical and empirical research methods to ascertain characteristics that limit Alternative Dispute Resolution (ADR) as a effective and efficient method of resolving family law related matters and in identifying the role of non-governmental organization in promoting conflict resolution at the community level. The researcher argues that an established Alternative Dispute Resolution (ADR) model for family law matters, a greater level of awareness, and trained court and private practitioners would increase access to justice and improve effectiveness of ADR model disputes in family law in Bangladesh.

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CHAPTER- 1

INRODUCTION

Introduction

"ADR" stands for "alternative dispute resolution," which means any way to settle a disagreement without going to court. It's a general term for a lot of different ways to settle disagreements that aren't full-on court cases but are still effective. Early objective assessment, bargaining, conciliation, mediation, and arbitration are all common types of ADR. ADR, which includes arbitration, mediation, and discussion, is a way to settle disagreements without going to court. It is important to know the difference between ADR that binds and ADR that does not bind. Most of the time, two main types of arbitration are talked about: binding arbitration and non-binding arbitration. Programs for negotiation, mediation, and settlement are not legally binding, and they only work if both sides want to reach a deal on their own. Programs for arbitration can be either binding or not binding. In binding arbitration, a third party makes a decision that both sides must follow, even if they don't agree with it. This is similar to how a court decision works. A third party makes a decision in non-binding arbitration that both sides can choose not to follow. Most of the time, ADR processes are faster and less expensive. If you and someone else disagree on something, you can go to arbitration. A neutral third party will listen to your side of the story and then make a final decision. In arbitration, both sides agree to take their disagreement to an unbiased third party, who is chosen by or on behalf of both sides. This third party then makes a final decision about how to settle the disagreement while giving both sides a chance to be heard.

1.1 Background of the Problem

ADR is a term that most people use to describe informal ways to settle disagreements. In these cases, the parties meet with a professional third party who helps them settle their disagreement in a way that is less formal and often more agreeable than what happens in court. 1 The most common

Mediation and arbitration are two common types of ADR. However, there are many more, such as judicial settlement conferences, fact-finding, ombudsmen, special masters, and more. 1 2 The ADR is usually voluntary, but sometimes the right courts require it. An ADR may be anything from helping people settle their differences by encouraging them to talk to each other directly before going to court to arbitration systems or mini-trials that look and feel a lot like a judicial procedure. 2 The ADR can also include processes that are meant to deal with community friction or help with community development difficulties.

These processes can be grouped into four main types: negotiation, conciliation, mediation, and arbitration. 3 Negotiation systems provide up a way for two sides to a disagreement to talk to each other directly, without the use of a third party. Mediation and conciliation methods are quite similar since they put a third person between the two people who are fighting, either to settle a specific issue or to fix their relationship. 4 Mediators and conciliators may only help people talk to each other or help them to a quick solution, but they do not have the power to determine or rule on a settlement. Arbitration systems let a third party decide how to settle a disagreement without going to court again. 5 Alternative" conflict resolution is often thought of as a way to avoid going to court. It may also be used as a slang term for letting a disagreement go or as a way to avoid violence. There has been growing talk in the last several years about using a systems approach to give individuals who are in conflict more choices and to encourage "appropriate"

ways to settle disputes. A non-governmental organisation (NGO) is a legally recognised group made up of people or companies that works on its own, without the help of any government. When governments pay for all or part of an NGO, the NGO stays non-governmental by not letting government officials join. grouping. There is no legal meaning of the word "non-governmental organisation" that everyone agrees on. In a lot of places, these kinds of groups are named "civil society organisations" or something else. Bangladesh has probably been the most significant place in the world for non-governmental organisations. According to some estimates, there are more than 20,000 NGOs in Bangladesh. ADR is a way to settle disagreements that doesn't involve going to court. It's commonly known that the non-governmental organisation (NGO) mostly controls the process of ADR. So, it is important to note the involvement of NGOs in putting the ADR process into place in Bangladesh.

1.2 Statement of the Problem

In today's world, the alternative dispute resolution system is the best way to settle conflicts in any country. Bangladesh has included this approach in a number of its laws. Our country's lower and higher courts are now dealing with a massive backlog of civil cases. The alternative dispute resolution system is very important for settling these cases. Even while diverse family laws in our nation have the option of an alternate dispute resolution mechanism, it is not producing the results we want. So, in this study paper, I have done my best to figure out why the alternative conflict resolution system isn't working and how to fix it. I have also attempted to figure out why most individuals aren't interested in the ADR system. Arbitration in Bangladesh has a lot of challenges. The following points can help explain these points.

1. Parties tend to go to court: If arbitration isn't required, they can go to court and file a lawsuit there.
2. Fraud or abuse of authority: Sometimes an arbitrator or arbitration tribunal uses their power in a bad way and makes a decision that hurts the true victim.
3. False initial impression and Pe-reception: This might be the biggest problem that gets in the way of a good dispute resolution. It's quite hard to modify first impressions. Discussion creator creates their choice based on the data they had at the time, and they are reluctant to see new data. So, the most important thing is to do everything you can to make a good first impression.
4. Not giving opponents face, respect, and dignity: "Treat others how you want to be treated" is something we all learn as kids, but we often forget it in the heat of battle.
5. An arbitrator may have various opinions: There are situations when an arbitrator may not be able to achieve a consensus ruling. The arbiter may not agree on what to do.
6. Bias in making a decision: An arbitrator may receive a bribe, which might lead them to be biased in making a decision.
7. Getting slower and more expensive: The parties may go to an arbitral tribunal to settle the issue swiftly and for less money. But occasionally the opposite is true, which means the party may have to spend a lot of money.
8. No privacy: Arbitration hearings and processes are totally private. Only the arbitrator and the parties involved are allowed to be there; the general public is not. In the same way, only the same people get copies of the papers, submissions, letters, and awards that we made throughout the arbitration. But in Bangladesh arbitration, the matter is not private.

1.3 The significance of the study

The phrase "alternative dispute resolution" is not new to our country. The provision of ADR is being added to more and more legislation in our nation every day. ADR is becoming more popular every day, however there are still some problems with how it is used. This research monograph has attempted to identify such deficiencies and has proposed certain recommendations. This study monograph also concentrates on the issue of how to popularise ADR among all individuals. This research will enhance the popularity of the Alternative Dispute Resolution method and facilitate anticipated success. If ADR is used correctly in our nation, it will change the way Family law is handled.

1.4 Research question

- ❖ Why is the attempt at ADR not succeeding as expected?
- ❖ Why do most individuals not care about ADR?

1.5 Purpose of the study

Arbitration is now a well-known form of ADR. It gives the parties the choice to forgo going to court and have their issue settled by an arbitration panel. It is a success for the idea of freedom of contract. The fact that so many people utilise it shows that they know about the benefits of arbitration. It is built on party autonomy as a way to settle disputes, therefore no one can be forced to arbitrate unless they want to. Not only is it important for the people who signed the primary arbitration agreement, but it is also important for a third party who may become a party to the contract on their own or by law.

- ❖ The Act's principal goals are as follows:
- ❖ To make sure that there are rules for both international and local arbitration and conciliation.

- ❖ To make sure that arbitration is fair, just, and effective.
- ❖ To make sure that the arbitral panel explains why it gave the award it did.
- ❖ To make sure that the arbitral tribunal stays within its powers.
- ❖ To let the arbitral tribunal utilise mediation and conciliation during the arbitration process.
- ❖ To make sure that an arbitral award may be enforced as a court decision.
- ❖ Why To make sure that the outcome of conciliation processes may be seen as arbitral awards on terms that everyone agrees on.
- ❖ To see awards granted in a foreign country that are covered by one of the two international agreements as a foreign arbitral award, just like India does.

Arbitration can be required or not, and it can be binding or not. On the surface, non-binding arbitration looks a lot like mediation. The main difference, though, is that a mediator will try to help the parties find a middle ground on which to compromise. An arbitrator, on the other hand, is not involved in the settlement process at all and will only decide who is at fault and, if necessary, how much damages should be paid.

I have seen the things I need for my investigation as follows:

- ❖ To find the flaws in family law legal processes that deal with ADR.

- ❖ To find out why most people aren't interested in ADR.
- ❖ To learn why the ADR isn't being used correctly.
- ❖ To figure out how to fix the situation.

1.6 Scope of the study

These days Alternative Dispute Resolution implies a way to settle family, civil, and criminal cases without going to court. In our nation, family laws have largely included the option of Alternative Dispute Resolution. This research paper only examines family legislation pertaining to ADR in Bangladesh. The phrase "alternative dispute resolution" will only be used in family court cases in our nation. Arbitration is a frequent technique for two parties to settle a disagreement without going through the long, expensive, and convoluted process of litigation. It is a great approach to help international trade and investment since it makes it easy and cheap to settle conflicts across countries. The Arbitration Act of 1940 was in charge of arbitrations in Bangladesh in the early years following independence. Bangladesh passed the Arbitration Act 2001 to fix its problems. The UNCITRAL Model Law is what the Act is founded on. The Arbitration Act 1940 has its own issues and made it hard for the arbitration procedure to work. For instance, the national courts had a lot of power over the arbitration process, and most crucially, those who used arbitration were having trouble enforcing international arbitral rulings. The The

The Arbitration Act of 1940 did not specifically address foreign arbitral rulings, making their enforcement exceedingly challenging. The Act of 2001 tried to fix these difficulties, but it didn't work completely. It has been fifteen years since the Arbitration Act of 2001 was established, yet it seems that arbitrations in Bangladesh are still having trouble with several crucial concerns, such interim measures and smoothly enforcing international arbitral rulings.

1.7 Limitation of the study

In reality, every research study has its limits. This research book exemplifies the inherent restrictions that have constrained the study's scope in several aspects. The principal restriction of the investigation is the constraint of time. The time is insufficient for the study. To conduct thorough research on various themes and subjects, enough resources and an expanded collection of books in the university library are essential; however, our library is insufficient for the research on “Application of ADR in Family Laws: Bangladesh in Context.” If arbitration is binding, neither side can appeal. That implies that one side can't really change what they think is an unfair arbitration ruling. There hasn't been any training for the attorneys to build up, and they also need to learn more about arbitration. If the issue at stake is little, the arbitrator's cost may make arbitration not worth it. It can be cheaper to have the matter heard by a judge given via affidavits. Judges and juries may not be able to look at some material because of rules of evidence, but an arbitrator can. So, an arbitrator's judgement may be based on facts that a judge would look at during a trial.

If particular information from a witness is shown in papers, then the witness's evidence can't be cross-examined. Arbitration may limit discovery more than other methods. In litigation, making the other corporation give certain information or documents.

entity not involved in the lawsuit to give particular papers or information. Because of this, arbitration is often not agreed upon until after the parties have already gone to court and discovery is ended. By then, the chance to save money by employing

arbitration may be lessened. It is not apparent what principles an arbitrator uses, but in general, they must respect the law.

If arbitration is binding, neither side can appeal. That means that one side can't really fix what they think is a wrong judgement by the arbitrator. If the issue is intricate but the amount of money at stake is little, the arbitrator's cost may make arbitration not worth it. may be shown having the doctor appear, it can be cheaper to litigate the case there. But right now, the court can only give out a certain amount of money.

CHAPTER- 2

Literature Review

2. Literature Review

As the information given in this research paper will be used and helpful for analysis, the method of this research paper has been used which is analytical and evaluative also. For preparing this research monograph I have followed many books, Newspaper, Website information, Article written by different Authors, few bare Acts and my personal observation.

Dr. Jamila A. Chowdhury (2013) in her book “ADR THEORIES AND PRACTICES: A GLIMPSE ON ACCESS TO JUSTICE AND ADR IN BANGLADESH” discusses about the mechanism of Alternative Dispute Resolution.

Mohammad Saidul Islam(2011) in his article “ Efficiency and Effectiveness of Alternative Dispute Resolution Schemes Towards the Promotion of Access to Justice in Bangladesh”.

Mazharul Islam (2014) in his article “The Evaluation of Alternative Dispute Resolution: Making a Case for Settlement” noted that lack of knowledge of judges and lawyers about ADR is interrupting to the success of ADR.

Md. Nannu Mian and Shaikh Rajib Hossain (2013) in their article “PROBLEMS OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS AND PROPOSALS FOR IMPROVEMENT: A STUDY IN BANGLADESH” discussed about the problem regarding the mechanism of ADR.

CHAPTER- 3

RESEARCH METHODOLOGY

3. Research Methodology

Any research is significantly influenced by its methodology. It is challenging to conclude a research project without employing any methods. The research's optimal outcome is significantly influenced by the implementation of appropriate methodologies that are pertinent to the subjects of the investigation. In the preparation of this research, I adhered to certain methodologies, such as the Imperial Methods and Analytical Method, when applicable. Interviewing, questionnaires, and document sources comprise the data collection methodologies implemented in this investigation. Both sources have been employed to gather the necessary information and data. Primary sources consist of in-person interviews with justices, while secondary sources include journals and websites.

Chapter- 4

Historical Development and Existing system of ADR

4. Historical Development and Existing system of ADR

Bangladesh first integrated court-based Alternative Dispute Resolution (ADR) into the Family Court Ordinance of 1985; however, it remained largely ineffective until the early 2000s, when former Chief Justice Mustafa Kamal revitalised it by launching pilot projects in selected family courts in Dhaka. The government, observing the remarkable outcomes of the pilot programs in family courts, was persuaded to integrate the ADR provisions into the Code of Civil Procedure (CPC), 1908. The ADR provisions, once voluntary, are now mandatory for all civil courts due to the inclusion of sections 89A and 89C of the Code of Civil Procedure, 1908, via the Civil Procedure (Amendment) Act, 2012. In addition to these two laws, ADR provisions have been included into the Labour Act of 2006 and the Artha Rin Adalat Ain (Money Loan Court Act) of 2003. The endeavour to resolve a legal problem by the active involvement of a third person (mediator) who seeks to identify common ground and facilitate a mutually acceptable resolution among the disputing parties. Mediation varies from arbitration in that the third party (arbitrator) functions similarly to a judge in a less formal, out-of-court environment but does not engage actively in the discourse. Mediation has grown prevalent in resolving domestic relations conflicts, such as divorce, child custody, and visitation, and is frequently mandated by the judge in these instances. Mediation has increasingly being utilised in contract and civil damage situations. Professional mediators, or attorneys who engage in mediation for significant fees, offer a financial alternative that is less burdensome than litigation, perhaps facilitating prompt resolution and alleviating stress. Nonetheless, mediation does not invariably culminate in a resolution.

4.1 Definition of ADR

1. Alternative Dispute Resolution (ADR) is a term that covers ways to settle disagreements without going to court, such as arbitration, mediation, or negotiation. ADR methods are often cheaper and work better. They are increasingly utilised in disputes that could potentially result in litigation, including significant labour conflicts, divorce cases, and personal injury claims.
2. Any way to solve a conflict that doesn't involve going to court. Also known as ADR. People can ask public courts to look into whether ADR methods are legal, but they don't usually throw out ADR decisions and awards if the people who are fighting have a real contract to follow them. Arbitration and mediation are the two main ways that alternative dispute resolution (ADR) works.
3. Three Alternative dispute resolution (ADR) includes a number of ways to help people settle their differences without going to court. Arbitration and Mediation are two common ADR methods. These methods are often private, casual, and less stressful than regular court sessions.

4.2 History and Development of ADR

Since the political and social unrest of the 1960s, alternative dispute resolution has grown a lot in the United States. The passage of new laws that protect people's rights, along with less tolerance for discrimination and injustice, led to more people filing lawsuits to settle disputes. The Civil Rights Act of 1964 made it illegal to discriminate against people based on their race, sex, or country of origin when hiring or using public places. Laws like this gave people more reasons to seek restitution for being treated

badly. At the same time, the women's movement and the environmental movement were both making progress, which led to a lot of legal fights. The result of these changes was a big improvement in the the number of lawsuits that people file in U.S. courts. Alternative Dispute Resolution (ADR) is a method that is becoming more popular that lets people settle their differences without going to court. Alternative Dispute Resolution (ADR) make people happier with how conflicts are resolved, which is very important.

Over the past few years, the Fresno Superior Court has been slowly improving its use of ADR. Court recognised need for better public access to dispute resolution in 1999 and set up an ADR Department. This part helps the parties by giving them information about ADR services and proceedings.

4.3 Development of ADR in Bangladesh

In an effort to reduce the delays, expenses, and grievances of litigants who were navigating the traditional trial process, formalised ADR was implemented in Bangladesh in June 2000 through court-annexed judicial settlement experimental projects. succession if ADR pilot program was initiated in a collaborative effort with ISDLS. In the Dhaka Judgeship, three Pilot Family Courts were established to exclusively adjudicate family cases, including divorce, restitution of conjugal rights, dower, maintenance, and custody of children, through judicial settlement. The Code of Civil Procedure did not require an amendment as a result of the 1985 Family Courts Ordinance, which permitted the trial judge to attempt reconciliation between the parties both before and during the trial.

The judges received training from a United States mediation expert, which was organised by ISDLS. The Assistant Judges were relieved of all other formal trial duties during this assignment.

By January 2001, all three pilot programs were operational. The program was gradually extended to additional courts across the nation after judges had effectively resolved cases. The judicial settlement effectively implemented by conclusion of the first year of the program.

The Law Minister organised a conference in 2002 to raise awareness of the accomplishments of these initiatives, as a result of the high settlement rates they were obtaining. The conference was attended by all District Judges, Presidents and Secretaries of all District Bar Associations, the current Chief Justice, the previous Chief Justice, Judges of both divisions of the Supreme Court and prominent attorneys from across the country.

In 2003, the Civil Code of Procedure was amended to include mediation and arbitration as viable dispute resolution options for non-family disputes. The Money Loan Recovery Act mandated the use of Judicial Settlement Conferences in money loan recovery cases in addition to this amendment. A training program was conducted at the Judicial Administration Training Institute (JATI) in Dhaka for the forty judges who have exclusive jurisdiction over money loan recovery cases. The program was headed by former Chief Justice Mustafa Kamal. In July 2003, mediations were initiated for disputes that were not related to family.

4.4 Types of ADR

The following are possible descriptions of the diverse ADR models that are present in various countries:

- a) ADR that is either freestanding or annexed to a court
- b) Binding or Non-binding ADR (c)ADR, whether formal or informal (d) Hybrid and Basic ADR

4.4.1 Court-Related Alternative Dispute Resolution

There are two types of Alternative Dispute Resolution (ADR): freestanding and court-annexed. ADR can happen on its own or as part of a lawsuit. When the process is linked to a lawsuit or court case, it is known as court-annexed ADR (judicial ADR).

4.4.2 Binding or Not binding ADR

It is very important to know the difference between binding and non-binding forms of alternative dispute resolution. Negotiation, mediation, and conciliation programs are distinguished by their non-binding nature, depending on the parties' readiness to reach a voluntary agreement. There are two types of arbitration programs: binding and non-binding. In binding arbitration, a third party makes a decision that the parties involved must follow, even if they don't agree with it. This is similar to a court ruling. There is also another part of ADR that is required and optional: how disputes get into the ADR process. If a court or law requires people to ADR, then ADR process is binding or required.

4.4.3 Formal or Informal ADR

The ADR process is less formal than court cases and other formal legal proceedings. People often say that ADR is an informal way to settle disputes, unlike the formal legal system. The ADR process is informal because it doesn't have strict rules of evidence, formal pleadings, or a lot of written documentation. Instead, it lets people change the rules as needed. There are two types of informal ADR modes: formal ADR modes and informal ADR modes. When a certain ADR mode is attached to a court, it usually becomes less formal because the court may need to see its records and proceedings. Fifteen

4.4.4 Basic and Mixed ADR

The hybrid ADR process combines parts of basic processes to create a wide range of ADR methods. For example, med-arb is a combination of mediation and arbitration. The hybrid ADR process may incorporate features typical of court-based adjudication; for example, the mini-trial merges an adjudicative presentation of arguments and evidence with negotiation.

4.5 Mechanisms of ADR

In Bangladesh, the most prevalent ADR techniques are Arbitration, Negotiation, Mediation, and Conciliation.

4.5.1 Mediation

In a private setting, mediation is a process in which a neutral third party, known as a mediator, assists the parties in discussing and attempting to resolve the dispute. The parties are afforded the chance to articulate the issues, engage in discussions regarding their interests, comprehensions, and emotions, exchange information, and generate potential solutions to the dispute. Although courts have the authority to require mediation in specific cases, the mediation process is considered "voluntary" in the sense that parties are not obligated to reach a resolution. The mediator is not authorized to render a decision on behalf of the parties; however, they may assist them in identifying a mutually acceptable resolution. It is indeed a litigative irony that the parties themselves are the only ones capable of resolving the dispute in mediation. Mediation may proceed in a variety of methods. The majority of mediations commence with the parties participating in a joint session. The mediator will provide an explanation of the process, the mediator's responsibilities, and the establishment of the session's agenda and ground rules. In general, the parties then deliver their introductory statements.

4.5.2 Arbitration

Arbitration is a well-established process in which the parties agree to submit a dispute to one or more impartial and independent arbitrators, who then render a binding and enforceable decision.

The arbitrator is typically chosen from a panel of arbitrators who are available or may have been formally agreed upon in the arbitration clause. The arbitrator will communicate with all parties after the matter has been submitted to them. A schedule will be established, which will specify the deadlines for the exchange of all

documents, the disclosure of all witnesses, the submission of arbitration briefs, and the location and timing of the hearing. At the arbitrator's request, a preliminary consultation will be conducted. This may be a collaborative session with all parties in attendance or may be conducted via telephone conference. Each party is permitted to present evidence during the arbitration proceeding. The arbitrator will render a "arbitrator's award" subsequent to the evidence review. The prevailing party frequently has the option of obtaining an enforceable court order after the arbitrator's award has been issued.

4.5.3 Negotiation

Negotiation is any form of consensual communication between two or more individuals with the objective of reaching a mutually acceptable agreement. Negotiation is a common occurrence in daily life, and the majority of us are unaware that we are participating in a process. For instance, it may involve a straightforward and informal discussion between a parent and a child about an increase in personal money. On the other hand, negotiation can be a highly structured and formal process that takes place on the steps of the courthouse between parties and their solicitors. In fact, this process resolves the majority of disputes, whether they are justiciable or non-justiciable, and negotiation is the foundation of all ADR processes.

Ury and Fisher observe that negotiation is a fundamental method for obtaining what one desires from others. It is a form of communication that is intended to facilitate the establishment of an agreement when there are certain interests that are shared and others that are opposed between you and the other party. Twentie In contrast, adversarial negotiations frequently commence with rigid positions, during which the parties present counteroffers and proposals that are substantiated by argumentation until a compromise is reached. The settlement may result in a win-

lose situation and will, to a significant extent, reflect the relative influence of the parties. The interest-based approach to negotiation is referred to as principled negotiation. The fundamental principle of this method is that the parties focus on resolving the issue by identifying a mutually beneficial solution, rather than attempting to vanquish the opposing party. The four fundamental principles of principled negotiation are as follows:

- 1) Distinguishing the individuals from the issue;
- 2) Concentrating on interests rather than positions;
- 3) Devising strategies for mutual benefit; and
- 4) Requiring objective criteria. Nineteen

4.5.4 CONCILIATION

Conciliation is a form of mediation in which the disputing parties involve a neutral third party, known as a conciliator, who meets with them separately to attempt to resolve their differences. A conciliation is distinct from an arbitration in that the conciliation process itself lacks legal standing, and the conciliator typically lacks the authority to gather evidence or summon witnesses, compose a decision, or issue an award. Fourteen A conciliation is distinct from a mediation in that its primary objective is to achieve conciliation, typically through the pursuit of concessions. In mediation, the mediator endeavours to facilitate the discussion in a manner that is conducive to the parties' objectives, considers their emotions, and organises their perspectives. The parties rarely, if ever, confront during conciliation. Rather, the conciliator meets with the parties individually. "Shuttle diplomacy" is the term used to describe a type of conciliation (mediation) that is entirely dependent on caucusing.

Chapter- 5

ADR in the Current Legal System

5. ADR in the Current Legal System

Emphasis is placed on the humane aspects of all family law-related matters. Negotiation, arbitration, and conciliation proceedings are employed to resolve issues related to marriage, divorce, dower, maintenance, custody of a child, and inheritance. In the event of a final resort, the family court is invoked.

5.1 Alternative Dispute Resolution (ADR) in Family Laws

5.1.1 What is ADR Family Conferencing?

The Family Conferencing Program at Legal Aid is an ADR process that enables you and your erstwhile companion to collaborate in order to resolve your dispute with the guidance of an experienced chairperson. a wealth of experience in family law and/or family mediation. An Alternative Dispute Resolution (ADR) Family Conference assists individuals in resolving their family law dispute by identifying issues and developing alternatives, encouraging individuals to consider options and alternatives, and facilitating the development of an agreement without the need to resort

For successful, you must be prepared to:

- Engage in a dialogue and investigate the matter,
- Engage in negotiations and compromise,
- Concentrate on the family issue rather than the other individual, and
- Consider the perspective of your former companion.
- It is crucial to have a comprehensive understanding of the practical and reasonable solutions to your dispute prior to attending the conference. It is exceedingly uncommon for there to be only one or two.

5.2.2 Who will be in attendance at the ADR Conference?

The family conference will be attended exclusively by the following individuals:

- Confidentiality is guaranteed for all statements made during the Conference. It is not permissible to reiterate it in court; however, there are certain exceptions. These will be clarified to you by your solicitor.

5.2.3 The Benefits of ADR family conferencing include:

- The process is less stressful and more informal.
- It is voluntary.
- It is confidential.
- It prevents the need to attend court.
- It is less expensive than the legal fees associated with court.
- It enables you to maintain control over decisions that affect your family's life.
- If an accord is reached, generated at the conclusion of the conference. Subsequently, these decrees may be submitted (registered) at the Family Court.

5.2.4 The Importance of Alternative Dispute Resolution

Muslim family laws regulations 1961 are the most sensitive laws. A dispute that arises from this law is more effectively resolved outside of the courtroom. Since this family dispute involves numerous personal and internal matters. ADR provides a more effective solution than the court in this family matter. Additionally, they were informed that they would be required to conduct mediation whenever a case was designated to them in their capacity as Family Court justices. First, the cases involving family matters are lodged in the court of the Assistant

justices with territorial jurisdiction. After the summons are issued, mediation court in accordance Section 24 allows the District judge to transfer any petition for trial or disposal to any court that is and has the capacity to try and application of the parties or on his own initiative.

5.3.1 ADR in line with the Muslim Family Law Ordinance of 1961

The Muslim Family Laws Ordinance of 1961 and the Family Courts Ordinance of 1985 both give people a chance to settle their differences in a different way or come to an agreement. The Arbitration Council is a way to settle disputes that is not part of judicial ADR. On the other hand, the Family Courts Ordinance of 1985 sets up a way for judges to help people get back together as an important part of the court process (court-annexed ADR).

ADR in line with the Muslim Family Laws Ordinance of 1961. This law allows for reconciliation or alternative dispute resolution through an arbitration council in three situations:

- (i) If there is polygamy as defined in section 6;
- (ii) If talaq becomes effective under section 7, and
- (iii) If the spouse does not provide maintenance for his wife as required by section 9, the Arbitration Council: Section 2(a) of the Muslim Family Laws Ordinance, 1961, says that an arbitration council is made up of the Chairman and one person from each side of a case that this law deals with.

The Shafi and Shia schools of thought do not recognise this form of talaq; however, the Muslim Family Laws Ordinance, 1961, recognises the "pronunciation of talaq in any form whatsoever."

As per the procedure, the spouse must give the Chairman of the Union Parishad a notice of talaq. The Chairman has to do everything he can to help the spouses get back together. The divorce will not be final until ninety days have passed since the notice was sent, or until the end of the wife's pregnancy, whichever is longer. This is unless the divorce has been revoked earlier, either explicitly or by actions (as a result of reconciliation brought about by the Union Parishad or otherwise). If a divorce goes through, the people involved can get married again without having to go through a hila, or marriage, first, except for a third divorce. Section 7(3) of the Ordinance says that talaq won't happen until 90 days have passed since the Chairman's notice. It is possible that the husband's failure to provide notice or his decision not to provide notice to the Chairman connected could be seen as a revocation of the talaq.

5.3.2 Section 7 of the Muslim Family Laws Ordinance, 1961 provides

The case of Abdul Aziz vs Rezia Khatoon³⁵ showed that talaq is not legally valid if the rules in section 7(1) are not followed. However, the Appellate Division of the Supreme Court of Bangladesh recently ruled that the petitioner husband divorced his wife by swearing an affidavit before a Magistrate and then sending a copy of the affidavit to the Nikah Register, where the divorce was registered in accordance with section 6 of the Act, 1974. This seems to go against section 7 of the Ordinance. As a result, the marriage bond is broken, and the wife is owed the full amount of the dower, both now and later. Section 7 (1) of the Ordinance 1961³⁶ says that he can't take advantage of his own mistake about not telling the Chairman.

The court's goal was to stop the husband from using the legal requirements for serving notice of talaq to the Chairman of Union Parishad as a way to get rid of the divorced wife's claim to dower after the talaq. This is because there seems to be a contradiction. It's likely that the Court used the well-known saying, "Equity will

not allow a law to be used as a tool of fraud." The wife who wants to end the marriage is also covered by Section 7 of the Muslim Family Laws Ordinance, 1961. The wife who wants to end the marriage must follow the steps in section 7 of the above-mentioned Ordinance, with the changes required in section 8. If the wife wants to use her delegated right, talaq-e-tafwez, she must send a message to the Chairman of Union Parishad after she has truly divorced herself. The High Court Division of the Supreme Court of Bangladesh made a decision in the case of Sirin Akhter and another vs. Md Ismail.

In this case, it has been decided that:

The law was followed, and the talaq took effect when the spouse acknowledged receiving the notice of the right of talaq-tafwez and the notice was delivered to the appropriate Chairman. Guidelines for the reinstatement of marital rights as

A consequence relief is against the law and goes against the ideas in articles 27 and 31 of the Constitution.

Section 8 says that "if any of the parties to the marriage wants to end the marriage in a way other than talaq," which seems to include ending the marriage through court proceedings, khula, and Mubara'at. Section 23(2) of the Family Courts Ordinance, 1985, makes it very important to carefully look into these ways of ending a marriage, especially judicial dissolution. Sections 10, 13, and 23(3) of the Family Courts Ordinance 1985 set out the rules for mediation. -

The law from 1961 will be put into effect. According to section 23 of the Family Courts Ordinance 1985 and sections 7 and 8 of the Muslim Family Laws Ordinance 1961, the marriage may end after 90 days from the date the wife first filed the suit or action or after 90 days from the date the court sent her a certified copy.

5.3.3 Famous two cases

Muhammad Amin vs. Surrava Begum 1969⁴⁰ and Muhammad Ishaque vs. Ahsan Ahmed 1975⁴¹ In one instance, it was determined that notifying the Chairman of the Union Parishad is unnecessary following the court's issuance of a decree under section 2(u) of the Act of 1939, predicated on the choice of puberty. In another case, nevertheless, the Lahore Court of Pakistan had looked into the matter in great detail and decided that the family court must transmit a copy of the order to the Chairman after it has been made. The woman, who is the one who gets the decree, must also tell the Chairman about it on her own and send a notification to her husband. The honourable learnt court had to decide whether the divorce decision was still valid after the couple had successfully reconciled. The court said that if the wife and husband completely agree to settle their differences, the decree would be considered to have been abandoned by the wife. The conciliation will lead to a compromise. 39 5 DLR (2000) (HC) 81 40 21 DLR 253 41 5 PLD Lah 1118 42 21 DLR 253 and therefore avoiding the order. In other words, the decree will not apply if the parties have reconciled within the appropriate time frame, as required by the Family Laws Ordinance and its rules. In the khula method of divorce, if the husband agrees to the divorce, the wife can then get the divorce without going to court by delivering the notice on the Chairman. If the woman needs to go to family court for khula because he won't grant his approval, then the same question comes up about whether sections 7 and 8 of the Ordinance apply. The Pakistan Court of Baghdad-ul-Jahid ruled made it necessary to go to an Arbitration Council before going to a family court to get a divorce by khula. It further said that khula can be used when the wife had a "fixed aversion" for the husband, in which case any amount of reconciliation would not help.²¹ In this case, the court merely talked about what would happen if the two sides came to an agreement. The khula obtained via court was highly practical since the wife would not want to get back together with her husband after going through the anguish of the judicial process. The court did not say that sections 7 and 8 do not

apply to khula, even if the odds of a successful reconciliation are quite low. There is no need to go to court for a mahara'at divorce, which is predicated on the parties' mutual dislike of each other. The marriage can be ended if either person gives the notification

5.4.1 ADR in the Family Courts Ordinance, 1985

The Family Courts Ordinance, 1985 contains a built-in way to settle disputes called judicial or court-annexed mediation. This is different from non-judicial mediation through the Arbitration Council, which was set up under the Muslim Family Law Ordinance, 1961. The Ordinance, at the request of the presiding family court judge, anticipates two forms of mediation mechanisms:

- (i) Pre-trial Reconciliation proceedings under section 10
- (ii) Post-trial Reconciliation procedure under section 13.

Section 11 of the Ordinance further says that any part of the proceedings might be held in camera if necessary. The goal of these rules is to provide the parties in a dispute a way to settle their differences informally, privately, and with a spirit of cooperation. The Family Courts will act as friends and well-wishers rather than judges. However, the last twenty years since this law was passed show that the specialisation in handling family matters and the use of mediation or conciliation in family court cases are still not happening, and the atmosphere or tradition of it is almost nonexistent.

5.4.2 Divorce Mediation

Without the Court's intervention Conciliation Divorce is the most hated , but it does happen, and Chairmen of Union Parishad regularly get notice of it. The Chairmen can help the two sides come to an agreement without going to court, thanks to

sections 7 and 8 of the Muslim Family Laws Ordinance, 1961. The Family Courts Ordinance, 1985 allows for conciliation between the parties involved in the court case, however these rules have not been fully recognised or followed yet. These laws are meant to be in line with the spirit of Quranic divorce laws. This article concentrates on conciliation facilities and the methodology for their effective application by fostering knowledge. Conciliation or mediation (the two phrases mean the same thing) is a way for the people who are arguing to make a decision together with the support of a third person. In conciliation or mediation, the disputing parties do not relinquish the authority to give any decision (unilateral or otherwise) intended to be binding. Conciliation and mediation are the most important parts of making plans for the end of families. Proponents of mediation and conciliation contend that alternative dispute resolution methods prioritise consensus over adjudication. In conciliation, on the other hand, the parties are in charge. It is perceived as an environment that enables the parties to resolve their issues independently. The practice of conciliation to resolve marital disputes originates from the Quran and the Sunna (the traditions of the Prophet). If they can't live together in peace and harmony, they can choose to split. However, it is best to try to make things right before they do. The Quran (IV: 35) advises couples to employ arbitration: The Family Courts Ordinance, 1985, set up the family courts and set forth the rules for how they work. Family affairs encompass lawsuits for divorce, reinstatement of marital rights, child custody, recovery of dowry, and spousal support.

"If you are worried that they will break up, choose two arbiters, one from his family and one from hers. If they want peace, God will bring them back together because God knows everything and is aware of everything." courts the power to mediate in cases that were still going on, both before the trial under section 10 and after the evidence was presented and the problems were framed

and a date was set for the preliminary hearing under section 13. Since the Ordinance was passed, the Family Courts have not used these rules to help settle conflicts in cases that are still going forward. The explanation is because the judges in question don't have any drive. Judges in family courts were absolutely clueless about mediation since they were used to an adversarial system. There was no previous effort to teach the judges how to mediate, and they were not told to do so. Because of this, these courts have been treating the parts of the Family Courts Ordinance that were described above as unnecessary .

The Family Court (Amendment Act, 1989) made it clear that quick decisions were important, which was the point of the original Ordinance. The Family Court cannot handle other family law matters, such as inheritance, division, gift, or wakf. It can only handle civil cases related to these issues. The Family Court Ordinance is for everyone, no matter what faith they follow. This law has not taken away the rights of any plaintiff of any religion. Section 4 of the Ordinance makes it clear that it has only made it possible to enforce part of the rights. a built-in way for the parties in a dispute to settle their differences informally, privately, and with a spirit of accommodation. The Family Courts act as friends and well-wishers, not judges.

The Family Courts then hold a pre-trial hearing of the matter when the plaint, written statement, and serving of summons have been filed. The Family Courts Ordinance of 1985 says that the Court must set a date for a pre-trial hearing of the claims, which is usually not more than thirty days away. Subsection 3 says that at the pre-trial hearing, the Court will find out what the parties disagree on and try to reach a compromise or reconciliation between them, if that is feasible. If no compromise or reconciliation can be reached at this point, the court will set the issues to be tried in the case and set a date, usually no more than 30 days later, for the recording of evidence. The Family Court Judge tries again to get the parties to agree or make up after the trial is over but before the judgement is made.

Chapter- 6

Scope of ADR in Other Sectors

6. Code of Criminal Procedure, 1898

Dispute settlement mechanisms that do not include or need a full-scale judicial process are sometimes referred to as "Alternative Dispute Resolution" (ADR). In a nutshell, it means to settle a legal disagreement out of court. As part of its civil justice system, Bangladesh has implemented this measure. The criminal judicial system has been slow to adopt ADR.

A little room for compromise between the warring parties is carved out in Section 345 CrPc. In addition to this, the Gramme Adalat Ain, 2006 and the Birodh Mimangsha (Paura Elaka) Board Ain, 2004 both deal with the compromise disposition of certain minor criminal crimes. When a defendant files a compromise petition for a compoundable offence, the Criminal Court has no choice but to grant the defendant's acquittal. Extending the reach of Section 345 of CrPC will enhance the possibility of alternative dispute resolution in criminal proceedings. Public safety might be jeopardised if the scope of compoundable offences is expanded. If ADR is effective, society will be able to rest easy. Compounding symbolises reaching a mutually agreeable resolution. Complicating offences typically include an individual's agreement to refrain from reporting or failing to pursue a criminal offender in return for monetary or other kind of compensation. Conversely, it is possible to say that compoundable transgressions are ones that the disputing parties can work to mitigate. You do not need the Court's consent. It should be noted that the victim or the person who feels wronged may exacerbate the crime. The ability to compound an infraction does not even rest with the public prosecutor. Section 345 of the Criminal Procedure Code lists the offences that can be legitimately compounded. Compoundability does not apply to offences constituted by Special Laws. If a crime is not compoundable according to Section 345, the court cannot permit compounding. There are two kinds of offences that can be compoundable:

(Compounding with the court's approval; (b) Compounding without the court's approval.”). Compounding some offences does not require a judicial order, as stated in Section 345 (1). Only crimes listed in Section 345 (2) are eligible for compounding. with the approval of the judge. A large variety of crimes are defined and punished under the Penal Code of 1860. Although the process for trying compoundable offences is outlined in the Code of Criminal Procedure, it is also possible to resolve them outside of court.

Preserving social harmony is the primary goal of compounding. However, compoundability is not available for many crimes, especially the more egregious ones. Crimes including murder, rape, kidnapping, dacoity, smuggling, abduction, etc., must not be compounded, with the exception of those listed in column 345 of the Code of Criminal Procedure.

6.1 Code of Civil Procedure, 1908

The Code of Civil Procedure, 1908, Sections 89A, 89B and 89C clarify the late addition of the rules of Alternative Dispute Resolution in 2003, through an amendment of the Third Amendment of the CPC. The court may adjourn the hearing for mediation purposes when any of the parties to the case, by or in-person, are present in court. The court may also refer it to the lawyers who are already on the case, or without lawyers, the parties themselves, or a mediator from the panel of mediators supplied by the District Judge for mediation, which has typically exclusively been used to reference mediation through a set panel. Section 89A of CPC lays out the various forms of mediation, while 89B and 89C lay out arbitration and mediation in appeals. The Code of Civil Procedure does a clear job of laying out the basic methods of ADR through negotiation, mediation, and arbitration.

6.2 Village Courts Act, 2006

The Village Court Act uses the name "Village Court," yet no judge actually makes decisions under the Act. 22 One of the people involved in a disagreement must ask for the Village Court to be set up. The Village Court would be led by the Chairman of the Union Parishad (UP) or any other member of the UP if the chairman is unable to chair or if there are doubts about his or her neutrality. Each Party must choose two people, one of whom must be a member of the UP. The Village Court has sole authority over minor civil and criminal cases listed in the schedule of the Act, unless the accused is found guilty of another cognisable offence listed in the first part of the schedule, there is a question of a minor's interest, there is a previous agreement in any arbitration between the parties, or a government or its employee is involved. The Village Court can't send anyone to jail. It can only order damages of up to TK. 25,000/- and the return of property. The Village Court, on the other hand, does not follow the rules set out in the Evidence Act, 1872, the Civil Procedure Code, or the Code of Criminal Procedure, 1898 (CrPC). Also, neither side can hire a lawyer to defend them.

6.3 The Arbitration Act, 2001

Peaceful arbitration for dispute resolution has been utilised since ancient times. Arbitration was implemented in Greece, China, Arabia, and Italy throughout the 12th and 13th centuries. Arbitration became an efficient mechanism for resolving international disputes by the late 18th century. Subsequently, International Arbitration successfully concluded about 100 cases. In those 100 instances, the United Kingdom and the United States of America participated in around 70 cases. The Hague Peace Conference had a significant influence on International Arbitration between 1899 and 1907. The Hague Peace Conference outlined the rules, procedures, and organisation of arbitration and founded the Permanent Court of

Arbitration. The arbitration is to be established as a component of international law. Ultimately, arbitration was declared as a state.

6.4 The Artha Rin Adalat Act, 2003

Under legislation to hear matters concerning the recovery of debts from financial organisations. Previously, loan recovery matters fell under the jurisdiction of regular civil courts. Specialised courts for resolving disputes between borrowers and lenders were formed within the District Judge's Court grounds. The Courts of Joint District Judge, formed by the new legislation, possess paramount authority over other legal statutes. In the event of a disagreement with any existing legislation, the provisions of the new law concerning monetary loans must have precedence. According to the Act, subordinate judges are appointed as judges of the money loan courts in collaboration with the Supreme Court. The law mandates the filing of all lawsuits for the recovery of loans from financial institutions, banks, Investment Corporations, House Building Finance Corporations, leasing companies and non-banking financial institutions established under the Financial Institutions Act of 1993, in the money loan courts for adjudication. The money loan court possesses all the authority of a civil court.

6.5 The Conciliation of Disputes

The Conciliation of Disputes (Municipal Areas) Board Act, 2004, Section 3, talks about the Board of Conciliation of Disputes. The Board will hold its trial. Section 5 of the Act lists a number of crimes that the Board can try. If the Board is set up to deal with a certain issue or crime in the municipal area where it is located, it can hear any case related to that issue or crime. It doesn't matter if one or both parties live outside the area or if both parties live in that area. 53 The Board in question has five members. two members chosen by the plaintiff in the suit in a certain way; and two members chosen in the suit. As long as one of the two members chosen by each party is from the municipality in question, To settle or hear all cases related to the issues and crimes listed. involved must submit a written application in Bangla on white paper with their signature or fingerprint. The application must include the names and addresses of the people the applicant has nominated, the names and addresses of each defendant, and one copy of the application to send to each defendant. where applicable, restitution of property that has been taken away. that come up in the Paura areas and are resolved from time to time help ADR

6.6 The Bangladesh Labour Act, 2006

The purpose of labour law is to control and govern the ongoing process by which workers and management agree on the terms and conditions of employment. The laws that make it up are mostly from the previous seventy years of parliament. Labour law governs aspects like employment, salary, working conditions, trade unions, and labour management interactions.

It also talks about the rules and laws that protect workers' freedom to join a union, such as the benefits of workers, the rules for taking time off, notably for women who are pregnant, and workers' social security. includes rules for collective bargaining and the ability to go on strike. Individual employment that protect your rights at work, such the right to a safe workplace or a minimum salary. collective believes that an industrial dispute may occur between the employer and the workers, the employer or collective bargaining agent must convey their views in writing to the other side. The party that gets the communication must, within fifteen days, set up a meeting with the other party to talk about the issue raised in the communication and try to reach an agreement through dialogue. This meeting can also be held between representatives of both parties who are authorised to do so. If the parties agree on a solution to the problem, they will write down the terms of the agreement and sign it. A copy will be sent to the Government, the Director of Labour, and the Conciliator. The conciliator must start his work within ten days of getting the request and convene a meeting of the people involved in the dispute to try to reach a settlement. The people involved in the issue must attend to the conciliator on the day and time he sets, either in person or through representatives they have chosen and given permission to discuss and reach an agreement that all sides must follow. If the parties to the dispute reach an agreement during conciliation, the conciliator must deliver a report of the agreement to the Government together with a signed memorandum of

settlement by the parties. If the Conciliator doesn't get a settlement within thirty days of getting a request, the conciliation will fail, but the parties can agree to keep it going for a longer time. If the conciliation doesn't work, the Conciliator will try to get the parties to agree to send the case to an Arbitrator for a decision. The Conciliator must offer the parties a certificate within three days of the Conciliation procedures failing if they do not agree to send the matter to an Arbitrator for settlement. If the parties agree to send the issue to an Arbitrator to be settled, they must write a joint request to send the matter to an Arbitrator that they both agree on. The Arbitrator mentioned in this sub-section may be a person on a panel that the Government keeps up or any other person that both sides agree on. The Arbitrator must make his decision within thirty days of receiving the case. It is correct to say that the Labour Act, 2006 talks about the ADR mechanism.

Chapter- 7

ADR the Areas of Challenges

ADR the Areas of Challenges

7. Challenges

Immediate attention is required to address specific challenges for further developments, particularly in supervising the operation of the ADR system and its subsequent advancement. Secondly, the deficiencies in criminal cases regarding plea bargains must be addressed through statutory intervention. Numerous countries, including India, have implemented provisions for mediation and conciliation at the pre-litigation stage. It is imperative to initiate this system promptly, as it holds significant importance; the ADR process can substantially enhance the legal framework, thereby facilitating swifter access to justice for individuals.

Additionally, similar to the CPC, the FCO lacks a provision for the substitution of a judge in the event of a failure in judge-sponsored ADR.

The FCO proposed the creation of distinct Family Courts to exclusively address family disputes. It is surprising that no distinct Family Courts have been established; instead, the Assistant Judge's court has been functioning as the Family Court, despite the judge being already overwhelmed with other civil cases.

Family disputes are inherently sensitive and personal, necessitating a judge who is both experienced and well-trained. Under section 4 of the FCO, the Assistant Judge, the least experienced tier of the subordinate judiciary, serves as the Judge of the Family Court. In India, the Family Courts Act of 1984 stipulates that an individual must have served in a judicial capacity for a minimum of seven years to be eligible for appointment as a judge.

Only Family Court Judges are presently tasked with facilitating compromise, and the FCO lacks any provisions for referring disputes to external individuals or institutions.

7.1 Some Lackings of ADR

7.1.1 Disconnect between rules and reality

Many courts have a rule that lets people use ADR processes for cases filed in that court, but the rule is not often used. One reason for this disconnect is that some judges don't actively promote ADR. Judges are the main reason why new or voluntary ADR programs happen, and they rely on judges to make referrals.

7.1.2 Cooperation of Lawyears

The lawyer community may not like the idea of ADR because they think it will take away their share of the pie. One of the main reasons cases take so long to get rid of is that lawyers use dilatory tactics, like asking for more time over and over again. A good mediation lawyer will always bring in new clients who want to try mediation instead of going to court.

7.1.3 Resistance from the bar

In certain jurisdictions, bar members oppose the utilisation of ADR or fail to advocate for their clients to employ ADR in suitable cases. Some of this resistance is because people don't know enough about how ADR works. For example, some lawyers don't know the big difference between mediation and arbitration: the role of the neutral. In mediation, a neutral third party (the mediator) helps the parties reach a negotiated agreement. In arbitration, on the other hand, an arbitrator has the power to make a final and often binding decision.

7.1.4 Lack of public awareness

In many parts of the country, most people don't know about ADR, so litigants have to depend on their lawyers to suggest it. People who use ADR might not understand how it works. For example, they might think that the mediator will "decide" the case.

7.1.5 Need for program evaluation

Court ADR programs often do evaluations to check the quality of the program and show that it is meeting the goals set by the court. These goals differ from court to court, but they usually include lowering dockets, saving transaction costs, saving time, giving litigants more options, and making clients happier.

7.1.6 Correction of legal shortcoming's

The Code of Civil Procedure (Amendment) Act, 2003, added ADR provisions to the law. It looks like the CPC didn't include ADR rules until 2003. There wasn't enough attention paid to the laws that were already in place in nearby countries. These problems are getting in the way of ADR's success, and the government needs to deal with them as soon as possible.

7.1.7 Risks of quality control

K. M. Hasan, former Chief Justice, A Report on Mediation in Family Courts: The Bangladesh Experience. Released by BLAST in March 2008. In an era characterised by limited resources, particularly for funding ADR administrators, numerous court programs face challenges in maintaining service quality and enforcing ethical standards for neutrals and attorney representatives. Some courts employ staff neutrals, whereas many others depend on a panel of external neutrals for dispute resolution services. Depending on the court, these neutrals may receive

compensation or serve as pro bono volunteers. Numerous programs indicate that a single unsuccessful mediation can become legendary and negatively influence the legal community's perception of mediation as a whole.

Program administrators seek to prevent such legends and uphold the program's reputation for quality services by ensuring the appointment and retention of only highly qualified mediators for the court's panel. The steps involve defining qualifications for panel membership, mandating advanced training, conducting mediator interviews, gathering participant evaluations via questionnaires, and observing mediation sessions.

7.1.8 Lack of funding

Many courts face challenges in sustaining and enhancing their budget to deliver ADR services. Court ADR programs face significant challenges in securing funding, as they must vie with traditional court services. This competition has become increasingly unfavourable for ADR programs, especially in recent years when state and federal budgets for nonessential programs have been significantly reduced. Courts have explored various funding mechanisms, such as filing fees, user fees, and certification fees; however, the financial support for numerous programs continues to be ambiguous.

7.1.9 Relating mediator's core values

A significant number of advocates for mediation within the judicial system anticipated that it would serve as a constructive alternative to a confrontational, formal, and potentially isolating justice framework. Nonetheless, certain ADR programs have developed to include numerous adversarial components that they originally aimed to eliminate. There is a growing concern among experts that in certain courts, mediation is increasingly resembling settlement conferences.

7.1.10 Requiring good faith

Court regulations in several states mandate that parties "mediate in good faith." Court programs have struggled with the administration of these regulations, and courts have contended with the interpretation of good-faith obligations. Experts advocate for the design of programs to incorporate stakeholder involvement to avert issues related to a good-faith mandate.

7.2 Achievements of court based ADR

7.2.1 In Family Courts

The Family Court Ordinance was enacted in 1985. This Ordinance incorporates mediation, an alternative conflict resolution technique, in sections 10, 11, and 13, so providing the court with significant authority to settle disagreements between the parties. However, the courts did not extensively implement these laws until the year 2000. Sixteen pilot courts were conducted in various parts of the nation from 2000 to 2001. Qualified judges were assigned to that location. The pilot courts successfully resolved family matters using mediation. through mediation over a three-year period (from July 2001 to June 2004) following its inception. Prior to these activities from 1985 to 2000, during a span of fifteen years, the total funds generated by around 70 Family Courts amounted to Tk. 6.2 million, and these courts resolved fewer than one thousand family problems through mediation.

7.2.2 Advantages of ADR

The resolution of a disagreement through Alternative Dispute Resolution (ADR) is typically more expedient than through the judicial system.

Expertise - A professional within a certain trade or sector may propose a viable solution that will be acceptable to all parties concerned. A judge is improbable to possess specialised knowledge beyond legal expertise. Privacy - Alternative Dispute Resolution (ADR) is executed in confidentiality, so circumventing media exposure. The public is also prohibited from attending. Parties can maintain amicable relations - The objective of ADR is to achieve a mutually acceptable compromise solution. Court processes result in a victor and a vanquished. Employing Alternative Dispute Resolution (ADR) to mediate a conflict enables firms to maintain amicable relations and sustain their commercial interactions post-resolution.

Expenses for the Parties - All modalities of Alternative Dispute Resolution are significantly less expensive than pursuing litigation. State Expenditures - Each case settled through ADR results in financial savings for the Government. Conservation of Judicial Resources - Each case resolved through Alternative Dispute Resolution alleviates the courts' caseload.

7.3 ADR & NGO

The legal system in Bangladesh, like those in many other countries, is lengthy and expensive. Most people's ability and access to the court system does not exist. In an attempt to avoid the cost and prolongation of lengthy court cases, people look for

local remedies, such as shalish. Shalish is the traditional, or ancient, method of settling disputes. In Bangladesh, shalish sessions frequently concern divorce, abandonment, verbal divorce, alimony, land/property disputes, and crimes, including rape, adultery, and violence concerning dowries. Local government stakeholders, particularly the Union Chairperson, and social leaders (such as religious leaders or teachers) often facilitate shalish. Many of these sessions are facilitated by customs and Islamic Shariah rules, that may be contrary to women's rights and law.

Chapter- 8

Research Findings

8.1 Research Findings

- In making this research monograph I have got the following findings:
- The ADR Procedure is not codified like other procedural laws.
- Insufficient Knowledge.
- Participants' good faith.
- The judges, mediators, arbitrators, or conciliators involved in the alternative dispute resolution system lack enough training in this methodology.
- There is a deficiency in knowledge and awareness among the general populace regarding the alternative dispute resolution system.
- There are deficiencies in the legal process; for instance, after obtaining a compromise agreement from the mediator, the court issues an order or decree, yet there is no provision for judicial review prior to this issuance to confirm that both parties comprehend the terms of the agreement and its potential consequences.
- There exists a bad perception among attorneys concerning the alternative dispute resolution system, which hinders the efficacy of ADR.
- Bangladesh lacks a standardised ADR law. This is a challenge for the individual serving as an impartial mediator or conciliator, as methods vary across various situations.
- Absence of institutional backing.
- Insufficient confidence among the parties regarding the alternative dispute resolution mechanism.
- The Family Laws system lacks robust procedures for Alternative Dispute Resolution (ADR).
- The Family Court Ordinance lacks a provision for post-judgment mediation.
- The involvement of third parties in the ADR process and the forms of ADR proposed by certain legislation lack clarity.

- There is no regulation governing the oversight of any ADR hearings by government employees.
- The general populace exhibits limited interest in participating in ADR procedures.
- In certain instances, the resolution of ADR procedures is not definitive.

8.2 Recommendations

To enhance the efficacy of ADR, comprehensive and proactive collaboration among many authorities is essential. The following initiatives are presented below:

- Implement obligatory ADR in specialised legislation, such as family law disputes.
- It is crucial to promote understanding of ADR within family and other legal frameworks.
- Clarify the benefits of Alternative Dispute Resolution (ADR).
- Encouraging non-governmental organisations to engage in alternative dispute resolution.
- Mandatory comprehensive training for relevant judges, attorneys, mediators, arbitrators, and conciliators is essential. The training will occur continuously.
- The Government need to allocate a sufficient and sustainable resource for the recruitment of judges and personnel for technical training.
- The Government should arrange a program on monthly basis in every union to aware the people about alternative dispute resolution system; have to inform the people about the good side of ADR.
- The provision of judicial review may be included in the legal proceedings after a successful completion of mediation process.
- There should be a harmonized uniform ADR legislation in Bangladesh which will be Applicable for all types of the relevant cases.

- It needs an adequate political support including mobilization and involvement of representatives/advocates for disadvantaged groups.
- To make more institution privately to deal with ADR process.
- To incorporate ADR proceedings in appellate stage in Family Court Ordinance, 1985.
- It needs to have a committee to supervise the ADR proceedings, this committee will see that whether the ADR proceeding is being exercised properly or not.
- The role of the third party in ADR process must be explicit.
- The decision of the ADR proceedings should be conclusive.

8.3 Conclusion

The ADR idea is most used in Bangladesh's family laws. ADR is a very broad term that includes a lot of different ways to settle disputes, such as arbitration and mediation. In Bangladesh, ADR is used in both informal systems, like shalish and village courts, and by NGOs. It is also used in formal systems, like the Civil Court, Muslim Family Laws, and Family Court Laws. But this practice of ADR in Bangladesh is too hard for many reasons, such as not having enough money, not having lawyers work together, and not having good faith. We should practise ADR more and more in our country so that we can settle disputes peacefully. In the end, I think that if we bring ADR to our country, we can reduce the number of cases between our courts and the people. This will help us understand the justice system better. Then the people would have more faith in our laws and justice.

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