



The effectiveness of alternative dispute resolution in Bangladesh: A critical analysis

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Abstract

In recent years, many litigations are pending in the different types of court of Bangladesh. To get round the altercated hearings of the litigations the Alternative Dispute Resolution is a scheme which ensures the most important right of justice for all the citizens of Bangladesh. The Alternative Dispute Resolution can be considered as fuel to resolve the paternal conflicts or other minor conflicts through an amicable way to ensure the good relations between the parties. It may reduce delay, cost and energy of the parties to a great extent. In considering the benefits of Alternative Dispute Resolution system almost every country of the world has established the ADR system in their judicial system for accessing to justice for all citizens. This paper may be an exertion to ensure a comprehensive success against the obstacles of the access to justice in the legal system of Bangladesh. By examining the different mechanisms of the Alternative Dispute Resolution we can get the positive, fair, efficient and effective justice inside the court and outside the court. This paper provides some recommendations to complete the success of ADR and helps every classes of peoples of the society to get easy access to justice.

Keywords: litigation, conflict, amicable, ADR, justice

Introduction

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]. It is the responsibility or duty of the court or other legal institutions to enforce these rights and to provide fair justice to the people. Though the legal system of Bangladesh theoretically provides justice for all but practically the disadvantaged sectors of the society cannot reach the door of the justice. In that case Alternative Dispute Resolution may be the only way to easily ensure and enforce justice ^[2]. At present ADR is an important part in the judicial system of different countries including Bangladesh. Our honorable Ex-Chief Justice Mustofa Kamal stated ADR as a non-formal settlement of legal and judicial disputes because it is a way of disposing of cases easily, quickly and less costly ^[3]. So it is said that ADR is a solution to get fair justice in cases of disputes pending before the court and in case of other cases outside the court.

Definition of ADR

Alternative Dispute Resolution is the mechanism for settling aside conflicts without litigation like negotiation, mediation or arbitration. According to legal Dictionary, "Alternative Dispute Resolution is the process of resolving disputes without litigation". It also provides that ADR is the procedure of settling disputes inside the court and outside the court ^[4]. The Law and Legal definition of Alternative Dispute Resolution is that ADR is a term that can resolve different types of disputes outside legal and administrative forums ^[5]. Duhaime's Law Dictionary state that ADR is the methods of resolving legal disputes and conflicts privately other than in the court ^[6]. So it is said that ADR is the means of settling of conflicts outside the court.

ADR in Bangladesh

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 ^[7]. Besides these two laws, the provisions of ADR have also been introduced in the following laws.

- a) The Code of Civil Procedure, 1908.
- b) The Muslim Family Laws Ordinance, 1961.
- c) The Customs Act, 1969.
- d) The Income Tax Ordinance, 1984.
- e) The Family Court Ordinance, 1985.
- f) The Value Added Tax Act, 1991.
- g) The Legal Aid Rules, 2015.
- h) The Arbitration Act, 2001.
- i) The Artha Rin Adalat Ain, 2003.
- j) The Conciliation of Disputes (Municipal Areas) Board Act, 2004.
- k) The Labor Act, 2006.
- l) The Village Court Act, 2006.
- m) The EPZ Trade Union and Industrial Relation Act, 2004 ^[8].

Reasons behind the incorporation of ADR in Bangladesh:

Bangladesh government has successfully incorporated the policy of the Alternative Dispute Resolution to ensure justice. There are some reasons for the incorporation of ADR in the judicial system of Bangladesh which are follows-

1. The main reason for the incorporation of ADR system is to avoid the delay procedure of the judiciary. At present more than 50 percent of litigations are pending before the

court. One or two years necessary for the disposal of a case may take up to nine to ten years. That's why most of the victims don't get justice within the due time. Thus, ADR has been incorporated.

2. Most of the citizens of Bangladesh live below the poverty line. They are unable to pay the high costs of litigation. As a result victims are unwilling to go to the court for justice. Thus, to reduce the cost of litigation the ADR schemes are incorporated.
3. To get off a huge backlogging of litigations from the judiciary system of Bangladesh.
4. To avoid procedural complexities of the judicial system of Bangladesh.
5. To avoid corruption from the judiciary.
6. To reduce economic interest of the legal practitioners in the litigation.
7. Non-availability of the help of the legal aid Board or Committees.

Victory of ADR in Bangladesh

By the establishment of ADR schemes a great success has been gained in the disposal of different cases which can be realized from the following information-

1. About 60 percent conflicts in the family courts have been disposed through compromising by the process of mediation ^[9].
2. More than 2418 suits under the pilot project have been solved through the way mediation from 2000 to 2004 ^[10].
3. Through mediation more than 12402 cases have been disposed under sections 89A and 89C of the code of civil procedure, 1908 from 2003 to 2006 ^[11].
4. From 2003 to 2006 about 24945 cases in the *Artha Rin Adalat Ain* have been resolved through ADR ^[12].

Weakness of ADR in Bangladesh

Though ADR is an effective and efficient method for getting justice but it has some loopholes which can be barrier to fulfill the objective of the ADR system. These loopholes are-

- a) Lack of proper institutional tricks.
- b) Lack of trained judges and lawyers for mediation and arbitration.
- c) Lack of proper education of the people.
- d) Minus impressions of the lawyers regarding ADR.
- e) Lack of awareness among the people.
- f) Non-appliance of ADR in certain cases for optional reason.
- g) Presence of corruptions in ADR mechanism.
- h) Lack of separate Code for ADR system.
- i) Minor applications of ADR mechanism in Criminal cases.
- j) Lack of separate meditation court.
- k) Lack of accountability of the judges, meditators and arbitrators.

Recommendations

The loopholes or barriers may be removed if some important measures are taken and implemented by the government of Bangladesh. To execute the aims of the ADR the following recommendations should be followed.

1. Institutional framework should be established regarding ADR.
2. Separate Code should be enacted regarding ADR.
3. Separate meditation courts should be established in the Thana level or Upazilla level.
4. ADR should be applied in criminal cases largely.

5. The judges and lawyers should be properly trained up.
6. Public awareness should be made and extended in local arenas through different types of government projects, NGO's, Research and other electronic media.
7. In criminal cases ADR is applied only in some C.R Cases but it needs to extend in some G.R Cases also.
8. The fee of the conciliators, meditators and arbitrators for disposing cases should be fixed by the Code.
9. A Statutory body should be incorporated for formulating rules, planning and monitoring the whole ADR system.
10. Positive impressions should be increased among the lawyers regarding ADR.
11. Corruptions should be removed from the ADR schemes.

Conclusion

The ADR mechanism is very remarkable and successful development in Bangladesh to resolve the disputes in alternative way. When a dispute is solved amicably with the saving of time and cost of the litigants then it ensures the impartiality, integrity and authenticity of the ADR mechanisms. The insertion of the compulsory ADR provisions in the Family Court and in some sections of the Code of Civil Procedure, 1908 have effectively opened the door of providing fair justice to the people. These recent incorporated provisions of ADR in different cases of Bangladesh have created an opportunity of access to justice for all citizens especially for that groups who are poor, unlettered and disadvantaged. Now the Civil court, the Family Court and *Artha Rin Adalat* have achieved a great success in their respective fields through ADR. Realizing the importance and great success of ADR the government of Bangladesh has also inserted ADR mechanism in the Criminal justice system. This article shows the effectiveness of ADR mechanisms and efficient success of ADR in Bangladesh. So considering the whole matters of this article it is said that ADR has a very significant preface towards the improvement of the justice avoiding all kinds of procedural and other complexities.

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