

Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Alternative Dispute Resolution in Bangladesh

MEDIATION in the rural society of Bangladesh is virtually of immemorial origin based on customary practice having its deep roots in the cultural heritage of this sub-continent.

Easy access to social justice, particularly distributive through equal participation for those who now share stark deprivation and poverty is the need of the hour.

Recent trend and development in the field of disputes resolution indicates that people in general tend to prefer mediation to litigation. In this backdrop mediation (ADR) should be allowed to play a role free from any statutory regulations and control. Thus Village Court/Grameen Court would adjudicate on petty cases in the matter of civil and criminal issues with legal authority but mediation should be left beyond its jurisdiction.

But the real challenge is how to revive and mould the traditional *shalish* on the right line reflecting the spirit and aspiration of the people.

One of the options is to activate participation of the community. But due to structural violence, lack of peace and amity, the rural civil society is unable to contribute/fulfil its social obligation in bringing about equitable resolution between the conflicting parties (in the society). Be that as it may, ultimately dispute resolution in a society can not be top down but bottom up. By this it is envisaged that the vacuum created should not be thought of filled in by an enactment as an easy solution from the top. Instead, approach is expected to be bottom up so that disputes arising in the community should be resolved at the community level resulting in not only decreasing the number of litigations but also creating space for legal system to pay attention to more pressing matters to be taken care of by the courts (of law). In this matter what is important is liberal attitude and patronisation from the administration in upholding the traditional values and customary practices.

Now the critical question as to how traditional mediation in keeping with the modern trend of dispute resolution could be moulded and be in full play. But there is no easy answer. One of the optimistic developments is some of the non-govt organisations

tions have taken up the challenge in the field. They are conscious of neutrality, non-impersonation of any verdict and 'win-win situation' in mediation process. As an integral part training for the mediators (mostly volunteers) on concerned legal issues and mediation process have been introduced (as a must) to overcome the limitations of the traditional mediation.

The finest hour of justice is when foes compose their fight through fair settlement to become friends. This can be achieved with little cost and no delay, with an informal procedure confirming only to the requirement of natural justice where the key-note would be justice rather than law.

Parameters of Effective ADR

The first requirement is the active participation of the local community in the dispute resolution process.

The process of dispute resolution, particularly in the informal settings of rural Bangladesh, can hardly be achieved with a top-down approach. It has to be a local affair of the people themselves. In other words, the current problems and lacunae in the alternative dispute settlement process ought not to be remedied through an enactment from the above. Instead, local disputes should be resolved at the local community level, resulting not only in decrease in the number of litigations but also providing space to the formal legal system to pay attention to more pressing matters and processing those through the judicial system (courts). What is important for alternative dispute resolution is not the creation of new structures and norms by the central authorities but facilitation of traditional practice to ensure natural justice for disputants.

The second requirement is to ensure that alternative dispute resolution does not become another arena for perpetuating domination of the powerful.

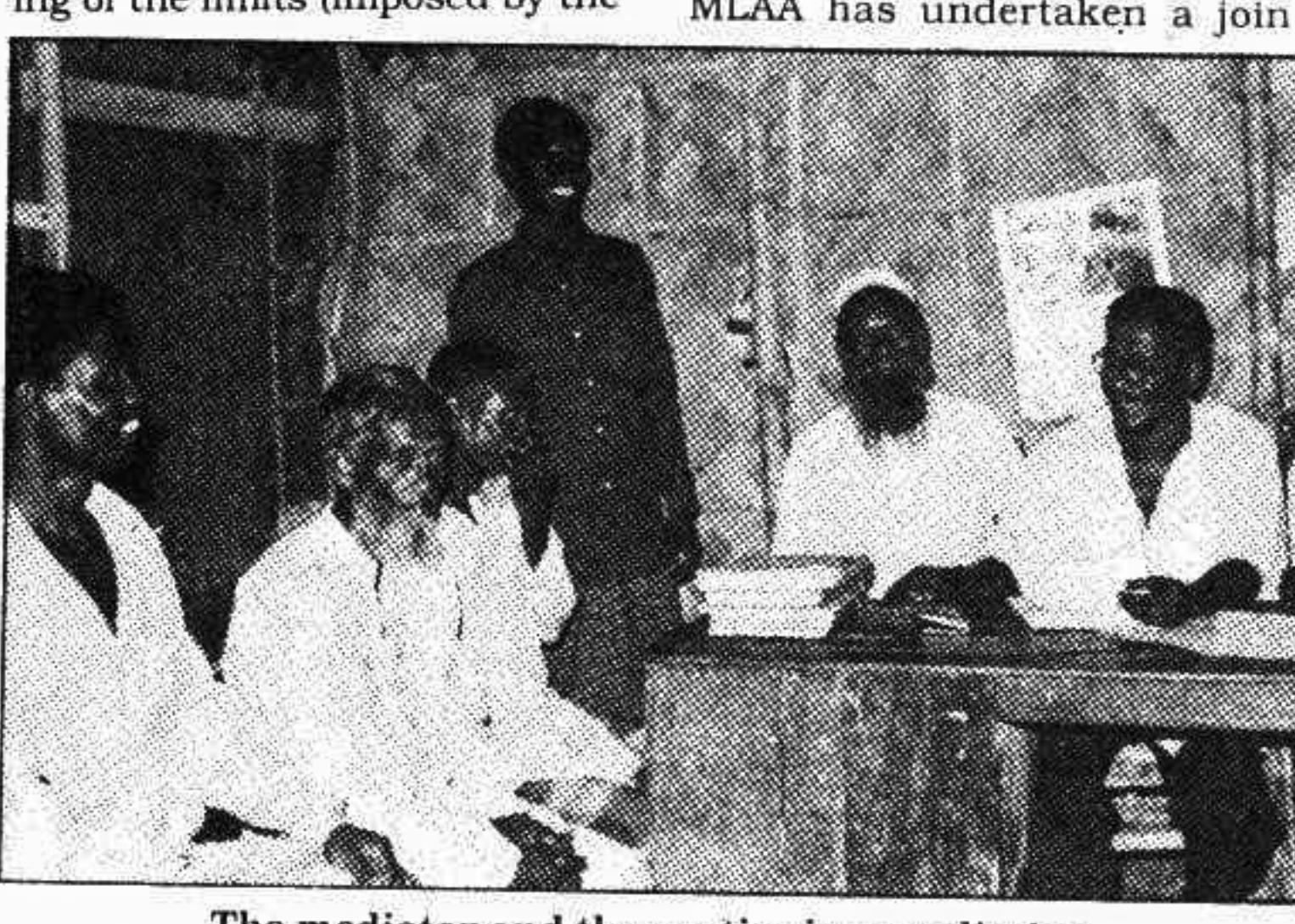
The wider the participation of the local community in the process, the lesser is the opportunity for the powerful to turn it into a mechanism for sustaining inequitable practices and power structures. However, wide participation must include representations of not only the

disputants and their friends/relatives but the poor and disadvantaged segments to reflect their notions of justice in the process.

The third requirement is to ensure that some of the orthodox and inequitable notions of justice, particularly the notions of subservience and rightlessness of women and medieval religious practices are not reproduced and strengthened by the *shalish* process.

Legal literacy and awareness, along with an understanding of the limits imposed by the

MLAA has undertaken a joint



The mediator and the parties in a mediation

legal system of acceptable resolutions, can gradually diminish the scope for inequitable deployment of the *shalish* process by the elite. An alternative dispute resolution mechanism is also a powerful medium for legal literacy and legal awareness, requiring due attention to these aspects also.

Best Practices

The critical issue is, obviously, the modes of re-organising traditional mediation process to ensure that disputes are mediated within the parameters indicated above.

A number of Non Government Organisations (NGOs) have been arranging mediation of disputes in several parts of the country. The oldest of these, Madaripur Legal Aid Association (MLAA), has been facilitating mediation as its primary activity for almost two decades now.

Annually MLAA facilitates

successful resolution of around 5,000 disputes in three districts (Madaripur, Shariatpur and Gopalganj) in southern part of the country.

Secondly, MLAA is also providing training to workers/mediators of around 30 NGOs each year, from all parts of the country.

Thirdly, since last year it has taken up the role of supervising mediation activities of a substantial portion of these NGOs.

Fourthly, for last two years

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plaints and arranging *shalish*. These mediation workers are provided extensive training in mediation techniques, documentation and law.

ii. Involvement and participation of the local community:

Mediation is not an imposed structure from the above. Local elders, influential persons and elected leaders in large numbers are involved in mediating disputes.

Usually for each village a village mediation committee is formed with at least 10 volunteer-mediators. A union mediation committee for each Union is then formed with representatives from the village mediation committees.

The members of these mediation committees are provided with short and repetitive trainings to help them distinguish between mediation and dictating solution, and facilitate their understanding of the legal system.

iii. Participatory mediation and documentation:

The mediation process starts with:

(a) a disputant contacting a mediation worker who, then,

(b) informs the other party, and

(c) informs the mediation committee members regarding the dispute.

Documentation is initiated with the first (a) of the above steps.

In addition to mediation committee members, local people are encouraged to participate in the mediation to ensure openness and fairness of the process as well facilitate wider acceptance, not only by the disputants themselves but the local community also.

The compromise reached

at a mediation session with the participation of the above persons is then documented with authentication by the members of the mediation committee and the disputants.

The participatory mediation

process is also a useful and effective avenue for legal literacy and awareness.

A substantial legal aid programme of the mediation organisation ensures that a client/complainant is supported for resolving his/her dispute through mediation and, if mediation fails or mediation is not appropriate, a networking and collaboration between

'mediation' and 'legal aid' organisations can be evolved to ensure service/support for effective resolution of disputes.

The above, in its entirety, is increasingly being identified as the Madaripur Model of Mediation (MM).

Replicability and Possibilities

As already indicated, a large number of NGOs in various parts of the country are undertaking mediation according to the above model (MM).

MLAA has a large and resourceful training centre in Madaripur. Besides, a number of MLAA Mediation Trainers are engaged in providing training and supervision in the project areas of other NGOs. BLAST, with offices in 13 districts, plans to expand its offices to all the 'old' 19 districts within the next year and a half and is in a position to provide support in instances where a dispute is appropriate for mediation.

The way forward, therefore, would include:

• further strengthening of the training facilities for ensuring mediation training on a much larger scale;

• mechanism for extensive supervision of and support to other NGOs particularly at the initial stage of their mediation programme; and

• production and distribution of materials on mediation techniques and legal literacy.

Most importantly, successful mediation is predicated upon the integrity and perception of fairness and justice of all those who are engaged in the process, as well as their thorough training and understanding of the requisite techniques.

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law watch

Why Indian Christians Are Under Attack

By A J Singh writes from New Delhi

Christian missionaries in India have been subjected to several much-publicised attacks.

Hindu fundamentalism is blamed. But

Gemini News Service reports that the main

reason behind the attacks is the church's attempt to empower the underclasses in their battles with powerful land-owners.

tancy.

"The VHP has always been anti-Christian," says Alain De Lastic, the Archbishop of Delhi. "They want to have one religion, one code. I believe this will ruin the country."

The BJP has tried to distance itself from its radical allies. Prime Minister Atal Bihari Vajpeyi has vowed to bring the anti-Christian attacks under control.

Analysts say it will be difficult for the beleaguered BJP government to blame the Hindu extremist fringe for the anti-Christian violence. It depends on 17 coalition partners if it is to stay in power.

Some political observers say that the latest attacks on the Christian community are a political move to stop the rise of Italian-born Sonia Gandhi, president of the Congress Party and widow of late prime minister Rajiv Gandhi. Under Sonia Gandhi, Congress has just wrested control from the BJP in two state elections.

The Hindu extremists believe that their onslaught against the Christians will distract the clergy and deprived classes about their rights. Awareness brought about by education has emboldened the poor, who have demanded the return of land and property forcibly grabbed by upper caste Hindus — among them, powerful rich landlords or the rural and political elite.

As

long as the clergy confined itself to converting the poor or low caste *harijans* and *pariahs* or opening new schools for converts, the upper caste Hindu landlords tolerated them.

Once the Christian missionaries began to teach India's poor and depressed classes about their rights. Awareness brought about by education has emboldened the poor, who have demanded the return of land and property forcibly grabbed by upper caste Hindus — among them, powerful rich landlords or the rural and political elite.

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A mob of 200 Hindu fundamentalists attacked a Christian Centre and raped four nuns.

Jesuit Father Thomas, 46, was abducted, tortured and beheaded. He worked for almost 30 years in a backward area of Bihar state and set up a network of schools that educated young Christians and helped them find employment.

The youths took legal steps to reclaim their land from upper-caste land-grabbers. Nearly 200 families succeeded. This so provoked high-caste Hindu landlords they punished them.

Later, Father Jeevendra Jadhav, 51, became a victim of Hindu militants backed by landlords. He had been working on a project for the rehabilitation of earthquake victims in Latur, Maharashtra state. Local bigwigs with powerful political connections tried to take land belonging to poor Christian earthquake victims. Father Jadhav helped foil their attempts.

Hindu extremists ransacked Jadhav's office and severely reprimanded him. They shouted slogans against him for forcibly converting people to Christianity, but spared his life.

Sister Annie, who works on Jadhav's project, said: "Forget about converting anyone. We do not even wear our habit while working in the villages."

Where

is

all

this

persecution

leading?

asks Father Ignatius Mascarenhas of Delhi.

"I've been hearing talk from intelligent, informed people, telling me: 'Father, if we do not react they'll laugh at us and nothing will be done.'

— Gemini News

The writer is a freelance journalist based in Dharamsala, northern India, who specialises in Tibet, Nepal, Bhutan and India's northern states.

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