Tuhin & Partners

NEXUS OF LAW & BUSINESS

PUBLICATION

# The Role of Mediation in Bank–Debtor Disputes and the Limitations of Arbitration Contracts

Banks in Bangladesh play a crucial role in financing development by giving loans to businesses (large and small), households, agricultural ventures, and various infrastructure projects.

4 August 2026

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CHAPTER 1

# Introduction to Bank–Debtor Disputes

## 1.1 The Banking Sector and Debtor Relationships in Bangladesh

Banks in Bangladesh play a crucial role in financing development by giving loans to businesses (large and small), households, agricultural ventures, and various infrastructure projects. In doing so, they enter into debtor relationships where borrowers agree to repay with interest over a given period. Over time, however, these relationships are strained when borrowers fail to meet repayment obligations. Several factors contribute: economic shocks, business downturns, mismanagement, fraud, sometimes political influence, and regulatory forbearance.

Because of the way the banking sector is structured, banks often have significant power in these relationships: they require collateral, legal guarantees, and enforce strict contractual terms. Borrowers, especially smaller ones, often lack the same level of bargaining power or legal resources. This imbalance becomes especially pronounced when defaults occur.

## 1.2 Loan Defaults and Their Impact on the National Economy

In recent years, non-performing or defaulted loans (often called NPLs) in Bangladesh have surged to worrying levels. As of March 2025, Bangladesh Bank reported that more than Tk 4.2 trillion in loans are non-performing, representing about 24.13% of total outstanding loans. By June 2025, that figure had increased further: defaulted loans crossed Tk 5.30 trillion, nearly 27.09% of all bank loans.

These large volumes of defaults weaken banks' balance sheets in multiple ways:

Banks must set aside larger provisions, reducing their profitability.

It reduces the flow of credit, because banks become more risk-averse.

Public confidence in the financial sector can erode.

The cost of capital may rise, as investors perceive higher risk.

There's a knock-on economic effect: businesses with defaulted loans have less access to funding for expansion or operations, which may slow employment, investment, and economic growth.

Furthermore, defaulted loans in non-bank financial institutions (NBFIs) have also surged: as of end-March 2025, more than 35% of NBFI loans were defaulted.

## 1.3 Existing Legal Framework for Bank–Debtor Disputes

Several statutes govern bank–debtor relationships and how disputes over loan defaults are handled in Bangladesh:

Artha Rin Adalat Ain, 2003 (Money Loan Court Act, 2003)

This law is the primary mechanism for banks and financial institutions to recover defaulted loans. It establishes special courts (Artha Rin Adalats) for speedier recovery of debts owed to financial institutions. Key features include: summary procedure for suits, special execution powers for decrees (attachment of movable and immovable property, auction sale, etc.), provisions for civil imprisonment in some cases, and a requirement for appeal or redress in certain orders.

However, the Act has been criticized for procedural rigidity, ambiguity in certain provisions (for example who may be made defendant or mortgagor, rules for civil imprisonment), and delays in execution despite statutory time limits. For example, Section 17 of the Act is supposed to require the trial to be concluded within 90 working days (extendable by 30 days), and Section 37 sets time limits for execution of decrees (90 days, with possible extension). But in practice, these time limits are not always adhered to.

Bank Companies Act, 1991

This Act governs banking companies in Bangladesh, their licensing, regulation, and oversight. It also plays a role in defining rights and responsibilities of banks, including constraints on how banks must behave, as well as how financial regulation interacts with recovery of loans. For example, large loans to be sanctioned subject to central bank oversight, rules for loan classification, and sometimes regulatory pressure to reduce bad loans.

Arbitration Act, 2001

The Arbitration Act provides the legal framework for arbitration in Bangladesh. It defines what constitutes an arbitration agreement, sets out formal requirements (e.g., writing), gives effect to arbitration clauses in contracts, and provides for enforcement of arbitral awards.

In theory, many bank-borrower contracts incorporate arbitration clauses. But in practice, arbitration is not often used in the default-loan context; courts often favor bank suits under the Artha Rin Adalat Act, and enforcement of arbitration agreements may be limited by issues such as cost, delay, or reluctance of parties.

## 1.4 Role of Courts and Specialized Tribunals in Debt Recovery

Because of the special nature of loan-default cases, the law sets up specialized tribunals, chiefly the Artha Rin Adalats, to handle them.

Artha Rin Adalats are established district-wise under the 2003 Act. They are presided over by joint district judges, and have the jurisdiction to try suits by financial institutions to recover loans. The Act gives them powers similar to civil courts in many respects, but designed (at least legislatively) to be faster and more summary.

Courts enforce decrees obtained by banks through these Adalats, including attaching properties, auctioning collateral, issuing title certificates, and (in some cases) ordering civil imprisonment for noncompliance.

However, there is a substantial backlog. For example, in mid-2025, over 70,000 cases in Artha Rin Adalats were pending, involving defaulted loans amounting to over Tk 2,32,000 crore (approx) in a very large number of suits. This backlog severely limits effective recovery and dampens the prospect of timely justice.

Courts, including high courts, have on several occasions had to intervene (via writ petitions etc.) to unpack or interpret problematic provisions (e.g. requirement to deposit large portions of decretal sum before appeal, clarity on who must be made defendant in cases involving mortgagors or guarantors etc.).

CHAPTER 2

# Arbitration in Banking Contracts- Strengths and Weaknesses

## 2.1 Arbitration Clauses in Loan and Mortgage Agreements

In Bangladesh, many loan and mortgage contracts between banks and borrowers include arbitration clauses. These clauses generally stipulate that if a dispute arises, it shall be resolved by arbitration rather than through court litigation. Such clauses are especially common in contracts involving large borrowers or in foreign financing agreements, where banks seek predictability in dispute resolution.

Under the Arbitration Act, 2001, an arbitration agreement must be in writing (Section 9) and may take the form of a clause in a contract or a separate agreement. The purpose of drafting such clauses is to bind parties to arbitration, bypassing or reducing litigation risk, delay, and public scrutiny.

## 2.2 Legal Standing of Arbitration Under the Arbitration Act, 2001

The Arbitration Act, 2001 is Bangladesh's principal law for arbitration. It replaced the older 1940 Act and consolidated both domestic and international arbitration under one statute. It provides for:

Definition of "arbitration agreement" (Section 2)

Requirements for enforceable arbitration agreements (writing, signature etc.) under Section 9

Provisions for interim measures (amended in 2004 to include some powers to issue interim reliefs via High Court or District Courts)

That said, legal scholars and practitioners have pointed out that while the law looks good on paper, there are gaps in its implementation: delays, lack of rules for emergency arbitration, lack of clarity about how foreign arbitration agreements interact with local courts, and sometimes excessive judicial interference.

## 2.3 Interaction Between Arbitration and Artha Rin Adalat Proceedings

Even when loan or mortgage agreements have arbitration clauses, banks often do not use arbitration when default occurs. The Artha Rin Adalat Ain, 2003 gives exclusive jurisdiction to the Artha Rin (Money Loan) Courts for recovery of bank and financial institution loans. Thus, even with an arbitration clause, a bank may choose to file suit under the Artha Rin Adalat framework rather than initiate arbitration, because:

the law gives express powers to Artha Rin Adalats to adjudicate loan recovery suits;

enforcement via the Artha Rin courts is more direct (especially in executing decrees, attaching and auctioning collateral) than some arbitration procedures;

there is uncertainty whether an arbitral award can be enforced under the Artha Rin process (especially if courts delay or refuse to recognize an award)

Moreover, there is evidence of significant backlog in Artha Rin Courts: as of December 2024, there were 72,540 pending cases in Artha Rin Adalats, claiming about Tk 1,78,270 crore in loan value. This formula of litigating under the Artha Rin regime tends to overshadow arbitration in practice.

## 2.4 Strengths of Arbitration in Debt Recovery

Despite the challenges, arbitration has certain strengths that make it attractive (at least in theory) in banking contracts:

Finality and enforceability: Once the tribunal gives an award, it is generally binding and can be enforced; this gives contractual certainty. Under the Arbitration Act, parties can avoid prolonged appeals that plague court proceedings.

Party autonomy: Parties can choose arbitrators with financial or technical expertise, agree on procedural rules, and sometimes speed up proceedings. They can also choose the seat of arbitration and governing law, especially in cross-border or foreign-financed transactions.

Privacy: Arbitration is private, unlike court suits. Banks often prefer arbitration when dealing with large or sensitive exposures because public litigation could harm reputation.

## 2.5 Weaknesses of Arbitration Contracts in the Banking Context

However, many of the theoretical strengths do not fully translate into practice in Bangladesh. Some of the key weaknesses are:

Lack of neutrality / perceived bias: Debtors often feel that arbitrators are more favorable to banks, which draft the arbitration clauses and have more resources to influence procedures and presentation of cases. There is concern that arbitrators may be selected from panels that repeatedly act for financial institutions, raising issues of conflict of interest.

Cost and delays despite “efficiency claims”: Arbitration, especially international or complex commercial arbitration, can become expensive. Also, because there are few institutional rules for interim relief, and because courts may intervene, arbitration may not always be faster than court litigation in the banking context. Scholars have noted that appeals and judicial review under Section 48 of the Arbitration Act, and delays in recognition and enforcement of awards, erode the efficiency of arbitration.

Limited debtor participation or access: Small borrowers often lack the capacity to negotiate arbitration clauses, to pay arbitration fees, or to participate fully in the process. Also, because arbitration agreements are often pre-drafted by banks, debtors may not fully understand or appreciate their rights under those clauses. Additionally, domestic arbitration procedures sometimes lack transparency or oversight, which may leave weaker parties exposed.

CHAPTER 3

# Mediation as an Alternative Path

## 3.1 Concept and Principles of Mediation

Mediation is a voluntary, party-driven process in which a neutral facilitator assists the disputing sides in reaching a mutually acceptable settlement. In Bangladesh CPC refers to conciliation/mediation in suits where the court may refer parties for settlement".

Likewise, the UN Convention on Mediation describes it as a process "whereby the parties attempt to reach an amicable settlement of their dispute with the assistance of a third person … lacks the authority to impose a solution". In practice, mediation's hallmarks include voluntariness (no party is forced to settle), neutrality (the mediator has no stake in the outcome), and confidentiality (discussions are private) the mediator's role is purely facilitative: unlike a judge or arbitrator, a mediator does not decide or impose terms, but helps parties explore interests and options. This informal setting allows for creative, customized solutions that litigation cannot typically offer.

Key principles of mediation can be summarized as follows:

- Impartiality and Neutrality: The mediator must have no bias towards any party. For example, the Bangladesh Money Loan Court Act permits parties to choose mediators such as retired judges, lawyers or former bankers, but requires that the mediator have no conflict of interest in the case.
- Voluntary Participation: Both sides choose to mediate and may withdraw at any time. The American Bar Association notes that mediation remains voluntary even if ordered by a court – the mediator simply cannot force a settlement.
- Control by Parties: Unlike arbitration or litigation, the outcome is entirely up to the parties. They craft their own compromise, rather than accepting a decision imposed by a third party.
- Confidentiality: All discussions in mediation are kept confidential and cannot generally be used as evidence if the dispute proceeds to court. This encourages candid dialogue. Section 89A explicitly emphasizes the informal and confidential nature of mediation.

These features make mediation particularly suitable for disputes that require preserving relationships or tailored solutions,for example, allowing banks and debtors to negotiate a workable repayment plan rather than rigid enforcement.

## 3.2 Comparative Analysis – Mediation, Arbitration, and Litigation

- Mediation is one branch of Alternative Dispute Resolution (ADR); its advantages become clearer when contrasted with arbitration and litigation. Broadly: Mediation: As above, it is a non-binding, informal negotiation assisted by a mediator. It is usually faster and cheaper than formal processes: ADR processes in general “are cheaper and faster than the traditional legal process,” allowing flexible, less formal procedures.

- Arbitration: In arbitration, a neutral arbitrator (or panel) hears arguments and evidence, then issues a decision (an “award”) which is generally binding. Arbitration hearings resemble a private mini-trial: they are less formal than court trials but still involve presentations of evidence and legal argument.

The process is usually faster than going to court, but typically longer and more formal than mediation. Arbitration awards under the 2001 Act are binding and enforceable, with limited judicial review. Optional/advisory arbitration exists only by private agreement, not by default. The appointing process for arbitrators in Bangladesh can take months under the 2001 Act though institutional bodies like BIAC can expedite appointments.

- Litigation: Litigation is the formal court process. Disputes are resolved by judges (or juries) under strict procedures. It is typically the slowest and most adversarial path: the Money Loan Courts (Artha Rin Courts) operate under rigid rules, public hearings, and formal discovery. A final judgment is issued by the court and can be appealed. The cost, time, and unpredictability of court litigation (often measured in years for large loan cases) far exceed those of ADR

In summary, arbitration provides a binding resolution faster than litigation but still with formalities, whereas mediation is non-binding and highly flexible. As one legal educator notes, mediation “allows the parties to tell their stories and be directly involved in shaping a way forward,” whereas arbitration “resembles a trial” ADR processes (mediation or arbitration) generally enhance party control, confidentiality, and speed compared to litigation

## 3.3 International Experience in Mediation of Banking Disputes

Globally, many jurisdictions and institutions have begun to integrate mediation into financial dispute resolution. For example, the European Union explicitly encourages out-of-court restructuring: the EU’s Insolvency Directive (2019/1023) calls preventive restructuring a “growing trend” in insolvency law, recognizing that early negotiation can avert bankruptcies. Likewise, the European Central Bank’s NPL guidelines (2017) advise banks to set up early-warning indicators and consider alternative workouts before loans become non-performing. These measures implicitly support mediation or similar negotiation among debtors and creditors.

At the multilateral level, UNCITRAL and its instruments have bolstered mediation’s profile.

The 2019 UN Convention on Mediation (Singapore Convention) makes international mediated settlements enforceable across borders, akin to the New York Convention for arbitration. UNCITRAL experts have urged Bangladesh to adopt these tools for easier enforcement of mediated agreements. Many global law firms and ADR bodies emphasize that recognizing mediated settlements internationally is crucial for commerce

Several countries illustrate successful mediation in finance:

- Vietnam has steadily expanded mediation in commercial law. Its 2010 Commercial Arbitration Law and 2015 Civil Procedure Code introduced mediation and conciliation chapters, and a 2017 decree further regulated commercial mediation. While practice remains nascent, these steps institutionalize mediation as part of the legal framework.
- Tunisia amended insolvency law to allow a court-appointed conciliator to negotiate debt rescheduling with creditors/ though still underutilized, Tunisia's approach explicitly empowers mediation-like processes to prevent bankruptcies.
- United Kingdom and other common-law countries often require courts to consider ADR. For instance, UK Civil Procedure Rules allow courts to penalize parties that unreasonably refuse court-ordered mediation. This has fostered an ADR culture where mediated solutions are expected in commercial disputes.
- A particularly relevant recent example is Singapore's Financial Industry Disputes Resolution Centre (FIDReC), launched in 2005. FIDReC handles consumer banking and insurance complaints: mediation is the default first step, and only if mediation fails does it move to a binding adjudication. (Parties appreciate that mediators are financial industry experts and that filing is free for consumers. While FIDReC deals primarily with retail finance disputes, its mediation-first model demonstrates the promise of ADR in financial sector conflicts.

In sum, the international trend is clear: many jurisdictions now embed mediation or conciliation in loan workout and insolvency regimes, supported by both legislative directives and institutional practice. These experiences show that mediation can rescue distressed borrowers (SMEs or individuals) and reduce pressure on courts. Bangladesh's policymakers and banks can draw on these models to shape local reforms.

## 3.4 Applicability of Mediation in Bangladesh's Context

Bangladesh already has some legal and institutional foundations for mediation, though practical use has been limited. Legally, the Money Loan Court Act (Artha Rin Adalat Ain) was amended in 2010 to insert mandatory mediation at two points in a loan suit: firstly, after the borrower files its written statement, and secondly after the trial concludes but before judgment. In both instances, the court must refer the case to mediation if both parties agree.

The Act empowers parties to choose qualified mediators (e.g. retired judges or bankers), but it provides very little procedural detail or protection. (For example, the Act does not fix mediator fees or training requirements, leaving significant gaps.) Institutionally, the Bangladesh International Arbitration Centre (BIAC) – established in 2011 as the first ADR institution in Bangladesh – now offers mediation services under its 2019 Mediation Rules. BIAC maintains a panel of distinguished mediators (including retired chief justices and senior lawyers).

Unlike the ad hoc mediators traditionally appointed by Money Loan Courts, BIAC's roster is certified and experienced, which can enhance the credibility of mediation. BIAC has already begun a pilot scheme inviting banks to submit arrears cases for mediation under its Rules.

Regulatory encouragement for mediation has increased recently. In May 2024, Bangladesh Bank issued a circular directing every bank to recover at least 1% of its non-performing loans through ADR by June 2026. The circular explicitly urges parties in loan disputes to seek ADR at any stage (before judgment) and to use mediators registered with BIAC or similar institutions.

It even envisages “memoranda of understanding” between banks and BIAC for ADR, to train staff and formalize referrals. This is a clear signal: government policy is shifting toward institutionalized mediation as part of the banking dispute toolkit.

In practice, however, mediation under the Money Loan Court framework has been sporadic. Money Loan Courts often struggle to facilitate effective mediation due to lack of time or expertise. The courts can refer cases to any mediator agreed by parties, but without an enabling infrastructure or incentives, many cases simply return to litigation after the statutory mediation period lapses.

Recognizing these challenges, some legal experts have called for further reforms to align mediation in loan suits with international best practice (for example, establishing mandatory court-annexed mediation centers and mediator accreditation).

Overall, while the legislative framework permits mediation in banking disputes, its effectiveness depends on stronger institutional support. BIAC’s leadership, coupled with Bangladesh Bank’s policy push, is gradually building such support. With continued legal refinement and promotion, mediation can become a realistic alternative for resolving bank–debtor conflicts in Bangladesh.

CHAPTER 4

# Towards Accountability in the Finance Sector

## 4.1 Accountability Challenges in the Current Legal Framework

Bangladesh's legal framework for debt recovery has significant accountability gaps that hinder both lenders and borrowers. Critically, its statutes leave many defaulters beyond easy reach. For example, the Bankruptcy Act 1997 applies only to individual debtors, meaning large corporate defaulters cannot be dealt with under formal insolvency laws. This creates a blind spot: major wilful defaulters often exploit this to evade consequences. A 2025 task-force report bluntly calls the system "dysfunctional," noting that borrowers routinely exploit procedural loopholes to delay payments.

The volume of unresolved cases is staggering. As of early 2024, more than Tk 178,000 crore of bank loans were tied up in 72,543 Artha Rin Court cases. Even a bank official has noted that "over 72 thousand suits" are pending in loan courts. This colossal backlog means loans remain non-performing for years, eroding banks' balance sheets and fueling economic risk. Contributing factors include a low judge-to-population ratio and inadequate courtroom resources, which have created severe judicial bottlenecks.

Moreover, the design of the laws themselves has drawn criticism. The Artha Rin Act mandates that banks must first sell or value collateral before suing borrowers, a provision that frustrates quick enforcement. Worse, the Act's forced post-litigation mediation stage has reportedly been misused: defaulters drag out trials knowing they can postpone a final judgment by feigning readiness to mediate.

In short, procedural provisions meant to aid repayment have become tools for delay.

The net effect is a lack of real accountability. Banks can take years to recover defaulted loans, while borrowers (especially powerful ones) face little immediate consequence. The task force also flagged recent policy changes that weaken accountability: for instance, scrapping the "group default" clause in 2024 lets related firms secure new loans despite a default elsewhere. Political influence compounds the problem; recent amendments have extended bank directors' tenures and allowed more insider appointments, undermining independent oversight. Transparency is also limited: the authorities no longer publish complete banking-sector data on capital and NPL ratios, making it hard to hold anyone to account.

In summary, Bangladesh's credit-laws form an environment in which neither creditors nor debtors are swiftly held to account. Loopholes and institutional constraints allow defaulters to stall indefinitely, and meanwhile banks' hands are often tied by procedural rules. This systemic dysfunction has alarmed economists and regulators, who call for urgent reform.

## 4.2 Criticism of the Artha Rin Adalat Act (Delays, Inefficiency, Asset Underutilization)

The Artha Rin Adalat Ain, 2003 attempts to ensure efficiency in loan recovery through Section 16 (Provisions Related to Judgment), which requires the court to deliver its judgment within 10 days of completing evidence or arguments under Section 15(2) and 15(3). Where no installment schedule is fixed in the decree, the court may allow up to 60 days for the defendant to pay. However, in practice these statutory deadlines are rarely adhered to, as frequent adjournments, procedural maneuvering, and enforcement bottlenecks dilute the effectiveness of Section 16. As a result, the intended goal of expeditious loan recovery often remains unrealized.

Section 18 (Special Provisions on Filing and Hearing of Cases): The Artha Rin Adalat Ain, 2003, s 18 introduces special procedures for the filing and hearing of money loan cases to ensure expedited adjudication. This section empowers the Artha Rin Adalat to prioritize such cases and limit dilatory practices. While intended to streamline proceedings, critics argue that procedural inefficiencies, frequent adjournments, and lack of strict enforcement often undermine the purpose of Section 18.In many cases, secured properties or businesses fetch well below market value at sale. The law theoretically requires sale "at value," but without independent valuation safeguards, banks often set reserves artificially low or buy their own collateral. Borrowers lose out on fair value, and the banking system ultimately recovers less from bad loans.

Section 25 (Approval for Alternative Dispute Resolution of High-Value Claims): The Artha Rin Adalat Ain, 2003, s 25 allows courts to approve alternative dispute resolution (ADR) in high-value money loan disputes. While framed as a mechanism to reduce case backlog and promote efficiency, in practice this provision raises serious concerns. First, ADR often operates in a setting where creditors hold far stronger bargaining power, leaving debtors with little room to negotiate on equal terms. Second, the statute provides no robust safeguards to ensure transparency or fairness in the process, effectively outsourcing judicial responsibility to mechanisms that may lack accountability. Finally, by diverting cases away from open court scrutiny, Section 25 risks undermining consistency in legal precedent and diluting judicial oversight. Instead of promoting justice, critics argue it entrenches creditor dominance and weakens debtor protections. These systemic issues produce real-world inefficiencies. As noted above, cases languish for years. A BIAC roundtable reported that many loan cases have been pending over a decade. Indeed, Bangladesh Bank figures show 72,543 loan suits pending as of early 2024. Meanwhile, the enforced sale of collateral remains the primary remedy, so undervalued assets is common; this "underutilizes" the debtor's remaining value and leaves wealth stranded. In short, the Artha Rin Act's procedural flaws have been widely criticized for causing unnecessary delay, inequity, and waste in loan recovery.

## 4.3 Mediation as a Tool to Complement Artha Rin Proceedings

Given the shortcomings above, mediation offers a complementary avenue to improve outcomes. Instead of relying solely on protracted litigation and auctions, mediation can help resolve loan disputes more efficiently. Under existing law, Money Loan Courts do have the power to refer cases to mediation after pleadings (and even at the appeal stage). However, this step has seldom been used effectively. By actively leveraging mediation before or during litigation, banks and borrowers could negotiate partial repayments or workout plans that reduce NPLs without waiting for court orders. For example, Bangladesh Bank's 2024 directive explicitly encourages parties to use ADR in loan cases at any stage.

The idea is that a court-authorized mediation with a retired judge or expert banker could produce a settlement in months, freeing up months or years of litigation time. If parties reach agreement, a mediated settlement can be filed and decreed by the court, immediately reducing the loan's classification as an NPL. Even if full repayment cannot be agreed, partial compromise (such as interest reduction or extended terms) can lighten the debtor's burden and improve recoveries. This mitigates the harm of lengthy enforcement: rather than repeatedly challenging each legal notice and auction, the parties negotiate a single, binding compromise.

In effect, mediation can "decongest" Artha Rin courts. Rather than letting cases linger for 10+ years, an early mediation might conclude in a few months. Some comparisons underscore this potential: BIAC reports that appointing a certified arbitrator typically takes 6–12 months under the Arbitration Act, Whereas BIAC can assign a mediator within days. Similarly, skilled mediators (especially those with legal and financial expertise) can help focus disputes on core issues and prevent dilatory tactics. While mediation is non-binding, in practice it often leads to voluntarily complied settlements. Both banks and debtors have incentives to reach compromise (banks to recover some funds; debtors to avoid losing all assets).

Thus, mediation is not an alternative exclusive of the Artha Rin process, but a complement. When used alongside the Money Loan Courts, it can inject flexibility and speed into an otherwise rigid system. This aligns with how multiple stakeholders now view ADR: as one banker at a recent BIAC conference put it, institutional mediation offers "unparalleled advantages" in speeding up recovery compared to the decades-long court path.

In short, properly implemented mediation would fill the gaps of the current regime, helping resolve disputes more quickly and equitably than litigation alone.

## 4.4 Promoting Transparency and Fair Settlements Between Banks and Debtors

Mediation also has the potential to improve fairness and transparency in banking disputes. Unlike adversarial trials, mediation encourages open communication: each side explains its financial situation and constraints directly to the other. This process can reveal underlying facts that a court decision might overlook (for example, potential for business rescue or community impact). Importantly, although mediated discussions are confidential, the ultimate agreement can be recorded officially. In Bangladesh, a mediated settlement in a loan case is submitted to the Money Loan Court for a decree. This means the terms (and, implicitly, the parties' concessions) become part of the public record in the final decree. As a result, the settlement process is documented and enforceable, providing transparency that pure negotiation might lack.

Institutional safeguards can further enhance transparency. The MLCA already requires that any mediated settlement over Tk5 crore be approved by the bank's Managing Director or CEO. This ensures that large compromises receive high-level scrutiny and are not casually agreed. BIAC's involvement adds another layer: its mediators are bound by professional ethics and are drawn from judicial or financial leadership.

This contrasts with the old system where court-referred mediators had no formal accreditation. The credibility of BIAC's panel helps both parties trust the mediator's neutrality.

For example, in a BIAC mediation of a loan dispute, the mediator will not impose a solution but will work equally with both bank and borrower. And because BIAC is a known institution, the parties have assurance that any settlement reached will follow BIAC's rules (including confidentiality and basic procedural fairness). If the mediated agreement fails to materialize, this process at least filters out frivolous claims and establishes a factual baseline, which can streamline any ensuing trial.

Finally, mediated settlements generally avoid the asset "fire sales" that litigation often triggers. By negotiating, parties may agree on collateral valuations or restructurings that preserve more value. In this sense, mediation can be fairer: instead of letting undervalued auctions decide winners, debtors might agree to hand over assets only if fairly priced, and lenders commit to extend credit in return. Such outcomes are typically more equitable than an all-or-nothing court ruling.

In sum, when properly structured, mediation offers transparency (through documentation and oversight) and fairness (through balanced negotiation) that benefit both banks and borrowers. The key is to build procedural checks – mediator qualifications, fee guidelines, and formal court recognition – so that parties feel secure that mediation will be impartial and binding once settled.

## 4.5 National and Social Implications of Mediation in Financial Disputes

Embracing mediation in banking disputes has implications that extend beyond individual cases. At the national level, wider use of mediation can free up judicial resources and inject liquidity into the economy. With nearly 17% of all bank loans classified non-performing (South Asia's highest rate), unlocking even a fraction of these funds by amicable settlement could be transformative. Every loan resolved through mediation (rather than years of litigation) translates into businesses paying off debts and freeing credit for new investment. In this way, mediation can support broader economic goals, accelerating recovery of bad loans and reducing losses in the banking sector.

From a social perspective, mediation promotes peace and cooperation. A well-known legal scholar observes that ADR in general "enhances the quality of social justice and to enjoy harmony and peace in society," which are essential for sustainable development.

In the context of finance, this means preserving livelihoods: for example, if a debtor's business can continue operating under a new payment plan, employees remain employed and communities avoid disruption. Mediation therefore helps prevent the social fallout of aggressive debt enforcement. It can also improve the public image of the banking system; seeing disputes resolved fairly builds trust among customers and investors.

Moreover, as Bangladesh integrates with global commerce, aligning with international norms matters. The country has been encouraged to join the UNCITRAL Singapore Convention on Mediation. Ratifying this treaty would signal that Bangladesh honors mediated international settlements as it does foreign arbitral awards, making the country more attractive for cross-border finance. Such steps elevate Bangladesh's rule-of-law reputation and could indirectly strengthen accountability by making mediated outcomes more reliable internationally.

In summary, institutionalizing mediation in finance serves national interests: it mitigates the heavy NPL burden on public finances, promotes efficient use of assets, and contributes to social stability by resolving conflicts amicably. By contrast, allowing loan disputes to fester in court erodes economic and social capital. As one ADR advocate notes, accessible ADR is a “pre-condition for meaningful development”, suggesting that improved mediation could ultimately underpin Bangladesh’s growth and equity.

CHAPTER 5

# The Way Forward – Policy, Legal, and Institutional Reforms

## 5.1 Reforming the Artha Rin Adalat Act to Incorporate Mediation Provisions

To realize mediation's potential, the Artha Rin Adalat Ain itself should be amended to establish clear mediation rules. Experts have suggested several reforms. First, the Act should set out a procedural framework for mediation

This could include fixed timelines (e.g. a set period for mediation once referred) and defined roles for court officers to facilitate the process. Currently the law is vague, so codifying steps (for example, requiring the court to convene a mediation conference within 30 days of referral) would reduce uncertainty.

Second, the Act should mandate mediator qualifications and accreditation. Rather than leaving to the parties, legislation could require that court-referred mediators be certified by a recognised ADR body (such as BIAC) or have specified credentials. Establishing a central panel of approved mediators (as proposed by some analysts) would ensure consistency and quality.

Moreover, mandatory training for court officers and lawyers on mediation would build capacity.

Third, reforms should address mediator fees and incentives. Currently, no fee guidelines exist in the Artha Rin Act, which can deter debtors from agreeing to mediate. Parliament could empower BIAC or the government to set standardized fee scales based on case size, similar to other countries' practice.

These measures would make mediation more accessible, especially for weaker parties.

Fourth, consider making mediation a mandatory pre-suit or early-suit step for certain loan categories. Rather than only post-pleading mediation, the law could allow or require parties to try mediation at the outset (subject to judicial discretion).

As one legal commentator points out, waiting until after litigation has begun often makes parties too entrenched; an early mandatory session (with right to proceed if it fails) could capture disputes before hostility hardens. The Artha Rin Act could explicitly authorize courts to adjourn or stay proceedings while mediation is underway, similar to Section 89A CPC practice.

Finally, the Act should empower courts to streamline enforcement of mediated settlements. For example, if parties sign a mediated agreement, the court could confirm it with minimal scrutiny (provided statutory conditions are met) and enter a decree promptly. This would give mediated outcomes the same finality as an arbitral award. Currently, courts already check large settlements for CEO approval, but further reforms could ease judicial approval for routine cases. In short, legislative amendments should enshrine mediation as an effective, structured alternative, rather than a procedural afterthought.

## 5.2 Coordination Between the Arbitration Act, 2001 and Banking Laws

Financial dispute resolution in Bangladesh currently suffers from overlapping laws. The Arbitration Act 2001 and banking statutes (like the Artha Rin Act and the Bank Companies Act) have not been fully harmonized. For true synergy, two changes are needed.

Firstly, the Arbitration Act itself may require adjustments to accommodate banking disputes. During a BIAC–UNCITRAL conference, a legal expert urged reform of the 2001 Act to help ADR "flourish" in the face of court backlogs.

For example, the Act might explicitly recognize that arbitration clauses in loan agreements can apply even after an Artha Rin suit is filed or conversely, clarify when the Money Loan Court's exclusive jurisdiction gives way to private arbitration. Currently, the MLCA contains provisions allowing arbitration at a certain stage even absent an explicit clause, which can confuse parties. A legislative review could resolve whether contractual arbitration should override or supplement the special loan-court process.

Secondly, regulators and courts should align procedures. This implies the law should not obstruct arbitration as a fallback. Ensuring the Civil Procedure Code (Sec. 5 of the Artha Rin Act) and Arbitration Act permit such conversions is crucial.

Courts might be empowered to stay Artha Rin proceedings when parties opt for arbitration, subject to judicial review. In practice, this means drafting clear rules on jurisdiction: if a valid arbitration agreement exists, perhaps the case should shift to arbitration rather than stay in loan courts.

Overall, coordination requires a coherent ADR hierarchy. The law should ensure that arbitration and mediation clauses in loan contracts are recognized and enforced in harmony with banking laws, rather than creating legal battles over forum. As one commentator observed, revising the Arbitration Act to integrate-with the money-loan regime is "imperative" given current delays. Aligning these statutes will prevent forum disputes and give banks and borrowers confidence in choosing ADR over litigation.

## 5.3 Role of Bangladesh Bank and BIAC in Institutionalizing Mediation

Concrete institutional support is essential to make mediation work. Bangladesh Bank, as the banking regulator, should continue to champion ADR. The 2024 directive (BRPD Circular No.11) is a strong start. Going forward, the central bank can embed ADR goals in its supervision: for instance, by requiring each bank to report ADR usage statistics (number of cases mediated, amounts recovered, etc.).

Performance targets (like the 1% NPL recovery goal) could be revised periodically upward as capacity grows. Bangladesh Bank could also offer incentives – for example, recognizing successful mediated settlements in its NPL classification rules or capital relief guidelines, to encourage banks to settle rather than litigate.

The Bangladesh International Arbitration Centre (BIAC) will be the linchpin of institutional mediation. BIAC should scale up its mediation program: this means recruiting more certified mediators, expanding the training of its panel, and possibly establishing a dedicated mediation wing. BIAC can publicize success stories from its pilot cases to build trust among banks and debtors. Crucially, BIAC and the banking sector should forge formal ties: the central bank's suggestion that banks sign MOUs with BIAC should be implemented widely. Such agreements can commit banks to refer eligible cases to BIAC mediation and ensure BIAC provides education (e.g. workshops) on the process to bank staff.

Partnership between Bangladesh Bank and BIAC is important too. The regulator could endorse BIAC's services – for example, by including BIAC mediation as an approved method in official loan recovery guidelines. Joint seminars, training, and even a shared ADR steering committee could align goals. The 2021 BIAC–UNCITRAL workshops have already spotlighted the benefits of institutional ADR. Continued collaboration (for instance, inviting UNCITRAL advisors or World Bank experts to train local mediators) would build credibility.

Ultimately, institutionalizing mediation will require persistent commitment. Bangladesh Bank and BIAC must work together to create a credible mediation ecosystem – supplying qualified neutrals, clear rules, and incentives – so that banks routinely consider mediation as part of their lending and recovery culture.

## 5.4 Legal and Procedural Safeguards for Fair Mediation Outcomes

To ensure mediation is not just available, but also fair, several safeguards are needed. Mediator qualifications are paramount. As noted, BIAC maintains a roster of experienced retired judges, lawyers and bankers. The law or rules should require mediators in loan disputes to have similar credentials or BIAC certification.

This could be achieved by regulations under the Artha Rin Act that limit referral to approved mediators. Training and accreditation standards (e.g. requiring a course in commercial mediation) would help avoid unqualified neutrals handling complex financial cases.

Fee and cost regulations should also be introduced. Mediation is often promoted as a cheaper ADR option, but without guidance, parties may face high fees or dispute over who pays. The Daily Star's analysis of Bangladesh law notes the absence of any fee schedule burdens litigants. A simple reform would allow BIAC or the Ministry of Law to publish a mediation fee tariff (perhaps a percentage of claim value, similar to certain arbitration rules).

Courts could then require parties to agree to BIAC's schedule as a condition of ordering mediation. This prevents unscrupulous mediators from charging excessive rates and makes costs more transparent.

Process oversight is another safeguard. Courts should retain a supervisory role in mediation. For instance, the Money Loan Courts already confirm that settlements comply with statutory limits; they could also require a short record of mediated agreements (dates, mediator identity, settlement terms summary) be filed.

If a party alleges the mediation process was unfair, judges should have authority to investigate or vacate a decree on proper grounds (similar to UNCITRAL's convention allowing refusal of enforcement for mediator misconduct). This does not mean second-guessing the deal, but checking basic due process (that both sides had genuine opportunity to participate, that mediator was neutral, etc.).

Finally, information and education safeguard fairness. Banks and borrowers should be fully briefed on their rights in mediation. For example, regulations could require that before mediation starts, both parties confirm in writing that they understand the voluntary nature of the process, and that any final agreement will be binding. Legal counsel for both sides should typically be involved, ensuring each party's position is adequately represented.

Together, these safeguards – qualified mediators, reasonable fees, judicial oversight, and informed consent – will make sure that mediated settlements in banking disputes are reached fairly and are trusted by both sides.

## 5.5 Long-Term Policy Recommendations for Sustainable Financial Accountability

In the long term, Bangladesh should weave ADR into the fabric of its financial accountability regime. Key policy steps include:

Ratification of International Instruments: The government should ratify the UNCITRAL Singapore Convention on Mediation. Doing so would allow any mediated settlement (including international loan agreements) to be enforced in Bangladesh without new proceedings. This would align Bangladesh with major trading partners and encourage foreign as well as domestic banks to trust mediation outcomes.

Embed ADR in Banking Law: Legislation like the Bank Companies Act and Bangladesh Bank regulations should encourage or require ADR clauses in all banking contracts. For example, a mandatory provision could be introduced that any loan agreement above a certain threshold must include an ADR clause (allowing court mediation or institutional arbitration). Regulators might also introduce incentives (such as faster approval of debt restructurings) for banks that successfully settle NPLs via mediation.

Strengthen Governance and Transparency: Policymakers must address the root causes of willful default. This includes reinstating the "group liability" rule for bank directors (reversing the 2024 rollback) and imposing stricter oversight on bank management. Simultaneously, banking laws should mandate the publication of key financial data (capital adequacy, NPL ratios, ADR usage rates) to allow market discipline. Better information will hold banks accountable and complement ADR mechanisms.

Institutional Development: The government and BIAC should jointly develop a long-term ADR infrastructure plan. This might include supporting university courses in mediation law, creating a national panel of mediators, and funding public awareness campaigns about ADR. Over time, Bangladesh could establish specialized ADR courts or centers for commercial disputes (Port Authority Arbitration Boards: Both Chittagong and Mongla Port Authorities have arbitration boards under their governing statutes. They handle disputes involving shipping, port charges, and contracts.)

Continuous Monitoring and Adaptation: Finally, progress should be measured. Regulatory agencies ought to monitor the impact of mediation on NPL resolution (e.g. % of NPLs reduced via settlement) and report annually. Laws and policies should be revisited periodically (for example, every 3–5 years) to incorporate lessons learned. An ADR Advisory Council, including representatives of banks, borrowers, BIAC and the judiciary, could guide iterative improvements.

Collectively, these reforms would create a culture of accountability in finance. Rather than defaults proliferating under opaque, adversarial processes, banks and borrowers would have clear, incentive-aligned paths to resolve disputes. This stability is crucial for sustainable economic growth. As one analyst noted, bringing mediated settlement “into the mainstream” of dispute resolution is essential for Bangladesh to achieve a “cheaper, faster and easier” business environment.

In the end, embedding mediation and arbitration thoughtfully into banking laws will help ensure that borrowers pay responsibly and lenders recover prudently – the twin pillars of a healthy financial system.

Tuhin & Partners

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# Talk to us about this.


CORPORATE OFFICE

Flat G2 (6th Floor), House # 94
Road # 10, Block # D
Niketan, Gulshan-1
Dhaka-1212

REGISTERED OFFICE

Office No. 305 (2nd Floor)
3/B, Purana Paltan
Dhaka-1000

hello@tnp.legal
+8801913885588
tnp.legal