

## OFF CAMPUS

# Alternative dispute resolution is crucial for its lawyers

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According to a Supreme Court report published this year, as of December 2024, a staggering 45,16,603 cases were pending with the Appellate Division, High Court, and lower courts across the country. It further shows that each lower court judge handles 1,977 cases, while each judge in the Appellate Division and the High Court handles 4,446 and 6,552 cases, respectively. The status quo is a matter of dismay, not just for lawyers' clients, but for many lawyers themselves.

In the context of our overburdened courts and strained legal system, alternative dispute resolution (ADR) offers a more efficient solution and is seen by many as an essential avenue for addressing these issues. It has seen great expansion in the past few decades, globally.

Rahim Shamji, the Founder and CEO of ADR ODR International, who is an international mediator and digital dispute resolution specialist (DDRS), informs that ADR processes are well-established in the UK, with competency in them no longer a luxury but an absolute necessity for lawyers in many practice areas. "The scene in the US is significantly more mature than in the UK," he adds. "95 to 98 percent of cases filed in the US don't go to trial, they are resolved in ADR."

The core idea behind it is not new in Bangladesh, with village elders, religious leaders, and prominent members

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of communities informally arbitrating (*Salish*) or mediating (*Madhyasthata*) disputes between parties in conflict. What is new to us, however, is the incorporation of these processes into our legal system.

Dr Khaled Hamid Chowdhury, Senior Advocate at the Appellate Division, a Fellow of the Chartered Institute of Arbitrators (FCI Arb), and the Head of Laws at London College of Legal Studies (South), believes that the current professional landscape makes it indispensable for law students and young lawyers to know and learn ADR procedures. He states, "Corporate clients are well aware of the drawbacks of litigation, and they naturally gravitate towards alternate means to resolve their disputes. So, they look for professionals who are competent in alternative dispute resolution procedures."

The most prominent among ADR procedures are arbitration and mediation.



DESIGN: AZRA HUMAYRA

Arbitration in Bangladesh is regulated by the Arbitration Act of 2001. It involves parties entering into an agreement to let their dispute be decided by an Arbitral Tribunal that they themselves have the freedom to appoint and then appointing lawyers who present their cases before the tribunal. Upon hearing the arguments made on behalf of both parties, the tribunal can make an arbitral award that is enforced "in the same manner as if it were a decree of the Court" (Section 44). This means that a decision reached through arbitration proceedings can be considered equivalent to a court judgement, unless it is set aside by the court (Section 42).

"Arbitration is generally much more expeditious," says Margub Kabir, Barrister-at-Law and Head of Chamber of Margub Kabir & Associates, on the differences between litigation and arbitration. He elucidates, "In court, when you go before a judge, there are many cases in the court's docket, and yours is one of them. Procedurally, you file the case, come on the list, get the judge to hear your case, pass an initial order, and then there will be a final hearing and then a final judgement. But for the entirety of the process, you will have to wait with all the other cases in the docket of the particular court. But in the case of arbitration, the tribunal exists just for the case that is in front of it."

Essentially, arbitration in the domestic context can be understood as the court-regulated, state-sanctioned privatisation of legal proceedings that allows greater flexibility and efficiency. But the ambit of arbitration is not just limited to domestic cases. The New York Convention, to which Bangladesh is a signatory, requires courts of one state to uphold arbitral awards given in another. Thus, in this era of complex international contracts, arbitration is predominantly the preferred means of settling disputes, providing an immense scope for growth and diversification for individual lawyers and the legal profession in Bangladesh at large.

"Graduates who have acquired the skills and are pursuing this field can have brilliant careers – almost automatically they are regarded as more employable by commercial law chambers," says Dr Khaled Hamid Chowdhury. "But as a method of dispute resolution, I think mediation is an even more powerful tool."

Mediation involves a neutral, impartial mediator facilitating conflict resolution. The mediator does this by

asking the right questions and having the parties explore the alternatives to settlement, as well as proposals and the likelihood of their acceptance. In a successful mediation, all of this leads to the parties thinking beyond their respective positions and towards a solution that is great for them but also good for the other side.

Speaking from his experience both as a lawyer and a mediator, Shahariar Sadat, an Advocate of the Supreme Court of Bangladesh and the Deputy Executive Director of the Centre for Peace and Justice, BRAC University, describes how mediation is a more empathetic method of dispute resolution, "As lawyers, our eyes are always on the evidence, on the technicalities, and we avoid the human aspect, giving the law all the prominence. But as mediators, the biggest emphasis is on the human element." Both Dr Khaled Hamid Chowdhury and Advocate Shahariar Sadat believe that in the legal profession, mediation training reminds them to focus on their client's humanity and, by extension, their own.

As of now, there is no overarching "Mediation Act" in Bangladesh. Nonetheless, section 89A of the Civil Procedure Code, 1908, facilitates court-directed mediation in civil cases. Notably, the *Artha Rin Adalat Ain*, 2003, under section 22, mandates pre-trial mediation between the financial institution and borrower in money loan cases. Moreover, recent developments have only added to the prominence of mediation in the Bangladeshi context. Through the Legal Aid (Amendment) Ordinance 2025, the government introduced mandatory pre-case mediation in matters of maintenance, dowry, house rent, and family disputes. However, mediation, like arbitration, is not limited to the domestic scene alone.

With the Singapore Convention making mediated settlements in one signatory nation binding in the courts of another, mediation is also set to enjoy increased relevance in the field of international commercial disputes. But despite the personal, societal, and national necessity that goes even beyond the obvious economic opportunity, the ADR scene in Bangladesh still lags behind by magnitudes in comparison to the global standard.

"Arbitration is definitely faster, but after it's done, you still have to litigate in court for enforcement. It basically frustrates the purpose," says Barrister Margub Kabir.

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