

ADR System in Bangladesh: A Comparative Study with South Asian Countries

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Abstract: Alternative Dispute Resolution is known as ADR. It is one of the simplest legal procedures for engaging a third-party arbitrator to settle disputes and issues between parties outside of court. This research paper is based on qualitative method. In order to obtain effective research outcome many data from primary and secondary sources have been gathered. However, the primary issue is that Bangladesh has no unified ADR law. The individuals involved in an ADR process can lack the necessary training and expertise to effectively supervise and persuade the disputants to settle the disagreement. There is few controversial questions left such as: ADR is actually an easy access towards justice system or not, therefore what could be done to make ADR process more fruitful and ensure justice for the victims and whether disadvantaged party through ADR system receive proper justice or not? Based on all the pending cases, the objective of this research is to implement the adequate procedure of ADR and also to encourage ADR by the court and encourage people to go through the process of ADR to resolve their dispute. This research state that if ADR is properly followed then people will not have to always depend on traditional adjudication process of court; they can also easily solve their disputes through arbitration, negotiation, mediation. For the performance of the activities of ADR a separate institutional framework should be developed. Separate skilled and trained mediators should be appointed only for performing mediation.

Keywords: Bangladesh, Arbitration, Mediation, Conciliation, Justice.

1. Introduction

Alternative dispute resolution 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. Despite historic resistance to ADR by many popular parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. In

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fact, some courts now require some parties to resort to ADR of some type, before permitting the parties' cases to be tried. The rising popularity of ADR can be explained by the increasing case-load of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. When strategically applied in the context of enforcement negotiations, ADR has proven to be a useful tool in overcoming impasse, improving the efficiency of difficult negotiations, and achieving durable settlements. It is said that injustice anywhere is a threat to justice everywhere. In that case the Alternative Dispute Resolution is regarded as an aspiration to ensure easy access to justice for all. Every man inherits some human rights by born and some of them are guaranteed by the Constitution as fundamental rights. Bangladesh Constitution also guarantees some rights as fundamental rights like equality before the law, equal protection of the law; rule of law etc.¹ The court or other legal institutions have a duty to uphold these rights and deliver just judgements to the people. Although Bangladesh's legal system is only theoretically ensures justice for everyone, with the exception of the most vulnerable Sectors of society are unable to access the court system. In Alternative Dispute Resolution may therefore be the sole option. In that case Alternative Dispute Resolution may be the only way to easily ensure and enforce justice.² Dr. Sumaiya Khair states that, these alternative approaches may take different forms based on the culture, customs, and traditions of the people in specific circumstances. Option conflict resolution is still a viable alternative to the formal legal system for the local population in Bangladesh, even though it has become obsolete in some societies.³

Mediation is a non-binding procedure controlled by the disputants where a party cannot be forced to agree to an outcome that it didn't desire. In mediation, any settlement is recorded as an enforceable contract. Here, parties decide on how it should be conducted with the mediator because the mediator is not a decision-maker. Rather, his prime job is to assist the parties in reaching a resolution of the dispute. It is a confidential procedure where the parties are not compelled to disclose information which they prefer to keep private. It is an interest based procedure such as; the parties are free to determine an outcome result which is intended as much to the future of their business relationship as to their past conduct. So to say, even if a settlement is not achieved through this process, it never fails completely as it allows the parties to address the facts and affairs of the dispute.

Negotiation is voluntary, in the sense that disputing parties are not ordinarily forced to negotiate with each other. The process of negotiation is informal and without defined procedures or rules governing the presentation of evidence or arguments. Because the goal of negotiation is a mutually acceptable resolution, the parties to a negotiation can shape that resolution to suit their own needs and interests, and are under no obligation to reach a principled outcome, much less one justified by a reasoned opinion applying formal legal norms. If resolution is reached, the

¹ The Constitution of the People's Republic of Bangladesh, Art. 27, 28 and 31.

² Naser, Mostafa Mahmud. The Role of clinical legal education in increasing access to justice: The context of Bangladesh, commonwealth legal education conference, 2006, 54.

³ Dr. Sumaiya Khair, 'Alternative Dispute Resolution: How It Works In Bangladesh' (2004) XV (1), The Dhaka University Studies
<[http://journal.library.du.ac.bd/index.php?journal=DULJ&page=article&op=viewFile&path\[\]=1430&path\[\]=1370#:~:text=Provisions%20for%20alternative%20dispute%20resolution,alternate%20means%20of%20settling%20disputes](http://journal.library.du.ac.bd/index.php?journal=DULJ&page=article&op=viewFile&path[]=1430&path[]=1370#:~:text=Provisions%20for%20alternative%20dispute%20resolution,alternate%20means%20of%20settling%20disputes)> accessed 26 November 2020.

settlement is not ordinarily subject to judicial review. The settlement agreement can subsequently be enforced as a contract. Negotiation is typically private; the process itself is not open to the public.⁴

Naima Huq defines that, the difference between the binding and non-binding forms of the ADR must be understood. Programs for negotiation, mediation, and conciliation are non-binding and strictly rely on the parties' willingness to come to a consensual agreement. Arbitration agreements can be legally binding or not.⁵

In Bangladesh, for the first time the provisions of ADR was incorporated into the Family Court Ordinance in 1985. But those provisions were not totally functional. In 2000, by the initiative of the Ex-Chief Justice Mustofa Kamal based on the success of his pilot projects the Government of Bangladesh again incorporated the ADR provisions into the Code of Civil Procedure (CPC), 1908. But initially it was optional. In 2012 after the amendment of the Code of Civil Procedure, 1908 the provisions of ADR now have been made compulsory for every civil matters through the incorporation of sections 89A and 89C of the Civil Procedure (Amendment) Act, 2012.⁶ The court or other legal institutions have the obligation to uphold these rights and give the populace fair justice. Although Bangladesh's legal system theoretically ensures that everyone has access to justice, in practice the weaker segments of society are unable to do so. Alternative Dispute Resolution may thus be the sole practical means of ensuring and enforcing justice.⁷

2. Problem Statement

In Bangladesh, resolving disputes outside of the legal system is nothing new; non-judicial and native ways have been employed by the societies for a very long time. However, the primary issue is that Bangladesh has no unified ADR law. ADR procedures are covered by many laws in Bangladesh, and some well-known ADR processes, such as mediation, negotiation, conciliation, arbitration, and others, are also practised there.⁸ These alternative dispute resolution (ADR) methods are thought to have a lower propensity to exacerbate parental conflicts, a higher propensity to persuade the parties to settle their disputes amicably, preserve the parties' future relationship, and significantly reduce cost, delay, and energy loss. Following the significant benefits of ADR, nearly every country in the world has integrated ADR into its justice delivery system, paving the way for the development of universal access to justice. Different laws have established various ADR systems and dispute resolution processes. This is a challenge for the individual who serves as a neutral mediator or conciliator because different situations call for different protocols. The individuals involved in an ADR process can lack the necessary training

⁴ Robert Mnookin, 'Alternative Dispute Resolution' (1998) Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series.<<https://mail.google.com/mail/u/2/#inbox/FMfcgxwKjdzqBNtGbNhZQZCJVsmTtRZC?projector=1&messagePartId=0.1>>accessed 26 November 2020.

⁵ Naima Huq, ADR: Recent Changes in the Civil Process (Dhaka: Dhaka University Press, 2004), pp. 1-18 and supra note at 1 & 4.

⁶ Ettie Ward, Mandatory Court-Annexed Alternative Dispute Resolution in the United States Federal Courts: Panacea or Pandemic? St. John's Law Review, Vol. 81, 2007; Retrieved from SSRN: <http://ssrn.com/abstract=993220>.

⁷ Naser, Mostafa Mahmud. The Role of clinical legal education in increasing access to justice: The context of Bangladesh, commonwealth legal education conference, 2006, 54.

⁸ M. Mamun, A Thesis on the Practice of Alternative Dispute Resolution in the Family Courts of Bangladesh (Dhaka: University of Dhaka, 2008), pp. 14-41.

and expertise to effectively supervise and persuade the disputants to settle the disagreement. ADR decisions can occasionally be politically motivated and biased. The disadvantaged party does not receive proper justice as a result.

3. Literature Review

For the better understanding of the research some literature has been reviewed which includes that the Alternative Dispute Resolution mechanism has been effectively implemented in Bangladesh for easier access to justice. By setting up a Dispute Conciliation Board, ADR can be used to quickly and easily resolve lawsuits in municipal areas, as stated in the Conciliation of Disputes (Municipal Area) Ordinance, 2004. The aforementioned Board may summarily try the offences listed in the schedule of Chapter XXII of this Ordinance if any offence occurs in the municipal area and among the people of the municipal area. The Board will be comprised of the Chairman, two members chosen by each side, and a commissioner from the local municipality. However, this Board is solely qualified to render a decision regarding the recovery of fined property.

Additionally, provisions made by the Gram Adalat Ain, 2006 and the Birodh Mimangsha (Paura Elaka) Board Ain, 2004 exist to resolve a few minor criminal matters by negotiation.⁹ It is important to remember that only the victim, not the public prosecutor, may compound a case, and that compounding is not permitted in cases covered by specific laws.¹⁰

There are many views and opinions of many people regarding the effectiveness of ADR in Bangladesh. Mohammad Saidul Islam analysed that, ADR has successfully opened the door of justice equally for rich and poor which the ordinary legal system has failed to do. Through ADR the parties can reach to a harmonious settlement of the dispute which is opposed to the win-lose outcome of the legalistic and formalistic approach of litigation.

In ADR the parties select and control the process of it for smooth, correct, effective and efficacious remedy and they are under the liberty to appoint any expert in the subject matter of the dispute. Through ADR, avoiding formal process of the court, it is not impossible to settle more than one suit in a single sitting which not only saves the time and energy of the litigants but reduces the cost to a significant extent. Apart from ensuring these benefits it can provide social and psychological benefits to the parties. So a vast number of disputes are settled through ADR which enormously reduces the tremendous pressure on the current suits in the ordinary courts.¹¹

Dr. Sumaiya Khair addressed that, ADR activities have established viable alternatives for conflict resolution amongst citizens by providing them with the means of recourse, alternative to courts, for vindication of their rights. One of the significant impacts that have emerged from ADR interventions is the increased level of awareness and sensitivity about law and rights

⁹ Karim, R. (2015). Introduction of Alternative Dispute Resolution in Criminal Justice System of Bangladesh, *Journal of Asian and African Social Science and Humanities*, Vol. 1(2), 98- 114

¹⁰ Al-Mamun, M. A. (2013). Introduction of Alternative Dispute Resolution in Criminal Justice System of Bangladesh with special reference to Plea Bargaining, *The Chittagong University Journal of Law*, Vol. XVIII, 1-30.

¹¹ Mohammad Saidul Islam, 'Efficiency and Effectiveness of Alternative Dispute Resolution Schemes Towards the Promotion of Access to Justice in Bangladesh' (2011) 8, *IJUC STUDIES*<https://docs.google.com/document/d/1eBIvhFD1uryPnk3BDn2FBF3VPu_xVB_10BBLqCZ_Vg/edit> accessed 26 November 2020.

amongst citizens. Training imparted by legal NGOs to local level ADR committees provides an excellent opportunity for them to acquire knowledge of the legal rights and wrongs in respect of specific issues.

While beneficiaries may not exactly have become legal experts, they have certainly acquired substantial knowledge about specific legal issues that impinge on their daily lives. Most importantly, they are aware about the gaps between law, culture and practice and recognize the need to respect the law at all events. ADR programs have wrought changes in the attitudes of citizens in ways that enable them to take control of their own lives and make their own decisions.¹²

According to Md. Khairul Islam, the legal framework of ADR has developed in Bangladesh over the last few years and acquired a distinct position in the dispute resolution process. ADR mechanisms can now be applied in resolving a wide array of commercial disputes, family disputes and civil disputes, among others, thus easing access to justice.¹³

Md. Mominur Rahman stated that, ADR has proven to be extremely beneficial in resolving various legal conflicts in Bangladesh. These include commercial and industrial conflicts, professional liability claims, personal injury cases, divorces, and other family-related difficulties. The "all or nothing" mentality that Nowadays, it is thought that litigation should not be used to settle any form of conflict. Alternative dispute resolution is especially important for the poor, who are frequently denied access to justice because of their circumstances, as it "enables the impoverished to meet the better-off opponent on a level playing field to negotiate a settlement."¹⁴

According to Ridoan Karim, Alternative Conflict Resolution (ADR) has been developed as a legal tool for swift dispute resolution. Alternative dispute resolution is currently a common practice in nations like Bangladesh where the courts are overloaded with litigation. We need more effective tools to improve the current design of our criminal justice system because the law itself is a dynamic process. Alternative conflict resolution does, however, have some drawbacks, so we must execute it in a way that doesn't compromise our legal system. In order to use the mechanism successfully, it is crucial to incorporate alternative conflict resolution into our legal system in the right way.¹⁵

Considering the reactions and opinions on the effectiveness of ADR in Bangladesh, this process definitely serves as a forum at which parties have opportunity to sit and analyze the cause of

¹² Dr. Sumaiya Khair, 'Alternative Dispute Resolution: How It Works in Bangladesh' (2004) XV (1), The Dhaka University, Studies <[http://journal.library.du.ac.bd/index.php?journal=DULJ&page=article&op=viewFile&path\[=1430&path\[\]=1370#:~:text=Provisions%20for%20alternative%20dispute%20resolution,alternate%20means%20of%20settling%20disputes](http://journal.library.du.ac.bd/index.php?journal=DULJ&page=article&op=viewFile&path[=1430&path[]=1370#:~:text=Provisions%20for%20alternative%20dispute%20resolution,alternate%20means%20of%20settling%20disputes)> accessed 26 November 2020.

¹³ Md. Khairul Islam, 'Critical Review of the Court Based ADR in Bangladesh: Prospects and Challenges' (2015) 20, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) <<http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue12/Version-4/F0201244555.pdf>> accessed 26 November 2020.

¹⁴ Rahman, M. M. (n.d.). Access to Justice and ADR in Bangladesh: Institutional and Legal Frameworks. In <i>ASA University Review</i> (Vol. 9, Issue 2). www.dca.gov.uk

¹⁵ Karim, R. (2015). Introduction of ADR in Criminal Justice System of Bangladesh. *Journal of Asian and African Social Science and Humanities*, 1(2), 98–114.

their dispute and reach an amicable settlement. ADR plays a great role in encouragement of access to justice keeping aside all sorts of procedural and other difficulties. After including ADR mechanism in the Family Court, the Civil Court and Artha Rin Adalat, Bangladesh achieved magnificent success in this area. However, for establishing more success of ADR in Bangladesh, judges, lawyers, representatives and mediators regarding the practice of ADR needs motivation, training programs, sessions. The judges also need proper institutional assistance to be able to take an activist stand to completely make use of the court annexed ADR in Bangladesh. The gaps which are still left shall be fulfilled to make this procedure more effective for the betterment.

All these researches played a vital role in understanding the concept of ADR system in Bangladesh. But the issue that is missed out is the ADR system in South Asian Countries. This research aims to put light on this untouched topic by comparing the ADR system in Bangladesh with other South Asian countries.

4. ADR System in South Asia Countries

One of the specialized bodies of the South Asian Association for Regional Cooperation (SAARC), the SAARC Arbitration Council (SARCO), is made up of the following member states: the Federal Democratic Republic of Nepal, the Islamic Republic of Pakistan, the Democratic Socialist Republic of Sri Lanka, the Islamic Republic of Afghanistan, the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, and the Republic of the Maldives. It is an intergovernmental organization tasked with creating a legal framework for the settlement of commercial, industrial, trade, banking, investment, and other disputes that may be referred to it by the member states and their citizens within the region.¹⁶

4.1. Bangladesh

4.1.1. Amendments of Civil Procedure Code, 1908

Sections 89A and 89B of the Code of Civil Procedure, 1908, deal with the provision for mediation. The application for mediation may be submitted by both parties at any stage after filing the written statement that they will mediate the dispute after which the court would adjourn the proceeding for mediation. The Judge himself can mediate on the dispute under this section. The fee of the mediator shall be fixed by the parties and if the court mediates the dispute itself, the judge cannot claim any fee or charge for it. Within ten days after the order for mediation, both parties will serve notice in writing to the court on the progress of initiation for mediation and the mediation procedure will have to be completed within 60 days which can be extended to a further 30 days if necessary. If the mediation becomes successful, the mediator will draft an agreement on such terms and conditions as the parties have mutually agreed upon. The parties will sign on the established agreement after which the lawyers and representatives will then sign as witnesses. This agreement will be submitted to the court which will pass a decree. If the Judge mediates the dispute, he will also follow the same procedure as explained above. If the mediation procedure fails, the proceedings of the suit will start from the stage it has been stopped before mediation. If the mediation succeeds to adduce a statement, evidence or other statements made at the time of mediation, this can then be used at the time of trial of the suit.¹⁷ There are about 3.5 million land related cases awaiting disposal across the country and A World Bank survey reveals

¹⁶ “ADR System” how much pertinent to guarantee “of Law” in the Administration of Arbitration and Conciliation Process; A Critical Review (2020), <https://apsnews24.com/news/2992>> 25 May 2020.

¹⁷ The Code of Civil Procedure (Amendment) Act 2003, s 89A, 89B, 89C.

that most crimes and corruption in Bangladesh take place in land-related services.¹⁸ The justice seekers are facing harassment's amid waiting for disposal of their cases. In *PN Duda vs. P. Shiv Shankar and others*, the Indian Supreme Court stated that-“Justice cries in silence for long, far too long.” To remove the weakness of adversary system in Bangladesh, effective measures should be adopted to dispense justice as early as possible. Article 35(3) of our constitution provided for “Right to a speedy and public trial” So to ensure justice for all Alternative Dispute Resolution is the best possible solution in our country.¹⁹

4.1.2. The Artha Rin Adalat Act, 2003

According to section 21 and 22 of the Artha Rin Adalat Ain, 2003, there are two modes of the Alternative Dispute Resolution which have been introduced in the commercial conflicts in this act that are known as settlement conference and arbitration. Involving the ADR mechanism in such way surely enhances the investment in this sector.²⁰

4.1.3. The Arbitration Act, 2001

Arbitration in Bangladesh is governed by the Arbitration Act, 2001. This Act repealed both the Arbitration (Protocol and Convention) Act, 1937 and the Arbitration Act of 1940 and consolidates the domestic and international arbitration regime in Bangladesh. The Act provides that an arbitral tribunal may rule on its own jurisdiction that an arbitral tribunal will not be bound by the Code of Civil Procedure and Evidence Act of Bangladesh and that the arbitral tribunal shall follow the procedure to be agreed on by the parties. Disputes arising from contracts are usually settled through an arbitration in which these disputes are generally commercial in nature involving employment contracts, government contracts, contracts relating to business transactions, etc. The contracts must contain a clause, agreement or reference stating that the disputes will be resolved through an arbitration. As a result the arbitration must be conducted under the rules of the Arbitration Act 2001 and the rules of the Bangladesh Council for Arbitration. The arbitrations can take place where the parties choose or at the Bangladesh Council for Arbitration.²¹

4.1.4. 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 C.R.P.C shall not be applicable in village court and no party has right to engage any lawyer in proceeding of such court.²²

4.1.5. The Muslim Family Laws Ordinance, 1961

Muslim Family Laws Ordinance, 1961 (MFLO) provides instrument for reconciliation through Arbitration Council in case of polygamy, divorce and maintenance even though the Ordinance

¹⁸ Digitising country's land management by Shahiduzzaman Khan, available at : <http://www.Thefinancialexpress-bd.com/old/index.php?ref=MjBfMTBfMTBfMTNfMV8xXzE4NjQzMQ>

¹⁹ *PN Duda v. P. Shiv Shankar AIR*, 1988 S.C. 1208, 3 S.C.C. 167 (1988).

²⁰ The Artha Rin Adalat Act, 2003.

²¹ The Arbitration Act, 2001, Section 1-8.

²² The Village Court Act, 2006.

does not deliver any explanation of the arbitration process. The Arbitration Council under this Ordinance is basically formed by the Chairman and representatives of each of the parties to a dispute. Such Council enables the resolving of dispute related to –

- Polygamy mentioned in Section 6
- Talaq or dissolution of marriage mentioned in Section 7 and
- Maintenance mentioned in Section 9.²³

In the leading case, *Nelly Zamnan v. Giasuddin Khan (34 DLR (1982) 221)*, the court held that: By lapse of time and social development the very concept of husband's unilateral plea for forcible restitution of conjugal rights as against a wife unwilling to live with her husband has become outmoded and does not fit in with the accepted state and public principle and policy of equality of all men and women being citizens equal before law entitled to equal protection of law and to be treated only in accordance with law as guaranteed in Article 27 and 31 of The Constitution of Bangladesh.²⁴

4.1.6. The Bangladesh Labour Act, 2006

The practice of conciliation is compulsory in Bangladesh before resorting to any industrial action. The role of the conciliator is to suggest solutions that can help find a compromise between the workers and the management, but he cannot impose a solution. The success of conciliation depends on the willingness of the two sides to resolve their differences. If a settlement of the dispute is arrived at in the course of conciliation, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute. If the conciliation fails, the conciliator will try to persuade the parties to agree to refer the dispute to an Arbitrator for a settlement. If the parties do not agree to refer the dispute to an Arbitrator for a settlement, the Conciliator shall, within three days of the failure of the conciliation proceedings, give a certificate thereof to the parties. The conciliation proceedings may continue for more than thirty days if the parties agree. The Director of Labour may, at any time, proceed with the conciliation proceedings, withdraw the same from a conciliator or transfer the same to any other conciliator, after which the other provisions of this section shall apply thereto.²⁵

The practice of mediators and arbitrators is still in its youth in Bangladesh. There are not enough skilled and certified mediators and arbitrators, and the selection procedure for these people is still developing. In some cases, one party may have greater power or resources than the other, which can make it difficult to negotiate a fair outcome through ADR. ADR methods may involve the use of individuals who are unqualified or biased, which can lead to an unfair outcome.

4.2. India

In India, ADR has been recognized as a legitimate means of resolving disputes for more than 20 years, ever since the 1996 Arbitration and Conciliation Act was passed. One of several steps taken by the Indian government to promote ADR was the Commercial Courts Act of 2015, which permits the establishment of commercial courts and business divisions of high courts for

²³ The Muslim Family Laws Ordinance, 1961, s 6, 7, 9.

²⁴ *Nelly Zamnan v. Giasuddin Khan (34 DLR (1982) 221)*,

²⁵ The Bangladesh Labour Act, 2006, s 210 (5)(4)(8)(10)(11)(9)(18)

the speedy resolution of commercial disputes.²⁶ The Indian judiciary has also promoted the use of ADR procedures like arbitration and conciliation to settle disputes promptly and cheaply. India's legal framework for ADR is still being developed and is regularly criticized for being slow and ineffectual. The lack of openness and accountability in the ADR system has also drawn criticism. In India, ADR can be used to resolve a range of disputes, including those concerning work, family, and business. The use of ADR as a technique for resolving disputes has been vigorously acknowledged and pushed by the courts in India. For instance, the Indian Supreme Court has rendered a number of important decisions that have bolstered the acceptability of ADR in India.²⁷ In the case, *Food Corporation of India. V. Joginderpal*²⁸ arbitration must be straightforward, less technical, and more sensitive to the situation's actual reality while still upholding the principles of fairness and fair play.

In India, the opposing parties choose the mediators and arbitrators, and their responsibilities include facilitating conversations and issuing binding decisions.²⁹ One advantage of the ADR system in India is the existence of respected organizations that support it. The Indian government established numerous organizations, such as the Mumbai Centre for International Arbitration and the Indian Council of Arbitration, to promote and impose restrictions on ADR. By providing assistance and training to mediators and arbitrators, these organizations contribute to the creation of efficient ADR processes. However, Parliament believed that the Legal Services Authority Act of 1987 and the Arbitration and Conciliation Act of 1996 would not be sufficient to give the courts the authority to use ADR mechanisms. With that in mind, the Civil Procedure Code was amended in 1999 to incorporate the Malimath Committee's recommendations, which took effect on July 1, 2002. In addition to Section 89 being added, Sections 26, 27, 32, 60, 95, 96, 100-A, 115, and 148 were changed. Additionally, several orders in the first schedule of the Civil Procedure Code were changed, and Order X's Rules 1-A, 1-B, and 1-C were added.

There are advantages and disadvantages to the ADR systems in India. India has a more established ADR system with a strong legal and judicial system. The method, however, confronts difficulties like inefficiency and a lack of transparency. In India, the legal framework for ADR is still being developed and is usually criticized for being slow and ineffective

4.3. Pakistan

4.3.1. The country's Constitution recognizes ADR as a method of settling conflicts between federating units. The following articles of the constitution demonstrate this.³⁰

1. Articles 153–154 of Pakistan's 1973 Constitution (Council of Common Interest)
2. Article 156 of Pakistan's 1973 Constitution (National Economic Council)
3. Article 160 of Pakistan's 1973 Constitution (National Finance Commission)
4. Original jurisdiction in cases of conflict between the federal or provincial governments is outlined in Article 184 of the Pakistani Constitution of 1973.

²⁶ The Commercial Courts Act of 2015, s 12A.

²⁷ Legal challenges of ADR in India and Bangladesh: 'A Comparison' (2023) thedailystar.net/law-our-rights/news/legal-challenges-adr-india-and-bangladesh-comparison-3249936> 10 February 2023.

²⁸ *Food Corporation of India v. Joginderpal Mohinderpal*, 2 S.C.C. 347 (1989).

²⁹ Arbitration and Conciliation Act, 1996, s 11.

³⁰ Constitution of Pakistan

4.3.2. The following is a list of the relevant laws (or specific clauses) that deal with ADR:

1. The summary trial requirements of Chapter XXII of the Code of Criminal Procedure, 1898.
2. The Family Courts Act of 1964, Sections 10 and 12.
3. A number of Pakistani statutes, including the Societies Act and the Companies Ordinance, 1984 (Section 283), also include arbitration.
4. In accordance with Sections 102 to 106 of the Local Government Ordinance of 2001, Union Councils have access to the Musalihat Anjuman institution, which is a conciliation forum.
5. March 21, 1908: S. 89-A of the Civil Procedure Code, 1908 (Act No. V of 1908).
6. The Arbitration (Protocol and Convention) Act of 1937 (ACT VI of 1937), which was enacted on March 4, 1937.
7. The Arbitration Act of 1940, 11 March 1940 (X OF 1940).
8. Ordinance of 2002 on Minor Offences and Small Claims.

ADR (Arbitration) is currently done in Pakistan in two ways: traditionally and through public bodies. The term "formal" alludes to the conventional, centuries-old system, which included the Panchayat (in Punjab) and Jirga (in NWFP and Balochistan) and was good for straightforward situations but easily captured by the elite when it came to status quo concerns. The latter includes ADR associated with government entities, such as arbitration councils, union councils, and conciliation courts. Arbitration councils were only allowed to hear cases involving divorce, second marriage authorization, and spousal maintenance. In *Hitachi Limited v. Rupali Polyester's and Others*³¹, the Supreme Court observed that the agreement which provided for arbitration under the rules of Conciliation and Arbitration of International Chamber of Commerce would not divest the jurisdiction of courts of Pakistan if otherwise it was vested in them. As for the enforcement of a foreign arbitral award, certain statutory requirements were pronounced to be necessary. Under the Muslim Family Law Ordinance of 1961, union councils served as the arbitration venue and handled a limited number of family-related matters (via elected councillors). The Conciliation Courts Ordinance of 1961 established conciliation courts and granted them limited civil, criminal, and financial authority. The majority of the aforementioned initiatives were rendered ineffective because of the frequent dissolution of local councils, which played a significant role in various types of ADR, and the lack of any well-defined strategy for the capacity building of the members of these bodies.³²

There are enough horrifying tales of how long it took for courts to designate arbitrators or for arbitration awards to be filed. The payment of damages from an arbitration-resolved lawsuit has been delayed for years because it has taken so long for awards to be carried out, trapping billions in funds. Every mediation that has been held has been concluded under the dreadful assumption that contesting the mediated settlement in court would drag the matter out for an indefinite amount of time.

4.4. Bhutan

Bhutan, the last remaining Buddhist monarchy and one of the world's most adamantly independent nations, is located in the Himalayas between China and India. The Bhutan ADR Act

³¹ *Hitachi Limited v. Rupali Polyester's and others*, 1998 SCMR 1618.

³² Proceedings of National Judicial (Policy Making) Committee (www.ljcp.gov.pk/njc/introduction)

of 2013 consists of 13 chapters and altogether 182 sections. In Bhutan Aggrieved party (complainant) files a notice of arbitration. Parties select the arbitrators. Arbitrators can be from any background (legal, technical). Arbitral award issued as though it were a regular court order in the locality with jurisdiction over the party against whom the award was issued. Arbitral tribunal issues written award and short period for parties to request corrections or amendments to arbitral award. An appeal can also be made against the arbitral award within set period of time.³³

Although the Bhutan Alternative Dispute Resolution Centre (BADRC) stated that they were not aware of any instances (out of a total of 117 arbitrated disputes) in which the courts had forced parties to violate the arbitration's confidentiality, there is no absolute guarantee of confidentiality in Bhutanese arbitrations. These requirements are generally not contentious, but it must be recognized that neither the parties nor the arbitrators have the power to depart from them. The other provisions of Chapter VI are a set of procedural standards by default, each of which may be modified by the parties if they include different standards in their signed arbitration agreement. In *Insignia Technology Co. Ltd. v. Alstom Technology Ltd.* case Alstom Technology Limited (Alstom) (defendant) and Insignia Technology Co., Ltd. (Insignia) (plaintiff) entered into a licensing agreement giving Insignia the right to use certain Alstom technology in China. The agreement contained an arbitration clause stating that disputes were to be resolved by arbitration at the Singapore International Arbitration Centre (SIAC) pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC) in effect at the time of arbitration.³⁴

4.5. Maldives

An impartial Maldives arbitrator is chosen and given the authority to reach a verdict between parties who have complaints or disputes in the Maldives arbitration process. The Maldives Arbitrator hears each party's argument and supporting evidence.³⁵ The Maldives Arbitrator will reward the party with the strongest case after carefully examining all pertinent data.³⁶ Depending on the provisions of the arbitration clause agreement, the results of the Maldives arbitration may be binding or not. Binding arbitration awards carry the same weight as court rulings. A court cannot review the Maldives Arbitrator's verdict, and the judgement of the Maldives Arbitrator cannot be appealed. Maldives arbitration is regarded as a less expensive and speedier alternative to court litigation for resolving disputes. Maldives Arbitration can settle disagreements in private. In most cases, an arbitration clause is incorporated into a contract between the parties that specifies Maldivian arbitration as opposed to Maldivian court resolution of disputes. An attorney should study the arbitration clause. Both parties may mutually choose to have their disagreement settled by Maldives arbitration if there is no arbitration clause in the contract. Conducting the Maldives Arbitration is a skilled, experienced professional.³⁷ In *Maldives Airports Co Ltd & Anor v. GMR Male International Airport Pte Ltd*, A contractual right which can and is ordinarily preserved by way of an order for specific performance or an injunction (which can also be characterised as a right which, if lost, cannot be adequately compensated by an award of damages) is considered an “asset” which may be preserved by interim order of the

³³ Chapters III - XI of the Bhutan ADR Act of 2013.

³⁴ *Insignia Technology Co Ltd v. Alstom Technology Ltd*, 2009 S.G.C.A. 24 (2009).

³⁵ Arbitration Act of Maldives, 2013, s 53.

³⁶ Arbitration Act of Maldives, 2013, s 64.

³⁷ Arbitration Act of Maldives, 2013, s 22.

court under Section 12A (4) of the International Arbitration Act (“IAA”).³⁸ Despite the significance of ADR, many Maldivian lawyers are unfamiliar with it. As a result, an adversarial system still dominates in the Maldives when ADR is contrasted with it. It is crucial to note that ADR frequently results in misunderstanding and confusion among the general public, who typically believe that ADR is a less effective type of litigation rather than recognizing it as a superior option to litigation. The future and success of ADR proceedings in the nation are severely hampered by a lack of expertise. To effectively manage the caseload, this field must have a sufficient number of qualified and trained specialists.

4.6. Nepal

In Nepal, there are numerous alternatives to traditional dispute settlement processes. The most popular techniques include negotiation, arbitration, and mediation.

4.6.1. Mediation

Mediation is a voluntary process in which a third person who is impartial assists the parties in resolving their differences. The mediator does not have the authority to make decisions; instead, they help the parties communicate and explore their choices.

4.6.2. Arbitration

Arbitration is a more formal process in which the disagreement is resolved by a neutral third party known as an arbitrator. The parties agree to abide by the decision, which has legal force and effect.

In *Aashasvi Shamsher JBR v. Vaiwers Developers Pvt. Ltd.* case, The Court stated that an Arbitration Agreement is deemed to be constituted in the following situations: agreement between the parties to resolve dispute through arbitration as per Section 3(a) of the Arbitration Act, 2055 within the contract, or through a separate agreement, or when parties exchange written communications deciding to submit the dispute to arbitration, or when Respondent submits its Statement of Defence in response to Statement of Claim submitted by Claimant without protesting arbitration as the dispute settlement mechanism. The Honourable Supreme Court also held that in the absence of the above-mentioned conditions, an agreement between parties to resolve any dispute themselves cannot be construed to mean that the parties had an intention to resolve the dispute through arbitration.³⁹

4.6.3. Negotiation

Through debate and compromise, the parties to a disagreement try to negotiate a settlement through negotiation. In conjunction with other ADR techniques, negotiation is frequently utilized. According to the Arbitration Act, 2055 (1999) which is discussed about the District and High Court, dispute, counter-claim, rejoinder, arbitrator, and matters referred to arbitration, as well as the appointment and disqualification of arbitrators, office, rules and language to be used in arbitration, and provisions relating to the rights and obligations of arbitrators.⁴⁰ Alternative dispute resolution techniques have a number of advantages, but they also face obstacles in Nepal.

³⁸ *Maldives Airports Co Ltd v. GMR Malé International Airport Pte Ltd*, 2013 S.L.R.2 449, 2013 S.G.C.A. 16 (2013).

³⁹ *Yashasvi Shamsher JBR v. Vaiwers Developers Pvt. Ltd.*, 2074.

⁴⁰ The Arbitration Act of Nepal, 2055 (1999).

First off, there is a dearth of knowledge and comprehension of ADR techniques in Nepal. It may be challenging for parties to understand their options as a result.⁴¹ The second issue is that Nepal lacks qualified ADR specialists. Despite the fact that there are some mediators and arbitrators on hand, the number is still quite small when compared to other nations. This might cause disputes to take longer to resolve and make it challenging for parties to obtain skilled professionals to assist them.⁴²

4.7. Sri Lanka

The practice of mediation has roots in the pre-colonial rule of the Ceylon Kings. By promoting amicable dispute resolution, the Gamsbhawa (Village Council) was the organization responsible for maintaining peace and harmony in the village.

- The Conciliation Board Act was passed in 1958 and repealed in 1977.
- The Sri Lanka Mediation Board Act was adopted in 1988.⁴³
- Sri Lanka was the first SAARC nation to restructure its arbitration laws in 1995 on the UNCITRAL model.

The following actions have been taken by Sri Lanka in relation to arbitration and mediation.

4.7.1. Arbitration

The most recent piece of legislation on the subject is the Arbitration Act, No. 11 of 1995, which revised the pre-existing arbitration laws in light of the Model Arbitration Law by UNCITRAL and established a system that recognizes party autonomy without judicial intervention, save for a very small number of exceptional cases. The need for prompt settlement of business conflicts led to the adoption of the Arbitration Act. The UNCITRAL Model Law is closely followed by the Sri Lanka Act. However, some modifications or additions to the regulations outlined in the Model Law have been deemed necessary.⁴⁴ In *Italtrade International USA L.L.C. v. Sri Lanka Cement Corp* case, the matter was arbitrated in Sri-Lanka, pursuant to Sri-Lanka law, in accordance with the rule of the international chamber of commerce. In August 1997, the arbitrator found in favour of Italtrade finding that SLCC had repudiated the contract and was therefore not entitled to the performance bond. Damages were awarded for the wrongful encashment of the performance bond and for lost profits under the 2 contracts. An action was filed in the court of Sri-Lanka for the declaratory judgement and for damages against PCCL and others pursuant to the convention on recognition and enforcement of foreign arbitral awards seeking a judgement declaring the arbitration award to be valid and enforceable.⁴⁵

4.7.2 Mediation

Parliament approved the Mediation Boards Act No. 72 of 1998 in 1998. The Act establishes the legal foundation for institutionalizing mediation boards, which have the authority to mediate all

⁴¹ Alternative Dispute Resolution in Nepal: A Comprehensive Guide (2023), <https://www.nepallawyer.com/blog/alternative-dispute-resolution-in-nepal-a-comprehensive-guide>> 7 April 2023.

⁴² Ibid.

⁴³ Najda Alexander, From communities to corporations: the growth of mediation in Sri Lanka. The ADR Bulletin Vol. 4, No. 1, April/May 2001.

⁴⁴ www.vakilno1.com/saarclaw/srilanka/arbitration_law_in_sri_lanka.htm

⁴⁵ *Italtrade Int'l, USA, LLC v. Sri Lanka Cement Corp.*, No. Civ. A., 2002 W.L. 59399 (2002).

disputes that are brought to them by disputing parties and, in some cases, by courts. The boards resolve several problems that are related to community disputes. However, banks are now increasingly referring to debt-related difficulties.⁴⁶

5. Comparison in South Asian Countries

(1) Legal Framework	
Bangladesh	The government of Bangladesh has made efforts to control the ADR system, which is still under development, by establishing laws like the 2001 Arbitration Act and by modifying the 1908 Code of Civil Procedure.
India	India's legal framework for ADR is still being developed and is regularly criticized for being slow and ineffectual. The lack of openness and accountability in the ADR system has also drawn criticism.
Pakistan	In Pakistan, arbitration is governed by the Arbitration Act, 1940. Because it was a province of the British Empire, Pakistan and undivided India were regulated by the Arbitration Act (1940), which was based on the English Arbitration Act (1936).
Nepal	The arbitration process of Nepal is defined by the Arbitration Act, 1999. These terms include District and High Court, dispute, counter-claim, rejoinder, arbitrator, and matters referred to arbitration, as well as the appointment and disqualification of arbitrators, office, rules and language to be used in arbitration, and provisions relating to the rights and obligations of arbitrators.
Maldives	The Maldives International Arbitration Center (MIAC), which was formed in accordance with the Maldives Arbitration Act, has just started operating. The MIAC has eminent arbitrators with years of expertise and a wide range of educational backgrounds.
Sri-Lanka	Arbitration Act, No. 11 of 1995 and Mediation Boards Act No. 72 of 1998 are established in Sri-Lanka for settle the dispute through ADR system.
Bhutan	The Bhutan ADR Act of 2013 consists of 13 chapters and altogether 182 sections are established for settle the dispute.

(2) Categories of Issues Eligible for ADR	
Bangladesh	The use of ADR to resolve commercial disputes has received significant attention in Bangladesh. ADR may also use in Bangladesh to settle the issues relating to family, employment.
India	ADR may be used in India to settle a variety of issues, including ones involving business, family, and employment.

⁴⁶ <http://www.justiceministry.gov.lk>

Pakistan	Pakistan Arbitration Act. Despite dealing with domestic arbitration procedures and governing the recognition and execution of domestic judgements, the UNCITRAL Model Law is not the basis for the 1940 Arbitration Act. Pakistan has ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards in order to acknowledge this trend. The promulgation of an ordinance was required to comply with this treaty.
Nepal	The current Arbitration Act has benefited the business community by outlining the necessary legal requirements.
Maldives	Maldives Arbitration is a dispute resolution process in which a neutral Maldives Arbitrator is selected and empowered to make a decision between parties having complaints or dispute. The Maldives Arbitrator settle the disputes related to business, employment etc.
Sri-Lanka	When it comes to implementing reforms to make it easier and more efficient for businesses to operate, to pay taxes and charges, and to handle litigation, Sri Lanka has lagged behind many other nations. The global trend in conflict resolution is away from starting legal proceedings in court and toward using arbitration procedures. Court proceedings are sometimes viewed as being expensive, dull, time-consuming, and requiring an excessive number of appeals.
Bhutan	ADR may be used in Bhutan to settle a variety of issues, including ones involving civil and commercial disputes, family and environmental issues.

(3) Degree of Judicial Support	
India	The courts in India have aggressively recognized and promoted the use of ADR as a method of conflict resolution. For instance, the Indian Supreme Court has handed down several significant rulings that have contributed to the legitimacy of ADR in India.
Bangladesh	The judiciary in Bangladesh has not yet shown the same degree of support for ADR as the courts in India.
Pakistan	The arbitrator must put the decision in writing and sign it. The majority opinion wins out if there are multiple arbitrators. The Act itself does not mandate that the arbitrator justify the decision. The court's ability to intervene with the award is somewhat constrained when it is a non-speaking award.
Nepal	The Nepal Act states that, unless the agreement specifies otherwise, Nepal law shall be the applicable substantive law. However, the arbitrator must resolve the conflict in accordance with "the conditions specified in the concerned contract," while also taking into account the relevant commercial usages.
Maldives	The Maldives has not yet shown the same degree of support for ADR as the courts of other countries.
Sri-Lanka	The Arbitral Award is not automatically given the status of a civil decree under the Sri Lanka Arbitration Act. To have it approved as a court order for execution, the parties must request the court's assistance.

(4) Functions of Arbitrators and Mediators	
Bangladesh	In Bangladesh, the use of mediators and arbitrators is still relatively new. The selection process for mediators and arbitrators is still being developed, and there are not enough trained professionals in these roles.
India	In India, mediators and arbitrators are chosen by the disputing parties, and their duties include assisting in negotiations and rendering legally obligatory rulings.
Pakistan	The arbitrator must uphold the fundamentals of natural justice; otherwise, the arbitrator's decision may be thrown out for improper behavior. If there is no arbitration agreement, the award must be announced within four months of the hearing's start date, whichever comes first. The court may, however, extend the deadline in specific situations.
Nepal	According to the Nepal Act, a party may appeal to the appellate court for the appointment of three arbitrators if the agreement is silent about the appointment of arbitrators or if no arbitrator can be selected in accordance with the agreement. Arbitrator and mediator help the parties communicate and explore their choices.
Sri-Lanka	The selection of the number of arbitrators is left to the parties. However, if the number is even, the arbitrators will jointly choose an "additional arbitrator" who will serve as the Chairman. If the parties are unable to agree on a number, the appointment process will be decided by three parties. In the absence of such agreement, the High Court may appoint the candidate. The High Court has the authority to select someone if the agreed-upon process fails.
Bhutan	Parties select the arbitrators. Arbitrators can be from any background (legal, technical). They give the arbitral award in written.
Maldives	The Maldives Arbitrator hears each party's argument and supporting evidence. The Maldives Arbitrator will reward the party with the strongest case after carefully examining all pertinent data.

6. Summary of Findings

1. Unequal Bargaining Power

The courts are a preferable option for a weak party when one side is able to dominate the other, as in employment and divorce cases.

2. Lack of Legal Experience

A mediator or arbitrator is unlikely to have the same level of legal expertise and understanding as a judge when a case involves complex legal issues.

3. There is no System of Precedent

So it is difficult to predict how an ADR-mediated dispute will turn out.

4. Enforceability: Since most ADR procedures lack legal authority, it might be challenging to uphold any judgement.

5. A Court action may still be required

If using ADR is unsuccessful in resolving the parties' dispute, legal action may still be necessary. When compared to initially bringing an issue before the courts directly, this raises costs and delays.

7. Recommendation

1. The court should give equal power to both parties.
2. Separate skilled and trained mediators and arbitrators should be appointed for performing arbitration and mediations.
3. There should be a system of precedent to settle the dispute through ADR system.
4. For the performance of the activities of ADR a separate institutional framework should be developed and equipped with adequate logistics and the award through arbitration or mediation should be enforceable.
5. Establishment of separate mediation courts, for both civil and criminal matters, with jurisdictions is essential for the success of ADR. Separate code can be enacted for the successful ADR in Bangladesh so that ADR is successful in resolving the parties' dispute.
6. Additionally there are more recommendation for the successful ADR system including, Family Court Model of Pre-trial hearing should be inserted in all civil suits.⁴⁷
7. 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.
8. The judiciary both civil and criminal may play an important role towards the effectiveness of the ADR.
9. In criminal cases ADR is applied only in some C.R Cases but it needs to extend in some G.R Cases also.
10. The fee of the conciliators, mediators and arbitrators for disposing cases should be fixed by the Code.
11. A Statutory body should be incorporated for formulating rules, planning and monitoring the whole ADR system.⁴⁸
12. Positive impressions should be increased among the lawyers regarding ADR.
13. Corruptions should be removed from the ADR schemes.

8. Conclusion

In Bangladesh, the ADR process has been a very effective and notable development for alternative conflict resolution. The impartiality, integrity, and legitimacy of the ADR procedures are ensured when a dispute is resolved amicably while saving the litigants' money and time. The Family Court and some portions of the Code of Civil Procedure were developed for alternative conflict resolution. The impartiality, integrity, and legitimacy of the ADR procedures are ensured when a dispute is resolved amicably while saving the litigants' money and time. The Family Court and some portions of the Code of Civil Procedure (1908) now contain mandatory ADR provisions, which have made it possible to give the people equitable justice. All individuals,

⁴⁷ Rahman, M. M. (n.d.). Access to Justice and ADR in Bangladesh: Institutional and Legal Frameworks. In *ASA University Review* (Vol. 9, Issue 2). www.dca.gov.uk.

⁴⁸ Islam, S., & Sultana, R. (2019). The effectiveness of alternative dispute resolution in Bangladesh: A critical analysis View project. In *International Journal of Multidisciplinary Research and Development* www.allsubjectjournal.com (Vol. 6). www.allsubjectjournal.com.

especially those who belong to underprivileged, illiterate, and poor groups, now have the option to access justice thanks to the recent incorporation of ADR provisions in various instances in Bangladesh. Through ADR, the Civil Court, the Family Court, and Artha Rin Adalat have now had tremendous success in their respective domains. As a result of recognizing the value and outstanding effectiveness of ADR, the Bangladeshi government has also implemented ADR mechanisms inside the criminal justice system. This article demonstrates the efficiency of ADR procedures and the effective development of ADR in Bangladesh. In light of the issues discussed in this article, it may therefore be concluded that ADR has a substantial preface for improving justice by avoiding many procedural and other complications.

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