

# Legal challenges of ADR in India and Bangladesh: A Comparison

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As an alternative to traditional judicial processes, Alternative Dispute Resolution (ADR) is quickly rising in popularity in both Bangladesh and India. The two South Asian nations have been working to enhance their ADR frameworks and facilitate citizens' access to justice. This is the result of several factors, including the demand for more efficient and cost-effective methods of resolving disputes as well as recognising the limitations of traditional litigation.

ADR has been accepted as a valid method of settling conflicts in India for more than two decades after the passing of the Arbitration and Conciliation Act, 1996. The Commercial Courts Act of 2015, which allows for the formation of commercial courts and business divisions of high courts for the swift resolution of commercial disputes, was one of many actions the Indian government took to facilitate ADR. Additionally, to resolve conflicts quickly and affordably, the Indian judiciary has been advocating the use of ADR processes including arbitration and conciliation.

Bangladesh, on the other hand, has a relatively young ADR system. The nation has, nevertheless, made major recent efforts to encourage ADR. The Bangladeshi government has passed laws, including the 2001 Arbitration Act, and amended the Code of Civil Procedure, 1908 to regulate ADR procedures. These laws enable the creation of arbitration centres and the appointment of mediators to settle disputes. The Supreme Court of Bangladesh has encouraged the use of arbitration to settle disputes, and other courts in Bangladesh have also supported the use of ADR processes at different times.

Despite these improvements, there are still many issues with the ADR systems in Bangladesh and India. The write-up contrasts the ADR systems in the two countries, highlighting their pros and cons.

### ***Legal framework***

The legislative foundation for ADR in India is still developing and is frequently criticised for being slow and ineffective. Concerns have also been raised concerning the ADR system's lack of accountability and transparency. Although Bangladesh's legal system for ADR is still developing, the government has taken attempts to regulate it by passing legislation like the 2001 Arbitration Act and by amending the Code of Civil Procedure, 1908.

### ***Categories of issues eligible for ADR***

ADR may be used in India to settle a variety of issues, including ones involving business, family, and employment. But in Bangladesh, the major emphasis has been on using ADR to settle business conflicts. This has been ascribed to the fact that resolving commercial issues through the regular judicial system is frequently more difficult and time-consuming.

### ***Degree of judicial support***

The courts in India have aggressively recognised and promoted the use of ADR as a method of conflict resolution. For instance, the Indian Supreme Court has handed down several significant rulings that have contributed to the legitimacy of ADR in India. The judiciary in Bangladesh has not yet shown the same degree of support for ADR as the courts in India.

### ***Functions of arbitrators and mediators***

In India, mediators and arbitrators are chosen by the disputing parties, and their duties include assisting in negotiations and rendering legally obligatory rulings. The practice of mediators and arbitrators is still in its youth in Bangladesh. There are not enough skilled and certified mediators and arbitrators, and the selection procedure for these people is still developing.

### ***Governmental and institutional promotion***

The presence of reputable institutions that promote ADR is one of the benefits of the ADR system in India. To promote and impose rules on ADR, the Indian government established many organisations, including the Mumbai Centre for International Arbitration and the Indian Council of Arbitration. These organisations assist in developing effective ADR procedures by offering support and training to mediators and arbitrators. Further investment is required to increase the capability of the ADR system in Bangladesh, where the establishment of comparable institutions is still in its early stages.

In conclusion, the ADR systems in India and Bangladesh have both strengths and weaknesses. India has a more established ADR system, with a well-developed legal framework and supportive judiciary. However, the system faces challenges such as inefficiency and lack of transparency. Bangladesh has a relatively new ADR system, but the country has taken steps to enhance its legal framework and develop the capability of its ADR system. Both countries have the opportunity to share their experiences and collaborate to further the use of ADR as a method of dispute resolution in South Asia.

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