

**SEMINAR PAPER
ON**

INSTITUTIONALIZING ALTERNATIVE DISPUTE RESOLUTION (ADR)

IN THE JUSTICE SYSTEM OF BANGLADESH



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**126th ADVANCED COURSE ON ADMINISTRATION & DEVELOPMENT
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CERTIFICATE

This is to certify that the seminar paper entitled '**Institutionalizing Alternative Dispute Resolution (ADR) in the Justice System of Bangladesh**' has been prepared by Musharrat Jebin, Deputy Secretary, Law Advisor, Food Directorate, Ministry of Food, who is a participant of 126th Advanced Course on Administration and Development (ACAD) held at Bangladesh Public Administration Training Centre (BPATC), Savar, Dhaka. The paper has been prepared under my direct supervision and guidance accomplishing all the activities satisfactorily. The quality of the paper is above satisfaction to me and the course management can accept the paper as a fulfillment of the course.

Date: 08.09.2019

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Abstract

The study based on the alternative dispute resolution which is treating as a special form of dispute resolution. It critically annualize the whole system of court based ADR in BD. Nevertheless, the research doesn't tell that ADR is better than litigation. It, in fact shows how the courts are modifying ADR and how ADR is transforming in the justice system. The study reflects fundamental laws relating to court based ADR especially in civil manners, family maters revenue suits. The study delimited the impact of incorporation of ADR in solution of civil cases by analyzing secondary data. It look into the feasibility of introducing any change on the present ADR framework to develop the existing court based ADR system. The study put an end by finding out the challenges of court based ADR.

Keyword

ADR, Village courts, Social justice, Legal aid, Government of Bangladesh.

1. Introduction

Alternative dispute resolution (ADR) has gained immense popularity in the last decade of 20th century in the justice system of the developed country around the world. The court cases usually take a long time at every stage of trial. Almost all countries of the common law system have been facing this problem of delay and excessive expenses in disposal of cases. The ADR is not formal, confidential, speedy and cost effective. A recent report of the United Nations Development Program (UNDP) on Bangladesh gives a finding that the elderly people of village settle 60-70% of petty disputes between the villagers who dare not approach the formal legal system for fear of delay and expenses. The purpose of institutionalizing ADR is neither to substitute consensual system instead of adversarial system nor to abolish or discourage informal mediation outside the court, but to make ADR a part and parcel of the formal judicial system so that people can get justice from the formal justice system easily and with less expense.

Though Bangladesh has long tradition of established legal and judicial system, the system has failed to meet the needs of the litigant people. Gradually the litigant people seem to have been losing confidence upon the judiciary there then needs are arising some efficient mechanism to deliver justice. Moreover the constitution of Bangladesh encourages ADR. Though ADR in the form of arbitration for settling commercial disputes has been running throughout the world for several countries, it emerged as a modern dispute resolution system in the mid 1980's first in the United States and Canada, since then ADR has experience steady growth in the USA, Canada and other developed countries around the world.

In Bangladesh, though ADR was incorporated in the family course at 1985, it wasn't practiced widely till 2000. To make the ADR procedure effective in Bangladesh it is necessary to remodel the whole ADR process, because the systems are totally different in the developed countries, where the mediation processes become successful. So to institutionalize ADR system effectively it is the high time to rethink about this matter giving highest emphasize.

The historical perspective consents that, the institutional landscape of Bangladeshi local justice is outrageous as it comprises the traditional process of shalish, a longstanding and impressive civil society efforts to lessen the encumbrance of the formal judiciary through mediation.

The current trial system in formal court in most of the country including Bangladesh is highly cumbersome and requires too much time to execute as huge number of cases is pending in the formal court¹. As a substitute of this problem, But in real life many instances arises which requires deep interrogation and investigation as well as legal binding and obligation. The Shalish is the oldest dispute resolution practice in rural Bangladesh. Public teasing practices, often unpunished, by male individuals and groups are widespread in rural Bangladesh. Women and girls are in the majority of cases not able to take proper action against male-generated provocations or physical approaches. Psychological subordination or inhibition in the majority of cases hinders women to protect and defend themselves. It can be assumed that some cases of deliberate violence which happened in the villages under analysis have not been reported because considered to be personal and capable of giving rise to scandals. We should not forget that there are also forms of psychological violence, whose repercussions can be as severe are those originated by physical violence. Physical violence can originate from an escalating quarrel or occur as a self-defensive reaction or as a response to a provocation. This seems to be the case in most conflicts involving physical clashes. A quarrel/discussion in a public place degenerating into a forceful clash is the typical scenario of violence. Often neighbors or passers-by intervene either assisting one party or trying to mitigate the clash.

The judicial system of Bangladesh has long tradition of established legal & judicial system; the system has failed to meet the needs of the litigant people in the changed national & global reality for its delay in disposal of cases & excessive expenses in litigation. To minimize the delay & sufferings in the courts the government has taken a lot of steps but all these steps could not bring expected pace in reducing the back log of cases. Though this scenario is prevalent both in higher & subordinate judiciary, this research will concentrate only on the subordinate judiciary. This research will also give special emphasize on village courts because the litigant people have no confidence upon the village courts. As a result they come before the civil or criminal courts for even tiny disputes incurring expenses & unpredictability of results.

The village courts Act of 2006, which is replaced and updated the village courts Act of 1976, provides for the establishment of a village court in every Union Parishad. As per the Act, village court is comprised of a panel of 5:

the UP chairperson ; to other UP council members one of whom is chosen by each party in the dispute; and then two additional citizens who are also chosen by the parties respectively. The courts have jurisdictions over civil disputes valuing up to 25000 taka. They also have jurisdiction over some crimes, including assault and theft, though they do not have the power to find or imprison; rather they can grant simple injunctions and award compensations up to 25000 taka. The village court can tender a judicious show casing role so as to bridge gap between Bangladesh's informal and formal justice institutions to provide a window for fair arbitration process to ensure human security in rural Bangladesh. As we know, without enforcement policy framework is meaningless exercises that will result in top down solution imposing floated up solutions. Therefore, level of enforcement of legislative obligations as well as proper functioning village court by the concerned local government institution (Union Parishad) would be unveiled with this endeavor. This study thus aims to recognize the collective efforts of the government of Bangladesh. In bringing peace and stability in the society by coming across prevailing conflicts

2. Literature Overview

For the purpose of this research I have studied a number of official and unofficial records, books, articles, reports, manuscripts and other publications on ADR, Justice System and related topics. But no literature with specific focus on industrializing ADR was found. Moreover, the idea of ADR to reduce the litigation is very new in Bangladesh. Though in some developed countries like USA, UK, Australia and Canada a number of studies held, but those works are not helping Bangladesh in developing a policy for institutionalizing ADR. Recently, to reform the justice system of Bangladesh, the legal and judicial capacity building project is working in some district courts, but it has no specific program institutionalizing ADR. In that context, it can be said that the research will be done on a virgin field. However brief reviews of related literatures are discussed below:

Sattar (2007)

The author in his study report titled “Existing ADR frame work and practice in Bangladesh” rapid assessment discussed the existing area frame work and practice in Bangladesh, perception awareness and knowledge of ADR among the litigant people of Bangladesh. He also pointed out the strength and weakness of ADR system in Bangladesh and suggested policy guideline for an effective ADR system but he didn’t develop any model of ADR for Bangladesh.

Khan (2007)

The writer in his book titled “An introduction to alternative dispute resolution” discussed the term ADR its brief history of development and some advantages and disadvantages of ADR. However this book is an elementary one and it is not based on any field study.

Sridhar (2006)

The writer in his book titled “Alternative dispute resolution-negotiation and mediation” discussed the necessity for introducing ADR in the justice system.

3 .Objectives of the Study

- ☐ To illustrate institutional strength of Village Court and the evolvement of the standard practice over time as dispute resolution facilitates upholding the spirit of social justice.
- ☐ To explore the concept of ADR in the modern world & to see the traditional ADR system in Bangladesh.
- ☐ To examine the laws relating to ADR under the legal system in Bangladesh.
- ☐ To identify different causes that hinder to institutionalize the ADR system in Bangladesh.
- ☐ To develop a model of ADR for Bangladesh considering present judiciary & ADR systems reviewing with the ADR systems operating in different countries in the world.

4. Research Questions

This research addresses two research questions: How does legal framework of the government of Bangladesh contribute towards institutionalization of dispute resolution approach? And does ADR through village Court of the local government institution play its due role to safeguard fair play and social justice in rural Bangladesh?

Some of the sub-questions derived from the main research questions are as follows:

1. Whether the ADR system would be an effective mechanism in decreasing the backlog of cases in Bangladesh?
2. What are the procedures village court follow to ensure fair play and social justice in resolving?

5. Conceptual Frameworks

Alternative Dispute Resolution (ADR) has been traditionally seen as a process of dispute settlement outside the formal judicial system where the parties represent themselves personally or through their representatives and try to resolve the dispute through a process of mutual compromise. It is generally non –adversarial method of dispute resolution that is used instead of litigation. ADR is not only an alternative method but it gives wider range of alternative solutions comparing with formal litigation. ADR includes Mediation, Arbitration, and Conciliation& Negotiation etc. There are some hybrid processes of ADR like Mini-Trial, Early neutral evaluation, Summery Jury trial, Expert Determination, Private trial, Mediation-arbitration (Med-Arb) and first track Arbitration etc.

6. Rationale of the Study

In the above discussion, it is observed that the number of judges working in the subordinate Judiciary is not sufficient enough in disposing the rapidly increasing pending cases. The total number of judges in subordinate judiciary is approximately 1800. It is needed at least to double the strength of judges to bring the pending cases in a reasonable stage within 10 years but is not possible to recruit such huge number of judges for a developing country like Bangladesh. Moreover, the present system and the process of delivering justice is not capable enough to meet the upcoming challenges and expectation of the nation. So, it is required to find alternative ways for disposing of the pending cases in the court. ADR is such a procedure that is incorporated by many countries of the world to reduce the caseload of their courts. ADR is not merely a mechanism to dispose of cases but it has some positive advantages over a lawsuit.

7. Methodology

The study has been decorated with content analysis. Initially an extensive library work has been undertaken in order to collect relevant materials. Secondary data sources has been the Local Government Division of the Ministry of Local Government, Office of the Deputy Commissioner, Upazila Nirbahi Officer, Union Parishad Secretariat, Donor Agencies and national and international NGOs and legal aid services specialized in Dispute Resolution functions. In addition, very selective Key informant's interviews has been conducted over skype/email. Key informants has been the concerned officials of the Local Government Division in the Ministry of Local Government, Deputy Commissioner, Upazila Nirbahi Officer, Union Parishad Chairman, DFID, UNDP, EU, SDC, Civil Society Organizations and local NGOs and experts.

8. Data used and sources

Both primary and secondary data has been used in this study. Primary data sources were the study respondent observation experience, case laws, Acts etc. secondary sources were different books, journals, documents of different government and non-governmental institutes of different countries, research report and internet etc.

The respondents of this study were the judges, lawyers, litigant people, court staffs, NGO officials, court related journals.

9. MAJOR FINDINGS & ANALYSIS

Fact1: The pending cases in High Court Division and Appellate Division: The total number of pending cases in High court and appellate division can be reduced through ADR.

Fact2: Financial prospects: The total pending cases in lower court are resolved with less money also the costs of court, advocate fees and other expenditures are very low. So, here the litigant can save their money.

Fact3: Satisfaction of people: Through ADR both the parties of the suit have control over the result, that result brings satisfaction for both the parties. It also research-establishes peace among the parties that affects our society in bringing money.

Fact 4: Village courts study practices: In local judicial system there the parties having a dispute may work together with the mediator to resolve the dispute and agree to the remedy that makes sense to them, rather than fight against each other.

Fact 5: Biasness: In the ADR process the parties may have more chances to tell their side of the story than in court and may have more control over the outcome.

Fact 6: Fair verdict as a Chair or village court: In a lawsuit the parties to the suit sometimes want to get the result of the suit in their favor by the way of unfair or corruption often with the help of court staffs and advocates but in the ADR process the whole proceeding of the court is transparent, so there is no scope of corruption here for the parties.

Fact 7: Challenges facing to impartiality: The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.

Fact 8: How local government division supports to overcome challenges that village court facing: In the ADR process the parties do not have to attend in the court every day for a long time. As ADR can be speedier, money saving and easier on the nerves, so the parties normally cooperate in the proceeding.

10. Statistical Results

1. Government Law Support Curriculum Information Statistics 2018-19 Economic Year

Name of the service organization	Legal counseling service	Assist in litigation	Alternative dispute resolution service	Total (person)	Compensation
64 District legal aid office	16090	32970	8115	57175	82502270
Supreme Court legal aid office	5077	199		5276	
Government legal assistance helpline Toll free-16430	33979			33979	
Dhaka & Chattogram workers legal aid cell	3429	412	5355	4376	8906205
Total				100806	91408475

Government Law Support Curriculum Information Statistics Economic Year till June 2019

Name of the service organization	Legal counseling service	Assist in litigation	Alternative dispute resolution service	Total (person)	Compensation
64 District legal aid office	50206	242492	17328	328864	180839225
Supreme Court legal aid office	16071	2467		18538	
Government legal assistance helpline Toll free-16430	66865			66865	
Dhaka & Chattogram workers legal aid cell	12303	2513	5355	16506	25843819
Total				430773	206683044

Source: Office of the register, Supreme Court, Bangladesh Government 2019

Achievements by the Paralegal Advisory Services (PAS) in February 2018

Name of the District	Released from Prison	PAS Interventions	Support in Courts	Support in Police Stations	Number of PLCs	Seeking Legal Assistance from PLCs
Barisal	8	553	297	19	8	38
Bogra	17	485	179	21	5	11
Brahmanbaria	11	411	112	12	8	19
Chandpur	2	114	106	6	7	13
Chittagong	9	584	60	10	8	35
Comilla	10	460	110	11	8	25
Dhaka	45	1099	150	20	4	29
Faridpur	1	300	202	12	7	25

Name of the District	Released from Prison	PAS Interventions	Support in Courts	Support in Police Stations	Number of PLCs	Seeking Legal Assistance from PLCs
Sirajganj	20	231	58	9	12	26
Sunamganj	4	147	92	8	8	12
Sylhet	7	343	132	21	8	38
Thakurgaon	1	96	56	2	8	11
Total	203	9486	3108	270	205	666
Gaibandha	1	177	63	5	6	29
Gazipur	0	243	179	8	6	20
Gopalganj	6	119	65	3	8	10
Jhenaidah	5	189	60	4	6	5
Jessore	1	368	84	0	7	19
Khulna	5	255	64	10	7	59
Kustia	3	245	84	5	5	18
Madaripur	4	110	92	4	8	19
Manikganj	3	268	135	10	8	17
Moulvibazar	5	166	73	8	6	8
Mymensingh	4	894	62	5	8	65
Naogaon	3	228	91	10	8	13
Narsingdi	7	416	129	20	8	12
Patuakhali	1	144	56	4	8	31
Rajshahi	9	520	261	14	7	42
Rangpur	11	321	56	9	8	17

Source: Office of the register, Supreme Court, Bangladesh Government 2019

11. Recommendation

The expansion of ADR in Bangladesh can improve the lives of millions of people in need and transform social norms that disempowered the poor (Lewis and Husain 2005). However ADR system has moved justice closer to the deprived people especially in rural area. ADR can facilitate process in which disputing parties engage the assistance of an impartial third party. Through mediation village court, arbitration, conciliation, negotiations are the art of peace-making. Of the several ADR processes, "Mediation" seems to be the most widely used one. In *Hurst V. Lemming* case honorable Supreme Court opined that mediation is not in law compulsory. It is at the heart of today's civil justice system and any unjustified failure to give proper attention to the opportunities afforded by mediation affords a realistic prospect of resolution of dispute. One way to improve the chances for litigants to gain justice from village courts would be to help litigants find affordable and easily approachable solicitors with a good understanding of the disputes. Another is to get the access easy relax; for example, by showing or helping illiterate people to file their case, to find the chance to meet any good lawyer and make him/her acquainted of the court matters. Another to provide training to the UP Chair and other people involved with village courts and other ADR system and sensitizing them to the needs of poor and rural people. Here one thing is to make sure that nobody can interfere or influence in the procedure. Women are normally shy and shy to raise their voice even getting justice in favor of her so women friendly environment in the court area is an important matter. Here especially UP representatives and panel members are needed to do gender friendly behavior. Proper training is also needed for high officials: sub districts officers, judicial officers, police officer, etc. The national institute of local government (NILG), Judicial Administration Training Institute (JATI), Bangladesh Civil Service Administration Academy, Police Academy can arrange this training courses including village courts and other ADR system into their curriculum. Policy makers should set clear rules for the UP Chairpersons so that his/her role is seen impartial and it is also necessary that all sessions must be announced publicly. In administrative assistance is also necessary for village court in ADR process. Nowadays Union Parishads are busy with huge work load. UP Secretaries are frequently engaged other activities; their capacities are insufficient to serve village courts. They need to give proper attention to ADR.

12. Conclusion

The judiciary is one of the three main organs of the government. However, the justice system of Bangladesh is not proficient enough in delivering justice. Though a lot of steps for improving the system have been taken from time to time but those could not bring good results. The study is expected to invent some effective mechanisms of ADR by which the existing backlog of cases will be reduced and the common people will get justice more easily and with less expense. NGO interventions in rural Bangladesh have increased significantly to link up between litigant and justice providers. Cooperation between NGO's and local government bodies has helped reduce pressures of the legal justice system. They should further increase their efforts to provide legal aid. Development partners should come forward to give technical support to make the Local Government Division stronger.

Thus, it will contribute a lot to the improvement of the legal and judicial system of Bangladesh.

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