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LETTER OF SUBMISSION

January 5, 2023

To

Md Deedarul Islam Bhuiyan, Assistant professor &

Head of Department of law at Sonargaon University

Subject: Submission of Research on, "Alternative Dispute Resolution in Bangladesh: Problems and Prospects."

Dear Sir,

I am a grateful to you for the submission of the Research on ―Alternative Dispute Resolution in Bangladesh: Problems and Prospects‖ that has been prepared as an integral part of LL.M. requirement.

In this topic this is very important to find out the real prospect and problems of the Alternative Dispute Resolution. As a result; I got the opportunity to prepare research on the above topic. While preparing this research I read many journal, Article and research paper. It was a great learning experience for me.

I hope you would find this paper up to your expectation. I would be grateful to receive your suggestions and comments regarding this.

Thank You Yours Sincerely,

Md Mahedi Hasan

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Student Declaration

Hereby I declared that the work presented in this research paper has been carried out by me and has not been previously submitted to any other institute. The work I have presented does not breach any copyright.

(Md Mahedi Hasan)

I’d : LLM 2201025005

Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University.

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.M. program.

(Md Deedarul Islam Bhuiyan)

Assistant professor & head of the department of law at Sonargaon University

Declaration

I declare that the Research Paper titled "**Alternative Dispute Resolution in Bangladesh: Problems & Prospects** " submitted by me as the requirement of department of Law, Sonargaon University is my own work. I am solely responsible for the content of this work. The research paper complies with the University rules against plagiarism. It has not been submitted for any other degree of this University or any other University or for any publication.

Mehadi Hasan

ID: LLM 220102590

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List of Abbreviations

ADR- Alternative Dispute Resolution

CPC- Code of Civil Procedure (1908)

FCO- Family Court Ordinance (1985)

HCD- High Court Division

MFLO- Muslim Family Laws Ordinance (1961)

ITO- Income Tax Ordinance (1984)

MLCA – Money Loan Courts Act 2003

DCT – Deputy Commissioner of Taxes

UP- Union Parishad

CrPC- Code of Criminal Procedure (1898)

CBA – Collective Bargaining Agent

NG0 – Non- Governmental Organization

BLAST- Bangladesh Legal Aid Services and Trust

PIL- Public Interest Litigation

CHT- Chittagong Hill Tract

MLAA – Madaripur Legal Aid Association

ASK – Ain O Shalish Kendro

BS – Bachte Sekha

ICSID – The International Centre for Settlement of Investment Disputes

Table of Cases

Abdul Aziz v Rezia khatoon [1969] 21 DLR 73

Gias Uddin Chowdhury vs Bangladesh [2014] 66 DLR 213

Chevron Bangladesh Block Twelve, Ltd and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd. V. People's Republic of Bangladesh Case No ARB/ 06/10 (ICSID, 30 May 2016)

Table of Legislations

Code of Civil Procedure ,1908
Family Court Ordinance, 1985
Muslim Family Laws Ordinance, 1961
Income Tax Ordinance, 1984
Money Loan Courts Act 2003 And The Money Loan Courts (Amendment Act) 2010
Labour Act, 2006
Village Courts Act, 2006

Chapter one

1.1 Introduction of Alternative Dispute Resolution

Dispute or conflict is a part and parcel of human life, and must always have to be present. But they have to be settled in such a manner as to establish peace, solidity, tranquility, and progress in all manner in human society. The fundamental capacity of dispute resolution is via mutual negotiation, if it is insufficient then the intervention of third party come after. A third party invited by the disputants or he meddle Suo moto (on his own desire) to assist get to the bottom of the dispute. As a result, this gave intensification to court system and Alternative Dispute Resolution (ADR). The mechanisms of ADR present in different forms arbitration, mediation, conciliation, negotiation etc.[1]In June 2000 modern form of ADR was introduced in Bangladesh as court based resolution pilot projects so the problems like delays, expenditure, and old processing system , for this three Pilot Family Courts established to settle family cases under FCO which had the authorization the trial court to pursuit reconciliation among the party's precedent to and during the trial. The program increased slowly to further courts overall the country as the three-pilot program become successful and the judges started settling the disputes 16 pilot family courts in 14 districts of Bangladesh had successfully been introduced[2]. In our legal system as an introductory the law with concerning ADR has been popularized by amending the Code of Civil Procedure. Chapter V of Artha Rin Adalat Ain, the laws of ADR have also been integrated. By the newly executed sections 89A/89B of CPC, the ADR mediation and arbitration has been introduced. Mediation started in non-family conflicts in July 2003.[3]

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[1] C.A Ogbuabor , *The Nigerian Judicial Review*.(Nigeria: University of Nigeria ,Enugu Campus,2-11-2012), https://www.google.com/search?rlz=1C1GGRV_enBD815BD815&ei=tScJXJyhLIjEvwSIuQc&q=the+nigerian+judicial+review+by+ogbuabor&oq=the+nigerian+judicial+review+by+ogbuabor&gs_l=psy-ab.3..33i160.55186.62419..62897...0.0..0.648.2773.0j8j2j1j0j1.....0....1..gws-wiz.....0i71j33i22i29i30j33i21.65TDgceV3vI# Accessed on: 18th 0ctober, 2018

[2] Development of Alternative Dispute Resolution in Bangladesh. http://www.assignmentpoint.com/business/business-statistics/development-of-alternative-dispute-resolution-in-bangladesh.html. Accessed on 17th October, 2018

[3] ADR Is Civil Justice System in Bangladesh. http://www.assignmentpoint.com/arts/law/adr-is-civil-justice-system-in-bangladesh.html. . Accessed on 18th October, 2018

1.2. History of Alternative Dispute Resolution

Mediation and Arbitration are conventional methods of dispute resolution for settling controversies between individuals, businesses and countries. The parties may consent to their utilization after a controversy has taken place or may necessitate it for potential conflicts by counting a compulsory mediation and/or arbitration clause in their contract. In mediation, an unbiased third party meets with the disputants, both as a group and on an individual basis, then offers non-binding suggestions in order to resolve their controversy. If the parties cannot resolve their dispute by mediation, they will often submit it to binding arbitration by a neutral arbitrator. This arbitrator is either selected directly by the parties or is designated by an arbitration agency. The arbitrator performs the role of both the judge and the jury while considering the dispute and issues a decision called an award. The award is final and binding upon the parties.

Historically, arbitration and mediation have been used to settle many different types of disputes. These disputes have typically fallen into one of the following categories – international disputes, commercial disputes, and labor disputes. A recent example of the successful employment of an international mediation is that conducted by former President Jimmy Carter in Bosnia. Additionally, there are numerous examples of the historic resolution of international conflicts by arbitration, such as its use by warring Greek city states and by various Catholic Popes who acted as arbitrators of conflicts between European countries during the Renaissance.

International attempts to provide a foundation for lasting, global peace have also incorporated arbitration. Two examples of this are the Permanent Court of Arbitration, which resulted from international meetings conducted between 1899 and 1907 in Hague, Netherlands and the development of the League of Nations in 1918 which employed arbitration as one mechanism of dispute resolution.

Outside the political arena, arbitration and mediation have been used by businesses worldwide to settle their commercial disputes. In Europe, businesses of differing national origin have frequently submitted their controversies to arbitration. In the United States, arbitration and mediation are often used to settle labor disputes. The submission of a commercial dispute to mediation and/or arbitration may be done voluntarily or at the prompting of a governmental agency.

The federal government of United States of America, has promoted commercial arbitration since as early as 1887, when it passed the Interstate Commerce Act. The Act set up a mechanism for the voluntary submission of labor disputes to arbitration by the Railroads and their employees. Then, in 1925, Congress passed the Federal Arbitration Act which governs the arbitration of contractual disputes involving commerce. More recently, the federal judiciary has found employment disputes, civil rights violations, securities fraud, RICO and anti-trust claims to present arbitrable issues.

While for the most part, the decision of whether or not to engage in commercial mediation and/or arbitration is a matter of contract and has been historically decided by the parties, there have been several occasions in which a government has intervened to require mediation and/or arbitration of a commercial dispute when it felt that the dispute threatened national interests.

For example, in 1926 the United States government enacted the Railway Labor Act to monitor the labor-management relations of both the railways and the airlines. Under the Act, the National Mediation Board may intervene in a dispute and require mediation. If the dispute is not resolved by mediation, the Board will ask, but cannot require, that the parties submit to binding arbitration.

There is also historical precedent for governments requiring the submission of commercial disputes to compulsory, binding arbitration when they felt their national interests so required. This has been done by several countries, including Australia, New Zealand, the United States and Norway. The United States required mandatory arbitration of a railway labor-management dispute in 1963 after a lengthy strike by railroad workers.

1.3. History of ADR in Bangladesh

Bangladesh has an age-old history of Alternative Dispute Resolution (ADR). The term "Alternative Dispute Resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms, which fall short of, or is alternative to, full-scale court proceedings. It is applied in different situations in different ways, both formally and informally. The village people usually preferred settling disputes amongst themselves and do not appreciate any intervention from other villages. They relate this intervention with loss of face for themselves and image of their village. With the gradual breakdown of the more traditional values of the social fabric, the

traditional system of resolving disputes now stands virtually extinct and has been replaced by police cases, legal procedures and other methods.

The community sometimes takes a leading role in resolving local disputes. In Bangladesh, these are popularly known as Shalish and Mimangsha. These are usually undertaken through mediation, negotiation, and reconciliation. In the Shalish or Mimangsha the community leaders delve deep into the root cause/s in the presence of both parties, hear viewpoints of disputants, and try to find a solution agreeable to the parties concerned. Resolving disputes through community initiatives with the above tools are commonly known as Alternative Dispute Resolution.

Societies world-over have long used non-judicial, indigenous methods to resolve disputes. In Bangladesh, dispute resolution outside of courts is not new. What is new is the extensive promotion and proliferation of ADR models and its increased uses. In the traditional system, disputes are resolved within the village. However depending on the intensity of the dispute or gravity of the situation, neighboring villages are also sometimes involved. During the British period, in 1870, the Panchayat system was introduced to manage and rule the area for its collection of revenue. The Panchayat system was used to resolve minor disputes within their area, and the major disputes were forwarded for legal procedures. In 1919, the Bengal Village Self Government Act was introduced and Union Courts were set up to resolve disputes locally.

Later, the government established the Rin Shalishi Board to keep peasants free from the Mahazons and the moneylenders and also to avoid clashes. Later, the Family Court Ordinance of 1961 and the Village Court Act of 1976 were introduced and authority was vested on the Chairman of Union Parishad to try petty local cases and small crimes committed in their area and take consensual decisions. These were later strengthened in 1985 with additional power to cover

Women and children's rights. The village court consists of UP chairman, members and representatives from concerned parties. Under the Village Court Act of 1976, the village court can try disputes over property valued not exceeding Tk. 5,000. The village court has also power to

summon a person to stand as a witness and can impose a fine of up to Tk. 500 on contempt charges. The village court provides easy access to the local people without any obstacle and allows them to defend their position without any outside assistance or lawyer. It is also less cumbersome and less expensive

However, this system has some disadvantages, such as the court decisions are sometimes biased and the members of the court may or may not have adequate knowledge and experience to conduct trial procedure. The present Union Parishad is the first tier in the hierarchy of local bodies in Bangladesh and has a mandate to settle disputes of the local people through Shalish. The decision of the Shalish is binding to the parties. In the process, the village elite is also involved. Major cases are not settled locally. Political influences are very frequent and often biased in the Shalish. Today, many NGOs are quite successfully involved in mediation between disputants. Still, many disputes are not mediated nor are local people acquainted with the ADR system.

CHAPTER TWO

2.1 problems of ADR

In recent years in Bangladesh there has been renewed emphasis on the Alternative Dispute Resolution schemes as a means to avoid the use of contested hearings in the formal litigation and to ensure the most fundamental right of access to justice for all in an easy way. These Alternative Dispute Resolution (ADR) modalities are considered as less likely to fuel the parental conflicts, more likely to induce the parties to resolve their conflicts in an amicable manner preserving the future relationship between the parties and reducing cost, delay and loss of energy to a significant extent. Following the considerable advantages of ADR almost every county of the world has introduced ADR system in its justice delivery system which has paved the way to the promotion of access to justice indiscriminately for all. This paper is an attempt to provide a comprehensive idea about obstacles in the way of access to justice in our legal system and by analyzing the different mechanisms of ADR and court and non-court based practices of those modalities under different legislations of Bangladesh, to show the fairness, efficiency and effectiveness of ADR towards the promotion of access to justice and to provide some recommendations for the complete success of ADR towards the effective, non-discriminative, speedy and easy access to justice for all either rich or poor, literate or illiterate, male or female and elite or lower class.

2.2 The prospective reforms:

The incumbent government, under its Ministry of Law and Justice, is required to adopt the principle that participation in ADR should be mandatory across all the consumer sectors. A statute is required to be enacted to that end. A office of Ombudsman may be created for every commercial sector. The current system of filling complaint application to the concern department is required to be abolished, as the same is unworthy of availing by the aggrieved consumer. The workforce engaged in ADR sector are required to be trained. The judges should be given more authority to exercise and act as mediator, conciliator, negotiator and arbiter by himself, over and above his judgeship, for the purpose of ADR.

While this reforms may lead to fears from some businesses that the system will be abused, particularly where disputes are raised by muscleman consumer or complainants are exhibiting

vexatious behavior, nevertheless the benefits in ensuring accessible redress to consumers and enhancing consumers confidence will be significant.

The failure to extend correct method of protecting the right to have disputes resolved in quicker and efficient manner, may lead to violation of the provisions of article 27 and 31 of the Bangladesh Constitution, guaranteeing a citizen to be treated in accordance with law and only in accordance with law. Therefore the authority has to be vigilante in order to protect the consumers rights, so far the dispute resolution is concerned through ADR mechanism.

2.3. ACCESS TO JUSTICE

From the beginning of 1960s, the meaning of access to justice mainly highlight on "practicing law for the poor people". The purpose is to counterbalance the cost, delay and the difficulties of the legal structure in Bangladesh. Access to justice vary from person to person. In the precise form, it appears as the formal way court system and the barriers that people faced by different groups of community. An individual has a right to appear in court to file a suit or to defend. In the Bangladesh Constitution Article 31 which guarantees the protection of law. Article 27 guarantees equality before law and the equal protection of law.[4]

[4] ACLRC. What is access to justice. http://www.aclrc.com/what-is-access-to-justice/. Accessed on 18th October 2018

Chapter Three

3.1 Introducing A.D.R. in Bangladesh

1. A.D. R. means Alternative Dispute Resolution, mostly applied to civil cases. When a civil case is instituted in a court of competent jurisdiction, the scenario usually is, that a long time is taken to serve the process, the defendants beat the law and submit their written statement/s after a long delay beyond the permissible statutory period of two months, lawyers and judges do not take any interest in screening out a false and frivolous case at the first hearing of the case under Order X CPC (in fact no such first hearing takes place), they seldom try to shorten the disputed questions of fact and law by application of Orders XI and XII of the CPC and mostly ignore the elaborate procedure of discovery, interrogatories, notice to produce etc. contained in those Orders, the issues of a case are seldom framed following the Code of Civil Procedure, the case takes several years to reach a settlement date and on the date of positive hearing half a dozen or more ready cases are fixed for hearing, resulting in the hearing of none. In the meantime years roll by, presiding judge of a single case is transferred a number of times, witnesses of a single case may be heard by more than one presiding judge, arguments are listened to may be by another presiding judge and judgment may be delivered by a presiding judge who had had no connection with the case ever before. Our legal system has thus been rendered uncaring, non-accountable and formalistic. It delivers formal justice and it is oblivious of the sufferings and woos of litigants, of their waste of money, time and energy and of their engagement in unproductive activities, sometimes for decades. When they win a case the result is much worse than winning it. When they lose a case they lose not only the subject matter of the dispute, but also a good part of their fortune. If interlocutory matters are dragged up to the appellate or revision courts, their woos know no bounds and their agonies are prolonged for an indefinite period. Appeals from trial court decrees may reach unto the Appellate Division by which time the parties are thoroughly drenched in misery. When a decree is thus obtained after protracted litigation, it does not end there. Execution proceedings then re-starts a fresh litigation between the parties or even their successors which may take years or decades to come to a conclusion and which may end up with no real or positive benefit to the decree-holder plaintiff. This is the experience of a common

> litigant in Bangladesh. Added to this inherent and in-built delay and expenses, corruption and often terrorism at almost each stage of litigation is eating into the vitals of the justice delivery system.

Most of us who are or were in the judiciary and were or are practicing in the Bar think that nothing can be done about it, or, at least, we have no role to play in the matter, either individually or collectively. We are drifting into a stage of aimlessness, inertia, inaction and helplessness. Many conscientious judges and lawyers have done what they could under the circumstances, but their sincerity has been drowned into the general morass of malfunctioning of the court system.

Early Neutral Evaluation" for the same reasons described therein.

3.2. Different types of ADR in Bangladesh:

Sumaiya Khair suggests that there are three streams of ADR in Bangladesh:

Extra- judicial or community based ADR (informal);

ADR in Quasi-formal systems; and

ADR in formal legal system.

All these ADR modes have been discussed in different chapters in this book with there merits and demerits. Formal ADR in different laws are shown in the diagram below:

3.3. Formal ADR in Bangladesh

I. Code of Civil Procedure (sec. 89A, 89B, 89C
II. Family courts Ordinance, 1985 (sec. 10)
III. Muslim Family Laws Ordinance 1961 (sec. 7, 8)
IV. ArtharinAdalat Ain, 2003 (sec. 21, 22)
V. Negotiation,Conciliation, Arbitration (sec. 210 of the Labour Code, 2006)
VI. Pre-Litigation
VII. Part of litigation

3.4. Informal ADR in Bangladesh

Informal ADR in Bangladesh includes traditional shalish and NGO modified Shalish. Quasi-formal ADR includes village court and Board of Conciliation have originated from the informal shalish system and this is why they all have been shown in the following single diagram.

3.5. Mechanisms of ADR

Negotiation is an informal way through which the parties communicate, try to attain an outcome which can pacify both the parties. Negotiation is broadly used in different fields like judicial proceedings, divorces, disputes in parents, in case of victim also. Negotiation is a non- binding process in which parties are not legally bound with the decision. (Raiffa 2002).[5]

In Negotiation third party can be or cannot be permitted to engage. The procedure can be confidential they may be counsels and there is no restriction to disagreement, verification, and interests. When a third party is not present or in the procedure then some other person tries to solve the disputes between the parties and bring them in to negotiation bench then drop out from the process and try to find out the solution based on the interest of the parties.[6]

3.5.1 Mediation:

Mediation as ADR advantageous way to settle many judicial issues out of court, specifically in matters where there is an emotional relation like divorce and with this mediation has become very famous over the last decades. Mediation is the resolution of a dispute by fixing up an autonomous individual between the two disputed parties in order to assist them in the resolution of their dispute out of court. In family matters under FCO there are some court directions like voluntary or mandatory mediation (Family Court Ordinance1985).[7] Mandatory in a sense that after filing a case

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[5] Traditional and Alternative way to solve conflicts. https://www.google.com/search?q=Traditional+and+alternative+ways+to+solve+conflicts&rlz=1C1GGRV_enBD815BD815&oq=Traditional+and+alternative+ways+to+solve+conflicts&aqs=chrome..69i57.31258j0j7&sourceid=chrome&ie=UTF-8#. Accessed on 18th October 2018

[6] Md. Nazmul Islam, The practice of ADR in Bangladesh: challenges and opportunities. May 22, 2013. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwjJr7H2gdTeAhURY48KHV7JB2YQFjABegQIARAB&url=http%3A%2F%2Fwww.academia.edu%2F3578736%2FThe_Practice_of_ADR_in_Bangladesh_Challenges_and_Opportunities&usg=AOvVaw3fjG5g0lHVX4hsUA2jfWOp. Accessed on 31st October 2018

[7] Taslim Ahammad, Mediation as alternative dispute resolution. (13th November 2017) https://www.google.com/search?rlz=1C1GGRV_enBD815BD815&ei=3Jf_W8mLBsv-vgTR_43wCQ&q=mediation+as+an+alternative+dispute+resolution+by+ahammed&oq=mediation+as+an+alternati

and before the initial of trial, both parties try to solve the dispute through mediation. The trial shall continue, only if the mediation efforts fails. [8]

The mediator guides the parties which helps to reach in to a beneficial result. The mediator does not give the decision, nonetheless helps the parties to identify and to target on the important matters which help to create a scope to reach a solution. The process of mediation is the combination of flexible and informal settlement practice in Bangladesh. Mediation is cheap but a mediator fixed by the court are not free. For highly reputed mediators the parties need to pay some money as a fee. This is calculated as per day but if the matter is quickly resolved within one or two day then the cost will be less. However, mediation is a very fast process because there is no judge, court date, lawyers to involve.[9]

3.5.2. Conciliation:

Conciliation is a dispute handling process where a third-party facilitator tries to attain a solution which may help the parties to solve disputes and continue their relationship (Spencer 2005).[10]

Conciliation sometimes considered as type of mediation whereby the conflicting parties use an unbiased party (conciliator) who reconciled the parties separately with an intention to conclude the differences. However, conciliation bear no resemblance with mediation the main object is to conciliate. In mediation, the mediator tries to mentor the discussion in a way that enhances the party's requirements, proceeds by taking their feelings into account and re-examine the whole issue. Conciliation is different from arbitration the process has no legal existing, and the conciliator

ve+dispute+resolution+by+ahammed&gs_l=psy-ab.3...15986.21677..22866...0.0..0.204.1623.0j9j2.....0....1..gws-wiz.....0i71j0i22i30j33i22i29i30j33i160j33i21.GS9LBckKRkM#. Accessed on 19th October 2018.

[8] Dr. Jamila A. Chowdhury, ADR Theories and Practices: A Glimpse on Access to Justice and ADR In Bangladesh, (Jamila Chowdhury ed,1st 2013,2nd ed, July 2018). Cambridge Scholars Publishing, UK

[9] Taslim Ahammad, Mediation as alternative dispute resolution. (13th November 2017). https://www.google.com/search?rlz=1C1GGRV_enBD815BD815&ei=3Jf_W8mLBsv-vgTR_43wCQ&q=mediation+as+an+alternative+dispute+resolution+by+ahammed&oq=mediation+as+an+alternative+dispute+resolution+by+ahammed&gs_l=psy-ab.3...15986.21677..22866...0.0..0.204.1623.0j9j2.....0....1..gws-wiz.....0i71j0i22i30j33i22i29i30j33i160j33i21.GS9LBckKRkM# Accessed on 19th October 2018

[10] Chowdhury. J. ADR Theories and Practices: A Glimpse on Access to Justice and ADR In Bangladesh (Jamila Chowdhury ed,1st 2013) Cambridge Scholars Publishing, UK

has no jurisdiction to investigate or call witnesses, usually address no binding decision or makes any award. .[11]

3.5.3 Arbitration:

Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute and the process is similar to trial and after hearing an arbitrator issue an award some award simply announce the decision and others give reason. The process may be binding or non – binding. In *Chevron Bangladesh Block Twelve, Ltd and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd. V. People's Republic of Bangladesh* for many years petrobangla deducqt the earnings of chevron from gas sales. The ICSID.,[12] give the decision in favour of Bangladesh that petrobangla was right in deducting the earnings from Chevron wheeling charges[13]

4.1 The Practice of ADR through statutory Provisions in Bangladesh

ADR in different Bangladeshi Laws:

The Code of civil procedure, 1908.

The Code of Criminal procedure, 1898.

The Artha Rin Adalat Ain, 2003.

The arbitration Act, 2001.

The Bankruptcy Act, 1997.

The Muslim Family Court Ordinance, 1985.

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[11] Development of Alternative Dispute Resolution in Bangladesh. http://www.assignmentpoint.com/business/business-statistics/development-of-alternative-dispute-conciliationresolution-in-bangladesh.html. Accessed on 19th October 2018.

[12] Is an international arbitration institution established in 1966 for legal dispute resolution and conciliation between international investors.

[13] Chevron Bangladesh Block Twelve, Ltd and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd. V. People's Republic of Bangladesh Case No ARB/ 06/10 (ICSID, 30 May 2016). https://bdjls.org/dispute-between-bangladesh-and-chevron-regarding-payment-deduction/. Accessed on 19th October 2018

The Muslim Family Law Ordinance, 1961.

The Gram Adalat Ain, 2006.

The Settlement of Disputes (Paura Area) Board Act, 2004.

The Code of Civil Procedure, 1908- The Code of Civil procedure was altered in 2003(Act IV of 2003) to propose mediation covered by section 89A, arbitration under section 89B and mediation in appeal held down section 89C. The entire mechanisms are connected with the court and were made associable in all kinds of non-family disputes. Section 89A administer for mediation at pretrial stage while arbitration may be exercised at any degree of litigation.[14]

Mediation in Appeal: Appeal is contemplated to be the continuance of the original legal action. Therefore, in 2006 the parliament initiate the for the settlement of a civil conflict through ADR in appellate stage. In order to expedite the mechanism section 89C was added into CPC. Notwithstanding at the beginning at its standing point after 2012, generate the same as compulsory. Nowadays every appeal obtain from original proclamation must be assign to mediation and adhere to with the equivalent provisions as specify in section 89 A.[15]

Mediation as ADR in CPC: Section 89A defines mediation as flexible, informal, non – binding, confidential, non – adversal dispute resolution process in which the mediator shall facilitate compromise of disputes in suit between the parties without directing the terms of such compromise. The person appointed as mediator must not be the one who is engaged by the parties in the suit, a person holding an office of profit in the service of the Republic shall not act as a mediator between the parties, if he had ever been engaged by either of the parties as a pleader in any suit in any court. The fees and the procedure to be followed for settlement of mediation; and when the court shall mediate, it shall determine the procedure to be followed, and will not charge any fee for mediation

[14] Md.Habib Alam, Alternative Dispute Resolution (ADR): A New Key for Implementing Civil Justice in Bangladesh, (Feb2014) volume 19(Issue 1) *IOSRJHSS* para88 https://www.academia.edu/7512634/Alternative_Dispute_Resolution_ADR_A_New_Key_for_Implementing_Civil_Justice_in_Bangladesh. Accessed on 19 October 2018

[15] Khairul Islam, Critical Review of the Court Based ADR in Bangladesh: Prospects and Challenges (Dec 2015) volume 20, (Issue 12), Ver. IV IOSRJHSS para 45. http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue12/Version-4/F0201244555.pdf. Accessed on 19th October 2018.

Special Provisions for Mediation: Section 89D newly introduced by the CPC Amending Act, 2012 provides that the contesting parties to a suit or of an appeal, pending in any Court before the commencement of the CPC(Amendment) Act, 2012, may be filing an application stating their willingness to settle the dispute through mediation and shall be disposed in accordance with the provisions of section 89A or 89B[16]

4.2. ADR in the *Artha Rin Adalat Ain (*Money Loan Court Act), 2003

Chapter v of Artha Rin Adalat Ain, 2003 provides settlement of dispute through mediation, section 22 of the Artha Rin Adalat Ain, 2003provides for settlement for conference after filing of written statement. The Court shall raise the matter to the parties or their lawyer for mediation after that, a report with signatures, pleaders and mediators is to be submitted in the Court. If the matter is fixed by mediation, the terms and conditions of the report is to be written in a contract. Thereafter the court will permit a decree on the basis of the agreement.[17] In *Gias Uddin Chowdhury vs Bangladesh* the petitioner filed an application to MLCA to get back the mortgage property as he defaulted in paying back the loan. The MLCA rejected the application and AD also supported the decision of MLCA because under section 32 of the ACT it is precondition to deposit 25% of the decretal amount of an immovable property if a claim raised by the third party.[18]

4.2. Muslim Family Laws Ordinance, 1961

Under the Muslim Family Family Law Ordinance, 1961 laws for reconciliation within arbitration council which is not a function of court-based ADR but governmental in nature has been specified for in three situations:

i. In the occasion of polygamy under section 6
ii. In the situation of dissolution of marriage(divorce) and formulating it in force under section 7

[16] MD. Abdul Halim, ADR In Bangladesh: Issues and Challenges, ('rev edn') CCB Foundation (2010)
[17] Judicial Portal Bangladesh. https://www.google.com/search?q=mediation+corner&rlz=1C1GGRV_enBD815BD815&oq=mediation+corner+&aqs=chrome..69i57j69i60j0l4.11921j0j7&sourceid=chrome&ie=UTF-8# Accessed on 19th September 2018
[18] [2014] 213 AD 66 (DLR)

iii. In case where husband fails to grant maintenance of his wife under section 9[19]

In the case of *Abdul Aziz vs Rezia* khatoon it was said that the non- compliance with the statutes of section 7(1) causes talaq lawfully in applicable. However, recently the Appellate Division of the supreme court of Bangladesh in evident paradox to section 7 of the Ordinance held:

The clients husband divorced his wife by claiming an affidavit formerly to the magistrate and sent the copy to Nikah Register in whose workplace the divorce was recorded as mandatory under section 6 of the Act, 1974 marriage dissolved as a result his wife authorized to payment of the whole dower, prompt and deferred. He cannot take benefit of his own mistake where he served no notice to the chairman as compulsory under section 7 (1) of the ordinance 1961. The specious contradiction clarified by the court's request to stop the husband from exploiting the statutory requirements of provision of notice of talaq to the chairman of Union Parishad to defeat the entitlement of dower of the separated wife following the talaq. The Court based on the principle "Equity will not allow a statute to be used as an instrument of fraud". Section 7 of the Act, 1961 appropriate for women who desires to dissolve the wedding.[20]

4.3. Under the Income Tax Ordinance, 1984

The ADR provisions for the first time has been implanted in 2011 by Finance Act of 2011 before it was not there in the ITO. New Chapter XVIIIB was assimilated with sections 152F to 152S. However, the term 'mediation' may be found in the aforementioned sections, a basic reading of the sections discloses that the mediation in the method of 'facilitation' via third party facilitator has been integrated in to the ITO. Earlier it has been noted that in the CPC and the *Artha Rin Adalat Ain* have afforded for obligatory ADR mechanisms. He/she may reward the recourse of the

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[19] Md.Habib Alam, Alternative Dispute Resolution (ADR): A New Key for Implementing Civil Justice in Bangladesh, (Feb2014) volume 19(Issue 1) *IOSRJHSS* para88 https://www.academia.edu/7512634/Alternative_Dispute_Resolution_ADR_A_New_Key_for_Implementing_Civil_Justice_in_Bangladesh. Accessed on 19th September 2018

[20]MD. Tanzer Hossen. T, Comparative study on Alternative Dispute Resolution in Family Court in Bangladesh. (2008). https://www.google.com/search?q=hossain+comparative+study+on+ADR+in+family+court&rlz=1C1GGRV_enBD815BD815&oq=hossain+comparative+study+on+ADR+in+family+court&aqs=chrome..69i57.40879j0j4&sourceid=chrome&ie=UTF-8#. Accessed on 20th October 2018.

see section 6 and 7 of the Muslim Family Law Ordinance 1961

ADR procedures but before that the ITO arrays an eligibility analysis for the aggrieved assessee. Section 152I stipulates that any aggrieved assessee can apply for the settlement of the dispute through the ADR method. The application follows the procedure accompanied by charges as prescribed by the National Board of Revenue. The eligibility of section 152J specifies the following necessities. An assessee will not be qualified to apply for ADR if he fails to-

a) submit the revenue of income for the significant year or years; or
b) fee tax payable under section 74

Section 152N provides compulsions upon the facilitator under section 152k to see the abovementioned conditions have been fulfilled by an applicant. The facilitator will forward print of an application to the DCT and also invite him for his view on the explanations of the application whether the situations referred in sections 152I and 152J have been presented with. The DCT will reply within 5 working periods, failure of which will indicate that the conditions have been contented. This section allows the facilitator to assist notice to the parties, adjourn the proceeding when so required, can call for records cause to make such enquiry as he deems fit and proper. Section 152L delivers certain rights and duties of an assessee throughout the ADR process. An assessee is entitled to negotiate himself or by an official agent. The duties of an assessee is to submit all the documents of all matters of law and facts. He also has to be cooperative, interactive, fair, and *bonafide* while negotiating for settlement. If any agreement is proved to false, fallacious declaration, the agreement shall be set aside and legal action be started against him. When a settlement is finally executed by the parties, automatically, binding for both the parties and it cannot be questioned before any Tribunal or Court by an assessee or any other income tax consultant.[21]

4.4. Village Court Act, 2006

The expression 'Village Court' stated in the Village Court Act. This court is established to resolve disputes quickly and easily. the decision under the Act cannot be performed by any judge.,[22] The Village Court is instituted through application via one of the parties to a dispute. The Chairman of

[21]. Khairul Islam, Critical Review of the Court Based ADR in Bangladesh: Prospects and Challenges (Dec 2015) volume 20, (Issue 12), Ver. IV IOSRJHSS para 45 http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue12/Version-4/F0201244555.pdf. Accessed on 20th October 2018.

[22] For a definition of who is a judge, see section 19 of the Penal Code, 1860

the *Union Parishad* or any of the participants of the UP where the Chairman is incompetent of leading or his impartiality is challenged become the chairperson of the Village Court. Individually party shall choose two members among them one need to be a member of the UP. The Court has an exclusive authority over petty civil and criminal affairs mentioned in schedule I and II of the ACT section 3(2) has an exception if there is a doubt of a minor's benefit, a preceding agreement in any arbitration among the parties, or a government is party. The Village Court cannot enforce imprisonment and can permit order of reward for damages which cannot be exceed of TK 25,000/- compensation of property. The procedures as computed in the Evidence ACT, 1872, CPC and the CrPC ACT, 1898 not applicable to the Village Court.[23]

4.5 Under the Labour Act, 2006

Section 2(62) of the Bangladesh Labour Act, 2006 defines - "the industrial dispute means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person." Industrial dispute process categorized into three stages:

i. **Negotiation:** An employer or a collective bargaining agent if at any time locates that an industrial dispute is expected to arise among the employer and the worker or workers the CBA agent shall interconnect its opinion in writing to another party. The party after getting the communication will organize a meeting for collecting agent relate to the issue raised in the communication within fifteen days since the day on which it was received. If there is a settlement between the parties it will be verified in writing and signed by the parties equally, a copy shall be handed by the employer to the government, the administrator of labour and the conciliator.
ii. **Conciliation:** If a party fails to place a meeting within fifteen days of getting communication or parties fails to do a settlement in one month since the time of the first meeting for negotiation any of the parties can apply for conciliator within fifteen days from

[23] Khairul Islam, Critical Review of the Court Based ADR in Bangladesh: Prospects and Challenges (Dec 2015) volume 20, (Issue 12), Ver. IV IOSRJHSS para 45. http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue12/Version-4/F0201244555.pdf. Accessed on 22nd October 2018

the termination of the abovementioned period. The conciliator will conciliate within ten days of receiving the dispute. The conciliator shall be the person fixed by the government for the specific area and will call a meeting to settle the dispute. If the parties reach in to the settlement then it shall be signed by the parties and a copy will be forwarded to the government by the conciliator. If the conciliator proceeding fails within one month of receiving the dispute then the conciliator will refer to an arbitrator. The conciliator will issue a fail certificate within three days if the parties do not desire for an arbitration.

iii. **Arbitration:** Arbitrator may be a person allowed on a board maintained by the government or any other person settled by the parties. If the dispute refers to an arbitrator agreed by the parties then the arbitrator will give an award within thirty days from the time it was raised to him. An arbitrator will send a copy to the government and the parties. The award shall be effective for two years and no appeal shall lie contrary to it.[24]

[24] Soabrin Siddiqua, Arif Anwar, MD. Rashedul Islam, Alternative Dispute Resolution under Labour Laws of Bangladesh: A critical Review, (July 2017) Volume 22 (Issue 7) para9. http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue7/Version-6/C2207060913.pdf. Accessed on 22nd 0ctober 2018

Chapter Four

5.1. The Role of NGOs Under ADR, Major NGOs providing mediation services

Bangladesh Legal Aid Services and Trust (BLAST)

BLAST's principal activities emphases on legal aid (advice, recommendation, mediation, litigation, and public awareness) and also legal remedies for the poor and individuals who are disregarded, related research advocacy, with (PIL) and public services to address discriminatory and arbitrary laws. BLAST also commence dimensions building and training for crucial factors in the justice system. Such as the role of the courts, the instigation of National Human Rights Commission, the application of laws, and certifying that ADR is accessible and operative and directed within agenda of law. In reply to a petition filed by BLAST, the High Court ordered the Government of Bangladesh for legal necessities to set up district courts in the three areas of CHT according to Chittagong Hill Tracts Regulation Amendment Act,2003, and to generate Nari-o-shishu Nirjaton Bishesh Adalat under the violence against women and Children Act 2000, as amended 2003. The formation of these courts has provided inhabitants of the three hill districts for jurisdictional protection with respect to civil and criminal matters, and also protect women and children protecting remedies, in case of violence; previously such matters handle by the DC, an executive official and appeals were heard in Chittagong, several hours travel from the homes of residents of the three CHT districts. BLAST attained a decision in its favour and the Government established the Tribunals to start operating.[25]

5.2. Madaripur Legal Aid Association (MLAA)

The MLAA was recognized in 1978 and is considered to be inventor in the introduction of NGO-based out of court mediation in Bangladesh. To provide mediation services, MLAA formed a mediation committee with the chairman and the members of the Union Parishad (Council) and

[25] https://www.blast.org.bd/issues/justice. Accessed on 28th[th] October 2018

also included teachers of the primary school, madrasa.,[26]MLAA also attended mediation sessions to monitor women's effective participation in mediation.[27]

5.3.Ain- o- Shalish Kendro (ASK)

ASK is a national constructed legal aid and human rights organization established in 1986 to run legal aid, mainly to women, workers, and working children. The major activities emphases on legal aid advice, recommendation, mediation, litigation, and public awareness, psycho- social counselling, Investigation of human rights violation. ASK manage its programs outdoor Dhaka through 20 key partner NGOs, 52 schools and 15 Human Rights Defenders involve advocacy with UN agencies, treaty.[28]

5.4. Bachte Sekha (BS)

Bachte Sekha was eminent in 1982. It works in Jessore, Khulna and practices another variation of traditional shalish[29] which gives extreme strengthening the voice of women throughout the shalish procedure of mediation. To certify this 11-member committee out of which seven of the appointees are women[30]

[26] Specific type of religious school or college for the study of Islamic religion
[27] Dr. Jamila A. Chowdhury, ADR Theories and Practices: A Glimpse on Access to Justice and ADR In Bangladesh, (Jamila Chowdhury ed,1st 2013,2nd ed, July 2018). Cambridge Scholars Publishing, UK
[28] A.K. Mohammad Hossain.. A mapping of Legal Aid Sector in Bangladesh, (January 2015). http://www.bd.undp.org/content/dam/bangladesh/docs/Projects/jsf/Legal%20Aid%20Mapping%202015.pdf Accessed on 28th October 2018
[29] Shalish means middle man- the third party who help in resolving dispute
[30]. Dr. Jamila A. Chowdhury, ADR Theories and Practices: A Glimpse on Access to Justice and ADR In Bangladesh, (Jamila Chowdhury ed,1st 2013) Cambridge Scholars Publishing, UK

Chapter Five

6.1 Conclusion

Did you ever wonder what people used to do before there were written laws and courts and judges? Was it really like what we saw in the movies? Let's see – there was a sword fight, and the man who won the fight was judged to be the winner of the argument. We're going to have to narrow that movie down a little…

From what historians tell us, arguments were frequently "settled" by the sword. However, in more peaceful civilizations, they were more often settled by the wise men or elders of each village, or the leaders of the local church. In ancient times, the history of mediation was the history of diplomacy.

The Eastern Civilizations were known for peaceful persuasion rather than coercive conflict. Confucians and Buddhists have a long history of respecting the natural harmony of life. To this day, if a person cannot resolve local conflicts peacefully, that person might lose the respect of others.

Several other ancient cultures had similar traditions. Villages had at least one leader who was skilled at helping people solve problems. People who followed the Roman example even created professional job descriptions – intercessors, conciliators, etc. – for those who ran back and forth between the bickering parties and traded offers of goods and services for the promise of peace.

Eventually, as populations increased, the king or the wise men ceased to be able to hear each dispute individually. With the Code of Hammurabi and the signing of the Magna Carta, laws began to be written down, and there were formal positions created for those delegated to use those laws to resolve disputes.

Mediation really came into play with the advent of international treaties. Since there was no existing "world law", groups like the League of Nations or the United Nations incorporated provisions for mediation into their rules, or what we now call international law. In the United States, we have the example of the Quakers to thank for our modern ideas of how mediation should work. Its earliest public applications came with the Industrial Revolution, forming the basis of modern labor law. From 1913 to 1947, the United States government formed the Federal

Mediation and Conciliation Service which, among other things, adapted labor conflict resolution techniques to other areas of civil law.

Mediation is now used in most areas of legal conflict, with excellent results. Early roundtables agreed that, due to variations in traditions, mediation programs are best developed locally – which is why each local jurisdiction may do things just a little differently from its neighbors. The theory reinforces our basic belief that, if given the chance, the people involved in a dispute are the best ones to decide how to resolve it.[31]

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[31] DR. Loukas A Mistelis , ADR In England and Wales: A successful Case Of Public Private Partnership (22 February, 2011). https://www.google.com/search?q=DR.+Loukas+A+Mistelis+%2C+ADR+In+England+and+Wales%3A+A+successful+Case+Of+Public+Private+Partnership&rlz=1C1GGRV_enBD815BD815&oq=DR.+Loukas+A+Mistelis+%2C+ADR+In+England+and+Wales%3A+A+successful+Case+Of+Public+Private+Partnership&aqs=chrome..69i57.2411j0j7&sourceid=chrome&ie=UTF-8#. Accessed on 30th October 2018

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