IJLHSS
International Journal of Law, Humanities & Social Science ©
ISSN (Online):2521-0793, ISSN (Print):2521-0785

THE DEVELOPMENT OF ALTERNATIVE DISPUTE RESOLUTION IN FAMILY COURT OF BANGLADESH: CHALLENGES AND PROSPECTS

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Abstract: *Alternative Dispute Resolution (ADR) is a valuable procedure for solving disputes in Bangladesh's Family Court. The paper aims to educate people about the importance of ADR in this context. In recent years, there has been a renewed focus on ADR as a means of avoiding formal litigation and ensuring access to justice for all in a simple manner. ADR in Family Court is considered less likely to escalate conflicts and more likely to encourage amicable resolutions, preserving future relationships between parties and reducing costs, delays, and energy. Most countries have introduced ADR in their justice systems, promoting access to justice for all. This paper provides an overview of obstacles to access to justice in Bangladesh and analyzes different ADR mechanisms and court and non-court-based practices to demonstrate the fairness, efficiency, and effectiveness of ADR. Recommendations are provided to ensure the complete success of ADR in Family Court, providing speedy and easy access to justice for all, regardless of socioeconomic status.*

Keywords: ADR, Family Court, Bangladesh
Research Area: Law
Paper Type: Research Paper

1. INTRODUCTION

Law is more than just norms; it reflects the aspirations that a nation holds. The changing needs of society lead to changes in its legal system, and if the system does not change, it becomes obsolete and ineffective. The legal system we have inherited was formulated based on the aspirations of the time, and as a result, it has become outdated and unable to address new problems like the backlog of cases. Meanwhile, the legal systems of the world have found creative solutions to these problems through experimentation. The causes of backlog and delay in our country are deeply rooted and systemic, caused by the legal system's failure to enforce discipline at different stages of the trial process, which allows dilatory practices to prolong case proceedings. This has led to a backlog and delay problem so severe that it denies citizens their right to seek justice.[1]

The establishment of Family Courts was an expression of our practical legal thought, on other hand, an acknowledgment that our traditional civil courts had failed to successfully deal with the suits relating to family affairs. Family Courts were established by the Family Courts Ordinance 1985 to serve the purpose of quick, effective, and amicable disposal of some family matters.[2] This purpose, though not noticeable from the preamble of the Ordinance, is evident in different places of the body of the Ordinance. The framers of the Ordinance for the said speedy disposal of the family cases are clear in fixing only thirty days for the appearance of the defendant, in providing that if, after service of summons, neither party appears when the suit is called on for hearing the court may dismiss the suit. [3]The purpose is again manifest in providing a procedure for the trial of cases in camera if required for maintaining secrecy, and confidentiality and for effective disposal of some complicated matters which may not be possible under normal law of the land.

Once more, the Code of Civil Procedure 1908 except sections 10 and 11 and the Evidence Act 1872 have not been made applicable in the proceedings under the Family Courts which is another sign that indicates the concern of the lawmakers to dispose of the family matters in congenial of the Family Court, which was proven to be absent in the lengthy procedure of civil courts.[4]Unfortunately, the noble aim of introducing Family Courts has not been expectantly achieved though already more than two decades have passed since the courts' coming into operation. There are many types of reasons behind such letdown. Given the social-economic grounds, the procedural as well as substantive Loopholes in the ordinance and related laws are not negligible. Responding to these loopholes an amendment was made to the Ordinance in 1989. Yet, the law is not flawless, resulting in giving rise to some confusion and uncertainties.[5] Besides, there are some misconceptions. Hence, this author endeavors to examine those confusions, uncertainties, and misconceptions in the light of judicial decisions of the country's higher courts. Hopefully, every practicing lawyer and acting judge in the Family Courts are aware of these confusions and uncertainties. Again, every lawyer and judge is supposed to know the clear position of law. In my research, I discussed various laws relating to family matters, the present situation of the family courts, various problems of the judges, and the ADR system.

2. BACKGROUND

Dispute resolution does not mean litigation, it means to methods of resolving conflicts between parties and individuals. Sometimes it is called Alternative Dispute Resolution (ADR).[6] Generally, it means (Alternative dispute resolution) as external dispute resolution includes dispute resolution processes and techniques that act as a means for disagreeing parties to agree short of litigation. It is a collective term for the ways that parties can settle a dispute with or without the help of a third party. Mostly Alternative Dispute Resolution is applied to civil cases. Truly it is a court-sponsored Alternative Dispute Resolution mechanism functioning within the formal judicial system.[7] By ADR a civil suit can be settled without a trial. A civil dispute may also be resolved through ADR without having sued anybody. Using ADR processes, it generally depends on agreement by the parties, either before or after a dispute has arisen. It has experienced steadily increasing acceptance and utilization because of a perception of greater flexibility, costs below those of traditional litigation, and speedy resolution of disputes, among other perceived advantages.[8]

Arbitration Act 2001 in Bangladesh has governed the arbitration process, which provides the basic legal framework and procedure governed by the arbitration rules chosen by the parties.[9]Where the Arbitration Act and the chosen arbitration rules are silent, the arbitrator has the discretion to adopt appropriate procedures to ensure fair and efficient conduct of the arbitration. In procedural matters, the arbitrary tribunal is allowed some flexibility and freedom and is not bound to follow the provisions of the Bangladesh Code of Civil Procedure, 1908 or the Bangladesh Evidence Act, 1872.

3. ALTERNATIVE DISPUTE RESOLUTION IN BAGLADESH

Generally, Alternative Dispute Resolution (ADR) includes arbitration, mediation, or negotiation for settling disputes without litigation.[10]This system of ADR are more expeditious and usually less costly being utilized in disputes that would otherwise result in litigation, including high-profile labor disputes, divorce actions, and personal injury claims. ADR is a term encompassing various techniques for resolving conflict outside of court using a neutral third party. It is applied in the context of enforcement negotiations, ADR has proven to be a useful tool in overcoming impasses, improving the efficiency of difficult negotiations, and achieving durable settlements. ADR has been effectively used to enhance public involvement in environmental decisions, facilitate technical inquiries and information exchanges, and identify creative solutions to daunting problems Outside of the enforcement context.

ADR is a process used for the purpose of resolving conflict or disputes informally and confidentially. It also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose.ADR without any delay, and this should be of prime importance in view of the fact that the ADR process can be of great help in strengthening the legal framework, which, in turn, can certainly bring about changes so that people can get justice speedier.

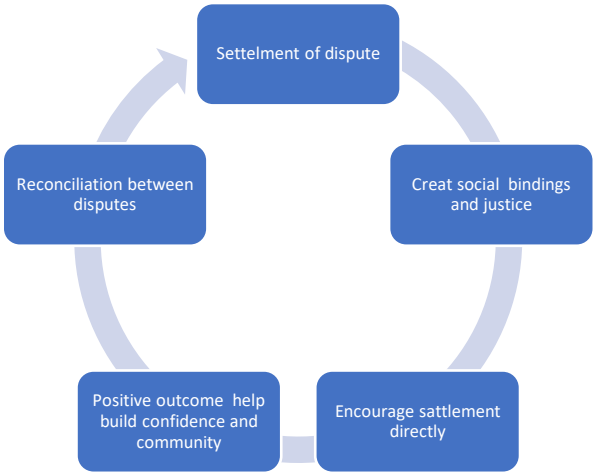

Figure: A Framework on Alternative Dispute Resolution (ADR)

All countries following the common law system, have faced this problem of delay and excessive expenses in the disposal of civil cases at the same point or the other in their legal history, as also the problem of judges and lawyers in developed countries like the USA, Australia, and Canada have witnessed huge backlogs of cases, excessive legal cost and expenses and litigation, as we are witnessing now in our country.[11] Lawyers and judges of developed countries did not look upon the Government to solve what was essentially a problem of administration of justice that concerned lawyers and judges themselves. In many areas of these countries, judges and lawyers put their heads together and devised a common strategy to solve the problem of a huge backlog of cases, delay in the disposal of cases, and excessive expenses in litigation.

The adoption of the ADR system is a system of alternatives but not a substitute. The judges, lawyers, litigants, and mediators all are active parties in the dissolution of a dispute. In an adversarial judicial system, a judge has a massive role to play.[12] He will take the evidence as it comes, hear the parties and deliver judgment without getting involved in the entire dispute resolution process. It is informal, confidential, speedy, and less expensive.

3.1 Concept of ADR

Alternative dispute resolution means solving the dispute outside the court. Alternative dispute resolution has attracted a great deal of attention as a method of reducing both the financial and emotional costs of litigation. [13]It appears that simply moving cases from the courts allow some cases to be resolved quickly and to the greater satisfaction of the parties. D.M. walker defines arbitration as the adjudication of a dispute or controversy on the fact or law or both outside the ordinary courts by one or more persons to whom the parties who are at issue refer the matter for decision.

Alternative dispute resolution includes dispute resolution processes and techniques that fall outside of the government judicial process. ADR has gained widespread acceptance among both the public and the greater profession in recent years.[14] Some courts now require parties to resort to ADR before permitting the parties to be tried. This popularity of ADR reduces the case burden in the court, and it is also less than litigation, it desires some parties to have greater

control over the selection of the individual or individuals who will decide their dispute and preference for confidentiality.

3.2 Objects of the ADR

The main purpose of Alternative Dispute Resolution (ADR) is to resolve disputes outside of the court system and reduce the huge number of cases in the court system. [15] The causes of the backlog and delay in the legal system are systemic and significant, leading to a failure to impose discipline at different stages of trial, which results in dilatory practices that prolong case life. This has led to a situation where the rights of citizens to seek justice are effectively denied. ADR provides a solution to this issue by reducing the financial and emotional costs of litigation and providing a faster and more satisfactory resolution for the parties involved. By utilizing ADR methods, it is possible to resolve cases more quickly and with greater satisfaction for all parties involved.

4. ADVANTAGES OF ADR

In general, the peoples become involved in disputes which, although very important and worrying to those concerned, are better resolved outside the comparatively expensive court system. For many reasons, advocates of ADR believe that it is as superior to lawsuits and litigation. [16]First ADR is generally faster and less expensive. It is based on more direct participation by disputants, rather than by lawyers, judges, and the state. In most ADR processes, the disputants outline the process they will use and define the substance of the agreements. This type of involvement is believed to increase people's satisfaction with the outcomes, as well as their compliance with the agreements.

- **Speedy process more than regular trial:** A dispute may be resolved in a matter of days or weeks instead of months or years.
- **Often less expensive**: Saving the litigants' court costs, advocate's fees, and expert fees.Permits more participation and empowerment, allowing the parties the opportunity to tell their side of the story and have more control over the outcome.
- **More Flexibility**: In choice of ADR processes and resolution of the dispute, permits the litigants to work together with the neutral to resolve the dispute and mutually agree to a remedy.[17]
- **Parties' participation:** ADR permits more participation by the litigant and parties to have more control over the outcome than normal trial.
- **Not more stressful**: Than litigation. Most people have reported a high degree of satisfaction with ADR. Because of these advantages, many parties choose ADR to resolve disputes instead of filing a lawsuit.[18]During the pendency of the suit, the court can refer the dispute to a neutral before the lawsuit becomes costly. ADR has been used to resolve disputes even after trial when the result is appealed.
- **More confidential:** The result and information given by the parties can be kept confidential.
- **Not formal system:** Alternative Dispute Resolution is more likely to preserve goodwill or at least not escalate the conflict, which is especially important in situations where there is a continuing relationship.

4.1 Types of alternative dispute resolution

Alternative dispute resolution (ADR) is three types, and sometimes different names are used for similar processes.[19] Though it is confusing to remember that it does not mean what the process is called as long as it helps to sort out the problem in an appropriate way. Some common types of ADR include Mediation, Conciliation, and Arbitration

5. LAWS AND PRACTICE REGARDING ADR IN FAMILY COURT OF BANGLADESH

Achieve the realization of dower money and amicable, peaceful, and quick settlement of disputes through ADR in the Family Courts inspired the government and the policymakers as well to widen the scope of ADR through other legislation.[20] It is a less expensive and speedier mode of settlement of disputes and It includes mediation, settlement of disputes, arbitration, and other ways that are voluntary and not compulsory. In very recent many countries have adopted the ADR mechanism and achieved success in reducing the backlog and increasing access to justice for the poor. Section, 10(3) and 13(1) of the Family Court Ordinance of 1985 first inserted the concept of ADR, wherein there is provision for compromise or reconciliation even before the pronouncement of judgment.

In civil litigation, ADR introduces in 2003 by the Code of Civil Procedure, (Amendment) Act, 2003 and by the Artha Rin Adalat Ain, 2003, with effect from July 1, 2003, and May 1, 2003, respectively.[21]The Code of Civil Procedure (Amendment) Act, 2003 added two new sections 89A, 89Bdesigned for ADR in all civil suits and cases. However, the mechanisms of ADR in the Artha Rin Adalat (Money Loan Court Act, 2003) are (a) settlement conference, which is to be presided over by the trial judge and to be held in camera, and (b) arbitration, which is to be presided over by a neutral arbiter and to be held in camera.

At Present day amendment in this regard is of ADR at an appellate stage in non-family civil disputes. A new section, 89 C, was inserted in the Code of Civil Procedure by Act No. VIII of 2006. The use of ADR in Artha Rin cases is a success story.[22] ADR is progressing and becoming a popular forum for the litigants of civil cases.

ADR is a widely accepted and appreciated method for reducing the number as well as the cost of suits. Many developed and developing countries have gained tremendous success in reducing the backlog by adopting ADR. Disposal of suits/litigation through ADR is bound to enhance the quality of social justice and thereby contribute to the promotion of harmony and peace in society, both of which are preconditions for meaningful development in social, cultural economic, and other spheres.[23]

Mediation, conciliation/reconciliation, arbitration, and other forms of ADR are important vehicles for promoting social harmony. Our country should develop the system of ADR without any delay, and this should be of prime importance because the ADR process can be of great help in strengthening the legal framework, which, in turn, can certainly bring about changes so that people can get justice speedier.

6. ADR IN FAMILY MATTERS

Historically, lawyers were trained exclusively in the adversarial method. The adversarial system of jurisprudence is based on the concept that justice will emerge best if competing parties, represented by lawyers, present their admittedly biased version of a case to a judge or jury. [24]The evidence is then subjected to the vital process of cross-examination in which each side has the opportunity to expose the flaws in an opponent's position. The system works quite well in some cases, particularly when cost and relationships between opponents are not a major concern. In many cases, however, the cost of litigation is prohibitive, the fighting and acrimony inherent in the process destroy relationships that otherwise could be preserved, and the complexity of litigation has caused overloaded court caseloads and major delays.

Parties, particularly corporations that may experience a great deal of litigation, now realize the huge costs involved in the adversarial process.[25] To reduce time, money, and exposure to a litigious atmosphere, people are looking for alternatives to the traditional approach. The purpose of this chapter is to help business decision-makers understand the status of alternatives to litigation. In the modern civil litigation environment, the knowledgeable decision maker can and must insist on using options that have the potential to reduce some of the present problems of litigation. The chapter addresses how to choose the type of alternative dispute resolution that will be most effective in a particular matter and will discuss the characteristics of an effective

mediator, arbitrator, or other neutral parties. There will be many exceptions to the general statements of this chapter, however, and readers should always make dispute resolution decisions only with the advice and counsel of their lawyers, whose enthusiastic participation is essential to the success of any alternative to traditional litigation. All matters relating to family laws are given due focus stressing the humane aspects. Problems relating to marriage, divorce, dower, maintenance, custody of the child, inheritance, etc. are solved through negotiation, arbitration, conciliation proceedings, and as the last resort, by applying to the family court.[26]

6.1 Object of the ADR in Family Court

The object of ADR is to solve the dispute outside the court and reduce the huge number of case from the court system.[27] The causes of backlog and delays in our country are systemic and profound. The legal system's failure to impose the necessary discipline at different stages of the trial of cases allows the dilatory practice to protract the case life. As a result, the current backlog and delay problem in our country has reached such a proportion that it effectively denies the rights of citizens to redress their grievances.

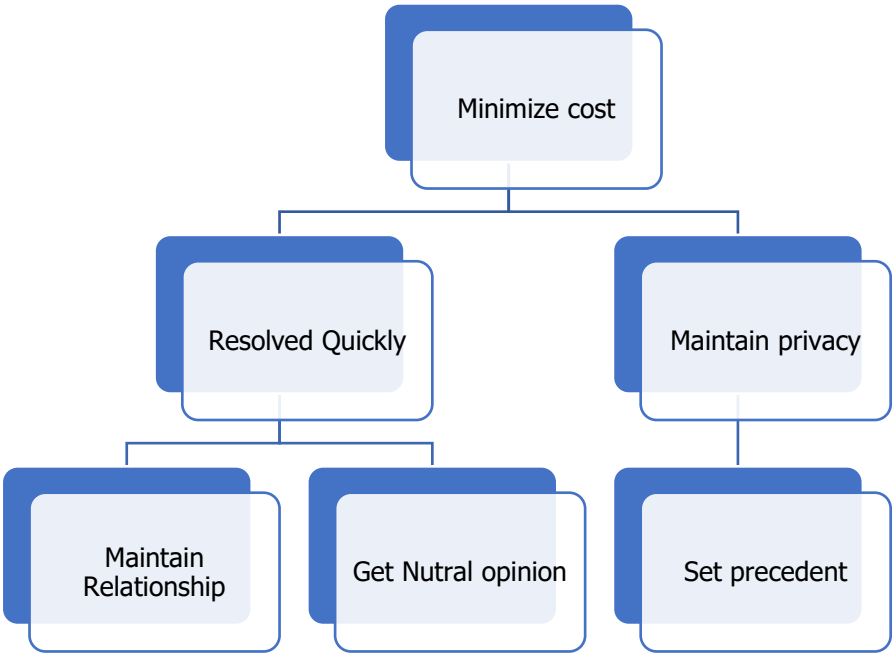

Figure: Model of Goals and Objectives of ADR

6.2 Importance of ADR in Family Court

The Muslim family laws ordinance 1961, and the Muslim family laws rule 1961 These two is the most sensitive law for the Muslim people.[28] To solve the dispute arising out of this law is better to solve it outside the court. Because there are many personal and internal matters involved in this family dispute. ADR gives a better solution than the court in this family matter. They were also told that as Family Court judges they shall have to perform mediation as and when a case is assigned to them. The cases involving family matters are first filed in the court of the Assistant judges with territorial jurisdiction. After issuance of the summons, the District Judge transfers the cases to mediation court under Section 24 of the Code of Civil Procedure. Section 24 provides that the District judge on the application of the parties or of his own motion may transfer any suit for trial or disposal to any court subordinate to it and competent to try and dispose of the same.

7. ADR IN CIVIL SUITS

Alternative Dispute Resolution (ADR) has become a popular method of resolving disputes in civil suits in many countries, including Bangladesh. There are several laws and regulations in

place that provide for ADR in civil suits, including the Code of Civil Procedure 1908 in sections 89A and 89B; the Muslim Family Laws Ordinance 1961 in sections, 6,7, and 9; the Family Court Ordinance 1985 in sections 10 and 13; the Artha Rin Adalat Ain 2003 in sections 21 and 22; the Gram Adalat Ain 2006, the Conciliation of Disputes (Municipal) Board Act 2004, the Arbitration Act 2001, and the Labor Code 2006 in section 210. These laws and regulations provide for various ADR methods such as mediation, arbitration, settlement conference, negotiation, and conciliation. These methods aim to resolve disputes outside of the court system and reduce the huge number of cases from the court system. ADR has been successful in resolving cases quickly and to the greater satisfaction of the parties, reducing both the financial and mental costs of litigation. The various ADR methods available under these laws and regulations provide parties with the flexibility to choose the most suitable method for their dispute.

7.1 Laws Relating to ADR in Bangladesh

In Bangladesh, there are many laws for ending disputes outside the court. The government of Bangladesh wants to make settle the dispute outside the court.[29] For that reason, they passed many laws, which make end the suit outside the court. These laws are The Family Court Ordinance, 1985; Muslim Family Laws Ordinance, 1961; The Salish Ain 2001(the arbitration Act 2001); the Salish (Amendment) Ain 2004; the code of Civil Procedure (Amendment) Act 2003; the Artha Rin Adalat Ain 2003; the Artha Rin Adalat(Amendment) Act 2004; the Conciliation of Dispute (Municipal areas) board Act 2004; and the Arbitration Act 2001.

7.2 The Muslim Family Laws Ordinance, 1961

The Family Court has been established on 15th June 1985 under The Family Court Ordinance. The first time mediation was introduced was in a family court in Dhaka Judge Court in 2000. After that, it extended in Chittagong from 12th February 2001, in Khulna from 1st September 2001, and in Rajshahi from 7th May 2001. Afterward, it expands all over the court of the country.

Mediation has been denoted in Family Court Ordinance, 1985 under Sections 10, 11, and 13. And compromise decree has been prescribed in Section 18 of the Family Court Ordinance. As to the provision of the above Section 10[30] of the Family Court Ordinance, when the written statement is filed, the family court shall fix a date ordinarily of not more than thirty days for a pretrial hearing. The court shall examine the plaint, the written statement, and documents filed by the parties and shall hear the parties. At the pretrial hearing, the court shall ascertain the point at issue between the parties and attempt to affect a compromise or reconciliation between the parties, if it is possible for the court. If no compromise is possible, the court shall frame the issue in the suit and fix a date for recording evidence.

A family court may hold the whole or any part of the proceeding under this Ordinance in camera under Section 11[31] of the Family Court Ordinance. Even where both parties to the suit request the court to hold the proceeding in camera, the court shall do so. In Section 13[32] of the said Ordinance it is mentioned that after the close of evidence of all parties, the family court shall make another effort to a compromise between the parties. If such compromise is not possible, the court shall pronounce judgment either or on some future day not exceeding seven days of which due notice shall be given to the parties of their agents or advocates and a decree shall follow the judgment The Family Court has been established on 15th June of 1985 under The Family Court Ordinance. The first-time mediation was introduced was in a family court in Dhaka Judge Court in 2000. After that, it extended in Chittagong from 12th February 2001, in Khulna from 1st September 2001, and in Rajshahi from 7th May 2001. Afterward, it expands all over the court of the country.

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The Muslim Family Laws Ordinance, 1961 provided equal opportunity for women to dissolve marriages extra-judicially (without the intervention of the court).[33] It sponsored the idea of reconciliation in the case of divorce by either spouse in accordance with the spirit of the Quran and Sunna. The Chairmen (elected member) of the City Corporation or Union Parishads (Administrative council at a local level) are empowered to affect the procedure of reconciliation before the disputants after its process is initiated by service of notice. The purpose of notice of talaq to be served upon the Chairmen of Union Parisad and the wife is to prevent the hasty dissolution of marriage or offer a second chance to the disputants, which is beneficial to both the parties in the event reconciliation is affected. When the due service of notice has satisfactorily established the talaq in the event of failure of reconciliation becomes effective after the expiry of 90 days from the date of service of notice under section 7 of the Muslim Family Laws Ordinance, l961 Section 7[34] introduced a single method of dissolving marriages and considered all talaq by the husband as single revocable talaq. Section 8 provided that the wife, who wished to dissolve her marriage, could follow the procedural law in the same way as the husband.

This was affirmed in the judgment in Hefzur Rahman's case in which the judgment of the court was given by Mr. Justice Mustafa Kamal, when a divorce proceeds from the husband, it is called talaq, when effected by mutual consent, it is called Khula or Mubara'at, according to the terms. The Muslim Family Laws Ordinance, 1961 has given statutory recognition to a wife's .right to divorce (Talaq--i-tafwez) in the exercise of her delegated power to divorce, as also to dissolution of marriage otherwise than by talaq. There are different modes of talaq according to the pronouncement of talaq by the husband. In the case of TalaqAhsan (most proper), a single pronouncement is made during a tour (the period between menstruation) followed by abstinence from sexual intercourse up to three following menstruations, at the end of which talaq becomes absolute. In the case of Talaqtasan (proper), three pronouncements are made during successive tuhrs, there being no sexual intercourse during any of the following three tuhrs. In the case of Talak-ul-bidaat or Talak-i-badai (which is popularly called Bain talaq in Bangladesh), either three pronouncements are made during a single tuhrs in one sentence or three separate sentences or a single pronouncement is made during a tuhrs indicating an intention to dissolve the marriage irrevocably. This form of talaq is not recognized by the Shafi and Shia Schools of thought, but the Muslim Family Laws Ordinance, 1961 recognizes the "pronouncement of talaq in any form whatsoever"

The procedure makes it incumbent upon the husband to send notice of talaq to the Chairman of the Union Parishad.[35] The Chairman must take all steps necessary to bring about reconciliation between the spouses. The divorce will, if not revoked earlier expressly or by conduct (as a result of reconciliation brought about by the Union Parishad or otherwise) be effective only after the expiry of ninety days from the date of the notice, or if the wife is pregnant after the pregnancy ends, whichever period is longer. If and when a divorce becomes effective, the parties may remarry each other without intervening in marriage, i.e., hila except in the case of a third divorce. Section 7(3) [36]if the Ordinance provides that talaq will not be effective until the expiry of 90 days from the receipt of notice by the Chairman. Failure on the part of the husband to give notice or his abstention from giving notice to Chairman connected should perhaps be deemed, in view of section 7, as if he has revoked the pronouncement of talaq.

7.2.1 Section 7 of the Muslim Family Laws Ordinance, 1961

In the case Abdul Aziz vsReziaKhatoon,[37] it was held that non-compliance with the provisions of section 7(1) makes talaq legally ineffective. However, very recently the Appellate Division of the Supreme Court of Bangladesh in apparent contradiction to section 7 of the Ordinance held:

The petitioner's husband divorced his wife by swearing an affidavit before Magistrate and accordingly sent the copy thereof to the Nikah Register in whose office the divorce was registered as required under section 6 of the Act, 1974 and the marriage tie is, in consequence, stands dissolved and as such her wife is entitled to the payment of entire, dower, both prompt and deferred. He cannot take the advantage of his own wrong in respect of no service of notice to the Chairman as required under section 7 (1) of the Ordinance l961.

The apparent contradiction can be explained by the Court's desire to prevent the husband from using the statutory requirements of service of notice of talaq to the Chairman of Union Parishad as a device to defeat the claim of dower of the divorced wife following the talaq. The Court probably relied on the following well-known principle "Equity will not allow a statute to be used as an instrument of fraud". Section 7 of the Muslim Family Laws Ordinance, 1961 also applies to the wife who wishes to dissolve the marriage. Section 8 of the said Ordinance has made it incumbent upon the wife who wishes to dissolve the marriage to follow the procedure laid down in section 7 of the Ordinance with necessary changes. Where the wife wishes to exercise her delegated right, that is talaq-e-tafwez, she must send notice to the Chairman of Union Parisad after actually exercising the right of divorcing herself.

Muhammad Amin vsSurrava Begum[38] In one case it was held that it is not necessary to inform the Chairman Union Parisad after the court has granted a decree under section 2(u) of the Act of 1939 on the basis of the option of puberty. But in another case, the Lahore Court of Pakistan had dealt with the question extensively and held that after the decree for dissolution has been made by the family court, that court must send a copy of the decree to the Chairman. At the same time, it is necessary for the wife, in whose favor the decree is passed, to independently inform the Chairman about the decree, and also to send a notice thereof to the husband. An issue that rose before the honorable learned court was the effectiveness of the decree of the dissolution of the marriage after a successful reconciliation. The honorable court held that in an instance of total successful conciliation, the decree shall be deemed to have been abandoned by the wife. The conciliation will have the effect of compromise and thus avoidance of the decree. In other words, the decree shall have no effect if within the specified period the reconciliation has been affected between the parties in accordance with the provisions of the Family Laws Ordinance and rules made there under

The Pakistan Court of Baghdad-ul-Jahid held that as a result of the promulgation of the Muslim Family Laws Ordinance of 1961 reference to the Arbitration Council has become a pre-condition for applying to a family court for dissolution of marriage by khula. It further held that khula is operative in cases where the wife has a 'fixed aversion' for the husband, in which case any amount of reconciliation would be of no use. The Ministry of Law has undertaken different measures to motivate and sensitize judges, lawyers, and the litigant public about the merits and advantages of the ADR. Workshops, seminars, and training programs have been organized for judges, lawyers, and court support staff in the divisional headquarters and selective districts. A widely acclaimed documentary film titled "Settlement of Disputes through Mediation" has been made and shown to participants and stakeholders all over the country.

The High Court Division of the Supreme Court of Bangladesh in SirinAkhter and another vs. Md Ismail.[39]In this case, it has been held that when the husband admittedly received the notice of exercise of the right of talaq-tafwez and the notice thereof was served upon the Chairman concerned, there was compliance with the requirement of law and the talaq became effective. Direction for restitution of conjugal rights consequently relief is wrong in law and is opposed to the principle embodied in articles 27 and 31 of the Constitution.[40]

Section-8 says, "where any of the parties to marriage wishes to dissolve the marriage otherwise than by talaq", which apparently means dissolution of marriage through court, khula and Mubara'at equally falls within the section. [41] These forms of dissolution of marriage,

particularly judicial dissolution, need careful examination in the light of section 23(2) of the Family Courts Ordinance, 1985. The provisions for mediation may be found in sections 10 and 13 and 23(3) of the Family Courts Ordinance 1985 which are to the effect:

Ordinance 1961 will come into operation. A question may be raised in view of section 23 of the Family Courts Ordinance 1985 and sections 7 and 8 of the Muslim Family Laws Ordinance 1961 concerning the time when the dissolution of marriage will be effective, is it after the expiry of 90 days from the receipt of the notice from the wife when she initially filed the suit or action; or is it after the expiry of 90 days from the receipt of the certified copy from the court.

7.3 The Family Courts Ordinance, 1985

Without the intervening of the Court and Built-in Conciliation in Family Court Proceedings. Divorce is the most detestable thing in Islam, nevertheless, these do happen, and Chairmen of Union Parishad often receive notice of divorce. The provisions of sections 7 [42]and 8 of the Muslim Family Laws Ordinance, 1961 enable the Chairmen to make conciliation between the disputant parties without the intervention of the court. The Family Courts Ordinance, 1985 also provides for conciliation between the disputants during the court proceedings but these statutory provisions have not been so far properly understood and practiced. The intention of these statutory provisions is to maintain harmony with the spirit of Quranic sanctions relating to divorce. This article focuses on conciliation facilities and the process of their proper utilization through the creation of right awareness among the disputants, the Chairmen of Union Parishad, and Family Court Judges.

Conciliation or mediation (the terms are interchangeable) is a process of joint decision-making by the disputants themselves with the help of a third party. In conciliation or mediation, there is no surrender by the disputing parties to the third-party intervention of the power to make any decision (unilateral or otherwise) that is intended to have a binding effect. Conciliation/mediation is the key component in the arrangement for the dissolution of families. It is argued in favor of mediation/conciliation that other forms of dispute resolution share the objective of agreement rather than judgment. However, in conciliation, it is the parties who are deemed to be in control.[43] It is seen as a space, which allows the parties to work out their own problems in their own way.

Conciliation to resolve marital conflicts can be traced back to the Quran and Sunna (tradition of the Prophet). When the husband and wife cannot live together in peace and harmony, they are given the option to separate,[44] but before such a separation it is recommended that there is an attempt at reconciliation.

The Quran (IV: 35) counsels' arbitration between spouses: The Family Courts Ordinance 1985, established the family courts and follows procedures as laid down therein. Family matters include suits for dissolution of marriage, restoration of conjugal rights, custody of children, recovery of dower money, and maintenance. The provisions for mediation may be found in sections 10 and 13 of the Family Courts Ordinance 1985 which are to the effect: - The majority of people of Bangladesh are Muslims, the inspiration to include the aforementioned provisions for conciliation in the Family Courts Ordinance was drawn from the Koran.[45]

"If ye fear a breach between them twain appoint (two) arbiters, one from his family, and the other from hers, if they wish for peace, God will cause them reconciliation for God hath full knowledge and is acquainted with all things."

The Family Courts Ordinance '85 thus provided the courts with arms to exercise mediation in suits pending before it both at the pre-trial stage under section 10 and after the close of evidence following the framing of issues and fixing a date of a preliminary hearing under section 13. Unfortunately, since the enactment of the Ordinance, the Family Courts failed to take

cognizance or apply these provisions to mediate disputes in pending suits before them. The reason is the lack of motivation of the concerned judges. Being used them to adversarial system the judges presiding over family courts were completely ignorant about mediation. No attempt was previously made to train the judges in the art of mediation, nor were they directed to use mediation. As a result, these courts had been treating the provisions of the Family Courts Ordinance as redundant to Family Courts' proceedings.

The Family Court Ordinance, 1985 (No. XVIII of 1985) has been enacted to resolve disputes arising out of marriage, restitution of conjugal rights, dower, and maintenance dissolution of marriage, guardianship, and custody of children. The object of the Ordinance is to provide a cheaper and more expeditious remedy and render the court accessible to all sections of society. The Family Court (Amendment Act, 1989) made explicit provisions for expeditious judgments emphasizing the intention and aim of passing the original Ordinance.

The Family Court has no jurisdiction to entertain other issues of family law for instance inheritance, partition, gift, or waqf further, the jurisdiction of the Family Courts includes only the civil jurisdiction regarding these issues. The Family Court Ordinance applies to all citizens irrespective of religion. This Ordinance has not taken away any person's right of any litigant of any faith. It has just provided a forum for the enforcement of some of the rights as is evident from section 4 of the Ordinance.

The Family Courts Ordinance, 1985 has a built-in conciliation mechanism enabling disputant parties to resolve the outstanding issue informally, discreetly, and with a sense of accommodation in which the Family Courts play the role of a well-wisher and friends rather than an adjudicator.[46]

After the filing of the plaint, written statement, and service of summon, the Family Courts proceeds with the pre-trial hearing of the suit.24 According to section 10 of the Family Courts Ordinance, 1985 the Court shall fix a date ordinarily of not more than thirty days for a pre-trial hearing of the suits. Subsection 3 states that at the pre-trial hearing, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties if that is possible. If no compromise or reconciliation is possible at this stage, the court shall frame the issues to be tried in the suit and fix a date ordinarily of not more than 30 days for the recording of evidence. At the conclusion of the trial but before the pronouncement of the judgment the Family Court Judge makes another effort to effect a compromise or reconciliation between the parties.[47]

The Family Court Judge here acts as a mediator and a conciliator between the disputant parties. The intention of the legislature to uphold the spirit of the Quran and Sunna- "With all the most detestable of all things permitted is divorce."

7.4 Code of Civil Procedure 1908

There is no provision related to Alternative Dispute Resolution directly in Civil Procedure Code by mediation. But previously, we perceived that Section 89[48] and sub-section 1 of Section 104 in CPC had been for dispute resolution. After that in the year 2000, ADR in the civil procedure is the effect of the success of Pilot project 2000 on mediation in Dhaka judge court and besides some other courts of Bangladesh. In Section 89a and 89b of the Code of Civil Procedure 1908, mediation and arbitration respectively have been incorporated through the Amendment, 2003.

As to the provision of Section 89(a)[49] of CPC, mediation can be defined that mediation means flexible, informal, non-binding, confidential, non-adversarial, and consensual dispute resolution process in which the mediator shall facilitate a compromise of disputes in the suit between the parties without directing or directing the term of such compromise.

As to provision 89 after the filing of the plaint by the plaintiff and written statement by the defendant, the court may take an initiative to settle the dispute by Mediation. If the contesting parties agree to settle the dispute through mediation, the court shall so mediate or refer to District Judge to settle the penal. The mediator will be selected from the District Judge itself, any retired judge, or a lawyer nominated by the parties who is not involved with either party, except a person holding the office of profit in the service of the Republic. When the court shall mediate, it shall determine the procedure of the mediation conducted by the court, and the pleader, their respective client, and the mediator will mutually determine the fees and the procedure. If the mediation process is filed, the court shall precede the suit for hearing from the stage where the suit stood before referring to mediation. And if the mediation by the court fails, the same court shall not hear, and the suit shall be heard by another court of competent jurisdiction. If the mediation is successfully over, the term of such compromise shall be reduced into writing in the form of an agreement and taken signatures or thumbs impressions of the parties as executes and pleaders and mediator as a witness. Finally, the court will pass an order or decree to the reliant provision of Order 23 that code.

The mediation shall be conducted within 60 days from the day on which the court is so informed. But the time of execution for the further period shall not exceed 30 days. After a successful mediation, the parties will get return court fees. No appeal shall lie against the order or decree passed by the court of mediation.

Section 89 (b)[50] has extended the opportunity to settle the dispute alternatively way through arbitration. Under this section, at any stage of the proceeding parties can make an application to solve the dispute through arbitration and withdraw the suit to the court. The court shall allow the applicant and permit them to withdraw the suit. This arbitration shall comply with the ShalishAin, 2001. If for any reason the arbitration does not take place or fails to give an award, the parties shall be entitled to re-institute the suit. That application shall be deemed to be arbitration under Section 9 of the ShalishAin, 2001. As if mediation has been accomplished on the application of contesting parties, the court passed an order and the contesting parties must be submissive to that order.[51] But the court cannot create any kind of pressure for the mediation, which has been described in section 89 of CPC. The contesting parties can settle their dispute wholly or partly by mediation.

Former Justice of Bangladesh High Court and First Director of Judicial Administration Training Centre Justice Md. Baruzzaman would be answering that[52] "under the present provision of law it is not mandatory for the Judge himself to mediate or refer the dispute for mediation, but in doing so the Judge must exercise his discretion by taking into consideration the intention of the legislature and the cause of just, speedy and inexpensive justice". As per the provision of the Sub-section (4) of section 89 within 10 days from the date of submission of a written statement, the parties shall inform the court in writing as to whether they have agreed to try to settle the dispute or disputes in the suit by mediation and whom they have appointed as a mediator, failing written statement will stand canceled and the suit shall be proceeded with for hearing by the court their agreement to try to settle the dispute or disputes in the suit through mediation and appointment of the mediator, the mediator shall be concluded within 60 days from the date on which the court is so informed unless the court of its own motion or upon a joint prayer of the parties extends the time for a further period of not exceeding 30 days.

As to the provision of sub-section (12) of section 89(a) of CPC, no appeal or revision shall lie against any order or decree passed by the court in pursuance of a settlement between the parties. Trial courts have exercised ADR in civil suits according to the provision of Act III of 2003, but there is no jurisdiction of the appellate court.[53] For that, So many cases were pending settlement in the Appellate court year to year. At last, Act 8 of 2006 has created an opportunity to settle the cases by using mediation. The provision of mediation in Appeal is as the Appellate

Court may mediate in an appeal or refer the appeal for us the shining mediation in order to settle the dispute here is or disputes in that appeal, if the appeal is an appeal from original decree under Order XLI, and is between the same parties who contested in the original suit or the parties who have been substituted for the original contesting parties. In mediation under sub-section (1), the appellate court shall follow the provisions of mediation as contained in section 89a with necessary changes as may expedient as far as possible.

The above discussion shows that the application of ADR in our civil court is an epoch in making a decision. Through the ADR, the people of our country get privileges as far as possible. As well as the judges and appellate court get relief from the cases which are filed year to year. On that achievement, Justice K. M. Hasan give an opinion that "the greatest achievement of the mediation court is changing of mental attitudes of the judges, lawyer, litigants and general public who were skeptical about mediation. Initially, there were feelings of opposition and suspicion by some in the legal profession for this entirely different based discipline but it is changing. Those who used to come to the court in confrontation mode are accepting the idea of mediation and more are coming prepared to settle the dispute through mediation. It is interesting to note that the same lawyer who fights tooth and nail to win a suit in the trial also tries hard to find out the solution through mediation."

7.5 The Arbitration Act, 2001

Peaceful arbitration for the settlement of disputes had been applied since the ancient period. Arbitration had been introduced in Greece, China, Arabia, and Italy in the 12th century and 13th centuries.[54] Arbitration took an effective impact on settling the international dispute at the end of the 18th century. After, International Arbitration had successfully finished almost 100 cases. In those 100 cases, the United Kingdom and the United States of America participated in about 70 cases. Hague Peace Conference created an ordinary impact on International Arbitration in 1899 and 1907. The Hague Peace conference, it had been described the rules, procedure, and structure of the arbitration and established the Permanent Court of Arbitration. Cordially the arbitration is to be proved as a part of international law. Eventually, arbitration was pronounced as state law.

7.6 ADR and The Court System

At present, it has been the policy of the government of most of the country that the dispute should be resolved at a proportionate level, and that the courts should be the dispute resolution method of last resort.[55] Although ADR is independent of the court system If the parties refuse an offer to mediate without a good reason then even if they win their case, the judge can refuse to award them some or of their legal costs.

In the UK, the court of appeal in the conjoined appeal of Halsey v Milton Keynes NHS Trust and Steel V Joy And Halliday[56] confirmed this notice the court said "all members of the legal profession should rottenly consider with their clients whether their dispute is suitable for ADR. One commentator comments that "this is close warning that not-to-do so could be negligent and a breach of professional duty. Dunne is the first reported case of the successful party losing costs because they declined to mediate.

7.7 Adversarial System

Adjudication is an adversarial process where a judge (or jury) adjudicates in a court according to the legal statutes in favor of one party after hearing both sides, with advocates presenting evidence on behalf of the parties.[57] The decision of the court is legally binding on the disputing parties. This is the only choice where one party needs to create a legal precedent or obtain an injunction, or where one party is refusing to negotiate or acknowledge the problem.

It is said that because courts are overburdened, they cannot deliver justice properly. Growing user disappointment with conventional legal services also triggers the development of

alternatives to courtroom litigation. In a study carried out in Canada, almost 60% of the client survey group said that they were either partly or very dissatisfied with the progress and outcome of their cases through the civil litigation system. Of their lawyers, 5% said that they thought that clients 'never' received value for money in litigation. The Woolf Report for England and Wales also recognized that the cost of civil justice in a court-administered system has risen sharply and that lengthy delays are now the norm in civil litigation.[58]

Mr. Justice Mustafa Kamal mentions that most of the countries following the common law system have faced the trouble of delay and excessive expenses in the disposal of civil cases in their respective legal history.[59] Developed countries like the USA, Australia and Canada have witnessed a few decades back, a huge backlog of cases, excessive legal costs and expenses and litigants' desolation. Those countries, by introducing various ADR methods to settle disputes outside the court, have made their judicial systems more service oriented to provide speedy relief to the disputants.

It is also said that the adversarial system established in common law countries has been found insufficient to address the increasingly complex, technical legal problems of present-day litigation. The adversarial system often creates two mutually opposing, exclusively hostile, competitive, antagonistic, and uncompromising parties to the litigation. [60] As litigation progresses it creates conflict after conflict. At the end of litigation, one party emerges as the winner and the other party is put in the position of the defeated. Adversarial litigation does not end in harmony and can lead to more litigation between them or even their successors.

However, the benefits of the adversarial system cannot be denied altogether. It is representative of stability and social solidity. Through adversarial hearings, complicated and disputed questions of fact and law are settled.[61] It is also argued that an adjudicative system helps to uphold not only the legitimacy of the common law system on a day-to-day basis but also the continued, often awestruck participation of the public.' In Richmond Newspapers, Inc. v Virgina, the Supreme I Court of the USA explained that "the open processes of justice serve an important prophylactic purpose, providing an out for community concern, hostility, and emotion". The trial itself is considered as a 'ritual of quasi-religious' character which provides a public assertion of principle and 'right'.

8. CHALLENGES TO REVOME BACKLOGS OF CASES

The judiciary in Bangladesh is deadlocked in a vicious circle of delays and backlogs of cases. In a report of the Law Commission, till 31st December 2018, there are more than 2.6 million cases pending in district courts. The recent rate of disposal of cases and accumulation of backlogs is alarming for justice, rule of law, and the economic development of the country. This is difficult to combat such an alarming backlog situation without taking recourse to Alternative Dispute Resolution (ADR). In those circumstances, the ADR system has been introduced within the formal justice system to minimize inordinate delays and to reduce undue litigation costs.[62]In the practices of ADR in Bangladesh, we find three different forums i.e. formal (e.g. Family Court), Quasi-formal (e.g. Village Court), and informal (e.g. village shalish). Now a number of statutes in Bangladesh have implemented a judicial practice of ADR through mediation, conciliation, and arbitration.

Remarkable is that the ADR within the formal justice system is the one introduced to ordinary civil courts in 2003 by the amendment of the Code of Civil Procedure (CPC), 1908. [63] Previously ADR was in practice in some special civil courts, sections 89A, and 89B was inserted by this amendment to incorporate the systems of mediation and arbitration of civil disputes that lie before the court.[64]The recent amendment gives the option to the court to mediate between parties or refer the dispute to the pleader or the parties themselves (where no pleaders have been engaged) or to the mediator from the panel to be prepared by the District Judges.CPC was further amended in 2006, to insert a section discussing the provision of

conducting ADR (mediation) during the appeal but there was an option for the court to decide whether the dispute should be referred for mediation, so the effort did not worked-well. For this reason, there is an exigent need for further amendments which would make ADR mandatory.

CPC was again amended in 2012, to replace the word 'may' with 'shall' in sections 89A and 89C to make mediation mandatory in both pre-trial and appellate stages in every civil litigation, and sections 89D and 89E were newly added. Section 89D provides a special provision for mediation when the contesting parties to a suit or of an appeal applied for mediation thereof started before the amendment of 2012. Section 89E provides for the application and commencement of the provisions of section 89A and 89C in the following words- 'the provision of section 89A or 89C shall be applied to such area, and commenced on such date as the government may by notification in the official Gazette, fix but the government has not yet issued any Gazette notification fixing the date and specifying the area for its application. So that the outcome of ADR has not been started yet in the ordinary civil courts of Bangladesh after an era of introducing the provisions in the CPC.[65] ADR under the CPC is a flexible, informal, non-binding, confidential, non-adversarial, and consensual dispute resolution process in which a third-party mediator shall facilitate a compromise to parties' disputes. Appointment of mediator by the parties or by the court, mediation work must be completed within 60+30 days from the date of appointment of a mediator. The court shall pass a decree/order according to the terms of compromise within 7 days from the date of getting a report from the mediator and if the mediation attempt undertaken by the court fails, the same Judge shall not hear the suit subsequently.[66]

The compulsory mediation system introduced in the ordinary civil courts is obviously a positive step not only to reducing the huge number of pending cases but it has also a healthy impact on the society and social relations of the litigants. Here now we are waiting for the government's initiative to start full-fledged ADR in the ordinary civil courts of Bangladesh. The famous words of Abraham Lincon emphasizing the deep significance of ADR may be recalled. In his view- "Discourage litigation; persuade your neighbors to compromise, whenever you can; point out to them the nominal winner is often a real loser, in fees, expenses, and waste of time.

9. ADR IN FAMILY MATTERS AND BENEFITS

Applying ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.[67]

9.1 Save Time

Often any dispute can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

9.2 Save Money

In ADR the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

9.3 Increase Control over the Process and the Outcome

Parties play a greater role in shaping both the process and its outcome in ADR and parties have more opportunity to tell their side of the story than they do at trial.[68] In few ADR processes, such as mediation, give scope to the parties to fashion creative resolutions that are not available in a trial, and some other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

9.4 Preserve Relationships

A less adversarial and hostile way to resolve a dispute in ADR like an experienced mediator can help the parties effectively communicate their needs and point of view to the other side and the parties have a relationship to preserve.

9.5 Increase Satisfaction

There is typically a winner and a loser in a trial and the loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. It helps the parties find win-win solutions and achieve their real goals. With all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

9.6 Improve Advocate-Client Relationships

From ADR by being seen as problem-solvers rather than combatants Attorneys may also benefit. Speedy and cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals from their friends and associates.[69]

The family courts were established by the Family Courts Ordinance, 1985 and follow procedures as laid down therein Family matters include suits for dissolution of marriage, restoration of conjugal rights, custody of children, recovery of dower money, and maintenance. The statistics on ADR in family matters are mentioned below form 2016 to 2020[70];

Source: National Legal Aid Services Organization (Bangladesh)

Name of the Districts	Year	Number of cases at the end of the previous year	Number of cases filed	Total	Number of disposal	Number of disposal through ADR	Percentage (%) of disposal through ADR out of total disposal	Pending cases at the end of the yea
Jamalpur	2016	9356	2592	11948	1618	72	4.45%	10330
Narayangonj	2017	10330	3942	14272	2018	74	2.33	16376
Cumilla	2018	12254	7426	19680	3304	77	3.03%	8679
Narsingdi	2016	7131	4123	11254	2575	78	3.03%	8679
Gazipur	2017	8679	9646	18325	2989	68	2.28%	15336
Brahmanbaria	2018	15336	12728	28064	4955	48	97%	23109
Manikganj	2016	8045	4307	12352	2038	38	1.86%	10314
Barisal	2017	10314	4610	14924	1918	41	2.13%	13006
Gopalganj	2018	13006	3076	16082	2174	132	6.07%	19908
Kurigram	2016	9224	3435	12659	2592	34	1.31%	10067
Bogra	2017	10067	3155	13222	2350	10	.43%	10872
Chittagong	2018	10872	2729	13601	2901	25	.86%	10700
Total		124614	61769	186383	31432	697	2.22%	160951

10. CHALLENGES OF ADR IN FAMILY MATTERS

Firstly, the Family Court Ordinance (FCO) does not have a provision relating to ADR at the appellate stage like the CPC. Further, like the CPC there is no provision for the substitution of the judge in case of failure of judge-sponsored ADR under the FCO.[71]

Secondly, it was envisaged in the FCO to form and establish separate Family Courts to deal exclusively with family disputes. Nonetheless, with utter surprise that no separate Family Courts have been established yet, rather the court of Assistant Judges has been working as the Family Court Judge who is already overburdened with other civil suits.

Thirdly, family disputes are very sensitive and personal in nature that require a judge who is experienced and well-trained. But under section 4 of the FCO the court of Assistant Judge, the lowest tier of the subordinate judiciary who is most inexperienced, acts as the Judge of the Family Court.[72] But in India the Family Courts Act, 1984 requires that a person shall not be qualified for appointment as a judge unless s/he has held a judicial office at least for seven years.

Fifthly, only the Family Court Judges are responsible for effecting compromise and no provision relating to referring a dispute to a person or institute outside of court is present in the FCO.

Finally, In the FCO there is no counseling support service in a district which is extremely necessary for providing assistance to the parties in resolving family disputes.

In many areas of the country, the general public is not aware of ADR and, therefore, litigants must rely upon their attorneys to recommend its use. ADR is used by those who may not understand the process, for example, expecting the mediator to "decide" the case or otherwise have the same authority as a judge. These litigants may be dissatisfied with the process because it did not meet their expectations.[73]

ADR programs still face many of the same challenges that the first ADR programs faced, as well as new challenges that have emerged as programs have become institutionalized in the court system. There are a number of common challenges from the different arenas in Bangladesh.

11. FINDINGS AND RECOMMENDATIONS FOR BANGLADESH ADR SYSTEM

In Bangladesh, the judiciary is caught in a vicious circle of delays and backlogs. Delays in the adjudicative process are frustrating by the backlog of cases, which is eating away at our judiciary. In the judicial process, while delay causes backlog, increasing backlog puts tremendous pressure on present cases and vice versa. The very recent rate of disposal of cases and the backlog is alarming for justice, rule of law, and the economic development of the country.

Taking everything into account, the benefits of ADR as a traditional system with modern approaches and its overall effectiveness in resolving disputes, family matters, commercial or non-commercial; domestic or international; we must not allow justice to be delayed, to be ultimately denied; we must ensure accountability, transparency, and integrity of the ultimate arbiters which must remain above reproach in the process of justice delivery system.

11.1 The Reasons for Delay of the Suit in Family Matters

The success of ADR could lead to a short-term fall in lawyers' income, but the long-term outcome would be completely different and argued that mandatory recourse to ADR at the pretrial stage by judicial intervention would not be a welcoming development for the lawyers, for their income could fall by any success of ADR programmer. Reasons are laid down-

- Lesser obedience of the judges.
- Service of the summons process is slow, which can be further, slowed down by the intentions of the parties concerned, indicating a poor state of court administration.
- Excess and very much reliance on the resort to interim injunction relief and orders, leaving the hearing of the main contentions and issues to 'infinity'.

- Numerous adjournments of the trial caused by the insistence of the lawyers,
- Lawyers are interested in lingering and delaying the process, for they are often paid by their appearances in court.
- Usually appeals and interlocutory orders, which fracture the case into many parts and effectively stay the trial.
- Chances of continued amendments of the plaints and written statements at any stage of the trial.
- Unwillingness of the judges.
- Lack of lawyer-client accountability gives the lawyer monopoly to conduct the case the way he considers best suited to his own interest.
- Not so good way for client-to-client interaction, which hinders the potentiality for alternative, dispute resolution and intensifies the conflicting nature of the proceedings.
- Failure of the parties to present the witnesses
- Rotation and transfer of judges,
- Inadequate administrative,
- Work-load,
- Poor working conditions and Poor salaries,
- Internal discipline is insufficient.

11.2 Problems of ADR in Bangladesh

- Injustice in the process
- Lack of Awareness and Knowledge
- ADR Procedures not Codified as Other Procedural Laws
- Lack of Impartial Third-Party Facilitators - The mediator, who acts as the neutral third party, is crucial to the success of the ADR process. The presence of a neutral facilitator helps to establish trust between the parties and ensures that no party is being taken advantage of. The success of ADR relies heavily on the impartiality and neutrality of the mediator.
- Third party who protects the integrity of the proceedings.
- Good faith from the participants.
- The presence of the parties.
- An appropriate site or venue.

11.3 Effective Court Management

The improvement of ADR in Bangladesh depends on its introduction and it is no longer an unheard concept of dispute resolution among judges, litigants, and lawyers of Bangladesh. In Bangladesh, the Family Courts are actively engaged in the ADR system but other assistant judges, who received training in mediation are apart from trying cases. The Ministry of Law needs to collect, maintain and update all relevant statistics in this regard.

Before we extend the frontiers of ADR. to other types of litigation, I would suggest the following: Make the presiding judge, a judge of co-equal jurisdiction, lawyers of the local court or a court of adjacent jurisdiction of more than 10 years standing, and Private Mediation Firms, adequately staffed by either experienced ex-judges of not less than 10 years standing or retired judges and/or non-practicing lawyers of not less than 15 years standing, recommended by the District Judge and approved by the Chief Justice of Bangladesh, as qualified for appointment as mediator or arbitrator. As a matter of practice, the presiding judge may not assume that function, but the enabling provision should be there because in many places a judge of co-equal jurisdiction or a lawyer of stated standing, or a private legal firm might not be available. The District Judge will keep a constant eye on A.D.R., provide the Ministry of Law with regular up-to-date information about the disposal of cases by mediation by various pilot courts, the

amount realized each month by the pilot courts, pending mediation in the pilot courts, comparison in terms of disposal and realization of money with the rate of disposal and rate of realization of money prior to mediation, the amount realized by execution of the decree on a previous 5-year average prior to mediation, etc. and oversee the progress of A.D.R. diligently and constantly.

Before introducing ADR in any other field intensive training of concerned judges, lawyers and court staff is a must. The training will be on a continuous basis and JATI should have an instructor on its payroll to impart training on different methods of A.D.R. to different tiers of trainee judges, including new entrants to the Judicial Service. A batch of trainers should be created to take up this arduous job in all the districts. If ADR introduces on a pilot court basis, it will have a smooth transaction and performance, result, and reactions among the judges, lawyers and litigants should be carefully recorded, and monitored in the ADR. A project should be made at each stage of extension after an exhaustive study of the experiences gained.

- Good record-keeping and systematic filing of the cases;
- Subject-wise classification of the cases;
- Good monitoring so as to classify the cases on the basis of the stages they have reached;
- To identify and to rid the docket of 'dead' or moot matters in order to prevent them from clogging the schedules;
- Monitoring and case-flow tracking in such a way as to know the status of each case,
- To know its procedural position, locate documents and records more easily, and reflect everything in a transparency plate.
- Good court administration is necessary for ready references and control over the exodus of cases that are in the docket and is to be ensured by the judicial.
- Administrators help the court instantly with any information it needs for effective case management.
- Sufficient court staff equipped with modern technological facilities like computerization would be necessary for good court administration.

Society perceives conflict as something that one should resolve as quickly as possible. Litigants see conflict as a fact of life that when properly managed can benefit the parties. The benefits of conflict include the opportunity to renew relationships and make positive changes for the future. The people of Bangladesh are hungry for justice. It is for us, the legal and judicial community, to respond to this public need in a well-thought-out, disciplined, and organized manner. Our success will depend upon the way we motivate and dedicate ourselves.

12. CONCLUSION

The legal framework for Alternative Dispute Resolution (ADR) has seen growth and recognition in Bangladesh over recent years as a means of resolving a variety of disputes. ADR mechanisms can be applied to settle commercial, family, and civil disputes among others, making access to justice easier. However, the effectiveness of court-based ADR provisions under different laws has been a matter of concern. Despite their potential to aid in the early resolution of litigation and as a tool for case management, the results have not been as satisfactory as expected.

It is important that the constitutional role of the judiciary not be compromised by blending it with non-judicial services, and that clarity and quality controls are maintained to ensure the appropriate use of ADR. While mandatory ADR can be beneficial, care must be taken to ensure that it is not coercive and does not impede access to trial for those who require judicial determination. ADR is often seen as a consensual approach to resolving disputes that bypasses the formalities of the adversarial trial system. It is considered informal, confidential, efficient,

mutually participatory, cost and emotionally effective, promotes peace and social harmony, and helps alleviate the crisis of case backlogs.

The Family Courts were established to handle family matters and were expected to utilize mediation and conciliation frequently as informal procedures to aid in resolving disputes. However, in practice, these courts also have civil and criminal jurisdiction, which reduces the emphasis on the use of ADR. The desired specialization and the practice of ADR during family court proceedings have yet to be realized and may require a social movement to encourage its use.

Despite its benefits, there are criticisms of ADR as well. Moving dispute resolution from the public to the private sphere can limit the development of the law to meet changing circumstances and prevent the use of settlement details as a public record. Private settlements may not consider wider implications, and ADR may encourage compromise, which may not be appropriate for all disputes.

In Bangladesh, the practice of ADR faces various challenges such as a lack of funding, cooperation from lawyers, and good faith. Nevertheless, there are opportunities for the implementation of ADR systems at the local and state levels. To promote peace and resolve disputes, it is important to further the use of ADR in Bangladesh.

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