Dissertation

The Missing Rules: How Standards Shape the Effectiveness of ADR in Bangladesh

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Declaration

I hereby declare that the dissertation of my Bachelor of Law (LLB) degree on "The Missing Rules: How Standards Shape the Effectiveness of ADR in Bangladesh" has been carried out by me. It does not include any material which has been previously submitted for any degree or diploma in any university, and no part of this dissertation was previously published or written by another person except where due references are made in the text.

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List of Abbreviation

ADR – Alternative Dispute Resolution

AA 2001 – Arbitration Act 2001

BLA 2006 – Bangladesh Labour Act 2006

CMA Boards Act 2004 – Conciliation of Disputes (Municipal Areas) Board Act 2004

CPC 1908 – Code of Civil Procedure 1908

CrPC 1898 – Code of Criminal Procedure 1898

FCO 1985 – Family Courts Ordinance 1985

FCA 2023 – Family Courts Act 2023

ICC – International Chamber of Commerce

ITA 2023 – Income Tax Act 2023

LASA 2025 – Legal Aid Services (Amendment) Ordinance 2025

MLCA 2003 – Money Loan Courts Act 2003

NBR – National Board of Revenue

ODR – Online Dispute Resolution

VAT – Value Added Tax

VCA 2006 – Village Courts Act 2006

UNCITRAL – United Nations Commission on International Trade Law

FIDIC – International Federation of Consulting Engineers

Abstract

This dissertation examines how the lack of clear procedural guidelines and uniform standards in Bangladesh's ADR system undermines its credibility. Since ADR was introduced in 2000 and expanded to civil, family, commercial, labour and financial disputes, the absence of national rules on mediator qualifications, training and oversight has produced uneven quality and weak public confidence. Using doctrinal methods, the thesis analyses key civil, commercial, labour and legal aid laws to identify gaps in accreditation, safeguards and ethics, and compares them with Australia's National Mediator Accreditation System, US schemes and India's court-annexed ADR centres, where strong training standards, oversight and quality control are linked to much higher settlement rates than Bangladesh's 2.22 per cent ADR use in 2014. It finds that, although the 2025 Legal Aid Services (Amendment) Ordinance expands mediation and creates special mediator panels, it remains incomplete without a unified accreditation and accountability framework, so the study proposes an independent national accreditation authority, drawing on UNCITRAL, FIDIC and ICC models to set competencies, supervise conduct, handle complaints and support ODR so ADR can deliver reliable, accessible justice for ordinary Bangladeshis.

Chapter 1

Introduction

1.1 Background

Bangladesh introduced Alternative Dispute Resolution (ADR) for the first time in 2000. It solves problems of slow, expensive, and complicated court systems. In 2003, the Code of Civil Procedure, 1908 (CPC 1908) was amended to include mediation as a formal part of civil litigation to deliver quicker and less expensive justice for ordinary citizens.[1] After twenty years, Bangladesh's ADR faces credibility issues due to lack of established rules for mediator qualifications, training or accountability. If mediators are not under any general guideline, then it will never ensure an effective ADR. This absence of standards makes people doubt the ADR.This project examines how unclear liability and eligibility standards hinder ADR effectiveness and proposes needed reforms.

1.1.1 Problem Statement

Bangladesh enacted comprehensive ADR legislation across CPC, The Family Courts Ordinance, 1985 (FCO 1985);[2] The Family Courts Act, 2023 (FCA 2023);[3] Bangladesh Labour Act,2006 (BLA 2006),[4] Village Courts Act, 2006 (VCA 2006);[5] Arbitration Act,2001 (AA 2001);[6] Money Loan Courts Act, 2003 (MLCA 2003);[7] Income Tax Act, 2023 (ITA 2023);[8] and Code of Criminal Procedure, 1898 (CrPC 1898);[9] still adoption remains critically low, only 3 out of 2,566 cases involving disputes over NBR's value added tax (VAT) claims could be resolved through ADR.[10] Despite mandatory provisions and the recent Legal Aid Services (Amendment)

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[1] *Code of Civil Procedure, 1908.*
[2] *Family Courts Ordinance, 1985.*
[3] *Family Courts Act, 2023.*
[4] *Labour Act, 2006.*
[5] *Village Courts Act, 2006.*
[6] *Arbitration Act, 2001.*
[7] *Money Loan Courts Act, 2001.*
[8] *Income Tax Act, 2023.*
[9] *Code of Criminal Procedure, 1898.*
[10] 'ADR in tax dispute resolution', The Financial Express (Sunday, 15 February 2015)

Ordinance, 2025 (LASA 2025);[11] requiring pre-case mediation, only a fraction of thousands of annual tax disputes resolved via ADR due to poor awareness and utilization.

The core problem of this is, there is no national mediator accreditation. Panels rely on untrained lawyers who lack minimum qualifications, training, or ethical codes. Which causes inconsistent outcomes. Power imbalances enable coercion of vulnerable parties such as women or small borrowers, without procedural safeguards or judicial review of settlements. Absent oversight bodies allow bias, misconduct, and non-enforceability, eroding public trust and overburdening courts.

The consequence of this is that the ADR is becoming just a procedural formality rather than a justice tool. Without standards reform, 2025 Ordinance risks failure despite institutional gains like Special Mediator panels.[12]

1.1.2 Research Question

The primary focus of this study is directed at the following inquiries:

1. To what extent does the absence of clear liability and eligibility standards undermine the credibility and effectiveness of ADR in Bangladesh?
2. What reforms are needed to ensure mediator eligibility and accountability in ADR in Bangladesh?

1.1.3 Literature Review

Court-annexed ADR was first launched in Bangladesh in June 2000 through judicial settlement pilot projects designed to cut delay, reduce costs, and ease the burdens faced by litigants in the conventional trial system. Tapan Gain observed that inconsistent results arose without proper accreditation or standardized training.[13] Mediation showed clear potential, but without clear

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<https://today.thefinancialexpress.com.bd/print/adr-in-tax-dispute-resolution> accessed 17 November 2025.

[11] *Legal Aid Services (Amendment) Ordinance, 2025.*

[12] The Daily Star, 'Legal Aid Services (Amendment) Ordinance 2025' (The Daily Star, 22 July 2025) https://www.thedailystar.net/law-our-rights/news/legal-aid-services-amendment-ordinance-2025-3945886 accessed 16 November 2025.

[13] Tapan Gain, *"Development of Alternative Dispute Resolution in Bangladesh"* (June 2000) <https://www.academia.edu/36707093/Development_of_Alternative_Dispute_Resolution_in_Bangladesh> accessed 21 October 2025.

standards, results have been inconsistent. Dr. Jamila A. Chowdhury's empirical study, *The daily work of District Legal Aid Offices: Experiences and challenges*, explores this in "Weighing the Gender Hypothesis on Mediators."[14] The study shows that the lack of standardized mediator selection criteria causes inconsistent ADR outcomes and that effectiveness depends on clear eligibility rules and competent neutrals. It notes that, although the 2003 CPC amendment expanded mediation, it did not set qualification, accreditation or continuing education requirements, contributing to very low uptake, with only 2.22% of civil cases using ADR from 2012-2014 because parties distrust untrained mediators, as Md Khairul Islam observes.[15] They caution that ADR, without adequate oversight, runs the risk of being another procedural obstacle instead of a tool for.[16] Hassan, Islam, and Malek argue that ADR's advantages, speed and cost savings require an institutional framework with professional standards and ethical codes, absent in Bangladesh's laws.[17] Patoari highlights power imbalances as a key ADR obstacle, where wealthy parties pressure weaker ones into unfair outcomes without legal or procedural protections.[18] Patoari recommends structured mediator training to protect vulnerable parties, while Akram warns that without proper accreditation, mediator bias and lack of oversight become serious problems.[19] This emphasizes that inadequate knowledge erodes public trust in ADR processes. Redfern and Hunter declared in *Redfern and Hunter on International Arbitration*[20] that clear professional credentials, ongoing training obligations, and balanced liability protections form essential cornerstones for ADR

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[14] Jamila A Chowdhury and Nusrat Jahan, '*Weighing the Gender Hypothesis on Mediators: Insiders' View from District Legal Aid Offices in Bangladesh*' (2021) 32(2) Dhaka University Law Journal 69 accessed 21 October 2025. <https://www.researchgate.net/publication/359203574_Weighing_the_Gender_Hypothesis_on_Mediators_Insiders'_View_from_District_Legal_Aid_Offices_in_Bangladesh/fulltext/63802dc1554def61936b7b0d/Weighing-the-Gender-Hypothesis-on-Mediators-Insiders-View-from-District-Legal-Aid-Offices-in-Bangladesh.pdf> accessed 24 September 2025.

[15] Md Khairul Islam, '*Critical Review of the Court-Based ADR in Bangladesh*' (*IOSR Journal of Humanities and Social Science*) 50 <https://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue12/Version-4/F0201244555.pdf> accessed 24 September 2025.

[16] *ibid*.

[17] A B M Rashedul Hassan, S M Shahidul Islam and Md Abdul Malek, '*ADR Mechanisms in Bangladesh: Widening Scopes for Access to Justice*' (*Asian Journal of Law and Policy*) 9 <https://ebaub.ac.bd/journal/ejl/files/sample.pdf> accessed 24 September 2025.

[18] Manjur Hossain Patoari and others, '*Legal and Administrative Challenges of Alternative Dispute Resolution (ADR) as a Peaceful Means of Resolving the Land Dispute in the Rural Areas of Bangladesh*' (2020) 11(3) Open Journal of Social Sciences Para 5.2 <https://www.scirp.org/journal/paperinformation?paperid=99458> accessed 24 September 2025.

[19] Md Saleh Akram, '*ADR in the Judicial System of Bangladesh*' (2023) 9(8) International Journal of Scientific Research in Multidisciplinary Studies 4 <7-ISROSET-IJSRMS-09012.pdf> accessed 24 September 2025.

[20] Redfern A and Hunter M, *Redfern and Hunter on International Arbitration* (6th ed Oxford University Press 2021).

integrity.[21] These studies show that Bangladesh's ADR system needs clear training rules, accreditation and ongoing supervision to work effectively and earn public trust, and that neither judges nor legal aid mediators follow a unified, detailed legal guideline on how mediation should be conducted.[22] Recently, the interim government issued the LASA 2025, which marks a major policy shift by making pre-case mediation compulsory for many disputes, including family matters, house rent, small civil claims, land, maintenance, dowry and cheque dishonour.

The literature shows that ADR in Bangladesh was meant to reduce delay, cost and hardship, but its impact is limited by unclear rules on who can mediate, how they are trained and how they are supervised. Studies report very low ADR use, power imbalances, loose procedures and low public trust, and warn that reforms like the 2025 Legal Aid Ordinance will fail without strong systems for mediator qualification, training and accountability.

1.4 Methodology and Scope

This work is based on doctrinal legal research. Secondary sources are academic books and articles about ADR. Primary sources are statutes and regulations.

The scope covers mediator eligibility, training, accreditation, accountability, and their impact on ADR credibility and effectiveness.

1.5 Limitations

Limitations of this research are:

Heavily based on secondary sources. Most of the empirical data are within 2021. Informal dispute systems are only mentioned in the historical context. Private arbitration has been seen in the lens of statutory frameworks only. There were no funds behind this research, nor sufficient time. This thesis is lacking interviews which restrict real-world validation.

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[21] *ibid* 130-35.

[22] *ibid* Para 6 (n 18).

Chapter 2

2. Legal Framework of ADR in Bangladesh

In Bangladesh, ADR has roots in older community practices such as "Grammo Shalish" or "Shalish," where respected elders informally resolved disputes so people could avoid costly and time-consuming courts.[23] Before liberation, the "Panchayet" system was also widely used and held a strong place in the minds of local people.[24] This practice originated from India and the panchayat system was widely accepted by local communities.[25] Dr. Jamila Chowdhury notes that "Confucius" advocated resolving issues through moral reasoning and compromise rather than sovereign-imposed decisions.[26] This ethos is reflected in the traditional use of shalish and later formal ADR processes, where parties seek private dispute resolution.[27] When the British colonized the Indian subcontinent, they meddled in the Panchayet.[28] The British introduced the Permanent Settlement and Zamindari system, fundamentally altering traditional dispute resolution methods in Bengal.[29] The local elders, who previously mediated disputes and operated relatively informally, lost some of their authority when colonists arrived.[30] Nonetheless, the British later accepted the importance of local dispute resolution.[31] By The Bengal Village Chowkidari Act, 1870; full legal recognition was given to the Panchayet.[32] This Act recognised that neighbourhoods could settle petty matters without going to colonial courts.[33] The Bengal Village Self-Government Act, 1919 strengthened village level dispute resolution by formally recognizing Panchayet bodies as statutory institutions.[34] These bodies were able to hear about civil cases and low-level criminal charges within their areas of control.[35] During this period, arbitration gained legal recognition through the Arbitration Act, 1940; establishing statutory procedures for commercial arbitration.[36]

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[23] Jamila A Chowdhury, *ADR Theories and Practices* (London College of Legal Studies 2013) 57–60.
[24] *ibid*.
[25] *ibid*.
[26] *ibid* 44.
[27] *ibid*.
[28] *ibid* 60.
[29] *ibid* 58–60.
[30] *ibid*.
[31] *ibid* 60.
[32] *ibid*.
[33] *ibid*.
[34] *ibid* 61.
[35] *ibid*.
[36] *ibid* (120).

In the pre-1971 era, traditional ADR among Muslims included land dispute resolution via personal laws, with The State Acquisition and Tenancy Act, 1950 adding provisions for efficient land matter handling.[37] The act also established "Arbitration Councils" to resolve family disputes like marriage, divorce, and maintenance.[38] The Industrial Relations Ordinance, 1969 provided for negotiation, conciliation, and arbitration in labor-management disputes.[39] Village Shalish, deeply rooted before 1971, continued informally in rural Bangladesh after liberation.[40] Over time, NGOs adopted modified shalish models with better procedural safeguards, especially protecting vulnerable groups like women.[41] Bangladesh's dispute resolution grew from community practices and was later formalised in colonial and post-liberation laws.[42] Modern ADR builds on this history, using new administrative methods and institutions.[43]

2.1 Evolution of ADR through Legislation (2000–2024)

Since the FCO 1985, first built reconciliation into formal family cases, statutory ADR has gradually spread across many areas of Bangladeshi law. LASA 2000 introduced free mediation for those who cannot afford lawyers, MLCA 2003 made mediation compulsory in loan recovery suits, and from 2004 local authorities have used ADR under the Conciliation of Disputes (Municipal Areas) Board Act 2004 (CMA Board Act 2004);[44] They established local boards to resolve neighbourhood and property disputes, while the VCA 2006 let Union Parishads settle minor civil matters through mediation and the Labour Act 2006 introduced negotiation, conciliation and arbitration for industrial conflicts. In 2012, section 89A of the CPC 1908 required courts to send most civil suits to mediation, the AA 2001 modernised commercial arbitration in line with the UNCITRAL Model Law, and ADR later entered fiscal and criminal fields through negotiated tax settlements under section 156A of the Income Tax Ordinance,1984[45] (ITO 1984);and compromise of compoundable offences under sections 345–347 of the CrPC 1898. Together, these laws show a clear policy to weave ADR into the justice system to cut delay and improve access to justice.

[37] *ibid* 62.
[38] *ibid* 196–202.
[39] *ibid* (n37).
[40] *ibid* 64.
[41] *ibid* 66, 211–16.
[42] *ibid* 57–66.
[43] *ibid*.
[44] *Dispute Resolution (Municipal Area) Board Act, 2004.*
[45] *Income Tax Ordinance, 1984* s 156A.

LASA 2025 makes pre-case mediation compulsory for many disputes, creates a panel of Special Mediators, restructures the National Governing Body and permits in-person and virtual mediation for wider access. Yet gaps in training, accreditation, power-imbalance safeguards and technology still risk turning mandatory mediation into a formality rather than an effective ADR tool.[46]

2.2 Analysis of Current Statutory Provisions by Subject Matter

To understand why Bangladesh's ADR system continues to face credibility problems despite extensive legislation, this section analyses the ADR provisions scattered across key statutes such as civil procedure, family, local government, labour, financial and fiscal laws. The aim is to show that these schemes operate without any common procedural framework, mediator qualification standards, or ethical safeguards, leading to inconsistent practice and weak protection against power imbalances. By mapping these gaps across the main ADR-enabling Acts, the chapter lays the foundation for arguing that a uniform national procedural guideline and accreditation system is necessary to make ADR a reliable, rights-protective alternative to litigation.

2.2.1 Procedural Law Framework

2.2.2 Relevant Provision in the CPC 1908

The CPC 1908 introduced mediation through section 89A, first added by the 2003 amendment and later strengthened in 2012 by making referral to mediation mandatory rather than discretionary for most civil suits. Section 89A allows mediation to be initiated at the summons stage or before framing of issues and recognizes several modes of appointment. Which are, a judge-nominated mediator, a pleader chosen by the parties, a mediator selected directly by the parties, or a mediator from a panel prepared by the District Judge. Mediation is described as a flexible, informal and confidential process to be completed within 60 days, extendable by a further 30 days, after which any settlement is recorded and turned into a decree of the court, with no appeal against that decree. In addition, section 89B permits withdrawal of a pending suit for referral to arbitration under AA 2001, while section 89C allows mediation at the appellate stage.

[46] *ibid* (n15).

2.2.2.1 Identified Flaws

Despite this framework, the CPC mediation mechanism lacks provisions on several key issues that are essential for a coherent, rights-protective ADR system.

There is a flaw in the conduct of the mediation. There is no answers given in 89A that, when the parties could not agree on a procedure then which default rules will be followed. The minimum or maximum numbers of sessions are not mentioned. Who will fix the time and venue, how joint & separates meetings should be arranged, the time allocation of parties speaking, these sorts of core things have been left on ad hoc practice.

There are no provisions on use of experts. If parties need an opinion of experts on how it will be conducted and who will be the expert, what will be the remuneration, what procedures the experts need to follow it is not mentioned.

Communication method between the mediator and parties, which things can be disclosed by the mediators, and which are not, in case of ex parte communication what will be the rules or will there be any ex parte at all is not mentioned. Only mentioning the communication will be "confidential" does not cover all these issues.

About the award/decree, how it will be drafted, if there is any power imbalance between the parties how will the whole agreement be seeing these sorts of crucial matters are not mentioned. It risks the award\decree to be unfair.

In case of parties or one of the party loses confidences over the mediator then in which manner the mediator will be replaced and how a new one will be appointed and who will manage these removal and appointments is not mentioned in the statute.

2.2.2.2 Commercial and Contractual Disputes

2.2.2.1 Relevant Provisions of AA 2001

The AA 2001 repeals the 1940 Act and aligns Bangladesh's arbitration framework with the UNCITRAL Model Law for domestic and international commercial arbitration. It defines arbitration broadly in section 2(a), applies to agreements under section 9, sets rules on tribunal composition and appointment in sections 11-15, lays down fair-hearing standards in section 23, regulates recognition, enforcement and challenge of awards in sections 44-46, and empowers courts under section 7A to grant interim relief such as injunctions and receivership.

2.2.2.2 Identified Flaws

There is no central authority who will list the qualified mediators.

Unannounced remuneration or at least not giving a bar or chart of remuneration keeps the parties confused about setting the remuneration. If there is a list of qualified arbitrators besides a chart of the remuneration scale, it will be easier for the parties to choose a qualified arbitrator within their ability.

According to Sec 23 the arbitrator must be impartial and give fair chance to both parties to present their case. But without a disciplinary mechanism if the arbitrators do the misconduct, it will be unseen.

Parties can challenge the award u/s 43 but it needs fresh court proceedings along with legal costs. Instead of speeding the process it becomes inefficient.

All these things weaken the public's confidence over arbitration.

2.2.3 Family Matters

2.2.3.1 Relevant Provisions of the FCO 1985; FCA 2023

FCO 1985 gives family courts power over family matters like divorce, dower, maintenance, and guardianship. Section 10 tells the judge to try reconciliation between the parties before recording any evidence. Section 13 tells the court to try for settlement if compromise seems possible before evidence, and it also allows another settlement attempt after the hearing but before judgment, with a successful settlement turned into a decree under section 14.

The FCA 2023 keeps this structure but clearly recognizes ADR and makes mediation a compulsory step before the court decides on key family disputes such as divorce and maintenance. Mediation takes place before trial, and the goal is to cut delay and encourage agreed solutions in sensitive family cases.

2.2.3.2 Identified Flaws

There is no legal definition of mediation nor any step-by-step rules on how it should run on family matters. So, it is scattered and each judge handles it in their own way.

In Family courts, judge is the mediator. But mediation is a whole different thing than judging. It does require special training and skills to handle a sensitive family issue.

Before doing mediation of a family dispute, no legal advice before settlement is given. It has the risk of the weaker party getting agreed on unjust settlement by coercion or for power imbalances.

Family courts do not have any clause like 89A of CPC. It risks confidentiality.

Since the judge is the mediator, there is no one to monitor the mediation or neither any scope to file any complaints against the mediator. If the mediation is baised the parties have almost no remedy.

2.2.3.3 Relevant provision of The Muslim Family Law Ordinance, 1961 (MFLO 1961)

The MFLO 1961 created Arbitration Councils to deal with certain Muslim family disputes. Each Council has a chairman, usually the Union Parishad Chairman or Mayor and one representative chosen by each party. The Council works on issues like polygamy under section 6, divorce under section 7, and maintenance, and a husband cannot marry again without written permission from the Council. In divorce matters, the husband must give notice to the Chairman, who then forms the Council and first tries reconciliation between the spouses.

2.2.3.3 Identified Flaws

In MFLO the mediators are the council members. They do not have any skills or training in mediation. Also, often they use their powers and do favoritism.

Each party selects their own council representative, and the members often act like party agents instead of being neutral.

There are no written documents or record of proceedings which will show the reasoning behind the decision.

These sorts of meditation through counselors often are patriarchal which makes the women suffered.

2.2.4 Local Administration and Community Disputes

2.2.4.1 Relevant provisions of VCA 2006

The VCA 2006 establishes village courts within each Union Parishad to resolve minor civil and criminal disputes locally. A village court is composed of the Union Parishad Chairman as presiding officer and four members, two nominated by each disputing party. The court's jurisdiction covers matters listed in the Schedule, with a pecuniary limit of 25,000 taka. It must first try to achieve conciliation under section 11; if that fails, it delivers a decision under section 12, which is final if unanimous or by a 4-1 majority, with limited appeal rights.

2.2.4.2 Identified Flaws

After 2006 the monetary limit of the VCA has not been increased. Due to inflation most disputes are now exceeding the limit of the pecuniary.

Union Parishad Chairman and party nominated members settled the disputes, there is nothing to mention that they do not have any sort of legal training.

For conciliation and after an unsuccessful conciliation giving the binding decision there are no separate bodies.

Without clear rules on evidence and legal aid it is too risky for the vulnerable parties.

2.2.4.3 Relevant Provisions in CMA Boards Act, 2004

The CMA Boards Act 2004 creates Conciliation Boards in municipalities and city corporations to resolve neighborhood and property disputes. Each Board, chaired by the mayor or municipal Chairman and including four party-nominated members, hears scheduled civil matters such as boundary, nuisance and damage claims, must first try informal conciliation under section 7, and if settlement is reached issues a certificate treated as a decree or, failing that, adjudicates and gives a binding decision.

2.2.4.4 Identified Flaws

Mayor or municipal chairman and local politicians can never act like neutrals. Board made by them will result in an impartial dispute resolution.

For conciliation and after an unsuccessful conciliation giving the binding decision there are no separate bodies.

Without clear rules on evidence and legal aid it is too risky for the vulnerable parties.

2.2.5 Labour Disputes

2.2.5.1 Relevant Provisions in BLA 2006

BLA 2006 uses negotiation, conciliation, and arbitration to resolve industrial disputes between workers and employers. Sections 210–212 set out this three-step mechanism. Section 210 says that when a dispute is likely, the employer or the trade union must send a written notice and then meet for direct negotiation within 15 days. If negotiation fails, the dispute goes to a government appointed conciliator who tries to settle the matter through conciliation. If conciliation also fails, either party may refer the dispute to arbitration under section 212, with an arbitrator chosen as provided in the Act.

2.2.5.2 Identified Flaws

No room for hosing their own conciliator does curtail the independency of the parties**.**

The finishing time frame of negotiation is not mentioned.
Labour arbitration do not say to follow the AA 2001 explicitly, which creates confusion about rules of impartiality and enforcing awards.

The power imbalances between workers and employers are not settled as it has not given any special protection for workers.
Qualification, training or ethical standards for conciliation is not detailed in the act.

2.2.6 Fiscal and Financial Disputes

2.2.6.1 Relevant Provisions in ITA 2023

Under section 299, a taxpayer with a pending tax dispute may apply for ADR on payment of a fixed fee. The Commission or authorized officer then decides suitability, and if ADR is accepted, appoints a facilitator under section 300, who must know tax law, have mediation skills, meet the parties, identify disputed issues and help them reach settlement. Any settlement order is final, subject only to reopening for fraud or misrepresentation under section 307, and sections 308–309 ensure confidentiality by barring later use of ADR communications in ordinary tax proceedings.

2.2.6.2 Identified Flaws

Facilitators do not have any formal certification or training system.

For individual taxpayers and small businesses there are no special procedural safeguards.

There is no independent body to monitor ADR sessions and receive complaints against the facilitators.

2.2.6.3 Related Provisions in MLCA 2003

MLCA 2003; as amended in 2010, makes mediation compulsory in loan recovery suits before the special money loan courts. After the defendant files a written statement, section 221 requires the court to send the case to mediation, which may be conducted by pleaders or another mutually agreed mediator such as a retired judge or former bank officer. Mediation should be completed within 60 days, with a possible extension of 30 days, and if the parties cannot agree on a mediator within ten days, the court appoints one on its own. Section 23 allows the court to send the matter to mediation again even after an earlier attempt has failed.

2.2.6.4 Identified Flaws

Small borrowers do not have any safeguards against the banks and financial institutions.

Mediators are not given any statutory obligation to ensure equal participation or to address power gaps between banks and individual debtors.

The veto power of banks over large settlements is an issue to a generous deal to a lender.

Before giving the decree there is no one to check the agreements.

There is no legal aid for the poor borrowers.

Bangladesh now has ADR in most major laws, but each statute uses its own rules and gives mediators power without common standards for training, conduct, or accountability. Because there are few safeguards for weaker parties and no unified framework, ADR often reflects existing power imbalances and fails to build public trust. This shows the need for a single national ADR framework with clear procedures, accreditation, and ethics so ADR can truly serve as a fair alternative to litigation.

Chapter 3

3. Comparative Analysis

This chapter reviews Bangladesh and global ADR literature, examining effectiveness research, international mediator training practices, and comparisons with India, Australia, and the US to identify gaps.

3.1 International best practices in mediator accreditation

Bangladesh has key gaps from other countries mediator accreditation. Redfern and Hunter emphasize that effective arbitration and mediation systems require neutrality, predictability, and enforceability.[47] These provisions are still under development in Bangladesh by the AA 2001. Mediators in Australia, US, and UK must meet strict requirements which are having a degree on law or social science, 5 days mediation training, and 10 hours supervised family practice.[48] They also must complete 12 hours of continuing education each year to ensure their skills are current.[49] Strict systems ensure high mediator performance and public trust. In many US states, mediators require formal certification and strict ethical codes.[50] Some US states protect mediators from court testimony about mediation proceedings, ensuring confidentiality and process trustworthiness.[51] These protections encourage honest mediation participation without fear of later use against parties. In the UK, mediators must register with bodies like the CEDR, overseeing training and conduct standards.[52] This kind of professional oversight helps maintain quality and gives people confidence that their mediator knows what they are doing.

3.2 International Training Standards and Professional Development

Best practices in the world demonstrate that a good training for mediators is one which combines theory and skills.[53] Australian family law mediators require minimum training standards, typically

[47] *ibid* (n20) 130.
[48] Hassan, Islam and Malek, (n17).
[49] *ibid*.
[50] *ibid*.
[51] Khairul, (n15).
[52] *ibid*.
[53] Hassan, Islam and Malek, (n17).

5 days of basic mediator training including theory and role-play components.[54] These training programs cover essential topics such as conflict theory, communication techniques, power imbalance identification, cultural sensitivity, and ethical decision-making.[55]

The US Federal Mediation and Conciliation Service offers a 55-hour training in mediation, which provides participants with hands-on experience.[56] Novice mediators must undertake supervised sessions where experienced practitioners observe and provide feedback.[57]This apprentice style of training helps to make certain that new mediators learn not only from books but also from doing and learning alongside experienced practitioners.[58]

In Bangladesh's early ADR pilot projects, American mediator William C. Rack from the US Ninth Circuit Court trained 30 Assistant Judges over three days in 2000.[59] His training included theory and practical skills, demonstrating that international mediator education standards require action learning as a key element.[60]But that first training push did not become a systematic or institutional daily practice throughout the districts.[61]

Another key ingredient that is lacking under the present system of Bangladesh is continuing professional education.[62] Australian registered mediators must complete 12 hours of annual professional development to stay current on best practices, legal changes, and new mediation methods.[63] Similarly, many U.S. states require mediators to attend annual workshops and seminars covering topics like domestic violence awareness, multicultural mediation, and ethical dilemmas.[64]

Bangladesh currently has no such continuing education requirement.[65] When someone is placed on a District Judge's panel of mediators there isn't even a system to ensure they refresh their

[54] *ibid*.
[55] *ibid*.
[56] Chowdhury (n23).
[57] *ibid*.
[58] *ibid* 75.
[59] *ibid* 69.
[60] *ibid* 70.
[61] *ibid*.
[62] Hassan, Islam and Malek, (n17) 19.
[63] *ibid*.
[64] *ibid* 19.
[65] Chowdhury (n23) 192.

skills/collect feedback.[66] This creates a risk that mediators rely on outdated techniques or fail to recognize new challenges in their practice.[67]

3.3 Enforcement Mechanisms and Quality Control

Comparative analysis reveals that successful ADR systems include robust enforcement mechanisms to maintain quality standards.[68] In the UK, mediators must register with organizations like Central of Effective Dispute Resolution (CEDR) and follow ethical and conduct standards for mediation.[69] If a mediator breaches the ethical rules, CEDR can take away their accreditation, meaning they cannot operate.[70]

The United States also has robust complaint systems.[71] Many states offering mediator certification programs have ethics hotline for parties to voice complaints about mediator behavior.[72] Complaints trigger formal investigations, leading to remediation training or license revocation for violations.[73]

India has taken steps to integrate ADR oversight into its judicial structure.[74] India's judiciary monitors court-connected ADR centers, settlement rates, party satisfaction, and mediator performance.[75] Judges referring cases to mediation receive feedback on outcomes, helping identify effective mediators versus those needing training or panel removal.[76]

None such exists in Bangladesh.[77] There is no organized agency which keeps a check on mediator's work, receives complaints and takes punitive action.[78] District Judges who compile

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[66] Chowdhury and Jahan (n14).
[67] *ibid*.
[68] *ibid*.
[69] *ibid*.
[70] *ibid*.
[71] Ettie Ward, 'Mandatory Court-Annexed Alternative Dispute Resolution in the United States Federal Courts: Panacea or Pandemic?' (2007) 81 St John's Law Review 95 https://scholarship.law.stjohns.edu/lawreview/vol81/iss1/7/ accessed 16 November 2025.
[72] *ibid*.
[73] *ibid*.
[74] Hassan, Islam and Malek, (n17).
[75] *ibid*.
[76] *ibid*.
[77] Chowdhury and Jahan (n14).
[78] *ibid*.

panels of mediators are not required to review or weed-out non-performers.[79] This lack of accountability means that even a mediator who repeatedly delivers bad settlements or behaves unethically bears no professional penalty.[80]

3.4 Comparative Success Rates and Public Confidence

From the statistical comparisons, it can be drawn that professional standards have an impact on ADR effectiveness.[81] Australia's National Mediator Accreditation System ensures uniform training and competence assessment across states, achieving 75% success rates across diverse cases.[82] Party satisfaction surveys find that more than 80% of its users believe the process was fair and the mediator competent.[83]

The same holds true for court-connected mediation programs using certified mediators in the United States.[84] Federal district courts with mandatory mediation programs have a settlement rate 70 to 85 percent.[85] The professionalism and expertise of the mediator have often been mentioned by parties as crucial factors in successful cases.[86] By contrast, mere 2.22 percent of eligible civil cases accessed court-based mediation from the years 2012–2014.[87] While 75-81% of mediated cases settle suggesting some trust, the tiny 2.22% overall uptake signals deep public doubt in ADR's effectiveness.[88] Parties simply do not believe mediators have the skills or impartiality necessary to deliver fair results.[89] This level of distrust is hardly an outlier in the world.[90] Countries that invest in rigorous mediator training, establish clear accreditation standards, and enforce ethical codes through professional oversight bodies have built public confidence in

[79] Code of Civil Procedure 1908, s 89A(10).
[80] Chowdhury (n23).
[81] *ibid*..
[82] *ibid*.
[83] *ibid*.
[84] Ward (n71).
[85] *ibid*.
[86] Khairul, (n15).
[87] *ibid*.
[88] Hassan, Islam and Malek, (n17)
[89] *ibid*.
[90] Chowdhury (n23).

ADR.[91]Bangladesh has made no such investment, and the results are reflected in continuously low rates of use despite legislative demands.[92]

3.5 Comparative analysis with other jurisdictions

Comparing Bangladesh with other countries reveals clear differences in ADR implementation and effectiveness. In India, for example, ADR is mandatory for certain cases, with courts actively encouraging mediation before trial.[93] India's court-annexed ADR centers employ specialized, trained mediators who collaborate closely with courts, enhancing overall efficiency.[94] In the United States, many courts mandate ADR programs requiring parties to attempt mediation before proceeding to trial.[95] This approach reduces court backlogs and improves access to justice. The key US difference is clear rules on mediator qualifications, training, and non-compliance procedures.[96] Australia's National Mediator Accreditation System establishes minimum standards for mediators nationwide.[97] Australia's National Mediator Accreditation System ensures consistent nationwide mediator quality through mandatory ongoing training and ethical guidelines.[98]

Compared to these systems, Bangladesh lacks critical components: no national accreditation system, mandatory mediator training, or central authority for quality oversight.[99] Inconsistent ADR procedures across laws undermine nationwide reliability and public trust.[100]

91 Hassan, Islam and Malek, (n17).
92 Khairul, (n15).
93 *ibid*.
94 *ibid*.
95 *ibid* (n71).
96 *ibid* 15.
97 Hassan, Islam and Malek, (n17) 25.
98 *ibid*.
99 Chowdhury and Jahan (n14).
100 Islam (n15).

Chapter 4

4.1 Impact of Absent Standards on ADR Credibility

Bangladesh's ADR system lags others due to the absence of uniform standards for mediator qualifications, training, and ethics.[101] This void leads to significant variations in mediator competence and quality, eroding public faith in ADR results.[102] The FIDIC Red Book model mandates clear qualifications for dispute adjudicators and procedural safeguards, which Bangladesh could readily adopt as a reference for professional standards.[103] UNCITRAL/FIDIC/ICC - how these instruments added comprehensive procedural guidelines which are absent in Bangladeshi legislations incorporating ADR.

4.2 Mediator Qualification and Accreditation Systems

UNCITRAL stipulates specific neutrality, impartiality, and expertise requirements for mediator appointments.[104] UNCITRAL's Model Law and Mediation Rules offer a global template for mediator accreditation and continuing education, essential for streamlining Bangladesh's ADR practice.[105] There is growing awareness that an accreditation system harmonized with such international practices will improve credibility and coherence.

4.3 Trust and Fairness Issues in Current System

In practice, ADR in Bangladesh suffers from low trust because confidentiality guarantees are inconsistent and weakly enforced.[106] UNCITRAL's compulsory confidentiality and voluntary

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[101] *Mediation and Alternative Dispute Resolution in Bangladesh (Advocacy Legal)* https://www.advocacylegalbd.com/mediation-and-alternative-dispute-resolution-in-bangladesh/ accessed 23 November 2025.

[102] *Legal and Administrative Challenges of Alternative Dispute Resolution in Bangladesh (Open Journal of Social Sciences, 2020)* https://www.scirp.org/journal/paperinformation?paperid=99458 accessed 23 November 2025.

[103] FIDIC, *Conditions of Contract for Construction* (Red Book) (FIDIC 2017). Official purchase and info page https://fidic.org/books/construction-contract-2nd-ed-2017-red-book accessed 23 November 2025.

[104] UNCITRAL, *Model Law on International Commercial Arbitration* (2006) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration accessed 23 November 2025.

[105] UNCITRAL, Mediation Rules (2018) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral_mediation_rules_advance_copy.pdf accessed 23 November 2025.

[106] *Problems and Prospects of ADR in Bangladesh* (The Daily Star, 27 March 2025)

participation approach represents best practice for ensuring just, credible processes.[107] Similarly, ICC procedural and ethical rules guarantee impartial tribunal appointments and award enforceability, motivating reforms in Bangladesh.[108]

4.4 Institutional Oversight and Ethical Compliance

Ethical misconduct and lack of accountability are frequent complaints against ADR practitioners in Bangladesh.[109] ICC and UNCITRAL models contain codes of ethics and dispute settlement mechanisms to be transposed at national levels.[110] Finally, monitoring bodies with judicial control are indispensable for protecting interests and ensuring procedural consistency.[111]

4.5 Statistical Analysis of ADR Adoption Rates

Bangladesh has many ADR laws, but limited use persists due to low awareness, no incentives, and weak institutional support.[112] Reported ADR use represents only a small portion of dispute resolutions in any given year, and the courts remain overburdened.[113] India, Singapore, Malaysia show high ADR uptake via mandatory resolution, certified mediator panels, enforceable settlements.[114] Institutional capacity building and digital Online Dispute Resolution (ODR) platform are a necessity to learn from this success.[115] These examples show that high ADR uptake

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https://www.thedailystar.net/law-our-rights/law-vision/news/problems-and-prospects-adr-bangladesh-3859266 accessed 23 November 2025.

[107] Alternative Dispute Resolution in Bangladesh: A Legislative Review (UniversePG, 2025)https://www.universepg.com/ajssls/alternative-dispute-resolution-adr-in-bangladesh-a-legislative-review accessed 23 November 2025.

[108] ICC, *Rules of Arbitration* (2021)https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/ accessed 23 November 2025.

[109] *ibid*.

[110] *ibid* (n108).

[111] ICC Rules of Arbitration *(ibid)*.

[112] '1,63028 cases so far disposed of through ADR system' (BSS News, 3 October 2025) https://www.bssnews.net/others/317850 accessed 23 November 2025.

[113] Mediation and Alternative Dispute Resolution in Bangladesh (Elahi Legal, 29 October 2025)https://elahilegal.com/mediation-and-alternative-dispute-resolution-in-bangladesh/ accessed 23 November 2025.

[114] *Commercial Courts Act,2015* (India)https://legalaffairs.gov.in/sites/default/files/Commercial%20Court%20Act,%202015.pdf accessed 23 November 2025.

[115] Singapore Mediation Centre, *Annual Report 2023* https://www.mediation.com.sg accessed 23 November 2025.

comes when accreditation, enforceability and institutional support work together, which is what the proposed guideline later in this chapter tries to replicate.

4.6 Technological Barriers

Further, ADR is challenged by low use of technology in Bangladesh.[116] It's early days for ODR and lack of access is an issue with the geographic and economic barriers rural participants already have.[117] To improve ADR in the future, the country must spend a lot of money on safe and easy to use ODR systems and also make clear laws to control how these systems work.[118]

4.7 Proposed General Guideline of ADR

1) Scope and basic principles

This guideline will apply to all court connected and statutory ADR in Bangladesh, including mediation, conciliation and arbitration under civil, family, labour, local government, financial and fiscal laws. It will sit above individual Acts as a common code, unless a statute clearly provides a stricter rule. The core principles are party autonomy, neutrality of the third party, confidentiality, fairness, and speedy but rights protective resolution, in line with UNCITRAL and ICC models. This guideline adapts key elements from UNCITRAL Mediation Rules, ICC arbitration practice and FIDIC dispute adjudication procedures to the Bangladeshi context, so that fragmented ADR clauses can follow one coherent standard.

2) Eligibility and accreditation of neutrals

Any person acting as mediator, conciliator, or adjudicator must be accredited by a national ADR Accreditation Board. Following UNCITRAL and FIDIC practice, accreditation will require a relevant degree in law, social science or another approved field, at least 40 hours of approved ADR training, and a minimum of 10 hours of supervised practical work.

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[116] Mediation Act 2012 (Malaysia) https://www.aiac.world/wp-content/arbitration/mediation-rules/rules_mediation_en/PDF-Flip/PDF.pdf accessed 23 November 2025.

[117] Legal Aid Services (Amendment) Ordinance 2025 (Bangladesh) https://www.bssnews.net/news/290242 accessed 23 November 2025.

[118] *ibid*.

Candidates must sign a code of ethics and declare any past disciplinary findings, and accreditation will be granted for a fixed period, such as three years, and renewed only if the neutral completes a minimum number of continuing professional development hours each year. This would correct the current situation where each statute uses different ad hoc criteria for who can mediate or arbitrate.

3) Training and continuing professional development

The Accreditation Board will approve standard training curricula based on UNCITRAL and ICC guidance. Core modules must include conflict analysis, communication skills, managing power imbalances, domestic-violence and vulnerability screening, ethics and confidentiality, and basic procedural law. Advanced modules can cover specialist areas such as family, labour, construction and tax disputes, and accredited neutrals must complete yearly continuing education on new laws, caselaw trends and best practices, with the Board able to suspend those who fail to meet CPD requirements. This responds to the present gap where most Bangladeshi mediators receive one-off training with no obligation to update their skills.

4) Appointment, disclosure, and challenge of neutrals

Neutrals will normally be appointed from the national panel, either by party agreement or by a designated institution or court. Before accepting a case, the neutral must disclose any circumstance that may give rise to justifiable doubts about independence or impartiality, as required in UNCITRAL and ICC rules. Parties may challenge the neutral within a set time if they believe there is bias or lack of competence, and the Accreditation Board or a designated court must decide challenges quickly and appoint a replacement if the challenge is upheld. This fills the current gap where parties under CPC 89A or in village forums lack any clear right or process to replace a mediator they no longer trust.

5) Conduct of mediation and conciliation

Mediation and conciliation must follow a simple written procedure. The parties can agree to this procedure, or the default rules in this guideline will apply. The process will normally include an opening session, explanation of ground rules, each party’s uninterrupted statement, joint discussion, possible private caucuses, and negotiation of options. Neutral must ensure each party has equal time to speak, understands the issues, and is not subject to threats or improper pressure, and may use experts where needed if their role, fees and neutrality are agreed in advance, but cannot impose a decision. This replaces today’s ad hoc practice, where many Bangladeshi ADR laws mention “mediation” but give no basic steps for how it should be conducted.

6) **Confidentiality and use of information**

All ADR communications, documents and notes are confidential, following UNCITRAL's approach. Nothing said or written during mediation or conciliation may be used as evidence in later courts or arbitral proceedings, except where disclosure is required by law for public-policy reasons such as child protection or serious crime. Neutrals must not disclose information shared in a private caucus without express permission from the party who gave it, and any breach of confidentiality will be a ground for disciplinary action by the Accreditation Board. This addresses current weaknesses where some statutes lack any clear protection for mediation discussions, discouraging open dialogue

7) **Settlement agreements and judicial scrutiny**

If the parties agree, the neutral will help them record a clear written settlement in simple language, setting out rights, obligations, timelines and consequences of non-compliance. For court-connected ADR, the settlement will be submitted for a decree or order, and in sensitive areas such as family, labour and high-value financial disputes the judge must briefly check voluntariness, basic fairness and legality before doing so, drawing on ICC and UNCITRAL ideas on enforceability and public policy. Settlements will be final but may be set aside only for fraud, coercion or serious procedural irregularity, to avoid "rubber-stamping" unfair deals seen under the CPC 1908 and MLCA 2003.

8) **Ethical code and complaints mechanism**

All accredited neutrals must follow a written code of ethics based on ICC and UNCITRAL standards, including duties of impartiality, independence, competence, confidentiality, avoidance of conflicts of interest, and respectful treatment of all parties. A national ADR Oversight Commission will receive complaints, investigate them through a transparent process, and impose sanctions ranging from warnings and mandatory training to suspension or removal from the panel, while publishing anonymized statistics on complaints to build public trust. The Accreditation Board will focus on entry standards and training, while the Oversight Commission will handle complaints, monitoring and policy reform, replacing today's near-total absence of any formal complaint route against ADR neutrals.

9) **Integration of ODR and access measures**

ADR providers and courts should progressively use secure online platforms for case intake, document exchange and virtual sessions, following international ODR trends. Platforms must protect data security and privacy and be simple enough for ordinary users, and to ensure access the guideline requires special support for rural and impecunious parties, including legal aid, clear information sheets and facilities at court or legal-aid offices where parties can join online sessions with staff assistance. The same accreditation, ethical and procedural rules will apply to both in-person and online ADR, so that technology reduces distance barriers in Bangladesh without lowering standards.

10) **Monitoring, data collection, and reform**

The ADR Oversight Commission will collect data from courts and ADR centers on number of referrals, settlement rates, time taken, party satisfaction and complaints, and will publish periodic reports and recommend reforms where patterns show systemic problems, taking guidance from ICC and FIDIC practice in monitoring quality and outcomes. Laws and rules on ADR should then be reviewed at regular intervals to ensure continued alignment with UNCITRAL, ICC and FIDIC best practices and with the evolving needs of Bangladeshi users. This continuous feedback loop is intended to prevent ADR from stagnating and to keep reforms responsive to real usage patterns.

Chapter 5

5.1 Summary of Findings

This thesis has shown that, although ADR has been written into many Bangladeshi laws, there are still no common rules on who can act as a mediator, how they should be trained, or how their conduct should be supervised. Because of this, ADR practice is inconsistent, power imbalances often go unmanaged, and the system has not delivered the faster, cheaper and fairer justice that policymakers expected. The literature and statutory analysis reveal recurring problems: very low ADR usage rates, fragmented procedures across different Acts, weak confidentiality protections, and almost no formal mechanisms for complaints or discipline against mediators. Together, these gaps explain why public trust in ADR remains fragile despite two decades of reform.

5.2 Lessons from Comparative and International Models

The comparative study of Australia, the United States and India show that higher settlement rates and stronger user confidence are closely linked to national accreditation schemes, continuing professional development, enforceable ethical codes and institutional oversight. These jurisdictions use clear entry standards, ongoing training and quality control mechanisms to ensure that ADR neutrals are competent and accountable. UNCITRAL, ICC and FIDIC frameworks further confirm that credible ADR depends on transparent appointment processes, independence and impartiality of neutrals, robust confidentiality, and predictable procedures backed by legal enforceability. Bangladesh already reflects some of these ideas in the AA 2001 and the 2025 Legal Aid Services (Amendment) Ordinance, but they remain partial and uncoordinated without a unified national framework.

5.3 Concluding Reflections and Way Forward

The proposed general ADR guideline and reforms in Chapter 4 seek to convert scattered statutory provisions into a coherent national system with shared standards for mediator accreditation, ethics, ODR integration and data-driven monitoring. By creating a national accreditation authority, an independent oversight commission and simple, rights protective procedures, ADR could move from ad hoc practice to a trusted institution within Bangladesh's justice system. If these recommendations are implemented, ADR has the potential to ease court backlogs, improve access to justice for poorer and rural litigants, and gradually build public confidence in negotiated solutions rather than purely adversarial litigation. In this way, Bangladesh can align its ADR regime with established international best practices while preserving sensitivity to local social and legal realities.

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