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***An Assignment On :***

**Problems and prospects of ADR in Bangladesh**

**Course Name :** *Alternative Disputes Resolution and Legal Aid*

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**Introduction**

Alternative Dispute Resolution (ADR) is an creative motion in the civil justice system of Bangladesh including land conflict. Traditional judicial system of Bangladesh especially land legal dispute is time consuming, highly cost and very much complex. People involved in the land dispute, are fear to go to the court to settle their conflict due to uncooperative delay, expenses and unbearable sufferings and most of them prefer alternative Dispute Resolution (ADR) as a way of resolving their conflict. Bangladesh has focus on Alternative Dispute Resolution (ADR) as a system to resolve civil conflict and dispute as it saves time, money and energy of disputing parties, narrow backlog of cases and work volume of court officials and also protect valuable time of the court from wasting. Lately ADR has become a popular system of settlement of land dispute among the people of Bangladesh as it is personal, informal and alleviate the parties from the sufferings. The phenomenon objective of this research is to identify the legal and administrative challenges of Alternative Dispute Resolution (ADR) as a means of settlement of land conflict and dispute in Bangladesh and also to suggest a direction for the absolute success of Alternative Dispute Resolution (ADR) as an effective means to resolve land conflict in the rural areas of Bangladesh. This research is qualitative in nature which is regulated on the basis of secondary information. Information of data are collected from various books, journals, newspaper, reports writing and judgement of apex court of Bangladesh.

**Definition of ADR**

Alternative Dispute Resolution ("ADR") refers to any means of setting disputes outside of the courtroom. ADR commonly includes early neutral assessment, negotiation, conciliation, mediation, and arbitration[[1]](#footnote-1). There has a prover that “the more laws, the less justice”. It could be known to all that, law is not the only solution to bring up justice, law does not always enough to ensure the justice. Whereas the law failed to ensure justice, after that equity came to “fill up the gap”. Alternative Dispute Resolution (ADR) is an equitable process which ensure easy to access to justice.[[2]](#footnote-2) Some of these programs are freely; others are obligatorily. Such as Negotiation, Mediation, Arbitration.

**Negotiation** is the preeminent mode of dispute resolution. While the two most known forms of Alternative Dispute Resolution (ADR) are mediation and arbitration, negotiation is almost always attempted first to resolve a dispute or conflict. **Mediation** is also an informal alternative to litigation. Mediators are particulars trained in negotiations, who bring opposing the parties together and attempt to work out a settlement that both parties accept or reject it. Mediation is not binding. **Arbitration** is one of the most symbolic and growing forms of Alternative Dispute Resolution (ADR). Arbitration is more formal than negotiation and mediation has a lot of similarities with traditional court proceeding, involving limited discovery and simplified rules of evidence (ex. Hearsay is usually admissible in arbitration).

**Benefits of ADR in the Settlement of conflict in Bangladesh[[3]](#footnote-3)**

The necessity of Alternative Dispute Resolution (ADR) is unlimited in the settlement of civil conflict in the rural areas of Bangladesh. Not only civil dispute or conflict but also in the settlement of commercial dispute or conflict and family dispute Alternative Dispute Resolution is an important method of settlement. It always focus in the future and not past in emphases on reestablishment of the relationship rather than exposure of the cause, it maintain good relationship and cooperation rather than determine the ability. The most benefit of Alternative Dispute Resolution (ADR) mechanism is it could make legal awareness among th mass people and able to reduce enmity. It is very simple and flexible system which avoids complexity of formal court procedure. It opens a new path to apply the principle of equity rather than the sever principle of rule of law. It creates chance of direct dialogue between the conflicting parties with possibly higher levels of confidentiality as public records are not commonly kept. It always tries to maintain win-won situation and also ensure access to justice especially for the backward groups of the rural areas who do not have adequate means to go to the court. Moreover it saves the disputing parties from the curse of delay and save money and energy and also decreases work volume of the court officials.

**Problems of ADR in the Way to resolve conflict in the rural areas in Bangladesh**

Alternative Dispute Resolution (ADR) system has included in the civil Justice procedure of Bangladesh more than a decade ago to solve civil dispute and problem including land dispute of conflict outside of the court as a flexible, fastest, cost effective and peaceful system. Although more than a decade has progressed Alternative Dispute Resolution (ADR) mechanism has not become truly functional to solve land conflict of dispute of the country. The expected success of Alternative dispute Resolution (ADR) mechanism in land conflict or dispute of Bangladesh that is to less backlog of cases and to provide swift and cost effective remedy without following complex system of the court has met failure[[4]](#footnote-4). Some legal challenge are facing by the Alternative Dispute Resolution (ADR) in the way of settlement of land dispute or conflict basically in the rural areas of Bangladesh are enunciated below :

**1. Rule of law**

Ensure the rule of law is the first challenge of Alternative Dispute Resolution (ADR) in the land conflict litigation in Bangladesh. Alternative Dispute Resolution (ADR) mechanisms are instruments of equity rather than instruments of law. In most of the cases rule of law is no present. As it emphasis on the settlement of dispute, may solve similar conflict of different ways and due process of law is not followed in Alternative Dispute Resolution (ADR).

**2. Imbalance of power between the parties**

The imbalance of power between the disputing parties are the result of prejudicial norms in society, where there is imbalance of power between the parties. It is one of the major challenge of Alternative Dispute Resolution (ADR) to work well.

**3. Create public awareness**

Most of the land litigants especially in rural areas are illiterate and unconscious who do not understand the nature and benefit of Alternative Dispute Resolution (ADR). For the success of Alternative Dispute Resolution (ADR) it is necessary to create public awareness in the rural areas of Bangladesh.

**4. Role of Legal professionals**

One of the main causes of delaying of suit is the dilatory tactics played by the lawyers. To resolve dispute or conflict through formal or informal Alternative Dispute Resolution (ADR) the role of the pleaders of the concern parties is important but recently in Bangladesh the role of legal professionals to solve a conflict or dispute outside of the court is not adequate.

**5. Legal challenge**

There has some legal challenge in Alternative Dispute Resolution (ADR) such as challenge under civil procedure 1908, challenge under village court 2006, etc.

**Challenge under the code of civil procedure 1908:**

1. compel the disputant parties to attend before the court:

The code of civil procedure 1908, state that mediation is mandatory and the court shall itself mediate or refer the conflict or dispute to the legal Aid Officer of the Pleader of the parties or to the mediators from the panel to mediate when all the contesting parties attend before the court but there is no statute to compel the parties by if any of the party does not attend before the court[[5]](#footnote-5).

1. No specific procedure to follow:

If the court itself mediates, court shall regulate the procedure to follow and if the mediation process is presided over the legal aid officer or mediator or pleader from the panel they are at library to determine the procedure. But there is no guideline or procedure or provision to complete the mediation process[[6]](#footnote-6).

1. No provision of post-trial mediation:

Section 89A and 89C of the Code of civil procedure allowed mediation at the pre-trial stage and appeal stage but the provision of mediation is not include after completion of the trial before the pronouncement of judgement or decision. In reality, parties could understand the merits of their suit after the end of the trial.

1. Lack of accountability of lawyer:

Most of the lawyer are adverse to Alternative Dispute Resolution (ADR) because if the dispute is settled their income level will be bring down. In many case, lawyers discourage or misguide their clients regarding Alternative Dispute resolution (ADR) but there is no provision to ensure accountability of the lawyer in case of failure of Alternative Dispute Resolution (ADR) unwillingness of the lawyers.

**Challenge under the Village court Act 2006:**

The main challenge of village court in the way of Alternative Dispute Resolution (ADR) is the limitation of jurisdiction. It can resolve a land dispute where value of the property does not exceed TK. 75,000/-. It has no jurisdiction in cases of all disputes or conflicts regarding land. It has jurisdiction only in case of restitution of immoveable property and compensation for damage to the property but in case of other conflicts is has no jurisdiction.

**Conclusion**

When a conflict has the potential to become, or has become, a legal matter, facilitative ADR process offer parties the empowering opportunity to resolve their own dispute with the assistance of a neutral third-party. Satisfaction with the mutually agreed upon outcome will often lead to the durability of the agreement lessening the time and money spent to enforcement. Furthermore, facilitative Alternative Dispute Resolution (ADR) process are much less formal, much less expensive and much less time-consuming than litigation. Advisory Alternative Dispute Resolution (ADR) process offer parties the benefits of dispute resolution services without the consequences of a binding decision. Advisory Alternative Dispute Resolution (ADR) processes, such also offer neutral third-party oversight to ensure that potentially problematic processes, such as government spending and service contracting, are executed with integrity and transparency.

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