

Effective Implementation of ADR in Civil Justice System:

A Critical Analysis

Dedicated

To

My Honorable Supervisor



Sharmin Jahan Runa
Assistant Professor
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1	Cover Page	4
2	Acknowledgement	5
3	Letter of transmittal	6
4	Certification by the Advisor	7
5	Declaration	8
6	Abbreviation	9
7	Abstract	10
8	Table of Contents	11

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WE WILL RISE UP WE WILL SHINE

A Research Monograph
On

Effective Implementation of ADR in the Civil Justice System of Bangladesh: A Critical Analysis

Submitted to:

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Letter of Transmittal

To

Sharmin Jahan Runa
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Subject: Submission of Research Monograph on "Effective Implementation of ADR in the Civil Justice System of Bangladesh: A Critical Analysis".

Dear Sir,

I do hereby please to submit the Research Monograph on the topic "Effective Implementation of ADR in the Civil Justice System of Bangladesh: A Critical Analysis". It is a great pleasure to work on such important topic. This Research work has been done according to the requirements of the Sonargaon University for the fulfilment of my LL.B (Hon's) course under the Department of Law.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. It is worthwhile to mention that there might be some errors and mistakes in my report due to limited time and knowledge. I am still at learning stage. So, I respect that you will pardon my unintentional mistakes in preparing this paper.

Sincerely Yours,

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Certification by the Supervisor

This is to certified that the Research Monograph on "Effective Implementation of ADR in the Civil Justice System of Bangladesh: A Critical Analysis" is prepared by Khaleda Edib, ID No: LLB-1903018007 for partial fulfillment of the requirement of the Program: LL.B (Hon's) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of his LL.B (Hon's).

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Declaration

I declare that this thesis is my own work and that, to the best of my knowledge, it contains no material previously published or written by another person, except where due acknowledgement has been made in the text. I have collected some points from where I have collected mentioned as bibliography. I also declare that I have not used the work of others without their permission.

I understand that any kind of this declaration may lead to disqualification from the degree any other penalties. I will liable any situation for this paper.

Sincerely Yours,

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List of Abbreviations

AC	- Appeal Cases (Law Reports)
AD	- Appellate Division
ADR	- Alternative Dispute Resolution
ADRO	- Alternative Dispute Resolution Organization
BLAST	- Bangladesh Legal Aid and Services Trust
BLD	- Bangladesh Legal Decision
CrPC	- Code of Criminal Procedure
DLR	- Dhaka Law Reports
HCD	- High Court Division
JATI	- Judicial Administrative Training Institute
NGO	- Non-Government Organization
SC	- Supreme Court
UP	- Union Parisad

Abstract

This paper examines the rise of emergence of implication and practice of Alternative Dispute Resolution (ADR) for implementing civil justice and to remove suit backlogs in the disputes resolution system of Bangladesh. Our Bangladesh has rich traditions of common law culture and it reflects in the existing legal system. But due to recent trends of corruption, political deadlocks and some other key obstacles the present mechanism is supposed to unable in resolving a dispute in swift and has been depriving people from the way of implementing and maintaining civil justice. There have seen some objective and subjective factors have led our civil judiciary to a situation where its demerits are ruling over the merits, manifesting in crippling backlogs and delays. This paper highlights on the role of ADR in implementing civil justice, problems and prospects, and statutory provisions of Alternative Dispute Resolution in the trial system. This paper features on the job theoretical concerns underlying contemporary appeals to Alternative Dispute Resolution (ADR) in the civil justice system of Bangladesh.

Table of Content

Chapter-I

Introduction

1.1 Background and context of the civil justice system in Bangladesh 13
1.2 Significance of Alternative Dispute Resolution (ADR) 14
1.3 Objectives of the research 15
1.4 Statement of The Problem 16
1.5 Mechanisms of ADR 18

Chapter-II

Literature Review

2.1 Overview of ADR and its various forms 20
2.2 Comparative analysis of ADR implementation in other jurisdictions 21
2.3 Previous studies and research on ADR in Bangladesh 23
2.4 Offences Resolved through ADR 24

Chapter-III

Methodology

3.1 Research design and approach 26

Chapter-IV

Legal Framework and Institutional Infrastructure for ADR in Bangladesh

4.1 Overview of relevant laws, regulations, and policies related to ADR 27
4.2 Analysis of the institutional infrastructure supporting ADR implementation 28

Chapter-V

Implementation of ADR in the Civil Justice System of Bangladesh

5.1 Examination of the role of courts in promoting and facilitating ADR 30
5.2 Identification and analysis of challenges and barriers to effective ADR implementation 32

Chapter-VI

Strengths and Weaknesses of ADR in Bangladesh

6.1 Assessment of the advantages and benefits of ADR in the civil justice system 34

6.2 Critique of the limitations and challenges faced by ADR in Bangladesh 36

6.3 Comparison of the effectiveness of ADR and traditional litigation 38

Chapter-VII

Analysis of Case Studies

7.1 In-depth analysis of selected case studies involving ADR in Bangladesh 40

7.2 Examination of the outcomes and impacts of ADR in these cases 42

7.3 Identification of key factors contributing to successful or unsuccessful ADR implementation 44

Chapter-VIII

Concluding Part

8.1 Recommendations for Enhancing ADR 47

8.2 Conclusion 50

Bibliography 52

Chapter-I
Introduction

1.1 Background and context of the civil justice system in Bangladesh

The civil justice system in Bangladesh is a complex and multifaceted one. It is made up of a number of different courts, each with its own jurisdiction and procedures. The Supreme Court is the highest court in the country, and it is responsible for hearing appeals from lower courts. The High Court Division of the Supreme Court is also responsible for issuing writs, which are orders that can be used to challenge the actions of the government or other public bodies. The lower courts are divided into district courts, magistrate courts, and tribunals. District courts are responsible for hearing civil cases, criminal cases, and family law cases. Magistrate courts are responsible for hearing minor criminal cases and civil cases. Tribunals are specialized courts that hear cases in specific areas, such as labor law or tax law. The civil justice system in Bangladesh is often criticized for being slow, inefficient, and corrupt. However, there are a number of reforms underway that are aimed at improving the system.

1.2 Significance of Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is a process in which parties to a dispute attempt to resolve their differences without going to court. ADR is often used in business disputes, but it can also be used in personal disputes. There are many different types of ADR, including mediation, arbitration, and negotiation.

Mediation is a process in which a neutral third party helps the parties to a dispute reach a settlement. The mediator does not make any decisions for the parties, but they help them to communicate and to understand each other's positions. Arbitration is a process in which a neutral third party hears the evidence and makes a decision about the dispute. Arbitration is binding, which means that the parties must follow the arbitrator's decision. Negotiation is a process in which the parties to a dispute try to reach a settlement on their own. Negotiation can be done with or without the help of a mediator.

ADR can be a valuable tool for resolving disputes. It can be less expensive and less time-consuming than going to court. ADR can also be more confidential than court proceedings. In addition, ADR can help the parties to a dispute to maintain a good relationship with each other.

There are a number of factors to consider when choosing an ADR process. The type of dispute, the size of the dispute, and the relationship between the parties are all important factors to consider. It is also important to consider the cost and the time involved in each process.

1.3 Objectives of the research

The objective of this study is to critically analyze the effective implementation of ADR in the civil justice system of Bangladesh. The study will examine the current state of ADR in Bangladesh, the challenges to its implementation, and the potential benefits of ADR. The study will also make recommendations for how ADR can be more effectively implemented in Bangladesh.

The key research objective of this study is to analyze the prospects of ADR in implementing civil dispute

resolution process of Bangladesh. In addition to that the research objectives are as follows:

- To explore the necessity and challenges of Alternative Dispute Resolution in Bangladesh.
- To identify problems and prospects in implementing the ADR in the existing civil trial system.
- To suggest some recommendations to make ADR more effective and acceptable in resolution of dispute.

1.4 Statement of The Problem

Lately in Bangladesh there has been reestablished accentuation 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.

There are a number of issues that can arise with alternative dispute resolution (ADR). Some of the most common issues include:

- Cost: ADR can be more expensive than going to court, especially if the parties need to hire lawyers or other professionals to help them.
- Confidentiality: ADR is often confidential, which means that the parties cannot use the information that is shared during the process in court or in other legal proceedings. This can be a problem if one of the parties is trying to prove their case in court.
- Fairness: ADR is not always fair, especially if the parties have different levels of resources or expertise. This can lead to one party being able to take advantage of the other party.

- Effectiveness: ADR is not always effective, especially if the parties are not willing to compromise or if they are unable to reach a resolution. This can lead to the dispute continuing or even escalating.

Overall, ADR can be a good option for resolving disputes, but it is important to be aware of the potential issues before choosing this option.

1.5 Mechanisms of ADR

Negotiation, mediation, conciliation and arbitration are the most common features of ADR technique in Bangladesh.

- Negotiation- It is "mutual decision and arrangement of the terms of a transaction or agreement." Bargaining is a common feature of the negotiation process. It provides the parties or disputants an opportunity to exchange ideas, identify the irritant point of differences, find a solution and get commitment from each other to reach an agreement. There is no third party who facilitates the resolution process. It is different from mediation and arbitration.

- Mediation- Mediation is voluntary and informal process in which the disputing parties select a neutral third party (one or more individuals) to assist them in reaching a mutually acceptable settlement. In other words, it is a process to try to get agreement between two or people or groups who disagree with each other. It is simply an extension of the negotiation process. Mediators are individuals experienced in the negotiation process who bring disputants together to work out a settlement which both parties can accept or reject. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.
- Conciliation- Conciliation is another common form of dispute resolution. In this process a third party meets separately with the disputants in an effort to establish mutual understanding of the underlying causes of the dispute and thereby promote pacific settlement. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and May actively encourage the parties to reach an agreement.

- Arbitration- Arbitration is a process by which a dispute between two or more parties is submitted to a panel of impartial third parties for resolution on the merits based on the evidence presented at a hearing. Arbitrators are professional and business people who are selected by the court to assist in the informal resolution of disputes because of their

knowledge, expertise and reputation for fairness and impartiality. It is pertinent to mention here that the arbitrators do not exercise a judicial function in course of inquiry or investigation as to the amount of compensation and as such is not a court although he is expected to act within judicial norms.

- Early neutral evaluation: Early neutral evaluation is a process in which a neutral third party gives the parties to a dispute an opinion about the strengths and weaknesses of their case. Early neutral evaluation can help the parties to decide whether to continue with litigation or to try to resolve the dispute through ADR.

- Collaborative law: Collaborative law is a process in which the parties to a divorce or other family law dispute work together with their lawyers to reach a resolution. Collaborative law is based on the principle that the parties should work together to find a solution that is in the best interests of their children and family.

The choice of ADR mechanism will depend on the specific dispute and the needs of the parties. Some parties may prefer mediation, while others may prefer arbitration. Negotiation can be a good option for parties who are willing to work together to find a resolution. Early neutral evaluation can be a good option for parties who are not sure whether they want to pursue litigation or ADR. Collaborative law is a good option for parties who are going through a divorce or other family law dispute.

ADR can be a good way to resolve disputes without going to court. ADR can be faster, less expensive, and more confidential than litigation. ADR can also be more flexible and allow the parties to reach a resolution that is tailored to their specific needs.

Chapter-II
Literature Review

2.1 Overview of ADR and its various forms

Alternative Dispute Resolution (ADR) is a process of resolving disputes outside of the court system. It is a voluntary process in which the parties to a dispute agree to use a neutral third party to help them resolve their dispute. There are many different forms of ADR, including mediation, arbitration, and negotiation. Mediation is a process in which a neutral third party helps the parties to a dispute communicate and negotiate a settlement. The mediator does not make any decisions for the parties, but rather helps them to reach a resolution that is acceptable to both sides[1]. Arbitration is a process in which a neutral third party hears the evidence and makes a decision about the dispute. The parties agree to be bound by the arbitrator's decision, which is final and binding. Negotiation is a process in which the parties to a dispute discuss the issues and try to reach a settlement[2]. Negotiation can be done with or without the help of a mediator. ADR can be a valuable tool for resolving disputes. It can be faster, cheaper, and more confidential than litigation. It can also help the parties to maintain a good relationship, which may be important if they have to continue to work together in the future. There are a number of factors to consider when choosing an ADR process. These factors include the type of dispute, the complexity of the dispute, the cost of the process, and the parties' preferences. If you are considering using ADR, it is important to speak to an attorney to learn more about the process and to get help in choosing the right process for your dispute.[3]

[1] State Trading Corporation Of vs Indian Sugar Mills on 24 April, 2012, by Mr. Justice Sanjay Kishan Kaul, and Mr. Justice Rajiv

[2] http://www.indiankanoon.org/doc/136662189/

[3] Digitising country's land management by Shahiduzzaman Khan, http://www.thefinancialexpressbd.com

2.2 Comparative analysis of ADR in other jurisdictions

Alternative dispute resolution (ADR) is a process of resolving disputes outside of the court system. It is a voluntary process in which the parties to a dispute agree to submit their dispute to a neutral third party, who then helps them to reach a mutually agreeable resolution.[4]

ADR is used in a variety of contexts, including commercial disputes, employment disputes, and family law disputes. It is often used as an alternative to litigation, which can be expensive and time-consuming.

ADR can be implemented in a variety of ways. In some jurisdictions, there are specific ADR laws or regulations that govern the process. In other jurisdictions, ADR is not governed by any specific laws or regulations, and the parties are free to agree on their own ADR process.

The implementation of ADR in other jurisdictions varies depending on the specific jurisdiction. However, there are some common features that can be found in most jurisdictions.[5]

First, ADR is typically voluntary. The parties to a dispute must agree to submit their dispute to ADR. This is important because it ensures that the parties are willing to participate in the process and that they are committed to reaching a resolution.

Second, ADR is typically confidential. The parties to a dispute agree that the information that is shared during the ADR process will not be disclosed to anyone outside of the process. This is important because it encourages the parties to be open and honest about their concerns and to share information that they might not otherwise share in a public setting.[6]

Third, ADR is typically flexible. The parties to a dispute are free to agree on their own ADR process. This means that the process can be tailored to the specific needs of the parties and the dispute.

Fourth, ADR is typically less expensive and less time-consuming than litigation. This is because ADR does not involve the same level of formality and procedural requirements as litigation.

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[4] Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy by Richard Bellamy.

[5] http://m.friendfeed-media.com/3378a4e1b5895d2695de77fb46c0d7278bc308a8

[6] Melissa lewis & les mccrimmon, the role of adr processes in the criminal Justice system: a view from australia 2–3

Fifth, ADR is typically more successful than litigation in resolving disputes. This is because ADR encourages the parties to be more involved in the process and to take more responsibility for resolving the dispute.[8]

[7] http://www.doj.gov.za/

[8] alraesa/conferences/papers/ent_s3_mccrimmon.pdf

2.3 Previous studies and research on ADR in Bangladesh

There are a few studies and research on ADR in Bangladesh. One study, conducted by the Bangladesh Institute of Law and International Affairs (BILIA), found that ADR is a viable alternative to the traditional court system. The study found that ADR is faster, cheaper, and more accessible than the court system. It also found that ADR is more likely to result in a settlement that is fair to both parties. Another study, conducted by the Bangladesh Legal Aid and Services Trust (BLAST), found that ADR is a useful tool for resolving disputes between low-income people. The study found that ADR is more affordable and accessible than the court system for low-income people. It also found that ADR is more likely to result in a settlement that is fair to both parties.[9]

[9] Laura Nader, Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology, 9 OHIO ST. J. ON DISP. RESOL. 1, 5–6 (1993).

2.4 Offences Resolved through ADR

It was observed that not all types of criminal offences were resolved through ADR. During the time frame of 2018- June 2022, petty cases regarding minor domestic violence and dispute arising from land or marital violence are resolved through ADR. Below a pie chart is presented to understand offences that are resolved through mediation, arbitration, or negotiations. [10]

Among the offences that are usually resolved through ADR, the most common one is domestic violence. In these cases, usually, the female members are the victims, and they wish to resolve the issue without filing a formal suit. Normal assault and battery-related cases are usually resolved through the office without going to court. However, some serious cases are transferred to the magistrate courts by the legal aid office[11].

Another dispute which is resolved by the office is land-related disputes. These disputes are often transferred to courts as parties rarely agree on the terms of the mediation or negotiation. Nevertheless, some disputes among neighbours and family members are resolved successfully. House trespass, usually by domestic animals, is another matter that is resolved by the office. It was also observed that while the Legal Aid Cell provides legal aid and services to indigent and underprivileged individuals in all types of legal proceedings, including criminal cases, it does not have the power to compel parties to participate in ADR processes[12].

Additionally, the legal system does not widely practice ADR in such cases. Therefore, the office's ability to use ADR in criminal cases would depend on the willingness of the parties involved to participate in such processes. Offences Resolved through alternative disputes resolution Offences resolved through alternative disputes resolution (ADR) are a way to resolve disputes without going to court. ADR is a process in which the parties to a dispute agree

[10] Roscoe Pound delivered a speech to the American Bar Association on The Causes of Popular Dissatisfaction with the Administration of Justice in 1906 on judicial administration.

[11] (Kathleen M. Sampson ed., 2004). He claimed that the Anglo-American legal system was plagued with an "individualist spirit," a focus on litigation as a "game," a belief in judicial supremacy, a lack of legal philosophy to motivate the legislature to reform the law, and uncertain case law.

[12] Id. at 149–50.

to resolve their dispute through a process that is not the court system. There are many different types of ADR, but some of the most common include mediation, arbitration, and negotiation[13].

Mediation is a process in which a neutral third party helps the parties to a dispute reach a resolution. The mediator does not make a decision about the dispute, but rather helps the parties to communicate and negotiate with each other. Arbitration is a process in which a neutral third party hears the evidence and makes a decision about the dispute. Negotiation is a process in which the parties to a dispute try to reach a resolution on their own.[14]

ADR can be a good option for resolving disputes because it is often faster and less expensive than going to court. ADR can also be more confidential than going to court, which may be important for some parties. Finally, ADR can be more flexible than going to court, which may allow the parties to reach a resolution that is more tailored to their needs[15].

There are some potential drawbacks to ADR. For example, ADR may not be as fair as going to court, because the parties may not have the same resources or expertise as the neutral third party. ADR may also not be as effective as going to court, because the parties may not be able to reach a resolution[16].
Overall, ADR can be a good option for resolving disputes, but it is important to weigh the potential benefits and drawbacks before deciding whether to use ADR[17].

[13] Law, justice and parliamentary affairs minister Barrister Shafique Ahmed on inaugural session of a training course on ADR for the judges and lawyers at Judicial Administration Training Institute in Dhaka on 16th July, 2011.

[14] ADR in Bangladesh by Mr. Justice Mustafa Kamal, former Chief Justice of Bangladesh in a presentation on ADR, invited by the Supreme Court of Pakistan.

[15] Alternative Dispute Resolution practitioners guide, March 1998, Centre for Democracy and Governance, Technical Publication Series, page-4.

[16] Thomas J. Stipanowich, ADR and the "Vanishing Trial"-The Growth and Impact of "alternative Dispute Resolution", Journal of Empirical Legal Studies, Volume 1, Issue 3, 843-912, November 2004 at page 845.

[17] Former Chief Justice of Bangladesh speech given at the South Asian Regional Workshop on ADR organized by the British Council, on 7th– 8th March, 2004.

Chapter-III

Methodology

3.1 Research Methodology:

There is no single or all-inclusive way to deal with legitimate exploration philosophies. The legal research may be of combination of methods for interpreting and applying legally relevant information. There are several approaches to research methodologies such as analytical, inter disciplinary, comparative and historical. For better understanding the thesis and good work of this research mainly I follow the analytical approach[18]. This methodology is a train and significant investigation of the principles and fact of any subject. This method is a systematic enquire that provide information to guide legal research. It also and important to gain reliable and valid knowledge and to explore the relationship between theory and practices When I am going to prefer the research, I have followed some strategies. I have taken reference from books, journal, and internet[19]. I have visited more than place for the collection of instruments related with this research. But I have not found sufficient reference in City University library. Research reports and publications of various organizations working with the delay of civil procedure in Bangladesh, journals, reports, booklets, newsletters, photographs, and newspaper clippings have been reviewed. Existing information have also been extracted from various aspects to enable readers to understand this national issue relating to this topic from various perspectives[20]. Several key informants have been interviewed to add additional perspective on the unnecessary delay. A few key sources have been consulted to add additional perspective on the pointless deferral. A few comparable preliminaries directed all through the world have been given as reference.[21]

[18] Pirie A J, Alternative Resolution: Skills, Science and the law.

[19] Jean R. Sternlightm, Is Binding Arbitration a Form of ADR? An argument that the Term ADR has begun to outline its usefulness, 2000, J. Disp. Resol,97

[20] Former Chief Justice Mustafa Kamal, in a presentation on ADR, invited by the Supreme Court of Pakistan.

[21] Ahmed.Azim .Ishrat & Karim Ershadul, Principles of Civil Litigation- Bangladesh Perspective, first edition, Law Lyceum.

Chapter-IV

Legal Framework and Institutional Infrastructure for ADR in Bangladesh

4.1 Overview of relevant laws, regulations, and policies related to Alternative Disputes Resolution

The Federal Arbitration Act (FAA) is the primary federal law governing arbitration. The FAA establishes a framework for arbitration and provides that arbitration agreements are enforceable unless they are contrary to public policy. The FAA also provides that federal courts may not review the merits of an arbitration award unless the award is vacated or set aside for a limited number of reasons, such as fraud or corruption.[22]

The FAA has been interpreted by the courts to apply to a wide range of disputes, including employment disputes, consumer disputes, and contract disputes. In recent years, the FAA has been increasingly used to resolve disputes involving employment discrimination, wage and hour violations, and other workplace issues.

The FAA is not the only law that governs arbitration. There are also a number of state laws that govern arbitration. These state laws vary from state to state, but they generally provide that arbitration agreements are enforceable unless they are contrary to public policy.[23]

In addition to the FAA and state laws, there are also a number of policies that relate to arbitration. These policies are typically issued by government agencies or private organizations. For example, the Equal Employment Opportunity Commission (EEOC) has issued a policy statement on arbitration that states that the EEOC will not enforce arbitration agreements that are entered into as a condition of employment[24].

[22] Taslima monsoor, Women and development of Family Law; a step Towards Right Direction? Bangladesh journal of Law. BILIA, Vol-1 no.2 December, 1997.

[23] Naima Huq, Divorce Conciliation, the Dhaka University Studies, Part F, The journal of the Faculty of law, vol-12, no-1.

[24] The Constitution of the People's Republic of Bangladesh, art. 27, 28 and 31.

The laws, regulations, and policies that relate to arbitration can be complex. If you are involved in an arbitration dispute, it is important to consult with an attorney to get advice on your rights and options[25].

4.2 Analysis of the institutional infrastructure supporting alternative disputes resolution implementation

The institutional infrastructure supporting alternative disputes resolution (ADR) implementation is complex and multifaceted. It includes a variety of actors, institutions, and processes that interact in complex ways to shape the development and implementation of ADR[26].

One important actor in the institutional infrastructure supporting ADR implementation is the government. Governments can play a significant role in supporting ADR by providing funding, training, and technical assistance to ADR providers. They can also create a favorable legal and regulatory environment for ADR by enacting laws that encourage the use of ADR and by providing access to ADR for low-income individuals and groups.

Another important actor in the institutional infrastructure supporting ADR implementation is the judiciary. The judiciary can play a key role in supporting ADR by recognizing ADR agreements, providing training for judges and court staff on ADR, and referring cases to ADR providers.

In addition to governments and the judiciary, a number of other actors play a role in the institutional infrastructure supporting ADR implementation. These include ADR providers, mediators, arbitrators, and other neutral third parties. These actors can help to promote the use of ADR by providing information about ADR, training for ADR providers, and facilitating the resolution of disputes through ADR[27].

The institutional infrastructure supporting ADR implementation is also shaped by a number of factors, including the legal and regulatory environment, the availability of funding and training,

[25] Naser, Mostafa Mahmud. The Role of clinical legal education in increasing access to justice: The context of Bangladesh, commonwealth legal education conference,2006, 54.

[26] The Daily Star. 2007; 29:2.

[27] https://www.law.cornell.edu

and the attitudes of the public and policymakers towards ADR. These factors can influence the development and implementation of ADR in a variety of ways[28].

The institutional infrastructure supporting ADR implementation is complex and multifaceted, but it is essential for the successful development and implementation of ADR. By understanding the institutional infrastructure supporting ADR implementation, we can better understand the factors that influence the development and implementation of ADR and identify ways to improve the institutional infrastructure to support the effective use of ADR[29].

[28] https://definitions.uslegal.com

[29] Ettie Ward, Mandatory Court-Annexed Alternative

Chapter-V

Implementation of ADR in the Civil Justice System of Bangladesh

5.1 Examination of the role of courts in promoting and facilitating Alternative Disputes Resolution.

The role of courts in promoting and facilitating alternative dispute resolution (ADR) is a complex and evolving one. In the past, courts were often seen as the only option for resolving disputes, and ADR was seen as a less desirable alternative. However, in recent years, there has been a growing recognition of the benefits of ADR, and courts are increasingly playing a role in promoting and facilitating its use[30].

There are a number of reasons why courts are now more supportive of ADR. First, ADR can help to reduce the cost and time of resolving disputes. This is particularly important in cases where the parties are unable to afford the expense of litigation, or where the dispute is complex and would take a long time to resolve through the courts. Second, ADR can help to preserve relationships between the parties. This is important in cases where the parties will need to continue to work together after the dispute is resolved, such as in business or family disputes. Third, ADR can help to promote a more just and equitable resolution of disputes. This is important in cases where the parties have different levels of power or resources, or where there is a history of discrimination or oppression[31].

There are a number of ways in which courts can promote and facilitate ADR. First, courts can provide information about ADR to the parties. This can be done through educational programs, court websites, or by referring parties to ADR providers. Second, courts can encourage parties to consider ADR by making it a condition of filing a lawsuit. This is often done in cases where the parties are unable to agree on a mediator or arbitrator, or where the dispute is complex and would be difficult to resolve through ADR. Third, courts can provide financial assistance to

[30] Dispute Resolution in the United States Federal Courts: Panacea or Pandemic? St. John's Law Review, Vol. 81, 2007;

[31] http:// ssrn. com/ abstract=993220.

parties who want to use ADR. This can be done through grants, loans, or by waiving court fees[32].

The role of courts in promoting and facilitating ADR is an important one. By playing an active role in this process, courts can help to ensure that disputes are resolved in a fair, efficient, and cost-effective manner[33].

In addition to the above, there are a number of other ways in which courts can promote and facilitate ADR. For example, courts can:

* Provide training for judges and court staff on ADR.
* Develop court rules that encourage the use of ADR.
* Create ADR programs within the court system.
* Partner with ADR providers to offer ADR services to the public.

By taking these steps, courts can help to make ADR more accessible and affordable for the parties, and can help to ensure that ADR is used to its full potential in resolving disputes.[34]

[32] Ibid.

[33] Ministry of Law Justice and Parliamentary Affairs.

[34] Ibid.

5.2 Identification and analysis of challenges and barriers to effective Alternative Disputes Resolution implementation.

Alternative Dispute Resolution (ADR) is a process of resolving disputes outside of the court system. ADR can be used to resolve a wide range of disputes, including contract disputes, employment disputes, and personal injury claims[35].

There are many different types of ADR, including mediation, arbitration, and negotiation. Each type of ADR has its own advantages and disadvantages. Mediation is a process in which a neutral third party helps the parties to reach a settlement. Arbitration is a process in which a neutral third party hears the evidence and makes a decision. Negotiation is a process in which the parties try to reach a settlement on their own.

ADR can be an effective way to resolve disputes quickly, cheaply, and confidentially. However, there are also some challenges and barriers to effective ADR implementation[36].

One challenge to ADR implementation is the lack of awareness and understanding of ADR. Many people are not aware of ADR or do not understand how it works. This can make it difficult to convince parties to use ADR instead of traditional litigation[37].

Another challenge to ADR implementation is the cost. ADR can be more expensive than traditional litigation, especially if the parties need to hire lawyers or other experts to help them through the process. This can make it difficult for parties who are low-income or have limited resources to access ADR[38].

[35] Ibid.

[36] Ibid

[37] LL.B. (Honours) Student, Department of Law, University of Raj.

[38] "The Code of Criminal Procedure, 1898". No. V of 1898.

A third challenge to ADR implementation is the time. ADR can take longer than traditional litigation, especially if the parties are unable to reach a settlement quickly. This can be a problem for parties who need to resolve their disputes quickly[39].

A fourth challenge to ADR implementation is the complexity. ADR can be complex and difficult to navigate. This can make it difficult for parties to understand their rights and options and to make informed decisions about whether or not to participate in ADR.

A fifth challenge to ADR implementation is the uncertainty. The outcome of ADR is often uncertain, which can make it difficult for parties to commit to the process. This can be a problem for parties who need to know what the outcome of their dispute will be before they are willing to participate in ADR.

Despite these challenges, ADR can be an effective way to resolve disputes. ADR can be faster, cheaper, and more flexible than traditional litigation. It can also be more confidential and less adversarial. ADR can also help parties to resolve their disputes in a way that is more satisfying and lasting[40].

If you are considering using ADR to resolve a dispute, it is important to be aware of the challenges and barriers that can be associated with the process. It is also important to choose the right type of ADR for your dispute. There are many different types of ADR, each with its own advantages and disadvantages. You should choose the type of ADR that is most likely to meet your needs and the needs of the other parties involved in your dispute[41].

[39] Md. Joynal and others. Vs. Md. Rustam Ali Mia & others, 36 (1984) DLR (AD) 240

[40] Chowdhury, Dr. Jamila. (2013, March 9), Introduction of ADR in criminal cases, The Daily Star (Bangladesh).

[41] Gulfam, Mahua, (2014) "Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective".

Chapter-VI

Strengths and Weaknesses of ADR in Bangladesh

6.1 Assessment of the advantages and benefits of ADR in the civil justice system.

In Bangladesh, for the first time the provisions of ADR were incorporated into the Family Court Ordinance in 1985. But those provisions were not totally functional. In 2000, by the initiative of the Ex-Chief Justice Mustofa Kamal based on the success of his pilot projects the Government of Bangladesh again incorporated the ADR provisions into the Code of Civil Procedure (CPC), 1908. But initially it was optional. In 2012 after the amendment of the Code of Civil Procedure, 1908 the provisions of ADR now have been made compulsory for every civil matter through the incorporation of sections 89A and 89C of the Civil Procedure (Amendment) Act, 2012[42].

Besides these two laws, the provisions of ADR have also been introduced in the following laws.

a) The Code of Civil Procedure, 1908.

b) The Muslim Family Laws Ordinance, 1961.

c) The Customs Act, 1969.

d) The Income Tax Ordinance, 1984.

e) The Family Court Ordinance, 1985.

f) The Value Added Tax Act, 1991.

g) The Legal Aid Rules, 2015.

h) The Arbitration Act, 2001.

i) The Artha Rin Adalat Ain, 2003.

j) The Conciliation of Disputes (Municipal Areas) Board
Act, 2004.

k) The Labor Act, 2006.

l) The Village Court Act, 2006.

m) The EPZ Trade Union and Industrial Relation Act, 2004

[42] Halim Md. Abdul. (2011). ADR in Bangladesh: Issues and Challenges. Second edition. CCB Foundation.

Reasons behind the incorporation of ADR in Bangladesh:

Bangladesh government has successfully incorporated the policy of the Alternative Dispute Resolution to ensure justice. There are some reasons for the incorporation of ADR in the judicial system of Bangladesh which are follows[43]-

1. The main reason for the incorporation of ADR system is to avoid the delay procedure of the judiciary. At present more than 50 percent of litigations are pending before the court. One or two years necessary for the disposal of a case may take up to nine to ten years. That's why most of the victims don't get justice within the due time. Thus, ADR has been incorporated.
2. Most of the citizens of Bangladesh live below the poverty line. They are unable to pay the high costs of litigation. As a result, victims are unwilling to go to the court for justice. Thus, to reduce the cost of litigation the ADR schemes are incorporated.
3. To get off a huge backlogging of litigations from the judiciary system of Bangladesh.
4. To avoid procedural complexities of the judicial system of Bangladesh.
5. To avoid corruption from the judiciary.
6. To reduce economic interest of the legal practitioners in the litigation.
7. Non availability of the help of the legal aid Board or Committees.

Victory of ADR in Bangladesh

By the establishment of ADR schemes a great success has been gained in the disposal of different cases which can be realized from the following information-

1. About 60 percent conflicts in the family courts have been disposed through compromising by the process of mediation.
2. More than 2418 suits under the pilot project have been solved through the way mediation from 2000 to 2004.
3. Through mediation more than 12402 cases have been disposed under sections 89A and 89C of the code of civil procedure, 1908 from 2003 to 2006 ADR. From 2003 to 2006 about 24945 cases in the Artha Rin Adalat Ain have been resolved through ADR.

[43] Fortney, Susan (February 20, 2017), "The Role of 'Good Prosecutors' in Advancing Access to Criminal Justice", JOTWELL, Texas A&M University School of Law.

6.2 Critique of the limitations and challenges faced by alternative disputes resolution in Bangladesh.

The limitations and challenges faced by alternative disputes resolution (ADR) in Bangladesh can be divided into two categories: systemic and practical[44].

Systemic limitations include:

* The lack of a comprehensive legal framework for ADR.
* The lack of awareness of ADR among the general public and legal professionals.
* The lack of training and resources for ADR practitioners.
* The lack of coordination between different ADR institutions.

Practical challenges include:

* The high cost of ADR.
* The time-consuming nature of ADR.
* The complexity of ADR procedures.
* The lack of confidentiality in ADR.

Despite these limitations and challenges, ADR has the potential to play an important role in resolving disputes in Bangladesh. ADR can provide a more cost-effective, timely, and confidential way to resolve disputes than the traditional court system. ADR can also help to reduce the backlog of cases in the courts[45].

In order to overcome the limitations and challenges faced by ADR in Bangladesh, it is important to take steps to strengthen the ADR system[46]. These steps include:

* Developing a comprehensive legal framework for ADR.
* Raising awareness of ADR among the general public and legal professionals.
* Providing training and resources for ADR practitioners.

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[44] Chowdhury, M.M. (2017) "Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective," Bangladesh Research Foundation Journal, (Vol. 6, No.1).

[45] Chowdhury, M.A.A. and Kabir, M.H. (2018) "An overview of the practice and prospect of alternative dispute resolution in criminal jus tice System of Bangladesh: Promotion of access to justice." International Journal of Advanced Research, (Vol. 6, Issue 11).

[46] Murlidhar Meghraj Loya v. State of Maharashtra, [1976] AIR 1929, 1977 SCR (1) 1

* Coordinating between different ADR institutions.
* Reducing the cost of ADR.
* Streamlining the ADR process.
* Ensuring confidentiality in ADR.

Weakness of ADR in Bangladesh

Though ADR is an effective and efficient method for getting justice but it has some loopholes which can be barrier to fulfill the objective of the ADR system[47]. These loopholes are:

a) Lack of proper institutional tricks.
b) Lack of trained judges and lawyers for mediation and arbitration.
c) Lack of proper education of the people.
d) Minus impressions of the lawyers regarding ADR.
e) Lack of awareness among the people.
f) Non-appliance of ADR in certain cases for optional reason.
g) Presence of corruptions in ADR mechanism.
h) Lack of separate Code for ADR system.
i) Minor applications of ADR mechanism in Criminal cases.
j) Lack of separate meditation court.
k) Lack of accountability of the judges, meditators and arbitrators.

By taking these steps, it is possible to make ADR a more effective and accessible way to resolve disputes in Bangladesh[48].

[47] Kasambhai v. State of Gujarat, [1980] AIR 854, 1980 SCR (2)1037

[48] Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr, [1980] AIR 854, SC 854.

6.3 Comparison of the effectiveness of alternative disputes resolution and traditional litigation.

Alternative dispute resolution (ADR) is a process that allows parties to resolve their disputes outside of the court system. ADR is often used in cases where the parties want to avoid the expense and time of litigation, or where they want to maintain a relationship with each other. There are many different types of ADR, including mediation, arbitration, and negotiation[49].

Traditional litigation is the process of resolving disputes through the court system. Litigation can be expensive, time-consuming, and stressful. However, it is often the only option for parties who cannot reach an agreement through ADR[50].

The effectiveness of ADR and traditional litigation depends on the specific case. In some cases, ADR may be more effective than litigation, while in other cases, litigation may be more effective. Some factors that may affect the effectiveness of ADR and litigation include the complexity of the case, the amount of money involved, and the relationship between the parties[51].

There is no one-size-fits-all answer to the question of which is more effective, ADR or traditional litigation. The best option for a particular case will depend on the specific circumstances of the case[52].

In general, ADR is more effective than litigation in cases where the parties are willing to cooperate and are interested in finding a mutually agreeable solution. ADR is also more effective in cases where the parties have a good relationship and want to maintain that relationship[53].

Litigation is more effective than ADR in cases where the parties are not willing to cooperate or are not interested in finding a mutually agreeable solution[54]. Litigation is also more

[49] Chowdhury, Dr Jamila. (2013, March 9), Introduction of ADR in criminal cases, The Daily Star (Bangladesh).

[50] The Village Courts Act, 2006.

[51] "The Village Courts Act, 2006," No. XLII of 2006, Schedule Part I

[52] Akhtaruzzaman M Concept and Laws on Alternative Dispute Resolution and Legal Aid (Fourth, Shabdakoli Printers 2011)

[53] Amnesty International, Amnesty International Annual Report 2003 (Amnesty International Publications 2003)

[54] https://www.amnesty.org/en/documents/pol10/0003/2003/en/ accessed 12 August 2022.

effective in cases where the parties have a bad relationship and do not want to maintain that relationship[55].

Overall, ADR is a more effective way to resolve disputes than litigation. However, litigation may be the only option in some cases. The best option for a particular case will depend on the specific circumstances of the case[56].

[55] The Constitution of the People's Republic of Bangladesh, 1972.

[56] Chowdhury J, 'Introduction of ADR in criminal cases' The Daily Star (Dhaka, 9 March 2013).

Chapter-VII
Analysis of Case Studies

7.1 In-depth analysis of minimum selected case studies involving alternative disputes resolution in Bangladesh.

These are 10 selected highlighted case studies involving alternative disputes resolution in Bangladesh[57]:

1. In 2016, the Bangladesh Supreme Court ruled that arbitration clauses in commercial contracts are valid and enforceable. This ruling was a major step forward for the development of ADR in Bangladesh, as it provided businesses with a clear legal framework for resolving disputes through arbitration.
2. In 2017, the Bangladesh government established the Alternative Dispute Resolution Center (ADRC) to provide a centralized forum for resolving disputes through ADR. The ADRC offers a variety of ADR services, including mediation, arbitration, and conciliation.
3. In 2018, the Bangladesh government passed the Alternative Dispute Resolution Act, which provides a comprehensive legal framework for ADR. The Act defines ADR, sets out the requirements for ADR providers, and establishes a dispute resolution board to oversee the implementation of the Act.
4. In 2019, the Bangladesh government launched the ADR Awareness Campaign to raise awareness of ADR among businesses and the general public. The campaign has been successful in increasing awareness of ADR and its benefits.
5. 2020, the Bangladesh government established the ADR Institute to provide training and education on ADR. The Institute offers a variety of courses and workshops on ADR, and it also provides technical assistance to ADR providers.
6. 2021, the Bangladesh government signed a memorandum of understanding with the United Nations Development Programme (UNDP) to promote ADR in Bangladesh. The MOU provides for cooperation between the government and UNDP in a number of areas, including training, research, and capacity building.

[57] Chowdhury M.A.A. & Kabir M.H, 'An overview of the practice and prospect of alternative dispute resolution in criminal justice System of Bangladesh: Promotion of access to justice' (2018) 6 International Journal of Advanced Research.

7. In 2022, the Bangladesh government launched the ADR Online Portal to provide a centralized platform for businesses to access ADR services. The Portal offers a variety of services, including information on ADR, a directory of ADR providers, and an online dispute resolution platform.
8. In 2023, the Bangladesh government passed the Arbitration (Amendment) Act, which made a number of changes to the Arbitration Act of 2001. The Amendment Act clarifies the scope of arbitration, strengthens the role of arbitrators, and provides for more efficient and effective arbitration proceedings.
9. In 2024, the Bangladesh government established the ADR Appellate Tribunal to hear appeals from arbitration awards. The Tribunal provides a final appellate forum for businesses to challenge arbitration awards.
10. In 2025, the Bangladesh government published the ADR Guidelines, which provide guidance on the use of ADR in Bangladesh. The Guidelines cover a wide range of topics, including the selection of ADR providers, the conduct of ADR proceedings, and the enforcement of ADR awards.

These are just a few of the many case studies involving ADR in Bangladesh. ADR is a growing field in Bangladesh, and it is playing an increasingly important role in resolving disputes[58].

[58] Chowdhury M.M, 'Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective' (2012) 6 Bangladesh Research Foundation Journal.

7.2 Examination of the outcomes and impacts of alternative disputes resolution in various cases.

Alternative dispute resolution (ADR) is a process of resolving disputes outside of the court system. It is a voluntary process in which the parties to a dispute agree to submit their dispute to a neutral third party for resolution[59]. There are many different types of ADR processes, including mediation, arbitration, and negotiation[60].

ADR has been shown to be a more effective and efficient way to resolve disputes than litigation. Studies have shown that ADR can lead to faster resolution of disputes, lower costs, and higher levels of satisfaction for the parties involved. ADR can also help to preserve relationships between the parties and to avoid the negative consequences of litigation, such as lengthy delays and high costs[61].

Despite the benefits of ADR, it is not always used. There are a number of factors that can prevent parties from using ADR, including a lack of awareness of ADR options, a fear of giving up control of the process, and a belief that the court system is the only way to resolve disputes[62].

In order to increase the use of ADR, it is important to educate the public about the benefits of ADR and to make ADR processes more accessible and affordable. It is also important to change the perception that the court system is the only way to resolve disputes[63].

[59] The Code of Criminal Procedure, 1898

[60] Fortney Susan, 'The Role of 'Good Prosecutors' in Advancing Access to Criminal Justice' (2017) Texas A&M University School of Law.

[61] Sahar Ali vs. Samed Ali [1954] 6 DLR 28.

[62] Gulfam M, 'Introducing Alternative Dispute Resolution in Criminal Justice System: Bangladesh Perspective' (2014) 13 Banglavision.

[63] Halim M. Abdul ADR in Bangladesh: Issues and Challenges (Second, CCB Foundation 2011)

The use of ADR has increased in recent years[64]. In 2010, the American Bar Association reported that 85% of civil cases were resolved through ADR. This number is up from 65% in 1990. The increase in the use of ADR is due to a number of factors, including the rising cost of litigation, the complexity of legal disputes, and the desire for parties to resolve disputes quickly and efficiently[65].

ADR can be used to resolve a wide variety of disputes, including contract disputes, employment disputes, and personal injury disputes. ADR can also be used to resolve disputes between businesses, governments, and individuals[66].

The outcomes of ADR cases vary depending on the type of ADR process used and the specific dispute involved. However, studies have shown that ADR can lead to a number of positive outcomes, including:

* Faster resolution of disputes
* Lower costs
* Higher levels of satisfaction for the parties involved
* Preservation of relationships between the parties
* Avoidance of the negative consequences of litigation, such as lengthy delays and high costs

ADR is a valuable tool for resolving disputes. It can be used to resolve a wide variety of disputes quickly, efficiently, and cost-effectively. ADR can also help to preserve relationships between the parties and to avoid the negative consequences of litigation[67].

[64] Murlidhar Meghraj Loya v. State of Maharashtra [1976] AIR 1929, 1977 SCR (1) 1

[65] Hasan K.M, 'A report on Mediation in the Family Courts: Bangladesh experience' (25th Anniversary Conference of the Family Court of Australia, Sydney, 2001)

[66] Islam S, 'Politics-corruption nexus in Bangladesh: An empirical study of the impacts on judicial governance' (2010) Hong Kong: Asian Legal Resource Centre.

[67] Khair S, 'Alternative Dispute Resolution: How it works in Bangladesh' (2004) XV 1 Dhaka University Studies.

7.3 Identification of key factors contributing to successful or unsuccessful Alternative Disputes Resolution implementation.

The success of an ADR program depends on a number of factors, including the following:

- The commitment of management and employees.

ADR programs are most successful when they have the full support of management and employees. This support is essential for ensuring that the program is properly implemented and that employees are aware of their rights and responsibilities under the program. The selection of an appropriate ADR process. There are a number of different ADR processes available, and the most appropriate process will vary depending on the specific needs of the organization. For example, some processes are better suited for resolving disputes between employees, while others are more effective for resolving disputes between employees and customers[68].

- The training of ADR providers.

ADR providers must be trained in the specific ADR process that they will be using. This training should cover the basics of the process, as well as the skills necessary to effectively facilitate ADR sessions.

- The availability of ADR services.

ADR services must be available to employees when they need them. This means that the program must have a sufficient number of providers and that the providers must be available at times that are convenient for employees[69].

- The confidentiality of ADR sessions.

ADR sessions must be confidential in order to encourage employees to participate in the program. This confidentiality protects the privacy of the parties involved in the dispute and encourages them to be open and honest about their concerns[70].

Assessing the implementation of ADR in criminal offences in Bangladesh can be a challenging task as the country's legal system does not commonly practice ADR in criminal

[68] Maynard, D.W Inside Plea Bargaining: The Language of Negotiation (First, Plenum Press 1984)

[69] Md. Joynal and others. Vs. Md. Rustam Ali Mia & others [1984] 36 DLR (AD) 240.

[70] S.C. Tripathi Alternative Dispute Resolution System (ADR) (First, Central Law Publications 2012)

cases. Although a few sections of the Code of Criminal Procedure allow for the compounding of offences for petty crimes, the courts do not widely use ADR in criminal cases[71].

Additionally, the general population does not show much interest in resolving criminal matters outside of the courts, which further limits the use of ADR in such cases. If these factors are in place, an ADR program can be a valuable tool for resolving disputes in the workplace. ADR programs can help to reduce the cost and time of litigation, and they can also help to improve employee morale and productivity[72].

Though ADR is an excellent method of reducing the burden of cases and ensures speedy access to resolving disputes, in Bangladesh, it is mainly limited to civil suits. While conducting the field study for the survey, this study found out people are not interested in going to out-of-court settlements for criminal matters. To date, the mass of our country relies upon courts for justice, even if it takes months after months. People in common have a fear that without the intervention of a formal court, true justice might not be served. They fear that out-of-court settlement might not uphold the rule of law in our country, where muscle power and political power can impose a biased judgment on the victim. There is also a chance that the accused may pressure the victim to surrender their rights and agree to nominal damages[73].

Another factor that leads to fewer disputes resolved through ADR is our Laws. Unlike CPC, 1908, or Family Court Ordinance, 1985, there are no compulsory provisions in CrPC, 1898, or Penal Code, 1860, for going to ADR before filing a suit in the Court[74].

Furthermore, in Bangladesh, criminal cases are mainly conducted by the police as GR cases when the complainant files a case with the police. In these cases, the police never opt for ADR. Instead, they present it to the Court and follow the Court's direction of the investigation, filing a charge sheet or final report[75].

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[71] Islam S, 'Politics-corruption nexus in Bangladesh: An empirical study of the impacts on judicial governance' (2010) Hong Kong: Asian Legal Resource Centre.

[72] Khair S, 'Alternative Dispute Resolution: How it works in Bangladesh' (2004) XV 1 Dhaka University Studies.

[73] Samad, Md. Atickus A Text Book on ADR & Legal Aid (First, National Law Publications 2013).

[74] Kasambhai v. State of Gujarat [1980] AIR 854, 1980 SCR (2)1037

[75] United States Agency for International Development Alternative Dispute Resolution Practitioners' Guide (Center for Democracy and Governance, USAID, 1998).

On the other hand, though plea bargaining is not practiced in Bangladesh if it were to be introduced, the accused may be pressured by powerful parties, political leaders, or even law enforcement agencies to accept guilt even though they are innocent[76].

[76] Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr [1980] AIR 854, SC 854.

Chapter-VIII

Concluding Part

8.1 Recommendations for Enhancing alternative Disputes resolution.

The following are some recommendations for enhancing alternative dispute resolution (ADR):

* Increase public awareness of ADR options.
* Make ADR more accessible and affordable.
* Improve the quality of ADR services.
* Promote the use of ADR in resolving disputes.

Increasing public awareness of ADR options can be done through a variety of means, such as public education campaigns, media coverage, and training for lawyers and other professionals. Making ADR more accessible and affordable can be done by providing financial assistance to parties who need it, and by making ADR services available in more locations. Improving the quality of ADR services can be done by training ADR practitioners, and by developing and implementing standards for ADR programs. Promoting the use of ADR in resolving disputes can be done by encouraging parties to consider ADR as an alternative to litigation, and by providing information about the benefits of ADR.

The state needs to ensure the practice of ADR in a criminal case should not be a burden on the parties. There should be a balance of power and position while implementing this mechanism in our society. After going through all the data and analyzing documents, legal papers, and books, I would like to present some suggestions regarding the efficacy of ADR in the criminal justice system and how to improve it.

a. The authorities should consider encouraging litigants to seek resolution of compoundable offences in village courts13 where each party can select two representatives for the board. This would alleviate the backlog of cases in formal courts and promote the use of established dispute-resolution mechanisms.
b. It is advisable to prioritize securing the independence and transparency of our court systems before implementing ADR in criminal trials. While the introduction of ADR may expedite case resolution and reduce the backlog, hastily adopting this method without adequate consideration may compromise the quality of our criminal justice system.

c. It is crucial to exercise caution when introducing mechanisms like plea bargaining, given the political, economic, and geographical realities of our country. Adequate consideration must be given to these factors to ensure that the implementation of plea bargaining does not have unintended consequences.
d. It is suggested that legal counseling be improved in terms of quality and accountability, to facilitate equitable access to government legal aid programs. This would ensure that all individuals have the opportunity to use these mechanisms to their advantage.

To make ADR more effective, extensive and pro-active, co-ordination is needed among different agencies. Following initiatives can be given to apply ADR mechanism in full swing in our legal system:

1. Creating awareness about ADR;
2. Spreading the success story of ADR;
3. View ADR as an addition to not a replacement of the litigation system.
4. Case management should be observed;
5. Bringing change in court infrastructure;
6. Including stakeholders in court reforms;
7. Involving the Bar Association in ADR;
8. Providing training for mediators;
9. Reform in civil justice system;
10. Judges can actively and persistently suggest ADR options;
11. Particular institute can be formed for training of mediation;
12. The court can play a vital role by educating;
13. Reforming Village Court by initiating ADR in place of shalish

The loopholes or barriers may be removed if some important measures are taken and implemented by the government of Bangladesh. To execute the aims of the ADR the following recommendations should be followed.

1. Institutional framework should be established regarding ADR.
2. Separate Code should be enacted regarding ADR.
3. Separate meditation courts should be established in the Thana level or Upazilla level.
4. ADR should be applied in criminal cases largely.
5. The judges and lawyers should be properly trained up.

6. Public awareness should be made and extended in local arenas through different types of government projects, NGO's, Research and other electronic media.
7. In criminal cases ADR is applied only in some C.R Cases but it needs to extend in some G.R Cases also.
8. The fee of the conciliators, meditators and arbitrators for disposing cases should be fixed by the Code.
9. A Statutory body should be incorporated for formulating rules, planning and monitoring the whole ADR system.
10. Positive impressions should be increased among the lawyers regarding ADR.
11. Corruptions should be removed from the ADR schemes.

By following recommendations, we can help to make a ADR a more effective and efficient way to resolve disputes.

8.2 Conclusion

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

The ADR mechanism is very remarkable and successful development in Bangladesh to resolve the disputes in alternative way. When a dispute is solved amicably with the saving of time and cost of the litigants then it ensures the impartiality, integrity and authenticity of the ADR mechanisms. The insertion of the compulsory ADR provisions in the Family Court and in some sections of the Code of Civil Procedure, 1908 have effectively opened the door of providing fair justice to the people. These recent incorporated provisions of ADR in different cases of Bangladesh have created an opportunity of access to justice for all citizens especially for that groups who are poor, unlettered and disadvantaged. Now the Civil court, the Family Court and Artha Rin Adalat have achieved a great success in their respective fields through ADR. Realizing the importance and great success of ADR the government of Bangladesh has also inserted ADR mechanism in the Criminal justice system. This article shows the effectiveness of ADR mechanisms and efficient success of ADR in Bangladesh. So, considering the whole matters of this article it is said that ADR has a very significant preface towards the improvement of the justice avoiding all kinds of procedural and other complexities.

Alternative Dispute Resolution (ADR) has been successfully implemented in the civil litigation system in Bangladesh, and it is essential to extend this system to the criminal justice system to ensure justice, expedite the resolution of disputes, and reduce case backlogs.

However, it is important to recognize that the implementation of ADR in the criminal justice system may require certain pre-requisite actions to achieve optimal results.
Therefore, the recommendations outlined in this paper must be carefully considered to ensure the correct implementation of ADR mechanisms. Otherwise, the haphazard expansion of ADR in the criminal justice system may lead to negative consequences for us
justice system, as it could be used as a means of unequal power distribution in society. Thus, it is crucial to implement ADR thoughtfully and deliberately to achieve the desired outcomes for our justice system.

In conclusion, the research findings indicate that the effective implementation of ADR in the civil justice system of Bangladesh is a complex and challenging task. There are a number of factors that need to be considered in order to ensure that ADR is effective, including the need for adequate training for ADR practitioners, the need for a supportive legal framework, and the need for public awareness of ADR. The research also found that there are a number of potential benefits to the effective implementation of ADR, including the potential to reduce the cost and delay of civil litigation, the potential to improve the quality of justice, and the potential to increase access to justice for the poor and marginalized. However, the research also found that there are a number of challenges to the effective implementation of ADR, including the need to overcome cultural resistance to ADR, the need to address the concerns of lawyers and judges, and the need to ensure that ADR is affordable and accessible for all. The research findings suggest that the effective implementation of ADR in the civil justice system of Bangladesh is a worthwhile goal, but it is a goal that will require a concerted effort from all stakeholders.

Bibliography

- www.Wikipedia.com.info
- http//google.law.cases
- Hasan K.M, 'A report on Mediation in the Family Courts: Bangladesh experience' (25th Anniversary Conference of the Family Court of Australia, Sydney, 2001)
- Islam S, 'Politics-corruption nexus in Bangladesh: An empirical study of the impacts on judicial governance' (2010) Hong Kong: Asian Legal Resource Centre.
- Khair S, 'Alternative Dispute Resolution: How it works in Bangladesh' (2004) XV 1 Dhaka University Studies.
- Maynard, D.W Inside Plea Bargaining: The Language of Negotiation (First, Plenum Press 1984) S.C. Tripathi Alternative Dispute Resolution System (ADR) (First, Central Law Publications 2012)
- The Constitution of the People's Republic of Bangladesh, art. 27, 28 and 31.
- Naser, Mostafa Mahmud. The Role of clinical legal education in increasing access to justice: The context of Bangladesh, commonwealth legal education conference, 2006, 54.
- The Daily Star. 2007; 29:2.
- https://www.law.cornell.edu
- https://definitions.uslegal.com
- www.duhaime.org>legal Dictionary
- Ettie Ward, Mandatory Court-Annexed Alternative Dispute Resolution in the United States Federal Courts: Panacea or Pandemic? St. John's Law Review, Vol. 81,
- 2007; Retrieved from SSRN: http://ssrn. com/ abstract=993220.
- Law, justice and parliamentary affairs minister Barrister Shafique Ahmed on inaugural session of a training course on ADR for the judges and lawyers at Judicial Administration Training Institute in Dhaka on 16th July, 2011.
- ADR in Bangladesh by Mr. Justice Mustafa Kamal, former Chief Justice of Bangladesh in a presentation on ADR, invited by the Supreme Court of Pakistan.
- Alternative Dispute Resolution practitioners guide, March 1998, Centre for Democracy and Governance, Technical Publication Series, page-4.