EBAUB Journal Volume 1 January 2019

ISSN: 2617 - 8338

EBAUB Journal

An Academic Journal of
EXIM Bank Agricultural University Bangladesh

Role of Mediation as a Means of Alternative Dispute Resolution in Resolving Disputes: An Appraisal

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ARTICLE INFO

Received date: Sep. 22, 2018
Accepted date: Dec. 23, 2018

ABSTRACT

In recent years in Bangladesh there has been renewed prominence on the Alternative Dispute Resolution (ADR) schemes. One of those, frequently seen to be practiced, is mediation; adapted as a means to avoid the use of contested hearings in the formal litigation and to ensure the most fundamental right of access to justice for all in an easy way. The study concentrates on the mediation as a form of ADR in Bangladesh. It critically analyzes the present legal framework for mediation in Bangladesh. Mediation is not a single process or series rather, it encompasses many dissimilar varieties, variations, and flavors of ADR mechanisms. This paper is an attempt to provide an inclusive idea about obstacles in the way of access to justice in our legal system. However, this paper does not focus on whether mediation is better than litigation rather it shows how the courts are transforming ADR and how ADR is transforming in the court system. While reviewing the mediation provisions, the study attempts to assess the existing position of the mediation and its efficacy in settling disputes. The study focuses on fundamental laws relating to mediation in Bangladesh mostly in civil matters, family matters, revenue matters and Artha Rin (Money loan) suits. The study describes the impact of incorporation of mediation in settling civil suits by analyzing secondary data. It investigates the possibility of introducing any modification into the existing ADR framework in order to develop the mediation. The study concludes by detecting the major challenges of mediation and gives some suggestions to improve mediation as a form of ADR in its way of success in Bangladesh.

Key words: Confidential, Dissolution, Flexible, Low cost, Mediator, Voluntary.

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1. INTRODUCTION

Now a day's mediation as a means of Alternative Dispute Resolution (ADR) has become a popular and flexible method which is conducted confidentially and a neutral person actively helps the parties in settling of a dispute. The parties are in ultimate control of the decision to decide the disagreement and the terms of decision. A dispute or difference can bring parties to mediation. The dissimilarity need not have a legal basis at all; it may be a matter of principle or trust. Even in case of close to a court hearing date the parties can go for mediation to dispute resolution, where the legal issues are well rehearsed between the parties, mediation can be the way to bring into play personal or commercial issues that cannot be taken up in a court.

To Cite: Haque, M.A. (2019). Role of mediation as a means of alternative dispute resolution in resolving disputes: an appraisal. *EBAUB J.*, 1, 75-81.

Mediation is not a bar to litigation or other methods of dispute resolution.

In Bangladesh, almost 2.3 million cases are pending before the various courts (Hasan, 2013).

BIAC (2012) published on its website that despite disposal of 1,023,264 cases, the number of cases pending before courts as on 1st January 2013 was still a staggering 2,454,360. Although the statistics slightly differ, what is important is that the number of pending cases is significant and the need for not only exploring but also practicing alternative ways of resolving disputes has become indispensable. In many cases, the disputes may very well get resolved through mediation and if not, Arbitration in those processes are duly facilitated and advocated (Hasan, 2013).

Different jurists defined mediation in different ways. According to Hazel Genn: "Mediation is a voluntary process where a natural mediator attempts to help the disputing parties to reach an agreement that is acceptable to both sides and that will bring the dispute to an early conclusion without having to go to Court".

According to Shally E. Merry and Susan S. Silbey " It is a process of settling conflict in which a third party oversees the negotiation between two parties but does not impose an agreement".

According to Lawrence Kershen QC " Mediation means a voluntary, confidential process in which a neutral third party assists the parties to negotiate a mutually acceptable settlement of their dispute".

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser- in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough" (Lincoln, 2017).

There must have some reasons of resolving dispute through mediation such as, i) Gets the right people and the right information to the table, ii) Identifies and focuses on what really matters to the parties, iii) Facilitates communication; helps overcome deadlock and emotional blockages, iv) Helps parties to reassess their risks & widens the options for resolution, v) Rebuilds or safeguards relationships, vi) Leaves ownership of the problem and the settlement with the parties (BIAC, 2017).

Mediation is a way to determine of a dispute or controversy by setting up an independent person between two opposing parties in order to assist them in the settlement of their dissimilarity. Therefore, it is one of the most popular types of alternative dispute resolution, whereby parties try to determine their differences without going to court. Some court guidelines operate voluntary or compulsory mediation, mainly in family matters. The mediation meeting is a get-together to set up between two or more people who have a difference in order to work towards a conclusion. This is important to stay impartial and it would help if mediator has already met with each individual confidentially before. The focus of study is to find out the present situation of mediation, the specific provisions under different statutory laws and its barriers. This study will be helpful for reader and mediator to gather knowledge on mediation in case of ensuring justice.

2. CONCEPT OF MEDIATOR/S

The mediator is a third party who helps to settle a dispute between two contradictory parties. If any married couple want to divorce, several times they try to engage a third party who is considered as a mediator to help them come to an arrangement, and perhaps even to stay away from divorce. By this system a mediator plays a vital role in case of dissolving the dispute specially the family matters. The Code of Civil Procedure states regarding the persons who may be appointed as a mediator and who may not. Sub-section (2) of section 89 A provided that when reference for mediation is made through the pleaders, the pleaders shall, by their mutual agreement in consultation with their respective clients, appoint someone as mediator and that mediators are i) May be another pleader, ii) May be retired judge, iii) May be a mediator from a panel of mediator as may be prepared by the District Judge under sub-section (10) of section 89A, iv) May be any other person who the parties deem suitable to act as a mediator for settlement. More than one person may be appointed as mediator (Halim, 2011). On the other hand, these people may not be appointed as a mediator. i) The person appointed as mediator must not be one who is engaged by the parties in the suit, ii) A person holding an office of profit in the service of the Republic shall not be eligible for appointment as mediator, iii) A person shall not act as a mediator between the parties, if he had ever been engaged by either of the parties as a pleader in any suit in any court (Code of Civil Procedure, 1908). A successful mediator must have the following qualities: i) Self determination, ii) Impartiality, iii) Disclosure of conflict of interest, iv) Competence, v) Confidentiality, vi) Quality of the process etc (Halim, 2011).

While referring a dispute or disputes in the suit for mediation, it shall be for the pleaders, their respective clients and mediator to mutually agrees on and determine the fees and the procedure to be followed for the purpose of settlement through mediation; and when the court shall mediate, it shall determine the procedure to be followed, and shall not charge any fee for mediation (Code of Civil Procedure, 1908).

A mediator should study the substance of the dispute, and try to identify the issues in conflict, using tools such as re-framing, active listening, open-ended questions, and his/her analytical skills. Mediation is a voluntary process (except where there is a law of mandatory mediation in place). The parties agree to the process, the content is presented through the mediation, and the parties control the resolution of the dispute. Because the participation of the parties and the mediator is voluntary, the parties and/or the mediator have the freedom to leave the process at any time. The mediator may decide to stop the process for ethical or other reasons, and the parties may decide that they are not satisfied with the process. The agreement, which is reached between the parties, is voluntary; the parties

own it and are responsible for implementing it. The agreement is validated and ratified by the courts (Halim, 2011).

3. ROLE OF MEDIATOR/S

The mediator's primary role is to act as a neutral third party who facilitates discussions between the parties. In addition, a mediator serves in an evaluative role when they analyze, assess the issues, and engage in reality-testing. A mediator is neutral and they are not the agent of any party. In their role, mediators do not offer prescriptive advice. Mediators also manage the interaction between the parties and encourage constructive communication through the use of specialized communication techniques. Finally, the mediator should restrict pressure, aggression and intimidation, demonstrate how to communicate through employing good speaking and listening skills, and paying attention to non-verbal messages and other signals emanating from the context of the mediation and possibly contributing expertise and experience. The mediator should direct the parties to focus on issues and stay away from personal attacks (Spencer, 2006).

Mediator assists the parties in their discussions, separately and neutrally. The mediator must have no risk in settling dispute or its outcome, nor be alleged as having an inappropriate link with any party. Parties now and then request a mediator who is a specialist in the meticulous part of dispute, which might give the parties some comfort and make the mediator's job possible. The Mediator does not take sides or make a conclusion about the merits of the case or the decision.

In some instances, mediation is conducted by a formally constituted mediation committee comprising lawyers or trained individuals, who hear all cases of that area. In others, mediation is conducted by individuals who are selected by the disputants to represent them. These mediators may be trained individuals, NGO workers or relatives/neighbors chosen by respective disputants. While NGOs play a monitoring role in their respective areas, they also ensure neutrality, at the same time representing the interests of a particular client (Khair, 2004).

4. STATUTORY PROVISION REGARDING MEDIATION

4.1. The Code of Civil Procedure, 1908

Sections 89A, 89C and 89D of the Code of Civil Procedure, 1908 deal with the provision for mediation. After filing of written statement the Court shall after adjourning the hearing, mediate in order to settle the dispute or disputes in the suit or refer the dispute or disputes in the suit to the engaged pleaders of the parties or to a mediator from the panel prepared by the District Judge. Thereafter the pleaders shall in consultation with their respective clients appoint another as mediator. Within ten days of order for mediation the parties shall serve notice in writing to the court about the progress of initiation for mediation and the mediation procedure will have to be completed within 60 days. If it is not completed within 60 days another 30 days can be extended. If the mediation becomes successful, the mediator shall draft an agreement on such terms and conditions as the parties agreed upon. The parties, pleaders and mediator will sign on it. Upon submission of agreement within 7 days the Court will pass a decree accordingly. If the mediation procedure fails, the proceedings of the suit will start from the stage it has been stopped before mediation. Section 89C specifies the scope of mediation in Appellate Court. Section 89 D newly introduced by the CPC Amending Act, 2012 provides that the contesting parties to a suit or of an appeal, pending in any Court before the commencement of the Code of Civil Procedure (Amendment) Act, 2012, many by filing an application stating their willingness to settle the dispute through mediation, such suit or appeal shall be disposed of in accordance with the provisions of Section 89A or 89C.

Provisions for alternative dispute resolution have recently been incorporated in The Code o f Civil Procedure 1908 by an amendment of the Act titled The Code of Civil Procedure (Amendment) Act of 2003.Sections 89A and 89C specify mediation and mediation in appeal as an alternative means of settling disputes. Section 89A of the said Act provides that after filing of the written statement, if all the contesting parties or their pleaders are in attendance in the Court and are willing to try and settle their dispute/s through mediation, the Court may i) adjourn the hearing and mediate in order to settle the dispute/s, or ii) may refer the dispute/s to the parties or their pleaders, or iii) may refer the dispute/s to a mediator from the panel prepared by the District Judge in accordance with sub-section 10 (Code of Civil Procedure, 1908) for undertaking efforts for settlement through mediation. Mediation under this Act has been defined as flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution in which the mediator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the term of such compromise (Code of Civil Procedure, 1908).

Within ten days from the date of reference by the Court to mediate, the parties shall inform the Court in writing as to whether they have agreed to try and settle the dispute through mediation and the name of the mediator. If they conform to these requirements then the mediation shall be concluded within sixty days from the day on which the Court is so informed, unless the Court extends the period on its own motion or upon the joint prayer of the parties. In any event, the extension shall not exceed thirty days. However, if the parties should fail to inform the Court of their decision to mediate following the reference by the Court, the suit shall proceed for hearing by the Court (Code of Civil Procedure, 1908).

Once the mediation proceeding is complete, the mediator shall submit to the Court through the pleaders a written report containing the result of the mediation. Should a compromise be reached, the terms of such compromise shall be reduced to writing in the form of an agreement,

bearing signatures or left thumb impressions of the parties as executants as well as signatures of the pleaders and the mediator as witnesses. The Court shall thereupon pass an order or decree in accordance with relevant provisions of Order XXIII of The Law (Code of Civil Procedure, 1908).

When the Court itself mediates, it shall make a report and pass an order in a similar manner. (Code of Civil Procedure, 1908) No appeal or revision shall lie against any order or decree passed by the Court in pursuance of settlement of disputes between the parties in accordance with the aforementioned provisions, (Code of Civil Procedure, 1908).

When a mediation initiative undertaken by the Court itself fails to resolve the dispute, the same Court shall not hear the suit, if the Court continues to be presided by the same judge who led the mediation initiative. In that case, the suit shall be heard by another Court of competent jurisdiction (Code of Civil Procedure, 1908).

The proceedings of mediation shall be strictly confidential. In the circumstances, all communications made, evidence adduced, admissions, statements or comments made and conversation held between the parties, their pleaders, representatives and the mediator shall be deemed privileged and shall not be referred to and admissible in evidence in any subsequent hearing of the same suit or any other proceeding (Code of Civil Procedure, 1908).

4.2. Artha Rin Adalat Ain, 2003

Section 22, 24, 25 and 44A of this Act specify regarding mediation. The Artha Rin Adalat Ain, 2003 is a special law that laid down, for the very first time, the foundation for speedy disposal of money suits connected with the banking and non-banking financial institutions. The end in view, inter alia, was the quick recovery of loan amount advanced by the financial institutions within the shortest possible time. Before the amendment in 2010, the provision of ADR was incorporated into the Act in the form of 'settlement conference'. The court could mediate the suit after the written statement was filed by the defendant or defendants, by adjourning the subsequent procedures of the suit. According to the provision, the presiding judge would call for a settlement conference with a view to settle the dispute at an early stage of the case. The settlement conference would be held in camera. Nonetheless, the Artha Rin Adalat Ain as it stands now after amendment in 2010 has incorporated the provisions of mediation both at trial as well as the appellate stage repealing the provisions relating to settlement conference.

Section 22 of the amended Artha Rin Ain included the provisions of mediation almost in the same words and manners as is provided under section 89A of the CPC but with the exception that in the former case a special resolution providing for authorization of the Board of Directors of the concerned financial institution authorizing one of its officers must be passed and submitted with the concerned Artha Rin Adalat. The Court will take special care as to whether the authorized officer has acted, during the mediation process, in consonance with the said authorization (Artha Rin Adalat Ain, 2003).

Any case of financial institution involving more than five crore taka shall be approved by the managing director or chief executive of the respective financial institution, even if the name is not mentioned in the report prepared for settlement in alternative way through mediation under this Act (Artha Rin Adalat Ain, 2003). At any stage of appeal of revision the parties may mediate the subject matter of appeal or revision and if mediation is successful as per provisions in sub-section (2), (3) and (4) of section 22, the same is to be informed to the court (Artha Rin Adalat Ain, 2003).

4.3. The Family Court Ordinance, 1985

Activating ADR in the Family Courts within the formal judicial system, the scope of mediation through the Family Courts Ordinance, 1985 has been tested with positive results. Although options for ADR were available under the Ordinance, the provisions were hardly utilised by the Family Courts in the past. This was largely due to ignorance and lack of motivation amongst lawyers and judges who, confined within the traditional adversarial system, made no attempts to take cognizance of or apply these provisions. Given the multi-dimensional problems besieging the Courts of Bangladesh, particularly the civil justice system, initiatives were undertaken by Justice Mustafa Kamal, former Chief Justice of Bangladesh, to commence reforms in the legal system. To this end cooperation was sought from the Institute for the Study and Development of Legal Systems (ISDLS) of USA for effectively resolving the problems faced by the Civil Courts. Drawing upon the American experience, a project was designed and launched to investigate avenues of judicial reform for dealing with the backlog of cases. Comprising of several phases the initiative produced a report that underscored specific reforms that could be initiated in Bangladesh. One of the recommendations of the report was to start a pilot project on mediation, a non-mandatory consensual dispute resolution system, in the Family Courts of Dhaka, gradually expanding the practice to other judgeships in the country. Mediation in the Family Courts was recommended on a careful assessment of the pervasive problems, their causes and likely solutions. The idea was to build, as far as possible, on the existing foundation of the country's legal system. The reason why the Family Courts were earmarked for the pilot project is that since The Family Courts Ordinance of 1985 itself provides for conciliation there was no need for a new legislation. Thus, while inclusion of other Courts at that stage would have necessitated new legislation or amendment of The Code of Civil Procedure, 1908, the plan sought to commence reforms in ways that did not require a change in the procedural rules. The other reason for recommending mediation in the Family Courts is that the process entails direct participation of the parties to the dispute. They are required to attend confidential meetings along with their lawyers and other interested persons in the presence of a neutral third party, who is trained to facilitate dispute resolution. The parties are allowed to talk

about their positions in joint sessions before settlement options are discussed in private. Parties are able to interact freely without inhibitions; this enables them to anticipate the likely result, should they choose to litigate. This process is particularly beneficial for women litigants, who have the opportunity of voicing their grievances without having to go through the embarrassment and discomfort of appearing in Court. As it is, given the traditional bias against them, women feel uneasy about exposing their private matters to the public in open Court; mediation, in the circumstances, has enabled them to utilize alternative modes of dispute resolution without compromising their privacy (Hasan, 2001). In practice the Family Court does not feel encouraged to insist or prevail upon the disputant parties to opt for mediation or conciliation or does it mechanically due to pressure of other non-family matters (Huq, 2001). Section 10(3), 10(4) & 13 of The Family Court Ordinance, 1985 deals regarding mediation process under this Act.

4.4. The Labour Code, 2006

Mediation and Conciliation are treated as same. Failing a negotiation under sub-section 210 (1,2), any report to the conciliator that the negotiation have failed and request the conciliator in writing to conciliate the dispute and conciliator shall, on receipt of such request, proceed to conciliate in the dispute. Under section 210(6) the conciliator has ten days time for conciliation (Halim, 2011). Chapter 14, section 210(1), to (19) describes the procedures of mediation, conciliation and arbitration (Islam, 2011). 222 of this Act also specifies regarding mediation.

4.5. The Arbitration Act, 2001

Section 22 of this act states regarding this that settlement other than arbitration.-(1) It shall not be incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute otherwise than by arbitration and with the agreement of all the parties, the arbitral tribunal may use mediation, conciliation or any other procedures at anytime during the arbitral proceedings to encourage settlement.

4.6. Village Court Act, 2006

Section 4 of this Act specifies that where a case is triable by a Village Court, any party to the dispute may apply to chairman of the Union Parishad concerned for the constitution of a Village Court for the trial of the case. Section 5 of this Act specifies that a Village Court shall consist of a Chairman and four members. Of these four members two are to be nominated by each of the parties to the dispute. One of two members to be nominated by each party should be a member of the concerned Union Parishad.

It can be presumed on the basis of the sections mentioned above that the Village Court acts on the basis of mediation. Here any party is able to discuss with other party openly. They try to resolve the matter peacefully through the agents of the parties. They follow win-win theory.

After formation of Village Court the Court shall hear both the parties and decide issues between the parties. Thereafter the Court shall take initiative of conciliation between the parties. If the mediation becomes successful, the terms and conditions as the parties agreed upon will be incorporated in an agreement which is to be signed by both the parties and their nominated person. After that the Village Court shall pass the 'order or decree' accordingly (Judiciary, 2018).

5. BENEFITS OF MEDIATION

A successfully completed mediation has many benefits. In a mediation process, it is possible to reach a solution within a few days and therefore, businesses do not suffer and get interrupted. In our country, legal and preparatory costs are comparatively high. Hence, solving disputes through mediation may save money which can be used in other ventures. One of the principles of mediation is that the mediator does not disclose any facts without the consent of one party to the other party. Therefore, greater confidentiality is ensured. It helps the parties to be safe from unwanted publicity. In England, a joint study on legal practitioners on commercial disputes reveals that at least 60% of them want to solve their disputes through Alternative Dispute Resolution (ADR). The main reason for this is the confidential nature of the ADR mechanisms. Mediation also takes less time and money (Salam, 2015).

Hopefully, as a platform for the initiation of ADR services, the District Legal Aid Officers (DLAO) now can settle disputes through mediation at the District Legal Aid (DLA) offices if the cases are referred to them by any court or tribunal (Legal Aid Services Act, 2000).

In 2014, attempts for mediation were made in 290 cases, of which 58% were resolved and Tk4.6 million were realized. In 2015 and 2016, the numbers of cases attempted for mediation were 705 and 2,609 respectively. See Munir Uddin Shamim, A wider scope for justice, Estimation shows that net growth rates of mediation for the last two years have been 143% and 270% respectively. Among the cases attempted for mediation, 75% in 2015 and 81% in 2016 were successfully resolved (Shamim, 2017).

In mediation, parties reach a settlement through dialogue and thus it is possible to continue relationship in the future. Honest discussion with the help of the mediator helps parties to ascertain the actual disagreement and solve it amicably (Salam, 2015).

5.1. Mediation is a flexible process

The place, date and time are selected by the parties on the basis of discussion between them and the mediator or the third party or the service provider. It depends on the parties to decide; sometimes the mediator helps them to decide. The parties can change their position freely as circumstances requires even after the mediation begins.

5.2. Mediation is confidential process

The discussions and the results of a dispute are not made public without the consent of the parties. The result may be exposed if both parties agree. Besides, mediation generally

involves some private meetings between each party and the mediator, in which the mediator commits to maintain the confidentiality of information received from one party in private. The mediator never tries to disclose it to another party unless given express permission.

5.3. In case of mediation, the parties are in ultimate control

In mediation, the mediator will often have a role in overcoming deadlock, in encouraging forward thinking and even in contributing settlement options or ideas for formulating the agreement. However, it is central to the concept of mediation that the parties are the decision makers. Effective mediators use their skill and experience to influence progress and leave the decision about whether to settle and on what terms firmly with the parties. Mediation is not binding unless and until an agreement is reached. Until that happens, the parties may walk away from the mediation at any time. Entering the process itself does not bind them to settlement in any way. The fact that the process is without prejudice allows the parties to explore all options freely, hypothetically, and without commitment. Any settlement agreement has to be in writing, and signed, to be legally binding (BIAC, 2017).

5.4. Mediation is voluntary

Mediation works voluntarily. Once mediation has started, continued involvement is always voluntary - any party can decide to untie without adverse consequences. Various contracts include an obligation to mediate before proceeding to court or arbitration, and such obligations are likely to be enforced against a party who tries to pay no attention to them. Some Bangladeshi laws make mediation mandatory before parties are permitted to go on to trial. So, engaging in mediation may be less than completely voluntary, but even then is still generally effective.

5.5. Mediation is not a waste of time and money, even if it fails

The settlement gap will usually be narrowed at mediation through the negotiations and through parties gaining a greater understanding of the other party's case and privately reviewing their own case. Mediation almost always tempers aspirations with practicality, and movement towards settlement takes into account the risks, legal and commercial, of not settling. When settlement is not reached, the preparation for mediation is useful groundwork for trial or hearing, or for further settlement negotiations. Most mediation last one or two days so the additional expenditure to each party is modest compared with the loss of management time and the costs of going through trial (BIAC, 2017).

6. BARRIERS TO MEDIATION

Since mediation is a comparatively new concept of ADR process, the main barrier of mediation is lack of knowledge about the process and the legal practitioners still do not think that this is an acceptable way of resolving disputes. Confusion among the parties as to its acceptability is also a barrier to the process. Though the Arbitration Act has been enacted by the parliament in 2001, mediation in particular is yet to get popularity among disputing parties.

For an ADR mechanism to be successful, especially in mediation proceedings, both the parties must agree to refer the dispute to be settled through mediation. Therefore, the parties must agree to each other otherwise they will have to face an actual litigation. Since no specific rules of procedure have been framed for mediation, the parties have to depend on the rules of mediation determined by a tribunal and the current Arbitration Act, 2001. This lacuna in the system makes ADR an uncertain game.

Lack of awareness regarding the advantages of ADR is another problem and we also do not have the institutional support that has been developed in countries like UK, USA, Singapore and even in India.

According to the Ministry of Law, Justice and Parliamentary Affairs, disposing of millions of cases pending before the courts in Bangladesh would take at least 86 years if no new cases are filed. The pending cases will not only make the litigants suffer, but will also cause loss to the state.

To reduce the burden on the courts, there is no alternative to ADR mechanisms and, hence, mediation can be an effective tool for popularizing the ADR system in our country. Therefore, in order to establish this comparatively new system of ADR, the mediators must establish themselves as not only lawyers but also performers (Dhaka Tribune, 2015).

7. RECOMMENDATIONS

Mediation is not about deciding who is right or wrong, who is innocent or at fault, and who should be declared the winner and the loser. Mediation is about looking to the future. The focus is not on who said or did what in the past. Instead, the goal is to find a practical solution and Settlement that is acceptable to everyone involved, considering the different interests while seeking to preserve business or other relationships.

Mediation is the process which helps to solve civil and commercial disputes with the help of a third party who is not a party to the dispute and works neutrally so that the parties can reach a certain and equally acceptable agreement. In mediation, parties try to solve the dispute freely and the mediator tries to help the parties but not to judge who is right and who is wrong. Primarily a mediator tries to identify relevant legal and factual issues and to bring those into attention of the parties so that they can reach a settlement avoiding legal proceedings. The mediator is selected by the parties. So, mediation should be encouraged, not litigation.

Justice Ahmed Sohel inaugurated also the two-day international special training workshop "Mediation playing vital role in reducing case backlog" as the chief guest. He

said, "More than 30 lakh cases are pending in the courts across the country. So we have to give importance on Alternative Dispute Resolution (ADR), mediation and arbitration to reduce these huge numbers of case backlog." The judge commented that mediation and arbitration is the only way of reducing case backlog. The judge said, "Mediation system is playing a vital role in reducing the case backlog and establishing the justice across the world." So, he urged the government to arrange research and to arrange higher training to give the mediation and the arbitration an institutional form for the purpose. He said, our neighboring country India is getting benefits by applying mediation and arbitration method successfully (New Nation, 2018).

To make ADR more effective, extensive, and pro-active, coordination is needed among different agencies. Other initiatives are i) We should make people aware of the activities of mediation as a means of ADR, ii) The media and different organizations should spread the success story of mediation as well as all the means of ADR, iii) Government should take necessary steps to encourage NGOs to become involved in mediation as a means of ADR, iv) The Bar Associations should Involve in case of mediation and ADR, v) Government should provide proper training for mediators, vi) Government and NGOs should give their efforts jointly and effectively.

8. CONCLUSION

Mediation process is believed to be a consensual approach in case of settling dispute not following the intractable formalities of the adversarial trial system. It is described as informal, confidential, expeditious, effective, mutual participatory, cost and emotion effective, promoter of peace and social harmony by removal of enmities and contributor to a breakthrough in prevailing crisis of backlogging of cases. Some organizations like IFC and BIAC actively working on structuring Rules for mediation and setting up the scene by preparing ADR professionals, the Courts and lawyers now need to work towards making ADR a voluntary and favored choice of potential litigants over and above court proceedings. The chances of mediation overcoming difficulties encountered by the process of arbitration shall much depend on whether it is imposed or voluntary as well as due adherence to the laws and rules by the courts and code of ethics by the learned lawyers of the nation (Hasan, 2013).

From the analysis mentioned above, it can be concluded that mediation is still a developing concept as an alternate dispute resolution mechanism in Bangladesh. Although it has some limitations, it can be said that it is playing a vital role in case of ensuring justice to the public. With the courts of Bangladesh being flooded with an overwhelming number of claims, it is perhaps about time that we appreciate this concept of alternative dispute resolution and take appropriate steps to facilitate mediation not merely by bringing amendments in the laws but also by enforcing them properly in the future. It is undeniable that with the rising number of NGOs mediations, court-connected mediations and provisions of law regarding mediation in Bangladesh will play a vital role in resolving disputes.

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