

# Role of Mediation in Matrimonial Dispute Settlement in Bangladesh

Mst. Shahina Ferdousi\*

**Abstract:** Bangladesh is a country where citizen of different religious belief live together. In all the religion, people follow their own personal laws in their family matters. Marriage is one of the essential aspects of the family matter of any personal law. In matrimonial relationship when the disputes arise, the parties to a dispute are tried to solve their problem. In that case in modern time mediation is playing a significant role to settle the disputes between the parties. This paper is an attempt to analyze the diversity of mediation conducted by the different bodies in different matrimonial cases. It has tried to find out the loopholes of the process of mediation and has tried to place some suggestions.

**Keywords:** Mediation, Matrimonial Disputes, Bangladesh.

## 1. Introduction

Mediation is a process by which a dispute can be settled informally with the help of a mediator. In mediation, a mediator only facilitates to make a flexible reconciliation between the parties to dissolve the disputes. Mediation is an alternative dispute resolution process which is very much popular and acceptable way of dispute resolution in Bangladesh for its process of dissolving disputes with the help of a neutral facilitator who helps the parties in deciding their cases with satisfaction of all the concerned that are parties in the dispute. So, in mediation there is no to impose any decision. It is the parties who decide the adjudication. Basically mediation is a customary practice of the informal justice system that has a history of more than a thousand years in the form of the Panchayat/Salish (Tonima, 2019). Usually it is out of court system which is informal, flexible, non-adversarial dispute settlement process to ensure the access especially for those who want to avoid the courts process. Now a day's mediation is very much popular for its informal method which ensures justice timely and without financial burden. Mediation does not give judgment rather it helps the couples to take decision about their disputes with their consent. Mediation facilitates mutually acceptable agreement satisfying everyone's

---

\* Assistant Professor, Department of Law, Prime University, Dhaka, Bangladesh.

interest. Lots of people of our society, specially a class of women avoid the court's formal procedure for not being expressive in front of people in deciding their matrimonial cases. The delay and inefficiency most prominently affect the poor, who are also hampered by the expense of the dispute resolution process (Tonima, 2019). In this context, mediation is the best acceptable way that may better protect and preserve women's rights in matrimonial issues in Bangladesh. At present NGO-based mediation has won the trust of litigants for its win-win system which creates an improved variation of the customary salish. The entire activities are facilitated by NGO staffs. The Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST), Ain-O-Salish Kendra (ASK), Nagorik Uddayog (NU) are prominent NGO's in providing legal aid specially for the people and women who are at distress and disenfranchised.

## **2. History of Mediation in Bangladesh**

Bangladesh has a glorious history of mediation. The history of mediation in Bangladesh can be addressed from decades ago where disputes are often settled through villagers in the form of Salish. Because of the deficiency of historical evidence, it is difficult to pinpoint the exact era when the concept of different traditional modes of informal justice, such as village Panchayat/ Salish, was first initiated in this region (Bhuiyan, 2019). To this continuation, at present, mediation has been incorporated as a mandatory part in our formal court system by enacting some new laws and amending some existing laws as it is treated the most acceptable process of settling the disputes especially in family matters for its flexible and success rate. Court-based mediations were introduced in Bangladesh with the incorporation of mediation provisions in specific legislation such as the Arbitration Act, 1940; Family Law Ordinance, 1961; Industrial Relations Ordinance, 1969; Muslim Family Courts Ordinance, 1985, and others. Recently, an advance variation of traditional Salish conducted by the NGO's has become very popular which is also informal mediation, conducted by the NGO's like Madaripur Legal Aid Association, which can be treated as the pioneer of all the NGO's. Besides that Ain O Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST) and Nagarik Uddayog etc. has the glorious history in settling disputes through mediation.

## **3. Kinds of Matrimonial Disputes arising in a Family**

Family is a place where a group of persons stay together out of the blood relationship, marriage or adoption. So, it is very much usual to have difference of opinion among the members of a family. In the family, the women are held more responsible to take care of all the household chores even if they are working women (Singh, 2020). And as a result the issues arises which leads to the disputes. In ancient time people

used to dissolve the family problem with the help of the senior members of the family or from the relatives. And in case of dissolve the disputes regarding land related or other matters, it was settled through Salish. At present people wishes to settle their disputes through mediation as the process of mediation is less time consuming, cost effective and confidential. Though the disputes are different for each family whether it is joint family or a nuclear family but the nature of matrimonial disputes are same from ancient time to till now. In continuation of the marital relationship the dispute arises between the parties are from mal adjustment. After dissolution from a marital relationship, disputes arise between the parties are for some sort of rights. As Bangladesh is a country of mixed religion, and different religious people are controlled by their religion in case of settling the personal matter. So, the rights and the obligation are not uniform for every religion. And that's why the nature of the disputes are seems to be different. Constitutionally, Bangladesh as a secular State aspires to ensure the equality of all citizens irrespective of their religious status (Karim and Khalid). The different disputes which can emerged in a family out of matrimonial relationship are dower, divorce, polygamy, restitution of conjugal rights, maintenance, guardianship and property distribution.

**Mal adjustment:** In the conjugal relationship the main problem that a husband and wife face is mal adjustment. Polygamy, extra marital relationship is the main factors behind such mal adjustment.

**Dower:** It is applicable only for the Muslim Women in Bangladesh. Existing law provides the rights of dower to a Muslim woman.

**Divorce/ Judicial Separation:** Out of mal adjustment, both husband and the wife may take decision of being separated from their marital relationship. The consequence of divorce creates the issues of guardianship and custody of child and maintenance.

**Restitution of conjugal rights:** In this sub-continent the issues of restitution of conjugal rights emerged with a prominent case of *Moonshee Buzloor Ruheem vs Shumsoonissa Begum* (11 MIA 551, 1867). In Bangladesh the provision of restitution of conjugal rights is under the jurisdiction of the Family Court Ordinance, 1985.

#### **4. Mediation in Settling Matrimonial Disputes**

Human conflicts and differences of opinion within or beyond the family affairs are the historical reality that we cannot either completely refuse or ignore (Bhuiyan, 2019). In all religion, dispute related to family matter were settled initially by the

elders of a family. The disputes were settled then through reconciliation. To avoid the court procedure, the family members of the disputed parties treated the family mediation as best policy to solve their disputes. The family mediator tries to help the parties to reach in a settlement which both the parties are agreed. From ancient time to till date the system remain same. This traditional system of mediation got an institutional shape by Salish conducted by the villagers (Village elders) where they tried to settle the disputes by hearing from both the parties of the disputes. In 1961 the Muslim Family Laws Ordinance introduces Salish system in some specific family matters. Where the Chairman of the Union Parishad and the Major of the City Corporation are given power to form arbitration council in case of divorce, maintenance for bring reconciliation between the parties of a marriage. Moreover some Non-Governmental Organizations (NGOs) of Bangladesh is trying to solve the conjugal disputes of a party through mediation. In 2003 the formal process of mediation i.e. court based mediation is introduced by inserting section 89A, 89B, 89C, 89D and 89E in the Code of Civil Procedure in order to settle the disputes and appeals between the parties through mediation or reconciliation. Now, when after filling the written statement, the parties are present in the court in person or through the pleader, the court will adjourn the hearing and shall refer the disputes to a mediator or to the concerned legal aid officer to settle the disputes through mediation.

### **5. Whether Mediation is successful in Dissolving Matrimonial Disputes**

Mediation is a short time process of settling disputes compare to the formal court procedure. As stated earlier mediation is a popular way of settling the disputes as it is inexpensive, swift, and flexible. There is no complex procedure. Mediator doesn't follow the strict procedure of taking evidence. Parties to a dispute feel mediation reliable because in mediation session they have enough opportunity to discuss over the matter. Here parties take decision through negotiation willingly. No dictation or direction by the mediator is imposed here on the parties. By inserting the process of mediation in the formal court system, the disputed parties in matrimonial cases are getting opportunities to solve their disputes through mediation. Besides that NGO's are playing a vital role in solving the disputes specially that are providing legal aid in family related issues. Mediation can significantly diversify and facilitate family dispute resolution procedures, as well as help separating couples to reach in agreements for the best interests of their children and in some cases even prevent couples from separating (Usova, 2016). A statistics is given below which shows a practical scenario settling disputes through mediation in matrimonial cases:

<b>Year</b>	<b>Total No. of Mediation</b>	<b>No. of complaint settled through Mediation</b>	<b>Cases Referred to the Litigation</b>	<b>Rate of Success (%)</b>
<b>2017</b>	<b>543</b>	<b>441</b>	<b>102</b>	<b>81%</b>
<b>2018</b>	<b>543</b>	<b>434</b>	<b>109</b>	<b>80%</b>
<b>2019</b>	<b>660</b>	<b>535</b>	<b>125</b>	<b>81%</b>
<b>2020</b>	<b>465</b>	<b>366</b>	<b>99</b>	<b>79%</b>
<b>2021</b>	<b>630</b>	<b>544</b>	<b>86</b>	<b>86%</b>

**Source: Ain O Salish Kendra (ASK), A Human Rights and Legal Aid Organization**

The statistics shows the ratio of success rate of mediation. From this chart we can get a clear picture of acceptance of mediation. But if we critically analyze the system of mediation we can point out some loopholes of mediation. Being very informal and flexible in nature it has no organized structure and operational mechanism (Hoque and Zarif, 2019). If mediation is done outside court, some of the parties may violate the provisions or the terms and conditions of the agreement made by them willingly. They may do the same thing and disputes may arise among them repeatedly. As the formal procedure of court is absent in case of mediation, sometimes it may create problem especially for the increment of money for dower and maintenance from the opposite party and sometimes for the guardianship and custody of a child.

## **6. Concluding Remarks**

As per the explanation of section 89A mediation is flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process. As we know, in case of mediation the mediator facilitates only to bring reconciliation between the disputed parties. So, the parties feel satisfaction for the decision they take out of their negotiation. They can share their feelings, their opinion much easily in front of the mediator. Moreover if the participants are dissatisfied with the results of the negotiations, they have the option of going to court. And for this it is acceptable to all. As the process of mediation is flexible and informal, here the process of discovery is absent. So if one party wants to hide something, others have no scope to discover the matter. In addition to that it can be said as more than 80% of cases (as per statistics) mediation acts as an effective tools to settle the matrimonial disputes, so it should be monitored after settlement for at least one year. Moreover, the persons who act as mediator in matrimonial cases, they should be more experienced and trained up. So that they can facilitates the situation with sincerity. To avoid all the problems mediation should be organized by the government organizations, non-government organizations that have expertise.

## References

1. Tahsin Kamal Tonima (2019), Mediation in Bangladesh makes Justice Accessible, International Mediation Institute.
2. Md. Deedarul Islam Bhuiyan (2019), Alternative Dispute Resolution Process in Family Matters under Legal Framework of Bangladesh: Challenges And Ways out, International Journal of Law, Humanities and Social Science (IJLHSS).
3. Muhammad Rafiqul Hoque and Muhammad Mustaqim Mohd Zarif (2019), Advantage Traditional Shalish System for Rural Dispute Resolution in Bangladesh: An Analytical Study of Its Structure and Operational mechanism, Malaysia, International Journal of Law, Humanities & Social Science, Volume 3, Issue 3 (April 2019), Pp.85-105, ISSN: 2521-0793.
4. Mohammad Ataul Karim and Saeed Ahsan Khalid, Polygamy and Divorce under Statutory Laws of Bangladesh: A Critical Appraisal of the ADR Mechanism,([https://www.academia.edu/30125759/Polygamy\\_and\\_Divorce\\_under\\_Statutory\\_Laws\\_of\\_Bangladesh\\_A\\_Critical\\_Appraisal\\_of\\_the\\_ADR\\_Mechanism](https://www.academia.edu/30125759/Polygamy_and_Divorce_under_Statutory_Laws_of_Bangladesh_A_Critical_Appraisal_of_the_ADR_Mechanism)).
5. Sneha Singh (2020). How mediation functions in family law disputes, iPleaders blog, <https://blog.iplayers.in/mediation-functions-family-law-disputes>.
6. Marina Kamenecka-Usova (2016), Mediation\_for\_resolving\_famiy\_disputes [https://www.researchgate.net/publication/308134271\\_](https://www.researchgate.net/publication/308134271_).