

Conciliation and Other Alternative Procedures of Dispute Settlements Related to Personal Matters in the Legal System of Bangladesh: A Critical Appraisal

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Abstract

Settlement of disputes through reconciliation or other alternative procedures within legal framework is playing pivotal role to settle the issues of personal matters particularly by the Family Courts and other non-judicial processes. Analysis and scrutiny of the legal provisions dealing with alternative procedures and other tools of effecting resolution along with practical factors impeding the implementation spirit have been made the core heart of this article. The article tried to articulate the potentiality of alternative tools to come out from the lengthy and procedural complexities attached with the adversarial system of battlefield which urges with due emphasis to familiarize the alternative tools with a view to making the adversarial process of settling disputes real and pragmatic. In doing so, the study reveals some undeniable practical factors and provisional lacunas creating obstacles towards smooth functioning of extra-judicial proceedings which deserve to be revisited. Finally recommendations have been provided to revisit the provisions by taking strong infrastructural measures and to strengthen other instrumentalities with the aim of achieving mountainous success in relation to the application of reconciliation or other alternative tools.

Keywords: Reconciliation, Talaq, Arbitration Council, Notice, Maintenance, Family Courts.

Introduction

‘Discourage litigation, persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expense, cost and time’. – **Abraham Lincoln**

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Conflict or dispute is a natural and inevitable part of all human social relationships. Conflict occurs at all levels of society – from interpersonal, family, to national and international levels. To combat these conflicts and settle the disputes, the legal system of a country prescribes legal procedure by which people can resolve their disputes. But legal procedures defined under legal system often fail to ensure justice to the litigants due to its inherent complexities and cumbersome procedures which create distrust and crises of confidence among the litigants about the court system. This inherent weakness of the system ‘blesses’ itself in huge backlog of cases and excessive costs which hinders the parties of a dispute to adjudicate their legal claims and prevents as well to redress their grievance.

The problem is more acute when we talk about personal or family matters where root causes of anger along with its suppression deserve to be settled with utmost care and attention which is only possible through reconciliation or other alternative procedures. Resolution of disputes aspires to be dealt not on the basis of abstract principles producing just results rather urges for treating these issues mutually and humanely. In this backdrop, the means of alternative dispute resolution appears as a viable forum for expeditious disposal of cases which facilitate and compliment formal court process reducing backlog of cases. Alternative procedures of settling disputes are competent enough to underline the importance of factual context of a particular case along with the sensitivity of the dispute which is impossible to attain under the adversarial system.

Alternative procedures of settling disputes in this subcontinent though developed initially through traditional norms and values but with the change of time these procedures particularly conciliation has secured due recognition under the legal system of this arena. Despite specific incorporation of these procedures, the expected outcome is not gaining momentum due to its less familiarity and other infrastructural problems. To come out from this scenario and makes the alternative procedures viable and effective relating to personal matters, revisit of the provisions dealing with alternative procedures along with critical analysis is the demand of time. Considering this background this Article will analyze the provisions of conciliation and other alternative procedures incorporated in the legal system of Bangladesh giving emphasis on the practical factors which hinder the implementation process as well as create disruption towards the progress of a practicable dispute resolution system.

Conciliation and Other Alternative Procedures (OAP) in the Formal Legal System

The former Chief Justice of Bangladesh, **Justice Mustafa Kamal**, rightly said that, “the purpose of alternative dispute resolution is not to substitute consensual disposal for adversarial disposal or to abolish or discourage informal mediation or arbitration outside the courts rather it is about making the process part and parcel of the formal legal system.”¹ Due to inherent weakness in the informal system, Reconciliation and OAP secured its incorporation relating to family matters in the following laws of Bangladesh:

- Muslim Family Law Ordinance 1961
- The Family Courts Ordinance 1985

In regard to non-family matters but civil matters, the Code of Civil Procedure 1908 and Artha Rin Adalat Act 2003 incorporated the provisions of alternative dispute resolution.

Conciliation under Muslim Family Law Ordinance

Muslim Family Law Ordinance 1961² is the first comprehensive codification and reformation of the personal matters like marriage, dower, divorce, maintenance etc. This law mainly developed on Pakistan in 1961 and Bangladesh also retains this legislation in its legal system which governs the personal law of Muslim citizens of this country. Being oppressed and deprived by the British rulers with the help of the complicated, dilatory and expensive and litigation, the think-tank of Muslim law underscored the importance of Marriage and family laws and pledged to develop a law in conformity with the basic principles of justice, equity, and harmonious human relations which are inherent in Islam.³ Members of the commission on Marriage and Family laws hoped that their views and thoughts in relation to this Muslim Family Law which reflects the spirit of Quran and Sunnah will not only eradicate the evils attached with procedural complexities of litigation but will also usher an era of domestic happiness. Finally Muslim Family Law

¹ Kamal, Justice Mustafa, “*Introducing ADR in Bangladesh, Keynote Paper presented at the National Workshop on Alternative Dispute Resolution: In Quest of New Dimension in Civil Justice Delivery System In Bangladesh*”, under the auspicious of the Legal and Judicial Capacity Building Project, Ministry of Law, Justice, and Parliamentary Affairs, GOB, Dhaka 2002, P.3.

² Herein after referred as MFLO 1961.

³ Report of the commission on Marriage and Family Laws, Ministry of law, Government of Pakistan, Karachi, the 11th June, 1956,P. 1203.

Ordinance came into operation in the then Pakistan providing procedural flexibilities and ensuring rights of women from the arbitrary denial of rights in relation to marriage, divorce maintenances etc.

Muslim Family Laws Ordinance 1961 aimed to minimize the practical complexities of court hearing⁴ and incorporated reconciliation provisions in respect of the following areas: Polygamy, Divorce and Maintenance cases.

Restricting Polygamy through Reconciliation

Despite the abusive exercise of polygamy Section 6 of the Muslim Family Law Ordinance though not prohibits but restricts the exercise of polygamy. Under this section, before a man marries for a second or subsequent time, he must obtain the permission of Arbitration Council. This section imposes obligation of submitting application to the Chairman describing the reasons of second marriage along with the taking of consent of the existing wife.⁵ Arbitration Council referred in this section is comprised of three members: the chairman and two others, one of whom is chosen by each party.

Strength of the Section

- This section provides for non judicial mechanism in terms of restricting the unfettered exercise of polygamy. Arbitration council is entrusted to scrutinize the reasons of second marriage and the dissatisfaction of the council prevents the statutory non recognition of second marriage.
- Arbitration council tries not to impose any decision rather grant or refuse the permission of second marriage by analyzing the reasons along with facts and circumstances.
- Consent of the first wife is one of the important determining factors of permitting second marriage.
- In the exceptional circumstances by virtue of the satisfaction of the Arbitration Council the proposed application may be granted but it may contain conditions. In case of non taking of permission from the Arbitration Council the second marriage shall not be registered under the Muslim Marriage and Divorces Registration Act 1974.

⁴ Huq, Naima, “*Divorce Reconciliation: Without Intervention of the Court and Built in Conciliation in Family Court proceedings*”, The Dhaka University Studies, Part F, The Journal of the Faculty of Law, Vol. X11(1) :1-16 June 2001.

⁵ Section 6 of the Muslim Family Courts Ordinance.

- Second marriage without taking the permission of Arbitration Council makes liable the defaulter to pay immediately the entire amount of dower whether prompt or deferred, due to existing wife and in case of nonpayment, the said amount shall be recoverable as arrears of land revenue. Defaulter may also be punishable with imprisonment of one year of fine.⁶

Weakness of the Section

- The decision of the Assistant Judge while reviewing the decision of the Arbitration Council be final and shall not be called in question in any court. If there is any gross and inexcusable error or illegality on part of the Assistant Judge even if he acts without jurisdiction, relief against his decision is barred by virtue of this section.⁷
- Practical experience suggests that chairman in local level is overburdened with many activities as they are part of local government. In addition, they do not have enough knowledge about the Muslim Family Law Ordinance and its procedure. Further, in accordance with the Muslim Family Law Rules 1961 decision in case of arbitration is taken by the opinion of the majority or by the sole decision of the chairman.⁸ In this proceeding effective representation of both parties may not be ensured on the one hand and there remains a huge possibility of exercising arbitrary power by the chairman⁹ in the absence of functions to be performed under this law.¹⁰ Another Point is if the chairman fails to oblige with his duty what would be the consequential mechanism is not dealt under the ordinance.¹¹ Absence of women member in the Arbitration Council also ignores the affairs related to women.

⁶ Section 6(5), *ibid*

⁷ Chowdhury, Obaidul huq, *Hand book of Family laws*, Dhaka Law Reports, 6th edition 2005. P. 73.

⁸ Rule 5 of the Muslim Family Law Rules 1961.

⁹ *Sarder Muhammad Vs Nasima Bibi* 19 DLR (WP) 50. It was held that in this case, decision of Arbitration Council creating impression that order was passed not by council but by chairman in his personal capacity: Order held, not illegal.

¹⁰ *Tahera Begum Vs Farukh Meah* 35 DLR (AD) 170. It was held that Ordinance of 1961 only defined Chairman as the Chairman of the Union Parishad or Paurashava but the Ordinance does not invest the chairman with the functions to be performed under the Muslim Family Law.

¹¹ Akhtaruzzaman, Md., “*Concept and Laws on Alternative Dispute Resolution and Legal aid*”, 2nd ed. 2008, P. 129.

Finally conclusion can be drawn that the alternative procedures regarding polygamy is not sustainable as it fails to restrict the exercise of polygamy.

Divorce Reconciliation

Divorce is though detestable in Islam but take place with the breakdown of relationship. Under the MFLO 1961 any man who wishes to divorce his wife shall have to comply with certain conditions.¹² The wording of the section is anti female as it only empowers the husband's right to divorce by virtue of which women are kept in subordinate position. This anti female approach is to some extent mitigated by section 8 of MFLO, where wife can also take the benefit of section 7 if husband delegated the right to divorce to the wife.

Under this section, after the pronouncement of *talaq* by the husband in any form whatsoever¹³ he shall have to give a notice, as soon as may be, in writing to the chairman and shall supply a copy thereof to the wife.¹⁴ This section also stipulates that the *talaq* pronounced shall not take effect for a period of ninety days but if the wife be pregnant at the time *talaq* pronounced the period would last until the birth of the child if it takes longer time than 90 days, commencing from the day on which notice is delivered to the chairman.

The idea of reconciliation has been sponsored under subsection 4 of section 7 which reads that within thirty days of the receipt of notice the Chairman shall constitute an Arbitration Council for the purpose of bringing about reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation. Required process for divorce should start only when friends and relations of both parties had made serious efforts at conciliation which had unfortunately not succeeded.¹⁵

The purpose of notice of *talaq* to be served upon the Chairmen is to protect the adverse party from the unfettered exercise of giving divorce or offer a second chance to the disputants, which is beneficial to both the

¹² Section 7 of the MFLO 1961 describes certain conditions.

¹³ This indicates that it may be in the form of *talaq -i- bidaat*, or *talaq -hasan*, or *talaq-ahsan*. The conditions of section 7 along with the notice therewith are also applicable where any of the parties to marriage wishes to dissolve the marriage otherwise than by *talaq* which means dissolution of marriage through court, and includes *khula* and *Mubara'a*.

¹⁴ Section 7 of the Muslim Family Law Ordinance.

¹⁵ Supra note 4.P.12.

parties in the event reconciliation is effected.¹⁶ Reconciliation attempt shall also be taken by the Chairman in case of a decree passed by Family Court for dissolution of marriage, and the decree shall not be effective until the expiration of ninety days from the day of serving notice to the chairman.¹⁷ By this process in an instance of total successful conciliation the decree shall be deemed to have been abandoned by the wife.¹⁸

Nature and Impact of Notice on Reconciliation Proceeding

The nature of notice under section 7 of MFLO whether it is compulsory or optional to give effect to divorce was a debatable issue and still unsettled by the divergence of opinion. Though there is a requirement of notice under this section but if the husband abstains from giving notice to the chairman he should be deemed to have revoked the pronouncement and that would be the advantage to the wife.¹⁹

This interpretation opens new floodgate of abuse of wife by the husband and completely hinders the initiation of reconciliation between the parties. By virtue of this instrument husbands can resort to frequent *talaq* under sudden impulse of emotion and after sometime revoke the *talaq* instead of giving notice to the chairman and wife which may aggravate the abuse of wife by the husband.²⁰ Without notice to the chairman a divorce would not be effective. It was also argued by the western authors that the requirement of notice is mandatory; non-fulfillment of which invalidates the *talaq*.²¹ The family Court decisions in Bangladesh also confirmed that without notice to the Chairmen, the *talaq* will not be effective.²² But the recent decision of the High Court Division of the Supreme Court observed that even without notice to the chairman divorce will be legally effective.²³ Despite the aforesaid judgments,

¹⁶ Halim Abdul, “*ADR in Bangladesh: Issues and Challenges*”, CCB Foundation Dhaka. P. 128.

¹⁷ Section 23(2)(3) of the Family Courts Ordinance 1985.

¹⁸ Supra note 17.P.10. *Mohammad Amin V. Surraya Begum* 1969 21 DLR 253.

¹⁹ Supreme Court of Pakistan in *Sayed Ali Nawaz Gardezi v. Mohammad Yusuf*, 15 DLR, 1963.

²⁰ Supra note 7. P. 82.

²¹ Pearl, David: “*A Textbook on Muslim Personal law*”. 2nd ed. London 1987, p.111.

²² Monsoor, Taslima: “*Dissolution of Marriage on Test : A study on Islamic family law and women*”, The Dhaka University Studies. The Journal of the Faculty of Law, Vol. XV (1) 1-36 June 2004.

²³ *Serajul Islam V Helena Begum* 48 DLR 1996, 51.

general trends of cases are protecting women by the strict interpretation of section 7(1) of MFLO.²⁴

The strict interpretation of section 7(1) of MFLO also creates predicament to the Muslim women because they remain in a difficult situation about the uncertainty of their marital status.²⁵ While in the eye of society they are divorced by *talaq* but in the official legal system (under section 7) they are not divorced and their marriage persists and this works abruptly against women.²⁶

Finally it can be said that this area of law still remain confused by the abrupt decision of the High Court permitting other ways to give *talaq* for example by giving an affidavit before the magistrate than giving notice to the chairman. This new trend in the higher judiciary disregards the values of reconciliation which is the best possible protection offered to women.²⁷

Reasons for Failure of Divorce Reconciliation

The chairman is the entrusted person to make arrangement but experience suggest that lack of initiatives from the chairman or the reluctance of the parties often frustrated the functioning of reconciliation.²⁸ Further MFLO does not contain any consequential measure if the chairman or Arbitration Council fails to make arrangement for reconciliation. Practical experience suggests that the chairman either does it mechanically without commitment or it is forgotten totally in the absence of any initiation by the disputant parties.²⁹ The loopholes of Arbitration Council described under the heading of polygamy are equally applicable here also. In addition, there is no monitoring body to watchdog the activities of the council and make them accountable in case of their failure or wrong judgments.

²⁴ Which [section 7(1)] confirms that *talaq* of the husband did not affect the marriage as the required notice was not given under section 7(1) of MFLO 1961. Relevant case : *Mst Fatima Begum v Md. Ghulam Hossain*, Family Suit No 61 of 1991 (Unreported) , *Anjuman Ara v Abdur Rashid*, Family Suit No 97 (Unreported).

²⁵ Supra note 22. P. 21.

²⁶ Ahmad Husna:” *Divorced yet married: the position of Bangladeshi women between English and Bangladeshi law.*” LLM Essay. (Unpublished) London SOAS 1991. P.5.

²⁷ Supra note 22 P.26.

²⁸ Supra note 16. P.132.

²⁹ Supra note 7. P.13.

Muhammad Amirul Haq (Tuhin), Advocate of the Supreme Court Bangladesh³⁰ said that notice in Dhaka City Corporation is given generally to the *Kazi* office where there is a prescribed form of notice. The *Kazi* office took the divorce registration in advance and after 90 days they issued a certified copy of registration of divorce without any kind of initiation of reconciliation. This malpractice not only denies the obligations of notice under section 7 of MFLO 1961 but also violates the Muslim Marriage and Divorce Registration Act 1974 by giving divorce registration in advance, he added. But he suggested that if *Kazi* Office takes the notice in good faith and make arrangement for reconciliation then at least the adverse party can get the opportunity of justifying his or her claim.

After divorces, issues for example custody, dower, maintenance emerges but lack of legality of divorce in absence of notice creates more complexities about the proceeding of these aforesaid issues, he informed. He also recommended for the attachment of *acknowledgement form* which is to be mandatorily given after the receipt of the notice.

Reconciliation in Case of Maintenance

Like polygamy and divorce, the Arbitration Council is also entrusted with an obligation for reconciliation when the husband fails to maintain his wife adequately or where there are more wives than one, fails to maintain them equitably.³¹ Arbitration Council is empowered to specify the amount of maintenance and issue certificate in this regard which can be reviewed by the Assistant Judge. The authority has also given the power of recovering the said amount of maintenance as arrears of land revenue. Here it is to be noted that the remedies by reconciliation is in addition to any other remedies available to the wife for example seeking remedy to the family court.

Practical experience suggests in the absence of any strict action, the realization of the amount of maintenance becomes impossible as the parties often deny paying the amount. Here, the compromise decree under the Family Courts Ordinance is more effective because the order itself provides for action or penalties in case of non-payment of the amount of maintenance. This can makes the defaulter more aware about the fulfillment of court order, said by *Dr. Md. Akhtaruzzaman*, Metropolitan Additional Sessions Judge, Dhaka.³²

³⁰ Interviewed on 19-09-2014.

³¹ Section 9 of the Muslim Family Law Ordinance 1961.

³² Interviewed on 26-09-14.

He also informed that beyond the court order judges with their personal capacity try to conciliate the issues of maintenance and prescribes suitable procedure so that the applicant can actually get the amount of maintenance. But after all the efforts if the defaulter still denies to obey the order then Judges go for execution of decree which may be in the form of civil imprisonment or attachment of property³³, he added.

Conciliation and OAP by Family Courts in Bangladesh

Family Courts in Bangladesh was established as an expression of our sophisticated legal thought and at the same time it provides an acknowledgement that our traditional civil courts had failed to successfully deal with the suits relating to family affairs.³⁴ With this tune, family courts were established by the Family Courts Ordinance 1985 to try in case of the following matters: Dissolution of marriage, Restitution of Conjugal Rights, Dower, Maintenance, Guardianship and Custody of Children. Regarding the application of the family courts irrespective of religion or faith though there was contrary opinion but it has been finally held that The Family Courts Ordinance is applicable to all citizens of Bangladesh irrespective of their faith or religion. The Family Courts while deciding the disputes shall follow the personal laws of their respective parties.³⁵

Reconciliation at Pre-Trial and Post Trial stage

The importance of reconciliation under the Family Courts Act are placed not only in the Pre-trial proceeding but also in the Post-trial proceeding. This indicates that reconciliation first of all is to be used as first resort of settling disputes and this attempt will be continued till the end of the disputes. This adequately shows the proper extent of application of alternative procedures under the Act. The Provision in relation to Pre-trial proceeding imposed obligation upon the court to ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible and in case of failure, fix a date for recording evidence.³⁶

³³ Section 16 of the Family Courts Ordinance 1985.

³⁴ Islam Zahidul, “*Strengthening Family Courts (An Analysis of the Confusions and uncertainties thwarting the Family Courts in Bngladesh)*”, Bangladesh Legal Aid and Services Trust (BLAST). www.blast.org.bd viewd on 31 July 2013.

³⁵ *Pochon Rikssi Das Vs Khuku Rani Dasi* and others 50 DLR 1998 (HCD 47), *Nirmal Kanti Das Vs Sreemati Biva Rani* 13 BLD (1994) 413.

³⁶ Section 10 of the Muslim Family Courts Ordinance 1985.

The wording of the section is straight and obligatory as the term “shall” impose not a mere obligation but an absolute obligation at the pre trial stage which confers advantage of settling disputes to put an end to the litigation once for all and relieves the parties and court system as well from the procrastination of litigation process.³⁷

The obligation is to be continued to the post trial proceeding where after the closing of evidence of all parties, the Family Court shall make another effort to effect a compromise or reconciliation between the parties and failure of which will oblige the court to pronounce judgment.³⁸

In order to give a sense of bindingness of decision, the Act imposes obligation upon the court to pass a decree to give effect the decision of reconciliation. Further to enforce the decree, sufficient procedural safeguards are given for the realization of decretal amount. The manifestation of speedy disposal of cases is found from the fact that it fixes only thirty days for the appearance of the defendant, and provides that if after service of summons, neither party appears to contest the suit the court may dismiss the suit.

The Family courts also manifest its significance by incorporating procedure for trial of cases in camera to maintain, secrecy, confidentiality.³⁹ To come out from the lengthy procedure of civil court the Ordinance also made inapplicable the Code of Civil Procedure except section 10 and 11 and Evidence Act in terms of proceedings of family courts. In terms of execution of decrees the judges of Family Court are empowered to act as the Magistrate of the First Class.⁴⁰

These are the provisions which are playing pivotal role not only for the purpose of settling disputes informally, discreetly but also provides a sense of accommodation and contentment.⁴¹

Reasons for Failure of Reconciliation under Family Courts

Though legislatures express their utmost commitment for the resolution of disputes expeditiously with the help of family courts but in reality their endeavours are results into failure for many reasons. One of the important

³⁷ Commentaries on Section 10, MLR on THE FAMILY COURTS LAWS, The Mainstream Law Reports 2009 Page 76-77.

³⁸ Section 13 of the Family Courts Ordinance 1985.

³⁹ Section 11, *ibid*.

⁴⁰ Section 16 (3B), *Ibid*.

⁴¹ *Supra* note 34.

obstacles is largely due to ignorance and lack of motivation amongst lawyers and judges who confined within the traditional adversarial system and made no attempts to apply the provisions of reconciliation.⁴² Judges lawyers having no extensive mediation skill often fail to gain the trust and confidence of the disputants. Another drawback is the fact that Family Courts Ordinance 1985 does not prescribe a cut off period within which mediation has to be completed.⁴³

Judges of the family Court are overburdened with civil cases and the extra-pressure to try the case of family disputes makes the whole process non functional, said by Naurin Aktar Kankon, Judge of the Family Court, Trishal Jurisdiction, Mymensingh.⁴⁴

While dealing with the case of family disputes judges get half point though in regular suit it is given one point, judges often show reluctance to try family disputes because points credited by disposal of cases creates impact on the annual review of their performance and thereby hinders their promotion and other benefits, she added.

She also informed that Lawyers often discourage and even stop the parties to take the means of reconciliation only because of their personal benefit. This can be prevented if the process be tried in camera at pretrial proceeding but here again the parties reluctance through the misguidance of lawyer makes the process vitiated.

In this regard, Dr. Akhtaruzzaman said⁴⁵ that Judges often tried to settle the disputes through reconciliation within their desks beyond the court room and he confesses about the success of many cases in this process. But he agreed that ignorance of law and procedure is found not only between the parties but also among the judges.⁴⁶

⁴² Khair, Sumaiya, *“Legal empowerment for the Poor and the Disadvantaged: Strategies, Achievements and Challenges”*, Colorline, Dhaka 2008. P.117.

⁴³ Ibid, P.117.

⁴⁴ Interviewed on 12-8-2014.

⁴⁵ Interviewed on 26-09-14.

⁴⁶ In one case (Criminal Revision no. 157 of 2013.) relating to custody of a children it is found that after mediation done by BNWLA it is decided that custody of the child will belong to the mother but the opposite parties denied the decision and brought the case to the executive magistrate court which also held that custody will belong to the mother but with conditions. Here the point is that executive magistrate is not the appropriate forum for settling this disputes rather it is the family court which is supposed to try the case. So ignorance of law not only brings injustice but also create multiplicity of suits.

To come out from this scenario if developmental incentive can be given to enhance the capability and skill of the judges as it was given under a pilot project by the USA based Institute for the Study and Development of Legal Systems (ISDLS) then the quick disposal rate can be achieved as it was resulted during 2000-2003⁴⁷, opined by Mr. Molay Saha, Advocate High Court Division, Supreme Court of Bangladesh.⁴⁸

Finally it can be said that success of family courts to provide incentive for access to justice system as well as for the promotion of alternative disputes resolution is not yet achieved and for that removal of the barriers is strongly recommended.

Mediation and Arbitration in Civil Process

The Code of Civil Procedure governs the procedural aspect of civil matters. This law by virtue of the Code of Civil Procedure (Amendment) Act 2003 contains provisions for mediation where the contesting parties are willing to settle their disputes through mediation.⁴⁹ This law also speaks for arbitration if the parties refer the dispute to the arbitration and the court shall allow the withdrawal of the suit⁵⁰ and then the dispute shall be settled in accordance with the Arbitration Act 2001. Though the mediation and arbitration referred under CPC does not cover personal matters in strict sense but the familiarity and efficiency of ADR through the provisions of this law will have impact on the promotion of reconciliation in regard to personal matters.

Prospect of Conciliation and other Alternative Procedures in Domestic Violence Cases

Domestic Violence Act 2010 in Bangladesh does not contain any provision for reconciliation in terms of settling disputes. But the incorporation of protection order, residence order, compensation order, and introduction of community service in lieu of punishment clearly indicates that domestic abuse and its offender is to be treated extra judicially with due care and attention. Accordingly, practical experience suggests for specific incorporation of reconciliation provision in the Domestic Violence Act.

⁴⁷ Under the Project, during 2000-2003, the total number of cases disposed of through mediation was 1996 as opposed to disposal of contested cases, which amounted to only 80 during the entire period.

⁴⁸ Interviewed on 19-09-2014.

⁴⁹ Section 89A of the Code of Civil Procedure 1908.

⁵⁰ Section 89B, Ibid.

Mr. Molay Saha, Advocate Supreme Court of Bangladesh informed⁵¹ that domestic violence cases are also settled with the tool of reconciliation procedure but for that the concerned lawyer has to convince the presiding judge about the initiation of reconciliation proceedings. He also urges for incorporation of specific provision for reconciliation in the Domestic Violence Act.

Conclusion

From the analysis of the provisions relating to conciliation and other alternative procedures incorporated in the legal system of Bangladesh, it is apparent that alternative procedures of settling disputes are playing pivotal role to create a sense of justice in a compatible atmosphere and rescued the disputants from the scourge of adversarial process of dispute resolution. These procedures are empowering the parties and enhancing the capability of exercising right to self determination where the parties can speak for themselves and make their decisions which is unimaginable in the adversarial battlefield. It is to some extent regrettable point to underline that despite the endeavours of the legislatures, these alternative procedures are not gaining momentum success due to manifold reasons such as, Lack of awareness and knowledge about these alternatives, Judges incapacity and ignorance, Lack of pro-active interpretation of judges, Lawyers reluctance, less capability approach of parties to adopt the alternatives, Non functioning of the instrumentalities of access to Justice, lack of case management, absence of matrimonial counseling in relation to family affairs, etc.

To overcome these barriers, some points are to be addressed properly

Amendment of Legislative Provisions

Anomalies under section 6 of MFLO 1961 should be revisited by removing the difficulties of revision power of Assistant Judge, provisions of accountability should be inserted to hold the chairman accountable, functioning of the chairman of the Arbitration Council should be inserted under the rules.

Mandatory obligation should be imposed regarding the service of notice along with the mandatory requirement of signing Acknowledgment form when the chairman or wife receives the notice. Regarding divorce reconciliation Kazi office may be involved in the proceedings as this office is closely related with this affair.

⁵¹ Interviewed on 19-09-2014.

Strengthening Family Courts

Regarding the execution of decree under family courts, confusion exists in relation to the determination of executing court. Procedural specification should be ensured here. Mandatory cutoff period should be inserted within which reconciliation has to be completed. Mandatory provision relating to matrimonial counseling should be incorporated in the Family Courts Act. Family Court Judges should be selected from comparatively more experienced judges which is specifically required in case of Bangladesh. To relieve the parties from lawyer's malpractice or excessive fees, Trial in camera should be routinely held.

Women's Participation

Women must be appointed specifically as judges of the Family Court and Village Court. Their participation must also be ensured in the Arbitration Council and Other Conciliation Proceedings.

Developmental Training and Other Incentives

Conciliation in family matters requires practical skill and techniques and for that adequate training should be arranged to enhance the skills of Judges, Lawyers, Mediators or Conciliators. In case of trying family disputes Judges should be given more credit than any other settlements. Pilot project can be taken by the Government in affiliation with Development Organization to empower Family Courts Judges and Lawyers.

- Village Court should be given more authority and remuneration or other incentives should be given to the members of the Village Court.
- A comprehensive instructional Code should be prepared for the Judges and Lawyers of the Family Court including Other Mediators and Conciliator regarding proper functioning and use of alternative mechanisms of dispute resolution.
- Hindu and Christian Personal Laws should be reformed by incorporating reconciliation provisions relating to personal matters and Family Court should be made their primary forum of seeking redress.
- Reconciliation provisions should be inserted in the Domestic Violence cases under the Domestic Violence Act.
- Access to justice should be ensured through the instrumentality of legal aid services by removing its procedural complexities and enhancing its familiarity.

A Critical Appraisal

- The activities of NGOs regarding legal aid and mediation should be appreciated and at the same time should be screened monitored and evaluated by a separate monitoring cell to prevent any kind of malpractice.
- Local Government system should be strengthened to popularize the alternative tools of settling at the rural area.
- Social Movement should be arranged to aware the disputant parties and motivate them to invoke mediation and conciliation.

Final words advocate that if these recommendations are duly addressed and accordingly measures are duly taken then we can assure the instrumental role of Conciliation and other alternative procedures in terms of dispute resolution and we will be able to dream for a society where people would be relieved from the scourge of delayed justice.