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**RESEARCH ARTICLE**

## The Dynamism of the Structure and Mechanism of the Alternative Dispute Resolution (ADR) System in Bangladesh for Dispute Resolution Outside the Formal Courts

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**ABSTRACT**

This study aimed to investigate the dynamic nature of this hybrid system to serve society in contemporary Bangladesh's changing circumstances effectively. Through a content analysis of documents and literature, it was found that the system is quite dynamic and effective in terms of structure and mechanism. Over the years, it has expanded in terms of scope and institutions to cover resolutions of conflicts relating to not only family affairs but civil disputes and even selected criminal cases. It is now compulsory for civil disputes to be addressed first through ADR. The system is gaining popularity in the country. The various ADR institutions entertain a large and increasing number of disputes of both natures every year. In most cases, the rate of success in resolving the cases submitted to these institutions is as high as 88%. However, handling civil disputes through ADR has yet to become popular. The record shows that in four districts, only 2.2% of civil suits were disposed of through ADR during 2012 and 2014. It suggests that adequate efforts need to be made to make ADR popular in this respect as well.

**KEYWORDS**

ADR, Dispute Resolution, Dynamism, Mechanism, Proceedings, Hybrid.

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**1. Introduction**

Differences or disagreements in opinion are only natural and acceptable until they reach a dispute or conflict. Disputes are a common phenomenon in human society. It was, it is, and it will remain there as long as human society exists in this world. Very few of these disputes are resolved automatically or by the antagonistic parties through mutual understanding and negotiation. A neutral third party plays an important role in dispute resolution when the disputing parties fail to communicate and settle it themselves. The initiative of this neutral third party may be formal in the sense that it has statutory laws to be applied by the Court itself or by its references, or it may be quasi-formal, backed by statutory laws but implemented by non-legal persons, and the third one is very informal, based on customary laws and practices by community leaders or NGOs. These formal, quasi-formal, or informal terms are some relative terms; otherwise, all these are informal concerning the formal court justice system. All these informal ways are alternatives to litigation, known as ADR (Alternative Dispute Resolution). Though it is considered a great legal innovation of Western people, and they are exporting it worldwide, societies all over the world have been practising it since time immemorial in various ways and forms. The study is based on library research on content analyses of public documents, books, journals, periodicals, published records, documents on websites, etc., as secondary sources and related statutory laws of Bangladesh as primary sources.

## 2. Understanding the meaning of Dispute, Dispute Resolution, and Alternative Dispute Resolution

Disagreeing with someone can be viewed as positive, functional, and natural. As man differs in size and colour from one to another, his thinking and opinion differ from time to time, from place to place, and even from man to man. However, the problem is that when a disagreement develops in an egoistic way, dispute begets, and conflict starts. A dispute is a short-term disagreement involving negotiable issues that may lead to a resolution between the parties. Contrarily, conflict is long-lasting and stems from deeply ingrained problems that are viewed as "non-negotiable" or non-compoundable in the language of criminal law (Keator 2011, 01). Conflict frequently does not result in a positive outcome. The bigger the conflict, the harder it is to control. A dispute is an expression of disagreement over something or with someone. Whatever the disagreement, dispute, or conflict, it needs to be known in its very nature before thinking about any resolution. In this regard, we should first define disputes and the meaning of dispute resolution.

The Arabic word *Musalaha* derived from the root *sulh*, means "peace, reconciliation, and agreement. The opposite of *Musalaha* is *fasad* (disorder). Some other antonyms of *Musalaha* used in the holy Quran are *ikhtilaf* (discord), *fitna* (conflict), and *`unf* (violence) (Rusli, 2013). It is unacceptable for anybody to disturb the peace that Allah established by introducing chaos into the cosmos since He created it in perfect order. Allah's greatest creations, humans, are tasked with maintaining this order. According to this viewpoint, humanity's culture of reconciliation serves as its *raison d'être*, or purpose for existing (Rusli, 2013, p. 206).

"A fact which is alleged by one party and denied by the other, and by both with some show of reason," is the definition of a dispute. Put differently, "a dispute is an issue that needs to be resolved collaboratively, not a war that needs to be won" (Akhtaruzzaman, 2015, p. 3). Dispute resolution is the process of resolving disputes between parties. It is a term that refers to several processes that can be used to resolve a conflict, dispute, or claim. These processes can be used to resolve any type of dispute, including family, neighbourhood, employment, business, housing, personal injury, consumer, and environmental disputes, as well as international disputes concerning international trade and finance between countries or institutions. Dispute resolution methods can be categorized into Judicial Dispute Resolution (JDR) and Alternative Dispute Resolution (ADR), which are alternatives to traditional conflict resolution procedures like litigation. ADR can range from informal to quasi-formal to judicial formal institutions. ADR can be simply defined as an alternative to traditional conflict resolution procedures, such as litigation (M. M. Rahman, 2015). However, from the present perspective, it can be termed as an Appropriate Dispute Resolution instead of an Alternative because of its mandatory use in various disputes under the recent amendment of CPC in 2021. Again, considering its aims and objectives, it may also be termed an Amicable Dispute Resolution. ADR, in fact, rests above the very informal traditional system (*Shalish*) and below the very formal court system. Thus, ADRs could range from very informal to quasi-formal to judicial formal institutions (particularly in the context of Bangladesh).

The truth is that alternative dispute resolution (ADR) techniques have been rediscovery rather than creation. Muslims employed alternative dispute resolution (ADR) techniques over 1,400 years ago to resolve their disagreements amicably, and Islamic legal sources frequently promote these techniques. Consequently, Western ADR is a copy of the Islamic *Sulh* (M. Z. Islam, 2012, p. 6). The origins of ADR can be traced back to pre-Islamic practices in Arabia, the Quran, and early and modern Muslim practices (Jamal, 2015, p. 3). In Arab and Islamic communities, arbitration (*tahkim*) and peaceful resolution (*sulh*) have a long history, having origins in pre-Islamic Arabia (Al-Ramahi, 2008, p. 1).

The Dispute Resolution (DR) Institutions in Bangladesh have been shown in the figure one in the next page:

**Figure 01:**



Figure 1 represents the total number of dispute resolution systems in Bangladesh.

**-Important ADR Institutions and Relevant Laws in Contemporary Bangladesh for Dispute Resolutions**

The modern dispute settlement approaches outside the Court in Bangladesh are termed the Alternative Dispute Resolution (ADR) system. It is basically a modified and hybrid version of the age-old informal justice institution traditionally used for conflict resolution, mostly in rural areas of the country. This hybrid system includes ADRs ranging from very informal to quasi-formal to formal institutions. This is depicted in Figure 1 and in Table 1 to be seen at a glance and comprehended. These ADR institutions are discussed below under the three categories: informal, quasi-formal, and formal.

**3.1 Informal**

**a) Traditional Shalish**

Alternative dispute resolution is not new; communities all over the world have long employed traditional, non-judicial means of resolving disputes. The approaches to dispute resolution in rural Bangladesh are as old as those in the society itself. Minor disputes

tend to be resolved informally within the family or the community (Siddiki, 2003, p. 12). The very traditional approach known as *Shalish* refers to a community-based, largely informal dispute resolution process (Golub, 2003, p. 3). It is a public event and participatory (Siddiki, 2003). It has been promoted by the government and some NGOs. Thus, three types of dispute-resolution methods are used in Bangladesh: traditional *Shalish*, government-administered *Shalish*, and NGO-led *Shalish* (Golub, 2003, p. 3). The last two types are modified and hybrid versions of the first one - traditional *Shalish*.

All these are involved in the local- or community-level justice system. In civil and criminal cases, non-judicial bodies in the community use alternative dispute resolution procedures to settle disputes. Beginning in the 1990s, a variety of NGOs have been carrying out the resolution of disputes at the community level. Several human rights NGOs in the country, including the Madaripur Legal Aid Association (MLAA), Bangladesh Legal Aid and Services Trust (BLAST), *Ain O Shalish Kendra* (ASK), *Banchte Shekha* (BS), *Odhikar* and many more have been engaged in it (M. M. Rahman, 2015, p. 251). The NGOs operate in both rural and urban settings. *Shalish* or ADR is typically conducted by skilled, informed, and experienced individuals in the NGO-led *Shalish* system. The informal nature of the NGO-led *Shalish* system is what unites it with traditional *Shalish*. Nevertheless, the system completes certain paperwork, such as a structured application for resolving conflicts and maintaining records of choices and compliances. Once more, this system places a strong emphasis on following state laws. However, its main goal is to reach a just and amicable conclusion. This system handles all kinds of disputes, just like the *Shalish* system (Dr. Matiur Rahman, 2010, p. 31).

In a study of NGO-led *Salish* in relevant unions of two districts (Madaripur and Shariatpur), it was revealed that out of 3,067 cases received in the first ten months of 1996, 2,699 cases were settled, which implies a success rate of 88%. Cases settled by *Salish* included disputes related to family laws (629), maintenance (488), second marriage (32), dowry (362), land (398), and other miscellaneous cases (Munni, 1996, p. 92). From the recent report of The Madaripur Legal Aid Association (MLAA), it is revealed that from July 2021 to June 2022, they received 143 applications from justice seekers, and amongst them 130 have been mediated successfully; 30, 68,000 taka has been recovered as maintenance and dower; 11, 35,000 taka recovered in replace of land disputes and 1.25 acres of land was recovered (MLAA activity report, 2022-2023).

It is well acknowledged that traditional *Shalish* methods of resolving conflicts lack legal standing in the established legal system. However, mediation carried out by non-governmental organizations is typically recorded, and a mediated settlement agreed by the parties free will has some legal presumption value and may be used as evidence in Court (Faruque & Khaled, 2010, p. 9).

### 3.3 Quasi-formal

#### a) The Village Court under the Village Court Act, 2006

In 1976, the Government of Bangladesh promulgated the Local Government Ordinance. The Union Parishad was entrusted with forty functions through this Ordinance, including limited judicial duties. The Village Court Ordinance provided each union with basic authority to try cases in the village courts. Accordingly, the village courts were set to deal with petty cases. The objectives of establishing the village courts were to settle disputes, both criminal and civil, to which villagers are parties (Hossain, 2012, p. 2). The Village Court (VC), formed under the Village Court Act, 2006, is an effective place for government-administered *Shalish* at the Union Parishad (UP) level, the lower tier of administrative structure in Bangladesh. Any civil or criminal dispute falling under the purview of the Village Court Act, 2006, will be heard by the Village Court, which is made up of five members: the chairman, who will preside over the Village Court, and two members chosen by each party, one of whom needs to be a Union Parishad member. The application of the Evidence Act, the Code of Criminal Procedure, and the Code of Civil Procedure has been prohibited since this Court is legally compelled to follow the informal process of trial or conflict settlement. The appointment of lawyers has been prohibited. Nonetheless, these courts' rulings have the same legal force as those of all other recognized courts in the country (M. M. Rahman, 2015, p. 250; Sarker, 2013, p. 23).

The formal justice system officially recognizes the local Court's decision. A village court's ruling is final and binding on the parties if it is made by a majority of four to one or by a majority of three to one when there are four members present. However, any party who feels wronged by a village court judgment may file an appeal with the appropriate Assistant Judge or Magistrate of First-Class Court within thirty days after the decision, if applicable, if the decision was made by a majority of three to two. The relevant authorities may reverse, amend, or send the decision back to the Village Court for review if they are convinced that justice has not been served (Faruque & Khaled, 2010, p. 9). However, by the recent amendments of the Act in 2024, the jurisdiction of the village court has been enhanced up to 3 lac taka for civil and criminal matters (Schedule of the Act, 2006).

A field survey in five districts, Manikgonj, Brahmanbaria, Gazipur, Narsingdi, and Narayanganj, shows that village courts have resolved 9995 out of 13931 cases during 2010-2014. The success rate is about 72% of the disputes submitted in that Court (M. K. Islam, 2015, p. 52).

#### b) The Arbitration Council under the Muslim Family Laws Ordinance, 1961

The Muslim Family Laws Ordinance (MFLO) of 1961 provides limited facilities for women, including the requirement for husbands to give wives notice of *talaq* before ending a marriage and requiring their wife's approval before getting married to someone else. Polygamy is restricted and only eligible for Muslims. The Arbitration Council will resolve disputes, and no man can enter into a

second marriage without written permission from the Arbitration Council. The chairman must be given notification of the talaq within 30 days, and the divorce will be finalized after ninety days (Bano, 2007; Riaz, 2005, p. 193). The talaq is considered a single *talaq* in Ahsan form, and the husband can reverse it during the waiting period or by getting married again after ninety days. The failure of the husband to give notice to the chairman is deemed to be a revocation of talaq (Haq, 2001). Where the wife exercises the delegated right, which is *talaq-e-tafweed*, she must also follow the procedure in Section 7 of the Ordinance.

The Arbitration Council, established in accordance with the MFLO 1961, resolves family disputes in both urban and rural areas (M. Rahman, Firoz, & Hoque, 2010, p. 13). One of the goals of this legislation is to avoid unexpected divorce, which typically happens when a husband becomes too enraged. Now, the party wishing to divorce must apply to the chairman, who will form the arbitration council. This council will resolve the dispute peacefully and informally without resorting to judicial proceedings. For the full ninety days while the notice is in force, it is recommended that the couple resolve their disputes out of Court. (Hyder, 2015, p. 313; M. M. Rahman, 2015, p. 249).

The Union Parishad, Paurashava, can act as an Arbitration Council (AC) under the Muslim Family Laws Ordinance of 1961 to resolve family disputes, including dower, divorce, polygamy, dowry, and maintenance. UP or Paurashava chairperson and two other members, one chosen by each party, make up AC panels. If a party neglects to designate a representative within the designated timeframe, the Arbitration Council will be established. (Faruque & Khaled, 2010, p. 8).

**c) The Conciliation Board under the Conciliation of Dispute (Municipal areas) Board Act, 2004**

The chairman of the municipal area presides over the Municipal Board, which has five members and is under Subsection 4(1) of the Conciliation of Disputes (Municipal Area Board Act, 2004). This Conciliation Board is, in fact, an urban version of the village court. The Board has exclusive jurisdiction over cases listed in the Schedules, with certain exceptions. The Conciliation of Disputes (Municipal Area) Board Act, 2004, Section 13, says that the CPC, CrPC., and the Evidence Act cannot be used in Board proceedings. Also, Section 14 of the same Act says that no one can have a lawyer present. The entire Act focuses on conciliation, and while the conciliation board's ruling is required, a right of appeal remains open (M. M. Rahman, 2015, p. 250). Some other legal instruments relating to quasi-formal or quasi-informal ADR for some specific dispute resolution, such as:

**d) The Bangladesh Labour Act, 2006**

Conflicts arising at work are a typical occurrence in nearly every nation. Bangladesh is not an anomaly. Workers occasionally damage factories and other industries, stage public protests, and clash with police enforcement. Like other nations, Bangladesh has labour laws with an ADR mechanism integrated to address labour disputes in an amicable manner. The Act, 2006 Chapter 14, Sections 210 (2) to (19) outline the mediation, conciliation, and arbitration processes (Hyder, 2015, p. 314; M. M. Rahman, 2015, p. 250). The chapter provides non-judicial and mediation-type mechanisms and judicial mechanisms to resolve industrial and other disputes (Halim 2022, 121).

**e) The Arbitration Act, 2001**

According to Section 2, the Arbitration Act, 2001 is applicable where one of the parties is a foreign individual, institution, or State and applies to the recognition and implementation of international arbitral awards as well as disputes resulting from arbitral agreements signed either before or following the enactment of the Act. The parties are free to choose the number of arbitrators or the chairman, and they can even solve their disputes without a third party. However, once the arbitral agreement is made between the parties, it is binding upon them, following sections 11, 22, and 39 of the Act.

If any dispute falls under the purview of the Arbitration Act of 2001, arbitration is required; if a civil suit is withdrawn at any point upon the parties' request for arbitration, the matter will be resolved following the Act as stated in Section 89B of the Code of Civil Procedure, 1908 (M. M. Rahman, 2015, p. 250).

In addition to these kinds of informal or quasi-formal ADRs, there are some formal ADRs that the Court or a third party handles at the Court's request. Formal ADR procedures are carried out under the following Bangladeshi statutes:

**f) The Code of Civil Procedure, 1908**

Sections 89A, 89B, and 89C of the Code of Civil Procedure, 1908, address the provisions of ADR. The CPC's Third Amendment added these provisions in 2003, and with subsequent amendments in 2012 and 2017, the ADR became mandatory. It says that if the hearing is put off, the Court can mediate to settle the dispute or disputes in the suit, or it can send the dispute or disputes to the party or parties who have hired a pleader, to the party or parties who don't have a pleader or pleaders, or to a mediator from the panel that the District Judge can put together under subsection (10), to try to settle through mediation. Furthermore, the CPC discusses several mediation procedures in Section 89A, while Sections 89B and 89C address arbitration and mediation in appeals (Hyder, 2015, p. 312; M. M. Rahman, 2015, pp. 247-248). The Code of Civil Procedure has appropriately addressed the fundamental

alternative dispute resolution (ADR) processes of negotiation, mediation, and arbitration (M. S. Islam, 2011, p. 107; Kamal, 2004, p. 5; M. M. Rahman, 2015, p. 246).

Under the above law, ADR in the country is not voluntary but mandatory and may be court-annexed, depending on the parties. Though the government amended the CPC, making out-of-court settlements of lawsuits mandatory, its impact is yet to be fully realized. In the selected four districts—Jamalpur, Narshingdi, Manikganj, and Kurigram—the record shows that for 3 years between 2012 and 2014, only 697 (2.22%) cases out of a total of 31,432 civil suits were disposed of through ADR (M. K. Islam, 2015, p. 53). It is certainly a very low response. Therefore, efforts must be made to make ADR popular for the resolution of civil conflicts as well.

#### **g) The Artha Rin Adalat Ain, 2003**

The Artha Rin Adalat Ain, established in 1990, is responsible for recovering loans from financial institutions. In 2003, a new Artha Rin Adalat Ain was implemented, superseding existing state laws. The new law prioritizes money lending regulations, with subordinate judges chosen after consulting the Supreme Court. The Financial Institutions Act of 1993 mandates all lawsuits for loan realization to be filed with money loan courts (Hyder, 2015, p. 313; M. M. Rahman, 2015, p. 249). As per the Ministry of Law, Justice, and Parliamentary Affairs, 24945 cases were settled nationwide through Artha Rin Adalat Ain between May 2003 and February 2006 (M. M. Rahman, 2015, p. 246).

### **3.4 Judicially Formal**

#### **a) The Family Courts Act, 2023**

Family courts were introduced in 1985 under the Family Courts Ordinance 1985 to handle cases involving marriage dissolution, conjugal rights restoration, maintenance, guardianship, and child custody. This Ordinance has been repealed and replaced by the Family Courts Act, 2023. It emphasizes mediation, with pre-trial proceedings scheduled within thirty days of written statements being filed. If mediation fails, the Court will formulate the claim and set a date for evidence recording (Hyder, 2015, p. 313; M. M. Rahman, 2015, p. 248). The Ordinance's Section 13 states that the Court will try again to mediate a reconciliation solution once all parties have presented their evidence (M. K. Islam, 2015, p. 53).

Between 2000 and 2004, 16 pilot courts were implemented across 13 districts, resolving 2418 family cases and generating Tk. 74.47 million through mediation. Before these initiatives, only about Tk 6.2 million was realized through 70 family courts, resolving less than 1,000 family problems through mediation (M. K. Islam, 2015, p. 53; M. M. Rahman, 2015, p. 246).

#### **b) The Code of Criminal Procedure, 1898**

The ADR system in our country has not been adequately developed in the criminal justice system. The Code of Criminal Procedure, 1898, has no provisions regarding ADR. However, it has the process of compromising the disputes among the parties mentioned in Section 345 of the Cr.P.C. 1898. Criminal offences cannot be mediated, but a few tiny offences can be mediated by the parties themselves or sometimes with the permission of the Court, known as compoundable offences. This is why the Cr.P.C. is silent about the provisions of ADR. However, a gross amendment will be held in this respect: the provisions of ADR will be inserted in the Code of Criminal Procedure, 1898 (Hyder, 2015).

#### **c) The Bankruptcy Act, 1997**

The ADR following a formal declaration by a competent court is covered in Chapter IV of this Act. Bankruptcy is a legal process where a debtor's property is taken for creditors' benefit, typically by a court-appointed receiver. There are two types of bankruptcy: individual bankruptcy and corporate bankruptcy. In Bangladesh, the Bankruptcy Act of 1997 governs bankruptcy, allowing both creditors and debtors to initiate proceedings. The provisions of this Act further allow debtors to declare bankruptcy as a result of their actions in two cases, namely: (a) if they transfer all or nearly all of their property, whether it be in Bangladesh or elsewhere, to a third party under false pretences known as benami transaction for the benefit of their creditors generally; (b) if in Bangladesh or elsewhere, he makes a transfer of his property or property kept in the name of his wife, son, or daughter by benami or of any part thereof with intent to defeat or delay his creditors' demand. However, Section 43 has given scope to the decree debtor, who may offer to the decree creditor a mediation, which is termed as composition for the purpose of this Act. Accordingly, the Court will consider the application and forward it to the Receiver for taking measures.

#### **d) The Income Tax Act, 2023**

The primary purpose of the Income Tax Act 2023 is to:

- i. Ensure equitable distribution of the tax burden among different income groups.
- ii. Encourage voluntary tax compliance and discourage tax evasion.
- iii. Facilitate economic growth and investment by providing incentives and benefits.

- iv. Enhance transparency and reduce complexities in tax laws.

Chapter three, under sections 297 to 308, clearly discusses the scope of ADR, and a taxpayer may apply for alternative settlement of disputes where the same are pending before the income tax authority or tax appellate tribunal or supreme court Bangladesh except the dispute for which a Writ has already been filed challenging the dispute (Chowdhury 2020, 187). on application, NBR will nominate a Facilitator who will write a memorandum of understanding that will be signed by the three parties, namely the payer himself, the deputy commissioner on behalf of the commissioner, and the facilitator.(Uddin, 2024) The dispute in whole or as part may be settled by way of ADR of any form. Such agreement is binding upon both parties, and no appeal or revision lies with any court against such memorandum of understanding unless it is partial. There is also a safeguard for the person concerned with such an ADR process, and no legal action can be brought for acts done in good faith.

**e) The Value Added Tax (VAT) and Supplementary Duty (SD) Act, 2012**

The existing Value Added Tax (VAT) Act, 1991, is envisaged to be replaced by the recently enacted VAT and Supplementary Duty (SD) Act, 2012. The new Act proposes to bring significant changes in the earlier VAT rules and regulations. The new VAT Act was drafted with the declared objective of generalizing the rules and laws in a more comprehensive and user-friendly manner, which was expected to make it easier to understand and be simple and reliable for the end-users.

125- a VAT payer may apply to the conciliator from the prescribed 'conciliators panel' of the Board for ADR, and no appeal lies against the decision comes from ADR. The government will circulate a gazette selecting Commissionerate VAT for certain areas from time to time for this purpose. This Commissionerate is empowered to solve all disputes through ADR regarding VAT except the matter of forgery, criminal offence, or such dispute relating to the question of law (Chowdhury 2020, 146).

**f) Customs Act, 1969**

The Customs Administration under the National Board of Revenue conducts its operations following the provisions delineated in the Customs Act, 1969. It consolidates and amends laws relating to customs duties and other related matters.

Chapter XVI, bearing sections 192B to 192K regarding the provisions of ADR, was inserted in the Act by an amendment in 2011. The application shall be made within 30 or 60 days where the dispute is pending before the Commissioner of Appeal or Customs Appellate Tribunal, respectively. Accordingly, the Board shall appoint a Facilitator for negotiation. Section 192H states that the appointed facilitator shall communicate the decision to the parties within seven working days to pay the tax/duty or to refund the same as the case may be. Again, section 192J states that the decision made by the facilitator shall be binding upon both parties but appealable to the proper Court by the aggrieved party. Section 192K safeguards persons for their unintentional mistakes done in good faith in connection with ADR (Islam 2012, 192)

**g) Parental Maintenance Act, 2013**

Besides the moral duties, this Act has made it obligatory for children to ensure maintenance as well as take care of their parents and grandparents in the absence of parents. Under Section 5 of the Act, it is also mentioned that any person violating or encouraging violating any of the provisions shall be subject to punishment up to one lakh taka; failing this, they shall be imprisoned for up to three months. Section 8 further states that, after getting an allegation from parents, the Court may send the case to the concerned local authority, such as UP, *Pourasava*, or any other suitable person for disposal (ADR in any form). Moreover, the fact that children's non-carrying offences are compoundable indicates their ADR nature (s. 6).

**h) The Children Act, 2013**

This Act came into operation on August 21, 2013, in Bangladesh for the benefit of 70 million people under the age of 18, known as children, in pursuance of and complying with the spirit of the provisions of the United Nations Conventions on the Rights of the Child (UNCRC), 1990. The probation officer appointed under Section 6 will rush to the police station to look after the child with whom police have brought up an allegation. After alleging tiny crimes against the children, the Children's Court will direct the concerned probation officer to meet with family and local respected personalities to solve the issue and to inform the Court accordingly. At any time of trial, the issue can be resolved alternatively, termed diversion, and the alleged child will be kept in alternative care instead of formal custody. According to Hindu practice in law, children are bound to provide maintenance to their aged and physically incapable parents irrespective of inheritance of property from them (Karim 2020, 93-94).

**i) EPZ Labor Act, 2019:**

The Act applies to both workers and owners and includes maternity benefits, working hours and leave, wages and payment, a collective bargaining agent (CBA), and especially dispute resolution by negotiation complying with ILO standards. At the time of a dispute between employee and employer, the CBA shall communicate its views in writing to the other party within 15 days with the intent to negotiate the dispute alternatively. Sections 124 to 134 state in detail the way out of settling the dispute without going to a formal court, alternatively by way of negotiation.

**Table 1 Laws and Acts backing and guiding the various ADR institutions in Bangladesh**

ADR Institutions				Standing Authority		Nature of Outcome		Legal Connectivity			process or Methods Used	
Types	Located	Related Laws Article	Relevant Provisions	Freestanding	Court-annexed	Binding	Non-binding	Formal	Quasi-formal	Informal	Basic	Hybrid
Village Court	Union Parishad Office	The Village Court Act, 2006	Complete	Y		Y			Y		Y	Y
Arbitration Council	Union Parishad Office	The Muslim Family Laws Ordinance, 1961	6, 7 & 9 Sections	Y		Y			Y		Y	Y
Conciliation Board	Municipal /Ward Office	The Conciliation of Dispute (Municipal areas) Board Act, 2004	Complete	Y		Y			Y		Y	Y
Labour Court		The Bangladesh Labor Act, 2006	209-231	Y			Y		Y			Y
Family Court	Court	The Family Court Act 2023	10, 13		Y	Y		Y			Y	Y
Money Loan Court	Joint District Judge's Court	The ArthaRin Adalat Ain, 2003	21, 22		Y			Y			Y	
Judges Court	District	The Code of Civil Procedure (Amendment 2003) 1908	89a-89e		Y	Y		Y			Y	
Sessions Court	District	The Code of Criminal procedure, 1898	345		Y							
District Judge/ Supreme Court	District / Supreme Court	The Arbitration Act, 2001	2,11,22,39		Y	Y			Y			Y
Informal Shalish		N/A										
NGO-Led Shalish		N/A										
District Judge	District	Bankruptcy Act, 1997	43-46		Y	Y		Y			Y	
District judge	District	Value Added Tax Act, 1991	41ঞ- 41ঠ									
District/ Supreme court	District/ Supreme court	The Income Tax Act 2023	152F-152S		Y			Y			Y	Y
District judge	District	<u>The Customs Act, 1969</u>	192ঞ-192ঠ	Y					Y			
District judge	District	EPZ Workers' Welfare Association and Industrial Relations Act, 2010					Y					Y
District judge	District	Value Added Tax and Supplementary Duty Act, 2012	Complete				Y					Y
District judge	District	Children Act, 2013	44-54		Y		Y			Y		
Magistrate Court	District/ Thana	Parental Maintenance Act, 2013	5 & 8		Y		Y				Y	

**4. Recommendations**

This research seeks to integrate Islamic law with statutory regulations to create a dynamic and adaptable Alternative Dispute Resolution system in Bangladesh, addressing the varied demands of its populace. This hybrid system will provide culturally attuned, legally robust, and efficient alternatives to regular court processes while honouring the values of both legal systems. The researchers' following recommendation is to introduce a combined ADR mechanism in Bangladesh.

- a) Incorporation of Islamic Legal Principles into the ADR Framework:** The ADR system in Bangladesh should effectively merge Islamic and statute law. Recognition of Islamic dispute resolution methods like Sulh (conciliation), Tahkim



(arbitration), and Musawaha (mediation) as legal ADR processes can achieve this. Ensure that secular and religious frameworks complement one another to increase access to justice and appropriately resolve conflicts culturally and legally.

- b) Formation of Hybrid ADR Institutions:** Establishing ADR entities that function under Islamic law and statute law would help Bangladesh fulfill its population's civil and religious demands. These hybrid centers would handle disputes involving family law, business, and civil law. The presence of qualified judges, attorneys, and Islamic legal experts (Muftis, Imams) would make it easier to resolve disputes in a way that respects religious and secular standards.
- c) Increase of Awareness and Education Regarding ADR:** The public does not understand ADR processes. Government, civil society, and professional organizations should push extensive awareness campaigns to address the issue. These advertisements should inform the public and legal professionals about ADR's ability to resolve conflicts faster, cheaper, and more amicably.
- d) Codification of Islamic Arbitration and Conciliation Mechanisms:** Islamic arbitration (tahkim) and conciliation (sulh) should be codified under Bangladeshi law to legitimize them. Islamic arbitration awards should be legally binding, like statutory arbitration awards, with clear application and enforceability requirements. This would increase the acceptability of Islamic ADR for personal and commercial issues.
- e) Training for ADR Professionals in Dual Legal Frameworks:** Mediation, conciliation, and arbitration professionals should be versed in statute and Islamic law. The dynamics of instances involving both legal systems will be better understood. Legal and ethical norms for handling conflicts according to Islamic principles and statutes should be stressed in training. Cross-disciplinary expertise would ensure resolution fairness, competency, and validity.
- f) Enhancing the Implementation of ADR Awards:** The ADR system's inability to enforce outcomes, especially arbitration, is a key issue. Reforms to make ADR awards more enforceable in Court should address this. This includes eliminating bureaucratic bottlenecks and speeding up ADR award recognition and enforcement.
- g) Advancement of Online Alternative Dispute Resolution Platforms:** Bangladesh should provide secure, dependable, and accessible online ADR platforms in accordance with worldwide norms. These platforms would enable online mediation and arbitration, especially for remote participants. Furthermore, it would increase ADR transparency and responsibility.
- h) Religious Scholars in ADR:** Religious scholars (e.g., Imams, Muftis) should play a formal role in ADR, especially in family law, inheritance, and community disputes. Due to their trustworthiness, their participation in mediation and conciliation would offer moral and theological validity. Their Islamic jurisprudence can supplement legislative laws and resolve issues culturally and religiously.
- i) Building a complete legal framework for ADR:** Bangladesh should develop a comprehensive ADR law incorporating Islamic and legislative concepts. This framework should establish clear procedural procedures for handling disputes between both legal systems to ensure consistency and avoid conflicts. The framework should also enforce Islamic and legislative ADR decisions.
- j) Conciliating Family and Personal Disputes (Sulh):** Sulh, which emphasizes reconciliation and mutual agreement, should be emphasized in ADR, especially for divorce, child custody, and inheritance conflicts. Promoting Sulh can reduce litigation and promote cooperation. Dedicated family ADR centres that prioritize Sulh processes will improve system efficiency and cultural relevance.
- k) Encouraging Legislative Support for ADR under Both Systems:** Legal measures should encourage secular and Islamic ADR use in Bangladesh. Examples include ADR terms in commercial contracts, tax breaks for corporations who resolve disputes through ADR, and lower legal fees for parties opting for ADR. Additionally, Islamic and statutory law ADR methods should be allowed to resolve conflicts in a united manner.
- l) Enforcement of ADR Decisions under Both Legal Frameworks:** Enforcing Islamic and statutory ADR decisions requires clear processes. Bangladeshi courts should enforce Islamic ADR awards as statutory awards. Islamic arbitration or conciliation rulings should be enforced more efficiently, especially in business and family law issues where religion is important.
- m) Public Awareness Campaigns Regarding Dual Legal Frameworks in ADR:** A comprehensive public awareness campaign should inform citizens about Islamic and statutory legal ADR processes and their benefits. This would show the people that ADR is not limited to one legal system and that they may resolve disputes using a procedure that respects their cultural, religious, and legal rights.
- n) National ADR Policy with Islamic and Statutory Law:** Bangladesh should adopt an ADR policy incorporating Islamic and statutory laws to resolve conflicts. This policy should specify multi-tier conflict resolution methods (informal negotiation, mediation, arbitration, and conciliation) to allow parties to resolve their disputes within both legal frameworks.

- o) **Partnerships between public and private entities to advance ADR:** Promoting and using ADR mechanisms requires public-private collaboration. Private companies should include ADR terms in their contracts, especially large ones. This collaboration could result from joint activities, conferences, and workshops to raise ADR awareness.
- p) **Periodic Evaluation and Monitoring of Adverse Drug Reaction (ADR) Results:** The efficacy of the ADR system, which considers both Islamic and statute laws, should be tracked through a predetermined mechanism. It is important to conduct regular assessments to gauge the effectiveness of dispute resolution, the level of satisfaction among the parties involved, and the overall influence on the legal system. Improving ADR processes and updating the legislative framework will depend on this feedback.

By adopting these ideas, Bangladesh can improve the efficacy and accessibility of ADR, alleviating the strain on formal courts while offering a swifter and more efficient method for dispute resolution. This would enhance the legal and business landscape in Bangladesh. The outcome will be a more inclusive, accessible, and equitable conflict resolution system capable of addressing the diverse requirements of individuals and enterprises nationwide.

## 5. Conclusion

The modern alternative dispute resolution (ADR) system in Bangladesh is a hybrid of the age-old *Shalish* system traditionally practised for dispute resolution in rural areas of the country. It is found to be quite dynamic and effective for society. Starting with the traditional *Shalish* system, over the years, it has continued to expand in terms of scopes and institutions to cover disputes about not only family disputes but also civil disputes and even selected criminal disputes for resolution. Since 2012, civil disputes have been made compulsory to be initially tried for resolution through the ADR.

The system is gaining popularity in the country. A large and increasing number of disputes relating to various family matters, civil matters, and, to an extent, matters of critical nature are entertained every year by the various ADR institutions. In most cases, the rate of successful resolutions of the cases submitted to these institutions is as high as 72–88%. However, handling civil disputes through ADR has yet to become popular. Records show that in 4 selected districts, only 2.2% of the total civil suits were disposed of through ADR during 2012 and 2014. It suggests that adequate efforts need to be made to promote and make ADR popular in this respect as well.

Based on the findings, it can be concluded that, through its dynamic approach to operation and administration, ADR in Bangladesh has tremendous scope for dispute resolution at the lowest social and economic costs and makes its contribution to ease the huge backlog of court cases in the country. It is therefore strongly recommended that all efforts be made to keep the ADR constantly updated to meet the challenges and needs of the time.

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