**Problems and Prospects of ADR**

**Problems**

***Consent of the parties***

For ADR to be successful, especially in arbitration proceedings, both the parties must agree to refer the dispute to be settled through arbitration or mediation. Under the Arbitration Act, 2001 if one party does not respond to the other party’s notice requesting arbitration to solve a particular dispute, the system provided by the current Act of 2001 as regards appointment of an arbitrator through Court on behalf of the non-responding party is very cumbersome and sometimes it takes years together to even get the arbitration tribunal constituted and the hearing started. So, it is basically, going through the same saga if both the parties do not agree to ADR.

***Lack of precise Rules***

Since no specific Rules of Procedure have been framed for arbitration, the parties are to depend on the Rules of arbitration determined by a Tribunal. This lacuna in the system makes ADR an uncertain game.

***No appeal on merit***

Even if a party is not satisfied with the merit of the outcome of a resolution of a dispute through arbitration, there is no room for filing any appeal on merit. Only an award can be set aside if it can be seen that the Tribunal was biased. This aspect of the matter sometimes deters a prospective litigant from choosing arbitration over litigation.

***Lack of institutional support***

Countries where the system of ADR has become successful put much emphasis on institutionalization of the system of ADR. For example, in the UK, USA, Singapore, France etc., we will find that there are so many private institutions which offer institutional support for ADR. This is helpful because these institutions have their separate Rules of procedure and panel of Arbitrators. They have their own system of arranging the whole arbitration in their own way. The parties simply write to them referring a dispute and they do the rest. Some of the big names are London Court of International Arbitration (LCIA), Singapore International Arbitration Center, Hong Kong International Arbitration Center, Indian Council of Arbitration etc.. In Bangladesh we have Bangladesh Council of Arbitration (BCA), Bangladesh International Arbitration Center (BIAC), Dhaka International and Domestic Arbitration Center (DIDAC) etc..

***Lack of awareness***

People will have to be made aware of the advantages of ADR and disadvantages of court based litigations. People do not have the requisite knowledge of the system. That is why the system is not becoming common in our country.

There are other numerous problems also, but because of time constraints I cannot mention all here.

**Prospects**

In almost all the agreements nowadays, lawyers are routinely incorporating an arbitration clause for settlement of possible disputes. Because of the legal requirements in various laws, parties involved are at least required to attempt mediation to solve the dispute outside the Court room. The government in the recent past has also reiterated on many occasions its plan to make ADR mandatory in certain cases. All these factors taken together, it can be said that ADR has a good prospect in Bangladesh. Before that, however, we need to educate people for the system. Certain recommendations for the system to become more effective are as follows:

***Establishing a state-run parallel authority for ADR***

A nationwide network needs to be envisaged for providing solutions through ADR. An apex body viz. a *Commission for Alternate Dispute Resolution* needs to be constituted to lay down policies and principles for making ADR available to the common man to frame most effective and economical schemes for ADR. It should also disburse funds and grants to different ADR Authorities and NGOs for implementing ADR schemes and programmes for the common man.

***ADR to be made mandatory in certain cases***

To successfully bring ADR to the common man while still reducing the backlog of cases piled up in Courts, radical steps need to be taken. It is important that the legislature introduce certain provisions which discourage initiation of litigation in cases where out of court settlements can easily be worked out.

***Imparting Legal Literacy***

Perhaps the biggest roadblock that faces any country is illiteracy. Our government has continuously been trying to eradicate illiteracy and now the new task has become even harder, that is, to impart legal literacy to the literates and illiterates alike. Legal literacy empowers one to be an active and alert citizen, thereby making a population more vigilant about its rights and duties. ADR is a fairly new concept to many and concepts like these not only take time in percolating to the grass root levels, acceptance of such a concept is also a big problem. Therefore a robust programme imparting legal literacy to the masses in Bangladesh, especially in the field of ADR becomes a necessity. Not only will this allow bringing ADR to the common man, an aware citizen will contribute positively to the development of the nation too.

***Integrating ADR in the legal education***

The legal education of today’s Bangladesh needs to take the ADR mechanisms seriously. Today these mechanisms are taught only as part of specialty courses which primarily focus on the deployment of these processes pertaining to areas of corporate mergers and amalgamations.

The need of the hour is different – It is time when these dispute resolution mechanisms are taught as essential courses for a new breed of lawyers who will be adept in these forms of dispute resolutions and these lawyers will surely help the ordinary man in the long run.