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A Legal Analysis of the Suitability of Alternative Dispute Resolution as a Rural Dispute Mechanism in Bangladesh

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Recently, Bangladesh has placed a renewed focus on Alternative Dispute Resolution programs as a method of avoiding contentious hearings in formal litigation and efficiently ensuring universal access to justice. Rural conflicts are generally characterized as social issues because they stem from misunderstandings, misperceptions, and long-held traditional attitudes regarding specific themes. Compared to typical legal procedures, alternative dispute resolution (ADR) approaches offer a more flexible and informal approach, which can be useful in addressing a variety of rural issues. ADR can resolve these a few rural conflicts. For example, disagreements over boundaries, agricultural matters, environmental concerns, etc. A mediator can help parties communicate with one another and come up with solutions that work for both of them, such as redefining borders or establishing easements. ADR techniques like arbitration and mediation offer a forum for candid discussion, group problem-solving, and preserving relationships for parties engaged in rural conflicts. These methods can be particularly helpful in maintaining communal cohesiveness and identifying solutions that are customized to the unique requirements and environment of rural communities. The purpose of this paper is to find out the present loopholes. Moreover, there is no provision to impose sanctions for refusing negotiation without authentic explanation. That's why the author tries to recommend some probable solutions like proper monitoring, a review board for implementing verdict, eradicating this problem & protecting the parties from significantly decreasing expense, time, and energy loss. Almost every nation in the world has integrated ADR into its justice delivery system by reducing administrative and legal barriers and strengthening oversight processes.

Keywords: *adr, challenges, effectiveness, access to justice, applicability, rural area.*

INTRODUCTION

Alternative Dispute Resolution (ADR) is a word that refers to a set of strategies and procedures for settling conflicts without resorting to litigation. ADR is an all-encompassing term that refers to multiple non-judicial methods of handling conflict between parties.¹ Examples of ADR are mediation, arbitration, neutral evaluation, negotiation, and conciliation. Due to ADR's ability to make decisions more quickly and economically, it has gained significant popularity among commercial and social parties worldwide. While those techniques have drawbacks, the benefits are widespread and widely regarded as the most effective. The major forms of ADR and their characteristics are well known to law practitioners and lawyers alike. Thus, ADR plays a critical role in resolving a dispute or conflict.

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

If we look at world history, we can see numerous civilizations that lacked legal institutions for ensuring social order, peace, and harmony. At the time, an alternative dispute resolution system

¹ 'Alternative Dispute Resolution' (*Legal Information Institute*)

<https://www.law.cornell.edu/wex/alternative_dispute_resolution> accessed 10 November 2023

² *Ibid*

was developed to avoid the complexities of the formal justice system. During that period, some civilizations employed an alternative dispute-resolution system.³ For instance:

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

After this civilization era, the development of the ADR system can be divided into three segments⁴. Such as:

1. ADR in Ancient Bengal
2. ADR in Mediaeval Bengal
3. ADR in Modern Bengal

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

- ADR in the British Era.
- ADR in the Pakistan Era.
- ADR after the Independence of Bangladesh.

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

³ A B M Mahmudul Hoque, *Alternative Dispute Resolution in Bangladesh: Challenges and Prospect* (1st edn, Law Book Company 2015) 22-24

⁴ *Ibid*

LITERATURE REVIEW

The process of identifying, reading, and evaluating the extent of literature in a particular area of interest is known as a literature review. A review of concepts and theories, as well as past study findings, is referred to as a literature review. To grasp what is currently known as a problem, a literature review is required. It aids in the avoidance of duplication of effort. It accomplishes the following goals:

- To demonstrate mastery of related literature;
- To demonstrate originality;
- To create or set up interest in the subject;
- To demonstrate the research's context.

Professor Dr. Jamila A. Chowdhury in her work has categorized the practice of Alternative Dispute Resolution mechanisms into three parts: Formal ADR Practice in Bangladesh, Quasi-formal ADR Practice in Bangladesh and Informal ADR Practice in Bangladesh.⁵

In the informal portion of ADR practice, she discusses the Village Shalish process's application of ADR processes in the rural arena, many modalities of ADR practice, the obligations of Shalish rulings, and the flaws in the Shalish process in that section. Additionally, the author mentions the Shalish NGO process as follows:

- Madaripur Legal Aid Association (MLAA)⁶
- Bangladesh Legal Aid and Services Trust (BLAST)⁷
- Bangladesh National Women Lawyer's Association (BNWLA)⁸
- Ain o ShalishKendro (ASK)⁹

⁵ Prof. Dr. Jamila Ahmed Chowdhury, 'ADR THEORIES AND PRACTICES: A Glimpse on Access to Justice and ADR in Bangladesh' (3rd edn, London College of Legal Studies 2020) p 117

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

⁹ *Ibid*

- BachteSekha (BS).¹⁰

To restore peace and harmony in rural areas through the ADR process, the author offers several approaches in her writings, including the following: to establish the binding nature of conflicts that are resolved outside of the courtroom provides two examples to substantiate this assertion. For example, in the country of **Japan**, spouses mutually agree on their divorce through a discussion process and then register the divorce with their local authority to give it a binding nature. In **Egypt**, spouses may end their marriage status and even establish custody of their children with mutual permission. However, she makes no reference to or clarification of any recommended ADR model for institutionalization, in other words, the establishment of any obligatory responsibilities for rural area residents. As a result, in my thesis paper, the Author intends to offer a set of rules for alternative dispute resolution to implement the intrinsic meaning or purpose of the ADR system and lower the backlog of cases in our formal judicial system.

Dr. ABM Mahmudul Hoque, in his writings regarding the ADR, has identified some classifications: Formal or Judicial ADR, Quasi-formal or Statutory ADR and Informal or Non-formal ADR.¹¹

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

In reality, the enforceability of agreements reached through mediation is non-existent. There is no attempt to bind the parties in any way. There is no mechanism through which the authority can create an environment devoid of political influence for the parties. As a result, in this paper,

¹⁰ *Ibid*

¹¹ Hoque (n 3)

the Author attempts to find loopholes & and set up rules in which the enforceability mechanisms and the impact of political influence are given top attention.

Md. Habib Alam discusses the emergence of the implications and practice of Alternative Dispute Resolution (ADR) to implement civil justice and eradicate suit backlogs in Bangladesh's dispute resolution system.¹² He states in the section on an informal justice system that the **Village Court Act 2006** adjudication process is based on the informal traditional Shalish system, which is considered ADR. In contrast to formal judicial adjudication, evidence law or other procedural law does not bind the Village Court. As a result, there does not appear to be any difficulty in providing simple and expeditious rural justice through these forums, which may be viewed as forums of alternative dispute resolution.¹³

However, he fails to clarify or mention any mechanisms for enforcing the rules and regulations governing the ADR process. That is why, once the mediators' decision is finalized, the people are unable to follow the order. That is why, in this paper, the author attempts to propose implementation mechanisms of enforceability and political influence are given top priority.

Bashir Ahmed and Mohammad Tarikul Islam have discussed the effectiveness of the existing local justice system in the rural sector in their writings ADR.¹⁴ They mention the prevalent impediments to Shalish in rural Bangladesh, as well as undue influence in the name of patron-client relations, political parties, and social prejudice, the Village court may be a viable alternative for facilitating local arbitration and ensuring a level playing field for contending parties.

The formal legal system in Bangladesh is overburdened, with inadequate officials and employees to appropriately manage the tasks. Consequently, a half-million cases languishing in

¹² Md. Habib Alam, 'Alternative Dispute Resolution (ADR): A New Key for Implementing Civil Justice in Bangladesh' (2014) 19(1) IOSR Journal of Humanities and Social Science <<https://www.iosrjournals.org/iosr-jhss/pages/19%281%29Version-12.html>> accessed 10 November 2023

¹³ *Ibid*

¹⁴ Bashir Ahmed and Mohammad Tarikul Islam, 'The Role of Union Parishad in Rural Dispute Resolution in Bangladesh: an Evaluation in the Light of People's Perception' (2013) 3(4) <https://castle.eiu.edu/studiesonasia/documents/seriesIV/Ahmed_Islam_Studies_March2013.pdf> accessed 10 November 2023

multiple courts indicate the existing procedure's inefficiency. He also mentions that the practice of creating village courts has grown in popularity and those local elected officials are far more receptive and interested in doing so. The Ministry of Local Government Division (LGD), the United Nations Development Programme (UNDP), and the European Commission partnered on a project called 'Activating Village Courts in Bangladesh' which assists the justice system in 500 Union Parishads (UP) across the country.¹⁵

Though they discuss the traditional Shalish system, the NGO-based Shalish system, the village court system, the effects of undue influence, and the judgment capacity of judges, in reality, the agreements reached through mediation are not enforceable. There is no attempt made to bind the parties, no way for the authority to create an environment free of political influence for the parties. That is why, in this paper, the Author attempts to propose monitoring mechanisms of enforceability and independence from political influence are prioritized.¹⁶

RESEARCH OBJECTIVES

1. To identify the challenges of existing ADR mechanisms in Bangladesh.
2. To study the existing Alternative Dispute Resolution (ADR) mechanisms in Bangladesh promoting Access to Justice.
3. To analyze the effectiveness of the ADR system as a rural dispute resolution process for reducing caseload in Bangladesh.

RESEARCH QUESTIONS

1. What are the challenges in practicing the Alternative Dispute Resolution (ADR) system in Bangladesh?
2. What are the existing Alternative Dispute Resolution mechanisms in Bangladesh?
3. To what extent Alternative Dispute Resolution (ADR) system can be an effective way as a rural dispute mechanism for reducing caseload in Bangladesh?

¹⁵ *Ibid*

¹⁶ *Ibid*

SCOPE OF THE RESEARCH

With some improvements, the long-serving traditional Shalish system can be trusted to reconstruct the local-level justice dispensing mechanism. More enthusiasm is focused on determining whether people desire government involvement in this burgeoning area of rural dispute resolution. If people enjoy it, the study's goal is to figure out what is preventing rural ADR from becoming institutionalized and what is driving its popularity. The ADR technique has been effectively employed in financial, commercial, revenue-related, and family-related conflicts. So, why can't it be utilized in petty civil and criminal disputes in rural areas? As a result, the chosen research topic, the institutionalization of village-level ADR, is completely unexplored in the academic setting. Because this is a new and exploratory study, participants are drawn from a variety of backgrounds, including Shalish stakeholders, practitioners, experts/academicians, and people's representatives, as well as members of the policy-making and implementation sides. The author believes that cross-validation of responses from a wide range of people will help to speed up the process of institutionalizing Shalish¹⁷.

Among these, the following concerns have been given considerable consideration for the goal of reviewing the overall legal structure of Village Court:¹⁸

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

¹⁷ Moyeenul Islam, 'Institutionalization of Grassroots Level Alternative Dispute Resolution (ADR): Challenges and Prospects' (Master in Public Policy and Governance, North South University 2012)

¹⁸ Rural Development & Cooperatives Government of the People's Republic of Bangladesh, Dhaka, *Report on Village Courts Legal Framework: Activating Village Courts in Bangladesh Project* (2013)

THE CHALLENGES OF EXISTING ADR MECHANISM IN BANGLADESH AT RURAL AREAS

Existing Alternative Dispute Resolution (ADR) Mechanisms: There are three primary kinds of Alternative Dispute Resolution practices in Bangladesh, each of which may be characterized as follows:

1. Formal or Judicial ADR;
2. Statutory ADR or Quasi Formal;
3. Informal ADR or Non-Statutory ADR.¹⁹

Status of ADR	Relevant Legislation	Relevant Sections	Methods Applied	Characters Who Play a Major Role
Formal or Judicial ADR	1. The Code of Civil Procedure (Amendment) Act, 2003	1. Sections 89A, 89B and 89C	1. Arbitration or Mediation	1. The court itself or a third-party mediator may mediate a dispute.
	2. Artha Rin Adalat Ain, 2003	2. Sections 21-25	2. Mediation	2. The court itself or a third-party mediator may mediate a dispute.
	3. The Family Courts Ordinance, 1985	3. Sections 10(3), 10(4) and 13	3. Reconciliation	3. By the Court itself.

¹⁹ Hoque (n 3)

<p>Statutory ADR or Quasi Formal</p>	<p>1. The Village Court Act, 2006</p> <p>2. Arbitration Act, 2001</p> <p>3. The Muslim Family Laws Ordinance, 1961</p>	<p>1. Sections 1 and 2</p> <p>2. Section 23</p> <p>3. Sections 2(a), 6, 7(4) and 9(1)</p>	<p>1. Civil and criminal adjudicatory jurisdiction in a specified area.</p> <p>2. Arbitration</p> <p>3. Arbitration</p>	<p>1. Union Parishad</p> <p>2. Arbitration Tribunal</p> <p>3. Union Parishad and Paurashava</p>
<p>Informal ADR</p>	<p>1. The Local Government</p> <p>2. Informal ADR by NGOs on Civil & Compoundable Criminal offences</p> <p>3. Criminal Procedure Code, 1898</p>	<p>1. Section 14(j)</p> <p>2. NA</p> <p>3. Section 345</p>	<p>1. Shalish or Mediation</p> <p>2. Mediation or moderate Shalish</p> <p>3. NA</p>	<p>1. Union Parishad and Paurashava</p> <p>2. NGO Mediators</p> <p>3. Compounding of complaints</p>

ADMINISTRATIVE CHALLENGES

Maintaining the rule of law is the main hurdle to ADR in Bangladesh. Alternative dispute resolution (ADR) strategies are used to settle disagreements. The rule of law is mostly missing or non-existent. Because it is mainly concerned with resolving conflicts, it may deal with comparable challenges in various ways. And the due process of law is not followed in alternative dispute resolution.²⁰

In a culture where there is a power imbalance between the warring parties, it is one of the most difficult components to ensure that ADR is effectively implemented and functioning. Even if the imbalance is not due to discriminatory cultural norms at the time, alternative dispute resolution systems will fail to protect the weaker parties' legal and procedural rights. Stronger parties with more money and power may compel the weaker party to accept a less desirable outcome²¹.

In the case of a multi-party conflict, it is difficult to include all interested parties in an alternative dispute resolution mechanism. In a land dispute, ownership is a critical fact to consider, and the party in possession, whether right or wrong, is often disinterested in alternative conflict resolution since he derives pleasure from the property's productive capacity. As a consequence, involving the party with larger possession in alternative dispute resolution is very difficult.²²

The vast majority of land litigants, especially those in rural areas, are illiterate and uninformed about the nature and advantages of alternative dispute resolution. For ADR to be successful in Bangladesh's rural areas, the public must be made aware of its existence.

It is one of the most typical causes of litigation delays because lawyers use dilatory strategies. It is critical to include the interested parties' pleaders in the resolution of conflicts via formal or

²⁰ Md. Manjur Hossain Pataori et al., 'Legal and Administrative Challenges of Alternative Dispute Resolution (ADR) as a Peaceful Means of Resolving the Land Dispute in the Rural Areas of Bangladesh' (2020) 11 Beijing Law Review <https://www.scirp.org/pdf/blr_2020041010571480.pdf> accessed 16 November 2023

²¹ *Ibid*

²² *Ibid*

informal alternative dispute resolution (ADR), however, the role of legal professionals in settling disputes outside of the court system is currently underdeveloped in Bangladesh.²³

LEGAL CHALLENGES

According to the **Code of Civil Procedure 1908**, when all of the contending parties come before the court, the court must mediate the disagreement or submit the matter to the Legal Aid Officer, the parties' pleader, or the mediators from the panel to mediate, whichever is appropriate. However, if either of the parties fails to come before the court, there is no option for the court to force them to do so.²⁴

The court will choose the technique to be used, whether it is a legal assistance officer, a pleader, or a panel of mediators. The panel will set the procedure for the mediation process, whether it is conducted by an attorney-assisted mediator, a pleader, or a panel mediators. There are no defined norms, laws, or systems in place to ensure the mediation process is performed appropriately.²⁵

Following **sections 89A and 89C of the Civil Procedure Code**, mediation is permitted throughout the pre-trial and appellate phases, but not after the trial has concluded and before the pronouncement of the verdict. However, parties may realize the merits of their argument after the trial has concluded.²⁶

If the mediation fails, Section 89A (7) specifies that the action must be reopened from the place where it was before the referral for mediation. It is also uncommon for parties to resign from mediation without giving any explanation, leaving the mediator with little alternative except to

²³ Hoque (n 3)

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ M.S Islam, 'Efficiency and Effectiveness of Alternative Dispute Resolution Schemes towards the Promotion of Access to Justice in Bangladesh' (2011) 8 International Islamic University Studies
<<https://doi.org/10.3329/iiucs.v8i0.20405>> accessed 16 November 2023

send the matter to a court. This prolongs the litigation, but there is no provision in the agreement that punishes the party that purposefully withdraws from mediation.²⁷

In the majority of situations, attorneys are opposed to ADR since it means their revenue will be lowered if the dispute is resolved. In many cases, lawyers misdirect or prevent their clients from exploring alternative dispute resolution, but there is no provision in the law assuring the lawyer's liability in the event of ADR failure due to the lawyers' reluctance.

The restriction of jurisdiction in village court is the most significant obstacle in the path of alternative dispute resolution. Land disputes in which the value of the property does not exceed Tk. 75,000 may be addressed via mediation. It does not have jurisdiction over each and all land-related conflicts that may arise.²⁸

IDENTIFYING THE ANCIENT RURAL ERA'S DIFFICULTIES

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

During the ancient time, there were various difficulties with the alternate conflict settlement procedure.²⁹

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

²⁷ *Ibid*

²⁸ Hoque (n 3)

²⁹ Liana B. Luna-Smith, 'Closing the Gap: Identifying and Defining Challenges Faced by Alternative Dispute Resolution Professionals as They Enter the Field' (Master of Science, Conflict and Dispute Resolution Program and the Graduate School of the University of Oregon 2015)

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

Insufficiency of available Infrastructure: It was discovered that there was no distinct office for the Village Courts and no designated location for the performance of judicial activities during that ancient period.

Identifying the difficulties that face in the Modern Era: It is not new in Bangladesh to resolve disputes outside of the court system; non-judicial and indigenous conflict settlement techniques have been employed by the society for a very long time. However, the most significant issue is that there is no consistent alternative dispute resolution statute in Bangladesh. Different dispute resolution techniques and procedures have been mandated by different pieces of law to resolve the disagreement. For the individual who serves as a neutral mediator or conciliator, this presents a dilemma, since all processes change in various situations. When persons who are participating in an ADR process are not adequately trained, they may lack the necessary knowledge and skills to effectively supervise and persuade the disputants to settle. It is as a result of this that the vulnerable party does not get adequate justice.³⁰

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

Legal Analysis of Existing ADR Mechanisms in Bangladesh:

The many methods of Alternative Dispute Resolution (ADR) that are employed in Bangladesh may be divided into three broad groups.³¹

- Judicial or Formal ADR;

³⁰ Md. Nannu Main and Shaikh Rajib Hossain, 'Problems of Alternative Dispute Resolution Mechanisms and Proposals for Improvement: A Study in Bangladesh' (2013) 1 International Journal in Management and social science

<https://www.academia.edu/35926705/PROBLEMS_OF_ALTERNATIVE_DISPUTE_RESOLUTION_MECHANISMS_AND_PROPOSALS_FOR_IMPROVEMENT_A_STUDY_IN_BANGLADESH> accessed 5 May 2022

³¹ Hoque (n 3)

- Statutory ADR or Quasi Formal ADR;
- Informal ADR.

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

1. The **Code of Civil Procedure (Amendment) Act of 2003**³² - Accordant to **the Code of Civil Procedure in 2003** which was changed to include mediation under **Section 89A**, arbitration under **Section 89B**, and mediation in appeal under **Section 89C**. All of these methods have been annexed to the court system and have been made applicable in all types of non-family litigation. **Section 89A** allows for mediation to take place before a trial, while arbitration may be used at any point of the litigation process.³³
2. The **Artha Rin Adalat Ain of 2003**³⁴ - The Artharin Adalat Ain also known as Money Loan Recovery Act was passed in 2003 with built-in options for alternative dispute resolution. The procedure will consist of a settlement conference, which will be presided over by a trial judge and conducted in a closed session. The details of the proceedings are being kept under wraps. As this system has proven ineffectual, the current administration revised the legislation in 2010 to enable mediation instead of a settlement conference, which was previously prohibited. As a result, additional restrictions were inserted into the Loan Recovery Act, of 2003, namely sections 22 and 23.
3. The **Family Courts Ordinance of 1985** - The Family Court Ordinance establishes a system for reconciliation via the use of judges as a crucial aspect of the legal process in family court cases (court-annexed ADR). It contains a built-in conciliation process that enables disputing parties to address the remaining problem informally, inconspicuously, and with a feeling of accommodation, in which the family Courts act as a well-wisher and friend rather than as an adjudicator, rather than adjudication.³⁵ In the case of **Khudeza**

³² Code of Civil procedure 1908

³³ Hoque (n 3)

³⁴ Money Loan Recovery Act 2003

³⁵ Hoque (n 3)

Begum v Md. Abdul Jalil, the victim was deprived of dower & and maintenance for herself and her child. Afterward, the victim filed a suit with the concerned court. The court, in the ADR segment, sent it for compromise. Ultimately, the parties succeeded in solving the matter through ADR.

Statutory or Quasi-Formal ADR: Quasi-formal or Statutory Alternative Dispute Resolution is defined as those cases in which the application, jurisdictions, and procedural methods relating to dispute resolution are regulated by a statute but are conducted by another judicial body that is not a part of the formal judicial structure of the country in question.³⁶ It is further subdivided into the following industries.

1. The **Village Court Act of 2006 - The Village Court Act of 2006** (Amendment 2013) refers to the phrase 'village court' for the first time. The Chairman of the Union Parishad, who would create a village court with a total of five members, will hear any issue brought before him by any party to the conflict. The Chairman of the Union Parishad will preside over the village court, and each political party will choose two members from among themselves, one of whom must be a member of the Union Parishad. The court's judgment is made based on a majority of the votes cast. Unless otherwise mentioned in the schedule, the court has jurisdiction over all small civil and criminal issues. The court does not have the authority to sentence someone to jail. In the event of a land conflict³⁷, it has jurisdiction only if the subject matter has a value of less than **TK 75,000**/(sec 07) and it has the authority to order compensation for property damage caused by cattle as well as the restitution of immovable property in certain circumstances. A pleader could not be hired by a party to represent them at the village court.³⁸
2. The **Arbitration Act of 2001 - The Arbitration Act of 1940** was in effect in Bangladesh until the Arbitration Act of 2001 was adopted, which took effect in 2002. According to Section 23 of the Arbitration Act 2001, the arbitration process that must be followed under

³⁶ Hoque (n 3)

³⁷ *Bishno Karmakar v Biswanath Karmakar* Case No 94/2021

³⁸ Hoque (n 3)

this Act is explained in detail. It was primarily created to facilitate the conduct of commercial and international arbitration proceedings. Other types of domestic arbitration, on the other hand, are permitted to be conducted under this Act. According to Section 89 B of the Civil Procedure Code, the Arbitration Act of 2001 may also be utilized to resolve civil issues that have been submitted to arbitration.³⁹

3. The **Muslim Family Laws Ordinance of 1961** - Following the Muslim Family Law Ordinance of 1961, provision for reconciliation via an arbitration council, which is not a component of judicial alternative dispute resolution but is administrative under character, has been made in three instances.⁴⁰ In the context of polygamy as defined by Section 6. 2. In the event of dissolution of marriage (divorce) and the imposition of the divorce decree according to Section 7. 3. In the event of the husband's inability to pay for his wife's upkeep as required under Section 9.

Informal ADR: Alternative Dispute Resolution techniques, such as informal and non-formal methods, are used in criminal cases as well as at the community level in both civil and criminal cases. Informal and non-formal methods are used to settle disputes in both civil and criminal cases. Furthermore, it may be divided into the following categories:⁴¹

1. **The Local Government** - Bangladesh is divided into six territorial administrative divisions, each of which contains 64 districts and more than 85,650 villages. These numbers are significant because a significant number of informal dispute resolutions occur in Bangladesh, with local government members playing a key role in the process. **Section 14(j) of the Local Government (Gram Parishad) Act, 1997** entrusts the duty of amicably settling local conflicts to the members of the local government.⁴²
2. **Informal ADR by non-governmental organizations (NGOs) on civil and compoundable criminal offenses** - In general, non-governmental organization (NGO) mediation is carried out by NGO employees who have been educated in legal and social

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² *Ibid*

justice knowledge as well as mediation abilities. Feminist mediators are actively sought after by non-governmental organizations (NGOs) to participate in their mediation programs, particularly in situations concerning women's rights, family conflicts, and other concerns of gender equality. A broad variety of civil problems as well as different criminal concerns are covered by these mediations, which are permitted under Bangladeshi law to be resolved by negotiation or mediation.⁴³

3. **The Criminal Procedure Code of 1898** - There are a large number of criminal cases that are compoundable under the law. However, there was no institutional venue or organization in our nation to resolve those matters that were compoundable. Sometimes the plaintiffs in criminal cases are unable to locate a formal or informal venue in which to resolve their case, and as a result, they are sentenced to many years in prison for a relatively minor offense, or even for not having committed any crime at all.⁴⁴ As stated in **Md Joynal and Others v Md Rustam Ali Mia and others**⁴⁵, the Appellate Division of the Bangladesh Supreme Court holds that: *“Our Criminal Administration of Justice encourages the compromise of certain disputes and even the compounding of certain offenses as provided by Section 345 of the Criminal Procedure Code. Shalish, also known as a compromise has been used in the settling of disputes in this subcontinent from the beginning of time”*.
4. ADR may take on a variety of forms, including hybrid forms. These hybrid modes were created by improvising a combination of three fundamental kinds of ADR. Negotiation, mediation, and arbitration are the three types of dispute resolution. To keep up with the developments, hybrid types of ADR are being developed over time. So it is not feasible to explore all of the many hybrid ADR forms that may occur in the actual world at present. The following are examples of hybrid versions of ADR⁴⁶: Early neutral evaluation, Fact Finding, Med-Arb, Mini-trial procedure, Settlement conference, Negotiated rulemaking, and private judging.

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ *Md Joynal and Ors v Md Rustam Ali Mia and Ors*[1984] 36 DLR 240

⁴⁶ Chowdhury (n 5)

ADR SYSTEMS ACROSS THE WORLD

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

ADR in the United States of America (USA): As a court-ordered process, the American Courts, the American Bar Association, and other organizations use mediation in the United States. This method is effective in a variety of cases, including simple money claims, sexual harassment complaints, and disputes regarding custody battles in the case of divorcing couples who have filed for divorce.⁴⁷

ADR in the United Kingdom: ADR arose in the United Kingdom partially as a result of issues arising from the cumbersome and costly process of civil litigation, and partly as a result of difficulties arising from lawyer-dominated arbitration. Among the techniques extensively employed in the United Kingdom are international mediation with standard forms, mini-trial, and executive tribunal, mediated settlement leading to a consensual arbitration award, med-arb, and a variety of other options. The Centre for Dispute Resolution (CEDR) is a newly founded organization that provides mediation services to businesses in the United Kingdom.⁴⁸

ADR in Canada: There are many similarities between Canada's judicial system and that of both America and the United Kingdom. In Canada, there are two separate and distinct judicial systems. Federal and provincial governments, for example. A movement toward alternative conflict resolution is emerging in Canada as a result of the high cost and lengthy nature of traditional dispute settlement. Alternative dispute resolution techniques, such as mediation and arbitration, are increasingly being utilized to handle business and non-commercial issues, rather

⁴⁷ Hoque (n 3)

⁴⁸ *Ibid*

than going to court. The majority of the time, such alternate procedures are voluntarily implemented.⁴⁹

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

ADR is also practiced in the following locations, which are listed in a brief chat.⁵⁰

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

⁴⁹ *Ibid*

⁵⁰ Chowdhury (n 5)

ACCESS TO JUSTICE

Justice delayed is justice denied. As a result, effective justice should be delivered as quickly as possible. Not only should accessible justice be quick, but it should also be inexpensive. To be considered accessible justice, criteria must be met that make justice more easily accessible, simpler to grasp, faster to provide, and more certain.⁵¹

1. **Access to Justice under the Constitution of Bangladesh** - Obtaining justice is emphasized in several articles of the **Constitution of Bangladesh**⁵², which serves as the nation's and the country's ultimate law and is referred to as 'the right to seek justice'. All citizens, according to **Article 27** of the Constitution of the United States, are equal before the law and are entitled to equal protection of the laws. A basic right to equal protection under the law is guaranteed by Bangladesh's Constitution, which states in **Article 31** that every citizen of the nation has the fundamental right. Even though the term 'access to justice' is not defined directly in these Articles, the substance of the phrase is merged with the phrases 'equal protection under the law' and 'protection of the law' to form the phrase access to justice. When the two Articles are read together, it is plausible to assume that people's right to seek justice is non-alienable and equal regardless of their socioeconomic level or income, which is consistent with the Constitution.⁵³

2. **Access to justice under the UDHR, 1948**- Upon unanimous approval by the **United Nations General Assembly on December 10, 1948, in Paris, the Universal Declaration of Human Rights (UDHR)** was formally adopted and became known as the Universal Declaration of Human Rights (UDHR). The Universal Declaration of Human Rights states that 'everyone has the right to be recognized as a person before the law, regardless of where he or she may be'. As a further measure, the Universal Declaration of Human Rights prohibits any kind of discrimination in the administration of justice to any individual, regardless of race or ethnic origin.⁵⁴

⁵¹ *Ibid*

⁵² Constitution of the People's Republic of Bangladesh 1972, art 27

⁵³ Chowdhury (n 5)

⁵⁴ *Ibid*

3. **Access to Justice under the ICCPR, 1966** - According to the **International Covenant on Civil and Political Rights (ICCPR), which was signed in 1966**, 'Everyone should have the right to be recognized as a person under the law wherever he or she may be located'.

THE BARRIERS OF ACCESS TO JUSTICE AND THE NOTION OF ADR

In Bangladesh, the prolonged duration of judicial processes continues to be a significant impediment to access to justice. Another element that makes it difficult for individuals to get justice is the high expense of the dispute resolution procedure. In part, this is because we live in a '*system in which money often counts more than qualities*'. To give an example, while more than 50% of family court lawyers charge fees greater than 10,000 to resolve cases through litigation, it can be said that in such cases, more than 95 percent of cases involving alternative dispute resolution can be resolved through a lawyer charging a fee equal to or less than take 5,000.⁵⁵ Many poor and disadvantaged individuals in Bangladesh continue to be unable to access the legal system via the established channels, making it important to develop other methods of ensuring that impoverished people have access to justice. At the moment, great attention is being dedicated to methods in which conflict resolution procedures might be made more efficient. The current resurgence of interest indicates the need for conflict resolution methods that are up to date with the times, which are now lacking. This interest is primarily the result of the constant worries of attorneys, judges, governments, and the general public about ensuring that conflicts are settled in the most efficient manner possible. Instead of using the traditional judicial system to resolve disputes, the industrialized nations established alternative procedures for settling disputes peacefully. As a result, this movement is gaining traction throughout the globe, and the general public is becoming more interested in settling issues via Alternative Dispute Resolution methods to expedite the resolution of disputes.⁵⁶

⁵⁵ *Ibid*

⁵⁶ Hoque (n 3)

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

How can it be Effective in Rural Areas?

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

- Increase the number of members on the judging panel from 5 to 10. The panel would be composed of one chairman (the UP chairman), one vice chairman (a woman member of UP who would serve on a one-year rotating basis), three members nominated by each service seeker party (at least one member from each party will be a member of the UP), one permanent member (appointed by the state as civil service employer), and one local school teacher (nominated by the UNO).⁵⁷
- This composition might be a policy to reduce the bias and undue influence of the chairman over the VCs in the organization. The village court's adjudication authority should be expanded, particularly in the area of financial matters, from 75,000 to 100,000.
- In addition to VC, a review mechanism for animus judgments, as well as a review board for verdicts, should be implemented in informal settings to complement VC. In reviewing VCs' decisions, the review board will function similarly to a high court division, with the following members: two NGO men working in the Concern Upazila Parishad (nominated by the United Nations), two members from the Upazila Parishad (nominated by the Upazila Chairman), and two retired public service officers. The review board will have a three-year term and will submit its findings to the United Nations and the chairman of

⁵⁷ Mohammad Shakil Bhuiyan et al., 'Access to Justice through Village Court for Rural Poor: The Case of Bangladesh' (2019) 4 International Journal of Publication and Social Studies
<https://www.researchgate.net/publication/331954675_Access_to_Justice_through_Village_Court_for_Rural_Poor_The_Case_of_Bangladesh> accessed 20 November 2023

the Upazila Parishad. If the review board's decision is not upheld, the party may file an appeal following Section 8 of the Village Court law of 2006.

THE ROLE OF VILLAGE COURT ON THE EFFECTIVENESS OF ADR SYSTEM AS RURAL DISPUTE RESOLUTION

Manpower and logistical support in sufficient quantities - The Village Court should have full logistical assistance from the government to accomplish the desired outcome. Every village court should have its own courtroom, with extra conveniences like a computer for archiving documents and an internet connection. A standard training package (including on-the-job training) that provides proper legal knowledge of the Village Court procedure may assist all parties. The government may have appointed a secretary and a court assistant to manage the Village Court's official business. It is recommended that a separate budget structure be established for Village Court to sustain all of these items.

To provide a proper and systematic monitoring system - To guarantee openness and accountability, the Village Court must have a robust and systematic monitoring mechanism, which is currently not in the necessary shape or character to perform its functions effectively. A monitoring cell under the supervision of the Upazila Administration may be established, which will have exclusive power for holding a three-monthly review meeting on the affairs in the presence of all VC bodies in the affected region. This cell will serve as the local point of contact for VC. The ministry will also get an intervallic report from the aforementioned unit, which will include information on any difficulties related to VC. If the cell discovered anything out of the ordinary, it should have had the authority to take urgent action while consulting with the ministry as soon as possible.

A system of cooperation between the Village Court and the Law Enforcement Agencies consists of the following components - The law enforcement forces of Bangladesh, particularly the police, are not very cooperative with the Village Court. The VC cannot compel the parties to consider their summons, and as a result, parties are frequently unwilling to appear in court. The coordination between the Village court and the law enforcement authorities takes on a much-

needed formality in this instance. Upon refusal of a court summons by a party, the court will make a record of the refusal and forward it to the police station. Following receipt of the notice, the police will take the necessary steps to assist the court in this matter.⁵⁸

The role of ADR in reducing caseload in Bangladesh: The major goal of the ADR movement is the avoidance of vexation, expenditure, and delay, as well as the promotion of the concept of universal access to justice. Listed below are some scenarios in which Alternative Dispute Resolution (ADR) may be used effectively to minimize the number of cases filed in Bangladesh.⁵⁹

As an example:

Litigation of the Backlog and Solution to the Problem: ADR processes aid in the reduction of the burden of the courts, allowing them to devote more time and attention to matters that should be determined by the courts. In an ideal world, Bangladesh's courts of law would only deal with constitutional concerns, such as writ proceedings, difficult civil and serious criminal offenses, and appeals, with no authority to intervene. Arbitration, conciliation, and other dispute resolution procedures should be used for any other matters.⁶⁰

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

A single procedure may be used: An agreement to settle a dispute involving intellectual property that is protected in many jurisdictions may be reached via alternative dispute resolution (ADR). This avoids the price and complexity of multi-jurisdictional litigation, as well as the danger of uneven outcomes.⁶¹

⁵⁸ *Ibid*

⁵⁹ Hoque (n 3)

⁶⁰ *Ibid*

⁶¹ *Ibid*

Informality: The Alternative Dispute Resolution procedure takes place in a more casual and relaxed environment. It is not governed by a sophisticated set of rules or by formal rules of evidence, as might be expected. The relaxation of the norms of evidence often results in a more relaxed environment⁶².

Win-Win Situation Provided by Alternative Dispute Resolution (ADR): When a lawsuit is filed, one party wins and the other loses the case. In ADR, on the other hand, there are no losers or winners. It is a win-win scenario for both of the parties involved. Consequently, many alternative dispute resolution methods do not end in the extreme outcome of litigation, where one party receives everything and the other receives nothing, but rather result in a settlement that benefits both parties.⁶³

ROLE OF SOME NGOS IN REDUCING THE BACKLOG IN BANGLADESH

Nowadays, we can observe that several non-governmental organizations (NGOs) are working in the legal field, and they have a variety of programs to assist impoverished and distressed individuals in obtaining justice. Some of them have Alternative Dispute Resolution (ADR) programs, particularly mediation programs, and some of them also have legal aid schemes to assist the poor and those in trouble. The actions of non-governmental organizations (NGOs) in the area of mediation are described in the following sections.⁶⁴

- **The Bangladesh Legal Aid and Services Trust (BLAST)** - BLAST started operating in 1993 and now has offices in all major Bangladeshi cities and towns. This includes labor law, family law, and governmental maltreatment of prison inmates. When a client's effort at mediation fails, BLAST often provides legal support and advocacy services. BLAST offers a people-centered modal mediation technique that also adheres to the jurisprudence standards of the countries in which it works.⁶⁵

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ Hoque (n 3)

- **The Bangladesh National Women Lawyers' Association (BNWLA)** - BNWLA is a grassroots organization that works to protect and promote women's rights via legal assistance and non-governmental organization mediation. Furthermore, the Bangladesh National Women's Law Association (BNWLA) participates in many national awareness-raising activities to improve access to justice in the community, and it publishes topics relating to domestic and state violence regularly.⁶⁶
- **Ain-o-Shalish Kendro (ASK)**- ASK is another well-known human rights organization that not only offers mediation services but also works on other human rights issues. However, via its Gender and Social Justice Project, it also raises awareness of the issue of women's rights violations among local government officials and law enforcement officers. ASK also works to establish relationships among residents, particularly journalists and attorneys, who are responsible for monitoring human rights enforcement mechanisms. As a result, ASK is trying to change the attitudes of society toward women so that they may get more benefits from the execution of the legislation.⁶⁷
- **Madaripur Legal Aid Association (MLAA)** - The MLAA was founded in 1978 and is generally recognized as a pioneer in introducing non-judicial conflict settlement in Bangladesh (NGOs). To provide more fair justice for everyone, local elites, comprising primary school teachers and madrasa (religious school) students, formed a mediation committee (World Bank). 2001 MLAA-trained paralegals also observed mediation sessions to ensure women were actively engaging. Since its inception in 1978, the MLAA has helped local communities settle issues via mediation while simultaneously performing Shalish locally.⁶⁸
- **BachteSekha (BS)** - The non-governmental organization BachteSekha was founded in 1982. It operates in the Bangladeshi districts of Jessore and Khulna and employs a variant of traditional Shalish that places a strong focus on empowering women throughout the Shalish process, according to the organization. To do this, BachteSekha established an 11-member village mediation committee, with seven of the members appointed being

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ *Ibid*

women⁶⁹. The legitimacy of the mediation process Because of this, the MLAA and BachteSekha both question the validity of the village committee that was constituted to facilitate mediation.

FINDINGS & CONCLUSION

Concerning Challenges: Regardless of whether the mediation process is managed by a legal aid officer, a pleader, or mediators from the panel, the court will set the procedure to be followed, and the panel will specify the protocol to be followed. However, there are no well-defined norms, regulations, or systems in place at present. It is provided in Section 89A (7) that, if the mediation procedure fails the action must be reopened from the point at which it was before the referral for mediation was made⁷⁰. The defaulting party refuses to negotiate and withdraws from mediation without providing a genuine explanation, leaving the mediator with no alternative except to transfer the matter to the relevant legal system. However, there is no provision in the agreement that imposes a sanction or penalty on the party that purposefully withdraws from mediation, even though this strategy extends the time frame for the case. The limitation of jurisdiction in village courts is the major impediment to the adoption of alternative conflict resolution methods in rural areas. Mediation may be used to resolve land disputes when the value of the property does not exceed Tk. 75,000. It does not have jurisdiction over all and all land-related problems that may emerge in any given situation.

In respect of Existing Mechanisms: The Village Court has the authority to hear cases involving both civil and criminal matters of a financial value of up to 75000 taka. However, many individuals do not go to the local court as a first step. Even in the case of a minor disagreement, they prefer to take it to an official court rather than to an informal court. The propensity underlying this goal might include the desire to punish and torment the other person, as well as the fear of not receiving justice, among other things. However, the fundamental reason for this

⁶⁹ *Ibid*

⁷⁰ Patoari (n 20)

is a lack of trust in the Village Court. Apart from that, the authority does not conduct the adjudications in the village court in a proper and legal manner.⁷¹

Concerning Effectiveness: The government should provide the Village Court with any sort of logistical assistance necessary to attain the greatest and most expected outcome possible. Every village court should be required to have a separate Courtroom, as well as supplementary facilities such as a computer for storing information and an internet connection, to function effectively. To ensure transparency and accountability, the Village Court must have a rigorous and systematic monitoring apparatus, which does not presently exist or is not in the proper shape or character to carry out its tasks efficiently. Because the VC lacks the authority to force the parties to consider their summons, they are usually unable to coerce them into attending court. In this scenario, the collaboration between the Village court and the law enforcement agencies takes on the appearance of a much-needed official.

RECOMMENDATIONS

1. To cope with the present perspective, except with some areas in which land is covered with water by flood or any other cause most of the time of the year, the pecuniary jurisdiction of the Village Court should increase in comparison to the usual court proceedings & and and and and consider the land price of the dispute area. Moreover, it requires a codified Law.
2. As the village people especially the Chairman and members of Union Parishad lack proper knowledge of law regarding the Alternative Dispute Resolution, the monitoring system through the TNO and proper training mechanisms with supporting staff should be increased.
3. In most of the cases in the village area (Union Parishad), we can see that the Parishad does not have any distinct courtroom to solve the dispute matters and there is no skillful computer operator to save the data in their computer storage with good internet access.

⁷¹ Hoque (n 3)

4. Women-related issues like Marriage, Divorce, and Rape, which are usually conducted by the Chairman and members of a Union Parishad, are applying a very old process. So, to cope with the present perspective it needs to reform.
5. We need the present administration, via the Ministry of Law and Justice, to embrace the idea that ADR should be mandatory for all consumer sectors. Legislation is required to do this. Workers in the ADR sector must be trained.
6. Community mediation supported by non-governmental organizations (NGOs) may be a useful tool in keeping up with the dynamism of society.

CONCLUSION

From the above discussion, it's clear to us that the existing Alternative Dispute Resolution (ADR) mechanisms are not sufficient to provide proper justice in society, especially in rural areas. There are a lot of challenges in the existing system for monitoring properly. For such reason, a codified law is required to serve the fruit or usefulness of ADR mechanisms for reducing the undue burden of cases in our court system. Usually, in our rural area, we can see that the common people want to get easy, quick, and inexpensive justice through the respective village headmen or leaders or such people who are generally involved in solving the dispute matters but they are not concerned or expert in the legal knowledge. Therefore, the government should be positive by taking proper steps to codify a law such as the Village Compromise Court Model⁷² and monitoring this system to ensure justice.

⁷² Hoque (n 3)