

Access to Justice and ADR in Bangladesh: Institutional and Legal Frameworks

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Abstract

Alternative Dispute Resolution(ADR) is known to be an instrument for easy and speedy access to justice throughout the world. It is cost effective and reduces backlog of pending cases in courts. Given the growing dissatisfaction of people with both the process and outcome of litigation, Alternative Dispute Resolution is increasingly being recognized as one of the instrumentalities to facilitate access to justice with a win-win feeling. ADR include a number of strategies including Negotiation, Mediation, Conciliation, and Arbitration. ADR is now an indispensable part of functioning legal systems of many countries both developed and developing.

Given the existing bleak scenario of justice delivery system and recent movement of legal reforms for increasing access to justice through ADR around the world, Bangladesh has initiated legislative scheme toward pre-trial mediation in order to make formal justice system more accessible and fair. Further, the practice of ADR has now been institutionalized in Bangladesh in many areas of dispute settlement such as family disputes, civil disputes, criminal disputes, labour disputes, and commercial disputes.

This paper attempts to provide a comprehensive idea about different modes of ADR and Court and non-court based practices of those modalities under different legislations of Bangladesh. Further, it highlights on the role of ADR in implementing justice, problems and prospect, and contemporary appeals to Alternative Dispute Resolution (ADR) in the legal system of Bangladesh.

Keywords: Alternative Dispute Resolution (ADR), Mediation, Conciliation, Arbitration.

Prologue

“Dispute resolution outside of courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflict” (US Centre for Democracy and Governance: 1998).

‘Justice delayed justice denied’ is a much known quote of William E. Gladstone. Delayed justice even sometimes fails to give proper remedies to a winning party too. Litigation cost in civil suit is sometimes too high in terms of time, money, energy and human expectations. In this context, ADR offers many advantages through which disputes of all kinds can be disposed of swiftly and inexpensively. The present judiciary of Bangladesh has been caught in a vicious circle of delays and backlog of cases. The backlog of cases is prolonging the whole trial process. As a result the justice seekers are suffering from many hurdles and eventually, losing their confidence in the judiciary. This process goes on with no apparent remedy in view. Present rate of disposal of cases

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and backlog is alarming for justice, rule of law and economic development of the country. There are about 3.5 million cases awaiting disposal across the country and these justice seekers are facing harassments amid waiting for disposal of their cases. A fair and right process for resolving disputes is crucial in any civilized society for the purpose of securing and defending rights of its citizens. Civil courts can bring disputes to an end ensure that people can enforce their rights. So ADR play a pivotal role to administer justice in Bangladesh.

Definition of ADR

At the outset, it is essential to define ADR in order to set the parameters of the court indispute resolution process. A simple definition of ADR is that it is an alternative to the procedures of formal dispute resolution, namely, litigation. ADR is taken to mean any process which is alternative to the formal procedures of dispute resolution. It is a generic term covering a collection of disparate procedures, which range from conciliatory processes such as mediation and conciliation to more formalized procedures such as the Executive Tribunal (called the mini-trial in the United States), or early neutral evaluation. In the U.S.A,arbitration is often referred to as ADR, whereas in the U.K. some commentators have disputed this, primarily because the procedure has been given a legal status through the involvement of the court and legislature.

However, its role in dispute resolution fell increasingly into disrepute because of its adoption of an adversarial approach and its development of complex rules and procedures. In Bangladesh, arbitration is falling within the ambit of ADR. Many legal theoreticians see ADR as any alternative to litigation, whereas others, particularly those providing ADR services or specialist mediators, prefer not to incorporate arbitration in the definition. Generally, ADR includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. It is a collective term for the ways that parties can settle disputes, with (or without) the help of a third party (Totaro,2010).

As said before, any method of resolving disputes other than litigation is abbreviated as ADR and it typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. In *Hilmond Investments vs. CIBC (1996) 135 DLR 471*, it was held that ADR is the method by which legal conflicts and disputes are resolved privately and other than through litigation in the public courts, usually through one of two forms: mediation or arbitration (<http://www.asapcollect.com>). The Department of Constitutional Affairs describes ADR as: “The collective term for the ways that parties can settle civil disputes, with the help of an independent third party and without the need for a formal court hearing” (<http://www.dca.gov.uk>).

Alternative dispute resolution is a concept that is, in general, used to refer to informal dispute resolution process in which the parties involved in disputes resolve their disputes with the assistance of a third party. The resolution process is less formal and often more consensual than is done in the court processes. For the convenience of the study, I provided two definitions to clarify the term.

According to World Bank Group, “ADR is a wide range of means to resolve conflicts that are short of formal litigations.” It is a consensual dispute resolution process which produces a win-

win solution (Mamun, 2008). Centre for Democracy and Governance (US) in the book named Alternative Dispute Resolution Practitioners Guide defines ADR as Follows; "The term ADR is often used to describe a wide variety of dispute resolution that are short of, or alternative to, full-scale court processes(US Centre for Democracy and Governance,1998)."

Modes of ADR

Negotiation, Mediation, Conciliation and Arbitration are the most common modes of ADR techniques in Bangladesh. Let us discuss the four important modes of dispute resolution.

Negotiation

Negotiation is the process whereby the parties of any dispute seek to settle or resolve the dispute. The negotiation process provides the parties or disputants an opportunity to exchange ideas, identify the irritant points of differences, find a solution, and get commitment from each other to reach an agreement. Bargaining is a common feature of the negotiation process. This feature makes it different from mediation and arbitration.

In negotiation, a third party may or may not be involved. When a third party is not involved in the negotiation process, someone usually breaks the ice and brings the parties to the negotiation table and then withdraws from the negotiation process.

Mediation

Mediation is simply an extension of the negotiation process. Mediators are individuals experienced in the negotiation process who bring disputing parties together and make attempts to work out a settlement or agreement that both parties can accept or reject. Mediation is used for a wide gamut of case types, including interpersonal, local business and national issues. Mediation is generally understood as a third party intervention between conflicting parties to promote reconciliation, settlement or compromise (Ordover,1994). Shalish, local process – combination of negotiation and mediation process, provides a traditional alternative to dispute resolution in a community and covers both civil and criminal cases of varying intensity and degree. This system in the village has been in place for centuries. Local leaders provide an opportunity for resolving local disputes. Women and the poor particularly, favor this option of conciliation through Shalish. They feel comfortable about easy access to the resolution process and are not required to pay money for it. Since the local Shalish is in a relatively better position to know the real nature of the conflict, the chances of exaggeration of issues are significantly less. Shalish is used in settling 60 to 70% of local disputes.

Arbitration

Next to mediation and negotiation, arbitration is another dispute resolution tool. In arbitration systems, the court authorizes a neutral person or a third party to resolve the dispute at the place of occurrence (Elkouri&Ruben,2003). The Arbitration Act of 1940 was introduced to settle disputes through this process. But the practice of arbitration by the court is not popular.

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract regarding which the dispute exists, must either contain an arbitration clause

or must refer to a separate document signed by the parties containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defense in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement.

Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award.

Once the period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.

Conciliation

Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator. When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both.

Objectives of ADR

ADR is applied to achieve some objectives. These objectives maybe divided into two broad categories. The following categories indicate the objectives of ADR.

- Objectives related to rule of law
- Objectives related to development

Objectives Related to Rule of Law

- (a) Support and complement the court system.
- (b) By-pass ineffective and discredited courts.
- (c) Increase popular satisfaction with dispute resolution.
- (d) Increase access to justice for disadvantaged groups.
- (e) Reduce delay in the resolution of disputes.
- (f) Reduce the costs of resolving disputes.

Objectives Related to Development

- (a) Prepare community leaders, increase civic management, and create public process to facilitate economic restructuring and other social change.
- (b) Decrease in the levels of tension and conflict in a community.
- (c) Manage disputes and conflicts that may directly hamper development initiatives (US Centre for Democracy and Governance: 1998).

ADR: A Tool to Enhance Access to Justice in Bangladesh

The constitution of Bangladesh, the supreme law of the land, has guaranteed for every citizen the right to access to justice in Articles 27 and 31. The constitution states that "All citizens are equal before law and are entitled to protection before law." But in practice, it is a far cry for the large section of its population. People who are weak, poor, and disadvantaged face innumerable obstacles in accessing justice because the formal court systems are plagued by corruption, delay, complicated procedures, exorbitant costs, class and gender biasness, and huge backlog of cases. This pathetic reality demands for Alternative Dispute Resolution (ADR). Briefly speaking, the reasons behind the demands for ADR are as follows;

- The legal procedures are much complex and beyond the level of comprehension of poor people who have little knowledge and who do not understand their legal rights and privileges (Khair, 2004).
- Money and power control the justice system in Bangladesh. As a result, economically weak, socially backward, and politically disadvantaged persons or groups remain out of service of justice system. (Khair, 2004).
- Poverty is considered as one of the fundamental obstacles in accessing justice for the large sections of the total population of the country.
- Corruption in justice delivery impedes economically disadvantaged groups access to justice. Payment of bribes often becomes a deciding factor in the settlement of cases (Khair, 2004).
- Delays in disposal of cases and dispensing justice, procedural wrangles, multiplicity of appeals, revisions, and reviews are some factors that make litigants frustrated(Khair, 2004).
- Patriarchal social structure and system are thought to be mostly responsible factor for women not to have the access to justice from legal system. In patriarchal society, women cannot access to decision-making in the family. Also they have no access to economic property which results in reducing their potentiality for taking legal actions.

Besides, the formal legal system is not consensual. Hence, it cannot produce win-win solution. Under such a critical situation, the necessity of practicing ADR cannot be expressed in words(Khair,2004).

Achievements of ADR in Bangladesh

After the insertion of ADR mechanisms in different existing laws, a great achievement in the quick disposal of the suits has been achieved by ADR, which can be perceived from the following pictures.

1. Since the activation of ADR in the family courts the average rate of substantive disposal by compromise through mediation has gone up to 60% compared to contested decree.
2. Under the pilot project in 13 districts total number of disposal of civil cases by way of mediation from 2000 to 2004 is 2418 and during this time through these courts total amount of realization is Tk.77770455.
3. Under section 89A of C.P.C total 12402 cases were disposed through mediation from July 2003 to June 2006.
4. Through the Artha Rin Adalat Ain total 24945 cases were solved through ADR from May 2003 to February 2006 across the country (Ministry of Law Justice and Parliamentary Affairs: 2006).
5. Former chief Justice Mustofa Kamal stated back in 2004, 7,974 non-family litigation have been disposed of by mediation & 13, 157 money loan case disposed of by ADR.
6. Former chief Justice K M Hasan stated that up to the 16th May, 2001, TK. 50, 94,50,100 was recovered by mediation in family matters and many industrial disputes were disposed of by ADR system.

Various types of ADR in legal framework of Bangladesh

ADR is a means of resolving dispute which is an alternative to going to the court. It may be any one of the two forms either determinative or elective, all mechanisms of ADR fall within these two forms.

Determinative ADR is any non-court process which will determine the outcome of the dispute. It involves a third party, whether an arbitrator or an adjudicator or an expert acting as a determinative capacity. Elective ADR is that which facilitates discussion, which usually turns into negotiations which does not produce any judgment or finding which is binding on the parties (Nigel,2009).The various modalities of ADR, Conciliation, Mediation, Settlement Conference, Arbitration, Mini-trial, Negotiation, Appellate ADR, Village court, Board of Conciliation and Traditional Salish (Halim,2010:33) which are practiced in Bangladesh can be classified under the following three categories –

- Formal ADR
- Quasi-formal/statutory ADR
- Informal ADR

Formal ADR

This form of ADR indicates those processes of dispute resolution which have been enumerated in the statutes and conducted either by the court or by the third person upon the reference of the court. ADR processes in the formal ways are conducted by the following Statutes of Bangladesh.

The Code of Civil Procedure (Amendment) Act, 2003

Mediation and arbitration have been inserted in section 89A and 89B of the Code of Civil Procedure, for all civil suits except suits under the ArthaRinAdalatAin 2003, through the *Code of Civil Procedure (Amendment) Act 2003*. Section 89A stipulates that at any stage, after filing the written statement, if all the contesting parties are present in person or by their pleaders apply to the court showing their willingness to settle the dispute through mediation, the court may, adjourning the hearing, mediate in order to settle the dispute or refer the dispute to the engaged pleaders of the parties or parties, where no pleader has been engaged or refer to the mediator from the panel as prepared by the district judge in consultation with the president of the District Bar Association. The mediator of the panel may be a pleader or retired judge or person known to be trained in the art of dispute resolution or such other person or persons as may be deemed to be appropriate for this purpose but any person holding office of profits in the service of the republic shall not be qualified for being mediator of the panel. It is also stipulated that a mediator shall not act as mediator between the parties if he has been engaged by either of the parties as a pleader in any suit (in ss.89A(10) of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003)). Mediation has been defined under section 89A as flexible, Informal, Non-binding, confidential, non-adversarial and consensual dispute resolution in which the mediator shall facilitate compromise of the dispute without direction or dictating the terms of such compromise. It is the discretionary power of the court that after the filing of the written statement, it may either mediate or refer the dispute to the pleaders or the parties or the mediator for settlement. Thus, unlike the USA where pre-trial mediation is compulsory but the judicial mediation in civil suits in Bangladesh is consensual and voluntary. So the provisions regarding mediation remained mostly unpracticed for making it voluntary for the judges to take step for mediation, lack of motivation of the concerned judges, ignorance of the parties and unwillingness of the lawyers.

When reference under s/s (i) is made to the pleaders of the parties, they shall in consultation with the clients appoint another pleader or a retired judge or a mediator from the panel or any other person whom they seem to be suitable. Here the parties have the option to appoint more than one mediator (.in ss.89A(2) of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003)).The procedure of mediation and fees for mediators shall be determined by the parties and pleaders, not by the court. But when the mediation is conducted by the court the procedure of mediation will be determined by the court and no fees will be charged from the parties (in ss.89A(3) of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003)).

A time-frame has been set out for speedy disposal of mediation. Within 10 days from the reference, the parties shall inform in writing to the court that whether they have agreed to settle the dispute through mediation or not and within 60 days from the day on which the court is so informed the mediation shall be completed unless the time is further extended for 30 days for the joined application of the parties (in ss.89A(4) of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003)). The mediator shall submit a report regarding the result of the mediation proceeding. If any settlement is possible, an agreement incorporating the terms of settlement shall be reduced to writing signed by the parties, pleaders and mediator and the court

shall pass an order or a decree following the report of the mediator. Where the court itself mediates the dispute, it shall also pass an order or decree in the similar manner. And the court shall issue a certificate directing refund of the court fees paid by the parties. And no appeal or revision shall lie against the order or decree passed by the court on the basis of settlement through mediation. Where compromise is not possible, the court shall proceed with the hearing of the suit from the stage at which the suit stood before the decision to mediate. Where the court itself tried to settle the dispute through mediation and failed, in that instance, the suit will be heard by another competent court (in ss.89A (9) of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003).This rule is inserted to avoid the biasness of the judges. On the other hand, failure to settle the dispute shall not limit the option of the parties regarding withdrawal, adjustment and compromise of the suit under Order23 Of the Code of Civil Procedure, 1908 (in ss.89A(13) of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003). This provision has made open other methods of alternative settlement

It is always open for the parties to withdraw the suit for arbitration either they have taken the help of mediation or not. Section 89B provides that if the parties, at any stage of the proceeding, are willing to settle the dispute through arbitration may apply before the court for the withdrawal of the suit and refer to the arbitrator and it will be settled by the arbitrator in accordance with the *Arbitration Act 2001*(in ss.89B of the Code of Civil Procedure, 1908(as amended in 2003 by Act 8 of 2003).

Following the massive success of mediation at the trial stage, the mediation proceeding has been incorporated at the appellate stage by section 89C of the Code of Civil Procedure through the *Code of Civil Procedure (Amendment) Act 2006*. For mediation in appellate stage the procedure described in section 89A will be followed (in ss.89C of the Code of Civil Procedure, 1908 (as amended in 2003 by Act 8 of 2003).

The Family Courts Ordinance, 1985

The most important provisions have been inserted in the *Family Courts Ordinance 1985* for the conciliation between the parties at both pre-trial stage and trial stage of suits concerning divorce, dower, maintenance, restitution of conjugal life and custody of children. An attempt to settle disputes through alternative process is compulsory for the judges. Section 10 says after the filing of the written statement, the court shall examine the plaint, written statement and the documents filed by the parties and if it deems fit, hear the parties. It shall ascertain points at issue and attempt to reach a compromise between the parties. Through conciliation if no compromise or conciliation is possible at this pre-trial stage, the court shall proceed for the trial of the dispute. Section 13 provides that the family court, after the close of all evidences but before the pronouncement of judgment, shall make an effort to effect compromise or reconciliation between the parties. These good provisions on mediation have been inserted in family matters just to preserve the relationship and peace between the parties.

These healthy provisions on mediation remained unpracticed since the enactment of the Ordinance, due to lack of motivation of the concerned judges. Due to their usual practice of adversarial system the judges presiding over family courts were completely ignorant about mediation (Hasan,2005:127).To activate ADR provisions in the family court a pilot project was taken in 2000 in three pilot family courts of Dhaka. Following the massive success of these courts it was extended to all the family courts in Bangladesh and different forms of ADR have been introduced by amending many laws of the country. During mediation in family courts, parties can

directly participate in the settlement process and they are allowed to voice their position in joint session because settlement opportunities are discussed privately. The parties are helped to realize the result of the suit if they proceed with the litigation. The most positive result of it is to provide opportunities to the women, who are unwilling to expose themselves to public eye going to the court, to directly participate in the dispute resolution process and voice her grievance without being condemned by critical eyes because all the activities performed on mediation in family courts are quite confidential (Hasan,2005:127).

ArthaRin Adalat Ain, 2003

Under sections 21 and 22 of the *Artha Rin Adalat Ain 2003*, two modes of ADR, settlement conference and arbitration, have been introduced for resolving commercial dispute. Section 21 defines the Settlement Conference as a conference comprising the parties, their lawyers and their representatives and presided over by the judge of the Artha Rin Adalat for disposing of suit in an informal, non-binding, confidential and non-adversarial manner on the basis of mutual cooperation and understanding of all concerned.” Section 21 deals with the details of procedure of the Settlement Conference and section 22 provides for the arbitration of the commercial dispute. After the filing of written statement the court may, keeping pending all subsequent proceeding refer the suit to the lawyers of the parties or where no lawyers have been engaged, to the parties themselves. But where the parties agree to try and settle the dispute through arbitration, the court is bound to refer the dispute for arbitration. Easy and quick settlement through ADR system in commercial dispute certainly improves the investment in this field.

Quasi-formal ADR

Where the application, jurisdictions and modes of ADR are regulated by statute but conducted by a non-judicial body that is Quasi-formal ADR. Quasi-formal ADR mechanisms in different legislations of Bangladesh are as follows:

The Muslim Family Laws Ordinance, 1961

According to section 7 of MFLO, 1961 to make the divorce effective the husband after pronouncement of talaq shall send a notice as soon as possible to the chairman and a copy of it will also be sent to the wife within 30 days. From the date of receiving the notice of talaq the chairman shall constitute an arbitration council which shall take all necessary steps for reconciliation between the parties. A talaq will not be effective until the expiration of ninety days from the day on which the notice was delivered to the chairman or if the wife is pregnant after the pregnancy ends, whichever period is longer. In what form either Ahsan or Hasan or Bidaat form, the talaq is pronounced it will be deemed as a single talaq in ahsan form, so husband can revoke the talaq anytime either expressly or impliedly i.e. to kiss her or consummate with her or touch her etc. By remarrying after ninety days if it is not for third time. The failure of husband to give notice to the chairman is deemed to be revocation of talaq (Haq,2001). In *Abdul Aziz vs. Rezia Khatoon(1969) 21 DLR 733*, it was held that non-compliance with section 7(1) makes talaq legally ineffective. Where wife exercise the delegated right that is talaq-e-tawfez, she must also follow the procedure of section 7. This vigorous provision on conciliation has been incorporated

in the Muslim Family Laws Ordinance 1961 to prevent the separation between husband and wife which is the result of pronouncement of talaq that usually occurs on sudden anger of husband. For taking additional wife or to get adequate or equitable maintenance, the party must apply before the chairman who will constitute the arbitration council which will decide these matters in informal and amicable way without following the procedure of courts.

The Conciliation of Dispute (Municipal areas) Board Act, 2004

The Municipal Board consisting of five members chaired by the chairman of the municipal area has exclusive jurisdiction without some exceptions in cases mentioned in the Schedules.(in ss. 4(1) of the Conciliation of Disputes (Municipal Area) Board Act, 2004). In the proceeding of the Municipal Board, CPC, Cr. P.C and the Evidence Act will not be applied ((in ss.13 of the Conciliation of Disputes (Municipal Area, Board Act, 2004) and no party can engage any advocate in such proceeding (in ss.14 of the Conciliation of Disputes Municipal Area) Board Act, 2004) The Act is entirely on conciliation and within the decision of the conciliation board is mandatory, but right to appeal is open.

The Arbitration Act, 2001

The Arbitration Act 2001 is applicable in respect of recognition and enforcement of foreign arbitral awards and in relation to a dispute arising out of the arbitration agreement entered into before or after the enforcement of the Act.Under the Arbitration Act 2001, arbitration is mandatory if any dispute falls within the ambit of the Act or if any civil suit, at any stage of it, is withdrawn on the application of the parties for arbitration then it will be settled in accordance with the Arbitration Act 2001(in ss. 89B of the Code of Civil Procedure,1908).

The Village Court Act, 2006

If any dispute either civil or criminal comes within the ambit of The Village Court Act 2006, it shall be dealt with by the Village Court consisting of five members including the chairman who will preside over the Village Court and each party shall select two members of which one must be a member of Union parishad. The procedures enumerated in the Evidence Act, the C.P.C and the Cr.P.C shall not be applicable in village court and no party has right to engage any lawyer in proceeding of such court.

The Labour Code, 2006

Arising disputes in workplace is a common phenomenon almost in all countries. Bangladesh is not also an exception. Sometimes, workers demonstrate in the streets, engage in conflict with the law-enforcing agencies, cause harms to factories and industries. Bangladesh like other countries has its own labor laws in which ADR system has been incorporated to amicably resolve or settle these labor disputes.

Chapter 14, section 210(1) to (19) of The Labour Code, 2006 describes the procedures of mediation, conciliation and arbitration.

ADR Mechanism in Criminal Justice System

In criminal justice system the ADR system has not been properly developed in our country. A list of petty offences which are compoundable is described in section 345 of the Cr.P.C 1898.

Informal ADR

Disputes are also resolved through alternative methods at the community level in both civil and criminal matters by non-judicial body, which may be described as informal ADR. Different NGOs (i.e. Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST), Ain O Shalish Kendra (ASK) and BanchteShekha (BS) etc) are involved in dispute resolutions at the community level.

Other Legislative Provisions relating to ADR

1. Sec. 28 of The Contract Act 1872, regarding arbitration.
2. Sec. 21 of The Specific Relief Act 1877, regarding arbitration.
3. Sec. 76 of The Bank Companies Act 1991.
4. Sec. 6 of The ParbattoChattagramBirodNispotiCommissionAin 2001

The insertion of the provisions of ADR in many laws of the country has opened the door of access to justice for the vast majority of the people. Under these statutes, disputes, through ADR, are settled within a very short time which reduces the cost of the parties. So justice through ADR can be ensured for all whether they are poor or rich.

Some legal Aid (ADR) Organization in Bangladesh

Most of the people of Bangladesh are poor and illiterate and have no access to formal court of justice. With a view to assist these class of people, some non-government organizations (NGO) have been playing an important role. They are helping these people to redress their dispute through ADR. Few of these organizations are:

- (1) Bangladesh Legal Aid and Services Trust (BLAST).
- (2) Ain o ShalishKendro (ASK) (Law and Arbitration Centre).
- (3) Madaripur Legal Aid Association (MLAA).

(1) Bangladesh Legal Aid and Services Trust (BLAST):

Bangladesh Legal Aid and Services Trust (BLAST) as a non-government Legal organization has been playing an important role in the legal system of Bangladesh. It was founded in 1993 and incorporated with the Registration of Joint Stock Companies as a company limited by guarantee. It was also registered as a non-government organizations (NGO with the NGO Affairs Bureau of the Government of Bangladesh in 1993).

This organization's divisional and district units were established with the cooperation of the local Bar Association and mediation and litigation is conducted by trained mediators.

(2) Ain o ShalishKendro (Law and Arbitration Centre):

Ain o ShalishKendro (ASK) (Law and Arbitration Centre) is a legal aid organization in Bangladesh which was established in 1986. It works various term including ADR. For example, in Rajshahi Division TK. 1, 82, 06,589 received through mediation and family court cases for complaints as dower and maintenance.

(3) Madaripur Legal Aid Association (MLAA):

Madaripur Legal Aid Association (MLAA) was founded in 1978. MLAA was the first organization to identify ADR as an important foundation for a cost effective, expedious, and accessible venue of justice for the disadvantaged.

Recommendations towards an effective ADR system

ADR is efficient and effective towards the promotion of access to justice, yet there are some weaknesses which are the impediments to the effective ADR system. These are:

- (i) lack of knowledge and awareness among the people;
- (ii) inadequate roles played by the legal professionals;
- (iii) absence of appropriate and institutional framework;
- (iv) absence of trained lawyers and judges regarding mediation;
- (v) negative impression among the lawyers regarding ADR;
- (vi) non-application of ADR in old cases under section 89A;
- (vii) mediation and arbitration are optional under the Code of Civil Procedure;
- (viii) in criminal cases non-inclusion of certain petty offences in the compounding provisions of the Code of Criminal procedure;
- (ix) want of separate ADR legislation;
- (x) deep-rooted faith and mind sets in the traditional systems; and
- (xi) the community based ADR mechanism is weakened by endemic corruption, partisan, conflicting local politics, illiteracy etc;

These impediments can be removed by the implementation of the following recommendations which will enhance the access to justice through the effective ADR mechanisms:

1. Various actors like the GOB ministries, the NGOs, the local government bodies, the media and other civil society can play an important role in promoting awareness, popularity and effectiveness of the ADR mechanism in Bangladesh.
2. The judiciary both civil and criminal may play an important role towards the effectiveness of the ADR.
3. For the performance of the activities of ADR a separate institutional framework should be developed and equipped with adequate logistics.
4. Separate skilled and trained mediators should be appointed only for performing mediations.
5. Separate code can be enacted for the successful ADR in Bangladesh.
6. Establishment of separate mediation courts, for both civil and criminal matters, with jurisdictions is essential for the success of ADR.
7. Family Court Model of Pre-trial hearing should be inserted in all civil suits.

8. The limitation imposed by section 23 of the Artha Rin Adalat Ain 2003 must be removed.
9. To acquire success through ADR the attitude of lawyers and judges must be changed.
10. Legal aid must be properly distributed to the poor litigants. For this purpose the AingotoSohayotaProdanAin, 2000 must be amended.
11. Establishment of a statutory body entrusted with the responsibilities of policy formulating, planning, promoting and monitoring the overall ADR system of the country.
12. Considering the nature of the dispute the fee of the mediators, arbitrators and conciliator should be determined by the statute.
13. It is barely necessary to review sec. 345 of Cr.P.C1898 and the list of compounding offences must be enlarged.
14. In criminal cases, ADR is applied only in some Complaint Register (CR) cases, so provisions should be made so that the General Register (GR) cases can also be resolved through ADR.
15. The mediation courts should be established in every Upazilla/ Thana.

Concluding Remark

In Bangladesh, ADR has proven to be very helpful in dispensing different types of legal disputes. These include divorces and other family matters, professional liability cases, personal injury situations, insurance issues, commercial and industrial disputes. The “all or nothing” approach of litigation is now considered inappropriate for resolving all kinds of disputes. In particular, poor people who are often denied access to justice due to their poverty, need alternative dispute resolution more desperately than others as “it enables the poor to meet the better-off opponent on a level of equality to negotiate a settlement”(Sampath, 1991:34).ADR has a very significant role towards the enhancement of access to justice avoiding all kinds of procedural and other complexities. ADR in comparison to the regular courts, keeps efficacious and effective role for the promotion and access to justice by ensuring consensual settlement, actual participation of the parties, reducing cost and saving the time and energy of the parties. Realizing the great success of ADR, almost all countries of the world have inserted the provisions of ADR in their Civil and Criminal justice system.In Bangladesh, after the incorporation of ADR in the Family Court, the Civil Court and Artha Rin Adalat, it has acquired a great success in this field. But for getting satisfactory result out of ADR, it requires a motivation of the concerned judges, training program for the judges, lawyers and mediators. Further, concerned authority should develop and promote awareness building program for the general people, adding adequate institutional and policy support. In order to endorse proposed legal reform in the sphere of current ADR system, the judges and lawyers should take an activist stand to fully utilize the court annexed ADR in Bangladesh.

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