

**EFFECTIVENESS OF ALTERNATIVE DISPUTE
RESOLUTION ON THE RECOVERY OF NON-PERFORMING
LOANS UNDER *ARTHA RIN ADALAT*: A STUDY ON
NATIONALIZED COMMERCIAL BANKS IN BANGLADESH**

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by

AMINUL ISLAM

Registration No.122/2012-13



University of Dhaka

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DEDICATED WITH EXTREME AFFECTION AND GRATITUDE TO

my parents Late Sona Mia Kazi and Yaroon Begum

and

my research supervisor Associate Professor Dr. Jamila Ahmed Chowdhury

ABSTRACT

Bangladesh is a densely populated country, and many people are living under the poverty line. To get them out of poverty to prosperity, people frequently take loans from different financial institutions including nationalized commercial banks. As people are poor, sometimes they cannot repay their loans in due time. As such, they have considered as loan defaulter. Finally, financial institutions or Nationalized Commercial Banks (NCBs) have to file suits to recover their loans. However, because of the absence of any specific law, the process of recovery was tedious and time-consuming for financial institutions. Therefore, a law titled *Artha Rin Adalat Ain*, 1990 enacted for accelerated recovery of such non-performing loans. Nevertheless, this law did not meet with success, due to some loopholes including very low recovery lies in the very slow execution of the decree. Thereafter, a new law enacted in 2003 for this purpose.

To accelerate the process of recovery, the *Artha Rin Adalat Ain* 2003 emphasized on the use of Alternative Dispute Resolution (ADR) to settle disputes on non-performing loans as a mandatory procedure to resolve these disputes. ADR is the unique feature added in this new law. The issue of recovery of non-performing loans is not only crucial but also remains complex for the financial sector of Bangladesh. The legal process is costly, time consuming, complex, and sometimes corrupted. Therefore, *Artha Rin Adalat Ain*, 2003 has included ADR system for recovering non-performing loans from borrowers so that good relation can maintain among the borrowers and NCBs, and the latter can maintain their viability with lower operating costs.

The level of non-performing loans negatively relates to bank efficiency and causes a hindrance to economic stability and growth of economics. Although trials in *Artha Rin* courts are contributing positively towards the recovery of NPLs, in this era of globalization, world business communities are eager to use ADR for the quick settlement of international business and trade disputes. The business community has now recognized that ADR is the acceptable mode of dispute resolution. It is felt that ADR is less costly, less adversarial and therefore more conducive to the preservation of business relationships, which is of vital importance in the business community. The use of ADR has grown tremendously in the international business in recent years. The growth has facilitated by several factors including tremendous expansion of international commerce, and increased globalization.

However, in our present legal system, increasing expenses of litigation, delay in disposal of cases and huge backlogs have virtually shaken the confidence of the people in the judiciary. In this backdrop, we cannot but ponder about the device like ADR, which is potentially useful for reducing the backlogs and delay in courts. Since ADR is much cheaper and speedier than the existing formal legal system, it can greatly mitigate the suffering of poor litigants. To fulfil the objective of this research, *Artha Rin Courts* of Dhaka District, as well as NCBs of Dhaka Districts, have been considered. While supporting the arguments of this thesis, opinions of 30 Bankers, 40 borrowers, 20 mediators, as well as 20 experts' judges have taken through questionnaire survey. After data analysis, I found that *Artha Rin* ADR has not improved NPL resolution and recovery significantly as the enforcement of the law is not properly executed for recovery the bank loans.

Furthermore, bankers are not empowered or delegated with required authority (e.g. waiver a part of interests etc.), to make a successful ADR with their borrowers. Thus, banker's power during ADR sessions should be provided and may be recognized through *Artha Rin Adalat Ain, 2003*. In addition, strong security for loans should be ensured for the success of ADR under *Artha Rin Adalat Ain, 2003*. Pertinently, increasing awareness of the benefits of ADR in comparison with the trial, training to judges, mediators and lawyers, the appointment of Panel mediators, and enhancing Judges' authority and power in conducting *Artha Rin ADR* could increase the effectiveness of the ADR under *Artha Rin Adalat Ain, 2003*. Therefore, introduction of settlement conference and/or Med-arb is suggested in this thesis.

This research will be helpful for the recovery the NPLs and will accelerate the financial condition of the banking sectors of Bangladesh. Furthermore, findings of this thesis will be beneficial for the policy makers to amend *Artha Rin Adalat Ain, 2003* or to enact or enforce new laws for the development of the financial sectors of Bangladesh. As financial sectors are the pillars for the development of a country, in short, I am highly optimistic that this research will also contribute to the overall economic development of Bangladesh.

DECLARATION

I do hereby declare that this thesis titled *“Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks in Bangladesh”* submitted to the Department of Law, University of Dhaka for the degree of Doctor of Philosophy in Law (Ph.D.), is prepared by me under the supervision of Associate Professor Dr. Jamila Ahmed Chowdhury, Department of Law, University of Dhaka.

I further declare that this thesis comprises only my original work and no plagiarism has occurred in this thesis. Furthermore, due acknowledgment has been made in the text to all other material used.

No part of this work has been used for the award of another degree.

Signature

Name:

Date of submission:

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LIST OF ACRONYMS

ABA	American Bar Association
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
ADBI	Asian Development Bank Institute
ALR	Apex Law Report
AMCs	Asset Management Companies
ARA	<i>Artha Rin Adalat (Money Loan Court)</i>
ARAA	<i>Artha Rin Adalat Ain (Money Loan Court Act)</i>
BB	Bangladesh Bank
BDBL	Bangladesh Development Bank Limited
BHBFC	Bangladesh House Building Finance Corporation
BIBM	Bangladesh Institute of Bank Management
BKB	Bangladesh <i>Krishi</i> Bank
BLD	Bangladesh Legal Decision
BLT	The Bangladesh Law Times
BRPD	Banking Regulation and Policy Department.
BSB	Bangladesh <i>Shilpa</i> Bank
BSRS	Bangladesh <i>Shilpa Rin Sangstha</i>
CEELI	Central European and Eurasian Law Institute
CESEE	Central, Eastern and South-Eastern Europe
CIB	Credit Information Bureau (Bangladesh Bank)
CJS	Chief Justices
CPC	The Cod of Civil Procedure
CP	Civil Petition
CPD	Centre for Policy Dialogue
CRG	Credit Risk Grading
DFIs	Development Financial Institutions
ECCU	Eastern Caribbean Currency Union
ECGI	European Corporate Governance Institute
EWACIV	England and Wales Court of Appeal (Civil Division) Decisions
FC	Family Court
FCBs	Foreign Commercial Banks

FISIM	Financial intermediation services indirectly measured
FPH	Further Pre-emptory Hearing
FSR	Financial Stability Report
FSRP	Financial Sector Reform Programs
GDP	Gross Domestic Product
HDFC	The Housing Development Finance Corporation Limited
IBFB	International Business Forum of Bangladesh
IDE	Institute of Developing Economies
IFC	International Finance Corporation.
IMF	International Monetary Fund
IRBD	Independent Review of Bangladesh's Development
IRS	Interest Rate Spread
JB	<i>Janata</i> Bank
JBL	<i>Jamuna</i> Bank Limited
KCDR	Karachi Centre for Dispute Resolution
KYC	Know Your Customer
MLR	Mainstream Law Report
MRA	Micro-credit Regulatory Authority
MOU	Memorandum of Understanding
NBFCs	Non-Banking Finance Companies
NCBs	Nationalized Commercial Banks
NFIs	Nonbank Financial Institutions
NPL	Non-Performing Loan
PCBs	Private Commercial Banks
PDR	Public Demand Recovery
PH	Pre-emptory Hearing
PW	Prosecution Witness
RAKUB	<i>Rajshahi Krishi Unnayan</i> Bank
RPO	The Representations of the People Order
SACCOS	Savings and Credits Cooperatives Societies
SOBs	State Owned Bank
SOCBs	State-Owned Commercial Banks
SCBs	State owned commercial Banks
SMA	Special Mentioned Account

SMEs Small and Medium Enterprises

USA United States of America

USAID The United Agency for International Development

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CHAPTER 1

INTRODUCTION

1.1 Background of the Financial Sector in Bangladesh

Over the last several decades, the financial condition of the banking sector in Bangladesh has been improving, because the economic development of the country has linked with the loan portfolio of commercial banks¹. Over the last decade, except for one or two years, the economy of Bangladesh has attained a stable growth rate of more than seven percent per annum². The financial sector of Bangladesh was heavily controlled under the strict directives of government and the Central Bank since its independence in 1971. Bangladesh Bank -the central bank of Bangladesh continued with various controlling policies including refinancing and rediscounting until December 1989³. However, after the introduction of Financial Sector Reform Program in 1990, to develop an inter-bank credit market, Bangladesh Bank almost closed both of its refinance and of rediscount windows. Any bank that needed finance started approaching the inter-bank financial market instead of Bangladesh Bank's windows; thereby, the discount rate policy, though intentionally lost its effectiveness⁴, promoted the growth of the private financial market in the country. Therefore, nowadays, all different financial sectors comprise like banks, non-banking financial institutions, and insurance companies are playing a vital role in the financial system like Bangladesh⁵.

¹European Central Bank, *Non-Performing loans What matters in addition to the economic cycle?* (Frankfurt am Main, Germany: European Central Bank, 2013) 4.

²The World Bank, 'GDP Growth annual %'(2016), available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BD>, accessed January 15, 2017.

³American International University- Bangladesh (AIUB). *The Current State of the Financial Sector of Bangladesh: An Analysis* (Bangladesh: American International University-Bangladesh, 2011), 3.

⁴*Id.* at 3-4

⁵Muhammad M. Rahman, "Banking Sector Reforms in Bangladesh and Its Impact" (Professional Master in Banking and Finance, Asian Institute of Technology School of Management, Thailand, 2012),1. ; See also, Annual Report (Sri Lanka: Central Bank, Sri Lanka, 2012),191, see also, R Gandhi, "Role of Non-Banking Finance Companies (NBFCs) in financial sector – regulatory challenges," BIS central bankers' speeches, Text of the Frank Moraes oration lecture by Mr. R Gandhi, Deputy Governor of the Reserve Bank of India, (Chennai: BIS central bankers' speeches, 2014), 3.

As of March 2014, the financial sector of Bangladesh consists of Bangladesh Bank as the central bank, and 56⁶ other scheduled banks under its control. Of these 56 banks, four are Nationalized Commercial Banks (NCBs), four state-owned specialized banks, 39 domestic private banks, and nine other foreign banks. Besides, 31 non-bank financial institutions (NFIs) and four non-scheduled banks are also operating in the market⁷. Moreover, as of February 2014 Microcredit Regulatory Authority (MRA) has given license to 699 Microcredit Organizations⁸ many of which also generate savings from their members. The financial system also embraces 77 insurance companies, two stock exchanges, and few co-operative banks.

As a central bank, Bangladesh Bank has the legal authority to supervise and regulate all banks and non-bank financial institutions. It performs the traditional central banking roles of note issuance, being the banker to the government and lender of last resort for other commercial banks. Given some broad policy goals and objectives of the government, it formulates and implements monetary policy, manages foreign exchange reserves, lays down prudential regulations, and conduct monitoring of the entire banking system⁹. Its prudential regulations include, among others: minimum capital requirements for member banks, limits on loan to a single borrower, policy for loan rescheduling and loan write-off, restriction on lending to directors of private banks, credit rating, disclosure requirement for banks, and bank deposit insurance scheme¹⁰. Bangladesh Bank also has the power to impose penalties on member banks for non-compliance with its directives and to intervene in the management of a bank if any serious problem does arise.

⁶Bangladesh Bank, Bank & Financial Institutions, <<http://www.bangladesh-bank.org/fnansys/bankfi.php>>, accessed May 15, 2014.

⁷Bangladesh Bank, Bank & Financial Institutions, <<http://www.bangladesh-bank.org/fnansys/bankfi.php>>, accessed May 15, 2014.

⁸Microcredit Regulatory Authority, *List of Institutions Primarily Selected for Obtaining License for Microcredit Activities*, http://www.mra.gov.bd/images/Licensed_NGO_MFIs/licenced%20mfis%20699%20english%20list24022014.pdf, accessed May 15, 2014.

⁹Bangladesh Bank, About Us, <<http://www.bangladesh-bank.org/aboutus/index.php>>, accessed May 14, 2014.

¹⁰Bangladesh Bank, *Prudential Regulations for Banks: Selected Issues*, <<http://www.bangladesh-bank.org/aboutus/regulationguideline/prudregsep2011.pdf>>, accessed May 13, 2014.

Different types of Banks in operation: Bangladesh Bank¹¹ regulates all scheduled banks of the country. As mentioned earlier the number of scheduled banks at present is 56 in Bangladesh. Out of these 56 banks, four are Nationalized Commercial Banks (NCBs)¹². Among others are 39 local private commercial banks, nine foreign banks, and four Development Financial Institutions (DFI). *Sonali* Bank is the largest among NCBs while *Pubali* is leading private banks. Among the nine foreign banks, Standard Chartered is the largest in the country. Besides the scheduled banks, *Samabai* (Cooperative) Bank, *Ansar-VDP* Bank, *Karmasansthan* (Employment) Bank and Grameen bank are also functioning in the financial sector of Bangladesh. The number of total branches of all scheduled banks is 8427¹³ as of June 30, 2013. Of all these branches NCBs, private commercial banks, specialized banks, and foreign banks hold 3499, 3386, 1476 and 66 branches respectively¹⁴. At least 50 percent of all branches of a scheduled bank should be located in rural areas¹⁵.

¹¹Bangladesh Bank the central bank and main regulatory body for the country's financial system and monetary system, was established in Dhaka as an independent organization according to the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) which was effective from 16th December 1971 [Bangladesh Bank website]. Now, it has nine offices located at different divisions of the country among which two are in the Capital city at *Motijheel* and *Sadarghat*, two are in *Rajshahi* division at *Bogra* and *Rajshahi* districts, and one in each of the rest five divisions namely *Chittagong*, *Khulna*, *Sylhet*, *Barisal* and *Rangpur*. Its prime jobs include issuing of currency, maintaining foreign exchange reserve, serving as a banker of all scheduled banks, and providing transaction facilities of all public monetary matters. Bangladesh Bank is also responsible for planning the monetary policy and implementing it accordingly. Bangladesh Bank has a governing body comprising of nine members with the Governor as its chief.

¹²Banks that were nationalized by the government after independence. Usually several branches of different private commercial banks were merged to form six nationalized commercial banks in Bangladesh. After the privatization of *Pubali* and *Uttara* Banks, existing NCBs are *Sonali* Bank, *Janata* Bank, *Agrani* Bank and *Rupali* bank. These four banks are considered as NCBs under this research. Though two other commercial banks namely Bangladesh Small Industries and Commerce Bank and Bangladesh Development Bank are operating under Govt. ownership, these two remain out of the scope of this research, as these are not nationalized.

¹³Bangladesh Bank, Annual Report (July 2012-June 2013), (Dhaka: Bangladesh Bank,2014),257.

¹⁴*Id.* at 257.

¹⁵Bangladesh Bank, Policy regarding establishments of business center by Banks, Banking Regulation & Policy Department, (BRPD Circular No. 18 dated 29.11.2012), (Head Office, Dhaka: Bangladesh Bank, 2012) 1, accessed May 26, 2014. Url: <<http://www.bb.org.bd/mediaroom/circulars/circulars.php>>.

Bangladesh Bank regulates and supervises the activities of all scheduled banks. It is now carrying out a reform program to ensure the quality of services and lending by all scheduled banks. Though many of these scheduled banks lend with some specific objectives like the development of any specific sector or supplying more credit to the poor, the objective of Bangladesh Bank is to ensure that all these banks are ultimately contributing towards poverty reduction and development of Bangladesh.

1.2 Bank Loans: An Effective Tool for Poverty Reduction and Development in Bangladesh-

History of financial development suggests that banking and financial expansion are directly interconnected. Either a growth of banking sector followed financial development, as in the case of the United States of America, or financial development followed the expansion of banking sector, as in the case of the United Kingdom and Europe¹⁶. For example, the ‘Venture Banker’ of 19th century Europe assembled and increased financial resources of the society for industrialization. The ‘Credit Mobilier’-the first venture bank established in 1850 in France did the job of supplying credit to venture capitalists in Europe for industrialization. In Japan, Iwasaki constructed Mitsubishi Empire up around a major venture bank. Through the supply of capital, these venture banks acted as engines of financial growth. In other countries, however, banking sector developed simultaneously with financial growth¹⁷. Moreover, poor banking growth leads to poor economic growth¹⁸. Furthermore, financial sector growth is playing a vital role in poverty reduction through private sector development, macroeconomic stability, public sector development and household development¹⁹. The developed financial sector will provide better credit to the poor and recover the loan from the

¹⁶Dr. Ramoni M. Debnath,, *Banks and Legal Environment* (Dhaka: Nabajuga Prokashani, 2009),41.

¹⁷*Id.* at 41

¹⁸European Central Bank, Bank bias in Europe: effects on systemic risk and growth, Working Paper Series No 1797 /May 2015(Frankfurt am Main, Germany: European Central Bank, 2015),14. See also, The Rabobank. Access to financial services in developing countries (Netherland: The Rabobank, 2005),18.

¹⁹Asian Development Bank, *Financial Sector Development, Economic Growth, and Poverty Reduction: A Literature Review* (Metro Manila, Philippines: Asian Development Bank, 2009), 1-10, see also Department for International Development, *The Importance of Financial Sector Development for Growth and Poverty Reduction* (London : The Policy Division, Department for International Development,2004), 10-15.

poor in smooth ways, which ultimately reduce poverty from the economy of Bangladesh²⁰. In this connection, it can say that skilled politics play a vital role in economic growth and poverty reduction²¹.

Following the first stream, the banking sector in Bangladesh is expanding rapidly in response to its economic growth and financial deepening which gathered momentum following the financial sector reforms started in the nineties. Importance of a banking sector increases as non-monetized sector gradually comes within the fold of the monetary sector and, money plays an increasingly greater role in financing goods and services²². Besides its contribution to promoting general economic growth, the banking sector has some special importance to the industrial and agricultural development of Bangladesh. Therefore, different specialized banks established to develop the industrial and agricultural sectors in Bangladesh²³. Specialized banks for industrial development include Bangladesh *Shilpa* Bank (BSB), and Bangladesh *Shilpa Rin Sangstha* (BSRS). The BSB along with its sister concern, BSRS were responsible for dispensing credits, especially long-term credits, to the country's industrial sector²⁴. However, these two specialized banks have amalgamated to form Bangladesh Development Bank Limited in November 2009.

Besides industrialization, considering the importance of agricultural development for a stable and sustained economic growth. The Government of Bangladesh has established two specialized banks –Bangladesh *Krishi* Bank (BKB) and *Rajshahi Krishi Unnayan* Bank (RAKUB)²⁵. These two banks are entrusted with the responsibility of providing credit for better access to inputs for crop production, agricultural implements, cash crops, and

²⁰Gazi S. Uddin, Phouphet Kyophilavong and Nasim Sydee, “The Casual Nexus of Banking Sector Development and Poverty Reduction in Bangladesh,” *International Journal of Economics and Financial Issues* 2, no. 3(2012): 310, accessed May 29, 2017. Url: <http://www.econjournals.com>.

²¹Scott Fritzen, “Growth, inequality and the future of poverty reduction in Vietnam,” *Journal of Asian Economics* 13 (2002):654.

²²Syed A. Ali, *Banking Law and Practice*, (Banglabazar, Dhaka: Agamee Prakashani ,2005),72.

²³Lutfur R. Chowdhury, *A Text Book on Bankers' Advances* (Dhaka: L.R. Chowdhury, 2012),19.

²⁴Syed A. Ali, *Banking Law and Practice* (Banglabazar, Dhaka: Agamee Prakashani ,2005),86.

²⁵Dr. Tanbir A. Chowdhury and Ms. Sarahat S. Chowdhury, “Performance Evaluation of Agricultural Banks in Bangladesh,” *International Journal of Business and Management* 6, no. 4(2011):76, accessed March 20, 2016. Url: www.ccsenet.org/ijbm.

processing and marketing of agricultural products. These banks also finance in various socio-economic development programs and agro-industry development projects²⁶. The Bank also has been financing economic growth for securing food, poverty reduction and agricultural growth²⁷. Since its inception in 1973 BKB has served more than 1.4 million beneficiaries by providing different forms of microcredit to landless, marginal farmers, and rural women²⁸. Besides sector-specific development banks like BKB and BDBL, in recognition of the role of finance in poverty alleviation and development, the Government has adopted an inclusive strategy of credit for the poor and underprivileged through NCBs and other specialized microcredit institutions. However, the main challenge was to design effective programs that would ensure cost-effective outreach to intended poor beneficiaries²⁹. While BKB and Small and Medium Enterprises (SMEs) Foundation run special credit programs for agriculture and SME development under the direction of Bangladesh Bank, NCBs are directed to provide subsidized credit for different poverty reduction programs run by the government³⁰.

However, lending either to the large industrial sector or to SMEs and poor households always involves a risk that money lent may not repay as per schedule. This may happen when a loan is granted without a proper appraisal of the project, or without taking sufficient collateral from risky borrowers. Irrespective of their underlying reasons, such loans are commonly termed as non-performing loans (NPLs). The banking sector of Bangladesh is already suffering from a high volume of NPLs³¹. As NPLs hinder stability and growth of

²⁶Syed A. Ali, *Banking Law and Practice* (Banglabazar, Dhaka: Agamee Prakashani, 2005), 91.

²⁷African Development Bank, African Development Fund, Agriculture and Rural Development Sector Bank Group Policy, (OCOD: African Development Bank, 2000)5-6, See also, Bangladesh Bank, Annual Report, 2010-11 (Dhaka: Bangladesh Bank, 2012)81.

²⁸Bangladesh Krishi Bank (2010). Poverty alleviation and micro credit project/program, accessed May 26, 2014. Url: <http://www.krishibank.org.bd/showDocument.php?documentid=1178>.

²⁹General Economics Division, Planning Commission, Ministry of Planning, Government the people's republic of Bangladesh, Sixth Five Year Plan FY2011-FY2015, Accelerating Growth and Reducing Poverty Part- 1, Strategic Directions and Policy Framework (Dhaka: General Economics Division, Planning Commission, Ministry of Planning, Government the people's republic of Bangladesh), 60.

³⁰*Id.* at 30.

³¹Mohammad A. Islam, Nur M. Shipon, "Effectiveness of Bank Audit in Bangladesh: A Comparative Study of Public Sector Commercial Banks and Private Commercial Banks," Bangladesh Research Foundation Journal 2, no.1 (2013): 162, See also, Bangladesh Bank, Annual Report, 2015-2016 (Dhaka: Bangladesh Bank, 2017)32-33., see also NAOSITE: Nagasaki University's Academic output site, Effect of Higher Financial Leverage on

economies,³² recently Bangladesh Bank has taken commendable initiatives to provide improved access to financial resources to SMEs through NCBs. However, NPLs of NCBs continues to remain high, leading to their poor performance and a high burden on the banking system³³. Therefore, Bangladesh Bank promotes and monitors the practice of different regulatory and legal mechanisms on NPLs to reduce its extent. The following section discusses the nature and extent of NPLs in Bangladesh, initiatives taken by Bangladesh Bank to reduce NPLs, and other remaining challenges to recover NPLs.

1.3 Non- Performing Loans: An Overview

1.3.1 Definition of 'non-performing loans' (NPLs)

a) Definition in general

A non-performing loan, “hereinafter referred to as **(NPLs)**” is either in default or close to being in default. Once a loan becomes nonperforming, the odds that it will repay in full considered substantially lower³⁴. As observed by the International Monetary Fund (IMF)

A loan is nonperforming when payments of interest and principal are past due by 90 days or more, or at least 90 days of interest payments have capitalized, refinanced, or delayed by agreement, or payments are less than 90 days overdue, but there are other good reasons to doubt that payments will make in full³⁵.

Corporate Borrowers in Bangladesh (Nagasaki: Nagasaki University, 2004), 13., See also- Shafiqul Alam, Md. M. Haq, “Nonperforming Loan and Banking Sustainability: Bangladesh Perspective,” *International Journal of Advanced Research* 3, no.8 (2015):1197, accessed on June 20, 2017. Url: <http://www.journalijar.com>

³²Mohd Z. A. Karim, Sok-Gee Chan, Sallahudin Hassan, “Bank Efficiency and Non-performing Loans: Evidence from Malaysia and Singapore,” *Prague Economic Papers* 2 (2010):120. See also, International Monetary Fund, *Non-Performing Loans in the ECCU: Determinants and Macroeconomic Impact* (2016), 22.

³³General Economics Division, Planning Commission, Ministry of Planning, Government the people’s republic of Bangladesh, *Sixth Five Year Plan FY2011-FY2015, Accelerating Growth and Reducing Poverty Part- 1, Strategic Directions and Policy Framework* (Dhaka: General Economics Division, Planning Commission, Ministry of Planning, Government the people’s republic of Bangladesh), 58-59.

³⁴“Nonperforming Loan – NPL,” Investopedia, Url: <http://www.investopedia.com/terms/n/nonperformingloan.asp> Investopedia.htm, accessed May 20, 2014.

³⁵International Monetary Fund, *The Treatment of Nonperforming Loans*, Eighteenth Meeting of the IMF Committee on Balance of Payments Statistics (Washington, D.C.: International Monetary Fund, 2005), 8. See also <http://www.imf.org/external/np/sta/npl/eng/discuss/index.htm>

According to financial times LEXICON, NPLs are loans on which the borrower is not making interest payments or repaying any principal³⁶. However, what would be an NPL, at what point the loan is classified as NPLs by the bank, or when it becomes bad debt, depends on local regulations³⁷. Variation also exists on how banks deal with their NPLs. Banks normally set aside money to cover potential losses on loans (loan loss provisions) and write off bad debt in their profit and loss accounts. In some countries, banks that have accumulated too much NPL are able to sell them off at a discount to specially established asset management companies (AMCs), which attempt to recover at least a part of the money owed³⁸.

World Bank defined NPLs as the ratio of the total or gross amount of loans, which is nonperforming divided by the total value of the loan portfolio (including nonperforming loans before the deduction of specific loan-loss provisions). Therefore, the loan amount recorded, as NPLs should be the gross amount of the loan (including interest) as recorded on the balance sheet, not just the principal amount that is overdue³⁹.

Unlike IMF, World Bank has not specified any specific days to classify any over-due loan as NPLs. This is because although ninety days normally consider as the dividing line between loans that are or are not classified as NPLs.⁴⁰As observed by LEXICON above, it is not a universal or binding standard for all countries around the world⁴¹. For instance, as per Section 5 (cc) of the Bank Company Act 1991, 'defaulting debtor' means any person or institution

³⁶Erik Banks, *Financial Lexicon, A compendium of financial definitions, acronyms, and colloquialisms* (New York: Palgrave Macmillan, 2005),246.

³⁷Jessica Petersson, and Isac Wadman, "Non Performing Loans- The markets of Italy and Sweden" (Bachelor thesis, Uppsala University, Department of Business Studies,2005),5.

³⁸*Id.* at 5.

³⁹Bank nonperforming loans to total gross loans (%), The world bank, <http://data.worldbank.org/indicator/fb.ast.nper.zs>, Accessed May 27, 2014.

⁴⁰The World Bank, *Bank Loan Classification and Provisioning Practices in Selected Developed and Emerging Countries*, (Washington, D.C: The World Bank, 2003), 9-10. Url: <http://info.worldbank.org/etools/docs/library/154927/financeforum2002/pdf/bankloanclassification.pdf>, accessed May 24, 2014.

⁴¹International Monetary Fund, *The Treatment of Non-performing Loans* (Washington, D.C.: International Monetary Fund, 2004), 9. Url: <http://Unstats.un.org/unsd/nationalaccount/AEG/papers/m3loans.pdf>>, accessed May 20, 2014.

served with advance, if loan granted in favour of that person or institution, or any portion thereof, or any interest of such loan has been overdue for six months in accordance with the definition of Bangladesh Bank⁴².

According to Oxford Dictionary of Finance & Banking (Third Edition), NPLs is a loan on which the interest or payments are overdue. Loans are overdue more than 90 days consider as Non-performing loans⁴³.

Hence, there is no standard on loan classification which has been uniformly adopted by all countries in the world, and the meaning of NPLs largely depends on the regulatory framework of loan classification mechanisms and financial culture followed in different countries⁴⁴.

In our country, NPL holders have treated as *Rin Khelapi*. Words like '*Rin Khelapi*' and '*Ku Rin*' are quite familiar in our financial society. When a borrower does not pay interest along with principal amount as per terms and conditions, then s/he is called '*Rin Khelapi*' (loan defaulter) and the loan is classified as '*Ku Rin*' (Bad Debt).

b) Definition of NPL as provided by Bangladesh Bank

Strong regulation is required to make sure the banking sector is lending in conformity with national development goals and not impairing the long run health of the banking sector in pursuance of their short-run profit motives. Therefore, Bangladesh Bank has developed some rigorous policies to regulate NPLs. As mentioned earlier, a loan becomes NPL when it cannot recover within the certain stipulated time that governed by respective laws. To ensure early

⁴²The Bank Companies Act of 1991, Act No. XIV(1991)

⁴³Bank for International Settlements, Guidelines Prudential treatment of problem assets – definitions of non-performing exposures and forbearance (Thailand: Bank for International Settlements,2016), 8. Also available at BIS website (www.bis.org).

⁴⁴The World Bank, Bank Loan Classification and Provisioning Practices in Selected Developed and Emerging Countries, (Washington, D.C: The World Bank, 2003), 9-10. Url: <http://info.worldbank.org/etools/docs/library/154927/financeforum2002/pdf/bankloanclassification.pdf>, accessed May 24, 2014. See also Sarawan Angklomkiew, Jason George and Frank Packer, “Issues and Developments in Loan Loss Provisioning: the Case of Asia,” BIS Quarterly Review (2009): 70, accessed May 24, 2014. Url: http://www.bis.org/publ/qtrpdf/r_qt0912h.pdf.

recognition of NPLs, Bangladesh Bank has formulated the Loan Classification and Provisioning policy.

Bangladesh Bank refers those financial assets as NPLs from which banks no longer receive interest and/or instalment payments as scheduled. They have known as non-performing because the loan ceases to “perform” or generate income for the bank. According to Bangladesh Bank policy, all commercial banks must set up required provisions for their NPLs. As specified by Bangladesh Bank, there have four different types of NPLs each of which has different provisioning requirements⁴⁵. For a continuous loan, demand loan, and fixed-term loan if any loan passes its due date by less than three months, it is considered overdue and requires a one percent provision of the unpaid amount. As loans become overdue by three to six months, it is considered as ‘sub-standard’ for which banks are required a 20 percent provision. Loans that remain overdue from six to nine months classify as ‘doubtful’ and require a 50 provision from lender banks.

Table 1.1: Loan Loss Provisioning in Bangladesh⁴⁶

Particulars	Continuous Loan*	Demand Loan**	Fixed term Loan More than 10 Lac	Fixed term Loan Less than 10 Lac	Rate of Provisioning
Overdue	Overdue= \geq 2M but $<$ 3M	Overdue= \geq 2M but $<$ 3M	Overdue= \geq 2M but $<$ 3M	Overdue= \geq 2M but $<$ 6M	1%
Substandard	Overdue= \geq 3M but $<$ 6M	Overdue= \geq 3M but $<$ 6M	Overdue= \geq 3M but $<$ 6M	Overdue= \geq 6M but $<$ 9M	20%
Doubtful	Overdue= \geq 6M but $<$ 9M	Overdue= \geq 6M but $<$ 9M	Overdue= \geq 6M but $<$ 9M	Overdue= \geq 9M but $<$ 12M	50%
Bad-Debt	Overdue \geq 9	Overdue \geq 9	Overdue \geq 9	Overdue \geq 12	100%

Source: Bangladesh Bank, Master Circular: Loan Classification and Provisioning, Banking Regulation & Policy Department, BRPD Circular No. 14, dated 23.09.2012.

⁴⁵Bangladesh Bank, *Field Survey Report of Study on Credit Risk arising in the Banks from Loans Sanctioned against Inadequate Collateral* (Dhaka: Bangladesh Bank,2017), 11.

⁴⁶*Id.* See also, BRPD Circular No. 19 dated 27.12.2012, Banking Regulation & Policy Department Bangladesh Bank Head Office Dhaka.

Any overdue that exceeds nine months should consider a ‘bad loan,’ and a 100 percent loan loss provision should maintain by respective banks. For long-term loans, the provisioning requirement has an extra three months lagged. Therefore, unpaid instalments of long-term loans consider as overdue until six months. Likewise, unpaid amounts have considered as sub-standard, doubtful, and bad loan after six months, nine months, and twelve months respectively⁴⁷. Therefore, Choudhury et al. state that the concept of NPL is not a “uniclass” rather a “multiclass” concept, which means that NPLs can be classified into different varieties usually based on the “length of overdue” of the said loans⁴⁸.

As all scheduled banks in Bangladesh has different degrees of NPLs, keeping track of the extent of NPLs and their required provisioning is very important for the financial stability and economic growth of the economy.

1.3.2 The extent of NPLs in Bangladesh

a) Current status of NPLs in Bangladesh: Global vs national perspective

The almost all-banking system in the world has different degrees of NPLs. Globally, the level of NPLs were 4.3% of the total gross loan in the world economy in 2015. A comparison of percentage NPL over gross loan between 1999 and 2015 in Table 1.2 indicates that the situation has improved much in terms of global average and also for developed and developing countries of Asia. Though Bangladesh has progressed well in terms of the world average and reduced its NPL to gross loan ratio from 41.1% in 1999 to 9.3% in 2015, much better progress recorded in other East Asian countries including Malaysia, Thailand, Indonesia, and China.

⁴⁷Bangladesh Bank, *Master Circular: Loan Classification and Provisioning, Banking Regulation & Policy Department* (Dhaka: Bangladesh Bank, 2012),1-10. (BRPD Circular No. 14 dated 23.09.2012), accessed May 26, 2014. Url: <http://www.bangladesh-bank.org/mediaroom/circulars/brpd/sep232012brpd14e.pdf>.

⁴⁸Toufic A. Chowdhury and Bishnu K. Adhikary, “Loan Classification, Provisioning Requirement and Recovery Strategies: A Comparative Study on Bangladesh and India.” *Bank Parikrama* 27, no. 2&3(2002):134-184.

Table 1.2: Status of NPL: A comparative global perspective

Name of the Country	% of a Total Non-performing loan of the Gross loan in 1999	% of a Total Non-performing loan of the Gross loan in 2015	GDP in 2015 (Trillion)
World	8.95%	4.3 %	73.50
Bangladesh	41.1%	9.3%	0.19
China	28.5%	1.5%	10.86
India	14.7%	5.9%	2.07
Japan	5.8%	1.6%	4.12
Malaysia	16.6%	1.6%	0.30
Thailand	38.6%	2.7%	0.40
Indonesia	32.9%	2.4%	--

Source: Non-performing loans to total gross loan, world bank statistics⁴⁹

A comparison of country-specific GDP and NPL to gross loan ratio in 2015 indicates that there is no definite relationship between these two. For instance, in 2015 both Japan and Malaysia have attained an NPL to gross loan ratio of 1.6% while Japanese economy was around 14 times bigger than that of Malaysia. India, on the other hand, ends up with an NPL to gross loan ratio more than 3.5 times bigger than Japan while its economy was only half of the Japanese economy in terms of GDP. These comparative statistics indicate that still, Bangladesh has much potential to reduce its NPL and attain an NPL to gross loan ratio competitive with other East Asian Tigers. However, in the context of Bangladesh, a pursuit of reducing NPL requires much attention to its NCBs. Moreover, it is a very satisfactory plan of the Bangladesh government that the Government has ensured that the Gross NPL of both private and public Bank will not cross 10 %⁵⁰.

⁴⁹Bank nonperforming loans to total gross loans (%). <http://data.worldbank.org/indicator/FB.AST.NPER.ZS>, accessed May 15, 2017.

⁵⁰General Economics Division, Planning Commission Ministry of Planning, Government the people's republic of Bangladesh, *Seventh Five Year Plan FY2016-FY2020, Accelerating Growth, Empowering Citizens* (Bangladesh: Planning Commission Ministry of Planning, Government the people's republic of Bangladesh, 2015), 182.

In addition to the above, the NPL has been increasing in the Banking sectors rapidly which is very much alarming for the development of a country.

Table 1.3: Amount of NPL in Banking sector of Bangladesh (Taka in billions)

Bank types	2008	2009	2010	2011	2012	2013	2014	End June 2015
NCBs	127.6	117.5	107.6	91.7	215.2	166.1	227.6	224.0
(%)	56.76%	52.27%	47.38%	40.89%	50.36%	40.93%	45.37%	42.65
DFIs	37.3	42.1	49.7	56.5	73.3	83.6	72.6	58.3
PCBs	57.0	61.7	64.3	72.0	130.4	143.1	184.3	223.5
FCBs	2.9	3.5	5.5	6.3	8.5	13.0	17.1	19.4
Total	224.8	224.8	227.1	226.5	427.3	405.8	501.6	525.2

Source: Annual Report 2014-15, Bangladesh Bank⁵¹

As shown in Table 1.3, though the share of NPL for NCBs is declining over the year, still it occupies more than 40 percent of total NPLs for the overall banking sector of the economy. This high volume of NPL for NCBs is because of their high volume of loans in comparison with other Private (PCBs) and Foreign Commercial Banks (FCBs), but because of lower control over their NPL to gross lending ratio.

It appears from the Table-1.4 percentage of classified loans for NCBs comprise almost half of the total classified loans in the banking sector of Bangladesh while the percentage of outstanding loan for NCBs is less than 20 percent of the total outstanding loans in the economy. This disappointing performance also reflected in the gross default rate of NCBs. As indicated in Table 1.4 gross default rate for NCBs remain as high as 25.74 percent in comparison with 5.44 percent and 8.33 percent respectively for PCBs and FCBs. This disproportionate ration of NPLs caused more than 50 percent shortfall in loan provisioning for NCBs. The government tries to cover this shortfall by taking loans from the market or increasing the tax that would create the entire economy to suffer.

⁵¹Bangladesh Bank, Annual Report (2014-2015), (Dhaka: Bangladesh Bank, 2016), 33.

Table 1. 4: Outstanding loans and classified loans in billions of Tk. As on June 30, 2016

	NCBs	SBs	PCBs	FCBs	All Banks
Outstanding	1168.61	222.64	4649.64	259.30	[6300.19]
(%)	18.55	03.53	73.80	04.12	100.00
	%	%	%	%	%
Classified	300.80	58.20	253.20	21.60	633.70
(%)	47.47	09.18	39.96	03.41	100.00
	%	%	%	%	%
Gross Default	25.74	26.14	5.44	8.33	10.06
(%)					
Net Default (%)	11.76	10.81	0.58	0.90	2.81
Provision for bad debt	114.60	28.50	158.00	16.30	317.30
Provision	-55.10	-2.00	11.80	0.80	-44.50
Shortfall/surplus					

Source: Banking Regulations and Policy Department, Bangladesh Bank

Therefore, we need to put special emphasis on the recovery of NPLs from NCBs. Furthermore, as discussed in the following section, lower NPLs and greater financial stability of NCBs in comparison with private commercial banks have special importance as NCBs play a vital role in planned economic development intended by the government.

b) Comparison between NCBs and private commercial banks

Competitions are visible among local private banks, public banks, and foreign banks with a view to holding their customers respectively⁵². However, banks are taking policies like introducing new banking technologies, enhancement of research facilities, globalization of services, innovation of new products and the introduction of one-stop service centers to provide better customer service which is an attraction for the customers⁵³. Nevertheless, like other public-sector organizations, public banks have been usually operating with a different set of ideology in contrast to their private and foreign counterparts.

⁵²Ritu Agarwal, "A Comparative Study of Nationalized and Private Banks with Reference to Customer Relation Management" (PhD thesis, School of Management Studies, Punjabi University, Patiala, 2009), 5.

⁵³*Id.* at 5.

Scholars around the world have made comparisons between NCBs or public sector commercial banks from various aspects. For example, Khwaja and Mian (2004) used data from the borrowers to compare public and private sector banks in Pakistan⁵⁴, and Sapienza (2002) has collected data from the borrower in order to compare public sector banks and private sector banks in Italy⁵⁵. As observed by Sapienza (2002), public sector banks lend at lower interest rates, with a bias towards poorer areas, compared to private banks. Furthermore, some lending of public sector banks appears to be politically motivated⁵⁶.

Similarly, Khwaja and Mian (2004) found that state-owned banks are more likely than private banks to lend to firms whose directors or executives have political affiliations and are less likely to collect these loans timely⁵⁷. Dinc (2005), using evidence from 36 countries, demonstrated that government banks lend more, relative to private banks in election years⁵⁸. Similarly, Cole (2008) demonstrated that nationalized banks in India are sanctioning loans in the agricultural sector in the rural areas⁵⁹ and such loans have given for the purpose of election⁶⁰. Megginson, W.L.(2003) compared the performance of 250 commercial state-owned banks of 59 countries with the different many private banks and found a significant

⁵⁴Asim I. Khwaja and Atif Mian,, “Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market,” *The Quarterly Journal of Economics* 120, Issue 4 (2005): 1371, Accessed June 30, 2016. Url: <https://doi.org/10.1162/003355305775097524>. See also Harvard Kennedy School, John F. Kennedy school of Government, Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market (USA: John F. Kennedy school of Government, 2005), 7. Available at www.hks.harvard.edu/fs/akhwaja/, accessed May 16, 2014.

⁵⁵Paola Sapienza, “The Effects of Government Ownership on Bank Lending,” Draft of Forthcoming *Journal of Financial Economics* (2002), 1.

⁵⁶*Id.* at 24.

⁵⁷Harvard Kennedy School, John F. Kennedy school of Government, Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market (USA: John F. Kennedy school of Government, 2005),14-28, accessed May 16, 2014. Url: www.hks.harvard.edu/fs/akhwaja/.

⁵⁸Craig O. Brown and I. Serdar Dinc, “The Politics of Bank Failures: Evidence from Emerging Markets,” *Quarterly Journal of Economics* 120 (2005):1413-1444, accessed June 30, 2016. Url: <https://doi.org/10.1162/003355305775097506>

⁵⁹Shawn A. Cole, Financial Development, Bank Ownership, and Growth. Or, Does Quantity Imply Quality? (Boston: Harvard Business School,2008), 28, accessed May 16, 2014. Url: www.hbs.edu/faculty/publication_files/09-002.pdf.

⁶⁰*Id.* at 24.

difference in the performance of state-owned banks in comparison with privately owned banks. The empirical evidence showed that the state-owned banks are less efficient than privately owned banks⁶¹.

Despite the political economy of lending made by nationalized commercial banks, the presence of such banks is important to attain targeted growth in developing countries. Agricultural financing by the state-owned banks have a great effect on the employment and trade service industry as financing on manufacturing and trade have interrelation with the employment⁶².

While expressing the rationale for having nationalized commercial banks, *Prakash Tandon*, a former chairperson of the Punjab National Bank observed:

‘[despite] many bank failures and crises over two centuries, and the damage they did under “laissez-faire” conditions; the needs of planned growth and equitable distribution of credit, which is privately owned banks were concentrated mainly on the controlling industrial houses and influential borrowers; the needs of growing small-scale industry and farming regarding finance, equipment and inputs; from all these there emerged an inexorable demand for banking legislation, some government control, and a central banking authority, adding up, in the final analysis, to social control and nationalization⁶³.

In a related vein, as observed by other scholars, public sector banks provide more credit facility to fishermen and farmers than private banks, and the state government announcement of giving agricultural loans has given more satisfaction to the consumers of public banks⁶⁴. Sometimes, customers of private banks are more satisfied than the service of nationalized

⁶¹William L. Megginson (2003), “The Economics of Bank Privatization,” Conference on Bank Privatization in Low and Middle Income Countries (Washington, DC: The World Bank, 2003), 1-2.

⁶²Shawn A. Cole, *Financial Development, Bank Ownership, and Growth. Or, Does Quantity Imply Quality?* (Boston: Harvard Business School, 2008), 27, accessed May 16, 2014. Url: www.hbs.edu/faculty/publication_files/09-002.pdf.

⁶³Prakesh Tandon, *Banking Century: A Short History of Banking in India* (New Delhi: Viking, 1989), 198.

⁶⁴N. Senthikumar, A. Ananth and A. Arulraj, “Impact of corporate social responsibility on customer satisfaction in banking service.” *African Journal of Business Management* 5 (7). (2011): 3034, accessed June 15, 2016. Url: <http://www.academicjournals.org/AJBM>.

banks as private banks have provided quality full services than the national banks⁶⁵ but nationalized banks are more reliable than that of private Banks⁶⁶. As observed other related research, customers of Public Sector banks are noticeably more satisfied than private sector banks for getting special products and service quality⁶⁷. Like above, the private Banks' employees are more satisfied than public Banks' as the employees of private banks got more salary and reward than that of public banks⁶⁸.

Despite many advantages of NCBs in national development, one major drawback faced by many NCBs is their large accumulation of NPLs due to politically motivated lending and recovery programs. Though NPLs ratio in Bangladesh has come down recently following some reform agenda, yet the gross NPLs of SCBs remain large (25.74 percent of their total loan portfolio or more than Taka 300.80 billion, as of June 30, 2016). As mentioned earlier, this ratio is markedly higher than the NPL in the private sector banks. NPLs for domestic private banks fell from 27.1 percent in 1999 to only 5.7 percent in June 2014⁶⁹.

Zaid Bakht, research director of Bangladesh Institute of Development Studies, said that although irregularities took place in the state-owned banks in recent times, the general people still believe that depositing money in them is safe and their savings will remain protected.

⁶⁵Waqar U. Haq, Bakhtiar Muhammad, "Customer Satisfaction: A Comparison of Public and Private Banks of Pakistan." IOSR Journal of Business and Management (IOSRJBM) 1, no. 5 (2012): 5, assessed May 20, 2016. Url: www.iosrjournals.org. See also, Owusu Alfred, "Service quality and customer satisfaction: a comparative study of the Ghanaian public Vs private bank." European Journal of Research in Social Sciences 5, no.1 (2017): 46, accessed February 13, 2018. Url: <http://www.idpublications.org>.

⁶⁶*Id.* at 5.

⁶⁷Dr. Raja M. Rather, "Assessment and Comparison of Indian Public and Private Sector Banks through Customers' Experience and Customers' Satisfaction Survey," Pacific Business Review International 5, no. 12 (2013) :83-84.

⁶⁸Sadia Rashid and Uzma Rashid, "Work Motivation Differences between Public and Private Sector," American International Journal of Social Science 1, no. 2(2012):30, accessed April 15, 2016. Url: <http://www.aijssnet.com/journal/index/16>.

⁶⁹General Economics Division, Planning Commission Ministry of Planning, Government the people's republic of Bangladesh, *Seventh Five Year Plan FY2016-FY2020, Accelerating Growth, Empowering Citizens* (Bangladesh: Planning Commission Ministry of Planning, Government the people's republic of Bangladesh, 2015),74.

The general people prefer to deposit in the state-owned banks even if the rate of interest is lower than the private banks⁷⁰.

This comparison rationalizes why in Bangladesh; we should concentrate more on the recovery of NPLs for NCBs. Moreover, the following section discussed why the recovery of NPLs, in general, is important for an economy.

1.4 Consequences of NPLs and Challenges of NPL Recovery in Bangladesh

Initiatives have taken to promote the recovery of NPLs not only in Bangladesh but also all over the world. In this regard, it has observed that non-performing loans can recover timely by early risk assessments, motivation, and by maintaining law and order situation, getting help from recovery agency, reducing relaxation, developing situation-specific models, real-time training, regular monitoring, and trade-off⁷¹. The objective of all these initiatives is to avoid any negative consequences of NPLs to the health and stability of an economy.

As mentioned earlier, NPLs is a global phenomenon and so, has some universal impacts that are equally important for every different economy of the world. Moreover, because of the peculiarity of every economy and its banking system, some consequences may become more important for an economy and hence, demand more attention.

1.4.1 Consequences of NPL in general

The issue of NPLs has gained increasing attention in the last few decades. The immediate consequence of a large amount of NPLs in the banking system is bank failure. Many types of research on the cause of bank failures found that asset quality is a statistically significant predictor of insolvency and failing banking institutions always have a high level of non-performing loans prior to failure⁷². It also observed that non-performing loans are one of the

⁷⁰Rejaul K. Byon, "State banks: wide disparity between deposit and credit growth raises fears of losses," *The Daily Star*, September 18, 2013, 21.

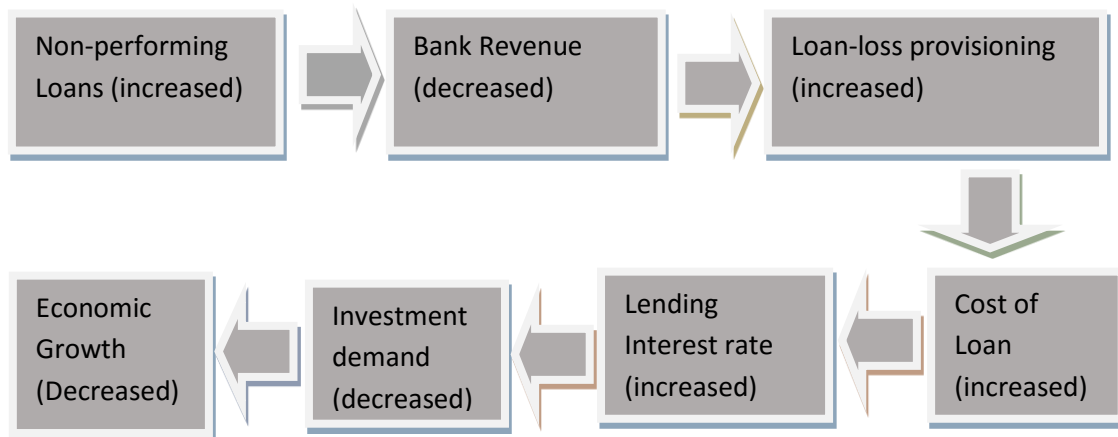
⁷¹Mohammad S. Islam, Nikhil C. Shil and Md. A. Mannan, "Non-performing loans - its causes, consequences and some learning," *Stamford Journal of Business Studies*, no.2 (2005):100-116, accessed January 15, 2014. Url: <http://mpira.ub.uni-muenchen.de/7708/>.

⁷²Demirguc-Kunt, Asli & Enrica Detragiache, "The Determinants of Banking Crises in Developing and Developed Countries", IMF Staff Paper 45 (1), 1998, P. 81-109.

major causes of the economic stagnation problems. Each non-performing loan in the financial sector has viewed as an obverse mirror image of an ailing unprofitable enterprise. From this point of view, the eradication of non-performing loans is a necessary condition to improve the economic status of a country. If non-performing, loans kept going and continuously rolled over, resources locked up in unprofitable sectors; thus, hindering the economic growth and impairing the economic efficiency⁷³.

As discussed earlier, sound development of the banking sector closely related to sound economic growth of countries all over the world. The pathway through witch accumulation of NPL and consequent poor performance of the banking sector may impair an overall economic growth shown as follows⁷⁴.

Figure 1.1: Consequences of Non-performing Loan in the economy



Source: developed by the researcher through literature review

From the above Figure 1.1, it appears that if non-performing loans increase then the revenue of a bank has transferred to loan loss provisioning. It increases the cost of lending, and lending banks tend to charge a higher interest rate. Consequently, investment demand in the economy declines and set a declining trend in economic growth. Furthermore, nonperforming loans increase unemployment in the banking as well as other institutions, as economic

⁷³Yixin Hou and David Dickinson, “The Non-performing Loans: Some Bank-level Evidences,” Research Conference on Safety and Efficiency of the Financial System, organized with the support of the EU Asia-Link Programme Asialink/ASIE/B7-3010/2005/105-139 coordinated by the University of Limoges (France: University of Limoges, 2007),6.

⁷⁴Unnayan Onneshan, *Banking Sector Caught in Trap Bangladesh* (Dhaka: Unnayan Onneshan, 2014),13.

activities shrink due to do a lower availability of credit in the economy⁷⁵. Borrower companies retrench their employees due to increasing NPL and also NPL hinders the savings – investment⁷⁶. Further, persistent NPL affects malpractices in the banking sector and demotivate the growth of entrepreneurship in an economy⁷⁷.

1.4.2 Consequences of NPLs in Bangladesh

The banking sectors of Bangladesh has been loaded classified loans as the NPLs of the NCBs of Bangladesh are over in comparison international standard as such banking sector falls in a loss both principal and interest⁷⁸. Effects of NPL causes various negative consequences in an economy including obstructing money circulation, earning reduction, capital erosion, increase in loan pricing, and after all a frustration to honest entrepreneurs⁷⁹. The high volume classified loans in Bangladesh of the total loans ratios have a great effect overall financial performance as the classified loans have kept provisions, which affect the banking sector⁸⁰.

Furthermore, due to an increasing amount of NPL write- off loans have been increasing gradually that is also an alarming issue for Bangladesh. The following table depicts a pen picture of written–off the loan in Bangladesh.

⁷⁵Shafiqul Alam, Md. M. Haq and Abdul Kader, “Nonperforming Loan and Banking Sustainability: Bangladesh Perspective,” *International Journal of Advanced Research* 3, no.8 (2015):1207, accessed June 20, 2017. Url: <http://www.journalijar.com>.

⁷⁶*Id.* at 1207.

⁷⁷CPD, *State of the Bangladesh Economy in FY2017 (First Reading)* (Dhaka: CPD, 2017), 26-27.

⁷⁸Dr. Ramoni M. Debnath, *Banks and Legal Environment* (Dhaka: Nabajuga Prokashani, 2009),185.

⁷⁹Qazi M. Rahman, “All about non-performing loan: The Bangladesh scenario, Views & Opinion,” *The Financial Express*, November 15, 2012,

⁸⁰Bangladesh Bank, *Financial Stability Report, 2012.Issue, 3* (Dhaka, Bangladesh: Financial Stability Department, Bangladesh Bank,2013), 24.

Table 1.5 Writing-off bad debts in different bank categories (Taka in billions)⁸¹

Bank types	30 June 08	30 June 09	30 June 10	30 June 11	30 June 12	30 June 13	30 June 14	30 June 15
SCBs	48.4	64.5	70.5	82.4	72.9	107.2	154.8	210.3
DFIs	31	31.8	31.8	32.0	24.5	32.6	34.2	5.6
PCBs	49.4	54.7	69.6	77.1	64.9	109.7	127.7	155.5
FCBs	1.7	2.0	2.1	2.4	2.6	3.7	4.4	5.1
Total	130.5	153.0	174.0	193.9	164.9	253.3	321.1	376.5

Source: Bangladesh Bank Annual Report (2014-2015) (Dhaka, Bangladesh: Bangladesh Bank, 2016), 35.

It appears from the Table-1.5 that the amount of written-off loan of SCBs is higher than other Banks and increasing rapidly. At the end of June 2015 written-off loan of the SCBs were 210.3 billion whereas for PCBs and FCBs amount of written-off loans were 155.5 billion and 5.1 billion Taka respectively. If for any bank loans classified as bad/loss for the last 5 years or more with 100 percent provisioning are written-off, then the bank is classified as a problem bank⁸². Furthermore, nonperforming loans are increasing unemployment problems in the banking as well as other institutions in Bangladesh as due to NPL Bank cannot expand their business⁸³. Further, NPL hit the profitability, affect expand of loan and malpractice in the banking sector are liable for NPL⁸⁴.

In Bangladesh, once intentional and habitual defaulters get a dividend from the slow recovery process, it poses some negative psychological impact on relatively honest borrowers and

⁸¹Bangladesh Bank *Annual Report (2014-2015)* (Dhaka, Bangladesh: Bangladesh Bank, 2016),35.

⁸²*Id.* at 34.

⁸³Shafiqul Alam, Md. M. Haq and Abdul Kader,“Nonperforming Loan and Banking Sustainability: Bangladesh Perspective,” *International Journal of Advanced Research* 3, no.8 (2015):1206-1207, accessed June 20, 2017. Url: <http://www.journalijar.com>.

⁸⁴CPD, *State of the Bangladesh Economy in FY2017 (First Reading)* (Dhaka: CPD, 2017), 26-27.

motivates them to default. This process may ultimately lead to a loan default culture and adversely affect the overall financial health of our economy⁸⁵.

Moreover, referring Bangladesh Bank statistics, ADB (2009) notes that the high NPLs adversely affect profitability and capital adequacy ratios; and such a high level; of NPLs constrains the supply of credit for economic development⁸⁶. Islam et al. (2014) have made a similar observation. As observed by the authors, there is a significant negative correlation between NPL to total loan ratio and profitability of NCBs. In other words, interest income of NCBs declines due to an increase in their ratio of NPL to total loan⁸⁷. The study also observed that NCBs with higher NPL suffer from significantly lower capital adequacy ratio and lower return on equity in comparison with other private commercial banks and foreign commercial banks operating in the country⁸⁸.

All types of NPL impacts on the financial health of banks as such low profitability as well as the capital of the banks decreased in the banking sector of Bangladesh⁸⁹. More importantly, the negative impact of NPLs is not limited only to the banking sector rather hinder the growth of other productive sectors of the economy. For instance, as explained in a policy report of Bangladesh Bank high NPLs lead NCBs to increase their Interest Rate Spread or the difference between borrowing and lending interest rate⁹⁰. Banks can increase their IRS by

⁸⁵Bishnu K. Adhikary (Bangladesh Institute of Bank Management (BIBM) (unpublished paper), “Non performing loans in the banking sector of Bangladesh: Realities and challenges,” Ritsumeikan Research Repository. 91, accessed April 20, 2012. Url:http://rcube.ritsumei.ac.jp/bitstream/10367/283/1/RJAPS21_Nonperforming%20Loans%20in%20the%20Banking%20Sector%20of%20Bangladesh.pdf.

⁸⁶Asian Development Bank Institute, *What is the impact of the global financial crisis on the banking system in East Asia?* (Tokyo: Asian Development Bank Institute,2009), 21.

⁸⁷Md. A. Islam, Mahmudul H. Siddiqui, Kh. F. Hossain, and Luthful Karim, “Performance Evaluation of the Banking Sector in Bangladesh: A Comparative Analysis,” *Business and Economic Research* 4, no.1 (2014): 105, accessed March 30, 2016. Url: <http://dx.doi.org/10.5296/ber.v4i1.4672>.

⁸⁸*Id.* at 97,102.

⁸⁹Mohammad A. Islam and Nur M. Shipon, “Effectiveness of Bank Audit in Bangladesh: A Comparative Study of Public Sector Commercial Banks and Private Commercial Banks,” *Bangladesh Research Foundation* 2, no.1 (2013), 167.

⁹⁰Bangladesh Bank, *Rationalizing interest rate spread in the banking sector: some policy suggestions* (Dhaka: Policy Analysis Unit, Bangladesh Bank,2008),6.

increasing their lending interest rates and decreasing their deposit interest rates. However, increased lending interest rates screen out economically viable projects that could be financially viable at a lower interest rate, hence discourage private investment and capital formation. On the other hand, lower deposit interest rates discourage the depositors to deposit in the bank for saving and supply of loanable funds⁹¹.

As NPLs causes two-way negative impacts on the productive sector of our economy, different measures have already taken to improve NPL recovery. The following sub-section discussed few important measures initiated to improve NPL recovery in Bangladesh.

1.4.3 Few legal measures already taken to promote the in-house recovery of NPL

Understanding the challenge of NPLs to national development various legislative measures have taken to discourage NPLs. For example, according to section 8(2)(j) of Sub-district Council Act 1998⁹², a person would not be eligible to contest as a Upazila Chairman if he/she has an outstanding loan (except house loan or small agricultural credit) that remain overdue on the day of the submission of nomination paper. A similar restriction has been imposed by section 19(2)(i)(j) of Local Government (Municipality) Act 2009⁹³, section 9(2)(i)(j) of Local Government (City Corporation) Act 2009⁹⁴, and section 26(2)(h) of Local Government (Union Council) Act 2009⁹⁵.

Besides, section 27(AA) of the Bank Companies Act 1991⁹⁶ limited the ability of a loan defaulter to take a further loan from any bank by stating that- 1) every banking company or financial institution shall send a list of its defaulting borrower to the Bangladesh Bank from time to time. 2) Bangladesh Bank shall send the list received under sub-section (1) to all banking company and financial institutions of the country, and 3) no banking company or financial institution shall grant any loan facilities in favour of any defaulting borrower. 4) Notwithstanding anything contained in any law for the time being in force, the lending

⁹¹*Id.* at 1.

⁹²*Upazilla Parishad Ain of 1998*, Act No. XIV(1998).

⁹³Local Government (Municipality) Act of 2009, Act No. LVIII (2009).

⁹⁴Local Government (City Corporation) Act of 2009, Act No. LX (2009).

⁹⁵Local Government (Union Council) Act of 2009, Act No. LXI (2009).

⁹⁶The Bank Companies Act of 1991.

banking company or, as the case may be, a financial institution shall institute suit against the defaulting borrower in accordance with the existing law.

In addition to that, as a preventive measure to loan default, in pursuance of Article 43 and 45 of Bangladesh Bank Order, 1972⁹⁷ Bangladesh Bank prepares the Credit Information Bureau (CIB) report and furnishes related information to member banks. CIB reports help banks and other non-bank financial institution to judge the creditworthiness of their borrowers even before lending. Further, as determined by the court in *PAUL & Co. v. Bangladesh Bank*⁹⁸, Bangladesh Bank is empowered to publish information on overdue loans and advances in a consolidated form, if it deems fit in the public interest to do so. The authority of Bangladesh Bank to disclose loan default information through CIB report has established through other similar cases.

For example, in *Sultana Jute Mills Ltd and others v. Bangladesh Bank and Others*⁹⁹, the facts of the case as stated in the petition was that the petitioner No.1 was a Jute mill company, and petitioner No.2 was its Managing Director; petitioner No.1 has been enjoying various loans, overdraft, and banking facilities from its banker *Agrani Bank*. Respondent No.3 for the purpose of the *Artha Rin* suit filed to recover the NPL. Later, the respondent no.1, Bangladesh Bank included the names of the petitioners in the CIB report as defaulting borrowers for the alleged loan liabilities of respondent No.3 *Agrani Bank* under borrower Code No.4999. The petitioner because of the said CIB report was unable to obtain and renew various facilities from various banks, which were causing a total disruption and stoppage in the business of the petitioners.

The respondent No.1 periodically without any notice to the petitioners has published the CIB report and, it has circulated to all banks behind the back and knowledge of the petitioners. The Respondent No.3 bank instituted Mortgage Suit No.21 of 1990 in the Court of Subordinate Judge and *Artha Rin Adalat* No.1, Chittagong, claiming an amount of Tk.8,89,94,800.22/- against the petitioners and others. The petitioners duly appeared and filed written a statement in the suit denying the claim of the respondent No.3. While the suit was pending, there were negotiations for an amicable settlement of the dispute between the

⁹⁷Bangladesh Bank Order of 1972, President's Order No. CXXVII (1972).

⁹⁸21 BLD HCD 484(1991).

⁹⁹15 BLT HCD 442 (2007).

petitioners and respondent No.3 by rescheduling the loan liabilities of the petitioners. As a result, the Board of Directors of the respondent No.3 approved the terms and conditions of the settlement of the petitioners' liabilities and respondent No. 3 vide letter dated 25.2.1995 communicated the terms and conditions of the compromise. The petitioner by a letter dated 19.3.1995 addressed to the respondent No.3 suggesting some modifications in the terms and conditions. The respondent No.3, however, vide its letter dated 14.6.1995 informed the petitioners that its Board of Directors did not accept the modifications suggested by the petitioner and the Board kept its earlier decision and asked the petitioners to take steps according to its letter dated 25.2.1995.

The petitioners by their letter dated 25.6.1995 immediately wrote back to the respondent No.3 communicating its unconditional acceptance of the offer contained in the letter dated 25.2.1995, of respondent No.3. Accordingly, the petitioners filed an application on 27.10.1996 before the Court of Subordinate Judge and *Artha Rin Adalat* No.1, Chittagong under Order XXIII Rule 3 of the Civil Procedure Code for a compromise decree in terms of the Board resolution of respondent No.3 as contained in its letter dated 25.2.1995. The respondent No.3 submitted a written objection refusing to accept compromise earlier agreed by the parties on some flimsy and untenable grounds. Upon hearing the parties, the learned court passed an order dated 15.3.1997 rejecting the application for compromise decree holding that respondent No.3 had not agreed to the compromise and that there was no signature of respondent No.2 on the deed of compromise. The petitioners then filed a writ petition being writ petition No.1862 of 1997 before the High Court Division whereupon a Rule Nisi was issued, and all further proceedings in the said suit were stayed by an order dated 7.4.1997.

The respondent No.1 has now started publishing the name of the petitioners in the CIB report as mentioned above at the request of respondent No.3, instead of regularizing the loan account. The CIB report has been prepared arbitrary and without any basis at the back of petitioners and without their knowledge and the same has distributed to various banks to the great detriment of petitioners and their business. Such CIB report arbitrarily prepared at the back of petitioners and also distributed without their knowledge, does not have sanction and support of any law as it has the effect inferring with jeopardizing, stifling causing detriment and adversely affect the business of the petitioners. Claiming that the Respondent No.1 has acted absolutely, arbitrary, mala fide, without lawful authority and for collateral purpose in including names of the petitioners in the CIB report for the liabilities of respondent No.3

without any basis at all and without considering question whether they are at all liable for the same or not being aggrieved by the inclusion of the names of the petitioners in the CIB report they have filed another writ petition No.1763 of 1999 and obtained the rule. The Hon'ble High Court Division discharged the Rule holding as follows:

“The CIB report was prepared by the Bangladesh Bank under the provisions contained in Chapter IV of the Bangladesh Bank Order, 1972 on the basis of the credit information furnished by the Respondent *Agrani* Bank under section 27 of the Bank Companies Act, 1991. The Bank advanced a loan to the petitioner company as per certain terms and conditions. The petitioner company violated the loan contract and defaulted in the payment of the loan. As per credit information furnished by the respondent No.3 Bank, the Bangladesh Bank prepared the impugned credit information report. Since the petitioner company failed to repay the loan, the respondent No.3 legally furnished credit information to Bangladesh Bank in compliance with section 27 of the Bank Companies Act, 1991. Hence, it was held that the respondent No.1 did not violate any provision of law and or acted contrary to any provision of law in including the name of the petitioners' company in the CIB report”.

As business people are always eager to maintain their credit ratings, such reporting standards will, of course, make some extra pressure on them to pay their loan on time. Further, in the event of failure of the borrower to repay the loan the bank may proceed against both borrower as well as guarantor in accordance with the provision of *Artha Rin Adalat Ain*, 2003 for the recovery of loans¹⁰⁰.

To reduce the political influence on loan default, the court started to take a strong position against political leaders, especially prior to the submission of nomination papers before the election. For instance, in the case of *Md. Abul Kashem v. Major General Mahmudul Hasan (Rtd.) and others*¹⁰¹ it has been held that the appellant was a bank loan defaulter on the date of submission of his nomination paper. The appellant held responsible for default in repaying bank loan taken not in his own name, rather in the name of his company. Therefore, this judgment extended the personal liability and linked it with the liability of the company held by an individual. The appellant was, therefore, disqualified from being elected as per clause (n) of the proviso to Article 12(1) of the RPO.

¹⁰⁰*Artha Rin Adalat Ain* of 2003, Act No. VIII (2003), section 6(5).

¹⁰¹17 MLR AD 273 (2012).

In a related vein, section 28A of the Banking Companies Act, 1991¹⁰² states that:

“Notwithstanding anything contained in this Act or any other law, where any loan or advance or any other debt taken from Bank Company shall be writing off, no bar of taking legal action to recover such writing off loans, advances or debts.”

Nevertheless, procedural lacunas and lack of judicial case management through ADR in *Artha Rin Adalats* still sheds negative lights on these successes. However, legal provisions are sometimes strict enough to restrain consensual settlement of NPL dispute, and therefore, increased backlog. For instance, courts cannot decrease the interest rate to ensure quick settlement of cases. In this respect, section 30 of the Banking Companies Act, 1991¹⁰³ states that:

“Notwithstanding any law for the time being in force, no transaction between a banking company and any of its debtors shall be triable by a Court and on the mere ground of high profits and rates of interest in the commercial business of a bank conducted in accordance with Islami [Shariat] excessiveness of the interest rate taken by the banking company”.

Furthermore, as loan recovery cases are dealing under the Code of Civil Procedure, 1908¹⁰⁴, but the civil cases have delayed due to inefficient judicial administration, increased cases, and delay attitudes of lawyers and tactics of defense lawyers¹⁰⁵.

The following sub-section discusses some other challenges for NPL recovery in Bangladesh that will also guide the analysis throughout the thesis.

1.4.4 Challenges of NPL recovery through *Artha Rin Adalats* (ARAs) in Bangladesh

Despite all the mechanisms for accelerated recovery of NPLs mentioned above, still, many scheduled banks in Bangladesh, especially NCBs are facing challenges due to increasing non-performing loan. A number of legal and procedural loopholes are hindering NCBs to take full

¹⁰²The Bank Companies Act of 1991.

¹⁰³*Id.*

¹⁰⁴*Artha Rin Adalat Ain of 2003*, section 5(2).

¹⁰⁵Melvin M. Belli, “The Law’s Delays: Reforming Unnecessary Delay in Civil Litigation,” *Journal of Legislation* 4, no.1 (1981):16-29.

benefits of legal measures when in-house mechanisms fail to recover NPLs. For instance, in the case of a bad loan, interest accrued on such loans cannot calculate unless a suit was filed in the court. Such interests cannot consider as an income of the lender bank either¹⁰⁶. Further, a number of provisions of *Artha Rin Adalat Ain*, 2003 including section 34(12) may also discourage mala fide borrowers to repay the loan, once a money loan suit is filed in the court. This section states that for execution of any decree against NPL under this act if any debtor has confined to the civil court for one full term, the same decree debtor shall not arrest and confined in the civil court to recover the same debt under further execution suits¹⁰⁷. Such provisions are discouraging the rate of recovery of NPL before filing of cases and are putting Banks under challenges in maintaining their NPLs. Therefore, NPLs of the banks make disinterest the banks to sanction credit facilities upon borrowers¹⁰⁸.

A high amount of existing NPLs represent high credit risk in today is banking system, and this exposes banks to enhanced market risks and liquidity risks. Although banks are trying to control the risks within the organization, high percentage of this risk and its consequences for the future could not be ignored¹⁰⁹. As discussed earlier, due to political influences and corruption are gradually increasing NPL in the banking sector of Bangladesh that causes problems in the financial sector in Bangladesh¹¹⁰.

The court cannot decrease the interest rate as per law, in this respect, section 30 of the Banking Companies Act, 1991 states that:

¹⁰⁶Syed A. Ali, *Banking Law and Practice* (Banglabazar, Dhaka: Agamee Prakashani, 2005), 430.

¹⁰⁷*Artha Rin Adalat Ain* of 2003, section 34(12).

¹⁰⁸Yixin Hou and David Dickinson, "The Non-performing Loans: Some Bank-level Evidences," Research Conference on Safety and Efficiency of the Financial System, organized with the support of the EU Asia-Link Programme Asialink/ASIE/B7-3010/2005/105-139 coordinated by the University of Limoges (France: University of Limoges, 2007), 6.

¹⁰⁹Ekrami, M. & A. Rahnama Eski, 2009, "investigating of effecting factors in NPLs creation", economic researches, 6: 195-216.

¹¹⁰Mustafa K. Mujeri and Sayera Younus, "An Analysis of Interest Rate Spread in the Banking Sector in Bangladesh, The Bangladesh Development Studies 32, no.4 (2009):13; see also Helal U. Ahmed, "Impact of corruption in the financial market of Bangladesh", *The Daily Financial Express*, July 22, 2017, accessed July 22, 2017, <http://www.thefinancialexpress-bd.com/2017/07/22/77702/Impact-of-corruption-in-the-financial-market-of-Bangladesh>.

“Notwithstanding any law for the time being in force, no transaction between a banking company and any of its debtors shall be triable by a Court and on the mere ground of high profits and rates of interest in the commercial business of a bank conducted in accordance with Islami [Shariat] excessiveness of the interest rate taken by the banking company”.

In addition to the above, it has decided in the case of *Janab Md. Asalat Zaman v. The State (civil)*¹¹¹ that the Bank rate is the rate which the Bangladesh Bank being the regulatory bank of all the banks may direct from time to time under Article 21(3) of the Bangladesh Bank (Nationalization Order) 1972 (P.O No.26 of 1972). Thus, bank rate being a specified and definite rate prevailing on the date of realization would be the rate of interest which the Bangladesh Bank rediscounts the first-class bills of exchange from the Commercial Bank.

Furthermore, as loan recovery cases are dealing under the Code of Civil Procedure, 1908¹¹², but the civil cases have delayed due to inefficient judicial administration, increased cases, delay attitudes of lawyers and tactics of defense lawyers¹¹³

Further, legal loopholes in the recovery process, as discussed in this sub-section are further aggravating the process. A detailed discussion of such loopholes is included in Chapter 3 while discussing the institutional and legal processes of NPL recovery in Bangladesh. Four full-length cases are illustrated in Chapter three to identify potential areas where backlog and delay in formal court process may cause a protracted delay in the NPL recovery through ARA in Bangladesh. Examining challenges caused by political influences and corruption, however, remain beyond the scope of this research.

¹¹¹3 ALR AD 205 (2014).

¹¹²The *Artha Rin Adalat Ain* of 2003, section 5(2).

¹¹³Melvin M. Belli, “The Law’s Delays: Reforming Unnecessary Delay in Civil Litigation,” *Journal of Legislation* 4, no.1 (1981):16-29.

1.5 Rationale and Objectives of the Research

1.5.1 Rationale of the research

It is evident from the discussion earlier that a healthy financial sector is very important for the national economic development¹¹⁴, while a heavy burden of NPL impairs the growth of the financial sector and thereby hinders such development¹¹⁵. As discussed, getting court decree against NPLs is costly, time-consuming, and impairs long-term relationship with borrowers. In contrast, ADR has already proven to be an effective mechanism for NPL recovery in many countries of the world. For instance, by following out-of-court debt settlement process, Thailand has reduced its volume of NPL from 2700 billion Bath or 47.70 percent of the total loan amount in 1999 to around 641 billion Bath or only 12.74 percent in 2003¹¹⁶.

In a World Bank study, similar advantages of out-of-court effort to recover NPLs were also observed by Garrido¹¹⁷. Further, as observed by Ogada, after its 1997-98 financial crises Indonesia managed to settle 70 percent of its US\$30 billion debt within next five years (1998-2003) through mediation¹¹⁸. Therefore, following the success in other countries, it is rational for us to find out loopholes and suggest changes for improved ADR to ensure enhanced NPL recoveries in Bangladesh. In a related vein, Government of Bangladesh has also taken a plan for establishing Legal Aid offices in every district for settlement the disputes through Alternative Disputes Resolution so that at least 37,000 victims will facilitate per year by 2020

¹¹⁴Abdulsalam Abubakar and Ibrahim M. Gani, "Impact of Banking Sector Development on Economic Growth: Another Look at the Evidence from Nigeria," *Journal of Business Management & Social Sciences Research (JBM&SSR)* 2, no.4 (2013):47, accessed March 13, 2016. Url: <http://borjournals.com/a/index.php/jbmssr/article/view/202/pdf>.

¹¹⁵Mohd Z. A. Karim, Sok-Gee Chan and Sallahudin Hassan, "Bank Efficiency and Non-Performing Loans: Evidence from Malaysia And Singapore," *Prague Economic Papers*, 2 (2010):120.

¹¹⁶The South East Asian Central Bank, *A Successful Effort in Management of Corporate Debt Restructuring in Thailand: Lessons Learnt* (Kuala Lumpur: The South East Asian Central Banks Research and Training Centre, 2004),31.

¹¹⁷The World Bank, *Out-of-Court Debt Restructuring* (Washington, D.C.: The World Bank, 2012). 1-60.

¹¹⁸International Monetary Fund, *Out-of-court corporate debt restructuring: The Jakarta Initiative Task Force* (Washington D.C.: International Monetary Fund, 2005), 775.

and at least 25000 cases can settle through ADR¹¹⁹. Moreover, in its 7th Five Year Plan, the Government of Bangladesh has set a target that the Gross NPL of both private and public Bank should not exceed 10%¹²⁰.

In a related vein, the *Artha Rin Adalat Ain* (Money Loan Courts Act) 2003 (hereafter mentioned as the Act) included ADR as a mandatory provision so that the volume of NPLs can minimize considering the context and conveniences of both bank and their borrowers. Section 38 and 44 A of the Act provides for mediation at the stages of execution and appeal/revision respectively. According to this act, mediation is compulsory and starts after defendants file their written statements. After the filing of written statements, the court shall refer the matter to parties for mediation¹²¹. However, sporadic references suggest that potential of ADR over traditional methods of NPL recovery in Bangladesh not yet marked with commendable success.

As described by Islam, due to the cumbersome and lengthy process of NPL recover through *Artha Rin Adalats*, borrowers feel rather relaxed even when suits have filed in *Artha Rin Adalat*¹²². In a related vein, referring a Bangladesh Institute of Bank Management faculty member, a business report on “The Daily Star” indicates that cumulative volume of NPL is increasing due to a heavy reliance on *Artha Rin Adalats*. Despite its potential, out-of-court processes are not used much to recover NPL¹²³.

Experts, however, observed that mere presence of out-of-court settlement option might not motivate borrowers to settle, if another enabling environment such as the strict implementation of insolvency law or option for control business by the management of the bank or may create sufficient incentive for borrowers to settle even incentive for the

¹¹⁹ General Economics Division, Planning Commission Ministry of Planning, Government the people’s republic of Bangladesh, *Seventh Five Year Plan FY2016-FY2020, Accelerating Growth, EmpowerRing Citizens* (Bangladesh: Planning Commission Ministry of Planning, Government the people’s republic of Bangladesh, 2015),176.

¹²⁰*Id.* at 182.

¹²¹*Artha Rin Adalat Ain of 2003*, section 22(1)

¹²²Mohammad R. Islam, “What is to do with non-performing loans?”, *The Financial Express*, July 26, 2013, 4.

¹²³Banks burdened with bad loans,*the NPL ratio is much higher than global average: study*, Star Business Report, The Daily Star, December 21, 2013.

officers¹²⁴. For the same reason, borrowers in Bangladesh may not feel the urge to settle their NPL disputes quickly through mediation.

As shown in Table 1.6 the cumulative figure of resolution of NPL through ADR, remain stagnant in recent years in Dhaka district. For instance, from 2009 to 2012 no one NPL case from foreign commercial banks was resolved through ADR. A similar situation has observed for PCBs after 2011. However, PCBs and NCBs are consistently showing better recovery of NPLs over the years. As claimed by Siddique et al. (2013) such a great success has materialized through out-of-court ADR conducted by PCBs and NCBs with their NPL borrowers. One rationale of this research is to validate this claim through comparable data collected from court registries (e.g., withdrawal of cases) and expert opinion collected through interviews conducted under this research.

Table 1.6: Cumulative no. of NPL resolution through *Artha Rin* ADR

Year	NCBs	DFIs	Private commercial	Foreign commercial
2009	413	262	93	7
2011	445	299	161	7
2012	463	304	162	7

Source: Non-legal measures for loan recovery, Siddique et al. (2013), p.23¹²⁵

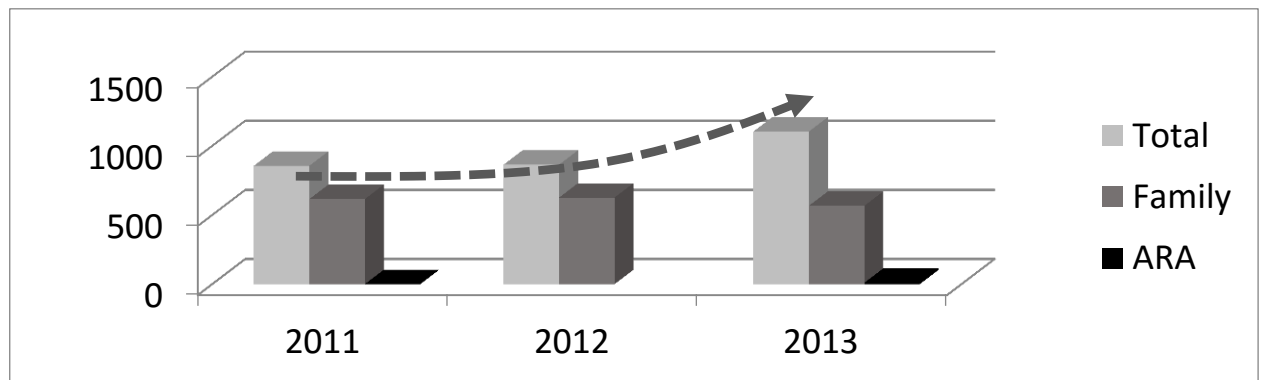
However, the same is not true for all other courts conducting ADR to resolve cases on trial. For instance, following the data are taken from court registries of the Family Courts and of *Artha Rin Adalats* of Dhaka District Judges Court which shown in Figure 1.2 below, the number of cases resolved through ADR in family court is even increasing day by day. This also provides a strong rationale to enquire about loopholes that may restrain *Artha Rin Adalats* to settle cases through court-connected ADR.

¹²⁴The World Bank, *Out-of-Court Debt Restructuring* (Washington, D.C.: The World Bank, 2012). 17.

¹²⁵Md. M. Siddique, Mohammad T. Islam and Md. S. Ullah, “Non-legal measures for Loan recovery in the banking sector of Bangladesh,” Seminar arranged by Bangladesh Institute of Bank Management on December 21, 2013 (Dhaka: Bangladesh Institute of Bank Management,2013), 23.

Therefore, to protect NCBs from incurring huge loss out of large amount of NPLs, while maintaining a good financial health, and a long-term relationship with their borrowers, it is necessary to study the mediation mechanism and other enabling laws that could accelerate the NPL recovery of NCBs without a loss of long-term relationship with their borrowers. It is also worthwhile to emphasize that as the impact of ARA mediation on the performance of NPLs recovery in Bangladesh has not researched earlier. Hence, this research would be helpful for the lawmakers in enacting or amending laws to protect the interest of NCBs and their borrowers.

Figure 1.2: Cumulative disposal through ADR: A comparative statistics of ARA and FC, Dhaka



Source: Court registry of Dhaka District judges court about Artha Rin Adalats and Family Courts

While explaining the importance of ADR for resolving commercial disputes famous Jurist Mahendra in his scholarly writing ‘Popular but no Panaceas’ wrote, “It is not surprising that ADR should have achieved its greatest success in the field of Commercial disputes. When businesses take their eyes off the ball through distraction by the demands of protracted litigation, their figures suffer. Further, there is a need to maintain amicable relationships, something better achieved by the use of ADR than through the processes of prolonged litigation”¹²⁶.

Regarding the importance of ADR, In the case of *Halsey v. Milton Keynes General Trust*, Lord Justice Dyson says, “It is one thing to encourage the parties to agree to mediation, even

¹²⁶New Law Journal, 2004, 1398.

to encourage them in the strongest terms. It is another to order them to do so. It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court¹²⁷. Realizing the importance of ADR the Alternative disputes resolution Act, 1998 passed in the USA, which required each of the 94 districts to authorize the use of ADR in civil actions. Each district was empowered to design its own ADR program but required to adopt procedures for making neutrals available to parties. 63 districts currently authorize mediation, and to authorize settlement conference and/or Med-arb. In 2001 approximately 24000 cases were referred to one another form of ADR in the district courts¹²⁸.

Following the introduction and success of various types of court-annexed ADR in the USA, most of the developed countries adopted the same. In the same line, the international aid organizations have begun since 1990 to urge foreign countries to adopt ADR as part of the rule of law. The United Agency for International Development (USAID) has been one of the leading organizations sponsoring the use of ADR many developing countries. Apart from USAID, the American Bar Association (ABA) has been another leader in the movement to encourage greater reliance on ADR as part of its international rule of law projects. The most active arm of ABA has been its Central European and Eurasian Law Institute (CEELI). Since mid-1990s CEELI has engaged in implementing various projects of ADR in Armenia, Azerbaijan, Bosnia, Bulgaria, Serbia and also in Latin American countries¹²⁹.

Though the issue of the effectiveness of *Artha Rin* ADR on NPL recovery has not been studied extensively earlier, as mentioned above, sporadic evidence mentioned earlier indicates that *Artha Rin* ADR is not yet effective enough to improve NPL recovery in Bangladesh. A hundred years ago American President Abraham Lincoln said, "Discourage litigation, persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses, and time"¹³⁰. The general objective

¹²⁷EWCA CIV, 2004, 576.

¹²⁸Thomas J. Stipanowich, "ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution", *Journal of Empirical Legal Studies* 1, no.3 (2004):849.

¹²⁹Jean R. Sternlight, "Is Alternative Dispute Resolution consistent with the Rule of Law? Lessons from Abroad." *DePaul Law Review* 56, no.2 (2007):574, accessed November 12, 2016. Url: <http://via.library.depaul.edu/law-review/vol56/iss2/15>.

¹³⁰6 *MLR Journal* 29 (2001).

of the study is to identify the major causes of non-performing loans and how can it be solved through Alternative dispute resolution in the court or outside the court and decrease the number of cases in order to protect the banking sector in Bangladesh especially national Commercial Bank (NCBs). ADR is catching up the people's imagination. It is a real phenomenon in the law courts now and not just a figment of the imagination¹³¹.

With the implementation of the financial sector reform programs (FSRP) in Bangladesh, necessary laws have enacted, and the existing laws have amended to improve the recovery position of Banks loans. With a view to improving the recovery of stuck up loans, various non-legal measures have also taken up by the government and the Bangladesh Bank. As a step towards that end, the four nationalized commercial banks have corporatized to improve their overall financial performance. In spite of all these attempts, the volume of Non-Performing loans remains the major problems of the banking system.

ADR processes held to have many advantages. They have considered reducing the caseload; cost cutting is a major justification. ADR methods, such as mediation, are much less stressful for the parties than the ordinary court process. Mediation introduces some flexibility and helps parties to stay open-minded for longer; the adversarial nature of the English civil procedure that encourages a confrontational approach is thus counteracted largely. A wider range of solutions is available to the parties, and so, their demands are more likely to meet. Finally, parties tend to derive more satisfaction from a solution arrived at through mediation¹³².

Considering the importance of ADR, former Chief Justice of Bangladesh K.M Hasan said, "the tout's do not allow the litigants to go to mediation. This is a real problem. These touts are economically and socially very powerful, and we will have to fight against them"¹³³. There is a general belief in France that before any case goes to any of the regular courts for a trial, an official assistant should provide to the parties concerned for the settlement of disputes. Therefore, in our courts as well, this dignified procedure has a tremendous effect of

¹³¹Chief justice Mostafa Kamal, ADR in Bangladesh, Published by BLAST in a booklet Reviewing the family Courts Ordinance, 1985, 05.

¹³²English Legal System Lectures 2006/07, Public Law-320

¹³³Staff Correspondent, "Judges should have higher mediation skills:Observe two former CJS", *The Daily Star*, July 06, 2008.

diminishing the number of cases and relieving the regular courts from the burdens of a considerable number of minor cases¹³⁴.

1.5.2 Objectives of the research

Following the background of the research and rationale for conducting this research, objectives of this research are to

- 1) Examine whether *Artha Rin* ADR can ensure a quick recovery of NPLs in comparison with the trial;
- 2) Identify the major underlying causes of lower effectiveness of *Artha Rin* ADR, and
- 3) Consequent delay in the disposal of *Artha Rin* cases and recovery of NPLs, and
- 4) Suggest some way-outs for further improvement in NPL recovery through ADR that would ensure a speedy disposal of *Artha Rin* disputes, and a quick recovery of NPL.

1.6 Outline of the Research

Accelerated recovery of NPLs through *Artha Rin* ADR also means quick disposal of *Artha Rin* cases. The research would, therefore, not only contribute to enhancing the viability of financial sector of the country by reducing NPLs but also contribute to reducing the backlog of cases in the formal judiciary and therefore make the judicial system more efficient in consequence. Having these plausible contributions in mind, this thesis has arranged in eight chapters. Once the background, rationale, and objectives of the research have outlined in this chapter, the next chapter will outline to discuss different theoretical and methodological aspects of the research. This chapter sets the scope of the research, set based on existing literature, provides methods for data collection and finally limitations of the research, before the conclusion.

Chapter 3 analyzes the mechanism of NPL recovery in Bangladesh. It started with in-house recovery mechanism followed by financial institutions and extended its discussion on relevant laws, Bangladesh Bank regulations and internal lending policies followed by NCBs

¹³⁴Khana, S.L. Comparative Law, Allahabad: Central Law Book Agency (1984),123.

to recover their NPL. The chapter proceeds with a discussion of jurisdiction, function, and process of mediation as mentioned in ARAA 2003. Further, it discussed the detailed procedure of ARA ADR as specified in the law and present four cases of NPL recovery to identify a number of loopholes in the legal framework of NPL recovery in Bangladesh. Keeping this loopholes in mind, analyzing court registry data on resolution and recovery of NPL cases the fourth chapter demonstrated how existing loopholes in the legal recovery process is making ADR ineffective and lacking resolution and recovery at a minimum level. Later, Chapters 5, 6 and 7 respectively discussed perceptions of mediators, lenders banks, and borrowers respectively on *Artha Rin* ADR. Such perceptions were important to understand users' satisfaction with the process and identify its' loopholes. Finally, based on all different aspects mentioned earlier, chapter 8 concluded the thesis with some policy suggestions on areas for improvement and need for further research on this topic.

1.7 Outcome of the Research

As the banking sector of Bangladesh, especially NCBs are struggling with NPLs and experimenting with different regulatory, non-regulatory and legal tools to reduce its' extent, this research would play a vital role to accelerate that process in three different ways.

- **Firstly**, by understanding the major procedural loopholes in the NPL recovery process under the Act, 2003;
- **Secondly**, by facilitating policymakers to develop an effective ADR mechanism that would ensure speedy disposal of *Artha Rin* disputes of NCBs' non-performing loans; and
- **Finally**, by identifying the areas of improvement that could enhance users' satisfaction on *Artha Rin* ADR in effective recovery of NPLs. The following chapters of this thesis are exploring all these issues.

1.8 Conclusion:

Accelerated recovery of NPLs through *Artha Rin* ADR also means quick disposal of *Artha Rin* cases. The research would, therefore, not only contribute to enhancing the viability of financial sector of the country by reducing NPLs but also contribute to reducing the backlog of cases in the formal judiciary and therefore make the judicial system more efficient in consequence. Having these plausible contributions in mind, this thesis has arranged in eight chapters. This chapter has discussed the background, rationale, methodology, outcome of the research outlined in this chapter, and the next chapter will outline to discuss theoretical Framework and methodology.

CHAPTER 2

THEORETICAL FRAMEWORK AND METHODOLOGY

2.1 Introduction

The Banking sectors of Bangladesh, especially NCBs have very much burdened with NPL that is causing serious harm to their financial health and long-term sustainability. One reason is that borrowers are willing to take loans from banks but are not willing, or able to repay loans when loans are due. Two major reasons have identified in the literature that may cause the borrower to make default. The first one simply relates to their business failure or negative cash flow that makes them unable to repay their loans. Different legal mechanisms including the laws of insolvency have devised in different countries to recover those loans as much as possible by selling out properties of the borrower. However, the recovery scenarios get much more complex when delinquent borrowers purposely make default to shift their debt burden to the banks. Banks may reduce the proportion of accidental default by a proper screening of borrowers and lend only to entrepreneurs with better earning potential and superior credit rating. Another way to reduce default is to ensure that borrowers have spent loan amount for the particular purpose they have intended to, and not spend in too risky ventures that had not covered by the risk premium taken with the lending interest charged by the bank. However, for conventional banking practice, such kind of extensive monitoring may not be cost-effective and should avoid by the respective banks.

The situation got even more complex when defaults have driven by the rational choices of the borrowers, not by any accidents or misfortune that drastically reduced their ability to pay or make them unable to repay loans in time. Various factors may promote a rational choice of loan default and increase NPL in consequence. For instance, even a decade earlier both of the major political parties in Bangladesh used to include agricultural loan forfeiture as an important cause of their election manifesto. Though the purpose was to attract more voters in the national election, the consecutive practice of loan forfeiture caused to develop a rational expectation among farmers that agricultural loans taken now will forfeit in future and need not repay anymore. This culture, however, is changing gradually as government becomes more serious about the recovery of agricultural credits and discouraging intentional defaults through stringent recovery practice. Similarly, there are several other factors including the institutional arrangement to ensure a low rate of default, the presence of stringent laws

against intentional default and bankruptcy, the effectiveness of judiciary in implementing quick recovery of a decree against intentional default, or private arrangement to discourage new borrowing to repay existing defaults. For instance, if the course process is slow in resolving disputes or sanctioning decrees delinquent borrowers may not be willing to arrange quick resolution of their NPL disputes and quick repayment of claims through mediation. Similar delinquency may result from lack appropriate laws or presence of legal loopholes that may allow delinquent borrowers to delay repayment by making unnecessary time petition just to delay repayment. Whatever is the reason a consequent rational expectation may discourage borrowers to apply mediation effectively that would disable them to make intentional delay. This chapter will identify factors that affect people's rational choice of making default and the presence of such factors in the context of Money Loan Default so that borrowers are not much willing for quick repayment of their loans under court decree made through mediation or other forms of ADR. A questionnaire developed following this theory would endeavour to explore how far any or more of these factors are liable for ineffective application of mediation in *Artha Rin Adalat Ain*, 2003.

2.2 Theoretical Framework

Legally, a loan/credit facility has defined to mean a contractual promise between two parties. Where one party, the creditor agrees to provide a sum of money to a debtor, who in turn promises to return the said amount to the creditor either in one lump or in instalments over a specified period of time. The agreement may include a provision of additional payment of rental charges on the funds advanced to the borrower (debtor) for the time; the funds are in the hands of the debtor. The borrowers should pay additional charges to the Bank at the time of taking loans in the form of interest charges, processing fees, commissions, monitoring fees, among other charges in addition to the principal loans¹³⁵. In practice, those additional payments shall make by the borrowers in accordance with the covenant of the loans or agreement of the loan, which affect the income or interest of the bank¹³⁶.

¹³⁵Arko, Samuel Kofi, "Determining the causes and impact of nonperforming loans on the operations of microfinance institutions: A case of Sinapi Aba Trust" (Commonwealth Executive Masters of Business Administration, Kwame Nkrumah University of Science and Technology,2012),17.

¹³⁶*Id.* at 18.

Moreover, a loan or credit facility may consider as performing loans if the borrower makes payment the principal and interest on time as per agreement executed between the borrower and bank and if the loans are performing loans that shall consider as healthy asset portfolio of the bank¹³⁷. As mentioned earlier, a number of factors that may result in loan default in the banking sectors. Fraser. Gup and Kolari (2001) depicted that a sharp increase in and high level of interest rates placed intense pressure on the financial system and contributed to the failure of a large number of institutions¹³⁸. In respect of Bangladesh, high-interest rates increase costs of borrowing, and debt burden grows, which leads borrowers to default. The high-interest rate also identified by Sobhan (1991) as one of the contributing factors to loan default in the industrial sector, particularly in the manufacturing sector in Bangladesh¹³⁹. Reduction of interest rates observed to be a successful action taken by bank management to improve recovery.

However, a variation of interest rates may not always produce desired results. Sometimes borrowers decide to apply for a loan and grab some easy credit, without considering much about the future and whatever skills they need to utilize those loans properly. The same observed in Bangladesh, especially in the case of lending made by NCBs. However, private and foreign commercial banks are able to attain a more than 99 percent recovery against commercial loans, having the same legal and judicial framework NCBs are able to attain a recovery rate less than 90 percent of their total outstanding loans. To some extent, the condition is even deteriorating over the years.

2.2.1 Theory of Adverse Selection and Moral Hazard

Once there is a direction from the government that a certain portion or amount of total credit should channel to a specific sector or of an economy, or to a particular group of borrowers, banks may not have sufficient choice to complete rigorous assessment before sanctioning loan, as it may not allow them to fulfil the quota. Further, banks always want to expand its

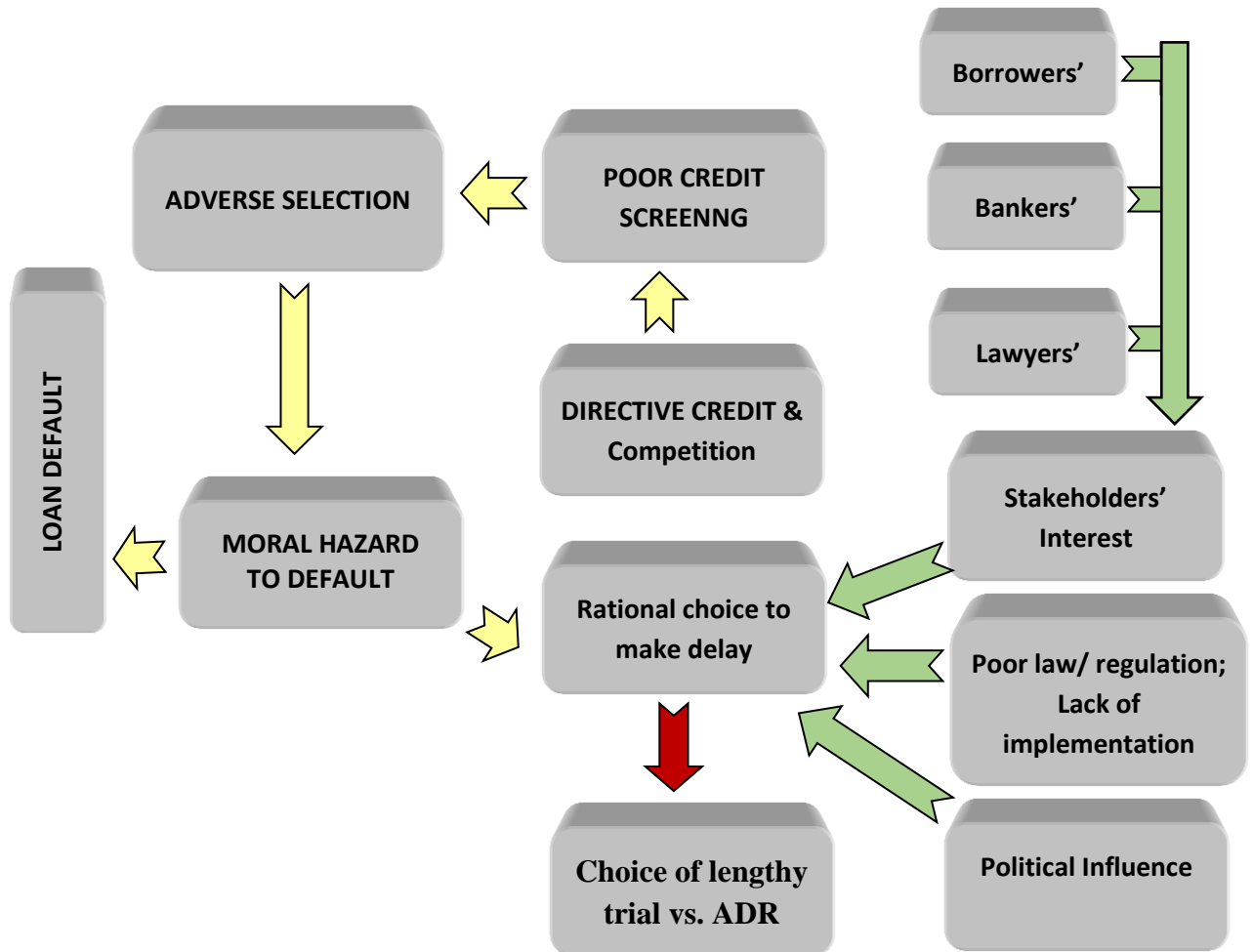
¹³⁷ *Id.* at 18.

¹³⁸ Fraser. DR. B.E Gup and J.W Kolari, 2001: Commercial Banking: The Management of Risk, second Edition, U.S.A: South –Western College Publishing.

¹³⁹ Rehman Sobhan, “An Industrial strategy for industrial policy: Redirecting the Industrial development in Bangladesh in the 1990s,” *The Bangladesh Development Studies*, 19, no. 1&2 (1991):201-215.

loan portfolio to earn more. Therefore, in some instances, banks may decide to extend easy credit without considering much about financing standards, as such increases the possibility of delay in repayment a consequent default which is very risky for the bank¹⁴⁰.

Figure 2.1: Rational choice theory of delay and ineffective *Artha Rin* ADR



Source: Developed by the researcher based on literature review

Though in case of expanding economy, or market boom borrowers may take get overwhelmed about their potential business expansion and build up debts, during market contraction and corrective actions, these borrowers, especially SMEs and micro-borrowers, frequently make default and end up with a moral hazard to escape their debt liability, despite their genuine interest not to make such defaults.

¹⁴⁰ John A. Weinberg, "Cycles in Lending Standards?" Federal Reserve Bank of Richmond Economic Quarterly 81/3 (1995):1-18.

a) Poor loan assessment

Before sanctioning loan, Bankers should assess, i.e., regular/recurring income, expenditure of the business, other assets, other debt, reasonable living expenses, employment prospects property attractiveness or outlook, willingness to repay the loan properly¹⁴¹. Weak assessment of the security is also liable for NPL. For instance, even in case of a reputed borrower who repays loan regularly, if the security of that borrower is not assessed properly at the time of sanctioning loan upon him, that may cause NPL¹⁴². Sometimes, banks finance borrowers based on personal experience, but they do not observe or scrutinize the borrower's historical background, business information, matured credit portfolio management, as such the NPL in the banking sector is high¹⁴³. The Bank should maintain sound internal control, identify credibility of the customers, and fulfil the loan procedure, accountability of the manager for sanctioning loan so that NPL may reduce through the internal Banking mechanism¹⁴⁴.

The possibility of loan default increases due to adverse selection of borrowers who have no capacity to utilize their loan fund profitably. As mentioned earlier, due to directive credit strategy suggested by the government, NCBs may end up with a set of inefficient borrowers. Due to directive lending criteria, NCBs cannot distinguish between good and bad borrowers and, therefore, charge the same interest rate for all types of borrowers. However, as the low-quality borrowers cannot use sanctioned loan in the proper business, any consequent business loss may increase their moral hazard and consequent loan default. The possibility of moral hazard increases even further when banks are not able to get sufficient collateral against directive credit. The high-quality borrower who can utilize the sanctioned loan properly are, on the other hand, may face fund constraint to make an investment in profitable business

¹⁴¹European Central Bank, *Draft guidance to banks on non-performing loans* (Germany: European Central Bank, 2016),44. See Also, European Central Bank, *Guidance to banks on non-performing loans* (Germany: European Central Bank, 2017),45.

¹⁴²Arega S. Asfaw , Hanna N. Bogale, Tadele T. Teame, “Factors Affecting Non-Performing Loans: Case Study on Development Bank of Ethiopia Central Region,” *International Journal of Scientific and Research Publications* 6, no. 5 (2016): 656, accessed February 17, 2018. Url: <http://www.ijsrp.org>.

¹⁴³GUO Ning-ning, “Causes and solutions of non-performing loan in Chinese commercial banks,” *Chinese Business Review* 6, no.6 (2007):13-15.

¹⁴⁴*Id.* at 18-19.

ventures¹⁴⁵. In this respect, Bank should ensure effective policy for sanctioning loan through an active risk management committee¹⁴⁶. Furthermore, it is observed that lack of motivation of managers, managers not being fully competent in appraising the value of collateral, lack of effort to reduce costs, lack of effort on the part of managers, lack of manpower, lack of focus on top managers as the internal factors are also caused to increased NPL¹⁴⁷.

To reduce NPL, loan monitoring is also very important. It has observed that inefficient Bank Management increased NPL¹⁴⁸. If the Bank continuously monitors the loan, then the loan becomes more secure. Banks should monitor borrowers regularly with attentively so that the borrowers do not relax at any stage of repayment of their loans¹⁴⁹. It was observed that less monitoring leads the borrowers to NPL¹⁵⁰. However, banks have applied that mechanism in order to profit¹⁵¹. Therefore, considering the facts of NPL, it is badly needed to control the NPL with a view to ensure stable economy and growth of a country. Otherwise, the financial sector of the country or even the whole world may face economic recession¹⁵² due to close economic tie.

¹⁴⁵ George A. Akerlof, "The Market for "Lemons": Quality Uncertainty and the Market Mechanism", *The Quarterly Journal of Economics* 84, no. 3 (1970) :497-499, accessed March 20, 2017. Url: <http://links.jstor.org/sici?sici=00335533%28197008%2984%3A3%3C488%3ATMF%22QU%3E2.0.CO%3B2-6>.

¹⁴⁶ Bank for International Settlements, *Sound Practices for the Management and Supervision of Operational Risk* (Washington, DC.: Bank for International Settlements, 2003), 3-4.

¹⁴⁷ Nguyen T. M. Hue, "Non-Performing Loans: Affecting Factor for the Sustainability of Vietnam Commercial Banks," *Journal of Economics and Development* 17, no.1(2015):94.

¹⁴⁸ Salvador Climent-Serrano (Spain), Jose M. Pavia (Spain), "An Analysis of loan default determinants: the Spanish case," *Banks and Bank Systems* 9, no. 4 (2014):119-120. See also, Mohd Z. A. Karim, Sok-Gee Chan and Sallahudin Hassan, "Bank Efficiency and Non-Performing Loans: Evidence from Malaysia and Singapore," *Prague Economic Papers*, 2(2010): 123.

¹⁴⁹ European Central Bank. *The ECB and IMF indicators for the macro-prudential analysis of the Banking sector : A comparison of the two approaches* (Frankfurt am Main Germany: European Central Bank, 2008), 33.

¹⁵⁰ *Id.* at 36.

¹⁵¹ *Id.* at 39.

¹⁵² Muhammad Farhan, Ammara Sattar, Abrar H. Chaudhry and Fareeha Khalil, "Economic Determinants of Non-Performing Loans: Perception of Pakistani Bankers European," *European Journal of Business and Management* 4, no.19 (2012) :96-97, accessed May 16, 2016. Url: <http://www.iiste.org>.

b) Directive credit

Directive credits increase inefficiency among bankers in sanctioning, monitoring, and recovering credit/loans, as they always have an excuse to hide them behind the shield of government regulations. Due to lack of proper regulation for sanctioning loans, weak corporate governance, poor or corrupt management, inadequate or imperfect accounting, and auditing caused to credit risk as such the NPL of the Banking sectors are increasing¹⁵³. In a related vein, as per the Financial Stability Report (FSR)-2012 brought out by Bangladesh Bank, “the classified loans in the state-owned banks are higher due to the nature of their operations (lack of efficiency in fund management, extending obligatory financing towards social and economic priority sectors and politically motivated lending). Yet, when Boards of banks, especially state-owned institutions, have onboard individuals who are either politically affiliated or are backed by the “powers” there is little that the central bank can do. The fact that the culture of impunity is now a well-established norm in our financial sector, whereby rules and regulations may flout openly, only goes to show that to what extent Bangladesh Bank exerts influence in these institutions¹⁵⁴. Altunbas et al.(2000) find that the levels of non-performing loans are positively related to bank inefficiency¹⁵⁵. Upon approval of the loan, the assessment of the borrower has not been done properly as such the Bank has fallen in NPL¹⁵⁶. The NPL occurred not only for lack of recovery of the loan but also for the corruption of the managers as well as obtaining the unfair advantages of the authorities over the loans¹⁵⁷. Loans are defaulted due to poor plans to deal with risk, reduce attention to borrowers, moving along the risk curve and lack of good models.

¹⁵³Omar Masood, Monhder Bellalah, Mansour, Walid, Teulon and Frederic, “Non-performing bank loans and Credit Managers’ Role: A Comparative Approach from Pakistan and Turkey,” *International Journal of Business*, 15(3) (2010):349.

¹⁵⁴The Daily Star, bad loan on the rise, November 19, 2003.

¹⁵⁵ Yener Altunbas, Ming-Hau Liu, Philip Molyneux and Rama Seth, “Efficiency and Risk in Japanese Banking,” *Journal of Banking and Finance*, 24, no.10 (2000):1605 -1628.

¹⁵⁶Ming-Chang Cheng, Chien-Chi Lee, Quynh N. T. Pham, and Hui-Yu Chen, “Factors affect NPL in Taiwan Banking Industry,” *Journal of Accounting, Finance and Economics* 6, no.1 (2016):68.

¹⁵⁷*Id.* at 69-70.

The non-performing loans can recover timely by early risk assessments, motivation, and law and order situation, helped from recovery agency, reducing relaxation, developing situation-specific models, real-time training, regular monitoring, and trade-off¹⁵⁸.

c) Inefficient-speed lending

There is a relationship between NPL and rapid advance¹⁵⁹. Due to a pressure to meet their loan target, bankers may not follow the rules and regulations for sanctioning loans that also caused an increase in Non-performing loans¹⁶⁰. Competitive banks are increasing their advances rapidly as such the NPL is increasing¹⁶¹. With a view to increasing the advances, Banks are bound to make easy the standard of loan terms, decrease interest rate, and monitoring the loan of the borrower¹⁶². In the case of developed countries, the advances are very speedy in processing, as there have strong legal institutions and laws that will give security to the banks against the defaulters¹⁶³. Relaxed terms-of-credit is one of the reasons for increasing NPL as such herd behaviour, moral hazard, agency problems and disaster short-sightedness is the basic factors behind the relaxed terms of credit¹⁶⁴. Furthermore, when the economy is growing up, then the bank manager provided loans by relaxed terms and condition.

¹⁵⁸Mohammad S. Islam, Nikhil C. Shil, and Md. A. Mannan, "Non performing loans - its causes, consequences and some learning," Stamford Journal of Business Studies, no.2 (2005):100-116. Accessed January 15, 2014. Url: <http://mpa.ub.uni-muenchen.de/7708/>.

¹⁵⁹ William R. Keeton, "Does faster loan growth lead to higher loan losses?," Economic Review-Federal Reserve Bank of Kansas City (1999): 73.

¹⁶⁰Awais Farooq, Aziza Naz and Basit Zaheer, "Does Deviation from Prudential Regulation Leads to Non-Performing Loans? Evidence from Habib Bank and National Bank of Pakistan," The International Journal of Business & Management 4, no.11 (2016) :98, accessed March 20, 2016. Url: www.theijbm.com.

¹⁶¹John A. Weinberg, "Cycles in Lending Standards?" Federal Reserve Bank of Richmond Economic Quarterly 81/3 (1995):1-18.

¹⁶² William R. Keeton, "Does faster loan growth lead to higher loan losses?," Economic Review-Federal Reserve Bank of Kansas City (1999): 58.

¹⁶³Nataša Šarlija. "The impact of liquidity on the capital structure: a case study of Croatian firms." Business Systems Research 3, no.1 (2012):35-36.

¹⁶⁴Gabriel Jiménez, Steven Ongena, José L. Peydró and Jesús Saurina, "Hazardous times for monetary policy: what do twenty-three million bank loans say about the effects of monetary policy on credit risk?," Centre for Economic Policy Research 82, no. 2 (2014): 463–505.

A smaller loan portfolio that earns less income treated as poor performance of a manager. Therefore, with a view to attaining higher income managers may finance huge loans by way of relaxed terms and conditions that ultimately generates further NPL¹⁶⁵.

d) High-interest rate with risky lending

The interest rate has a contribution to enhance or decrease the profitability of the lending bank. While the interest rate is high, then the profit is high. On the other hand, while the interest rate is less, then profit is low¹⁶⁶. When the interest rate becomes high, the borrowers have to pay an additional payment to the Banks at the time of repayment¹⁶⁷. There has an interrelation with the interest rate, credit growth, and NPL. Because if the interest becomes high, the NPL also be high on the other hand if the credit growth is high the NPL is low¹⁶⁸. Some other reasons identified by Fraser, Gup and Kolari (2001) that the sharp increase and high level of interest rates placed intense pressure on the financial system that contributed to the failure of a large number of institutions¹⁶⁹. As mentioned earlier, a high-interest rate increases costs of borrowing and debt burden grows that leads borrowers to default. In respect of Bangladesh, the high-interest rate also identified by Sobhan (1991) as one of the contributing factors to loan default in the industrial sector, particularly in the manufacturing sector in Bangladesh¹⁷⁰.

¹⁶⁵Hisham U. Hassan, Muhammad Ilyas, Choudahry A. Rehman, "Quantitative Study of Bank-Specific and Social factors of Non-Performing Loans of Pakistani Banking Sector." *International Letters of Social and Humanistic Sciences* 43 (2015):195, accessed November 13, 2016. doi:10.18052/www.scipress.com/ILSHS.43.192.

¹⁶⁶Johannes P. S. Sheefeni, "The effects of interest rate spread on non-performing loans in Namibia," *European Journal of Business, Economics and accountancy* 4, no. 5 (2016):31, accessed May 10, 2017. Url: www.idpublications.org.

¹⁶⁷Pierre Collin-Dufresne and Robert S. Goldstein, "Do Credit Spreads Reflect Stationary Leverage Ratios?" *The Journal of Finance* 16, no. 5 (2001):1939-1944.

¹⁶⁸International Monetary Fund. *Nonperforming Loans in the GCC Banking System and their Macroeconomic Effects* (Middle East and Central Asia Department: International Monetary Fund, 2010), 14.

¹⁶⁹ Fraser. DR. B.E Gup and J.W Kolari, 2001: *Commercial Banking: The Management of Risk*, second Edition, U.S.A: South –Western College Publishing.

¹⁷⁰Rehman Sobhan, "An Industrial strategy for industrial policy: Redirecting the Industrial development in Bangladesh in the 1990s," *The Bangladesh Development Studies*, 19, no. 1&2 (1991):201-215.

In these circumstances, the need for classification of the loan portfolio in the banking sector and non-bank financial sector is a burning issue in the context of productive utilization of working funds¹⁷¹. Banks should also constantly review the interest rates on loans since loan delinquencies are higher for banks that increase their real interest rates¹⁷².

2.2.2 Rational choice theory to make default and delay

Default risk is a major obstacle to the provision of loans especially in the developing countries in the world, but due to some reasons, the borrowers become defaulter that is for bad luck and opportunistic behaviour¹⁷³. However, once made default, NPL borrowers have to make a rational choice between quick and low-cost disposal through *Artha Rin* ADR or lengthy disposal through trial. Moreover, in terms of legal cost to disposal, ADR is advantageous over trial; NPL borrowers may also consider the long-term opportunity cost of fund and go for lengthy trial instead. Other stakeholders getting benefit from such delay may also have an influence on such delay. Different factors that may induce NPL borrowers to take such decision discuss below.

While explaining the Rational Choice theory, this thesis, however, depends on the notion of “Formal Rationality.” Weber uses the term “formal rationality” to refer to the simple means-ends rational calculation. You have a goal, and you take rational steps—that is steps that are based on past experience, observation, logic, or science—to attain that goal¹⁷⁴.

When borrowers make a rational choice to make default that decision may promote or accelerate by many avenues. The major avenues that may induce borrowers to make such rational choice; that are i) political influence ii) poor laws and lack implementation (e.g., excessive time petitions during trial to drag the process, delay in confiscating collaterals due to non-transparent laws or complex procedures) and iii) benefits to stakeholders who may

¹⁷¹Syed A. Ali and Rustom A. Howlader. *Banking Law and Practice*, 1st ed. (Banglabazar, Dhaka: Agamee Prakashani, 2005),420.

¹⁷²Tarron Khemraj and Sukrishnalall Pasha, “The Determinants of non-performing loans: An Econometric case study of Guyana,” Munich Personal RePEc Archive, MPRA Paper No. 53128 (2009):22-23, accessed June 10, 2017. Url: <http://mpra.ub.uni-muenchen.de/53128/>.

¹⁷³ Marco Pagano, eds, *Defusing Default incentives and institutions* (Washington DC: Inter-American Development Bank, 2001).

¹⁷⁴ *Id.*

promote such default (e.g., lawyers may earn more fees through lengthy cases). The following sub-sections explore further on each of these issues.

a) Political interference, inefficient lending, and NPL

Banks may provide loans to borrower due to political interventions. The influence that is more political has found during election years. As the government influence banks to provide loans to inefficient borrowers who may not have got credit otherwise, that causes a high rate of default¹⁷⁵. By looting government, banks' money the politicians ensure their election prospect due to this reason the politicians intervene to finance towards them who will not return the money to the state-owned Bank and such types of risky finance caused to default¹⁷⁶. Political turmoilis also responsible for increasing NPL, as prospective borrowers cannot utilize their loan money properly, they may incur a loss that tends them to be defaulters¹⁷⁷. Politicians may create pressure on the state-owned bank to finance those enterprises that are their supporters and voter that caused huge NPL, and many state-owned banks finance to the politicians without considering the merit of the borrowers that increase the volume of NPL¹⁷⁸.

However, it is observed that political intervention especially the control of the central and local government and flexible finance constraint have a high influence on the adjustment of NPL, and only economic recession, as well as wilful default by borrowers, are the two unimportant variables do not greatly affect the number of NPLs¹⁷⁹. Due to political

¹⁷⁵I. Serdar Dinc, "Politicians and banks: Political influences on state-owned banks in emerging markets," *Journal of Financial Economics* 77 (2005):475-476, accessed May 28, 2016. Url: www.elsevier.com/locate/jfec.

¹⁷⁶ Michael Halling, Pegaret Pichler and Alex Stomper, "The Politics of Related Lending," ECGI Working Paper Series in Finance 296 (2010):1-3, accessed December 12, 2016. Url: www.ecgi.org/wp.

¹⁷⁷Fahmida Khatun, Research Director, Centre for Policy Dialogue (CPD), "Economic implications of political instability", *The Daily Star*, March 08, 2015. Business.

¹⁷⁸Muhammad I. Ahmad, Wang Guohui, Mudassar Hassan, Muhammad A. Naseem & Ramiz -ur-Rehman, "NPL and Corporate Governance: A Case of Banking Sector of Pakistan," *Accounting and Finance Research*. 5, no. 2 (2016):32-34, accessed March 20, 2017. Url: www.sciedupress.com/afr.

¹⁷⁹Nguyen T. M. Hue, "Non-Performing Loans: Affecting Factor for the Sustainability of Vietnam Commercial Banks", *Journal of Economics and Development* 17, no.1 (2015): 94.

interference banks, appropriate project selection is not possible¹⁸⁰. In this regard, Khwaja and Mian (2005) show that politically connected firms in Pakistan borrow more with higher default rates from SOBs (state-owned bank), but no such phenomenon occurs with private banks¹⁸¹. Due to political pressure, loans sanction to borrowers without considering character, payment status, capital, collateral of the borrowers and due to political influence and corruption of bankers as well as reschedule without down payment, which caused a default of the loan¹⁸².

b) Legal protection of creditor rights, poor implementation of laws and rational choice to delay

A credit relationship basically depends on the relation among a lender who provides the funds, a borrower who invest the funds and promised to pay the principal and interest of that fund and the courts of law who enforce the contract of the creditor and borrower if arise any dispute¹⁸³. However, defaults arise from borrowers' opportunism that depends on the low protections of creditors' rights, the enforcement of the contracts by the court and the efficiency of the judiciary in the enforcement of contracts and laws¹⁸⁴. For instance, a huge backlog of cases in *Artha Rin Adalats* and inefficient ADR with a huge potential of making frequent time petition may create an impression among delinquent borrowers that they can easily create a constructive delay and enjoy free credit for an extended period of time.

¹⁸⁰ Victor Shih, "Dealing with Non-Performing Loans: Political Constraints and Financial Policies in China", *The China Quarterly* 180 (2004): 922-944.

¹⁸¹ Harvard Kennedy School, John F. Kennedy school of Government, Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market (USA: John F. Kennedy school of Government, 2005),14-28, accessed March 6, 2017.Url: <www.hks.harvard.edu/fs/akhwaja/> Accessed March 6, 2017. See also, Asim I. Khwaja and Atif Mian, "Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market." *The Quarterly Journal of Economics* 120, Issue 4 (2005): 1371–1411, accessed June 30, 2016. Url: <https://doi.org/10.1162/003355305775097524>.

¹⁸²Rabeya S. Lata, "Non-Performing Loan and Profitability: The Case of State Owned Commercial Banks in Bangladesh," *World Review of Business Research* 5, no. 3 (2015):180.

¹⁸³Inter-American Development Bank. *The Costs and Benefits of the Strict Protection of Creditor Rights: Theory and Evidence* (New York Avenue, Washington, D.C. Inter-American Development Bank, 2000), 7.

¹⁸⁴Marco Pagano, eds, *Defusing Default incentives and institutions* (Washington DC: Inter-American Development Bank, 2001).

c) Stakeholders' interest on protracted delays in courts

A genuine interest of borrowers to repay the loan is always important for lower default and less NPL. However, as mentioned earlier, in the case of directive credit, or intense competition to improve profitability through an extension of easy credit banks are not always able or even willing to make a proper assessment of credit. Though borrowers are the key stakeholders who may benefit from constructive loan default actions or non-actions from other stakeholders such as lawyers, mediators, and bankers may also promote this process. For instance, it is frequently claimed in the literature that lawyers prompt their parties to make time petition and make delay in the disposal of cases. One reason usually put forward for such action from lawyers is their natural fear that quick disposal of cases through ADR may quickly reduce the number of cases from their *seresta* and therefore create a business loss.

As the process of settlement through litigation delayed by the litigants, lawyers and the administration of judges and such types of delay causes the problem to all different parties¹⁸⁵. Such types of delay shall affect the overall demand for litigation¹⁸⁶. Further judicial workloads also caused for loading the case of a country¹⁸⁷. Case manager of the courts is also responsible for delays in court proceedings¹⁸⁸. Cases are delayed due to a delay in the court system; lawyers caused delay and delay caused by independent person or agencies¹⁸⁹. The delay of the court system has also been occurring by the inefficiency of court, the engaged counsels¹⁹⁰. The litigants have no faulty attitude for delaying the proceedings, but lawyers abuse the rules of procedure¹⁹¹. Lawyers may not take preparation for the case during the hearing as such they frequently take time further some law chambers are overburden with litigation and depend on supportive staff, i.e., junior lawyers, but they have no accountability

¹⁸⁵University of Otago, Are Courts Slow? Exposing and Measuring the Invisible Determinants of Case Disposition Time (New Zealand: Business School, 2013),1.

¹⁸⁶*Id.* at 1.

¹⁸⁷National Center for State Courts. Florida Judicial Workload Assessment Final Report (Florida: Research Division, 2016), 16.

¹⁸⁸*Id.*at17.

¹⁸⁹Emmanuel L. Caparas and Florentino P. Feliciano, "The problem of delay in the philippine court system," Philippine Law Journal 62 (1987): 203.

¹⁹⁰*Id.* at 204.

¹⁹¹*Id.* at 204.

of the cases¹⁹². Moreover, cases are delayed by the court related agencies as the court agencies do not execute summon on due time. Cases are even delayed by the witness as they do not come to court on due time for giving witness¹⁹³.

d) Other factors affecting the rational choice of default and delay

i) Natural calamity and bad luck

The borrowers cannot repay the loan because their income becomes unexpectedly low for losing the business due to accidental reasons¹⁹⁴. Natural disasters create a business loss for the borrowers as such they cannot repay and ultimately become loan defaulter¹⁹⁵. The price of the commodities automatically decreased, then the borrower's loss their business that caused default the borrowers as such the NPL is increasing¹⁹⁶. Though business environment is always uncertain, in some cases borrowers make an excuse to some general events that affect the entire economy, that is not equally applicable to them all.

ii) Government Policy

Sometimes the NPL of the banks increased due to government policy as the government change policy in which the borrowers are fallen in financial loss and borrowers cannot repay their Bank loans¹⁹⁷. Banks should follow government policies while financing the agricultural and manufacturing sector. However, for avoiding NPL banks should be slow down financing in the manufacturing as well as agricultural companies due to their continued default¹⁹⁸. Radical approval of new banks as such new banks give opportunities to the borrowers for

¹⁹²*Id.* at 205.

¹⁹³*Id.* at 206.

¹⁹⁴University of Pennsylvania, *Natural Disasters and Credit Supply Shocks* (Philadelphia, USA: Wharton Risk Management Center, 2014), 2.

¹⁹⁵*Id.* at 11-16.

¹⁹⁶International Monetary Fund, *The Treatment of Non-performing Loans* (Washington DC: International Monetary Fund, 2005), 4-5, accessed May 20, 2014. Url: <http://Unstats.un.org/unsd/nationalaccount/AEG/papers/m3loans.pdf>.

¹⁹⁷Mabvure T. Joseph, Gwangwava Edson, Faitira Manuere, Mutibvu Clifford, Kamoyo Michael, "Non Performing loans in Commercial Banks: A case of CBZ Bank Limited in Zimbabwe", *Interdisciplinary Journal of Contemporary Research in Business* 4, no. 7(2012): 479.

¹⁹⁸*Id.* at 482.

sanctioning loans, and old banks facing competition with the new banks, and due to the reason new and old bank financing without considering the condition of the borrowers that deteriorates credit quality and increases credit risk, entailing non-performing loans¹⁹⁹. In this connection, Lawrance (2004) said that NPLs arise due to government desire to collect the tax, as government emphasis taxation rather than poor incentives, principal-agent problems, moral hazard, or dynamic commitment problems of the borrowers²⁰⁰.

The non-performing loans are great concerns for government and the economy. However, there are still suggestions that can be adapted to reduce and prevent the growing numbers of non-performing loans. First, the bank should include the two actions in their operations- a) estimate the non-performing loans and allocate it to the corresponding borrowers and consider how unpaid loans are recorded in the accounts in such a way as to increment principal outstanding; and b) estimate the interest received rather than the receivable, and on the interest payable so that the performing loans are not affected by the non-performing loans otherwise loans ultimately shall be treated as NPL.²⁰¹

iii) *Hartals* and other political instabilities

Political instabilities always make pressure on the profitability of businesses, especially for small and medium enterprises; negatively affect their ability to repay loans. Though political instability was a common phenomenon in Bangladesh couple of years earlier, under the current context, it is not a considerable factor to make a significant impact on NPL recovery anymore.

iv) Potential for fund diversification, and lack of collateral

It appeared that borrowers had diverted their fund; as such, fund diversification of the borrowers is the caused for becoming a defaulter. Borrowers do not disclose that their fund diversification to the Bank, as such they become defaulter and cannot pay the bank's loans

¹⁹⁹ Ming-Chang Cheng, Chien-Chi Lee, Quynh N. T. Pham, and Hui-Yu Chen, "Factors affect NPL in Taiwan Banking Industry," *Journal of Accounting, Finance and Economics* 6, no.1 (2016):68.

²⁰⁰Lawrence Dwight, "The Role of Non-Performing Loans in China: A Public Finance Approach (2004):9.

²⁰¹Anne Harrison, "Non-performing loans –Impact on FISIM" *Fourth meeting of the Advisory Expert Group on National Accounts* (Frankfurt: Advisory Expert Group, 2006), 3-4.

accordingly they failed to maintain a commitment to the bank for repayment of loans²⁰². Further, if the collateral security is less, the borrowers do not want to pay the bank loans regularly that caused to be defaulter borrower²⁰³. Borrowers took loans for some purposes, but after getting the loans, they have been used the loan amount for other purposes that caused loan default and increasing Non-performing loan²⁰⁴.

v) Corruption of Bankers

The state-owned bank officers engage with corruption due to lack of personal stake and non-accountability of nominated directors in the Board, undue interference of governmental, political and other influential persons, corrupt trade union leaders under political patronization, and career advancement hazards for honest professionals²⁰⁵. They generally are doing corruption by means of not following the rules and regulation for sanctioning loans, political pressure and patronage for posting, promotion, an extension of job tenure, overvaluation of properties and assets of the borrower which are offered as collateral, etc. Though both borrowers and bankers make delay in ADR, a distinction between different reason for delay indicates that in only a small percentage of cases delay is caused by mal-intention like doing some corruption²⁰⁶ (SCBs- 5.1%, Private Bank -2.3%, Foreign Bank - 1.2%, RAKUB Krishi Bank-8.5%, Specialized Bank-5.4%, and others Bank-1.1%), or taking undue benefits. In this respect, Hon'ble Finance Minister AMA Muhith blamed some banks for turning their borrowers into loan defaulters. In a workshop held at CIRDAP on 26 Aug 2017, he opined, *“Some banks have a tendency to deliberately turn their borrowers into*

²⁰²Kipyego D. Kwambai and Moses Wandera, “Effects of credit information shaRing on nonperforming loans: the case of Kenya commercial bank Kenya,” *European Scientific Journal*.9, no.13 (2013):187.

²⁰³*Id.* at 187.

²⁰⁴Shafiqul Alam, Md. M. Haq and Abdul Kader, “Nonperforming Loan and Banking Sustainability: Bangladesh Perspective,” *International Journal of Advanced Research* 3, no.8 (2015): 1203, accessed on June 20, 2017. Url: <http://www.journalijar.com>.

²⁰⁵International Business Forum of Bangladesh (IBFB), *Study Paper on Reducing Corruption in Accessing Industrial Credit* (Bangladesh: IBFB),15, accessed September 10, 2017. Url: <https://www.ibfb.org/>.

²⁰⁶Transparency International Bangladesh. *Corruption in Service Sectors: National House hold Survey, 2015 (Bangla)* (Dhaka: Transparency International Bangladesh, 2016),50. See also, Transparency International Bangladesh. *Corruption in Service Sectors: National House hold Survey, 2015 (Bangla-extended summary)* (Dhaka: Transparency International Bangladesh, 2016),40.

defaulters from day one of allocating loans to them.”Furthermore, corruption affects the growth of banking sector²⁰⁷.

2.3. Scope of the Research

As discussed in Chapter 1 and further depicted in this Chapter, NCBs are struggling much with their NPL, in comparison with other private and foreign commercial banks in Bangladesh. According to the recent statistics of Bangladesh Bank, the rate of NPL declined to 2.81 percent overall, for NCBs the rate still remains as high as 11.76 percent (Table 1.4). Therefore, the scope of the current research is confined in NCBs only. Though other state-owned specialized banks such as Bangladesh *Krishi* Bank, Bangladesh *Shilpa* Bank, and few other DFIs also involved a very high rate of NPLs, this group is excluded because the nature of loan provided by NCBs and DFIs vary both in the amount and in borrower groups, and so may not be comparable for this purpose.

Moreover, as shown in Table 2.1, NCBs comprise a significant portion of the total banking sector in Bangladesh both in terms of the number of branches and volume of loan grant. As shown in the table in terms of the total number of branches NCBs composed around 40% of the total Banking sector in Bangladesh. Though private commercial banks also have a large number of branches, analyzing only four NCBs is more convenient in comparison with 39 private commercial banks.

Table 2.1: Distribution of bank branches in Bangladesh: NCBs vs. Other banks

Types of Banks	Number	Branches	% of total
Nationalized Commercial Banks	4	3599	<u>39.56%</u>
<i>Sonali Bank</i>		1205	
<i>Agrani Bank</i>		931	
<i>Janata Bank</i>		909	
<i>Rupali Bank</i>		554	

²⁰⁷Junghee Park, “Corruption, soundness of the banking sector, and economic growth: A cross-country study,” *Journal of International Money and Finance* 31(2012),908, see also, Fahmida Khatun, “State of the Governance in the Banking Sector: Dealing with the Recent Shocks,” presentation of the dialogue organized by the Centre for Policy Dialogue (CPD), on 5 November 2012(BRAC Centre Inn Auditorium, Dhaka: CPD, 2012), 101.

Other state-owned commercial banks	2	104	01.14%
Bangladesh Small Industries and Commerce Bank		68	
Bangladesh Development Bank		36	
Development Financial Institutions	2	1407	15.47%
Bangladesh Krishi Bank		1029	
Rajshahi Krishi Unnoyon Bank		378	
Private Commercial Banks	39	3917	43.06%
Foreign Commercial Banks	9	70	00.77%
Total Banks	56	9097	100.00%

Source: Calculated from the website data of respective Banks

There is intense competition among local private commercial banks, public banks and foreign banks in writing-off NPLs as bad debt. As shown in the table below²⁰⁸ in 2012 NCBs need to write off more than 92.3 billion of their bad debts, while for private commercial banks and development financial institutions the rate was 85.5 billion and 32.3 billion respectively. This greater severity also rationalizes to deal with NPLs of NCBs.

Table 2.2: Write-off bad debts over the years: NCBs vs other banks (Billion Taka)

Bank type	2010	2011	2012
NCBS	<u>70.5</u>	<u>82.4</u>	<u>92.3</u>
DFIs	31.8	32.0	32.3
Private commercial	<u>69.6</u>	<u>77.1</u>	<u>85.5</u>
Foreign commercial	2.1	2.4	2.9
Total	174.0	193.9	213.0

Source: Bangladesh Bank Annual reports

Further, the scope of the research confines to NCB branches of Dhaka district because all different kinds of variation in businesses (i.e., Micro, SME and large industrial), both in

²⁰⁸Md. M. Siddique, Mohammad T. Islam and Md. S. Ullah, "Non-legal measures for Loan recovery in the banking sector of Bangladesh," Seminar arranged by Bangladesh Institute of Bank Management on December 21, 2013(Dhaka: Bangladesh Institute of Bank Management,2013), 13.

terms of size and nature are available in Dhaka. Further, as shown in the Table 2.3 NCBs have largest banking network in Dhaka district. Therefore, any problem identified or recommendation outlined for Dhaka would have a wider application all over the country. However, the outcome of this research can further test in other areas of the country to test any significant area specific variable that may markedly affect the effectiveness of ADR in *Artha Rin Adalat Ain, 2003*.

Table 2.3: Geographic distribution of NCBs in Bangladesh, October 2015²⁰⁹

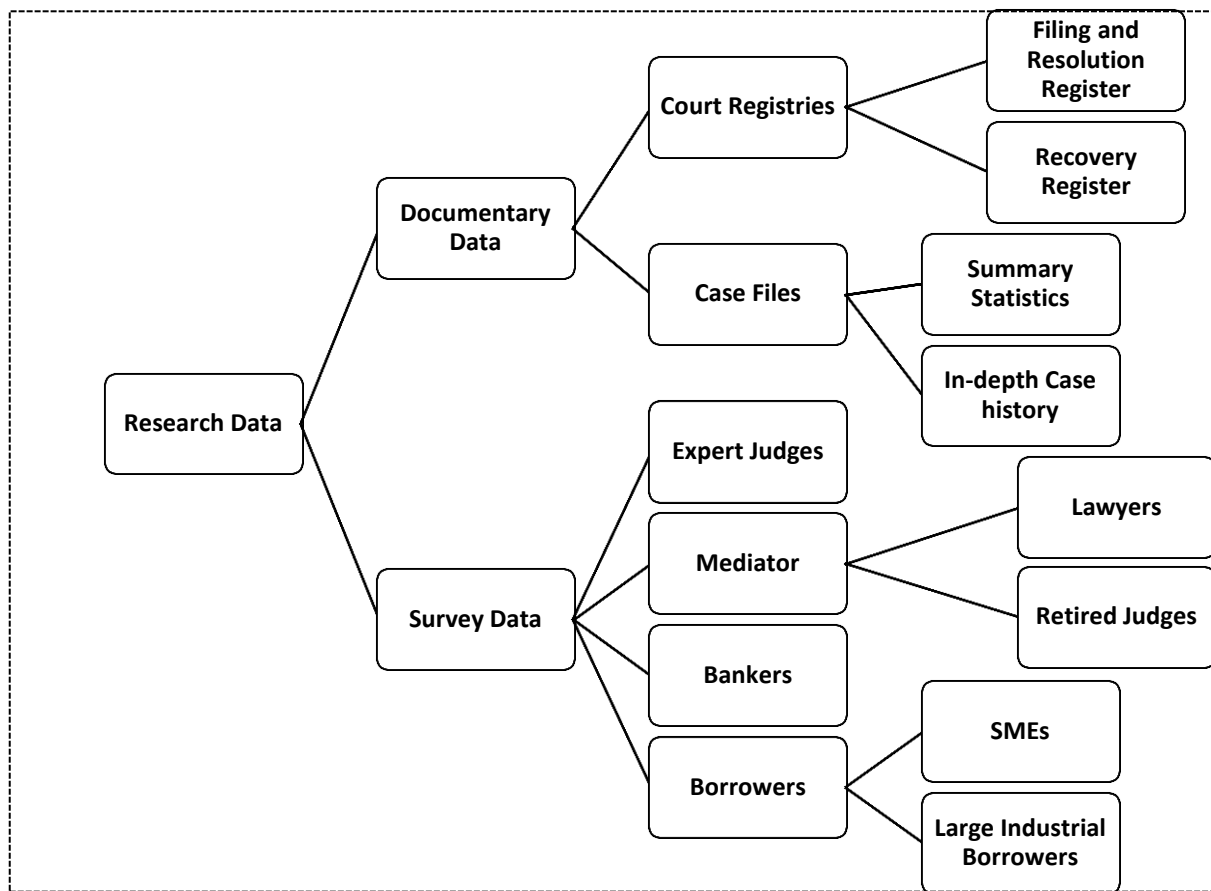
District	Sonali Bank	Agrani Bank	Janata Bank	Rupali Bank
Dhaka	123	90	107	64
Chittagong	67	70	69	42
Rajshahi	23	19	28	8
Khulna	23	29	22	13
Barishal	29	21	18	10
Sylhet	32	35	25	20

Source: Data from the website of respective banks in October 2015

2.4. Methods of Data Collection

This thesis examined the major causes of ineffective ADR and consequent lower resolution and realization of NPL through ADR. Both documentary and empirical data collected and analyzed for this purpose. Further, to improve triangulation, research data collected from five different sources. As shown in Figure 2.2, unpublished documentary data were collected from court registries and individual case files; Further, empirical data through semi-structured questionnaire survey was collected from mediators of *Artha Rin Adalat*, Bankers from NCBs studied in this research, and from NPL borrowers of *Artha Rin Adalat* (existing or near past).

²⁰⁹ Data collected from website of the respective bank viewed at October 2015

Figure 2.2: Methods of data collection

Source: Developed by the researcher based on the methodology of this research

However, a brief outline of different methods used to collect documentary and empirical data for this research has been included in this section, further analysis of data collection techniques used to retrieve documentary data from court registries, and to collect empirical data from different respondents have discussed in respective chapter throughout this thesis.

2.4.1 Data collected from courts on resolution and realization of NPL:

To examine whether mediation in ARA provides a more accessible method to resolve NPL disputes in comparison with litigation, data collected on the resolution of NPL disputes and realization of money through litigation and mediation.

a) **Data from court registries**

Relating to litigation and in-court mediation resolved in 2013 were collected from case registers, and realization registers kept at respective *Artha Rin Adalats* of Dhaka district. These documentary data were collected in January 2015 from the courts for the year of 2013.

Court registry data on filing and disposal

In each court, a case register records the yearly aggregate data on:

- the number of cases outstanding at the beginning of the year-2013
- the number of cases filed in a year-2013; the number of cases disposed of through litigation-2013, mediation-2013, *ex parte*-2013 or dismissal -2013 and
- the number of cases pending at the end of a year-2013.

However, as mentioned earlier, collective data like the total number of cases filed and the total numbers of disposed of cases in a year are not recorded electronically as the data are recorded manually by the court clerks and are thus not readily available. It was necessary to request these collective figures from court officials with the consent of respective judges, using a proforma schedule prepared for this purpose.

Therefore, aggregate data on yearly disposal of cases collected from the case registers provide an overview of cases including:

- the total number of cases filed in the year 2013
- the total number of cases disposed of through mediation
- the total number of cases disposed of through litigation
 - through contested decree
 - through an *ex-parte* decree
 - through dismissal.

The collective rate of resolution of cases was calculated by dividing the total number of cases disposed of in 2013 by the total number of cases filed in the same year although some of the cases resolved in 2013 might be filed in an earlier year. Since 2013 represented a typical year without showing any major deviation in filing or disposal of cases from other years such calculation did not distort the result.

b) Data from individual case files

Though data from court registries afford an overview of yearly resolution of cases through litigation and in-court mediation, a sample of individual case files was consulted to measure the average time required to resolve cases through litigation and in-court mediation. Individual case files record details of the case process, including the date of filing, order(s) made on different dates, date of resolution and decree of the court on the outcome generated through mediation or litigation. Individual case files also include complaints (a claim or complaint by the party who initiates the lawsuit), written statements (a written response to complaint made by the defendant of his defense) and other helpful documents including bank statements. To answer this research question, data were collected from the individual case files.

- the date of filing of cases
- the date of resolution of cases
- the nature of cases, i.e., money suit (*Artha Rin* case)
- the type of resolution, i.e., either through mediation or litigation or ex-parte.

The higher the total number of cases dealt with in a court, either through mediation or litigation, the lower was the percentage of total cases collected for a random sample and vice versa. However, the higher the number of cases disposed of in a court, the higher was the total number of sample drawn. For instance, in 2013, The *Artha Rin Adalat* -4, Dhaka resolved the highest number of *Artha Rin* cases (445), from them no case resolved through in-court mediation and 39 cases were resolved through contesting litigation was selected initially for the sample.

From these selected files of in-court mediation and litigation, the time-to-resolution for every selected sample was calculated on the number of days which elapse between the date of the filing of a case and the date on which a mediated agreement or a contested decree was made.

However, actually, no mediation has been performed of the above four Courts, two courts, i.e. *Artha Rin Adalat* -1, Dhaka and *Artha Rin Adalat* -3, Dhaka counted cases through *Solenama* (compromise Deed) as mediation but not as a mediation under the *Artha Rin Adalat Ain*, 2003.

c) A case study on delay from selected case files

Furthermore, four completed case study has discussed in the research with a view to find out the procedural steps as well as how much time has taken for disposal of those cases. An extensive scrutinization has conducted of those four completed cases related to National Commercial Banks. Among the four, one selected from contesting trial in the *Artha Rin* case stage and the second one from Ex-parte in the *Artha Rin* case stage. The third one selected from completed through mediation in the *Artha Rin* case stage; and the fourth one was ex-parte in *Artha Rin* case stage but later settled through mediation in the *Artha Jari* stage.

d) Data from realization registers of courts-

Though average time-to-resolution was collected from individual case files kept at different courts, data required to calculate average time-to-realization of money were not recorded in individual court files. This is because realization through litigation is a lengthy process in most cases and may take several years especially when a judgment debtor becomes absconding. In this case, payment is usually made only after an execution suit– a separate suit that is filed in the same court by decree holders when judgment debtors become absconding to pay the amount decreed. In most cases,decree holders had to file an execution suit to realize their claim.

Further, in the case of litigation, data on realization cannot be recorded in individual case files because sometimes the payment of litigation is made through installments. However, in mediation too, realization could sometimes be a continuous process if payment is made through different installments. Therefore, the realization register of each individual court was consulted to collect data on realization,and a total number of *Artha Rin* cases for realization in 2013 is 1121 against which total realization amount of Tk.14,564,553,592.00 as shown Table 4.3.

However, maximum Ex-parte suits are stayed by the court until the execution of Warrant of Arrest as per section 44 of the *Artha Rin Adalat Ain*, 2003 if the judgment debtor does not appear in the court. Every resolution is recorded against the case number and a column next to the case number indicates the nature of the resolution,i.e., contesting litigation, Ex-parte or mediation. Whether such realizations were made following an execution suit (or not) can be identified by the case number recorded in the register. If the money was realized after filing an execution suit, the case number was written in the realization register as Decree No.,and if

the money was realized before filing an execution suit, those cases were numbered as Case No. Following this recording system, realization data were further separated into realization before execution suit and realization after execution suit

2.4.2 Semi-structured questionnaire survey

Quantitative data collected from court registries and individual case files to explore the performance of ADR in resolving and realizing NPL cases, more data on different qualitative aspects were required to explain the lower rate of resolution and recovery. Accordingly, qualitative data collected from borrowers and bankers, mediators - the all three group who participate in mediation. As the objective of this research was not only to collect a response to specific questions of what, but also to gather respondents' opinion of the reason why semi-structured questionnaire surveys conducted to allow that flexibility.

a) A semi-structured questionnaire survey to borrowers

As observed through the initial analysis of court registry data a majority of NPL borrowers are from SMEs. Therefore, out of 40 respondents 38 responses were collected from SME and big borrowers and the remaining 2 were from small household borrowers. Response from small borrowers has intentionally kept low, as small borrowers can still deal with their cases through PDR Act.

b) A semi-structured questionnaire survey to Bankers

Semi-structured interviews were conducted to 30 bankers from four NCBs, i.e. *Sonali* Bank, *Agrani* Bank, *Janata* Bank, and *Rupali* Bank to gather information on bankers' perception of mediation conducted under *Artha Rin Adalats*. 10 interviews were taken from officials of *Sonali* Bank that still leads NCBs in Bangladesh. 10 interviews were collected from officials of *Agrani* Banks and five each from *Janata* Bank and *Rupali* Bank. Interviews were conducted one to one in head offices and branches of respective banks. Mid-level managers having an experience of more than 10 years were chosen for the interviews.

c) A semi-structured questionnaire survey to mediators

Under *Artha Rin, Adalat Ain* mediators could be selected from judges, lawyers, bankers, or any other competent person able to conduct the mediation. Therefore, to get an opinion from a diverse perspective 18 lawyers and two retired judges who work as mediators for *Artha Rin* cases are interviewed in the research. Though the questions asked to mediators were in some

way similar to those questions asked to bankers, and borrowers attending mediation, responses from mediators were treated as more neutral and a good source for triangulation.

d) A semi-structured questionnaire survey to expert judges

As both borrowers, bankers and mediator lawyers are a stake holder in *Artha Rin* cases, this research solicits opinion from 20 expert judges who have a long experience to serve in *Artha Rin* cases. The purpose of collecting opinion from expert judges was to triangulate responses from other respondents.

2.5 Conclusion

Though data from court registries afford an overview of yearly resolution of cases through litigation and in-court mediation, a sample of individual case files was consulted to measure the average time required to resolve cases through litigation and in-court mediation. Individual case files record details of the case process, including the date of filing, order(s) made on different dates, date of resolution and decree of the court on the outcome generated through mediation or litigation. Individual case files also include complaints (a claim or complaint by the party who initiates the lawsuit), written statements (a written response to complaint made by the defendant of his defense) and other helpful documents including bank statements. To answer this research question, data were collected from the individual case files.

CHAPTER 3

MECHANISM OF NPL RECOVERY IN BANGLADESH: INSTITUTIONAL PROCESS, LITIGATION AND ADR

3.1 Introduction

Financial Institutions have been following some policy and guidelines. As a ship cannot run without rudder, As such financial institutions should have proper guidelines to finance to the borrowers, to recover the loans from the defaulter borrowers. To follow internal mechanism for financing loans to the borrowers and recovery the same are mandatory for the Bank and financial institutions. In this respect, all banks and financial institutions have prepared an internal guideline by following the Rules and Regulation of Bangladesh Bank as well as prevailing laws of Bangladesh so that no conflict will be arisen among the guidelines of the Bank, financial institutions, Bangladesh Bank Regulation, and laws of Bangladesh. When the borrowers become defaulter then the respective bank should file cases against the defaulter borrowers under the *Artha Rin Adalat Ain*, 2003 in order to recover the bank dues. In the last chapter I discussed about theoretical framework and methodology of this thesis and this chapter, I will discuss about mechanism of NPL recovery in Bangladesh: Institutional process, litigation and ADR.

3.2 In-house NPL Recovery Mechanism followed in Bangladesh

3.2.1 In-house recovery mechanism followed by NCBs

No Banks of Bangladesh have been following same lending policies. Maximum cases banks have tried to lend the borrower as per guidelines of the Bangladesh Bank. The Banks are financing loans to the borrower considering default risk minimization and borrower's ability to pay off or not to pay off loan²¹⁰. Before lending, the bank should identify the cost for the financing and be careful as to collateral²¹¹. Bank should justify the borrower's capital, assets,

²¹⁰Tor Jacobson and Kasper Roszbach, "Bank lending policy, credit scoring and value-at-risk," *Journal of Banking & Finance* 27 (2003) 616, accessed December 17, 2017. Url: www.elsevier.com/locate/econbase.

²¹¹Anil K. Kashyap and Teremy C. Stein, "Monetary Policy and Bank Lending," *NBER studies in Business Cycle* 29 (1994): 249.

management, earnings, and liquidity before financing the borrower²¹². However, at the time of financing the bank should consider the Business risk, economic & financial risk, management risk, security risk and recovery risk of the bank²¹³. However, the following policies have maintained by the NCBs for sanctioning credit towards their borrowers and recovery thereof:

➤ **Sonali Bank Limited:**

- If the Credit Risk Grading (CRG) score is acceptable, then the loan is approvable as per delegation power of the loan sanction, and CRG has calculated Financial Risk, Business/Industry Risk, Management Risk, Security Risk, Relationship of the borrowers²¹⁴.
- Credit Administration Division scrutinize the security deeds whether the security has been obtained and documented as per policy of the Bank and control over the all security documents as the proper documented loan documentation ensure the interest of the bank and established the right of the Bank for legal action for the recovery of loan through court²¹⁵.
- Bank should maintain compliance and monitoring system so that bank can analyze and collect all direction, circular, circular letter etc. centrally issued by the controlling authority, and credit monitoring can inform the banker as to the financial condition of the borrower earlier²¹⁶. With a view to reduce, NPL Bank should follow the Bangladesh Bank Rules and Regulations²¹⁷.
- Bank take steps for recovery loan as per provisions of the *Artha Rin Adalat Ain*, 2003 (as amended) and Branch also takes effective initiative for recovery the written-off loan which is monitored by the recovery division of the head office²¹⁸.

²¹²Rustom A. Hawlader, *Bank and Financial Management*, (Dhaka: Attatna Prokash, 2007),35.

²¹³Agrani Bank Limited, *Credit Policy-2013* (Head Office, 9D, Dilkusha C/A, Dhaka: Agrani Bank Limited, 2013),4.

²¹⁴Sonali Bank Limited, *Revised Credit Policy and Credit Risk Management Policy-2015* (Dhaka: Sonali Bank Limited, 2015), 5-7.

²¹⁵*Id.* at 22-24.

²¹⁶*Id.* at 25.

²¹⁷*Id.* at 31.

²¹⁸*Id.* at 34.

- During selection borrower and guarantor the bank officials should follow the KYC (know your customer), Money laundering prevention Act, Anti Terrorism Act and other rules and regulations and consider the character, capacity, collateral, condition, capital, control for credit of the borrower²¹⁹.
- The Board of Directors of the Bank is entitled to hold all power, and all loan proposals shall proceed as per approved format of the Board of Directors in which all information papers or documents should present as per checklist²²⁰.

➤ **Agrani Bank Limited:**

- At the time of any loan renewal, accrued interest will not capitalize with the principal amount under any circumstances and documented again²²¹.
- Credit should rate monthly before classification, and no interest from the classified loan can take into profit unless recovered in cash or as per guideline of the Bangladesh Bank from time to time²²².
- Legal proceeding should execute through expert lawyer for recovery loan and maintained a black list of the defaulter borrowers so that future loan will not grant to them and black list should be up dated. Bank may obtain ownership of the security properties through court²²³.
- The borrowers who have no security will be maintained a list and tried to attach their property through court and Board can write off the account as per guideline of the Bangladesh Bank²²⁴.
- Recovery procedure against write off have to be continued, and any recovery from written-off loan will be made account for as per Banking Company Act, and Guidelines with regard to CIB reporting, provisioning and write -off of bad and doubtful debts, and suspension of interest accrual should be strictly enforced. Zonal

²¹⁹Sonali Bank Limited, *Policy Guidelines* (Dhaka: Sonali Bank Limited, 2015),31-32.

²²⁰*Id.* at 41.

²²¹Agrani Bank Limited, *Credit Policy-2013* (Dhaka:, Agrani Bank Limited, 2013),9.

²²²*Id.* at 25.

²²³*Id.* at 26.

²²⁴*Id.* at 26.

and branch officials should be taken necessary action for recovery loan with a view to avoid time barred²²⁵.

➤ **Rupali Bank Limited:**

- It is a very acute problem to recover money from the defaulted borrower. If loan becomes NPL of any bank is more than 5%, then that situation is very much alarming issue of the development country in the world²²⁶.
- If Loan default then the Branch manager shall send notice to the borrower giving 15 days time, if no result come from the notice then send legal notice, also create social pressure to the borrower for recovery loan and create mental pressure through family or close relative²²⁷.
- Branch of the Bank should maintain register of loan and issued notice to the borrower when the time of expiry of loan has occurred. The manager or the 2nd person of the Branch should check register of the loan at the 1st day of each month, accordingly, send notice, demand notice, special notice, final notice even legal notice for recovery the loan if the borrower does not pay loan on due time²²⁸.
- After sending various notices, the Bank officials also communicate with the borrower in his residence, business places for recovery the loan, in that case, if the borrower has given commitment for payment the loan then the bank official should obtain an undertaking from the borrower. In this way, the bank official should maintain communication with the borrower until recovery the loan. The Branch arranges camp for recovery the loan in the presence of higher office. The Bank shall maintain the list of defaulted borrower. After applying all procedures if the result has not come or the borrower does not pay the loan then a bilateral discussion shall arrange with the borrower. Bank may reschedule the loan for recovery the loan²²⁹.
- When a loan becomes SMA (Special mention account), then it has treated as NPL. If a loan becomes non-performing, then as to the worth of loan, condition of loan, and why it has become NPL should observe by the Bank, The account should observe

²²⁵*Id.* at 27.

²²⁶Rupali Bank Limited, *Credit Manual* (Bangladesh: Rupali Bank Limited, 2013),129.

²²⁷*Id.* at 129.

²²⁸*Id.* at 128-130.

²²⁹*Id.* at 130-131.

meticulously²³⁰. The Bank also examines the documentation of the loan even go for legal action for safe guard the interest of the Bank. Bank also scrutinize that why the account has been defaulted and what is the business condition of the borrower²³¹.

- Bank shall scrutinize the financial condition of the borrower for realization loan and for demanding from the borrower bank should scrutinize about demand by the banks panel lawyer²³².
- If any loan becomes NPL during on-side supervision by the department of Bank Inspection of Bangladesh Bank in that case if the Bank wants to release from NPL, then Bank should obtain permission from the Bangladesh Bank, and conflict between Bank Management and Bangladesh Bank for classification then the decision of Bangladesh Bank shall be final²³³.

➤ **Janata Bank Limited:**

- With a view to sanctioning loans, the branch should follow the direction of the memorandum of understanding (MOU) executed between Bank and Bangladesh bank, and also should reserve at least 10% of the capital for following the BRPD Circular No.35 dated 29.12.2010 issued by Bangladesh Bank under BASEL-2²³⁴.
- Before financing to borrower bank should select the borrower considering his character, purpose of the loan, capacity to repayment loan, own capital, business condition, security condition, status, credit risk according to CRG, experience of the borrower²³⁵.
- Furthermore, bank also identifies present and permanent address of the borrower; guarantor, family condition, CIB report, financial liabilities of the borrower, and scrutinize the documentations²³⁶. If the loan is more than Tk.10 crore or Tk.10 crore,

²³⁰*Id.* at 132.

²³¹*Id.* at 132.

²³²*Id.* at 133.

²³³*Id.* at 139.

²³⁴*Janata Bank Limited, Managing Core Risk in Banking (Credit Risk Management)* (Dhaka: Head Office, Janata Bank Limited, 2014),17-18.

²³⁵*Id.* at 18.

²³⁶*Id.* at 19.

the bank shall obtain clearance certificate from the Head of Internal & Compliance Department as to confirmation that whether credit policy, identification the borrower and up dated CIB have been complied or not²³⁷.

- Bank shall construct task force, monitoring cell, conference, package allowance, mobile team, and early alert system, reprimand if loans recovery is low and to *apply Artha Rin Adalat Ain*, 2003 with a view to recover non-performing loans²³⁸. Further, Bank may pronounce for reward with a view to recovery NPL as per Bangladesh bank guidelines and government direction²³⁹. However, Loans provisions, CIB report, Rescheduling of the loans, Interest waiver, Written off loans of the loans should be as per guidelines of the Bangladesh Bank²⁴⁰.

3.2.2 In-house recovery mechanism followed by private commercial banks (PCBs)

The concerned recovery department will take all necessary measures, i.e. meeting with the borrowers, negotiate for restructuring, rescheduling settlement by way of extension of time, waiver of partial interest, serving legal notice, foreclosure and sale of mortgaged/ hypothecated/ pledged property, filing suit in time to avoid violation of section 46 of the *Artha Rin Adalat Ain*, 2003, follow up suits, publishing sale notice in the newspaper, best effort to be made to keep classified loan within the minimum possible level.

However, adequate provision against classified non-performing loan should be maintained as per Bangladesh Bank's Guidelines, and all activities related to loan classification should be as per guidelines of Bangladesh Bank. Furthermore, in all cases, Bangladesh Bank guidelines should follow by the respective private banks for CIB reporting, provisioning and write off bad and doubtful debts, and suspension of interest. Recovery department shall continuously follow up the dealing lawyers for early disposal of *Artha Rin* cases and try to settle with the borrower through negotiation out of court. Without filing *Artha Rin* cases, no bank shall write- off their classified account and legal action for recovery loans to continue until settlement.

²³⁷*Id.* at 43.

²³⁸*Id.* at 65.

²³⁹*Id.* at 66.

²⁴⁰*Id.* at 66.

3.2.3 In-house recovery mechanism: A comparison between NCBs and PCBs

All commercial Banks including NCBs as well Private Commercial Banks (PCBs) have been following recovery mechanism as per guidelines of Bangladesh Bank, but by following mechanism, few comparisons have shown like below:

- NCBs have griped with various problems of corruptions, inefficiency in loan default as well recovery NPL whereas PCBs are very much efficient to solve their NPLs problems²⁴¹.
- Loans sanctioning and recovery procedure of PCBs is satisfactory than loans sanctioning and recovery procedure of NCBs²⁴².

3.3 Relevant Laws and Regulations for the Recovery of NPL

All the financial institutions of Bangladesh have been followed mechanism for recovery the NPL in their special forms and prevailing laws and regulation of the country. Day by the NPL of the Banking sector in Bangladesh is increasing, and Non-performing loan in NCBs are higher²⁴³. In the previous chapter- 1, I have discussed about the introduction and background of the financial institutions of Bangladesh, and also impact and challenges of the financial institutions of Bangladesh. Financial institutions have been following certain laws regulations and policy for realization loans from the defaulted borrower. These describe as follows.

3.3.1 Relevant laws

Relevant Laws for recovery the NPL in Bangladesh has given below:

- (i) ***Artha Rin Adalat Ain 2003, (Act No. VIII of 2003)***

The *Artha Rin Adalat Ain, 2003* has played a vital role for recovery non-performing loans from the defaulted borrowers. It has made effective from May 01, 2003 except section 46 and 47. Those two sections were effective from May 01, 2004. This Act contains sixty sections

²⁴¹Saidul Hasan and Azizul Baten, "Performance of Nationalized and Commercial Bank in Bangladesh," *Journal of Applied Science* 5 (10) (2005): 1814.

²⁴²Ibid.1818.

²⁴³Md. A. L. Mahmud, "Banking Sector: Current Status," *Bangladesh Economic Update* 4, no. 12 (2013):14.

(Now fifty-Nine sections as section 21 repealed in 2010 through amendment) and divided into eight Chapters.

In the present context of Bangladesh, this law is playing vital role for recovery of Bank Loans from the defaulter borrowers. All the Banks and financial institutions will have to file cases under *Artha Rin Adalat Ain*, 2003 for recovery the NPL from the defaulted borrower. In this perspective, section 2(a) of the *Artha Rin Adalat Ain*, 2003 includes the following financial institutions for filing suits under this Act for recovery NPL:

- i. Bangladesh Bank established under Bangladesh Bank. Order, 1972 (P.O-President Order No. CXXVII of 1972);
- ii. Banks, established under the Bangladesh Bank, (Nationalization) Order, 1972 (P.O. No. XXVI of 1972);
- iii. Bank Companies, established or run according to the Banking Companies Act, 1991 (Act- No. XIV of 1991);
- iv. House Building Loan Granting Corporation, established according to Bangladesh House Building Finance Corporation Order, 1973 (P.O. No. VII of 1973);
- v. Investment Corporation of Bangladesh established under The Investment Corporation of Bangladesh Ordinance, 1976 (Ordinance No. XXXX of 1976);
- vi. Bangladesh *Shilpa-Rin Shangstha*, established under The Bangladesh *Shilpa-Rin Shangstha* Order, 1972 (Order No. XXVIII of 1972);
- vii. Bangladesh *Shilpa* Bank, established under The Bangladesh *Shilpa* Bank Order, 1972 (P.O. No. CXXIX of 1972);
- viii. Bangladesh *Krishi* Bank, established under The Bangladesh *Krishi* Bank Order, 1973 (P.O. No. XXVII of 1973);
- ix. *Rajshahi Krishi Unnayan* Bank, established under The *Rajshahi Krishi Unnayan* Bank Ordinance, 1986 (Ordinance No. LVIII of 1986);
- x. Bangladesh Small and Cottage Industries Corporation, established under The Bangladesh Small and Cottage Industries Corporation Act, (East Pakistan Act No. XVII of 1959);

- xi. Financial Institutions Act, 1993 established under the Financial Institutions Act, 1993 (Act No. XXVII of 1993);
- xii. International Finance Corporation (IFC);
- xiii. Commonwealth Development Corporation (CDC);
- xiv. Islamic Development Bank (IDB);
- xv. Asian Development Bank (ADB);
- xvi. International Bank for Reconstruction and Development (IBRD); and
- xvii. International Development Association (IDA).

However, In the case of *Uttara Bank v. Ali and Co. and others*²⁴⁴ it observed that the counter claim of the defendants is not entertainable as only the financial institution can institute the suit in the Court of *Artha Rin Adalat* for recovery of loan.

It has mentioned that according to section 4 of the *Artha Rin Adalat Ain, 2003* the *Artha Rin Adalat* will constitute as per followings:

- i. In order to fulfilling objectives of this Act and subject the provisions of sub-section (ii) and (iii), the Government may constitute one or more *Artha Rin Adalat* each District and publish the same through Gazette notification.
- ii. The Govt. may constitute *Artha Rin Adalat* for two or more Districts if they consider it convenient.
- iii. Provided that, no *Artha Rin Adalat* has constituted, declared under Sub Section-(i) above, the suits relating to recovery of loan of the financial institution to be filed in the Court of the Joint District Judge, having its jurisdiction and the provisions of this Act shall be applied hearing, issue of summons and Appeal as if the Court of the Joint District Judge has constituted or promulgated for carrying out the objectives of the Act.

²⁴⁴55 DLR HCD 156 (2003).

- iv. In order to fulfilling objectives of this Section, according to the Civil Courts Act, 1887 the Govt. may declare any of the Joint District Judge Court as *Artha Rin Adalat* if necessary by shifting or re-fixing its local jurisdiction elsewhere; after declaration, the Court of the Joint District Judge so declared, shall stop activities or cease to function as Joint District Judge and the District Judge shall transfer the under trail suits of the aforesaid Court to any other Court under his jurisdiction.
- v. The Govt. shall appoint Judges for the *Artha Rin Adalats* from amongst the Joint District Judges in consultation with the Supreme Court and the Joint District Judges so appointed, shall not hold trials of the criminal and civil cases except holding the trials of *Artha Rin* cases.
- vi. If the Govt. so desires may entrust a Judge of an *Artha Rin Adalat* with the functions of another *Artha Rin Adalat* in addition to his own duty.
- vii. If any Judge of the *Artha Rin Adalat* has appointed under this section fails to perform his duty owing to leave, illness or for any other reason. The District Judge according to his local and administrative Jurisdiction may engage any Joint District Judge to perform the said duty in addition *to* his own work or for full time as a temporary arrangement.
- viii. The Govt. may close any *Artha Rin Adalat* at any moment through gazette notification.
- ix. If the Government close any *Artha Rin Adalat* according to sub-section above, shall make a specific arrangement for under trial cases of the said Court in the same order.
- x. If the *Artha Rin Adalat* was closed under the provision of sub-section, and the same was a Court, constituted according to sub-section (iv), then following such declaration of closing, the closed or suspended activities of the Joint District Judge shall be restored or revived and the District Judge shall transfer under trail suits in that Court.
- xi. The *Artha Rin Adalat* shall be stationed at District Head Quarter; when only one court was formed for two Districts, the Govt. will determine the location of District Head Quarter through a gazette notification.
- xii. The *Artha Rin Adalat* constituted and declared under this Section comprising the Joint District Judge; the trying judge should be called *Artha Rin Adalat* Judge.

(ii) **Other relevant laws**

Table 3.1 Other Relevant laws for the recovery of NPL in Bangladesh

Name of The Law	Relevant Sections
The Code of Civil Procedure, 1908 (Act V of 1908)	Section and Orders relevant with <i>Artha Rin Adalat Ain</i>
Limitation Act, 1908 (Act No. IX of 1908)	Article 59
Bankruptcy Act, 1997 (Act No. X of 1997)	11,12,13
The Bank Companies Act, 1991(Act No. XIV of 1991)	5(cc),(d), (e), (g) , 17, 27,28
The Financial Institutions Act, 1993 (Act No. XXVII of 1993)	2 (e), 14 (1)
The Public Demands Recovery Act, 1913 (Act No. III of 1913)	7, 14,
The Negotiable Instruments Act, 1881 (Act No. XXVI of 1881)	138, 140 & 141
The Penal Code, 1860 (Act No. XXXXV of 1860)	406,420,462A, 462B
Bangladesh Bank Order, 1972 (President's Order No. CXXVII of 1972)	Chapter -4
The Transfer of property Act, 1882 (Act No. IV of 1882)	53D,59,60,67
Power of Attorney Act, 2012 (Act No. XXXV of 2012)	6
The Contract Act, 1882 (Act No. IX of 1872)	126, 171, 172
The Registration Act, 1908 (Act No. XVI of 1908)	17, 78 (A)
The Stamp Act, 1899 (Act No. II of 1899)	Schedule

The Court fees Act, 1870 (Act No. VII of 1870)	Schedule
The Bankers' Books Evidence Act, 1891. (Act No. XVIII of 1891)	Section-4

Source: Relevant laws reviewed by the researcher during the research

(i) The Code of Civil Procedure, 1908 (Act V of 1908)

It is a full procedural law for recovery the NPL. In this connection, section 5(2) of the *Artha Rin Adalat Ain*, 2003 (Act No. VIII of 2003) states that the rules of the Code of Civil Procedure, 1908 shall be applicable as far as practicable with the rules of the *Artha Rin Adalat Ain*, 2003. The Code of Civil Procedure, 1908 contains 155 sections, five (two repealed) schedule and 51 Orders of the First Schedule. Furthermore, section 6(1) of the *Artha Rin Adalat Ain*, 2003 states that until anything repugnant, to the process of holding trials and disposal of the suits filed in the *Artha Rin Adalat*, under this Act, the relevant provisions of the Code of Civil Procedure, 1908 shall be applicable

(ii) Limitation Act, 1908(Act No. IX of 1908)

The Limitation Act, 1908 (Act No. IX of 1908) is playing a vital role for recovery the bank's loan as this act has prescribed time limit for claiming the loan from the debtor. It contains 29 sections and five parts. However, it also contains a schedule. As per schedule recovery, related limitation has given below.

Table 3.2: Application of the Limitation Act 1908 to *Artha Rin Adalat* cases

Sl. No.	Nature of demand by the Bank through suit (No. of Article of the schedule)	Period of limitation	Time limit for filing suit
1	For Money lent under an agreement that shall be paid on demand (59)	Three years	When the money is lent

Source: Limitation Act 1908

Furthermore section 46 (1) of the *Artha Rin Adalat Ain* 2003 states that notwithstanding anything contained repugnant to the Limitation Act, 1908 (Act no. IX of 1908), subject to the

rules of section 46(2), a financial institution shall lodge a suit after expiry of following one year, in case of a borrower is failed to repay the debt as per the terms of the agreement after commencing the payment schedule as follows:

- a) Minimum 10% of money receivable within first one year; or
- b) Minimum 15% of money receivable within first two years, or
- c) Minimum 25% of money receivable within three years,

Unless recovered the sum, subject to the rule of section 46 (1), shall file a lawsuit within following one year.

However, section 46(2) of the *Artha Rin Adalat Ain*, 2003 states that if the financial institution, in the meantime, has rescheduled for payment of loan within the term stipulated in section 46(1), the rule of the section 46 (1), subject to the necessary *mutatis mutandis*, shall come into force newly.

Moreover, section 46(3) of the *Artha Rin Adalat Ain*, 2003 mentions that if the period of total repayment schedule is less than three years as provided under rule of section 46 (1) and sum recovered within the period aforesaid is less than 20%, the financial institution, subject to the rule of section 46(4), shall file a law suit within next 1 (one) year.

In this respect, in the case of *Shahabuddin Khan v. Bangladesh (Spt. Original)*²⁴⁵ has decided that the provision of section 46 of the *Artha Rin Adalat Ain* , 2003 so far it relates to the question of filling the suit by the bank or financial institution against the borrower within specified time is directory and not at all mandatory and therefore , in any view of the matter, the suit is not barred by limitation.

(iii) Bankruptcy Act, 1997 (Act No. X of 1997)

The creditors or the financial institutions have given an opportunity to go to the Court to get the debtors declared insolvent and realize money by selling his properties and assets. On the other hand, debtors also get an opportunity to declare him insolvent through Court under this Act. This act was effective August 01, 1997 and comprises 119 section divided into eleven

²⁴⁵ 14 BLC HCD 111(2009).

chapters. The banks and the other financial institutions in our country have been urging for passing of Bankruptcy Act to deal with their claims expeditiously. The Bankruptcy Act, 1997 has already been passed by the parliament “under the Bankruptcy Act the government has set up two exclusive Bankruptcy Courts, In order to familiarize the judges, lawyers, accountants and bankers with the new Act and speed up the process, the central bank technical assistance project organized a workshop, which provided intensive training to the participants. Because of the Act and the training, the new bankruptcy courts are functioning well. It has recognized by the local and international participants in engage workshop that the Act is a self-contained Act. A creditor is not entitled to file plaint under this Act against the debtor if the liability of the debtor is not amount to Tk.5, 00,000/- or more²⁴⁶. Furthermore, the debtor cannot file case under this act if his liability is amount to Tk.20,000/- or he is under arrest or imprisonment by any competent court for payment of debt²⁴⁷.

(iv) The Bank Companies Act, 1991(Act No. XIV of 1991)

This act incorporated in 1991 and was effective from the February 24, 1991. It comprises 123 sections, eight parts and two schedules. Section 5(cc),(d), (e), (g) defined defaulter borrower, demand liabilities, secured loan or advance and debtor respectively.

Furthermore, according to section 17 of the Act due to following activities, the directorship will vacate:

- 1) If any director of an banking company fails to-
 - a) Pay advances or loans accepted by him or instalments or interests on that advances or loans, or
 - b) Pay the money he is bound to for any security, or
 - c) Accomplish any duty to be accomplished by him and the responsibility for which he has taken on in writing, and the said banking company gives him order through a notice by the Bangladesh Bank to pay the said advances, loans, instalments, interests or money or to accomplish the said duties and he fails to accomplish those duties

²⁴⁶Bankruptcy Act of 1997, Act No. X (1997), section 12

²⁴⁷Bankruptcy Act of 1997, section 13

and payments within two months after receipt of the order, in that case, the office of director shall be vacant beginning from the expiry of the said term.

2) Whoever has received a notice under sub-section (1) may, within thirty days after receipt of the notice, send his statements on the subject in question, if any, in written form to the Bangladesh Bank, and a copy thereof to the banking company who issued the notice.

3) The Bangladesh Bank shall provide decision within fifteen days thereon after receiving any statement under subsection (2).

4) The decision of the Bangladesh Bank under subsection (3) shall be final.

5) Where any post of a director is vacant under this section, the amount due to the vacant director's post shall be realized through integrating his share of the respondent [**bank company**] and after realizing the integrating share value the remaining outstanding shall be considered as government's demands and shall be recovered under the Public Demands Recovery Act, 1913 (Act No. III of 1913).

6) Where any post of a director is vacant under this section, the amount due to the vacant director's post shall be paid to the concerning banking company or a financial institution, he will not fit to be a director to his banking company or financial institution or any other banking company or financial institution within one year from the date of payment of the due money.

(7) Under Sub-section (1), if a Director of a Bank Company receives any notice, he or she will not be able to transfer the shares standing in his or her own name of the Bank Company until repayment of all dues of the concerned Bank or Financial Institution.

(8) No question can be raised in any court of law or tribunal other than the court of law constituted under section (3) of the Company Act, 1994 (Act No. XVIII of 1994) in respect of any action, order or decision taken under this section.

In addition to the above, according to section 27 of the Bank Companies Act, any banking company shall not do the followings:

- a) sanction any loan or advance in favour of any of its Directors other than 'secured loan or advance' or any loan, advance, guarantee or any other financial facility other than 'secured loan or advance' on the basis of the guarantee of any of its Directors;

- b) sanction any loan or advance in favour of the following persons or institutions without security or sanction any loan or advance on the basis of guarantee of the following persons or institutions:
- i) any of the members of the family of any of its directors;
 - ii) any interested institution or private company in which the Bank Company or any of its directors or any member of the family of any directors is a director, proprietor or partner;
 - iii) any public limited company which is in any way regulated by the Bank Company itself or any of the directors or any member of the family of any of its directors or the shares held by these persons give them opportunity to at least 20% of the voting rights.
- c) in the following cases, without the approval of the majority of its Directors except the concerned Director shall grant [any loan, advance, guarantee or any other financial facility-
- i) to any of its Directors or;
 - ii) any person, commercial institution or company in which any of the Directors of the said Bank Company has interest as partner, Director or Guarantor.

Explanation: In this [section], Director means the Director's wife, husband, father, mother, son, daughter, brother, sister and other persons dependent on the Director.

However, according to the section 27 (4) of the act the managing director of every banking company shall, before the close of the month to which the report relates, submit to the Bangladesh Bank a report in the prescribed form and manner, and in the said report the following particulars shall be mentioned-

- a) all loans and advances granted by it to companies, private as well as public, in which the banking company or any of its directors is interested as director; and
- b) all loans and advances granted by it to public companies in which the banking company or any of its directors is interested as managing agent or guarantor.

If on examination of any report submitted under sub-section 27(4) it appears to the Bangladesh Bank that any loans or advances referred to in that sub-section have been granted to the detriment of the interests of the depositors of the banking company, the Bangladesh Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose restrictions on the granting of such loans or advances, and may direct the banking company to secure the repayment of loans or advances granted in this way within such time as may be specified in the order.

Moreover, notwithstanding anything contained in any other law for the time being in force, no registration of any debtor companies director shall be effective and no director of any such bank shall be entitled to transfer or sell his shares without the permission of one level higher authority of the loan or investment sanction authority [of the lending bank or financial institution]²⁴⁸.

Furthermore, every bank companies sent defaulter list to the Bangladesh Bank and after receiving the same Bangladesh Bank shall send the defaulter list to the all banking companies as well as Financial Institutions of Bangladesh, accordingly no banking company or financial institutions shall grant any loan facilities in favour of the defaulter borrower²⁴⁹. In this situation, notwithstanding anything contained in any other law for the time being in force, the lending bank company or the financial institution shall file a suit against the defaulting borrower in accordance with the existing law²⁵⁰ for recovery loans.

No banking company shall, without the previous approval of the Bangladesh Bank, grant remit of [loans or its part or its earning interest] taken from it by any of the following persons or institutions²⁵¹:-

- a) any of its directors, and his family members;
- b) a commercial institution or company in which any director of the banking company is interested as Guarantor, co-director, managing agent; and
- c) any such person in which any director of the banking company is interested as partner or Guarantor.

Any remission of loans in disregard of the provisions of subsection 28 (1) shall be illegal, and who Directors or Officers were engaged for such a respite will be treated as convict and every responsible person for such a respite shall be punishable with imprisonment for no more than three years or a fine of no more than three lacs Takas or both.

It is worthy mentioned that notwithstanding anything contained in this Act or any other law, where any loan or advance or any other debt taken from Bank Company shall be writing off, no bar of taking

²⁴⁸The Bank Companies Act of 1991, Act No. XIV (1991), section 27A.

²⁴⁹The Bank Companies Act of 1991, section 27AA (1)(2)(3).

²⁵⁰The Bank Companies Act of 1991, section 27AA (4).

²⁵¹The Bank Companies Act of 1991, section 28 (1).

legal action to recover such writing off loans, advances or debts²⁵² and notwithstanding any Act for the time being in force, no transaction between a banking company and any of its debtors shall be triable by a Court and on the mere ground of high profits and rates of rent in the commercial business of a bank conducted in accordance with Islami [Shariat] excessiveness of the interest rate taken by the banking company²⁵³.

In the case of Janata Bank v. Mohiuddin Specialized Textile²⁵⁴ it has been held that the Court is not empowered or authorized to waive interest charged on the amount under claim as per agreement executed between the judgment debtor and the financial institution, i.e. the plaintiff Bank till its realization. The contemplation of the aforesaid provision of law is clear and unambiguous that the court cannot waive such interest and it is the Bank itself who could waive such interest to whom the defendant could approach for waiving the interest. Section 30 of the Bank companies Act 1991 has also imposed similar embargo upon court's jurisdiction to interfere with the interest so payable by the borrower to the Bank under agreement, although the court had authority to grant instalment to the decretal amount subject to some limitations.

(v) The Financial Institutions Act, 1993 (Act No. XXVII of 1993)

As per section 2(e) of this act, loan means the granting by a financial institution of advances, loans and other facilities in which a financial institution undertakes to bear the liabilities on behalf of the customer and incurring of other liabilities by a financial institution on behalf of the customer.

Furthermore, no financial institution shall grant any unsecured advance, credit or credit facilities to any firm in which any of its directors, individually or jointly, is interested directors unless the total amount of such facilities does not exceed 10 percent of its paid-up share capital and reserves and grant, in the manner mentioned in aforesaid, advances, credits or credit facilities in excess of Taka 500 000 to any person or group of persons other than those stated in the said clause.

Further, no financial institution shall grant any advance or credit allowing its own shares as securities or grant credits or advances to any other institution for the purpose of buying and selling its own shares and there arises any loss as a result of the granting of any unsecured advance, credit or credit facilities in contravention of the provisions of sub-section 14 (1),

²⁵²The Bank Companies Act of 1991, section 28 A.

²⁵³The Bank Companies Act of 1991, section 30.

²⁵⁴62 DLR HCD 501(2010).

all the directors of the financial institution shall, jointly and individually, be responsible for the compensation.

(vi) The Public Demands Recovery Act, 1913 (Act No. III of 1913)

Though all money realization or recovery case against the defaulted borrower has been filed under the *Artha Rin Adalat Ain*, 2003, Bangladesh *Krishi Bank*, *Rajshahi Krishi Unnayan Bank*, Others state owned Banks may file suit under this Act as certificate case if the claim amount is less than Tk.5,00,000.00 (Taka Five Lac) ²⁵⁵. The public demand recovery Act contains 6 parts, 59 sections and 2 schedules. However presently Bangladesh Bank has issued a circular not to file cases under PDR against the defaulted borrower for recovery loan.

(vii) The Negotiable Instruments Act, 1881 (Act No. XXVI of 1881)

Negotiable instrument is very important in the day-to-day transaction in the world. The bankers are taking cheque as security for recovery the loans and obtain promissory note for recovery the loan. According to section 13(1) of the Act, 1881, a “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer. This Act comprises 17 (seventeen) chapter and 139 section. If the cheque dishonoured against the payment of bank dues, then the Bankers filed case against the borrower under section 138, 140 & 141 of the Negotiable Instrument Act. According to section 138 of the Act, 1881, Bank has filed cases against borrowers due to dishonour of cheque under following ways:

According to section 138(1) where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both:

²⁵⁵*Artha Rin Adalat Ain* of 2003, Act No.VIII (2003), section 5(5)

Further, according to section 138 (3) notwithstanding anything contained in sub- section (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil Court if whole or any part of the value of the cheque remains unrealized.

Provided that nothing contained in this section shall apply unless-
(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 [thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within 30[thirty days] of the receipt of the said notice.

However, the notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

- a) by delivering it to the person on whom it is to be served; or*
- (b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or*
- (c) by publication in a daily Bangla national newspaper having wide circulation.*

Where any fine is realized under sub-section (1), any amount up to the face value of the cheque as far as is covered by the fine realized shall be paid to the holder.

Furthermore, according to section 138 (3) notwithstanding anything contained in sub- section (1) and (2), the holder of the cheque shall retain his right to establish

his claim through civil Court if whole or any part of the value of the cheque remains unrealized.

In addition to the above, if any company has occurred any offence, then section 140 has been followed. According to section 140 (1) if the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. Further, as per section 140(2) notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Furthermore, section 141 of the Act states that notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898), no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138; no court inferior to that of a Court of Sessions shall try any offence punishable under section 138.

(viii) The Penal Code, 1860 (Act No. XXXIV of 1860)

The Penal Code is also playing a vital role for recovery of the Bank loan from the borrower. In practice, Bank has been filing suit against the defaulted borrowers under this law when the

borrower has submitted any false documents to the Bank as security. This act contains 511 sections. In this respect, section 462A²⁵⁶ of the Penal Code, 1860 states that:

“Whoever, being an officer or employee of a banking company, by his negligent conduct in dealing with a banking transaction allows any customer of the company or any other person to cause loss of property to the company shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both”.

For example, an officer or employee of a banking company shall be guilty or negligent conduct if in discharging his duties he fails, either wilfully or negligently, to follow any direction of law prescribing the mode in which such duties are to be discharged.

Further, section 462B²⁵⁷ of the penal code, 1860 states that *“whoever fraudulently receives any benefit from a banking company in the course of any banking transaction shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both”.*

Moreover, under section 462A²⁵⁸ of the penal code “banking company” means:

- (a) banking company as defined in section 5(c) of the Banking Company Ordinance, 1962 (LVII of 1962);
- (b) A bank constituted under the Bangladesh Banks (Nationalization) Order, 1972 (P.O. No. XXVI of 1972);
- (c) A financial institution as defined in section 50(c) of the Bangladesh Bank Order, 1972 (P.O. No. CXXVII of 1972);
- (d) Bangladesh *Shilpa Rin Sangstha* established under the Bangladesh *Shilpa Rin Sangstha* Order, 1972 (P. O. No. CXXVIII of 1972);

²⁵⁶Act No. XXXXV (1860)((ACT NO.

²⁵⁷*Id.*

²⁵⁸*Id.*

- (e) Bangladesh Shilpa Bank established under the Bangladesh *Shilpa* Bank Order, 1972 (P.O. No. CXXIX of 1972);
- (f) Bangladesh House Building Finance Corporation established under the Bangladesh House Building Finance Corporation Order, 1973 (P.O. No. VII of 1973);
- (g) Bangladesh Krishi Bank established under the Bangladesh *Krishi* Bank Order, 1973 (P.O. No. XXVII of 1973);
- (h) Investment Corporation of Bangladesh established under the Investment Corporation of Bangladesh Ordinance, 1976 (XL of 1976);
- (i) Grameen Bank established under the *Grameen* Bank Ordinance, 1983 (XLVI of 1983);
- (j) Rajshahi Krishi Unnayan Bank established under the *Rajshahi Krishi Unnayan* Bank Ordinance, 1986 (LVIII of 1986);
- (k) A bank conducts in accordance with Islamic Shariah.

Furthermore, the mortgagor has transferred the mortgaged land after or before the mortgage, in that case, bank may file case under section 420²⁵⁹ of the penal code, 1860. Section 420 states that:

“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

(ix) Bangladesh Bank Order, 1972 (President’s Order No. CXXVII of 1972)

This Act has established in Bangladesh for establishing a central Bank in Bangladesh to manage the monetary and credit system of Bangladesh²⁶⁰. This Act contains 6 chapters

²⁵⁹*Id.*

²⁶⁰Bangladesh Bank Order of 1972, President’s Order No. CXXVII (1972), Preamble.

and 84 Articles. However, in connection with recovery of the loan, Chapter IV has been playing a vital role as it is furnishing credit information of the Borrower. The High Court Division of the Supreme Court of Bangladesh in the case of *SA Telecom System Ltd. And others v. Governor, Bangladesh Bank and others*²⁶¹ held that if a person in his own name or in the name of any institution is favoured with any advance or loan which has become overdue according to the definition of defaulter borrower in Act, 1991 read with Bangladesh Bank Order, 1972, becomes a defaulter borrower. Whenever a financial Institution sends the name of its defaulters to Bangladesh Bank, at once it classifies the names of incumbent in the CIB list. It is a continuing and ongoing process, and there is no escape from that.

(x) The Transfer of property Act, 1882 (Act No. IV of 1882)

Banks/Financial institutions have accepted property as security and settled the loan by selling the mortgage property. The mortgage has been dealing under the Transfer of Property Act, 1882. According to section 58 of transfer of property Act “*A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.*”

In this regard, section 53D of the Act states that:

“No immovable property under registered mortgage shall be re-mortgaged or sold without the written consent of the mortgagee, and any re-mortgage or sale made otherwise shall be void”.

Furthermore, after payment of the bank dues, the mortgagor(s) shall have right to redeem his property from the mortgaged Bank. In this respect, section 60 of the Transfer of Property Act, 1882 states that:

²⁶¹17 BLC 326 (2012).

“At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, or the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished.

If the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court. The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.”

Moreover, mortgagee bank shall have right to foreclosure or sale the mortgage property, if the borrower has not paid the bank dues as per stipulated time of the loan agreement or any other manner executed between the bank and borrower. In this regard, section 67 of the Transfer of Property Act, 1882 states that:

“In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.”

(xi) Power of Attorney Act, 2012 (Act No. XXXV of 2012)

When the borrower of the financial institutions or banks has given the property as security through mortgage, the borrower has given power to sell the mortgage property as per power of attorney act to the financial institutions or banks.

(xii) The Contract Act, 1882 (Act No. IX of 1872)

As the Banking, transition with its borrower has completely related with the loan agreement and others guaranteed as well as documentations, which dealt under the contract Act. Bank obtained lien, pledge, hypothecation and guarantee from the borrower as security. A Contract of guarantee has special significance in the business of banking as a means to ensure safety of funds lent to the customers. In case the borrower is unable to provide the security of tangible assets or the value of the assets falls below the amount of the loan and the borrower's personal security is not considered sufficient, an additional security is sought by the banker in the form of a guarantee given by a third person²⁶².

The contract of Guarantee has defined under section 126 of the Contract Act, 1872 that reads:

“A contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default.”

The person who gives the guarantee is called the ‘surety’ or ‘Guarantor’; the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’ or ‘beneficiary’. A guarantee may be either oral or written.

Illustration: A advances a loan of Tk.1,00,000.00 to B and C promises to A that if B does not repay the loan, C will do so. This is a contract of guarantee.

The common forms of security for bank lending are bailment and pledge of goods. Both those types of securities interests place the property in the position of the bank and borrower can take back the goods, or part of them, only against the issue of delivery

²⁶²Lutfur R. Chowdhury, *A text Book on Bankers' Advances* (Dhaka: L.R Chowdhury, 2012),468.

orders by the branch and against the availability of adequate funds in borrower's accounts²⁶³.

Under section 172 of the Contract Act, 1872, pledge or a pawn is defined as, **"The bailment of goods as security for payment of a debt or performance of a promise is called pledge"**.

The person who delivers the goods(bailor) as the security is called the 'pawner' or 'pledger' and the person to whom the goods are so delivered(bailee) is called the 'pawnee or the' pledgee'.

Illustration: X borrows Tk.500.00 from Y and keeps his watch as security for payment of the debt. The bailment of watch called a pledge.

Thus, a pledge is only a special kind of bailment. Here goods are deposited with a lender or promisee as security for the repayment of a loan or performance of a promise.

Lien is the right of one person to retain goods and securities in his possession belonging to another until certain legal debts due to the person retaining the goods are satisfied²⁶⁴. In other words, lien is 'a legal claim against an asset which is used to secure a loan and which must be paid when the property is sold. Liens can structure in many different ways.

A banker has a general lien on cash, cheque, bill of exchange and securities deposited with him in his capacity as a banker for any money due to him as a banker. Moreover, a banker's lien is more than a general lien. It is an implied pledge, and the banker has a right to sell the property after reasonable notice if the property comes into his hands in the ordinary course of his business. In this connection, reasonable notice will be depended on the circumstances of each case. This situation has recognized in the case of *Brando v. Barnett* (1864). Lord Campbell stated that:

"Bankers have a general lien in all securities deposited with them as bankers by a customer unless there be an express contract or circumstances that show an implied contract, inconsistent with lien".

²⁶³*Id.*162.

²⁶⁴*Id.*153.

However, section 171 of the Contract Act, 1872 states that a banker's lien can be applied if:

- The right does not extend to securities or other valuable property deposited with a banker merely for safe custody or for as special purposes;
- The possession of the instruments has been obtained lawfully as a banker;
- There exists no implied or expressed agreement contrary to the lien;
- The property is in the hands of the banker in the capacity of his customer's banker.

The Transfer of Property Act, 1882 has dealt with only mortgages of immovable property. It can be said that the mortgage of movable property is thereby forbidden. The mortgage of movables has called hypothecation. The movables may be stocks, raw materials, plants, machinery, finished products, vehicle, vessel etc. It may also be assignment of bills or collection of payments against work orders or supply orders. They must make regular periodical checks to verify stock reports since the hypothecated goods is not in the possession of the banker, may vanish at any time or the work order may be cancelled at any time due to its non-execution or improper execution.

Hypothecation has not defined in any law, but it is widely accepted in the merchant law by long usage and practice. However, Interpretation clause in section 3 of the Transfer of Property Act, 1882 under the definition clause of "actionable claim" makes reference to hypothecation in relation to movable property and the *Artha Rin Adalat Ain*, 2003 also mentioned about hypothecation.

Black's Law Dictionary²⁶⁵ defines the term "hypothecation" as the pledging of something as security without delivery of title or possession.

Dr. Harts describes hypothecation as a "charge against property for an amount of debt where neither ownership nor possession is passed to the creditors²⁶⁶".

In the case of "*Co-operative Hindustan Bank v. Surendra Nath 1932 cal 426*", says that A mortgage of movable property (such machinery and plant, stock-in-trade, floating stock

²⁶⁵Ninth edition, 2009,811.

²⁶⁶The Law of Banking, Hart L.D (Lond), 752.

policy) is perfectly valid transaction even though possession is not delivered, and the mortgage is only a hypothecation.

The Delhi High Court under *M/s. Gopal Singh Hira Singh v. Punjab National Bank* observed that in case of hypothecation, “The borrower is in actual physical possession but the constructive possession is still of the bank because, according to the deed of hypothecation, the borrower holds the actual physical possession not in his own right as the owner of the goods but as the agent of the Bank²⁶⁷”.

(xiii) The Registration Act, 1908 (Act No. XVI of 1908)

All instrument of mortgage referred to in section 59 of the Transfer of Property Act is mandatory for registration and any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage²⁶⁸. Furthermore, during registration of Mortgaged Deed, there need to deposit certain amount to the government for registration of the Mortgage Deed²⁶⁹ and registration fees should be paid at the time of presentation of documents for registration²⁷⁰.

(xiv) The Stamp Act, 1899 (Act No. II of 1899)

Legal mortgage when drafted needs to print on the non-judicial stamp paper as the documents should be stamped²⁷¹. Further where an instrument is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt²⁷², or makes redeemable or qualifies duly stamped transfer, intended as a security, of any marketable security then it shall be chargeable with duty²⁷³. Moreover, a release or discharge of any such instruments shall also be chargeable with the stamp duty²⁷⁴. Provided that, where property subject to a mortgage is transferred to the mortgagee, he

²⁶⁷AIR Delhi 115 (1976)

²⁶⁸The Registration Act of 1908, Act No. XVI (1908), section- 1.

²⁶⁹ The Registration Act of 1908, section- 78 (A).

²⁷⁰ The Registration Act of 1908, section- 80.

²⁷¹Geoffrey Manners & Co Ltd., 5 DLR (WP) 134 (1953).

²⁷²The Stamp Act of 1899, Act No. II (1899), section 23A(1)(a).

²⁷³The Stamp Act of 1899, section 23A(1)(b).

²⁷⁴The Stamp Act of 1899, section 23A(2).

shall be entitled to deduct from the duty payable on the transferred the amount of any duty already paid in respect of the mortgagee²⁷⁵. However, unless due stamp has been paid on it, an award cannot be taken into consideration by Court²⁷⁶. Moreover, no instrument chargeable with duty shall be admitted as evidence²⁷⁷, where a document which is primarily a promissory note is insufficiently stamped it is not admissible in evidence to prove an acknowledgement of liability in order to save limitation in respect of a promissory note previously executed²⁷⁸.

(xv) The Court fees Act, 1870 (Act No. VII of 1870)

When a loan becomes defaulter, then the bank is bound to file case under *Artha Rin Adalat Ain*, 2003. In that case, Bank is required to pay court fees @2.5 percent over the suit value, but the court fees will not exceed more than Tk.50,000/-. In addition, the bank is also required to pay VAT over the total court fees @ 15 percent.

(xvi) The Bankers' Books Evidence Act, 1891 (Act No. XVIII of 1891)

Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise²⁷⁹. However, no officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause²⁸⁰.

²⁷⁵The Stamp Act of 1899, section 24.

²⁷⁶*Province of East Pak v. Najibur Rahman* 18 DLR 588 (1966).

²⁷⁷The Stamp Act of 1899, Act No. II (1899), section 35.

²⁷⁸*Judge Bahadur v. Banstropan Singh*, AIR Pat 118 Rel.(1946) See also AIR Mad. 75(1938).

²⁷⁹The Bankers' Books Evidence Act of, 1891. Act No. XVIII (1891), section 4

²⁸⁰The Bankers' Books Evidence Act of 1891. section 5

3.3.2 Bangladesh Bank regulations

Bangladesh Bank also issued rules and regulations for recovery the loan from the defaulted borrower of the Bank or Financial Institutions. Those are as follows:

i) BRPD Circular No. 14 September 23, 2012, for Loan Classification and Provisioning:

If any loan has not classified as per this circular, the Bank shall not file case against the borrower. However, the account of the borrower should be unclassified avoiding the litigation procedure.

ii) BRPD Circular No. 15 dated September 23, 2012, for Loan Rescheduling:

When a loan becomes classified, then the financial institutions shall regularize the account of the borrower through rescheduling by required down payment as per this circular. This procedure is very effective for the financial institutions to avoid litigation against the borrower.

iii) Prudential regulations for banks: selected issues, Bangladesh Bank, September- 2011:

This guideline is playing vital role for the financing, recovery and operation of the Bank. It is an overall short procedure for banking business.

iv) DFIM Circular Letter No.11 dated November 21, 2013, for guideline of written off of loan²⁸¹:

After filing *Artha Rin* case, it is mandatory for the financial institutions to write off the account. The rule regarding write off the account has been incorporated by this circular. Before filing the *Artha Rin* case, no account shall be written off.

²⁸¹Department of Financial Institutions and Markets, Bangladesh Bank, Head Office, accessed June 10, 2017.

Url: at <http://www.bb.org.bd>

3.4 Recovery of NPL through *Artha Rin Adalat*

3.4.1 Jurisdiction of *Artha Rin Adalat*

Artha Rin Adalat Ain, 2003 is a special law for recovery money from the defaulted borrower of the financial institutions. Who can file under *Artha Rin Adalat Ain* is specified in section 2(a) of the *Artha Rin Adalat Ain*, 2003. However, the *Artha Rin Adalat Ain*, 2003 has certain process, jurisdiction, and function for disposal of the cases. Process, jurisdiction, and function of the *Artha Rin Adalat Ain*, 2003 has given below.

According to section 5 of the *Artha Rin Adalat Ain*, 2003, the following jurisdiction has been playing by the *Artha Rin Adalat*:

(i) Notwithstanding anything contained in any other law, subject to the sub-section (v) and (vi), all the cases for recovery of outstanding loans of the financial institutions should be instituted and decided in the *Artha Rin Adalat*, established and promulgated or constituted under section-4 of this Act.

(ii) The financial institutions within the meaning of this Act, wants to institute any mortgaged suit for recovering loan allowed against property or property under foreclosure under to section-67 of the Transfer of Property Act, 1882 (Act No. IV of 1882) and Civil Procedure Code, 1908 (Act No. V of 1908), the same suit shall be filed in the *Artha Rin Adalat* constituted under this Act; and in such cases, the provisions of Civil Procedure Code, 1908 will be applicable so far it is adaptable with the provisions of this Act.

(iii) If the suit is a mortgage suit and brought for foreclosure, in that case, the decree pronounced by the court shall be a preliminary decree and the decrees pronounced for recovery of loans in other cases, all are final decrees.

(iv) Anything contained repugnant to the Transfer of Property Act, 1882 or in any other laws now in force, the decree pronounced in any suit filed in the court under this Act in favour of the plaintiff-financial institution for foreclosure shall be considered as preliminary decree except in case of mortgaged suit under sub-section (iii) of the Act; and as soon as the auction sale is completed against mortgaged loan of movable property. The preliminary decree to considered final decree and the sale is final, and the purchase is absolute; ultimately, borrower-debtor shall lose the right to reduce the property.

(v) Despite anything contained in the Public Demands and Recovery Act, 1913 (Act No. III of 1913) loan that is government demand and recoverable through *Artha Rin Adalat*, the suit for which shall have to be filed in the Court constituted under this Act.

Provided that the suit for recoverable loan under this Act up to an extent of Tk.50,000/-, belonging to Bangladesh *Krishi* Bank, *Rajshahi Krishi Unnayan* Bank and other state owned financial institutions can be filed as certificate cases according to the Public Demand and Recovery Act, 1913 instead of filing suit in the *Artha Rin Adalat*.

(vi) If there is any special provision for recovery of loans for any financial institution established under any special law, the provisions of this Act will be an addition to the provisions of that law and if the said financial institution files suits for recovery of loan under this Act, the provisions of this Act shall be applicable (to the aforesaid financial institution).

(vii) Despite the provision of sub-section (i), no provision of this Section should be applicable for recovery of loan as sanctioned to the government by the financial institution as named under Section-2, clause-(ka) and sub-clause (xii), (xiii), (xiv), (xv), (xvi) and (xvii) under this Act.

(viii) Suit filed under this Act to be registered as "*Artha Rin Suit*".

(ix) Provided there are more than one *Artha Rin Adalats*; the local jurisdiction shall be determined by the District Judge.

(viii) The District Judge at his own or on application of any of the parties may transfer any under trial suit to any *Artha Rin Adalat* from another *Artha Rin Adalat* if he thinks most essential for ends of justice.

(ix) The *Artha Rin Adalat* shall be considered as Civil Court, and this Court will have all the powers and jurisdiction of the Civil Court until anything repugnant to the provisions of this Act.

3.4.2 Functions of *Artha Rin Adalat*

The main function of the *Artha Rin Adalat Ain*, 2003 is to recover the loan from the defaulted borrowers of the financial institutions and Banks of Bangladesh. *Artha Rin Adalat Ain*, 2003 has been playing a vital role for recovery the money from the defaulted borrower of the financial institutions and Banks. With a view to settle the suit with in early time, the

law has incorporated period for every steps of the suit. These periods of the procedural steps have given below:

Table 3.3 Timescale for ARA proceedings

Steps	Procedural Stage	Duration
1.	Served Legal Notice upon the Borrower, Guarantor, Mortgagor (not compulsory); ↓	Not mandatory
2.	Complied the procedure under section-12(3) of <i>Artha Rin Adalat Ain</i> , 2003 (If having any mortgaged property with the Bank, it's Compulsory); ↓	15 working day notice period
3.	Filed the <i>Artha Rin</i> suit in the proper Court (If the suit filed with court fees then the next date of suit has been fixed for returned for summons, otherwise the plaintiff bank obtained time for 21 days for filing the Court fees under CPC); ↓	Not mandatory, but should file suit before violation of section 46 of the <i>Artha Rin Adalat Ain</i>
4.	Submitting the Court fees (If the suit filed without court fees); ↓	21 working Days
5.	Returned of summons; ↓	15 working days
6.	Submitting daily newspaper (The notice should be published within 15 days in daily newspaper); ↓	30 working days
7.	Submitting the Written Statement (the defendants, i.e. borrower obtained 40 working days for filing the written statement without costs and with costs of Tk. 2,000/- the borrower can enlarge 20 working days with permission of the learned court) (If the defendant, i.e. borrower did not appear the suit the learned court shall passed the ex- parte decree in favour of Bank); ↓	60 working days

8.	For taking steps under section 22 of <i>Artha Rin Adalat Ain</i> , 2003 for disposal the suit through mediation (After filing the written statement); ↓	90 working days
9.	Fixed for framing issue; ↓	Duration was not mentioned in the <i>Artha Rin Adalat Ain</i> , 2003 but the certain date shall be fixed up for framing issue after filling the written statement;
10.	For P.H. (Peremptory hearing); ↓	Duration was not mentioned in the <i>Artha Rin Adalat Ain</i> , 2003 but the certain date shall be fixed up for P.H.;
11.	For F.P.H. (Further Peremptory hearing); ↓	Duration was not mentioned in the <i>Artha Rin Adalat Ain</i> , 2003 but the certain date shall be fixed up for F.P.H.;
12.	For Argument; ↓	Duration was not mentioned in the <i>Artha Rin Adalat Ain</i> , 2003 but the certain date shall be fixing up for argument.
13.	For Passing Judgment and Decree;	10 working days

Source: relevant sections of the *Artha Rin Adalat Ain*, 2003 and CPC 1908

Counting Days:

According to section 48 of the *Artha Rin Adalat Ain*, 2003 “in respect of counting days under this act only the working days of the judge shall be counted and when the judge acts temporarily shall also be counted”.

Interlocutory Petition:

If the plaintiff and defendant filed any interlocutory petition under *Artha Rin Adalat Ain, 2003* and the Code of Civil Procedure, 1908, i.e. Amendment petition, plaint rejection petition, document wanting petition, suggested issue frame petition, wanting manual calculation of interest petition, attachment petition etc., the learned court can extend the time as without counting above mention duration for disposal of the said petition for the end of justice.

High Court Order:

The Hon`ble High Court Division having all power and jurisdiction to stayed all further procedure of *Artha Rin* suit if any parties aggrieved any order of the *Artha Rin Adalat*.

It is a panic matter for the financial institutions and Banks are that the defendants or defaulted borrowers of the financial institution and Banks are reluctant to pay the bank dues though the institutions have filed suit within stipulated time of the Act. The borrowers always want to waste time by filing various petitions before the honourable court as mentioned above even the borrowers stayed the *Artha Rin* suit by the Honourable High Court Division and Appellate Division of the Supreme Court of Bangladesh.

In addition to the above, the defaulted borrower also not present in the case on due date for contesting the case and Financial Institutions and Banks obtained ex-parte decree.

Furthermore, it has observed in the court proceedings that though the *Artha Rin Adalat Ain, 2003* has fixed out the time for quick and early disposal of the cases. The opposite parties or the defaulted borrowers of the financial institutions filed several petitions for wasting the time, and the presiding judge cannot dispose the cases within frame time.

3.4.3 Application of the Code of Civil Procedure in *Artha Rin Adalats*

As *Artha Rin Adalat Ain, 2003* is a special law it has followed by its own proceeding. However, it also follows the Code of Civil Procedure, 1908. In this regard, section 6(1) of *the Artha Rin Adalat Ain, 2003* states that if any process is not mentioned in the Act, until anything repugnant, to the process of holding trials and disposal of the suits filed in the *Artha Rin Adalat*, under this Act, the relevant provisions of the Code of Civil Procedure, 1908 shall be applicable.

3.5 Procedure to Recover NPL through *Artha Rin* ADR: An Overview

ADR is very important for revive from drawback of litigation, changing the business scenario and legislative responses as judges, lawyers, litigants and other stakeholders understand that courts are not in position to bear entire burden of justice system²⁸². By using ADR U.S.A, Singapore, Hongkong, Australia, England, India, Srilanka and Bangladesh reduce cost, time and prepare congenial atmosphere in the disputes²⁸³.

The *Artha Rin Adalat Ain* has followed the following proceedings for disposal of the *Artha Rin* suit:

3.5.1 Pre-mediation

3.5.2 During mediation and

3.5.3 Post mediation

These proceedings are discussed below:

3.5.1 Pre-mediation

The premeditation steps are the initial stage of a suit as mentioned below:

i. Preparation of plaint:

Before filing *Artha Rin* suit, a plaint has made containing the following²⁸⁴:

- (a) Name of the plaintiff, address, place of work etc.
- (b) Name of the opposite party, address, place of work and residential address etc.
- (c) Entire particulars relating to plaintiffs claim.

²⁸²Zafar I. Kalanauri, Implementation strategy for ADR in Pakistan.2, This paper has been prepared by Zafar Iqbal Kalanauri Mediator & Advocate Supreme Court Pakistan, and published by Pakistan Alternate Dispute Resolution Centre (the only private forum in Pakistan where the experts in different fields resolve disputes outside the court room using different ADR mechanisms), 128-A, Upper Mall Scheme Lahore, Pakistan. Web: <http://www.zklawassociates.com>

²⁸³*Id.* at 2.

²⁸⁴*Artha Rin adalat ain of 2003*, Act No. VIII (2003), section 8(1).

- (d) Cause of action, place, and date.
- (e) Purpose for depositing Court fees and suit value
- (f) Particulars regarding jurisdiction of the Court.
- (g) Remedy sought.
- (ii) In addition to the particulars as contained at section 8(i), the plaintiff includes more particulars²⁸⁵:—

A. A schedule which should exhibit:—

- (a) The principal amount lent to the borrower or the amount of capital invested, as the case may be.
- (b) Simple interest or profit or rent as (charged) according to nature of the financial institution.
- (c) Amount charged as penal interest.
- (d) Besides, other misc. expenses chargeable upon the defendant.
- (e) A statement showing the particulars of amount deposited by the defendant being the repayment of loan and the amount due to the financial institution until the filing of the suit.
- (f) A comparative statement showing position of total amount of loan granted and the amount claimed by the plaintiff and the amount of loan repaid by the borrower defendant.

B. A schedule showing detailed particulars and description of the mortgaged deed along-with the evaluation sheet if any to be exhibited, on the basis of which loan has been taken.

Further, if the plaintiff wants to show certain documents in support of his claim as evidence and he has the same in possession, the said documents or attested copies or photocopies of the same have to be submitted showing in a list²⁸⁶.

²⁸⁵ *Artha Rin adalat ain* of 2003, section 8(2).

²⁸⁶ *Artha Rin adalat ain* of 2003, section 8(3).

Furthermore, if the plaintiff wants to establish his claim on the basis of some documents as evidence but the same is not in his possession, he has to submit the list of the said documents with the plaint and say as to with whom the documents are available²⁸⁷.

Moreover, if the plaintiff fails to comply with the provisions of sub-section (ii) and (iii) of section 8 and he submits any documents making delay, the court shall not accept the same without cost and appropriate causes being showing; the cost so payable to be deposited in government fund under appropriate head of expenditure²⁸⁸.

In addition to the above, the plaintiff has to show in one paragraph of the plaint as to who is going to represent the plaintiff-institution²⁸⁹.

Further provided the plaintiff fail to submit any schedule of property of the defendant the Court may ask the defendant to submit such account of immovable and movable property swearing an affidavit and the defendant so instructed shall submit an account of his immovable and movable property, swearing a written affidavit, if needed²⁹⁰.

Finally, the financial institutions shall submit equal of number copies of the plaint, and relevant papers and documents at the time of filing the suit under this section attached thereto considering the number of the defendants²⁹¹.

ii. Filing Plaint:

At first, a plaint has filed to the *serestadar* as per Order-7, Rule 17 of the Code of Civil Procedure, 1908 (Act No. V of 1908) and as per section 8 of the *Artha Rin Adalat Ain*, 2003. As per section 6 of the *Artha Rin Adalat Ain*, 2003 an Affidavit and Ad-valorem Court Fees have to be made with the plaint. All supporting papers and information have to submit. After submission the plaint the *serestader* examine the *Vokatnama*, court fees etc. then the suit is registered in the filing registered form no.(R) 12-A.

²⁸⁷ *Artha Rin adalat ain* of 2003, section 8(4).

²⁸⁸ *Artha Rin adalat ain* of 2003, section 8(5).

²⁸⁹ *Artha Rin adalat ain* of 2003, section 8(6).

²⁹⁰ *Artha Rin adalat ain* of 2003, section 8(7)

²⁹¹ *Artha Rin adalat ain* of 2003, section 8(8)

iii. Plaint sent to Assistant of the Bench:

Serestader has sent the plaint to the Assistant of Bench for punching the court fees and entry the court fees in Court Fees Register Form No.(R) 13. After completing, the same the bench officer return the plaint to the *serestader*.

iv. Suit Registered in the *Balam* of suit:

Serestader sent the plaint to the sitting learned Judge for order after writing necessary order for filing the suit. After observing the suit the learned Judge order for entry the case in the *Balam* then the *serestader* entry the concerned *Balam*, i.e. High Court Form No.(R) 1(i). The *Artha Rin Adalat* Judge also order for summon returned within 15 days through post and *Nejarat*.

v. Summon sent to *Nejarat* by *Serestadar*:

Serestader as per order of the learned court signed the Summon, which will send through post and *nejarat*, and sealed the *Artha Rin Adalat* then sent to the *nejarat* division of the District Judge and post summon to the post office. Postal receipt has been entried in the record.

vi. Distribution of the Summons:

Najir of *nejarat* division of the District Judge Office registers the Summons in a registered (Form No.(R) 14) then distribute to the Executor(*jarikarok*) fixing the return date.

vii. Summon Return:

As per Order 5 of the Code of Civil Procedure, 1908 and Chapter 3rd and 4th of the Civil Rules and Orders the concerned executor shall submit a execution of summon report to the *nazir* containing a oath in the opposite page of the summon. After observation of the summon as to execution the *nazir* remarks with seal as to the type of execution then registered in the Registrar.

viii. Execution Summon return to the *Serestadar*:

The *nazir* has sent the returned summon to the *serestadar* of the *Artha Rin Adalat* within time then summon enlisted in the record by the *serestadar*. Post Summon and AD (acknowledge due) enclosed in the record.

ix. Record submitted to the Court through Bench Assistant on fixed date:

After completing the above-mentioned proceedings, *serestader* has submitted the record to the Court through Assistant of Bench. If the judge noticed in the record that summon has not executed towards the defendants properly or summon does not return within fixed date then the judge ordered to execute summon through newspaper. In this regard, Section 7 of the *Artha Rin Adalat Ain, 2003* (Act No. VIII of 2003) states as to provisions for serving summon notices of the *Artha Rin* case as described below:

- (i) Notwithstanding anything contained in any other laws, the plaintiff shall deposit the requisite process fees in the Court along-with the plaint in order to serve summons through the processor by registered post with A/D and the Court shall take immediate step for the service of the process simultaneously; if the services duly served, are not returned ' within 15 days or returned un-served arrange to publish the summons in the form of advertisement in any one widely circulated Bengali daily newspaper and in addition to that in a daily local newspaper if there is any, at the cost of the plaintiff if the Court considers it to be convenient for ends of justice; the service of the summons and such process shall be deemed to have been served lawfully.
- (ii) If the plaintiff wants to serve any notice at his own cost in addition to the above, the provision upon the opposite party, then the Court shall execute the same through Court process server in addition to the previous step of serving the process.
- (iii) In order to serve summons by publishing in newspaper the plaintiff shall file a specimen of summons, with the plaint which is supposed to be published through national newspaper as advanced measure, and if the Court consider it to be convenient according to the provisions of aforesaid sub-section shall make an arrangement to publish the same in national Bengali daily newspaper subject to necessary correction or modification.

x. Submission paper published in the paper:

The financial institution has submitted the paper to the court as per direction of the court, which published in the daily national and local newspaper.

xi. Submission of Written Statement:

The defendants of the *Artha Rin* suit have submitted written statement to the court on the fixing date for written statement. If the defendant cannot submit the written statement, the defendant may seek time from the court for submitting the written statement. The court may grant time for submitting the written statement. On the other hand, if the defendant does not appear before the court for contesting the case through written statement on the fixed date, the court may settle the case as ex-parte or may fix next date for settle the case as ex-parte. However, if the defendant submits the written statement in the court by presence in the court, the court will fix next date for framing issue with a view to settle the case. About written statement, section nine of the *Artha Rin Adalat Ain, 2003* states as follows²⁹²:

- (i) The defendant should appear before the Court receiving the summons issued by the Court on the fixed date and may submit written statement if any over the claim of the plaintiff.
- (ii) If the defendant depends on certain documents in support written statements, shall submit the same or its attested photocopy as supporting papers showing the same in a list.
- (iii) If the defendant depends on any documents, which are not in his possession, he should make a list of such documents while submitting same along-with the written statements; he should indicate the name and particulars of the person with whom the documents are lying.
- (iv) In Case of failure to comply with the provision as provided at sub-section-(ii) and (iii) above and if the defendant submit some documents making delay, the court shall not accept the same without sufficient cause being shown and cost payable for ends of justice; the cost so paid to be deposited as Govt. fund in the appropriate head.
- (v) If the defendant admits the claim of the plaintiff partly or fully, the defendant should include the particulars of such admission in a separate paragraph specifically.
- (vi) If the defendant denies any claim of the plaintiff fully or partly, the defendant should mention the particulars of such denial specifically in support of his claim in a separate paragraph of the written statement.

²⁹²*Artha Rin Adalat Ain* of 2003.

(vii) It should mention in one paragraph of the plaint as to who will be holding the responsibility of representing the defendant.

(viii) According to this section, the defendant shall submit a copy of written statement along with the relevant papers for the plaintiff when he submits the same in the Court.

xii. Time limit for submission of written statement:

The defendant has to submit the written statement within stipulated time of the *Artha Rin Adalat Ain, 2003* (Act No. VIII of 2003). In this regard, section 10 of the *Artha Rin Adalat Ain, 2003*(Act No. VIII of 2003) states that:

- 1) After expiry 40 (forty) days from the appearing of the defendants, the court will not receive any written statement subject to section 10 (2) of the same Act. In that case, the court will dispose the case in ex-parte immediately.
- 2) Despite the rules of sub-section (1), the court may extend 20 (twenty) days to the defendant subject to the cost payable of minimum Tk.2000.00(Two thousand) and maximum Tk.5000.00(five thousand).
- 3) The expanses payable under this section should be deposited in the Government treasurer, and a *chalan* of the same should be provided to the court as evidence.

3.5.2. During mediation:

i. Mediation proceedings:

It is a mandatory procedure in the court for settlement the case. Section 22 of the *Artha Rin Adalat Ain, 2003* discusses about the mediation procedure for recovery the NPL through ADR. Section 22 of the *Artha Rin Adalat Ain , 2003* (Act No. VIII of 2003) states that:

- (i) Notwithstanding anything contained in Chapter -4 of this Act for hearing, after submission of written Statement by the defendant, keeping pending all subsequent proceedings subject to the provisions of Section-24, the Court may refer the case to the engaged lawyers or may send the dispute to the parties for settlement if no lawyers have been engaged.
- (ii) The case as referred according to sub-section-(i), the lawyers engaged for conducting the case, on mutual consultation with the parties to the suit, may

engage a lawyer on mutual consultation who is engaged by neither of the parties or may engage any retired Judge or a retired officer of a bank or a financial institution or any other competent person as arbitrator in the interest of Settling the dispute.

Provided that, person employed in any beneficial post of the Republic has barred to appoint as arbitrator under this Section.

- (iii) The Court shall not specify any procedure for settlement or fix any remuneration for the lawyers, and when disposing any suit through arbitration, the lawyers, the parties, and the arbitrator shall finalize the system of settlement and the fees of the arbitrator and the lawyers based on mutual discussion.
- (iv) The mediators, being kept the confidentiality of information of the parties, and after having been terminated to the proceeding of the mediator, a report shall be submitted before the court and the report aforesaid shall contain the sign of the parties, or, as the case may be, thumb impression of the left hand as the executioner and the signature of the mediator and lawyer; provided, if the dispute in the case is disposed of by means of mediation, the identical conditions of mediator shall be written down in the shape of an agreement.
- (v) The date on which, the Court shall give order, such order for settling the matter through arbitration, the arbitration process shall have to be completed within 60 days of passing order for settling the issue through arbitration process until the Court extend time for further 30 days on persuasion by the parties or its own initiatives showing cause thereof.
- (vi) Within 10 days of passing an order by the learned court under sub-section (i), the parties have to submit mediator name in writing, if fail to submit the name of mediator by the parties , the court shall appoint a mediator.
- (vii) The Court shall give necessary order or pronounce decree based on aforesaid report and as per section 24 of the Act.
- (viii) The mediation process under this section shall be held secretly and the discussions or suggestions or the depositions of the witnesses, any admission or statement or any comments shall be treated as secret and at the later stage, at the time of

hearing or at any stage, the reference of the above proceedings shall not be accepted as evidence or shall be mentioned at any stage of proceedings of the Court.

- (ix) Despite anything contained in the Court Fees Act, 1870 (Act No. VII of 1870), if any suit is settled through arbitration under this Act, the Court shall issue an order allowing return of court fees and on the basis of the said order, the plaintiff shall be entitled to get return of the court fees which was deposited with the plaintiff when filing the suit.
- (x) No appeal or revision shall lie in the Higher Court against the Order of this Court if there is a settlement through arbitration under the provision of this Section.
- (xi) If the mediation proceeding has failed, then the court start the case from the previous stage of the mediation proceedings.

However, on the emphasis of the *Artha Rin* mediation the Hon'ble High Court Division has passed judgment for mandatory provision of *Artha Rin* mediation. ***In the case of Md. Arshad Hossain Chowdhury v. Artha Rin Adalat No.1, Chittagong and others***²⁹³ the following judgment was passed:

1. On the application under Article 102 (2) (a)(ii) of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued calling upon the Respondents to show cause as to why the Judgment and Order No. 13 dated 25.04.2013 passed by the *Artha Rin Adalat* No. 1, Chittagong in the *Artha Rin* suit No. 61 of 2012 rejecting the petitioner's application for mediation should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other of further order or orders as to this court may seem fit and proper.
2. By the Rule issuing order dated 20.06.2013, further proceedings of the aforesaid *Artha Rin* case was stayed for a period of 03 (three) months. It was extended time to time and lastly on 12.01.2014 extended for a further period of 3 (three) months from date.

²⁹³ Writ Petition No.5652 of 2013 reported 3LNJ HCD,488(2014).

3. Short facts, for the disposal of this Rule, are that the respondent no. 2 Eastern Bank Limited, *Agrabad* Branch, 33, *Agrabad* Commercial Area, Chittagong, as plaintiff, instituted *Artha Rin* suit No. 61 of 2012 before the *Artha Rin Adalat*, Chittagong against the petitioner and others for recovery of its outstanding dues together with interest thereon of Tk. 16,11,681.89 as on 30.04.2012. The petitioner and other defendants entered appearance in the suit and contested the same by filing written statement denying the material allegations of the plaint. At one stage of the proceeding, particularly when the suit was fixed for further hearing, the defendants including the petitioner filed an application under section 22 of the *Artha Rin Adalat Ain*, 2003 for settling the dispute by the intervention of the mediator under the supervision of the Court. The *Artha Rin Adalat*, upon hearing the parties and no consideration of the materials on record, by its order dated 25.04.2013, rejected the said application for mediation holding, inter alia, that without consent of both the parties mediation process would not be fruitful. Moreover, the Court was informed that the plaintiff bank expressed its unwillingness to go with the mediation process. Against the said impugned order dated 25.04.2013, the defendant no. 2 approached this court and obtained the present Rule and order of stay as stated above.

4. Mr. *Mahfuzur Rahman Roman*, learned Advocate appearing on behalf of the defendant-petitioner, drawing our attention to the provision of section 22 of the *Artha Rin Adalat Ain*, 2003, submits that after amending the said provision of law the mediation process was made mandatory for the purpose of resolving the dispute between the parties under the supervision of the Court and as such the impugned order rejecting the application for mediation is illegal, without lawful authority and is of no legal effect.

5. The learned advocate for the petitioner submits further that there is no option for the plaintiff-bank to raise any objection against mediation process and the court upon its own volition should have exercised the power and sent the matter for mediation in view of the provision of chapter 5 of the *Artha Rin Adalat Ain*, 2003.

6. Mr. *Nazmul Karim*, the learned Advocate appearing on behalf of the respondent no. 2 bank, frankly concedes that the mediation process in view of provision of section 22 of the *Artha Rin Adalat Ain*, 2003 is a mandatory one, and we find him in a difficult position to oppose the Rule.

7. We have heard the learned advocates from the both the parties, perused the materials on record and other documents including the impugned order as places before us.

8. On a plain reading sub-section (1) of section 22 of the *Artha Rin Adalat Ain*, 2003 it appears that after filing of the written statement by the defendant, the Court shall send the matters to the parties for the purpose of mediation under the supervision of the Court, sub-section (6) of the Section 22 of the *Artha Rin Adalat Ain*, 2003 provides that within 10 days from the date of sending the matter in view of the provision of Sub-section (1) of section 22 of the *Artha Rin Adalat Ain*, 2003, parties will inform the Court in writing the name of the mediator, but when the parties failed to provide the name of the mediator within the aforesaid 10 days, the court shall appoint a mediator to resolve the dispute between the parties.

9. Having read together with the provision of sub-section (1) and sub-section (6) of section 22 of the *Artha Rin Adalat Ain*, 2003, we find that this provision made mediation mandatory for the purpose of dispute resolution under the supervision of the Court.

10. The legislature has incorporated these provisions of mediation or settlement conference or in other words alternative dispute resolution to mediate the dispute or to realize the outstanding dues from the defaulted borrower without unnecessary spending time, energy, and money in litigations. In this respect, if we look into the preamble of the *Artha Rin Adalat Ain* it is easier to realize that the purpose of this new law is to accelerate the recovery of unpaid loan given by the financial institution, that was not attainable through other usual laws in force.

”যেহেতু আর্থিক প্রতিষ্ঠান কর্তৃক প্রদত্ত ঋণ আদায়ের জন্য প্রচলিত আইনের অধিকতর সংশোধন ও সংহতকরণ প্রয়োজনীয়; সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল,”

11. Therefore, the legislature, while incorporating the *Artha Rin Adalat Ain*, has given prime consideration for realization of enacting the law is for recovery of loan and as such the *Artha Rin Adalat Ain*, 2003 has been incorporated upon consolidating the law of 1990 and since under the previous law it appeared that by filing suits or execution short span of time and thus the legislature has incorporated the provision of the chapter 5 in the new *ain*, 2003 for easy recovery of money within a short time and as such alternative dispute resolution has been incorporated in the new law for the purpose of realizing money without spending much time and money in litigations.

12. As such chapter 5 has been incorporated in the present *Artha Rin Adalat Ain*, 2003 allowing the parties to ask for amicable settlement under section 22 of the *Artha Rin Adalat Ain*, 2003 and lastly by Act No. 16 of 2010 this mediation process has been amended and

make it mandatory for the parties of the suit to go for mediation at a certain stage of the proceeding to decide the dispute between the parties at the intervention of the mediator.

13. *Adalat* is under a statutory obligation of the provision of law that it should send the pleadings to the parties of the suit or their engaged lawyer as soon as filing the written statement by the defendant without any prayer either of the parties of the suit.

14. Moreover, when the defendant borrower wants to settle the dispute with the intervention of the mediator in an alternative dispute resolution, in such a situation the plaintiff-bank should have extended its hand to materialize the intention of the legislature and also for early recovery of its dues from the defaulted borrower without spending much time or money in litigation.

15. Be that as it may we find that the parties of the suit have many options, if they want to settle the dispute in an alternative manner. It is necessary to mention here that in all purposes of mediation or settlement conference or alternative dispute resolution (ADR) *Adalat* should have taken a vital role to materialize the dispute of the contending parties out of court without expending time and energy unnecessarily.

16. For the reasons and discussions made herein above and also the relevant law, we are of the view that the Rule has merit and thus the Rule is made absolute, however without any order as to costs. The order dated 25.04.2013 passed by the *Artha Rin Adalat*, 1st Court, Chittagong in the *Artha Rin* Suit No. 61 of 2012 is hereby declared illegal and is of no legal effect.

17. The *Artha Rin Adalat* concerned is hereby directed to appoint a mediator for holding mediation within 15 (fifteen) working days of receipt of this judgment. In doing so, the parties of the suit are also directed to take positive steps for holding mediation keeping in view of the provision of subsection (5) of section 22 of the *Artha Rin Adalat Ain*, 2003. The concerned *Artha Rin Adalat* is also directed to proceed with the suit in accordance with law, if the parties of the suit failed to mediate the dispute within 90 (Ninety) days, from the date of appointment of mediator by the *Artha Rin Adalat*, as provided under section 22 (5) of the *Artha Rin Adalat Ain*, 2003.

In another case *A.K.M Fayekuzzama v. Judge, Artha Rin Adalat No.2, Dhaka and others*²⁹⁴ the following judgment was passed: This Rule Nisi was issued on an application filed by the petitioner under Article 102 of the constitution, calling upon the respondents to show cause as to why the impugned order dated 07.06.2012 passed by the *Artha Rin Adalat* no.2, Dhaka in *Artha Rin* suit no.237 of 2011 should not be declared to have been passed without lawful authority and is of no legal effect.

1. By the Rule issuing order dated 22.07.2012 further proceeding of the above suit was stayed till disposal of the Rule.

2. The facts leading to disposal of the Rule are briefly stated below:

The petitioner and others are the defendants in an *Artha Rin* suit being no.237 of 2011 brought by the respondent –bank for realization of outstanding dues of tk. 8,74,74,699.61

3. The petitioner as the defendant No. 1 entered appearance in the said *Artha Rin* suit and by filing a written statement denying most of the allegation made in the plaint stating inter-alia that the petitioner took loan over a sanction letter issued by the lending Bank. Further case of the petitioner is that he has paid Tk. 2,59,60,715.02 and claiming of Tk. 8,74,74,699.61 or any other amount from the petitioner is absolutely false, without any basis and the sweet will of the plaintiff-bank.

4. After submitting written statement the petitioner filed an application before the respondent No. 1, *Artha Rin Adalat*, Dhaka praying for holding a settlement conference to settle the dispute between the parties in an alternative dispute resolution as contemplated under section 22 of the *Artha Rin Adalat Ain, 2003*.

5. On the other hand, the respondent-Bank upon filling an application expressed its unwillingness to go for settlement conference stating inter-alia therein.

6. Upon hearing of both the parties the respondent No. 1- *Artha Rin Adalat*, 2nd Court, Dhaka by its impugned order dated 07.06.2012 rejected the application filed by the petitioner seeking for holding mediation or settlement conference mainly on the ground that the plaintiff-bank express its un-willingness to go for settlement conference to mediate the

²⁹⁴ Writ Petition No.9455 of 2012 reported 3LNJHCD,560(2014).

dispute between the parties and thereby fixed 26.06.2012 for framing issues. The defendant-petitioner against the said order of the respondent No. 1 approached this court and obtained the present Rule and order of stay as stated above.

7. Mr. *Md. Mamunur Rashid*, the learned advocate appearing on behalf of the petitioner having place the impugned order and other materials on record submits that there is no option for the plaintiff-bank to raise any objection against mediation process to be referred by the court to the parties and as such non referring of the *Artha Rin* suit to the mediator on the face of the objection made by the plaintiff-bank is illegal, without lawful authority and is of no legal effect.

8. Mr. *Md. Mamunur Rashid*, the learned advocate upon referring the unamended provision and the amended provision of mediation process submits further that before amendment it was the discretion of the court either to send the pleadings for arbitration or not. But after amendment, the provision for holding settlement conference has been made mandatory for the court to refer the *Artha Rin* suit to the parties for mediation and in such view of the matter, the impugned order of the *Artha Rin Adalat* should be declared to have been passed without lawful authority and is of no legal effect.

9. Mr. *Rashid*, the learned advocate submits further that language of section 22 is very clear wherein it has been provided that after submission of the written statement, the *Adalat* shall send the pleading to their engaged lawyers and if any lawyer has not been appointed the matter shall be sent to the parties for holding settlement conference and sending the pleadings section 24 of the *ain*, 2003 should also to be taken into consideration.

10. In support of his submission Mr. *Md. Mamunur Rashid*, the learned advocate, placed reliance on the case of *M/s. Rana Apparel Limited and others v. Government of Bangladesh and others* reported in 15 BLT (2007), 104.

11. Mr. *Md. Moksadul Islam*, the learned advocate appearing on behalf of the respondent No. 2-bank supporting the impugned order on the other hand submits that the provision of mediation is not only for the defendant of the suit but also for both the parties, in such view of the matter when either of the parties like the plaintiff-bank refuse to go for settlement conference at this stage, the whole purpose of the process of mediation would be fruitless and as such the order passed by the *Artha Rin Adalat* is not required to be interfered with.

12. We have heard the learned advocate of both the parties, perused the writ petition, annexure and also gone through the decision referred to.

On the fact of the submissions of both the parties we have look into the intention of the legislature and in doing so we are to see both the unamended and the amended provision of mediation process which is provided in Chapter-5 of the *ain*, 2003 under the heading "বিকল্প পদ্ধতিতে বিরোধ নিষ্পত্তি", which reads as follows:

২২। মধ্যস্থতা-(১) ধারা ২১ এর অধীনে মীমাংসা সভার মাধ্যমে বিরোধ নিষ্পত্তির লক্ষ্যে প্রয়াস গ্রহণের জন্য কোন আদেশ না করিয়া থাকিলে, বিবাদী কর্তৃক মামলার লিখিত জবাব দাখিলের পর, আদালত ধারা ২৪ এর বিধান সাপেক্ষে, পরবর্তী কার্যক্রম স্থগিত রাখিয়া, মধ্যস্থতার মাধ্যমে বিরোধ নিষ্পত্তির লক্ষ্যে প্রয়াস গ্রহণের জন্য মামলাটি নিযুক্ত আইনজীবীগণ, কিংবা আইনজীবী নিযুক্ত না হইয়া থাকিলে, পক্ষগণের নিকট প্রেরণ করিতে পারিবে।

তবে শর্ত থাকে যে, পক্ষগণ যদি এই মর্মে আদালতের নিকট দরখাস্ত করিয়া আবেদন করেন যে, তাহারা মধ্যস্থতার মাধ্যমে মামলার নিষ্পত্তি করিতে আগ্রহী, তাহা হইলে এই ধারার অধীনে মধ্যস্থতার মাধ্যমে নিষ্পত্তির চেস্টার জন্য মামলা প্রেরণ করা আদালতের জন্য বাধ্যতামূলক হইবে।

The law was amended in 2010 vide Act XVI of 2010, and the provision of section 22(1) as provided after the said amendment is as follows:

"ধারা ২২মধ্যস্থতা।- (১) চতুর্থ পরিচ্ছেদে বর্ণিত সাধারণ পদ্ধতিতে মামলার বিচার বা গুনানী সম্পর্কিত যে বিধানই থাকুক না কেন, এই আইনের অধীন দায়েরকৃত কোন মামলায় বিবাদী কর্তৃক লিখিত জবাব দাখিলের পর, আদালত, ধারা ২৪ এর বিধান সাপেক্ষে, মধ্যস্থতার মাধ্যমে বিরোধ নিষ্পত্তির লক্ষ্যে, মামলাটি, নিযুক্ত আইনজীবীগণ কিংবা আইনজীবী নিযুক্ত না হইয়া থাকিলে পক্ষগণের নিকট প্রেরণ করিবে।"

13. The section 24 of the *ain*, 2003, also should be taken into consideration for the purpose of materializing the mediation process under section 22 of the *ain*, 2003, which reads as follows:

২৪। (১) এই আইনের অধীন মধ্যস্থতার মাধ্যমে বিকল্প পদ্ধতিতে মামলার নিষ্পত্তির উদ্দেশ্যকে কার্যকর করার লক্ষ্যে, আর্থিক প্রতিষ্ঠান উহার পরিচালক পর্ষদ (Board of Directors) বা অনুরূপ উপযুক্ত পর্যায় কর্তৃক, তদুদ্দেশ্যে রিজুলিউশন বা সিদ্ধান্ত গ্রহণপূর্বক, কেন্দ্রীয়, আঞ্চলিক ও স্থানীয় পর্যায়ে উপযুক্ত ব্যবস্থাপক বা কর্মকর্তাকে যথাযথ ক্ষমতা অর্পণ করিয়া আদেশ বা পরিপত্র জারী করিবে।]

(২) আর্থিক প্রতিষ্ঠান, উপ-ধারা (১) এর অধীন জারীকৃত আদেশ বা পরিপত্রে, প্রদত্ত অনুমোদন ও অর্পিত ক্ষমতার সীমা এবং উক্ত ক্ষমতা প্রয়োগের পদ্ধতি ও নীতি, সুস্পষ্টভাবে উল্লেখ করিবে।

(৩) আর্থিক প্রতিষ্ঠান, উপ-ধারা (১) এর অধীনে জারীকৃত আদেশ বা পরিপত্রের অনুলিপি সংশ্লিষ্ট এলাকার অর্থ ঋণ আদালতে প্রেরণ করিবে।

(৪) আদালত, এই আইনের অধীন মধ্যস্থতার মাধ্যমে বিকল্প পদ্ধতিতে উপনীত আপোষ অনুযায়ী ডিক্রী বা আদেশ প্রদান করিবার পূর্বে নিশ্চিত হইবেন যে, উক্ত আপোষ উপ-ধারা (২) এর নির্ধারিত সীমার অধীনেই হইয়াছে এবং, ক্ষেত্রমত, আর্থিক প্রতিষ্ঠানের ব্যবস্থাপনা পরিচালক বা প্রধান নির্বাহী কর্মকর্তা কর্তৃক উহা অনুমোদিত হইয়াছে।

This section 24 deals with the delegation of power for effective role in the arbitration or settlement conference as provided under section 22 of the *Artha Rin Adalat Ain*, 2003.

14. On a plain reading of those provisions of mediation or settlement conference it is seen in the unamended provision that it was mandatory upon the *Artha Rin Adalat* to place the dispute or the pleadings to the parties for the purpose of mediation when the parties of the suit by filing an application to the court want to settle the dispute by holding settlement conference at the intervention of the mediator.

15. But in the amended provision of section 22 of the *ain*, 2003 (Act 16 of 2010) provides the court to send the pleadings or dispute to the engaged lawyer or the parties as the case may be after filing written statement by the defendant for settling the matter through mediation or by way of settlement conference without any application for such mediation. But the parties have no option to expresses their unwillingness to go for mediation process at this stage. So, we hold that the amended provision of the *ain*, 2003 for holding mediation is mandatory one. Because subsection (11) of section 22 of the *ain*, 2003 has been provided consequence if the parties have failed to mediate the dispute by arbitration which reads as follows:

”ধারা ২২ (১১) মধ্যস্থতার মাধ্যমে বিরোধ নিষ্পত্তির প্রয়াস ব্যর্থ হইলে আদালত মধ্যস্থতা কার্যক্রমের পূর্ববর্তী অবস্থান হইতে মামলার শুনানীর কার্যক্রম আরম্ভ করিবে।”

The unamended provision for mediation under section 22 of the *Artha Rin Ain*, 2003 clearly said that if the parties by filing an application desire to go for mediation for settling the matter by arbitration, then the court has no other choice but to send the pleadings for

mediation/arbitration. But in the amendment Act, 16 of 2010 the above provision of mediation was repealed by the legislature by incorporating new provision for mediation wherefrom we find the clear intention of the legislature that the power given to the court under amended Act is a mandatory power.

16. In such view of the above matter, there is no provision for any of the parties of the suit to expresses their unwillingness to go for mediation by filing an application to the court.

Moreover, if the parties to the suit failed to settle the dispute between then under section 22 of the *Artha Rin Adalat*, 2003 they have another alternative provision/remedy in this chapter to settle the dispute invoking section 23 of the *ain*, 2003 which provides as follows:

২৩। (১) ধারা ২২ এর অধীন মধ্যস্থতার মাধ্যমে বিকল্প পদ্ধতিতে বিরোধ নিষ্পত্তি না হইলে ৪র্থ পরিচ্ছেদের বিধান অনুযায়ী আদালত কর্তৃক রায় বা আদেশ প্রদানের পূর্বে মামলার যে কোন পর্যায়ে উভয় পক্ষ আদালতের অনুমতিক্রমে ধারা ২২ এর উপ-ধারা (২), (৩) ও (৪) এ উল্লিখিত বিধান মোতাবেক বিকল্প পদ্ধতিতে মামলা নিষ্পত্তি করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত মধ্যস্থতার মাধ্যমে মামলা নিষ্পত্তির সুযোগ এই আইনের ধারা ১৭ তে উল্লিখিত মামলা নিষ্পত্তির সময়সীমার ব্যত্যয় ঘটাইতে পারিবে না।

17. The legislature has incorporated these provisions of mediation or settlement conference or in other words alternative dispute resolution to mediate the dispute or to realize the outstanding dues from the defaulted borrower without unnecessary spending time, energy, money in litigations, In this respect if we look into the preamble of the Act we will see that the whole purpose of Act is to realize the unpaid loan given but the financial institution to the borrower for different purposes of their business. The preamble of the Act reads as follow:

"যেহেতু আর্থিক প্রতিষ্ঠান কর্তৃক প্রদত্ত ঋণ আদায়ের জন্য প্রচলিত আইনের অধিকতর সংশোধন ও সংহতকরণ প্রয়োজনীয়; সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল,,

18. So, the legislature while incorporating the *Artha Rin Ain* has given prime consideration for realization of the unpaid loan. Since the whole purpose of enacting the law is for recovery of loan and as such the *Artha Rin Adalat Ain*, 2003 has been incorporated upon consolidating the existing law of 1990 and since under the existing law it appeared that by filing suits or execution cases money could be recovered but not in a short span of time,

and thus the legislature has incorporated the provision of chapter 5 in the new *Artha Rin Adalat Ain*, 2003 for easy recovery of money within a short time and as such alternative dispute resolution has been incorporated in the new Act for the purpose of realizing money without spending much time and money in the litigations.

19. As such chapter 5 has been incorporated in the present *ain*, 2003 allowing the parties to ask for amicable settlement under section 22 of the *ain*, 2003 and lastly by Act No. XVI of 2010 this mediation process has been amended and make it mandatory for the parties of the suit to go for mediation at a certain stage of the proceeding to decide the dispute between the parties at the intervention of the mediator.

20. *Adalat* is under a statutory obligation of the provision of law that it should send the pleadings to the parties of the suit or their engaged lawyer as soon as filing the written statement by the defendant without any prayer either of the parties of the suit.

21. Moreover, when the defendant borrower wants to settle the dispute with the intervention of the mediator in an alternative dispute resolution. In such a situation, the plaintiff-bank should have extended its hand to materialize the intention of the legislature and also for early recovery of its dues from the defaulted borrower without spending much time or money in litigation.

22. Be that as it may, we find that the parties of the suit have many options if they want to settle the dispute in an alternative manner. It is necessary to mention, or settlement conference or alternative dispute resolution (ADR) *Adalat* should have taken a vital role to materialize the dispute of the contending parties out of court without expending time and energy unnecessarily.

23. The decision as referred to by the learned advocate for the petitioner is applicable in the present facts and circumstances of the instant case in our hand.

24. For the reasons and discussion made herein above and also the relevant law are of the view that the Rule has merit and thus the Rule is made absolute, however without any order as to costs.

25. The judgment and order dated 07.06.2012 passed by the *Artha Rin* suit no. 237 of 2011 is hereby declared illegal and is of no legal effect.

26. The trial court concerned is hereby directed to send the pleadings of the suit to the parties or their engaged lawyers for holding mediation within 15 (fifteen) working days of receipt of this judgment. In doing so, the parties of the suit are also directed to take positive steps for holding mediation keeping in view of the provision of subsection (5) of section 22 of the *ain*, 2003. The concerned *Artha Rin Adalat* is also directed to proceed with the suit in accordance with law, if the parties of the suit failed to mediate the dispute within 90 (Ninety) days from receipt of the pleadings of the suit as provided under section 22 (5) of the *ain*, 2003.

Furthermore, in the case of *Mohammad Ali v. Judge, Artha Rin Adalat (Spl Original)*²⁹⁵ it **was decided that** *Adalat* should remember that after amendment of section 22 in the year 2010 mediation has been made mandatory on the part of the *Artha Rin Adalat* itself. When amended section 22 be read together with section 24 of the *Artha Rin Ain*, it makes the proposition morer. Now the law stands that right after filing of the written statement, the duty is incumbent upon the court to initiate mediation.

Moreover, **In the case of *Sree Proshanta Kumar Sarkar v. MD Agrani Bank Ltd.(Spl. Original)***²⁹⁶, the Hon'ble High Court Division of the Supreme Court of Bangladesh has been decided that this court finds, from an ingrained inability to appreciate that the core objective of the Act at debt recovery must not invariably without further qualification entail the acquisition of a defaulter/ judgment debtor's property. But undue conservatism per se or misconceived reservations either to explore avenues of equitable alternative amicable settlement processes endorsed by the act itself or to exercise its inherent jurisdiction, for reasons not entirely evident to this court, operate regrettably to bind the *adalats* hand it were.

In addition to the above decisions, **In the case of *Sonali Bank Ltd. v. Judge, Artha Rin Adalat, No1 (Spl. Oriinal)***²⁹⁷ the Hon'ble High Court Division of the Supreme Court of Bangladesh has been decided that the executing court cannot direct the parties or refer the matter for mediation like the provisions contained in section 22 of the *Artha Rin Adalat Ain*, 2003 and as such giving permission to sell the property by the judgment-debtors subject to

²⁹⁵19 BLC HCD 356 (2014).

²⁹⁶3ALR HCD175(2014).

²⁹⁷5 ALR HCD 381(2015).

the provisions of section 38 is absolutely contra to the provisions of section 38 of the *Artha Rin Adalat Ain Ain*.

3.5.3. Post mediation

Framing issues

If the mediation proceedings have failed, the court starts the case from the previous stage. As per section 13 of the *Artha Rin Adalat Ain*, 2003, the learned court framing the issue for disposal of the suit. In this regard, section 13 of the Act states that:

- (i) After Submission of written statement by the defendant at a certain stage, the Court shall give a hearing to the parties to the Suit, if present and frame issue if any after scrutinizing the plaint and the written statement; and if there is no any issue to frame, the Court shall pass order pronounce of judgment as immediate step.
- (ii) According to the provision of sub-section- 13(i), if any party or both the parties remain absent, the Court shall frame issue scrutinizing the plaint and the written statement and if there is, no issue to frame the Court shall pass order or deliver judgment as an immediate step.
- (iii) At any stage of the suit, if the subject matter of the plaint is admitted in the written statement or through any manner of the defendant and on the basis of such admission if the plaintiff submits petition seeking appropriate relief in the Court as may be available, the Court shall pass appropriate judgment or order on the basis of aforesaid admission of the defendant without waiting for settling other issues that exist between the plaintiff and the defendant.
- (iv) If on the first date or at any stage of the suit, the Court observes that there is no any conflict between the parties in respect facts or law points, then the Court may dispose of the Suit through passing final order or delivery of judgment.

Fixing the Date for Hearing

On the date of fixing date for hearing, the lawyer of the parties has opened the case in a summary hearing then the court call the plaintiff for taking witness supporting the plaint. Before witness, the plaintiff should oath before the court. The court has written down the examination in chief of the plaintiff if the examination in chief will not be outside the plaint.

The lawyer of the defendant will cross-examine the plaintiff. Thereafter, the defendant will give examination in- chief the lawyer of the plaintiff cross-examines the defendant. However, the learned court may ask the necessary question to the witness and write down the same as per section 165 of the Evidence Act, 1872 (Act No. V of 1872).

Submission of Argument in Writing

It is not mandatory of the *Artha Rin Adalat* to hear the verbal argument before announcement of the judgment as per section 15(1) of the *Artha Rin Adalat Ain*, 2003 (Act No. VIII of 2003).

However, as per 15(2) of the *Artha Rin Adalat Ain*, 2003 if any party or parties intend, being notified by writing to the court thereto after the course of hearing of the suit finished and subject to the delivery of copies to the other party or parties, may submit the written argument within maximum 5 (five) days, provided that no scope to provide written objection against the written argument. As per section 15(3) of the Act, the court may pronounce order allowing extra verbal argument beyond the written argument to any party or parties if the court seems proper.

Judgment

When the evidence is finished, the court will pronounce Judgment. In this connection, Section 16 of the *Artha Rin Adalat Ain*, 2003 (Act No. VIII of 2003) states that:

(i) When the evidence of the suit is completed, the court will pronounce the judgment within maximum 10 (ten) days, provided that the produce of the written argument by the party or parties under sub-section (ii) of the section 15 or if the court hears the oral argument under sub-section (ii) of section 15, the court will pronounce judgment within following 10 (ten) working days from the date of submitting the written argument aforementioned or hearing the oral argument.

(iii) Unless the court ordered or judgment for payment the decreed amount by time longer instalment, the court will order to the defendants for the payment of the decreed amount within 60(sixty) days from the pronouncement of judgment thereof.

Preparation of decree

Serestader will prepare decree within 7(seven) days according to judgment as per Rule 160 of the first part of Civil Rules and Orders. According to Rule 161 when the decree is prepared, it will be sent to the parties or lawyers of the parties with a view to examine the draft of decree within 3 (three) days of notice. It is listed in fixed M-5 for examine the draft of decreed by the learned judge. If there have no objection of the lawyers, The *Artha Rin Adalat* has signed the decreed. If there is seen any clerical or mathematical mistake or differ with the judgment, it is noticed to the *serestader*, *serestader* will obtain order from the judge in this matter.

Appeal

The aggrieved parties may appeal under the *Artha Rin Adalat Ain*, 2003. In this connection section 40 of the *Artha Rin Adalat Ain*, 2003 says that notwithstanding anything repugnant to the rules of this act, the allied rules of the Code of Civil Procedure, 1908 shall be applicable to the proceedings of appeal and revision under clause.

However, as per section 41 of the *Artha Rin Adalat Ain*, 2003, the following rules have been followed for filing and disposal of the appeal:

(i) If any party is aggrieved by and dissatisfied with the order or decree of *Artha Rin Adalat*, and the amount of decree exceeds Tk.50,00,000.00 (the fifty lakh) the party so dissatisfied, subject to the provisions of sub-section-(ii), shall file appeal before the High Court Division of the Bangladesh Supreme Court within the period of maximum 60 days of pronouncing such judgment; provided, the amount is Tk. 50,00,000.00 (or less than this), shall file appeal before the District Judge.

(ii)The appeal shall not be accepted, if the appellant fails to deposit an amount, equivalent to the 50% of the decreed money in the decree-holder organization in cash, as partial admission of plaintiffs claim or if it does not admit the claim of the decree-holder, the money shall be deposited to the court, issued the decree and produce the money receipt to the court being the proof of such deposit, otherwise, the appeal shall not be accepted according to the provision of sub-section-(i).

(iii) Despite the provision of sub-section-(ii), if the judgment-debtor has deposited at least 10% amount in the mean time according to the provision of Section-19 (iii), the said amount shall be deducted from the aforesaid 50% amount when filing.

(iv) Despite having the previously mentioned provisions of law, the plaintiff-financial institution shall not have to deposit any amount while filing appeal under the provisions of this Act.

(v) Subsequent after acceptance of appeal, the court shall write a note whether he himself shall hear the appeal and if he decides not to hear the same, he shall send the same to any additional District judge under his jurisdiction, if any; provided, there is no any additional District judge, he himself make hearing of the case.

(vi) The appellate court shall hear the appeal within 90 days of accepting the same; in case of failure to complete the hearing in 90 days, the court shall enhance time for further 30 days showing cause in writing.

Revision

In this connection, section 40 of the *Artha Rin Adalat Ain*, 2003 says that notwithstanding anything repugnant to the rules of this act, the allied rules of the Code of Civil Procedure, 1908 shall be applicable to the proceedings of appeal and revision under this clause.

However, as per section 42 of the *Artha Rin Adalat Ain*, 2003 the following rules have maintained for filing and disposal of the revision:

(i) No court shall accept any petition of revision against the judgment or decree of the appellate court, if the application is not accompanied with the proof of depositing an amount equivalent to the 75% of the decreed money in the plaintiffs organization or in the court including 50% deposited amount or proof of depositing the same in the decree passing court through bank draft, pay order or negotiable instruments, and produce the same to the court with the petition while filing appeal.

(ii) Despite the provision of sub-section-(i), the plaintiff financial institution need not deposit money or security if it files any application for revision.

(iii) The Higher Court shall dispose of the application for revision within 60 days of its acceptance, and in case of failure within the previously mentioned 60 days, the court may enhance more 30 days showing sufficient cause.

Moreover, the aggrieved parties may file leave to appeal in the Appellate Division of the Supreme Court as per section 43 of the *Artha Rin Adalat Ain*, 2003. This section states that as to the filing of appeal in the appellate court for allowing permission by the appellate division to the borrower –defendant against any judgment, decree or order pronounced in appeal or revision by the high court division under this act, if the appellate division deems proper to allow may order to the borrower-defendant to deposit any portion of the remaining unpaid decreed amount to the creditor financial institution in cash or may direct to deposit in the court which has passed decree as security deposit in the same way that provided under section 42(1) of the *Artha Rin Adalat Ain*, 2003.

3.5.4 Procedure for *Artha Jari* suit

After judgment and decree of the *Artha Rin* suit, if the defendant will not pay the decreed amount within framed time of the *Artha Rin* suit decree, then the financial institution will file *Artha jari* suit before the concerned court for execution of the *Artha Rin* suit. In this connection, section 26 of the *Artha Rin Adalat ain*, 2003 (Act No. VIII of 2003) states that in the rules related to the service of money decree, unless there is repugnant to the rules of this Act, the rules related to the money decree under the Code of Civil Procedure, 1908 shall be applicable while to serve under this act. The chronological stages for filing the *Artha jari suit* have given below:

(i) Filing Application to the Court

When the plaintiff has filed application as per fixed form under Order- 21, Rule-11 of the Code of Civil Procedure, 1908 (Act No. V of 1908) for execution of the *Artha Rin* suit, then the *serestader* has listed the application in the filing register No. (R) 5 and sealed as well as punched the court fees. Thereafter, it has sent to the assistant bench officer for registering the court fees.

(ii) Register entries by the Assistant bench officer

Bench assistant punch all the court fees in connection with all application for the execution and after sealing in the court fees and entry the sum of the court fees in the For No. ® 13. Thereafter, the record has sent to the *serestader* for necessary course of action.

(iii) Sent to *serestader*

Serestader has entered the application in the filing register and attached the order sheet then placed to the learned Judge for necessary order.

(iv) Ordered by the learned Judge

Judge, *Artha Rin Adalat* has passed show cause notice under section 30 (1) of the *Artha Rin Adalat ain*, 2003 (Act No. VIII of 2003) to the judgment debtor through processor and post office with A/D (acknowledgement due) for service of summon. Provided, the decree holder (plaintiff) shall deposit the process fees so prescribed in the court with the application of execution for the service summon. However, the judge also ordered for returning the both summons within fifteen days concurrently.

(v) *Serestader* sent the notice to the *Nezarat*

As per order of the learned court, the *serestader* shall send the notices to the *nezarat* prior to sign the notice and sent through post office. *Nezarat* division has issued the notices to processor with a view to serve within fixed time then entries the process Register (Form No. (R) 14). *Serestader* also attached the postal receipt with the record.

(vi) Notice served through newspaper

If the show cause notice shall not return within 15 days as mentioned above or return without delivery before the time prescribed. Thereafter, as per section 30 (i) of the *Artha Rin Adalat ain*, 2003, the court shall take necessary initiative to publish the summon in any one widely circulated *Bengaly* daily newspaper with the cost of decree holder (plaintiff), if the court deems necessary for the end of justice, shall serve summon in a local news paper. If any and such type of execution shall treat as lawful, summon. Provided, any notice publish in the newspaper under section 30 (i) of the *Artha Rin Adalat Ain*, 2003, the court shall order to publish the notice in the newspaper which is directed by the decree holder lodging a petition in writing before the court.

(vii) Submission paper and objection of the Judgment debtor

On the fixing date, the decree holder shall submit the newspaper which has been published in the daily newspaper as per section 30 of the *Artha Rin Adalat Ain*, 2003. If the judgment-

debtor has any objection against the execution, he shall submit objection with the presence in the court. In this connection, section 32 of the *Artha Rin Adalat Ain*, 2003 states that:

(i) If any third party submits claim according to the provisions of Civil Procedure in any execution suit arisen out of a decree or an order of the *Artha Rin Adalat*. In addition, the court does not reject the same on its first consideration; the decree holder may submit prayer within a maximum period of 30 days for a hearing against the same by filing written objection.

(ii) In case of such claim, the petitioner shall deposit 10% of decretal amount as security otherwise; the court shall reject the claim.

(iii) If the *Artha Rin Adalat* takes (i) any claim for consideration, the court shall dispose of the said petition within 30 days of submitting the same and if it fails to dispose of the matter within 30 days, the time shall extend more 30 days recording sufficient cause thereof.

(v) The court during pronouncing a written objection under sub-section-(iii), if it appears before the court that the petition having claimed under sub-section -i, has been filed with ill motive with a view to delay or to oppose to recover the dues of the decree holder. The court shall, therefore, forfeit the security or bond so deposited under sub-section-ii by the order while the court sets aside the petition aforesaid. If by the same order, will direct for the feature the security or bond so submitted under sub-section-i, and by the method, the decreed amount has recovered, the court shall recover the money under forfeited security or bond applying the similar process and shall direct to pay the sum obtainable to the decree holder.

(viii) Execution of Attachment

The court may pass order for attachment moveable/immovable property of the Judgment debtor as per Order -21, Rule -30 of the Code of Civil Procedure, 1908 (Act No. V of 1908).

(ix) Fixed up the condition of the auction

As per Order-21, Rule -66(2) of the Code of Civil Procedure, 1908 the parties shall have to fix up the condition of the auction.

(x) Publication of Auction Notice:

At the time of execution case, the learned court passed an order for publication of auction notice for selling the mortgage property as per section 33 of the *Artha Rin Adalat ain*, 2003 (Act No. VIII of 2003). In this connection, section 33 says as follows:

(i) When the *Artha Rin Adalat* passing any decree or order for selling a property shall urge a sealed press tender in newspaper at the cost of the plaintiff giving minimum time of 15 days and the above press tender shall be published at least in one widely circulated national *Bengali* daily. If the court deems proper may order to publish in another local *Bengali* newspaper in addition to the same, if any for ends of justice, and the same notice shall be published hanging in the notice board of the Court and beating drums in the locality.

(ii) Every quotationer /bidder shall submit along with the tender to the court, if the quoted value is maximum Tk.10,00,000/- (Taka Ten Lac), then 20% of it. If the quoted is more than Tk.10,00,000/- (Taka Ten Lac) and if it is maximum Tk.50,00,000/- (Taka Fifty Lac) then its 15%. If the quoted value is more than Tk.50,00,000/- (Taka Fifty Lac), 10% of it as security in the form of bank draft or pay order.

(iia) The quotation shall submit into the specified tender box or to the prescribed authority within specified time by the registered post to the concern authority.

(iib) The bidder shall pay remaining amount within subsequent 30 days after receipt of the quotation of maximum Tk.10,00,000/- (Taka Ten Lac) within next 60 days for more than Tk.10,00,000/- (Taka Ten Lac) and within subsequent 90 days for more than Tk.50,00,000/- (Taka Fifty Lac), if failed the court shall forfeit the bid amount.

Provided that if the concerned decree holder- financial institution requests to extend the time limit for the convenience of the decree-debtor through application, the court may extend maximum 60 (sixty) days of the prescribed time limit under this sub-section.

iic) If it is notified to the court on behalf of the decree-holder that the proposed property value of the tender so submitted under sub-section (ii) is insufficiently tense or less and if the court is agreed on that, then it may decline the quotation aforesaid denoting the reason.

iii) In case of the security so deposited under sub-section (ii b) is forfeited, the sum aforesaid shall be paid to the decree holder and shall be adjusted with decreed value and hereinafter the court. Thereafter, unless the bidding amount is in total less than the quotation of the second highest bidder

and the sum forfeited earlier, shall request to the second highest bidder aforesaid to purchase the property under auction. Once the second highest bidder is asked, the latter shall pay the entire cost within the time specified in sub-section (iib) and otherwise done, his/her security shall be forfeited, and sum aforesaid of the security shall be given to the decree holder in order to make adjustment with the claim of the decreed amount.

iv) Otherwise sold the property by auction in accordance with sub-section (i), (ii), (iia), (iib),(iic) and (iii); Further publishing the advertisement in at least two *Bengali* national dailies if the court deems fit causing published in a local newspaper, if any, for the sake of justice as per similar method stipulated in sub-section (i), and hanging the notice in the notice board of the court and by beating the drums locally, the court shall call on sealed tenders; and rules of sub-section (ii), (iia), (iib), (iic) and iii relating to auction and forfeiture shall be abided by.

iv-a) Regards to the notification by newspapers under sub-section (i) and (iv), the court shall cause publish in such a newspaper which shall be advised by the plaintiff in writing thereof.

v) Any property otherwise sold as abided by sub-section (i), (ii), (iia), (iib), (iii) and (iv), shall be vested on behalf of the decree holder allowing possession and enjoyment until full decreed amount might have been recovered and being demised of the property aforesaid as per rules of sub-section (i), (iia), (iib), (iic), (iii), (iv), the decree holder may recover the arrears of the decreed sum and the court shall duly issue a certificate.

vi) In case of additional sum of the decree is recovered by auction, the surplus sum aforesaid shall be repaid to the debtor. In addition, if the sum recovered by auction is less than the decreed value; the additional suits for execution shall be acceptable subject to the rules of section -28 therein.

via) Notwithstanding anything contained in any other rules of sub-section (v) and (vi) whilst the decree holder is incapable to arrange for auction the property aforesaid in a open bid in spite of being possessed and owned the property, an execution suit so directed in section 28, may be filed by deducting the reasonable and appropriate value or the value so prescribed for the property.

vib) Notwithstanding anything contained in this section regarding the transfer of possession and ownership of the property on behalf of the decree holder under sub-section (v), the same shall be secured by the written petition before the court on behalf of the decree holder under sub-section (vii) within 6 (six) years after the reassignment and unless doing so, once 6 (six) years will be expired, the ownership of the decree holder on the property aforesaid shall automatically be

vested on and a declaration to that effect or a certificate can be obtainable from that concerned court.

vii) Notwithstanding rules of sub-section (iv) and (v), if the decree holder duly submits any petition before the court that he/she is interested to obtain the title of the property aforesaid, the court, shall abstain from abiding by the rules of sub-section (iv) and (v) without disturbing the rules of sub-section (i), (ii), (iia), (iib), (iic) and (iii); the decree holder shall cause to execute a certificate declaring that the title of the property of the decree holder aforesaid has been vested on behalf of the decree holder and such a certificate so executed shall be entitled as a deed of the title and the court shall arrange for dispatching a copy of the certificate aforesaid to the office of local Sub-Registrar for registration.

viiia) If it requires to be possessed of the property through the court under sub-section (v) and (vii), the court may cause to transfer the possession to the decree holder upon the written application of the later.

viiib) Sooner than transferring the possession of the property to the decree holder under sub-section (viiia), the court shall be reaffirmed that the property aforesaid was mortgaged against the loan of the decree by the original possessor of that or the property aforesaid was forfeited from the original title and possession of the debtor in order serve the decree.

viiic) Notwithstanding anything contained in any other acts for the time being in force, any tax or registration fee for the certificate, executed under sub-section (vii), shall not be obtainable.

ix) The possession of the property or rights of possession under sub-section (v) or for the assignment of the title of the property under sub-section (vii) on behalf of the decree holder, the decree aforesaid so served shall cause to dispose of the execution suit finally as per the rule stipulated in sub-section - 28.

(xi) Issued Sale Certificate:

The learned court has issued Sale certificate to the auction bidder as per Order-21 Rule-94 of the Code of Civil Procedure, 1908 and also handover the possession as per Order-21, Rule-96 of the Code of Civil Procedure, 1908 (Act No. V of 1908).

(xii) Appointment of Police Force

If necessary, the learned court may order to appoint police force for handover the possession to the highest bidder.

(xiii) Civil Prison

The learned court may pass order for civil prison of the defendant –borrower. In this regard, section 34 of the *Artha Rin Adalat ain*, 2003 (Act No. VIII of 2003) states that:

(i) Subject to the provisions of sub-section-(xii), the *Artha Rin Adalat* is competent enough to award civil jail to the extent of 6 months to the judgment-debtor for recovery of decreed money on submission of a petition by the decree-holder.

(ii) The provisions as mentioned under sub-section (i) shall not be applicable upon substitution of heirs of the principal judgment-debtor according to the provisions of inheritance law.

(iii) Provided, it becomes necessary to confine the judgment-debtor of any company, partnership firm or any limited company for execution of the decree, the natural person of the said company, firm or the limited company formed comprising the natural persons, those persons shall be liable to be confined in civil jail individually or collectively.

(iv) But the provisions of the previously mentioned sub-section-(iii), shall not be applicable to such person who has been substituted to any previously mentioned person or persons by inheritance after taking the above loan against which decree has been pronounced.

(v) Any person confined in the civil jail according to the provisions of sub-section (i) or (iii) shall not be released from the jail until the entire decreed amount is paid up or he has been confined at least for 6 months, whatever comes first; and he shall be released from the jail forthwith subsequent after the paying back the entire decreed amount.

(vi) Despite the provisions of sub-section-(v), if the judgment-debtor confined in the civil jail and pays back an amount up to the extent of 25% of the decreed amount in cash and execute a bond that he shall pay back the remaining decretal amount within 90 days; the court shall set him free the judgment-debtor in such case.

(vii) Provided that, if the judgment-debtor fails to pay back the remaining amount according to terms of the bond as executed under sub-section-(vi), he shall again be liable to arrest and

confine in the civil jail and if he is so confined again, the term of such jail shall be treated to be a term of 6 months as a new.

(viii) The expenses for maintenance of the person confined under the provisions of this Act, shall be born by the Govt. as spent for the maintenance of the under trial prisoner and the Govt. acquires right to recover the same from the judgment-creditor as recoverable under the provision of Govt. demand and the decree-holder shall acquire the right to realize the said amount from the judgment-debtor as the cost of the suit.

(ix)The court shall not give an order for confinement of any judgment-debtor unless at least a auction sale has not be completed before it and the decreed amount of the decree-holder has been totally recovered.

(x)Provided that, no auction sale process could be materialized under sub-section-(ix), the judgment-debtor shall be liable to be straightly arrested and confined to civil jail.

(xi)Provided that no person below the age 18 shall be arrested and confined to civil jail for execution of decree under the provision of this Act.

(xii)Provided that, a judgment-debtor shall not be arrested and put to civil jail again in order to executing the decree if the judgment-debtor was confined to civil jail for more than one occasions though there is running more than one execution suit under this Act.

(xiii) No judgment-debtor shall be relieved of the charge of debt although he was confined to civil jail for a full time or any part thereof and if it is not barred by limitation under the provision of this Act, there should not be any bar to institute a fresh execution suit against him.

3.6. Repeal of Section 21 and 22 of *Artha Rin Adalat Ain*: A critical evaluation

Before amendment of the *Artha Rin Adalat Ain*, 2003 in 2010 settlement conference under section 21 of *Artha Rin Adalat Ain*, 2003 and mediation under section 22 of the same Act had been running simultaneously. Before amendment, the contents of both sections were as under.

1. Section 21 (1) states that provided whatever provisions contained under chapter-4 relating to trial or hearing of the suit, subject to the provision of section-24 of this Act if the Court deems proper may convene a settlement conference for settlement of dispute after submission of written statement by the defendant in a alternative way keeping pending all proceedings of the suit; and the court may ask the parties, their engaged lawyers and their representatives to remain present in the said settlement conference, whereas section 22 (1) states that notwithstanding anything contained in Chapter -4 of this Act for hearing, after submission of written statement by the defendant, keeping pending all subsequent proceedings subject to the provisions of Section-24, the Court may refer the case to the engaged lawyers or may send the dispute to the parties for settlement if no lawyers have been engaged.
2. The Judge of the *Artha Rin Adalat* shall preside over such conference and shall determine the venue, procedure and functions of the settlement conference, and the settlement conference as scheduled to be held under this procedure, shall take place in camera under section 21(2) of the act, 2003 but the case as referred according to sub-section 22(1), the lawyers engaged for conducting the case, on mutual consultation with the parties to the suit, may engage a lawyer on mutual consultation who is engaged by neither of the parties or may engage any retired Judge or a retired officer of a bank or a financial institution or any other competent person as mediator in the interest of settling the dispute. Provided that, person employed in any beneficial post of the republic is barred to be appointed as mediator under this section.
3. Under section 21 (3) of the Act 2003, the court shall explain the points of disputes before the parties, their engaged lawyers and the representatives and shall streamline his endeavours in arriving at a settlement; but in his efforts, the court shall not exert any influence upon the parties to accept his own proposal whereas, under section 22 (3) of the Act 2003, the court shall not specify any procedure for settlement or fix any remuneration for the lawyers and when disposing any suit through mediation, the lawyers, the parties and the mediator shall finalize the system of settlement and the fee of the mediator and the lawyers on the basis of mutual discussion.
4. If the dispute is settled through the settlement conference under section 21 (4) of the Act , 2003, the terms and conditions of the settlement shall be recorded in agreement and the parties in dispute shall sign as executors, lawyers and the representatives

present shall sign over the agreements as witnesses; afterwards, the court shall pass an order or necessary decree under the provisions of related rule of Order-XXIII of the Code of Civil Procedure, 1908 on the other hand, according to section 22 (4) of the Act, 2003, the date on which, the court shall give order, such order for settling the matter through mediation, the mediation process shall have to be completed within 60 days of passing order for settling the issue through mediation process until the court extend time for further 30 days on persuasion by the parties or its own initiatives showing cause thereof. Provided that under sub-section-22(1), the parties shall communicate the court in writing within -10 days of mediation order whether they have been agreed to take step for settling the dispute through mediation and who has been engaged for settling dispute. Provided further that, if the parties fail to communicate the court within 10 days of passing the order as per provision of sub-section-22 (1) said order shall be cancelled and the hearing and subsequent process of the suit shall immediately be started in such manner as if no order was given for settling the matter through mediation under the provision of sub-section-(1).

5. According to section 21 (5) of the Act, 2003, the process of settling the dispute shall be completed within 60 days of passing order by the court for settling the dispute through settlement conference until the time is extended not exceeding 30 days on the basis of written representation of the disputed parties or courts own initiatives sufficient cause being shown in the record, but the mediator shall submit a report to the court on his mediation activities without leaking out the secrecy of the parties under section 22 (5) of the Act, 2003.
6. Further, section 21 (6) of the Act, 2003 states that the initiative as taken for settling the dispute through settlement conference, if failed and the Judge of the aforesaid court if not transferred in the mean time, next hearing of the suit shall not be made; the suit shall be transferred for hearing to any other court having jurisdiction and the next hearing of the suit shall he resumed from its previous position in a such a manner as if no efforts were taken for settlement of the disputes through settlement conference on the other hand section 22(6) of the Act, 2003 states that if the disputing issues of the suit have been settled through mediation, the terms and conditions of the agreement so settled, shall have to be incorporated in the aforesaid report and the parties and the lawyers shall sign or put left the thump impression as may be applicable over the agreement as executors and the lawyers as witness.

7. Section 21 (7) of the Act, 2003 states that if the suit could not be transferred to a court having proper jurisdiction according to sub-section- 21 (6) for any other reasons, the District Judge may appoint any other Judge to that court under his jurisdiction on ad-hoc-basis for making hearing of the suit whereas according to section 22 (7) the court shall give necessary order or pronounce decree on the basis of aforesaid report as may be applicable according to the relevant rules of Order-XXIII of the Code of Civil Procedure, 1908.
8. The process of settlement conference under section 21 (8) shall be held in camera and any suggestions, advice or counselling amongst the parties, their lawyers and the representatives as adduced, an admission, deposition or comment should be considered to be strictly confidential and at later stage the aforesaid matters cannot be cited or shall not be accepted to be evidence but if the process for settling the dispute through mediation under section 22 (8) fails, the court shall resume the hearing from the previous stage in such a manner that there was no attempt at all to settle the dispute by means of mediation.
9. Section 21 (9) of the Act, 2003 states that despite having anything in the court fees Act, 1870 (Act No. VII of 1870), if the dispute of any suit is settled in the settlement conference, if any of the parties, submits petition for refunding court fee as deposited with the plaint or written statements; the court shall issue a certificate on the above, so that the parties may take back the court fees on that basis which was deposited with the plaint or written statement on the other hand, the mediation process under section 22 (9) shall be held secretly and the discussions or suggestions or the depositions of the witnesses, any admission or statement or any comments shall be treated as secret and at the later stage, at the time of hearing or at any stage, the reference of the above proceedings shall not be accepted as evidence or shall be mentioned at any stage of proceedings of the court and section 22 (10) of the Act, 2003 states that despite anything contained in the court fees Act, 1870 (Act No. VII of 1870), if any suit is settled through mediation under this Act, the Court shall issue an order allowing return of court fees and on the basis of the said order, the plaintiff shall be entitled to get return of the court fees which was deposited with the plaint when filing the suit.
10. However, section 21 (10) of the Act, 2003 states that no appeal or revision shall lie in the higher court against any order pronounced by the court or any issue settled

through settlement conference under the provision of this Act (**Explanation.**— Under the provision of this Act settlement conference shall mean, which shall be presided over by the judge of the (*Artha Rin Adalat*) and where the parties to the suit, lawyers engaged by the parties, their representatives are authorized to be present and the court shall play a co-operation role in disposing the Suit in a non-formal way, where an atmosphere of voluntary will, un-conflicting attitude, mutual co-operation and the basis of which shall be fellow feelings and compromising) and under section 22(11) of the Act, 2003, no appeal or revision shall lie in the higher court against the Order of this Court if there is a settlement through mediation under the provision of this section.

11. In the case of *M/S Rana Apparels Ltd. and other v. Govt. of Bangladesh & others*²⁹⁸; it was decided that it appears from the reading section 21 that if the court deems fit and proper after filing and perusing the written statement, then the court can invoke the provision of this section. Nevertheless, section 22 clearly said that if the parties desires then the court has no other choice but to go for meditational arbitration. Reading section 21, we find that the power given to the court under section 21 is a discretionary power to be exercised judiciously but before amendment dated 30.03.2010 of the *Artha Rin ain*, 2003, the mediation was not mandatory, but now the arbitration proceeding is mandatory under section 22 of the *Artha Rin Adalat Ain*, 2003.

Thereafter, Section 21 for settlement conference was repelled on 2010 by the amendment of the *Artha Rin Adalat Ain*, 2003 and empirical data shows that from 2006 to 2010 no cases were dissolved through settlement conference under section 21 of the *Artha Rin Adalat Ain*, 2003. Furthermore, no cases were resolved through mediation under section 22 of the *Artha Rin Adalat ain*, 2003 from 2006 to 2012. But in 2013 only 04 cases were resolved through mediation under section 22 of the *Artha Rin Adalat Ain*, 2003. This empirical data clearly states that mediation under *Artha Rin Adalat Ain*, 2003 cannot fulfil its purposes.

Furthermore, I have taken 20 judges expert opinion regarding abolition of section 21 of the *Artha Rin Adalat ain*, 2003. The respondents were asked that the option of settlement

²⁹⁸ 15 BLT HCD 104 (2007).

conference, as mentioned in section 21 of the *Artha Rin Adalat Ain*, 2003, be omitted by a subsequent amendment. What do you think is the reason behind that? The Table no.3.6 gives the result of this question:

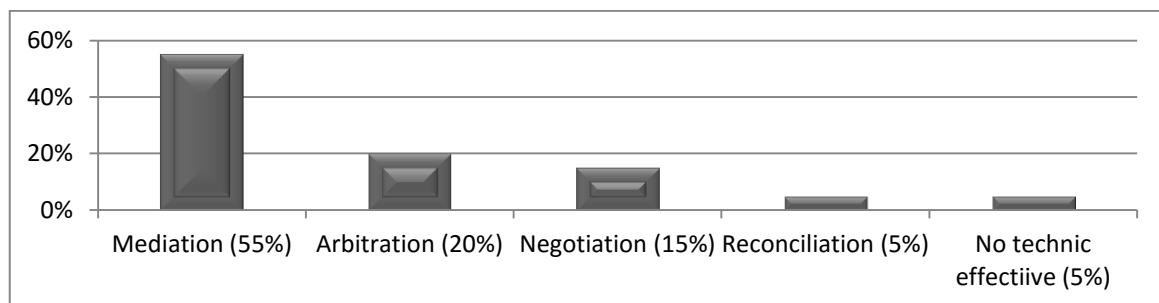
Table 3.4: Abolition of section 21 of the *Artha Rin Adalat Ain*, 2003

SL No.	Respondents reply	percentage
1	It was unsuccessful as parties are not interested	40.00%
2	Corruption of the judges	45.00%
3	Unfair negotiation	10.00%
4	Accusation against court- staff	5.00%
Total		100.00%

Source: Analysis of survey responses collected under this research

It appears from the above table 3.6 that 40% expert judges has replied that section 21 of the *Artha Rin Adalat Ain*, 2003 was abolished due to unsuccessful as bankers, lawyers and borrowers are not interested to settle through settlement conference and 45% expert judges has replied that the sitting judges of the *Artha Rin Adalat* are corrupted. Further, a question was put to expert Judges to know which types of ADR mechanism they consider the most effective for quick recovery of NPLs.

Figure No. 3.1: Party interests for types of ADR to resolve *Artha Rin* disputes



Source: Developed from the analysis of data collected under this research

From the above figure No.3.2, it appears that 55% percent experts-judges suggested for mediation, 20% expert-respondents ask for arbitration, 15% expert-respondents ask for negotiation, 5% expert-respondents ask for reconciliation and 5% expert-respondents ask no technique for effective ADR.

In this circumstance, it has determined that mediation is most reliable process for a successful ADR for recovery the bank dues.

3.7 Case Studies on NPL Recovery through ADR

3.7.1 Case study 1 (case contested through contesting trial)

Mr. Y is a businessperson in Bangladesh and a renowned person. For his business purposes, he open a current account with a National commercial Bank namely A Bank Limited. Thereafter, in 2010 he took a term loan from the bank for a period of 36 months. After payment of three instalments, the borrower Mr. Y becomes irregular to pay the instalments. Bank has been communicating with him over phone, and he assured to be regular to pay the bank instalment. Several times communication the borrower is not interested to pay the instalment then the bank sent reminder letter in several times for paying the bank loan even the bank official had visited his business office and residence physically. Ultimately, the bank is going to initiate legal action against Mr. Y for recovery the loan. As a part of legal action Bank auction, the collateral securities for selling as per section 12(3) of the *Artha Rin Adalat Ain*, 2003, but no bidder has been participated then the bank has filed *arrha Rin* suit against the borrower. Suit steps are as follows:

“A”bank filed *Artha Rin* suit in the third week of August 2011 against Mr. Y for not paying banks dues.

1st round of delay: Summons was issued and was not returned on September. Then the court ordered for publication of summons notice for appeared defendants. On October 2011, the bank submitted the publication of summon notice and court order to submit written statements.

2nd round of delay: on November the borrower appeared into court and seeks time for written statement (three times). The court grants the application and fixed on January 2012 for written statements.

Third round of delay: On that day, Mr. Y submitted his written statement, and the learned court ordered for mediation. In February 2012 both parties to appear in the court and submit the name of their mediators. After that, the court ordered parties and their lawyers to sit for mediation and fixed on the second week of April 2012 for submitting mediation report.

Both parties sit for mediation in the first week of March 2012 and mid of March 2nd time.

Fourth round of delay: Mediator seeks 30-day time, and court granted his application. Accordingly, parties sit for their third mediation session on the last week of April 2012. On 13.5.2012, the mediator submitted a report to the court and notified about failure in mediation.

Fifth round of delay: As mediation failed, the court fixed a date on the last week of May 2012 for framing issues, and defendant again sought time.

Sixth round of delay: The court fixed a date on mid of June 2012 to frame the issues, and framed the issue. The court fixed on the last week of June for final hearing, and the plaintiff and defendants opened their case through summary submissions.

Seventh round of delay: The court fixed on the mid of July to hear witnesses of plaintiff bank and parties again appear in court. The plaintiff bank officials examined in chief, and defendant lawyer cross-examined bank officials.

Eighth round of delay: On August to hear witnesses from the defendant and defendant sought time and approved by court. Accordingly, on the mid of August, defendant provide witness in the court and plaintiff's lawyer cross-examine the witness. At the end of chief and cross from both parties, the learned court fixed for arguments on September 2012.

Ninth round of delay: September 2012 fixed for argument and defendant sought time and granted by the court.

Tenth round of delay: On third week of September, the defendant submitted their written argument and sought for time to provide verbal arguments. The court approved the petition and fixed a date in the first week of October 2012 to hear verbal arguments.

The court approved the petition and fixed a date in the first week of October 2012 to hear verbal arguments. Fixing date the defendant submitted their verbal arguments the learned court pronounced the judgment on October 2012 and passed a decree on November.

Eleventh round of delay: Even after the judgment the borrower, abstain from repaying debt. Thereafter, the bank filed execution suit by the second week of March 2013 and April 2013 the court issued a show cause notice under section 30 of the ARA Act and ask the defendant to explain his position.

Twelfth round of delay: The summon was not returned by the defendant then the last week of April, the court passed an order for the publication of summon in national dailies and fixed a date on the mid of May when the plaintiff bank has to appear in the court and submit the evidence of such publication.

Thirteenth round: In mid-May, the plaintiff bank submitted the evidence of publication before the court, and the court fixed a date on the last week of June for judgment debtor to submit written objection. As the judgment debtor remain non-respondent, on the next court day in the last week of June 2013, the learned court passed an order for set a date for auction order under section 33(1) of the *Artha Rin Adalat Ain*, 2003, as the judgment debtor remain non-respondent.

Fourteenth round of delay: After completion of all formalities the tender for auction was dated in mid-August 2013, and no one participated in the auction then on first week of September 2013 the court issued an ownership certificate in the name of the bank, following an application by the bank in that regard. Debtors may use muscle man to futile the auction process, and debtors may fraudulently sell or otherwise handover their property during the execution process.

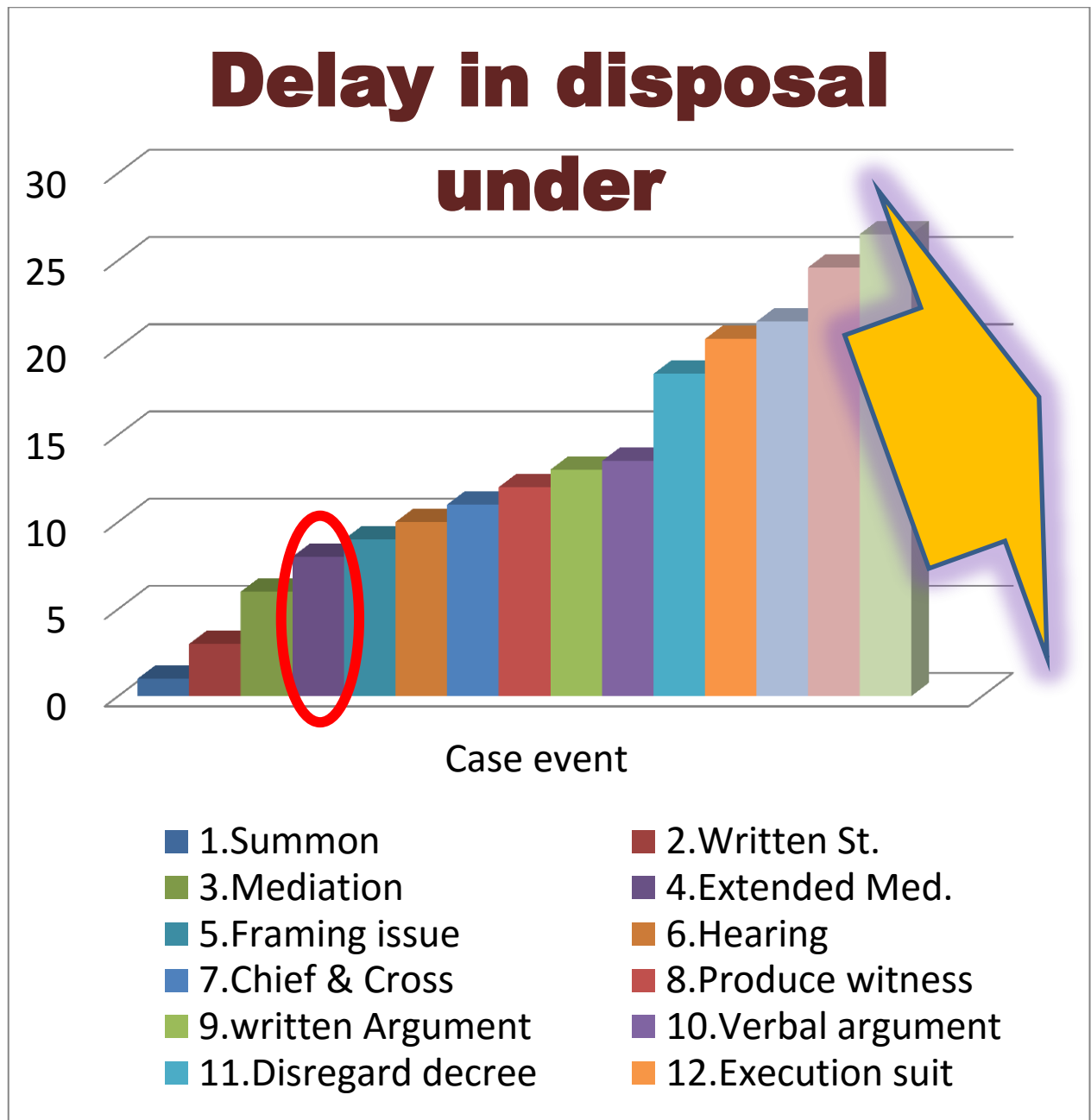
Fifteenth round of delay: On the third week of October 2013 the decree holder bank filed a second execution suit for the remaining suit amount that was not realized by the mortgaged property against the suit.

Sixteenth round of delay: The process continued.

Analysis of the case study indicates that NPL borrowers may delay the execution process in almost every step of NPL recovery through ARA suits and only partial amount is realized even after a long delay of three years. Therefore, promotion of ADR is imperative to reduce such kind of delay.

As shown in this figure, delay in disposal increase in almost every stage of a civil litigation process under ARA. In this case, study this process may continue as further execution suit is filed to recover the part of bad debt not attained through sale of assets.

Figure 3.2: Delay in disposal under *Artha Rin Adalat* trial cases



Source: Developed by the researcher from analysis of relevant sections of Artha Rin Adalat Ain, 2003 and the Code of Civil Procedure, 1908.

This Figure 3.2 is prepared from the case study no.1 presented earlier. It indicates how delay accumulates as litigation progresses through a large number of stages shown here.

If the dispute could be solved through mediation parties may get their final outcome on the fourth bar shown in red mark here. However, as initial mediation effort fails the case is progression through numerous stages and causing excessive delay.

3.7.2 Case study 2 (Case Settled through Mediation)

Mr. X is a service man in Bangladesh. For development, his house he received a house-building loan from a National commercial Bank namely B Bank limited in 2007. In 2011 the borrower Mr. X becomes irregular to pay the instalments. Bank has been communicating with him over phone, and he assured to be regular to pay the bank instalment. Several times communication the borrower is not interest to pay the instalment then the bank sent reminder letter in several times for paying the bank loan even the bank official had visited his house physically. Ultimately, the bank is going to initiate legal action against Mr. X for recovery the loan. As a part of legal action Bank auction, the collateral securities for selling as per section 12(3) of the *Artha Rin Adalat Ain*, 2003, but no bidder has been participated then the bank has filed *arrha Rin* case against the borrower. Suit steps are as follows:

“B”bank filed *Artha Rin* suit in the 2nd week of February 2013 against Mr. X for not paying banks dues.

1st round of delay: Summons was issued and was returned on first week of March after execution.

2nd round of delay: On the 3rd week of March the borrower appeared into Court and seeks time for written statement. The learned court grants the application and fixed on last week of May 2013 for written statements. The borrower again sought time and learned court grant the time petition with cost.

Third round of delay: On 1st week of June Mr. X submitted his written statement, and the learned court ordered for mediation. In 2nd June 2013 both parties to appear in the court and submit the name of their mediators. After that, the court ordered parties and their lawyers to sit for mediation and fixed on the 3rd week of August 2013 for submitting mediation report.

Both parties sit for mediation in the last week of June 2013 and mid of July 2nd time.

Fourth round of delay: on the 3rd week of August 2013 the parties sought further time for mediation. The learned court grant further 30 days time and 2nd week of September the parties sitting 3rd time for settlement the case and settled.

Fifth round of delay: on the 3rd week of September 2013, the mediator submitted mediation report. As the mediation success, both parties submitted a petition as mediation. The learned court

accepts the petition and ordered to return the court fees. The plaintiff bank filed petition before the court on the last week of September 2013 for withdrawing the court fees and the learned court passed an order for the same and with draw the court fees accordingly.

3.7.3 Case study 3 (case contested through *Artha Jari*)

Mr. C is a businessperson in Bangladesh and a renowned person. For his business purposes, he open a current account with a National commercial Bank namely D Bank Limited. Thereafter, in 2008 he took a term loan from the bank for period of 48 months. After payment of four instalments, the borrower Mr. C becomes irregular to pay the instalments. Bank has been communicating with him over phone, and he assured to be regular to pay the bank instalment. Several times communication the borrower is not interest to pay the instalment then the bank sent reminder letter in several times for paying the bank loan even the bank official had visited his business office and residence physically. Ultimately, the bank is going to initiate legal action against Mr. C for recovery the loan. As a part of legal action Bank auction, the collateral securities for selling as per section 12(3) of the *Artha Rin Adalat Ain*, 2003, but no bidder has been participated then the bank has filed *Artha Rin* suit against the borrower. Suit steps are as follows:

“D” bank filed *Artha Rin* suit in the last week of November 2009 against Mr. C for not paying banks dues.

1st round of delay: As Bank primarily did not deposit court fees, so court fixed on the first week of 2010 for court fees.

2nd round of delay: Summons was issued and was not returned on 3rd week of February 2010. Then the court ordered for publication of summons notice for appeared defendants. On third week of March 2010, 2nd week of May 2010, last week of June 2010 plaintiff-bank sought time for paper submission and 3rd week of July 2010 plaintiff-bank submitted paper to the learned court and court order to submit written statements.

3rd round of delay: On September the bank was appeared, but the borrower was not appeared then court fixed for ex-parte hearing.

4th round of delay: Last week of November plaintiff bank sought time and defendant appeared and sought time for written statement. The court grants the application with CP cost and fixed on December 2010 for written statements.

5th round of delay: On last week of January 2011 borrower sought time, 3rd week of February borrower sought time but bank was not appeared, 3rd week of March bank appeared borrower not appeared and sought time. The learned court fixed on last week of April 2011 for written statement.

6th round of delay: On that day Mr. C submitted his written statement, and the learned court ordered for mediation on the last week of May as plaintiff and defendant did not submit mediator name.

7th round of delay: Last week of June the mediator sought time for mediation report as he did not find the address of the lawyer of the Bank. Both parties sit for mediation in the first week of July 2011 and mid of July 2nd time.

8th round of delay: On 31.07.12, the mediator submitted a report to the court and notified about failure in mediation. As mediation failed, the court fixed a date on the last week of September 2011 for framing issues.

9th round of delay: The charging court did not take any step, defendants appeared, but plaintiff did not appear.

10th round of delay: On the last week of September 2011 the court framed issue the learned court fixed on the last week of October 2011 for peremptory hearing.

11th round of delay: On the last week of November the plaintiff bank sought time and court fixed on the 3rd week of 2012 for PH, on that day the plaintiff filed petition for amendment of plaint and accordingly amended subject to affidavit on the 3rd week of February.

12th round of delay: The court granted amendment petition of the 3rd week of March and borrower sought time and granted by the learned court. The learned court fixed on the 3rd week of April for Peremptory hearing.

13th round of delay: On April borrower appear the plaintiff Bank sought time due to *Hartal*, but borrower was appeared. Learned court fixed on the 2nd week of May for PH.

14th round of delay: On that day both parties was appeared acting judged was busy in his own court.

15th round of delay: On June the learned court took witness of PW-1, On July the cross examination of PW-1, and on August chief examination of PW-1 and Cross examination of PW-1, and last week of August borrower sought time. And granted by the court

16th round of delay: September 2012 was fixed for further hearing and defendant sought time and granted by the court and October acting judge was busy in his own court.

17th round of delay: On first week of January 2013 defendant sought time and granted by the court. On the 1st week of February defendant sought time and granted by the court with cost.

18th round of delay: On first week of March was fixed for further hearing the defendant sought time due to *hartal*. On the 2nd week of April defendant again sought time due to *hartal* and the 2nd week of May was fixed for further hearing.

19th round of delay: On the second week of June plaintiff appeared but defendant sought time , granted by the court

20th round of delay: On 2nd week of July was fixed for further hearing, defendant sought time and granted by the court with CP cost Tk.2000/- on the 2nd week of August defendant again sought time and granted.

21st round of delay: On 3rd week of September the witness was ended and the learned court fixed on the 3rd week of October 201113 for argument.

22nd round of delay: On last week of November was fixed for Argument, the defendant sought time and granted by the court.

23rd round of delay: On 1st week of January 2014 the plaintiff appeared but defendant took no step then 2nd week of March the defendant again sought time and granted by the court.

24th round of delay: On the last week of April 2014 court fixed for further hearing (witness of defendant) and 2nd week of June fixed for defendant witness and 1st week of July defendant sought time, last week of July defendant sought time, 1st week of October defendant sought time.

25th round of delay: On 1st week of November the court was busy. Next date fixed on 1st week of January 2015.

26th round of delay: On the 2nd week of February both parties appeared. Next date fixed on 3rd week of February for further hearing and on 3rd week of March the acting court was busy.

27th round of delay: On 1st week of April the defendant witness was ended and next date fixed on the 1st week of April for argument and on that day no step was taken and the learned court fixed on 2nd week of April for judgment. Lastly on the 3rd week of April learned court passed decree.

28th round of delay: Even after the judgment the borrower, abstain from repaying debt. Thereafter, the bank filed execution suit by the 4th week of November 2015 and 2016 the court issued a show cause notice under section 30 of the ARA Act and ask the defendant to explain his position.

29th round of delay :The summon was not returned by the defendant then the 1st week of January 2016, the court passed an order for the publication of summon in national dailies and fixed a date on the mid of February when the plaintiff bank has to appear in the court and submit the evidence of such publication.

30th round of delay: In mid- February the plaintiff bank submitted the evidence of publication before the court. As the judgment debtor remain non-respondent, on the next court day in the 1st week of April 2016 the learned court passed an order for set a date for auction order under section 33(1) of the *Artha Rin Adalat Ain, 2003*, as the judgment debtor remain non-respondent.

31st round of delay: After completion of all formalities the tender for auction was dated in last of June 2016 and no one participated in the auction then on first week of August 2016 the court issued a possession certificate in the name of the bank, following an application by the bank in that regard. Debtors may use muscle man to futile the auction process and debtors may fraudulently sell or otherwise handover their property during the execution process.

32nd round of delay: September 2016 the decree debtor filed Writ Petition and stayed the proceedings of the *Artha jari* case which was recorded in the record.

33rd round of delay: The process continued.

Analysis of the case study indicates that NPL borrowers may delay the execution process in almost every step of NPL recovery through ARA suits and no amount is realized even after a long delay of 7 seven years. Therefore, promotion of ADR is imperative to reduce such kind of delay.

As shown in this figure, delay in disposal increase in almost every stage of a civil litigation process under ARA. In this case study, this process may continue as further execution suit is filed to recover the part of bad debt not attained through sale of assets.

3.7.4 Case study 4 (case settled through Ex-parte)

Mr. Z is a businessperson in Bangladesh. For his business purposes, he open a current account with a National commercial Bank namely Y Bank Limited. Thereafter, in 2012 he took a personal loan for a period of 36 months. After payment of three instalments, the borrower Mr. Z becomes irregular to pay the instalments. Bank has been communicating with him over phone, and he assured to be regular to pay the bank instalment. Several times communication the borrower is not interest to pay the instalment then the bank sent reminder letter in several times for paying the bank loan even the bank official had visited his business office and residence physically. Ultimately, the bank is going to initiate legal action against Mr. Z for recovery the loan. No auction was called for selling as per section 12(3) of the *Artha Rin Adalat Ain, 2003*, as no collateral securities was against the loan as such the bank directly has filed *Artha Rin* suit against the borrower. Suit steps are as follows:

“Y”bank filed *Artha Rin* suit in the third week of April 2014 against Mr. Z for not paying banks dues.

1st round of delay: As Bank primarily did not deposit court fees, so court fixed on the 2nd week of May 2014 for court fees.

2nd round of delay: Summons was issued and was not returned on 3rd week of June 2014. Then the court ordered for publication of summons notice for appeared defendants. On 2nd week of July plaintiff-bank did not submit paper publication and on the last week of July plaintiff was not appeared summon not executed. Then On the Mid of October plaintiff was not submitting paper.

3rd round of delay: On the last week of November 2014 plaintiff appeared but paper not submitted. On the 2nd week of February 2015 summon was not executed then the learned court again ordered for paper publication and on the 2nd week of April published the summon notice in the paper then on the mid of June the paper was submitted in the court.

4th round of delay: On the 2nd week of July summon was executed then fixed for Written Statement failing to submit written statement then ex-parte hearing.

5th round of delay: On the 2nd week of November 2015 the learned court passed ex-parte decree.

6th round of delay: Even after the judgment the borrower abstain from repaying debt. Thereafter, the bank filed execution suit by the second week of February 2016 and 1st week of March 2016 the court issued a show cause notice under section 30 of the *Artha Rin Adalat Ain*, 2003 and ask the defendant to explain his position.

7th round of delay :The summon was not returned by the defendant then the 1st week of March 2016 the court passed an order for the publication of summon in national dailies and fixed a date on the mid of April when the plaintiff bank has to appear in the court and submit the evidence of such publication.

8th round of delay: In 1st week of June the plaintiff filed petition under section 34(1) of the *Artha Rin Adalat Ain*, 2003 for Warrant of Arrest against the defendant, and the learned court fixed on the 3rd week of July for hearing the petition. After hearing the learned court passed an order for Warrant of Arrest. Warrant of Arrest will be executed on the last week of the month of September. But on the 1st week of September, the plaintiff filed petition mentioning inter alia that they got the entire outstanding from the borrower and the proceeding is ended with full satisfaction.

It appears from the four case studies that if the dispute could be solved through mediation, parties may get their final outcome within shortest possible time as shown case study No.2, if the parties want to delay the case they may take various technique for delay the proceedings as shown case study No.3, However, if borrower wants to settle the case then it is possible after the judgment as shown case study No.4. Furthermore, if the borrower is not interested to pay the bank loans further proceeding will be started which has shown in the case Study No.1.

3.8 *Artha Rin Adalat Ain, 2003: A Critical Evaluation and Some Loopholes of Legal Framework for NPL Recovery*

The non-performing loan has been increasing day by day and the NPL has been created problematic situation for the bank, as it has no income for the bank, and have provision, which affect the profit of the bank²⁹⁹. With a view to recover the NPL, there is enacted *Artha Rin Adalat Ain, 2003* in Bangladesh³⁰⁰. The *Artha Rin Adalat Ain, 2003* is a special law for recovery the NPL of Financial Institutions; it follows the rules of the Code of Civil Procedure³⁰¹. As the Code of Civil Procedure allows filing numerous petition, counter-application for the plaintiff and the defendants and the presiding judge has no freedom for determining whether hearing of the case has adjourned or new claim has to add in the plaint through amendment of plaint³⁰². The cases have been delaying due to servicing summon, adjournments, time limit for case disposal and also restriction on appeal that increasing the legal expenditure of the financial institutions³⁰³. Section 22 of the *Artha Rin Adalat Ain, 2003* does not empower the presiding Judge for the mediation procedure that caused the lengthy procedure of the mediation. Practically, the defendant sought time from the court for delaying the *Artha Rin* case. If any judgment debtor has confined six months confinement, then no warrant has issued against him.

However, settlement conference under section 21 of the *Artha Rin Adalat Ain, 2003* has repealed by amendment in 2010, no success come through section 22 of the *Artha Rin Adalat Ain, 2003*. In this respect, the judges-expert respondents were asked that what other remedies-like better training, more authoritative power to judges in strict time management for cases, or any other- would you suggest improving the NPL recovery through ADR? The Table no.3.5 gives the result of this question:

²⁹⁹International Finance Corporation (IFC), *Distressed Asset Transfer Handbook: General Guidelines for the Purchase and Sale of Distressed Assets in the Financial Sector* (2121 Pennsylvania Ave. NW, Washington, DC 20433, United States of America: IFC, 2012),8.

³⁰⁰*Artha Rin Adalat Ain* of 2003, Act No. VIII (2003), preamble

³⁰¹*Artha Rin Adalat Ain* of 2003, section 5(2)

³⁰²Forrukh Rahman, *Artha Rin Adalat, 2003;* A Review, Newsletter (2007),1.

³⁰³Lutfur R. Chowdhury, *A text Book on Bankers' Advances* (Dhaka: L.R Chowdhury,2012),772.

Analysis from the above table 3.7, it appears that 75 % expert-judges has replied that judges power should incorporate in the mediation proceedings under the *Artha Rin Adalat*. 55% respondents have viewed that judge's trainings on ADR is necessary for successful ADR.

Table no. 3.5 Better training, more authoritative power

Sl No.	Reply of the respondents	Percentage
1	Power should be given to judges for early recovery through ADR	75
2	Training of the judges regarding ADR for recovery loan	55
3	Build up awareness	20
4	Circular for banker's powers.	20
5	Separate Artha Rin court	30
6	Authorities powerful institution for ADR	25

Source: Analysis of survey responses collected under this research

One quarter of all respondents further expressed that bankers authoritative power should be incorporated for a successful ADR under *Artha Rin Adalat Ain, 2003*. 20% respondents replied that circular for bankers empowering delegation power should be issued by the respective bank. 20% judges –respondents have replied that build up awareness among the borrowers, bankers, lawyers and judges may increase such situations. Further 30% judges-respondents replied that there should have separate *Artha Rin Adalat* to success of ADR under *Artha Rin Adalat Ain, 2003*. The above discussion and responds of the expert-judges it has assumed that ultimately restore section 21 of the *Artha Rin Adalat Ain 2003*, may accelerate the success of ADR under *Artha Rin Adalat Ain, 2003*.

3.9 Conclusion

Though the lending policy vary bank to bank, all policies has been followed the laws and the guidelines of Bangladesh Bank. Litigation through contesting is very much lengthy procedure under the prevailing laws of Bangladesh. Due to this reason, cases are pending long time in the court, and the parties could not be able to achieve the benefit from the judgment of the concerned case. However, Mediation procedure undoubtedly reduce the case load in Bangladesh as mediation procedure comparatively a short procedure and if any case dissolve

through mediation no parties file appeal, review and revision in the apex court. Considering lengthy procedure of the cases, all should accept the mediation for settlement the cases. Moreover, Mediation has been maintaining the good relationship between the borrower and the bank, and the court fees has returned from the court as per law, which also reduce the operational cost of the financial institutions as well as cost of the borrowers.

CHAPTER 4

EFFECTIVENESS OF *ARTHA RIN* ADR IN BANGLADESH: AN EVALUATION ON COURT REGISTRY DATA

4.1 Introduction

ADR is a popular and common proceeding in the legal system not only in Bangladesh but also in other parts of the world. It is an internationally recognized dispute resolution mechanism to complement court proceedings. In countries like Bangladesh, where a huge backlog of cases makes formal trial an ineffective remedy to disputes, ADR plays a vital role in the disposal of suits smoothly. The practice of ADR, especially mediation has also been proofed as an effective method of dispute resolution in different civil courts of Bangladesh. To get benefitted from ADR and accelerated recovery of NPL, court proceeding under *Artha Rin Adalat* Act, 2003, includes the provision of ADR

In addition to the earlier mentioned judgment of the Supreme court of Bangladesh, the Developed Countries like, Australia, Canada, England, New South Wales, Hong Kong have been using ADR as a mandatory proceedings for resolving cases, and they also think that case settlement through mediation reduced the backlog of cases as well as saved the money of the litigants³⁰⁴.

In respect of the successful ADR, World Bank has performed the study and finding the cost saving in ADR comparative to litigation that shown in **Table 4.1**³⁰⁵:

³⁰⁴LC Paper No. CB (2)1574/01-02(01),1-6.

³⁰⁵The World Bank, *Settling Out of Court How Effective Is Alternative Dispute Resolution?* (Washington DC: The World Bank, 2011), 2, accessed April 15, 2017. Url: <http://www.worldbank.org/fpd/publicpolicyjournal>.

Table 4.1 Cost savings with ADR in USD and as a % of the cost for litigation

Country or countries	Study	Reform	ADR cost as % of litigation cost
Bosnia and Herzegovina, FYR Macedonia, Serbia	IFC 2006	Introduction of ADR centres	50
Colombia	Alvarez de la Campa 2009	Conciliation made mandatory (before court filings)	40–50
9 Latin American countries	Jorquiera and Alvarez 2005	ADR use	3-18
United States	Barkai and Kassebaum 1992	Court-annexed arbitration program	USD 500 (per party)
United States	Cited in Stipanowich (2004)	Introduction of early mediation pilot programs in 4 superior courts	USD 6,000 (per case)
Canada	Hann and Baar 2001	Introduction of mandatory mediation in Ottawa and Toronto	USD 6,000 (per case)

Source: World Bank report, Settling Out of Court How Effective Is Alternative Dispute Resolution?

Table 4.2: Time savings with ADR relative to litigation³⁰⁶

Country	Study	Reform	Time savings (Months)
Colombia	Alvarez de la Campa 2009	Conciliation made mandatory (before court filings)	11
United Kingdom	Genn and others 2007	Introduction of quasi-compulsory automatic referral to mediation	None
United States	Bingham and others 2009	ADR use by the federal government	6
United States	Cited in Stipanowich (2004)	Introduction of early mediation pilot programs in 4 superior courts	1
United States	Barkai and Kassebaum 1992	Court-annexed arbitration program	4

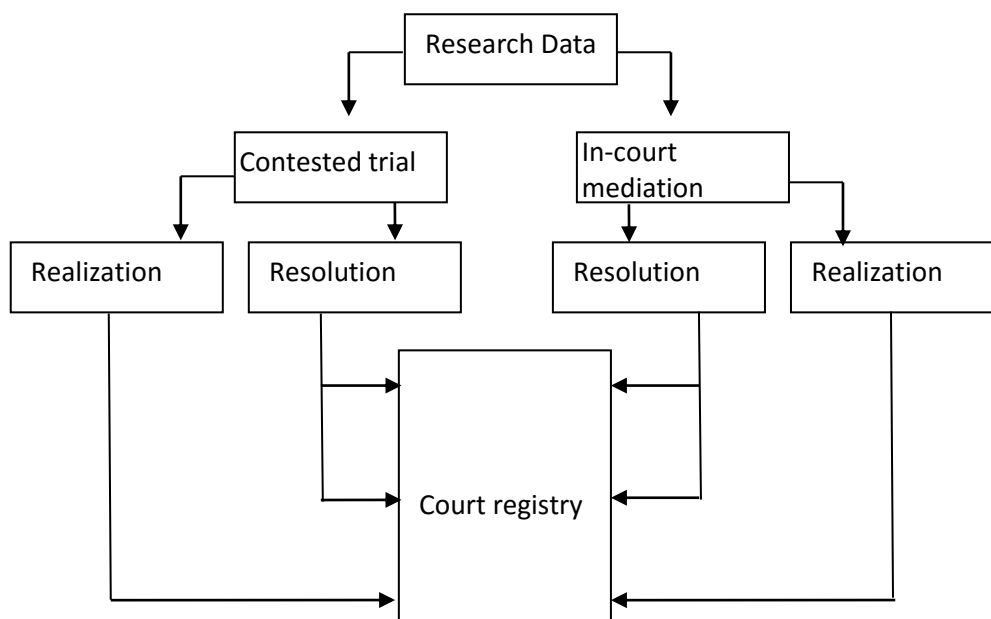
Source: World Bank report, Settling Out of Court How Effective Is Alternative Dispute Resolution?

³⁰⁶*Id.* at 3.

Further, World Bank study found the time-saving in ADR comparative to litigation. As shown in Table 4.2, more time savings through ADR can be expected in developing countries where the normal court proceeding are not speedy enough like USA or UK. However, as discussed in chapter one, sporadically available literature indicates that ADR in *Artha Rin Adalats* are not as high performing as it is in the case of other civil disputes. Since borrowers, attending *Artha Rin Adalats* are in some cases large industrial borrowers, sometimes they are not concerned much about cost saving through ADR, rather are more concerned about deferral of loan repayment and associated savings on interest. On the other hand, NCBs are not private banks. Nationalized banks may follow a lending and recovery policy as instructed by the government. Serving political interest may prevail over making a better profit through the accelerated recovery of NPL.

Therefore, the incentive structure of NCB management may widely vary from that of private entrepreneurs. Though there is a two way possibility on the effectiveness of ADR in *Artha Rin Adalats*, and irrespective of its success or failure, both banks and commercial borrowers may act as a catering and hindering factor for or against such effectiveness, the objective of this chapter is to analyze resolution and realization data collected from Dhaka *Artha Rin Adalat* to make a comparison, between cases resolved through mediation and litigation in terms of time to resolution, time to realization, and borrower size determined by amount of decree. To fulfill this objective data were collected on the resolution of disputes and realization of decree money through contested trial and in-court mediation.

Figure 4.1: Flowchart of data collected to measure resolution and realization through ARA



Source: Developed by the researcher following the methodology of this research

Data relating to a total number of resolution and realization for all cases solved through contested trial, ex-parte, dismissal, withdrawal and in-court mediation in 2013 were collected from case registers and realization registers kept at all four *Artha Rin Adalats* of Dhaka district. These documentary data were collected in January 2015. However, due to limited access of case registers, average time to resolution and average time to realization was calculated from case registry data of 300 individual cases files of *Artha Rin* court 1 and *Artha Rin* Court 4 of Dhaka district. Case files were consulted from *Artha Rin* Adalat 1 and 4 because these two courts deal with all four NCBs in Bangladesh, along with a number of other private banks. As indicated in Figure 4.1, a complex process was followed to collect individual and aggregate data on time to resolution and time to recovery of the court decree. The following sub-sections discussed the process of collecting data on each of the different types of data collected in this research.

4.2 Resolution of NPL through mediation vs. trial: A quantitative analysis

4.2.1 Case backlog in *Artha Rin Adalat*

As mentioned earlier, available evidence indicates that *Artha Rin* ADR may not be effective enough to reduce huge case backlog of cases in courts. Statistics on filing and realization of casers at *Artha Rin Adalat* Dhaka indicates that less than 30% of total cases (old or newly filed in 2013) were disposed of by the end of the year. The number of pending cases was 2130 at the beginning of 2013, and of a slow rate of disposal number of outstanding cases at the end of 2013 increases to 4874 cases. This means that case backlog of *Artha Rin Adalat* has increased by 229% by the end of 2013.

Table 4.3: Lower resolution and case backlog in *Artha Rin* Courts (2013)

Cases outstanding at the beginning	2130	26.22%
New cases filed	5995	73.78%
Total cases for disposal	8125	100.00%
Cases disposed of through contested trial	202	02.49%
Cases disposed of trough ex-parte	818	10.07%
Cases disposed of through dismissal	82	01.01%
Cases disposed of through mediation	4	00.04%
Cases resolved through solenama or withdrawn	15	00.18%
Total Cases resolved in the year	1121	13.80%

Total cases that realized decree money	1106	13.61%
Cases outstanding at the end	7004	86.20%
Increased backlog	4874	229.00%

Source: Analysis of court registry data collected under this research

4.2.2 Lower disposal through *Artha Rin* ADR

Table 4.3 indicates that a very insignificant number of cases are withdrawn by respective parties by submitting Solenama to the court. These solenama results from negotiations between parties, however, does not count as mediation, as these mediations are not conducted following the provisions of *Artha Rin* Act 2003. Cases that follow the mediation process suggested in *Artha Rin* Act 2003 remain insignificant as well (4 in 2013).

Therefore, once submitted for trial, *Artha Rin* cases are not resolved through ADR and reported back to the court. Also, the overall rate of disposal is not promising. Though Table 4.3 indicates that overall rate of disposal in *Artha Rin* Court is very low, to understand further the dynamic of such backlog, it is important to analyze the nature of disposed and undisposed cases. Table 4.4 indicates the dynamic of disposed of cases in terms of the type of resolution, i.e. either through contested trial or through mediation.

Table 4.4: Insignificant no. of disposal of NPL cases through *Artha Rin* ADR

Type of disposal	Number of disposals	Percentage of disposal
Total in-court disposal	1121	100.00%
Disposal of contested trial	202	18.02%
Disposal by <i>Artha Rin</i> ADR	4	00.36%
Disposal through ex-parte	818	72.97%
Disposal through dismissal	82	07.31%
Withdrawal of cases	15	01.34%

Source: Analysis of court registry data collected under this research

Table 4.4 indicates that less than 1% of total disposal in *Artha Rin* Courts are done through mediation. This might happen if defaulted borrowers wish to protract the disposal period and enjoy interest-free NPL by going through the long trial process. On the other hand, bank official of nationalized commercial banks may not face sufficient pressure to accelerate the

recovery of NPL by ensuring quick resolution of disputes through mediation. Though from here it is not conclusive whether the delay is primarily caused by the reluctance of borrowers or less enthusiasm from lending banks, a comparative analysis of Ex-parte and dismissal data may shed some light on this issue.

As in most of the cases, Banks remain the plaintiff of *Artha Rin* Cases, data on disposal through ex-parte in Table 4.4 indicates that in almost three-fourths (72.97%) of the cases (818 out of 1121) banks get unilateral decree because of the absence of borrowers. This might occur if borrowers are not really concerned about repayment, even if there is a court decree to repay; or if borrowers are not able to continue cases through trial. The reluctance from borrower's side can be further strengthened through the argument that, if borrowers were really incapable of bearing the high cost of litigation, they might prefer low-cost mediation.

Table 4.5: Average time to disposal through different modes of resolution

Nature of disposal	Average time to disposal (excluding <i>ArthaJari</i>)
Ex-parte	3.8 months
Trial	18.5 months
Mediation	18.0 months

Source: Analysis of court registry data collected under this research

As the number of cases disposed of through mediation is less than 1% of total disposable cases, there is a high possibility that borrowers are not much concerned about repayment, even when Banks get decree against NPL borrowers. Data from Table 4.5 indicates that almost all cases that received ex-parte decree were resolved in the first three to five months. The average time to resolution through ex-parte cases is 3.8 months, which may be required to prepare the case for first hearing. That means almost all of the Ex-parte resolutions defendant parties or defaulters of NPL remain absent from the very beginning of *Artha Rin* cases.

This further indicates that NPL borrowers may not take the initial disposal of cases seriously, or they have made a rational choice to make default and prolong their period of default through protracted delay in court. Defaulted borrowers may show this kind of reluctance if is

not easy for banks to realize *Artha Rin* decrees, rather wait for a long time and spend a substantial amount of money to dispose of loan collaterals through decree *jari* cases. Analysis of results from empirical data in following chapters will further clarify this issue.

Further, analysis of time to the disposal of trial cases (excluding *jari* trial cases) through *Artha Rin* Courts indicate that most of the cases are resolved in and around 18 months from their date of filing. Though very few in number, comparison of time to the disposal of cases through mediation (excluding *jari* mediation cases), as depicted in Table 4.5, with time to disposal for cases through trial indicates that almost the same time is required for disposal through trial and mediation. Nevertheless, NPL borrowers are not choosing mediation to resolve their cases in *Artha Rin Adalats*.

4.2.3 Insignificant progress in time to resolution through *Artha Rin* ADR over trial

Table 4.6: Disposal through Mediation

Nature of disposal through Mediation	No. of cases disposed
Mediation during trial	01
Mediation at decree <i>jari</i> cases	03
Total mediation	04

Source: Analysis of court registry data collected under this research

The reluctance of NPL borrowers to resolve their cases through mediation is equally applicable for *Artha Rin jari* case, as shown in in Table 4.6 above.

Table 4.7: Resolution of *Artha Jari* cases in 2013

Type of resolution	No. resolved	Average time to resolution	The average amount of claim
Mediation	03	19.50 months	15.44 crore
Ex-parte	43	8.2 months	9.78 crore
Contested	39	18.23 months	0.79 crore

Source: Analysis of court registry data collected under this research

Comparison of statistics between trial and mediation from Table 4.5 and 4.6 together indicates that NPL borrowers are not choosing mediation to dispose of their cases (only four in comparison of 202 cases resolved through trial mentioned in Table 4.4) in *Artha Rin Adalat* even when the average time to resolution of cases through trial and mediation remain very close to each other. Data on Table 4.7 further validates this claim. During *Artha Rin jari* stage very high-value cases are sometimes resolved through mediation or dismissal. Analysis of empirical data in following chapters will explore why NPL borrowers may have a preference for an authoritative judge-led *Artha Rin* trial than non-judge neutral mediators in *Artha Rin* ADR (mediation).

Table 4.8: Nature of cases resolved through trial vs. ex-parte (excluding *jari* cases)

Nature of disposal	Average decree amount
Trial	1.84 lac
Ex-parte	171 lac

Source: Analysis of court registry data collected under this research

Comparison of Statistics between disposal through trial and ex-parte as shown in Table 4.8 indicates that relatively low-value cases are disposed of more through contested trial, while high-value cases on an average are resolved as ex-parte. A comparison of the amount of decree through ex-parte and contested trial indicates that decree amount for cases resolved through contested trial always remain low in comparison with ex-parte decrees. This indicates that big borrowers are much reluctant to continue their cases. This comparative statistics also make sense because high-value NPL borrowers may find it more cost-effective, and therefore, make a rational choice to bear legal expenses and delay NPL recovery than repaying principal and interest on NPL. Data on Table 4.12 further validates this claim.

Table 4.9: A special mention to Ex-parte cases of *Agrani* Bank

Name of the NCB	Disposal of Ex-parte cases
<i>Sonali</i> Bank	6
<i>Agrani</i> Bank	74
<i>Janata</i> Bank	2
<i>Rupali</i> bank	0

Source: Analysis of court registry data collected under this research

Ex-parte cases from different nationalized banks as analyzed in table 4.9, however, indicates that most of the ex-parte cases came from *Agrani* bank. Therefore, instead of taking this trend as a general trend for all NCBs, this issue can be dealt specifically with *Agrani* Bank. As mentioned above, comparison of NPL cases from different NCBs indicates that most of the ex-parte cases came from *Agrani* Bank. The same is true for cases resolved through the contested trial as shown in table 4.10.

Table 4.10: interbank comparison of contested trial cases

Name of the NCB	No. of resolution through trial
<i>Sonali</i> Bank	4
<i>Agrani</i> Bank	45
<i>Janata</i> Bank	2
<i>Rupali</i> bank	0

Source: Analysis of court registry data collected under this research

As indicated in Table 4.10, most of the cases resolved through contested trial are from *Agrani* Bank followed by *Sonali* bank and other banks. This indicates that *Agrani* Bank is much strict in its credit policy and so is able to collect more amount through the recovery of NPL. One possibility is that other NCBs resolve most of their cases through *Solenama* that are not accounted for official rate of resolution.

However, this is not the case because NCBs with a lower number of resolution through trial is not showing any better performance (rather performing worse) than *Agrani* bank in recovering their outstanding NPLs. On the other hand, the same argument could be applicable to other private and foreign banks that prefer to resolve NPL cases either before filing or through withdrawal with *solenama*. A lower Gross Default rate of private and foreign banks, as shown in Table 1.4 further validates this claim.

4.3 Recovery of NPL: Litigation vs. Mediation

Besides expertise, some cases also disposed of through dismissal. Collected statistics on the dismissal of *Artha Rin* cases indicate that most of the dismissal cases came from private

commercial banks. Therefore, once filed, NCBs, in comparison with private commercial banks, seem to be more vigilant on recovering their debts.

Table 4.11: Resolution through withdrawal of cases without a *solename*

Type of resolution	No. of Resolution	Average time to resolution	The average amount of claim
Withdrawal	10	14.2 months	23.36 lac

Source: Analysis of court registry data collected under this research

Though not significant in number, cases are sometimes withdrawn by plaintiff bank. As indicated in Table 4.11, a total of 10 *Artha Rin* cases were withdrawn in 2013. The average amount of claim for withdrawn cases indicates that low-value cases in comparison with trial, expertise, or dismissal cases are dealt in this way. One reason for that may be to make the disposal cost effective. Though average time for withdrawal varies among cases, on average cases are withdrawn in a 14.2 month from their filing.

A comparison of mediated *jari* cases (Table 4.7) with usual resolution and realization cases indicates that very high-value litigations may go to mediation after a long gestation period. Therefore, mediation in *Artha Rin Adalats* is not using for a quick resolution rather used as the wind-up mechanism when after a long gestation period through contested trials parties understand the possible court decree that may follow from the case.

A comparison between average time to resolution and the average amount of realization for mediated and contested *Artha Rin jari* cases indicate that both time to resolution and the average amount of realized in mediated *jari* cases is higher than similar amounts in contested *jari* cases. This indicates that for high-value NPL cases borrowers may make intentional delay after court decree and then settle high-value *Artha jari* cases through mediation when court sanction may become inevitable.

Comparison between expertise *jari* cases with other contested *jari* cases indicates that big borrowers are more reluctant about court outcome on NPL cases in comparison with low values NPL borrowers. This is evident because When NPL borrowers remain absent in *jari* cases, the average loan amount is 978 lac. However, when defaulted NPL borrowers contest *jari* cases the amount of claim in only 78.5 lac.

Table 4.12: Contested *Artha Jari* vs. Ex-parte *Artha Jari* cases- big borrowers' reluctance to repay

Nature of disposal	No. of Disposal	Average time to resolution	The average amount of claim
Contested <i>Jari</i>	39	18.23 months	0.79 crore
Ex-parte <i>Jari</i>	43	8.2 months	8.38 crore

Source: Analysis of court registry data collected under this research

Therefore, the need of these two type of borrowers need to be addressed differently while developing a mechanism to popularize mediation in *Artha Rin* Courts of Bangladesh.

4.4 Conclusion

As observed through the resolution and realization of *Artha Rin* Cases resolved through mediation and contested trial, the only insignificant number of total *Artha Rin* Cases is dealt with mediation. Further, analysis of time to resolution and time to realization of mediation, contested trial, and *jari* cases indicate that borrowers of NPL, especially the big borrowers may remain reluctant due to the institutional mechanism of NPL recovery and urge for such recovery from nationalized commercial banks. Therefore, to improve the impetus for resolving quickly through mediation, sufficient incentives need to be created by making NPL recovery more penalizing for borrowers and increasing periodic vigilance from banks to accelerate recovery through *Artha Rin* cases. Interview data with defaulter borrowers and bank officials, as included in the next chapter, will put some light on this issue.

CHAPTER 5
**AN EMPIRICAL EVALUATION OF EFFECTIVENESS OF *ARTHA RIN* ADR:
MEDIATORS' PERSPECTIVE**

5.1 Introduction

The objective of a Mediator is to serve as an unbiased third party to ensure fair disposal of disputes that would not grant one party the victory and vanquish the other³⁰⁷. Mediation rather provides a fair and equitable forum for both the parties to share their view to reaching a consensual solution to their disputes. As mediators have an opportunity to closely monitor both the parties during mediation and discuss with them jointly and separately regarding their interests, concerns, and initiatives to resolve the disputes, they always remain in a strategic positions to understand the motive of parties attending the mediation, factors that are causing major backlog in resolving issues amicably and possible way outs to overcome this situation, and thereby ensuring enhanced effectiveness of ADR. Keeping this context in mind, this chapter firstly discussed mediators' perception on reasons for the lower effectiveness of *Artha Rin* ADR, and further action required to overcome such barriers causing delay. Based on the semi-structured questionnaire survey conducted for this research, this chapter highlights major causes of inefficiency that would be further clarified in subsequent Chapters of this thesis. As will be seen during a discussion in this chapter, total percentage responses for some questions exceeds 100 percent, a few questions of the questionnaire allowed respondents to make multiple choices.

5.2 Mediators perception through questionnaire survey: Methodology revisited

5.2.1 Semi-structured questionnaire survey

As discussed earlier in the methodology chapter, 20 mediators (18 lawyer-mediators and 2 retired judges) were asked about their perception of effectiveness of *Artha Rin* ADR, borrowers' choice about mediators, borrowers' and banks' pro-active participation in mediation to resolve NPL disputes, power disparity that small borrowers may face while attending mediation against large banking corporations, procedures that mediators follow to

³⁰⁷Dr. Jamila A. Chowdhury, *ADR Theories and Practices: A Glimpse on Access to Justice and ADR in Bangladesh* (Dhaka, Bangladesh: London College of Legal Studies (LCLS), 2013),54.

overcome such power disparity and ensure equitable outcome through mediation. A semi-structured questionnaire with both open and closed-ended questions was used for this purpose. Though judges cannot conduct mediation in *Artha Rin Adalats*, they have substantial expertise and understanding on the causes of delay in NPL recovery through *Artha Rin* ADR. Therefore, the semi-structured interview survey on mediators did not include sitting judges who are currently acting as judge to resolve NPL in money loan courts.

5.2.2 Different types of respondents interviewed as mediators

In conducting the survey, questionnaires were filled based on the personal interviews taken by the researcher. The field investigation has been carried out from 1st January 2016 to 30 March 2016.

Table 5.1 Mediator respondents' professional orientation

Profession	Number	Percentage
Lawyers	18	90%
Retired judge -magistrate	02	10%
Total	20	100%

Source: calculated from empirical data collected under this research

Among the respondents, 90% were lawyers and 10% were retired judges. This variation in the number of mediators is consistent with the fact that still most of the mediations are conducted by lawyers rather than judges. Further, among all respondents, 16 were male and only 4 females. This 80:20 ratio, though not consistent with the participation of female lawyers and judges in the judiciary, is consistent with the fact that in our social context still male mediators are preferred by parties than female mediators.

Table 5.2: Age range of mediators participated in the research

Age Range	Percentage of respondents
50 year or above	15%
40-49 years	55%
30-39 years	25%
20-29 years	5%
Total	100%

Source: calculated from empirical data collected under this research

Since mediators were asked about their perception of different aspects of *Artha Rin* ADR, the age, and judicial experience was a prime factor in choosing respondents for this research. For instance, as demonstrated in Table 5.2 above 70% mediators were in their mid-age, i.e., above 40 years. Only 5% respondent mediators were below 30 years. Similar was observed in the experience of mediators chosen as respondents for this research.

Table 5.3: The judicial experience of mediators participated in the study

Age Range	Number	Percentage of respondents
10 year or above	12	60%
5-10 years	7	35%
2-5 years	1	5%
Below 2 years	0	0%
Total	20	100%

Source: calculated from empirical data collected under this research

As shown in Table 5.3 sixty percent of the respondent mediators have experience in the judiciary for a period of 10 years or more. Only 5% of the respondents have experienced less than 5 years. As the application of formal mediation is comparatively new in Bangladesh experience of respondents as mediator was less than their experience as mediators, experience to act as a mediator was another key factor in choosing respondents for this research.

Table 5.4: Participants' experience as a mediator

Age Range	Number	Percentage of respondents
10 year or above	11	55%
5-10 years	6	30%
2-5 years	3	15%
Below 2 years	0	0%
Total	20	100%

Source: calculated from empirical data collected under this research

As shown in Table 5.4 above 55% of the total respondents were experienced mediators for more than 10 years. Only 15% of the respondents had experience as mediators for less than 5 years.

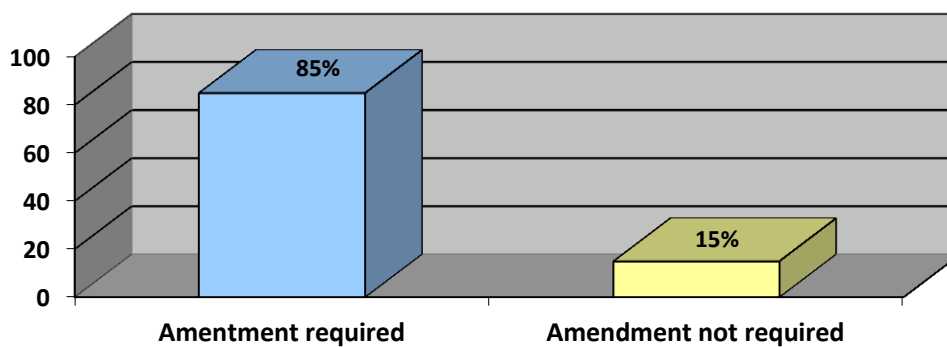
5.3 Mediators' perspective on the effectiveness of ADR for NPL recovery

As discussed earlier a survey was conducted through a questionnaire to know the Mediators view and level of consciousness on the subject of this research. In this study, opinions of the respondents from the lawyers and retired judges who have been dealing as mediators in the *Artha Rin* cases under *Arth Rin Adalat Ain, 2003* regarding nonperforming loan and its recovery through ADR under *Artha Rin Adalat Ain, 2003* in Bangladesh. A total of sixteen questions (from question no. 1 to question no.16) have been set on the level of awareness on NPL and its recovery under *Artha Rin Adalat Ain, 2003*. The summary of findings of the survey carried out for the purpose of this research is given below:

5.3.1 Need for an amendment to ARAA provision for effective ADR

The respondents were asked whether the provision of *Artha Rin Ain* are enough for loan recovery or further amendment is necessary for the more effective recovery of NPL through ADR. The opinion of the respondents regarding this issue is shown in Figure 5.1 below.

Figure 5.1: Need for any amendment to ARAA to enhance NPL recovery



Source: Developed from the analysis of empirical data collected under this research

Figure 5.1 depicts that about 85% respondents are agreed to amend the present *Artha Rin Ain* for recovery loan and 15% respondents are not agreed to amend the *Artha Rin Ain, 2003* for recovery loans.

Though a majority of respondents opined for the need for an amendment in ARAA, need for any new law was rejected by the equal number of respondents participated in this research. While respondents were asked whether any new enactment is required for enhancing the

recovery of NPL a majority of the respondent opined that the existing law with some amendment would suffice, and so no new enactment would be necessary. This answer was consistent with one later response where a number of respondents indicated a need for better enforcement of the existing ARAA and other corollary acts. Answers of the respondents regarding this question are shown in the following Table.

Table 5.5: Need for a new law to replace or supplement ARAA

Type of response	Require new law	Not require a new law	Total
% respondents	15%	85%	100%

Source: calculated from the empirical data collected under this research

5.3.2 Borrowers' less inclination to accept ADR procedure to resolve NPL cases

To understand borrowers' inclination towards ADR mediators were asked to share their perception on the extent to which borrowers are interested in taking ADR in resolving NPL cases.

Table 5.6: Inclination to accept ADR in NPL recovery

Inclined	Highly	Moderately	Indifferent	Oppose	Total
NPL	20%	35%	35%	10%	100%
Borrowers					
Bankers	15%	65%	15%	5%	100%
Lawyers	30%	25%	45%	0%	100%

Source: calculated from the empirical data collected under this research

As shown in Table 5.6 seventy percent borrowers remain either indifferent or only moderately interested in accepting ADR in resolving NPL cases. While only 20 percent borrowers are highly interested in taking ADR in resolving their cases, 10 percent of borrowers oppose to take ADR in resolving their NPL disputes. Therefore, according to the perception of mediators, it is clear that under the existing condition NPL borrowers do not have the motivation to resolve cases quickly through ADR.

5.3.3 Interest of bankers to accept ADR for resolving NPL disputes

As ADR in ARAs is a joint initiative from both borrowers and bankers, mediators were also asked about their perception of bankers' interest to take ADR for resolving their disputes. Another objective was to understand the comparative position of borrowers and bankers in accepting ADR as a means of accelerated resolution of NPL disputes.

As observed from Table 5.6 as much as 80% bankers remain moderately interested or indifferent in taking ADR to resolve their disputes. However, bankers seem to be more inclined in taking ADR, in comparison with borrowers. This is because, as perceived by mediators, as many as 65% of bankers remain moderately interested in accepting ADR in resolving NPL cases, in comparison with only 35% borrowers who are interested in taking ADR in similar cases. On the other hand, while 35% borrowers remain indifferent to take ADR, this number of indifference reduced to only 15% in case of bankers' inclination to accept ADR.

5.3.4 Lawyers' interest to resolve NPL cases through ADR

Since lawyers are one of the most influential persons to guide party action during litigation and also continue their influence when mediation is conducted out-of-court (lawyers' mediation or other third party mediation), it is important that lawyers should have a genuine interest in the quick resolution of NPL disputes through ADR.

From Table 5.6 above it appears that 70% percent lawyers are moderately interested or indifferent in apply ADR to resolve NPL cases, only 30% percent lawyers showed their high interest to accept ADR in resolving NPL cases. Therefore, there is a scope to increase the motivation of lawyers in applying ADR in resolving NPL cases through *Artha Rin Adalat*.

5.3.5 Interest to appoint different types of mediators: NPL Borrowers vs Bankers

As in ADR of NPL cases, borrowers and bankers are two parties to make a settlement, both borrowers and bankers were asked about mediators that they usually appoint to resolve their disputes. Since earlier it was revealed that only a small percentage of lawyers showed a high motivation to apply ADR in resolving NPL cases, answer to this question is important to understand the extent to which lawyers interest to apply ADR may affect the rate of NPL disposal through *Artha Rin* ADR.

Table 5.7: Party interest to appoint lawyers as mediators

Type of mediators preferred	Type of respondents	
	By borrowers	By Bankers
are Lawyers	90%	90%
are retired judges	--	5%
are <i>Artha Rin</i> judges	10%	5%

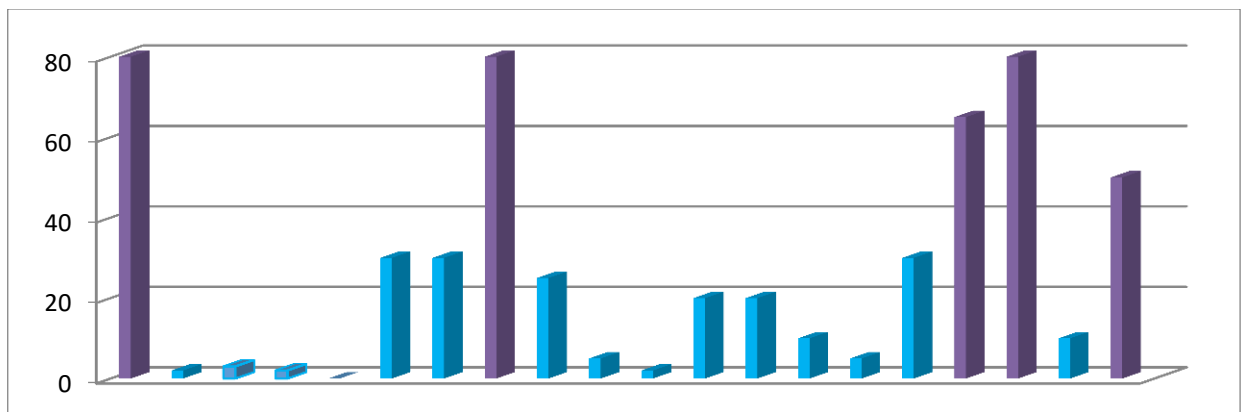
Source: calculated from the empirical data collected under this research

From Table 5.7 above it appears that both borrowers and bankers are interested in appointing mediators from lawyers in 90% of cases. Therefore, lawyers' lower interest to resolve NPL disputes through mediation affects the overall success rate of mediation in *Artha Rin* cases.

5.3.6 Mediators' perception on borrowers' genuine interest to resolve through ADR

As 90% borrowers prefer to appoint mediators from lawyers despite only 30% of lawyer mediators have a high interest to resolve cases through mediation, there was a concern about borrowers' genuine interest to resolve cases through mediation.

Figure 5.2: Borrowers' genuine interest to resolve NPL cases through *Artha Rin* ADR



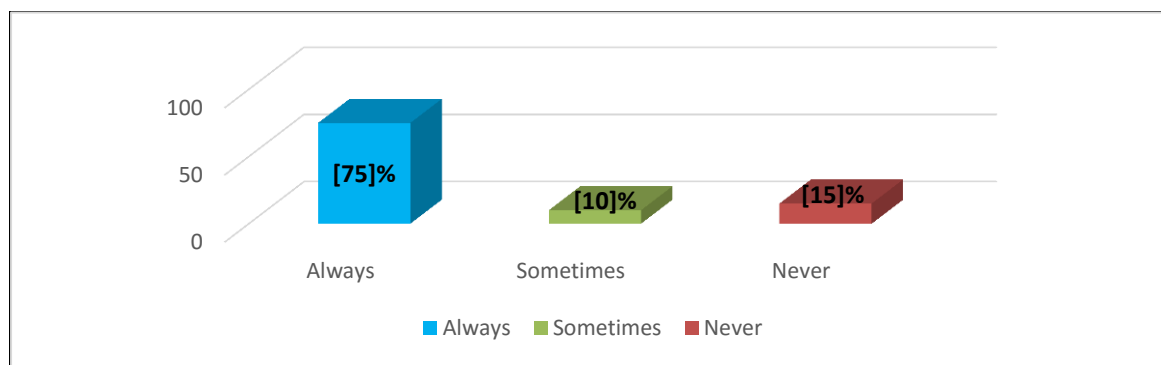
Source: Developed from the analysis of empirical data collected under this research

In figure 5.2 above it is clearly visible that only 5 out of 20 or 25% cases borrowers do have a genuine interest to resolve cases through *Artha Rin* ADR. A detailed discussion of borrower's perspective on the lower effectiveness of *Artha Rin* ADR, as discussed in Chapter 7, highlights the issues for which borrowers may feel low incentive to resolve their NPL cases through *Artha Rin* ADR.

5.4 Mediators' perception of fair Justice Attained through *Artha Rin* ADR

As it was revealed that NPL borrowers don't have genuine interest to attend *Artha Rin* ADR one concern was whether such lack of interest is because *Artha Rin* ADR may not be able to provide fair justice to NPL borrowers and hence not able to attract them, despite its potential to provide low-cost resolution in comparison with trial. *Artha Rin* mediators were, therefore, asked about their perception of the extent to which *Artha Rin* ADR is able to provide fair justice to its borrowers.

Figure 5.3: Mediators' perception of fair justice through *Artha Rin* ADR



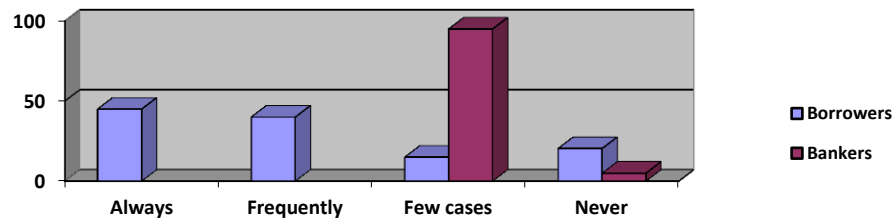
Source: Developed from the analysis of empirical data collected under this research

As shown in Figure 5.3 according to the perception of mediators in 75% cases *Artha Rin* ADR can always ensure fair justice to its borrowers. In another 10% cases, however, the possibility of getting fair justice through ADR depends on context, and it cannot provide fair justice in only 15% cases. Though *Artha Rin* ADR is able to provide fair justice to its borrowers, as discussed in Chapter 4, the rate of resolution through *Artha Rin* ADR still remains low. Therefore, mediators were asked to identify factors that are causing inefficiency in the quick resolution of NPL through *Artha Rin* ADR. Different factors that mediators identified as probable factors causing inefficiencies are discussed as below.

5.4.1 Time petition- a means to create unnecessary delay in resolving NPL

As both banks and borrowers are parties to NPL case and so can make intentional delay through unnecessary time petitions, mediators' were asked about their perception on how frequently NPL borrowers and bankers may make unnecessary time petitions to cause a protracted delay in the resolution of disputes.

Figure 5.4: Time petition in NPL mediation: borrowers vs. bankers



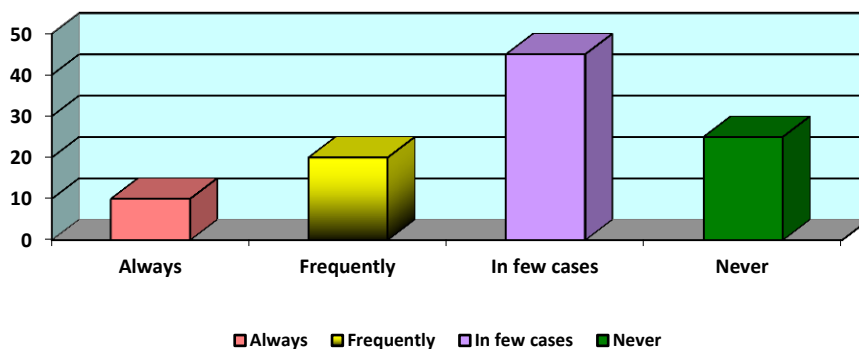
Source: Developed from the analysis of empirical data collected under this research

As perceived by mediators most of the time petition to make delay is made by borrowers. While for 85% respondents time petitions are always or frequently files by parties, none of the respondents think that bankers frequently make time petitions to make delay. According to 95%, respondents’ bankers make time petition in only a few cases and 5 percent respondents also assert that bankers never make time petition to cause a protracted delay in NPL cases.

5.4.2 No significant power disparity in NPL mediation

Though power disparity may exist in the mediation of family cases where vulnerable women have to negotiate with their male counterpart, as observed in this research power disparity is not a big issue in the mediation of NPL disputes.

Figure 5.5: Presence of power disparity in NPL mediation



Source: Developed from the analysis of empirical data collected under this research

As shown in Figure 5.5 accordingly to only 30 percent respondents’ extreme power disparity remains as a frequent or regular issue in *Artha Rin* mediation. The remaining 70 percent respondents perceived power disparity as an issue in only a few or no cases resolved through ADR. This is consistent with the usual scenario where NPL borrowers are entrepreneurs and,

therefore, have a superior quality to negotiate for their desired outcome through mediation. Therefore, a majority of mediators who participate in this research consider ADR in ARA as a fair process that may not unduly benefit one party over the other due to a presence of extreme power disparity in mediation.

Nevertheless, as extreme power disparity could be an issue in mediation that leads to an unfair outcome, mediators were asked about their means to deal with extreme power disparity in NPL mediation.

Table 5.8: Means to resolve power disparity in NPL mediation

Means to resolve power disparity in NPL mediation	Percentage
Borrowers should take legal action against illegal recovery	13.00
Ask both sides to show patience	37.00
Ask the bank to show more patience	12.50
Make parties understand the benefit to settle through ADR	6.25
Try to settle for the further session	25.00
End the ADR process and report court for further action	6.25
Total	100.00

Source: Calculated from the empirical data collected under this research

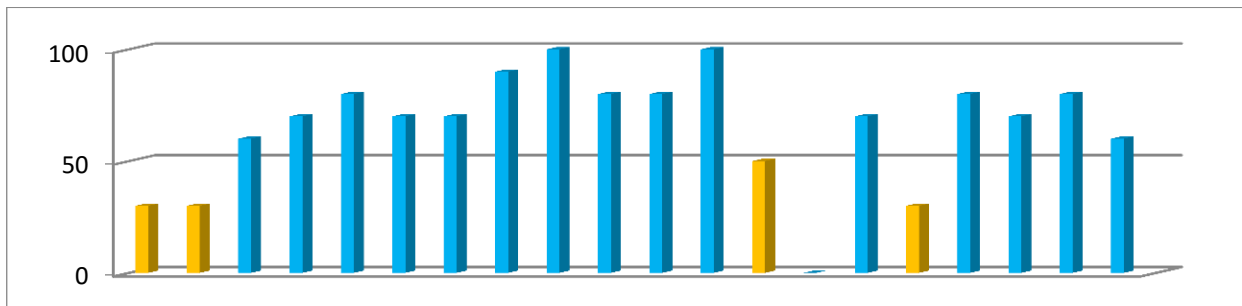
As understood from the responses listed in Table 5.8 above in more than 80% cases mediators prefer to take the purely facilitative approach by asking parties to show patience or letting them know about the importance of mediation over the trial or make further sessions to settle disputes. In only around 20% cases borrowers are suggested to take legal action against illegal recovery attempt from Banks or report to the court to settle the dispute through trial. However, no evaluative action was identified by any mediations, though evaluative mediation could be a key to the quick resolution of disputes through mediation.

5.4.3 Net monetary benefit of *Artha Rin* ADR over *Artha Rin* trial cases

In Chapter 4 it has been clearly depicted that resolution of NPL cases through ADR takes the substantially lower time to settlement, in comparison with cases settled through contested trial. However, scholars sometimes argue that this advantage of quick resolution through ADR may not always have a one to one relationship with the cost of resolving disputes

through ADR vs. contested trial. This is because specialized mediators and arbitrators sometimes charge a higher rate from their borrowers and therefore, reduce the cost advantage attained otherwise with a quick resolution of disputes through ADR.

Figure 5.6: Net monetary benefit in disposal through *Artha Rin* ADR over *Artha Rin* trial



Source: Developed from the analysis of empirical data collected under this research

Therefore, mediators were asked to share their perception on the percentage of cases for which a resolution by *Artha Rin* ADR rather than *Artha Rin* contested trial may provide a net monetary benefit to parties attending ADR. As shown in Figure 5.6 according to all respondents except one, resolution through ADR provides a net monetary benefit to borrowers over the contested trial. However, the perception of mediators varies within a range from 30% to 100% cases for which borrowers of *Artha Rin* ADR may expect such a net monetary benefit over the contested trial. Further analysis shows that on an average of 65% cases borrowers may expect a net monetary benefit to resolve NPL cases through *Artha Rin* ADR rather than *Artha Rin* trial.

5.4.4 Mediators’ perception on major obstacles to effective *Artha Rin* ADR

Once mediators in *Artha Rin Adalat* were asked about hindrance to the effective use of *Artha Rin* ADR in NPL recovery, they identified a number of factors from a different perspective including borrowers, bankers, mediators, layers that may reduce the effectiveness of *Artha Rin* ADR in recovering NPLs.

As shown in Table 5.9 below, lack of interest of borrowers is the major factor causing ineffective *Artha Rin* ADR in recovering NPL, followed by lack of initiative by bankers and mediators. As predicted through the theoretical framework discussed in Chapter 2, political influence remains low or in other words insignificant for this purpose.

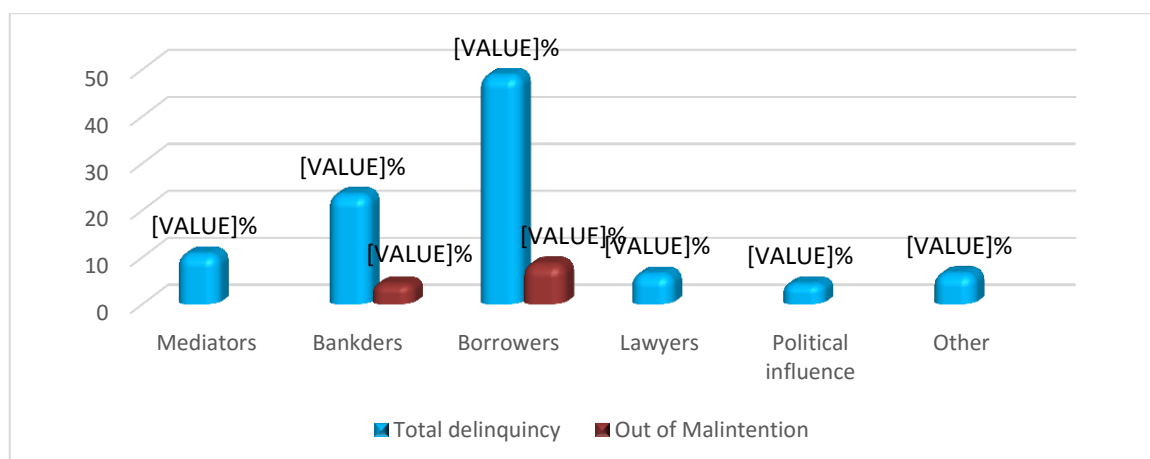
Table 5.9: Factors causing ineffective *Artha Rin* ADR

Factors of ineffective <i>Artha Rin</i> ADR	Percentage
Mediators	10.60
Bankers	23.32
Borrowers	48.76
Lawyers	06.36
Political Influence	04.24
Others	06.36
Total	100.00

Source: Calculated from the empirical data collected under this research

However, if we further explore the issue of lower interest by borrowers to resolve *Artha Rin* dispute through ADR, some insights shared by expert judges may put some new light on this issue. As explained by expert judges, parties may not feel the interest to settle their cases through mediation because they do not find genuine interest from banks to make a consensual solution where both have to sacrifice something to gain a win-win position. As perceived by expert judges, because of their strong legislative position bankers may think they will win the case anyway, another reason for lack of genuine effort from banks to make a consensual settlement in that participating bank officials sometimes do not sufficient authority to take a decision. Approval from the Bankers is a very lengthy process. As bankers think they have no power to settle through ADR, they may find it better to get a judgment from the court.

Figure 5.7: Political influence do not have any significant impact on NPL recovery

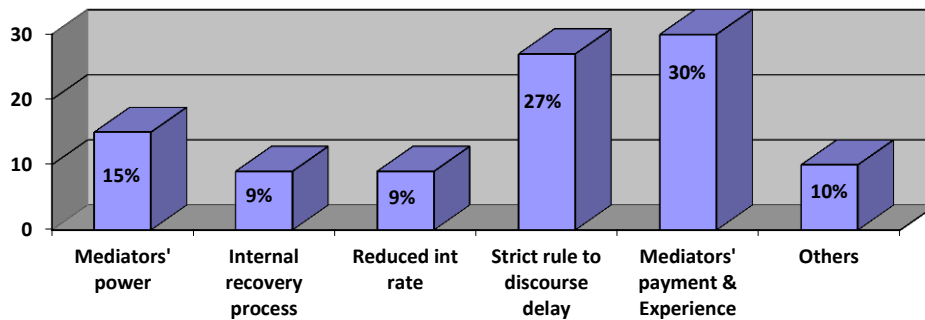


Source: Developed from the analysis of empirical data collected under this research

5.4.5 Mediators' perception on the way out to more effective *Artha Rin* ADR

As mediators identified a number of hindrances to the effective implementation of Arthurian ADR they were asked to suggest some way-outs that could overcome the barriers and ensure quick and less cost disposal of NPL disputes through *Artha Rin* ADR.

Figure 5.8: Mediators' recommendation for more effective use of *Artha Rin* ADR



Source: Developed from the analysis of empirical data collected under this research

In reply, mediators posed a number of suggestions including increased power for mediators to settle disputes, the strict rules to discourage delay, better payment and training for mediators, and other internal processes to recover bank loan. As depicted in the Figure 5.8 above according to almost one-third of the mediators' better payment to mediators is required to motivate their pro-active action in quick resolution of disputes. It is argued by many scholars; lawyers may consider quick resolution through mediation as contrary to their business interest, and so, may not be proactive in attaining quick resolution through effective *Artha Rin* mediation.

Therefore, a better remuneration package would be required to motivate their pro-active action in mediation. Besides, more than one-fourth of the respondents' application of strict rules is required to discourage delay in resolution and recovery of NPL in *Artha Rin Adalats*. While a number of respondents mentioned about the importance of a strict application of laws, others specified definite techniques that would discourage borrows to create a protracted delay in the resolution of NPL disputes. Some of the techniques suggested include a rule for plaintiffs to deposit a certain percentage of unpaid loan amounts before being able to file any case against NPL recovery process followed by the bank. Others suggested strict

case management and not entertaining time petition without inevitable grounds of being absent.

5.5 Conclusion:

Following observation on less effective *Artha Rin* ADR in realizing NPL this chapter demonstrated the neutral view of mediators on the factors including bankers and NPL borrowers that are causing delays in NPL recovery process through *Artha Rin* ADR. However, the story behind, i.e., the reason for the low incentive of NPL borrowers and banks in resolving NPL through ADR are discussed in detail in Chapter 6 and 7. Once the perception of mediators is considered with background reasons discussed in following two chapters, it would provide us better reasoning to identify the proximate cause of less effective *Artha Rin* ADR in recovering NPLs. As the discussion in following two chapters unfolds specific reasons for less incentive for borrowers and banks it would be easier to understand the significance of recommendations made following the suggestions made by mediators during questionnaire survey conducted in this research.

CHAPTER 6

AN EMPIRICAL EVALUATION OF EFFECTIVENESS OF *ARTHA RIN* ADR: BANKERS' PERSPECTIVE

6.1 Introduction

ADR on *Artha Rin Adalat* provides an opportunity to the quick recovery of NPL to respective banks. Besides other developed and developing countries around the globe³⁰⁸, ADR in recovering bank loans showed good progress in a number of Asian countries including Indonesia, Malaysia, and Singapore³⁰⁹. However, as discussed in Chapter 2 there are a number of factors that may affect borrowers' rational choice to loan default. Once borrowers make a rational choice to make default, either by not paying the loan altogether or by delaying the process of recovery to reduce their cost of funds, it is expected that borrowers would not be willing to attain a quick resolution of their NPL disputes through ADR. A delay in the court process may happen due to bureaucratic red tape, poor case management and frequent time petitions, the low incentive of lawyers to a quick resolution for the sake of their alleged business interest. Bank officials may also decide not to participate actively in ADR if they are not satisfied with the ADR process conducted in *Artha Rin Adalats* (ARAs).

This chapter is to discuss all these issues and reveal the perspective of bankers on the performance of ADR in ARA to recover NPL. With this purpose in mind, a survey was carried out to inquire into the opinion of the respondent bankers about the non-performing loan and recovery the same under *Artha Rin* ADR. The survey was carried out on 30 bankers, following a semi-structured questionnaire survey. As mentioned earlier, among these 30 bankers, 10 were chosen from *Sonali* Bank- the largest NCB in Bangladesh with the

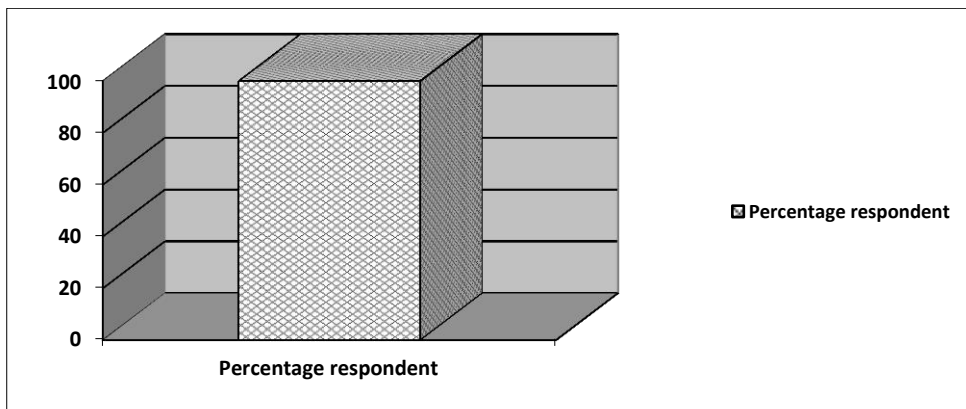
³⁰⁸ For instance, among many other European countries, the Governments of Romania, Latvia, and Portugal have made specific recommendations on alternative dispute resolution processes to recover bank debt. See more on, <http://www.fktk.lv/en/law/general/fcmc-guidelines-and-recommenda/4665-2009-08-21-principles-and-guideline.html>; accessed March 24, 2018.

³⁰⁹ Muhammad K. Shehzad, "Commercial mediation in emerging markets – role of State Bank in promoting mediation for resolution of banking disputes," *National Conference on ADR (29 - 30 April, 2010)* (Lahore, Pakistan: IFC and KCDR, 2010),1.

highest proportion of outstanding NPL. 10 more banker respondents were chosen from *Agrani* Bank- the second largest NCB among the four. Five respondents each was chosen from *Janata* Bank and *Rupali* Bank respectively. Though most of the responses were made to specific questions regarding ADR and loan default, few open-ended questions were asked to consider issues not otherwise mentioned in the literature. As will be seen during a discussion in this chapter, total percentage responses for some questions exceeds 100 percent, a few questions of the questionnaire allowed respondents to make multiple choices.

As shown in Figure 6.1 below all bankers unanimously agreed that higher number of loan defaults causes more backlog of NPL cases in *Artha Rin* Courts. Therefore, it's very important for banks to have a quick resolution through ADR so that higher default may not cause a vicious circle of delay in disposal by creating, even more, the backlog in *Artha Rin Adalats*.

Figure 6.1: Backlog of cases caused by unpaid loans



Source: Developed from the analysis of empirical data collected under this research

For this bank official from four NCBs were interviewed with a semi-structured questionnaire about their perception of the lower effectiveness of ADR in resolving NPL cases in ARAs.

6.2 Descriptive Statistics of Bankers Interviewed: Methodology Revisited

6.2.1 Semi-structured questionnaire survey

The questionnaire consists of two parts, the first concerning Background information of the respondents; and the second part deals with the level of consciousness regarding the state of the non-performing loan and recovery and invites suggestions for its improvement. In order to obtain the main objective of the study a random survey was carried out among the

respondents. Participation of various Officers of the different Branches of Nationalized Commercial Banks, i.e. *Sonali Bank*, *Agrani Bank*, *Janata Bank* and *Rupali Bank* officers have been tried to ensure. As mentioned earlier, considering the time, resources and other constraints, sampling has been done among 30 respondents from different branches of four Nationalized Banks situated in Dhaka district.

In conducting the survey, questionnaires were filled on the basis of the personal interviews taken by the researcher. The field investigation has been carried out from 1st January 2016 to 30 March 2016.

Table 6.1: Bank Wise distribution of Respondents (Bankers)

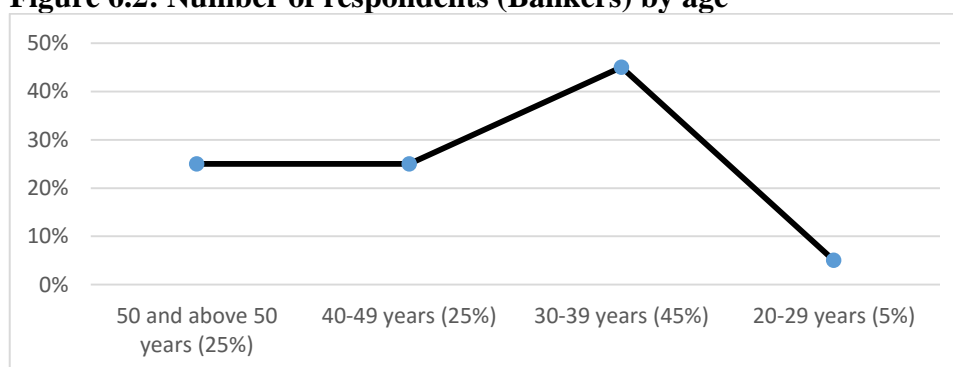
SL No.	Name of the Bank	Number of respondents
01.	<i>Sonali Bank</i>	10
02.	<i>Agrani Bank</i>	10
03.	<i>Janata Bank</i>	5
04.	<i>Rupali Bank</i>	5
Total		30

Source: Calculated from the empirical data collected under this research

6.2.2 Respondent bankers' age and experience

Out of the total respondents, it is found that only 5% respondents belong to age group 20 - 29, the maximum 45% belongs to 30 - 39, and 25% each belongs to age group 40 - 49 and 50 or 50 above. No person below 18 (Eighteen) years has been considered for the survey for ensuring maturity level. The number of the respondents is shown in Figure 6.2 below.

Figure 6.2: Number of respondents (Bankers) by age



Source: Developed from the analysis of empirical data collected under this research

Most of the respondents were chosen from middle or upper age group to get a more informed response from experienced bankers in this sector. As banker respondents were asked about their opinion on a different policy issue, a minimum level of experience was required for them to make specific comments on those issues. However, almost 80 percent respondents were male bankers, following the lower rate of participation of female in upper-level bank management yet.

6.3. Bankers' Perspective on the Effectiveness of ADR for NPL Recovery

6.3.1: Legal loopholes: A need for new enactment and better implementation

As discussed in the theory of loan recovery under chapter two a number of factors may affect a rational choice of a borrower to make default in loan repayment. One important factor is the availability of strict law to establish creditors' right over delinquent borrowers. In some cases, laws provide a wide scope for delinquent to make protracted delay in repaying their loans or even escape it altogether. For instance, as explained by Humblot (2017), one reason that Italy is struggling much with its non-performing loans in comparison to other European countries is its' much complicated and time-consuming bankruptcy process. In Italy, average bankruptcy period is 7.5 years and costs 23% of the outstanding loans. However, because of the simplified process in other neighbouring European countries, average recovery cost is only 15% of the outstanding loans³¹⁰.

In a related vein, according to section 11.2 of the Insolvency Act 1997 of Bangladesh, no court shall entertain any insolvency application against any autonomous organization formed by or under the financial assistance by the government. Bangladesh *Shilpa* Bank and Bangladesh *Shilpa Rin Sangasta* that used to extend industrial credit to many state-owned autonomous corporations faced an unprecedented rate of default and activities of BSRS came to a halt, as 85 to 90 percent of its total lending portfolio turns out to be classified loans.

Therefore, one common practice worldwide is to make necessary amendments to laws to accelerate recovery. As a part of this process, Italy has made some changes in laws relating to corporate debt guarantee under Law 119/2016 of 30 June 2016. According to this new

³¹⁰Thomas Humblot, 'Non-performing loans in Italy: an overview', *The bank for a changing world*, BNP Paribas, (March 2017) 5; See also, International Monetary Fund, *Cleaning-up Bank Balance Sheets: Economic, Legal, and Supervisory Measures for Italy (European Department: IMF, 2016)*, 1-32.

amendment real estate property held as guarantee can be transferred to the creditor without requiring any prior court ruling. Further,

Law 132/2015 of 20 August 2015 reforms the rules for insolvency administrators and specifies their mandate. Liquidation plans must be submitted within a period of 180 days and executed within two years. The realization of security is accelerated by lowering the minimum selling price and by imposing a maximum duration of the disposal process (Humblot 2017, 8).

To explore this aspect further in the context of NPL recovery in Bangladesh, banker respondents were asked about the necessity of making any amendment to ARA to make it more effective for loan recovery through ADR. In response, more than 93% responded opined that it is important or very important to make necessary amendments in the existing ARA. Only less than 7% respondents perceive that there is no need to amend existing laws to improve the performance of NPL recovery under ARA.

Table 6.2: Is amendment to ARAA necessary for better NPL recovery through ADR?

Need for an amendment to ARAA	No of respondents	Percentage
Very important	03	10.0%
Important	25	83.3%
No important	02	06.7%
Total	30	100.0%

Source: Calculated from the empirical data collected under this research

However, as shown in Table 6.3, according to 70 percent of banker respondents it is not required to enact new laws to accelerate NPL recovery. Once we compare responses in Table 6.3 with that of Table 6.2, it is vivid that bankers' perception about the poor performance of ADR in *Artha Rin Adalat* is mostly depended on lack of the presence or application of laws that may create sufficient pressure on default borrowers to repay their loan on time. This reply is in line with the similar urge shown by mediators while asked about the necessity of new laws or of amending existing laws to make a better recovery through ADR.

Table 6.3: Need for a new law to recover NPL

Need for an amendment to ARA	No of respondents	Percentage
Required	09	30.0%
Not required	21	70.0%
Total	30	100.0%

Source: Calculated from the empirical data collected under this research

Further, Bankers were asked about major obstacles that, according to their opinion, are causing major obstacles against effective NPL recovery through *Artha Rin* ADR. As it was an open-end question to allow maximum flexibility in identifying the reason responses were coded, and a pater was identified to divide all responses into four major categories as follows-

- a) Borrowers do not have a genuine interest to repay
- b) Delay in court proceedings
- c) Political stability and interference
- d) Poor credit management

6.3.2 Less political influence causing lower loan default

As observed in many countries worldwide debt crisis in a country has a good correlation with political turmoil and even dethronement of governments. For instance, a debt crisis in Indonesia results in a collapse of Suharto Government when strict economic regulations were imposed to curb financial instability, and people revolt against these. A similar event was observed in Argentina, South Korea and many other Asian and Latin American countries.

A reverse causal linkage was also observed by scholars where political unrest may result in more loan default and larger volume of NPL in consequence. However, the impact of political unrest on loan recovery may vary depending on the size of the business seeking credit. For instance, the pressure to repay the loan may be observed among SMEs, in comparison with large industrial borrows who may export their products even during *hartals*. Similar was also observed in Bangladesh. In a survey conducted by ARNET on SME lending, a large majority of SME borrowers considered *hartals* or general strike as the most prominent obstacle to SME business in Bangladesh.

Table 6.4: Major obstacles to SME Business that may cause loan default

Major obstacle identified	No. of responses	Percentage
Hartals (general strikes)	71	73.9%
Slow seasonal sales	29	30.2%
Lack of business capital	28	29.2%
Competition	27	28.1%

Source: Calculated from the empirical data collected under this research

As observed in Table 6.4 above internal political turmoil, generally termed as *hartals*, in Bangladesh are causing major obstacles to SME business and causing the increased chance of default. The other potential barriers to competition or slow seasonal sales are very less potent in comparison to *hartals*. Nevertheless, SME borrowers have somehow managed this shock and repaying their loans regularly. According to the survey mentioned above, only 5-6 percent of total credit to SME remained overdue. The ratio of wilful default demonstrated in Figure 6.5 also confirmed that SME borrowers' rate of wilful default is much lower than that of large industrial borrowers.

Table 6.5: Causes of less effectiveness of Artha Rin ADR

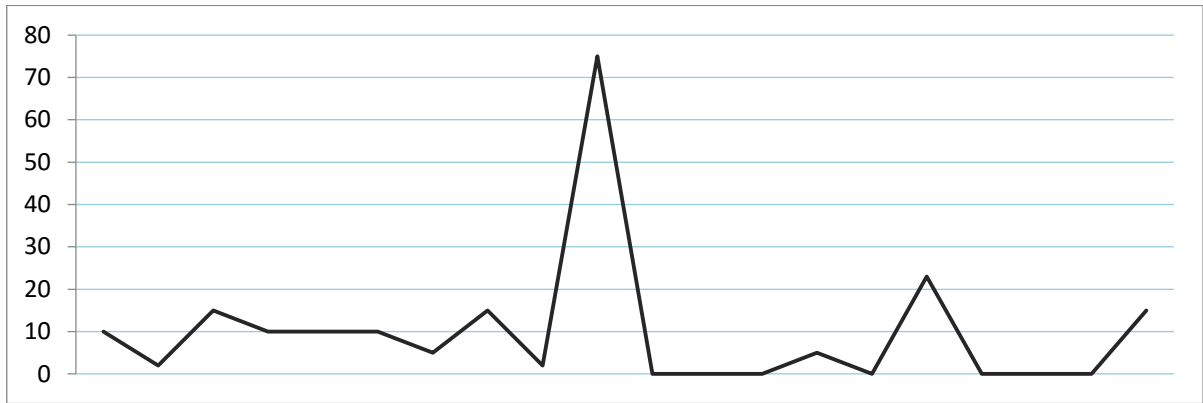
Causes of ineffective ADR in ARA	No. of respondents	Percentage
Lack of genuine interest of borrowers to repay	20	66.7%
Delay in court proceedings	17	56.7%
Political instability and interference	2	06.7%
Poor credit management	8	26.7%

Source: Calculated from the empirical data collected under this research

While compared with the theoretical framework one interesting finding observed through Table 6.5 is that only less than 7 percent cases bankers find political influence and political instabilities a major barrier against the effectiveness of ADR in *Artha Rin Adalats*. This is also consistent with the earlier discussion in Chapter 1 that nowadays political culture to promote loan default is changing and the issue is institutionalized by excluding defaulters of bank loan defaulter from national and local government elections. Banks are required to provide a regular update about their classified loans to central bank and information about

defaulted borrowers to the Credit Information Bureau (CIB) of Bangladesh Bank. Therefore, there is no explicit political influence to manipulate the outcome of ADR, when we consider the problem from a total number of NPL borrowers- both SME and large industrial borrowers³¹¹.

Figure 6.3: Extent of political influence in the sanction of bank credit



Source: Developed from the analysis of empirical data collected under this research

Though political influence in the loan sanctioning process is not ruled out by the respondents, a detailed analysis of responses to the extent of such influence reveals that only one respondent perceives it to be as high as 75 percent of all loans sanctioned by banks. For the remaining other respondents, the rate remains below 20 percent.

Table 6.6: Political stability affecting NPL recovery

Impact of political instability on NPL	No. of respondents	Percentage
Highly affected	9	30.0%
Moderately affected	16	53.3%
Slightly affected	5	16.7%
Total	30	100.0%

Source: Calculated from the empirical data collected under this research

³¹¹The articulation, however, may be different if we consider only a number of large industrial borrowers who are consistently using their NPL money and delaying the recovery process by virtue of their very strong political connections. See more on, Joseph Allchin, “Bangladesh’s other Banking Scam.” *The New York Times*, April 11, 2016.

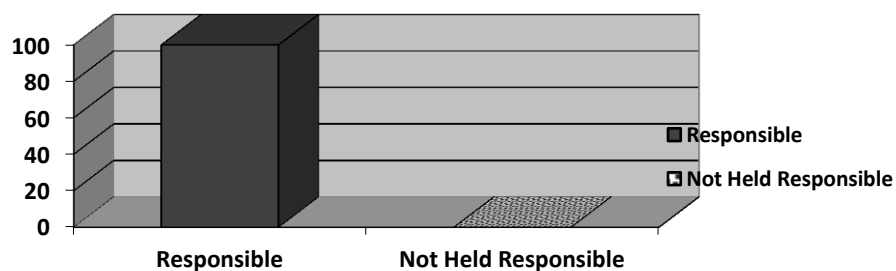
Therefore, political influence was never identified by bankers as a significant factor for effective NPL recovery through mediation. Besides political influence, political stability of a country also affects loan default.

Further, as demonstrated in Table 6.6 above, like direct influence by the political leader's impact on political insatiability on the recovery of NPL also marked to be moderate or low according to 70 percent of the total borrowers participated in the survey. As shown in Table 6.6 only 30 percent of the banker respondents perceive political instability as an important factor affecting loan default under rational choice by borrowers. Therefore, though a kind of political influence may not be ruled out during the loans sanctioning process, it can be reasonably expected that sudden volatile condition in the political situation may not have any long-term impact on the recovery of NPL.

6.3.3 Poor credit management and low recovery of NPL

The bank officials interviewed in this research, however, indicated that in sent percent cases loans are granted after performing proper screen out process to every borrower applied for a loan. However, a number of problems were identified by bankers that reduce the strength of bankers' credit right after the disposal of the loan and eventually, make ADR. Some of these factors, as identified by bankers include a) diversion of property by the borrower, prior to default; b) lower value of collateral; b) business loss by the borrower.

Figure 6.4: Bank officials held responsible for poor loan screening and monitoring



Source: Developed from the analysis of empirical data collected under this research

Though banks may reduce the possibility of business loss and diversion of collateral property by choosing borrowers with high business credentials and superior credit rating, and better monitoring during the process, a 100 percent guarantee cannot be attained that proper credit

screening and monitoring would be able to eliminate the possibility of moral hazard from that part of delinquent borrowers, and reduce their rational choice of constructive loan default.

While explaining bankers' opinion about credit management, its need to be a bear in mind that such evaluations were made against existing banking policies and rules governing the management of credit. Research findings, however, demonstrated that a strict credit management policy has a correlation with better recovery. Lenient lending and recovery policy, on the other hand, may lead to higher default³¹².

6.3.4 Greater sanctioning to dishonest credit officials causing low default

Another good option available to banks in restraining constructive loan default caused in collaboration with dishonest bank officials is to make those officials liable for their delinquency when a borrower makes default, and poor screening and monitoring practice are identified in this regard. As demonstrated in Figure 6.4 above, during the interview all of the banker respondents opined that official conducting loan screening and monitoring are always held liable for their negligence, if loans sanctioned become classified in a later date. Though the proper stick is in place to aware bank officials about the importance of proper loan screening and monitoring, from the response of bankers in this research, it seems that NCBs are not providing sufficient incentives or motivation to its credit officers in improving the recovery of NPL.

Table 6.7: Incentive to credit officers for better credit management

Type of response	Getting incentive		Not getting incentive	
	Number	Percentage	Number	Percentage
	05	16.7%	25	83.3%

Source: Calculated from the empirical data collected under this research

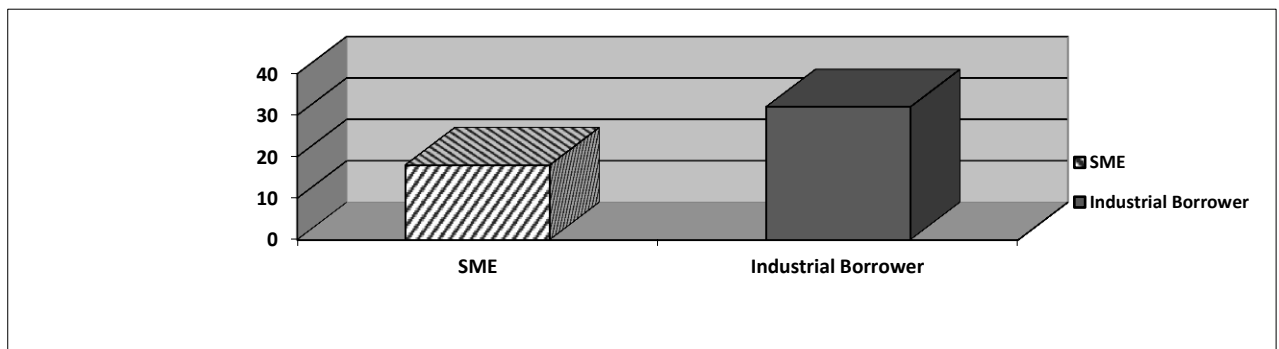
³¹²Alice Kagoyire and Jaya Shukla, 'Effects of credit management on performance of commercial banks in Rwanda (A case study of equity bank Rwanda Ltd.)', *International Journal of Business and Management Review* 4, no.4(2016) :10.

From the response of bank officials, it is apparent that officials are not getting a proper incentive to work for the better recovery of NPL. As expressed in table 6.7 above in only 16.7 percent cases credit officials are getting incentives for better management of credits. As explained earlier in Figure 6.4, credit officials may always be held responsible for the poor appraisal of credit and subsequent NPL. Therefore, this incentive mechanism to extend better credit needs to be taken care of to improve the internal mechanism of NPL recovery and reduce moral hazard of bank officials, in case, by collaborating with delinquent borrowers.

6.3.5 More diligent SME borrowers and less reluctance to repay

To understand bankers' perspective on the reason for loan default, lending banks were asked what percentage of borrowers repay loan regularly and for those who do not pay regularly, would be the reason for such default. As informed by banker respondents, in more 60 percent cases borrowers pay their loan regularly, while in remaining 40 percent or so borrowers fail to repay regularly either out of their genuine business failure or that they have made a rational choice to go for constructive loan default. To distinguish between defaults made by genuine borrowers and wilful defaulters, bankers were asked about their perception of what percentage of borrowers are making wilful default.

Figure 6.5: Wilful default of bank loan: SME vs. Large Industrial borrowers



Source: Developed from the analysis of empirical data collected under this research

As perceived by bankers on an average 35 percent of total borrowers make wilful default of their loans. However, the tendency to make wilful default varies between SME borrowers and large industrial lending. While in the case of SME as low as 18 borrowers make wilful default, for large industrial borrowers, more than 30 percent default is made intentionally by borrowers.

As the nature of the response to loan default may vary between SME entrepreneurs and large industrial borrowers, bankers were asked their perception on wilful default made by SMEs and large industrial borrowers. From the above Figure, it appears that respondents from the Bankers say that average 26.4 percent SME borrowers are a willful defaulter and average 31.75 large industrial borrowers are a willful defaulter.

6.3.6 Need for more authority to bank officials attending *Artha Rin* ADR

As perceived by bankers in 93 percent cases borrowers ask for an exemption in their interest rate. Though demand for interest rate waiver may couple with other one or two types of waiver like a principal waiver for principal amount or legal expenses incurred, in only 10 percent cases borrowers may demand a waiver in principal repayment. Waiver of legal expenses may be asked for around 13 percent respondents or so. In only 3 percent cases borrowers may ask for a rescheduling of their loan.

Table 6.8: Bankers' perception on NPL borrowers' demand for a waiver in mediation

Type of waiver asked for	No of respondents	Percentage
Interest waiver	28	93%
Principal waiver	03	10%
Waiver for legal expenses incurred	04	13%
Loan rescheduling	01	3%
Total number of responses	30	

Source: Calculated from the empirical data collected under this research

6.3.7 Reduction/waiver of interest may work better on recovery of NPL to SMEs

Eighty five percent of the total bankers appeared in an interview agreed that interest rate affects loan repayment, especially to small borrowers. It signifies that an increased rate of interest makes an extra pressure on borrowers to repay their dues on time. Though in most of the cases borrowers ask for exemption of interest rate during mediation, Different other exemptions asked by borrowers include loan rescheduling, payment of legal expenses, payment of the principal amount, etc.

Figure 6.6: Impact of the interest rate on loan repayment



Source: Developed from the analysis of empirical data collected under this research

From the above Figure 6.6, it appears that 85% of the respondents from the Bankers say that high-interest rate affects the loan repayment and only 15% of the respondents say that high-interest rate does not affect the repayment of the loan. From the response of bankers, it is also obvious that high-interest rate mainly affects small borrowers for whom the cost of capital remains as a major part of their total operating cost for business.

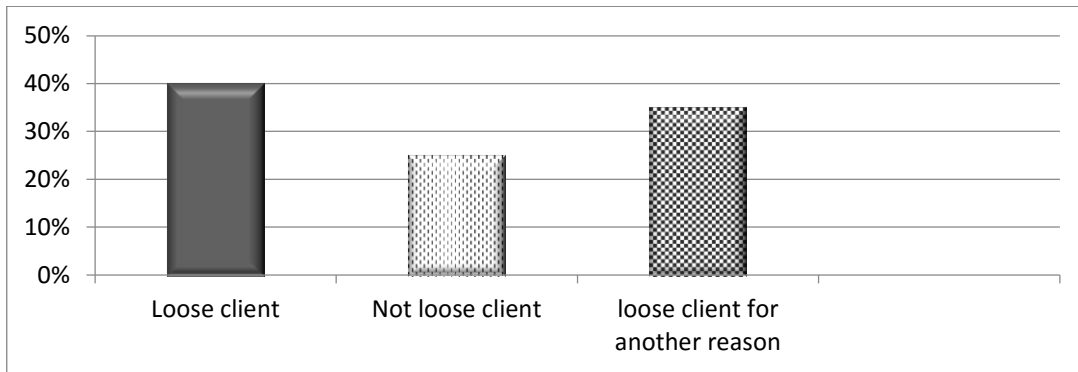
Table 6.9: Impact of the interest rate on loan demand

Effect of the interest rate on loan demand	No of respondents	% respondents
High effect	01	3.3%
Moderate effect	17	56.7%
Slight or no effect	12	47.0%

Source: Calculated from the empirical data collected under this research

From Table 6.9 above it appears that only around 3 percent bankers consider prevailing interest rate as a major determinant of loan demand made by borrowers. Around 57 percent respondents reply that prevailing interest rate has moderately affected the demand for credit, while for other interest rate has a very light or no impact on the demand for credit made by borrowers. Therefore, banks are not necessarily losing their borrowers only because they are charging a higher interest rate. This has been verified by another question asked to bankers regarding their perception of their possibility of losing borrowers due to high-interest rate charge for loans.

Figure 6.7: Do banks loose borrowers for higher interest rate?



Source: Developed from the analysis of empirical data collected under this research

From the above Figure 6.7, it appears that 25 % respondents from the Bankers reply that due to higher interest rate they do not lose the borrower and 40% respondents reply that due to higher interest rate they lose the borrower. However, the government Bank loose borrower due to service benefit, borrower personal problem, lengthy procedure, borrower's entertainment, power delegation.

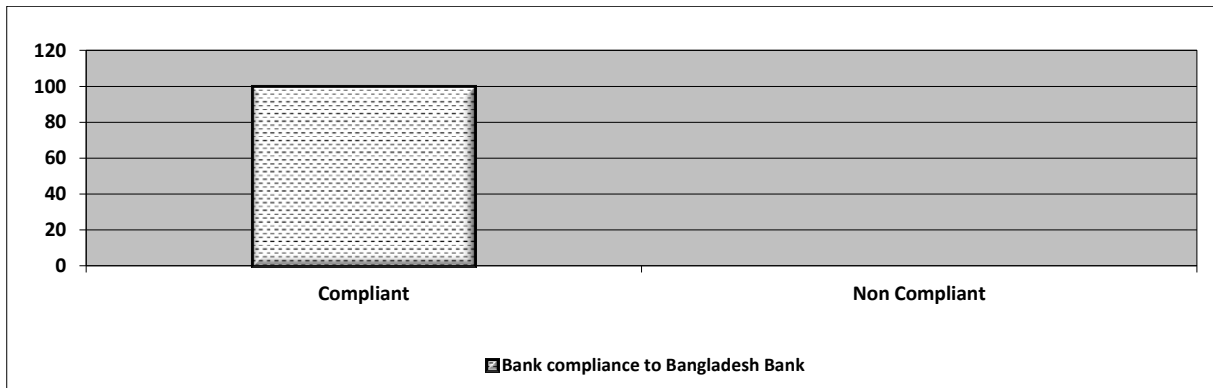
Though in an expanding economy and intensive market competition like Bangladesh even a high-interest rate may not reduce loan demand faced by banks, a high-interest rate may result in lower recovery, especially in the case of SME borrowers. As observed by ILO in its research project on loan recovery in Ghana, the interest rate has a negative correlation with recovery, especially for micro and SME borrowers³¹³. As is observed, in the next chapter, one major urge for SME borrowers attending mediation is to waive interest that would ultimately reduce their effective interest rate on outstanding loans.

6.3.8 Need for a new enactment or amendment of ARAA

Bankers remarked that new law is enacted for recovery NPL, and only 5 respondents opined that no new law be enacted for recovery NPL. Further bankers did not identify any major loopholes from their side that may cause higher NPL. As shown in Figure 6.8 below, sent percent respondent from bank perceive that Bangladesh Bank regulations fully comply while revering NPLs from defaulted borrowers.

³¹³International Labour Organization, *The impact of interest rates on demand for credit and loan repayment by the poor and SME in Ghna* (Geneva, Switzerland: ILO, 2003),2.

Figure 6.8: Bank compliance with Bangladesh Bank regulations in recovering NPL

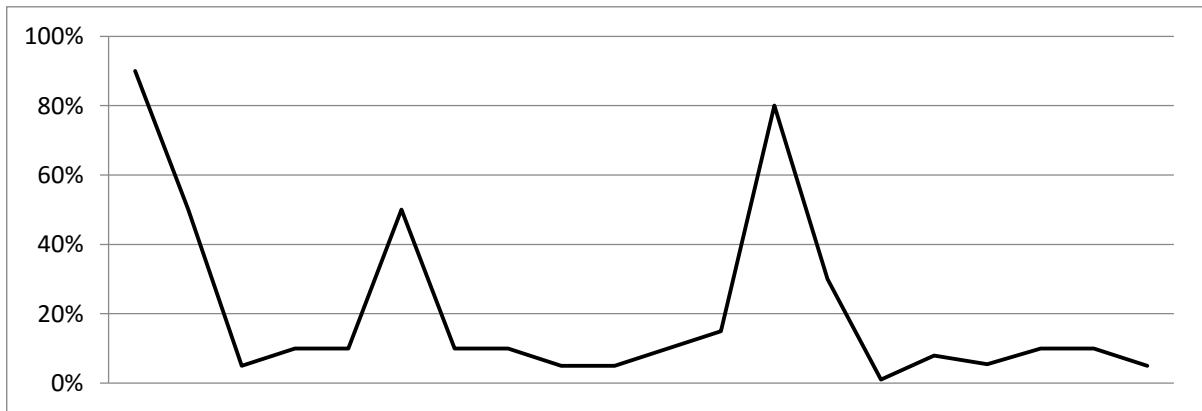


Source: Developed from the analysis of empirical data collected under this research

6.4 Bankers' Satisfaction with the process of ADR Conducted in ARA

A question was put to the respondents to know how satisfied they are with the ADR process to recover NPL. As apparent from the figure below around 65 percent respondents were mostly satisfied with the process. Only 20 percent respondents were fully dissatisfied with the process to conduct ADR in *Artha Rin Adalats*.

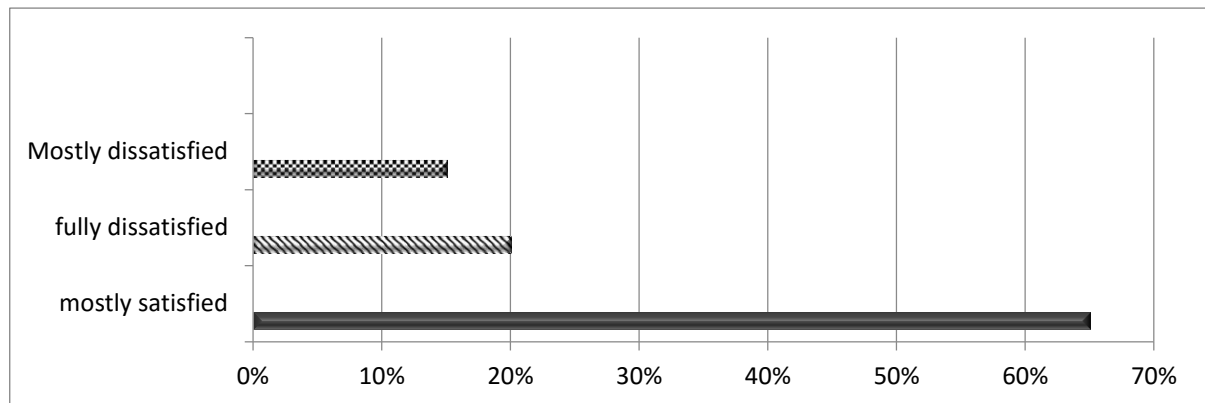
Figure 6.9: Borrowers lose their collateral in repaying the loan through ARA



Source: Calculated from the empirical data collected under this research

It appears from Figure 6.9 that according to only 20% of banker respondents NPL borrowers may lose collateral for their inability to repay bank loans. This lower possibility of confiscating collateral, despite the long delay in disposal, legitimize the point why NPL borrowers may make a rational choice to make default and consequent delay in repaying debts under *Artha Rin* cases.

Figure 6.10: Bankers' satisfaction on ARA ADR



Source: Developed from the analysis of empirical data collected under this research

As shown in Figure 6.10 almost 65% bankers remain satisfied with the current mechanism of ADR under *Artha Rin Adalat*. It seems that NCB bank officials are not much concerned or aware about the benefits of ADR for a quick and low-cost recovery of NPL.

6.5 Conclusion

From the discussion so far, it can be reasonably predicted that political influence or instability is not a significant factor for our banks to recover their non-performing loans. Though bank interest rate seems to have a great impact on loan default bankers may not be willing to reduce the rate because banks are allowed to vary their interest rate only within a designated limit advised by Bangladesh Bank. As experienced by bankers, a variation of interest rate within that rate does not have much impact on their borrower bases. Sometimes borrowers move from their bank and switch to another bank, but that mostly depends on other reasons. The most alarming thing identified by bankers is the legal loopholes and need for amendments in *Artha Rin Adalat* or even enactment of a new law to put more pressure on defaulted borrowers to quickly resolve their cases through ADR. As discussed in Chapter 7, following good practices in other low-income countries with high NPL, a practice of Med-Arb may also provide a better result with minimum changes in existing legal structure.

CHAPTER 7

AN EMPIRICAL EVALUATION OF EFFECTIVENESS OF *ARTHA RIN* ADR: BORROWERS' PERSPECTIVE

7.1 Introduction

Effective use of ADR to accelerate the recovery of NPL depends on borrower satisfaction on the process of ADR that they go through money loan courts. Earlier studies have defined and analyzed borrower satisfaction on ADR from different perspectives. In some cases, it is taken as satisfaction on the fairness of the process of ADR. Such firms may be measured by borrowers on the basis of their ability to participate in the ADR process. When any substantial power disparity does not exist between parties, maintaining procedural fairness could be enough for party satisfaction. However, a separate satisfaction study on distributive fairness may be required if borrowers attending ADR do not feel that they are treated fairly during the dispute resolution process. As existing literature doesn't shed any light on this issue, an empirical study was conducted on 40 NPL borrowers who are either got their cases resolved through *Artha Rin* court and attended ADR or who are currently dealing with ADR. As mentioned in the descriptive statistics given in the following section those respondents from NPL borrowers were selected from microlenders, SMEs and large industrial borrowers.

7.2 Descriptive Statistics of Borrowers' Interviewed: Methodology Revisited

7.2.1 Questionnaire survey to NPL borrowers

A survey has been carried out in order to inquire into the consciousness and opinion of the respondents about the non-performing loan and recovery the same under *Artha Rin Adalat Ain*, 2003 prevailing in Bangladesh. The survey has been carried following a structured questionnaire developed incommensurate to the subject matter of this research.

The questionnaire enquired about the satisfaction of borrowers over the process of ADR in *Artha Rin Adalat*, as well as invited suggestions from the respondents to strengthen the effectiveness of the ADR process currently followed at ARA. In order to obtain the views of NPL borrowers contesting cases in ARA, the questionnaire survey was conducted through personal interviews carried out from 1st June 2015 to 30th November 2015. As will be seen during a discussion in this chapter, total percentage responses for some questions exceeds 100 percent, a few questions of the questionnaire allowed respondents to make multiple choices.

7.2.2 Descriptive statistics of respondents from NPL borrowers

Of the Forty respondents, as shown in Table 7.1 below, 37 were male, and 03 were female. It appears from the above table no.7.1 that The ratio of the respondents was 92.5% male and 7.5% female.

Table 7.1: Distribution of NPL borrowers participated in this research

Type of respondents	Number				Percentage			
Gender	Male		Female		Male		Female	
	37		3		92.5%		7.5%	
Age	>=50	40-49	30-39	20-29	>=50	40-49	30-39	20-29
	26	12	02	Nil	65%	30%	5%	Nil

Source: Calculated from the empirical data collected under this research

This ratio is consistent with the fact that in our social context still, female borrowers is less than the male borrowers are. Percentages of the gender of the respondents show in Table 7.1.

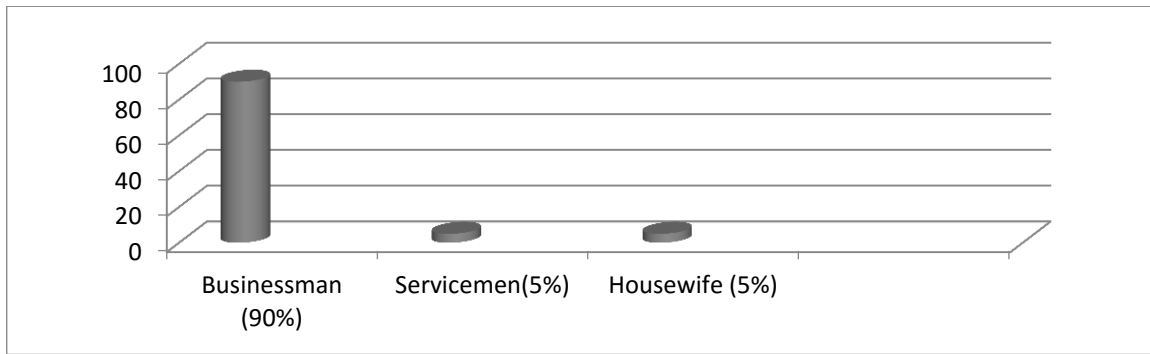
a. Respondents by age:

Further, it appears from the Table 7.1 that 26 respondents were aged above 50 years, 12 respondents were aged 40-49 years, 02 respondents were aged 30-39 years, and no respondents were aged 20-29 years. The ratios of the respondents were 65% more than the age of 50 years, 30% were 40-49 years ages, and 5% were 30-39 years ages.

b. Respondents by profession:

Of the Forty respondents, 36 were businessmen, 02 were servicemen, 02 were housewives. As shown in Figure 7.1, the ratio of the respondents was 90% businessmen, while 5% serviceman and a remaining 5% were housewives. This structure of respondents is consistent with the overall structure of our credit market where most of the borrowing is made by business people, leaving only a small percentage of salaried persons and housewives who may prefer to borrow from banks.

Figure 7.1: Percentage of respondents by profession



Source: Developed from the analysis of empirical data collected under this research

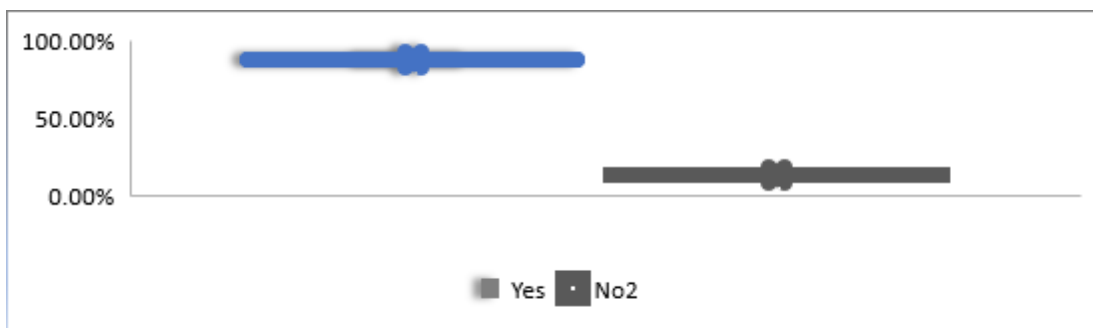
7.3 Borrowers' Perspective on the Effectiveness of ADR for NPL recovery in Bangladesh- A Supply-side evaluation

The survey was conducted through a questionnaire to know the Borrowers-Borrowers view and level of consciousness on the subject of this research. In this study, opinions of the respondents from defaulter borrowers of four nationalized commercial banks in Bangladesh have been taken regarding nonperforming loan and its recovery through ADR under *Artha Rin Adalat Ain, 2003* in Bangladesh. A total of ten questions (from question no. 1 to question no.10) have been set on the level of awareness on NPL and its recovery under *Artha Rin Adalat Ain, 2003*. The summary of findings of the survey carried out for the purpose of this research is given below:

7.3.1 Borrowers' knowledge on the low-cost benefit of ADR over the contested trial

Respondents were asked whether they know *Artha Rin* ADR is a low-cost alternative to trial.

Figure 7.2: ADR as a low cost means to disposal in comparison with the trial



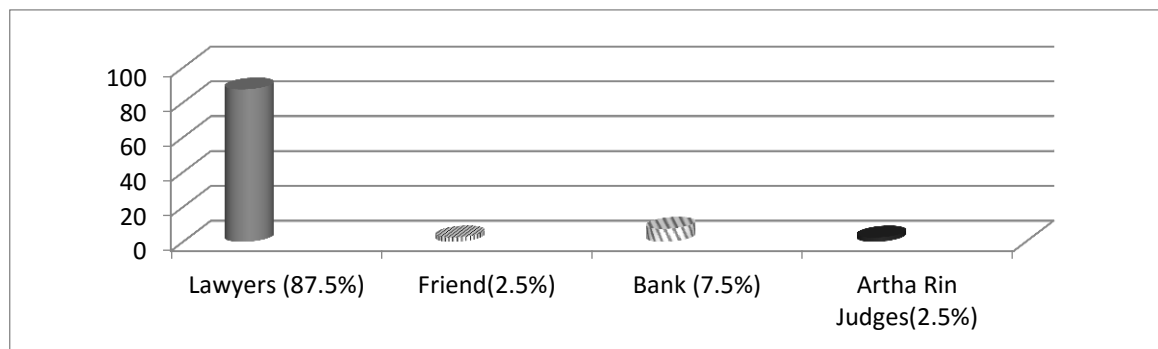
Source: Developed from the analysis of empirical data collected under this research

From Figure 7.2 above it appears that about 87.50 replies that *Artha Rin* ADR is a low-cost alternative to contested trial and 12.5% respondents reply that *Artha Rin* ADR is not a low-cost alternative to contested trial.

7.3.2 Source of information regarding *Artha Rin* ADR

The respondents were asked what do you first came to know about *Artha Rin* ADR. Answers of the respondents regarding this question are shown in the figure below. From Figure 7.3 it appears that about 87.50 borrowers first came to know about *Artha Rin* ADR from Lawyers, 7.5 % replies that they came to know about *Artha Rin* ADR from Bank, 2.5 % replies that they first came to know about *Artha Rin* ADR from friend, 2.5 % replies that borrowers first came to know about *Artha Rin* ADR from *Artha Rin* Judges.

Figure 7.3: Borrowers’ first source of information regarding *Artha Rin* ADR



Source: Developed from the analysis of empirical data collected under this research

7.3.3 Lawyers’ encouragement to borrowers for resolving NPL cases through ADR

Lawyers’ view on mediation affects not only their choice of taking or not taking mediation but also their expectation from mediation and even the satisfaction of mediated outcomes.³¹⁴ Therefore, respondents from NPL borrowers were asked to know whether their lawyers encouraged them to use *Artha Rin* ADR for resolving your NPL case.

³¹⁴Roselle L. Wissler, “The Role of Antecedents and Procedural Characteristics in Mediation : a review of the research,” *The Blackwell Handbook of Mediation Bridging Theory, Research, and Practice*, ed. Margaret S. Harmen (Oxford: Blackwell Publishing, 2006), 129-147.

Table 7.2: Lawyers' encouragement to resolve *Artha Rin* cases through ADR

<i>Level of encouragement</i>	Moderate	High	Indifferent	Discouraged
<i>Percentage</i>	65%	25%	5%	5%

Source: Calculated from the empirical data collected under this research

A careful consideration of Table 7.2 reveals that, in contrast to the popular notion that lawyers deliberately restrain the progress of ADR in consideration of their business interest, lawyers in *Artha Rin* cases demonstrated much enthusiasm to resolve cases through ADR. As replied by 65% of borrowers lawyer moderately encourage their borrower to use *Artha Rin* ADR for resolving their NPL case. Another 25% borrowers replied that lawyers Highly encourage their borrower to use *Artha Rin* ADR for resolving their NPL cases. Only 5% borrowers replied that lawyer discourage the borrower to use *Artha Rin* ADR for resolving their NPL case and, 5% replies that lawyer never encourages the borrower to use *Artha Rin* ADR for resolving their NPL case.

7.3.4 Borrowers' prior experience to attend *Artha Rin* ADR

The respondents were asked that have they attended *Artha Rin* ADR. Responses made by informed borrowers revealed that 80% of the borrowers had participated ADR earlier.

Table 7.3: Borrowers' prior experience to attend ADR

Prior experience to attend ADR	Attended earlier	Hot attended ADR
<i>Percentage</i>	80%	20%

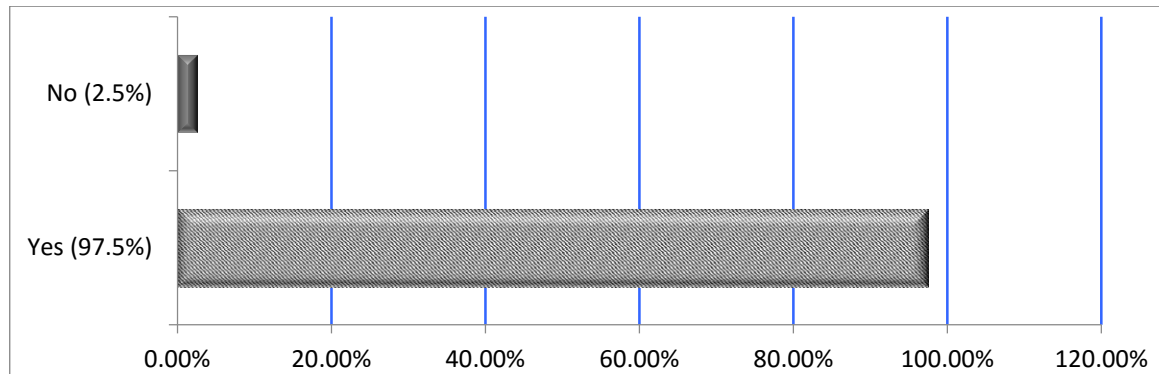
Source: Calculated from the empirical data collected under this research

From Table 7.3 above it can be understood that for most of the cases borrowers are making an informed choice to attend *Arth Rin* ADR, despite their prior knowledge or experience of having a delay in *Artha Rin* courts. Among all borrowers interviewed in this research, 80% respondents answered that they had attended the *Artha Rin* ADR, while only 20 % respondents replied that they do not attend the *Artha Rin* ADR. This response is consistent with a prior response made by mediators that only 25% of total borrowers shows a genuine interest to resolve their cases through ADR.

7.3.5 Borrowers' notion of fair justice attained through *Artha Rin* ADR

Respondents were further asked to know whether *Artha Rin* ADR provides borrowers a fair chance to raise voice during settlement? Figure 7.4 below demonstrates that NPL borrowers' overwhelming response that the process of ADR (mediation) followed under *Artha Rin* cases provides them a fair chance to raise their voices and express their opinion.

Figure 7.4: Notion of fair justice through *Artha Rin* ADR



Source: Developed from the analysis of empirical data collected under this research

From the Figure 7.4, it appears that 97.50 % respondents answer that *Artha Rin* ADR can provide fair chance to raise borrowers' voice during ADR. Only 2.5% of respondents answer that *Artha Rin* ADR cannot provide fair chance to raise borrowers' voice during ADR.

7.3.6 Process of fair justice attained through ADR

As almost all of the borrowers were very positive about attainment of fair justice through *Artha Rin* ADR, another corollary question was the factors that cause *Artha Rin* ADR to facilitate a fair justice process for its borrowers.

Table 7.4: Borrowers' perception of factors causing fair justice through *Artha Rin* ADR

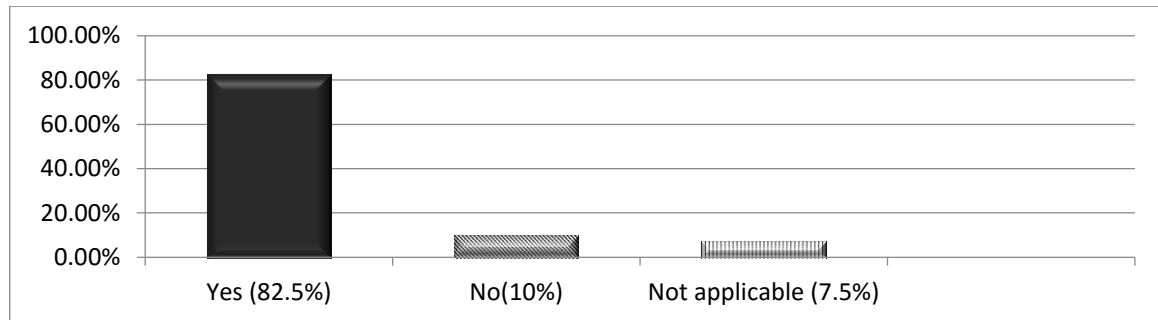
Borrowers' perception of factors causing fair justice through <i>Artha Rin</i> ADR	Percentage
Borrowers able to negotiate with banks directly	36.33%
Consideration of borrowers' business position and waiver of interest	27.28%
Can defend their positions	18.18%
Others	18.21%

Source: Calculated from the empirical data collected under this research

7.3.7 Borrowers' understanding of Artha Rin ADR process

The respondents were asked whether the *Artha Rin* mediators explain complex terms before inviting opinions from parties attending mediation.

Figure 7.5: Ease of understanding Artha Rin ADR



Source: Developed from the analysis of empirical data collected under this research

As demonstrated in Figure 7.5, 82.5% respondents answered that the *Artha Rin* mediator explain complex terms before inviting opinion, 10% respondents answered that the *Artha Rin* mediator does not explain complex terms before inviting opinion and 7.5% respondents answered that this question is not applicable to them as they do not attend the mediation session.

7.3.8 Fair justice to NPL borrowers

Borrowers of NPL were asked about the fairness of justice attained through *Artha Rin* ADR. In response, more than 92 percent NPL borrowers responded to the fairness of justice attained through *Artha Rin* ADR.

Figure 7.6: Artha Rin ADR can ensure fair justice



Source: Developed from the analysis of empirical data collected under this research

It is found from the Figure 7.6 that 92.5% respondents answered *Artha Rin* ADR could ensure fair justice to NPL borrowers, 7.5% respondents answered that *Artha Rin* ADR could not ensure fair justice to NPL borrowers.

7.3.9 Problems of taking *Artha Rin* ADR to resolve NPL disputes

Despite borrowers' perception of fair justice through *Artha Rin* ADR, as discussed earlier resolution of disputes through ADR remain extremely low. Therefore, NPL borrowers attending mediation were asked about their perception of causes probable that may hinder the progress of *Artha Rin* ADR to resolve NPL disputes. Following are some major categories on what NPL borrowers perceive as the major problems to resolve NPL disputes through NPL ADR.

Table 7.5: Borrowers' perception on loopholes of *Artha Rin* ADR

Borrowers' perception of factors causing fair justice through <i>Artha Rin</i> ADR	Percentage
Limited authority of bank officials attending <i>Artha Rin</i> ADR	47.5
The rigid adversarial position was taken by bank officials	40
Banks create documents hiding facts	15
The business loss sustained by borrowers,	15

Source: Calculated from the empirical data collected under this research

Though not exhaustive major problem areas identified by NPL borrowers indicates that bank officials attending NPL cases do not have any authority to make concession during ADR to attain an equitable and consensual solution. As demonstrated in Table 7.5 around half of the NPL borrowers think that bank officials do not have sufficient authority to make a concession for a consensual solution. With a different articulation, another 40 percent resident opined that bank official takes an adversarial position and demonstrate a rigid mindset while attending *Artha Rin Adalat*. Other significant reasons include a poor business performance by borrowers, documents created by the bank through window dressing adversarial mindset and less power of judges to settle disputes through ADR. Other factors mentioned by a number of disputants include higher demand for fees by the mediators and the absence of a provision for panel mediators.

Contrary to popular view political influence was identified to have a very little contribution towards the inefficient functioning of *Artha Rin* ADR. Only 2.5% of the NPL borrowers identified political instability as a major cause for lower recovery of NPL through *Artha Rin* ADR. Other discrete issues identified by respondents as a factor causing lower recovery of NPL includes lack of interest of successors to replay NPL (5% of respondents).

7.3.10 Borrowers' key suggestions for more effective use of ADR

Table 7.6 below indicates the key suggestions that NPL borrowers made about some improve the effectiveness of *Artha Rin* ADR in a quick recovery of NPL.

Table 7.6: Borrowers' key suggestions for the improvements of *Artha Rin* ADR

Borrowers' perception of factors better functioning of <i>Artha Rin</i> ADR	Percentage
More authority of judges to conduct ADR	82.25
More authority to a bank official	77.50
Panel of mediators	67.50

Source: Calculated from the empirical data collected under this research

Once borrowers of *Artha Rin Adalat* identified different factors causing inefficient functioning of *Artha Rin* ADR another corollary question was to take their opinion on how to make *Artha Rin* ADR a more effective option for such recovery. In reply, more than eighty percent of NPL borrowers vowed for more power for judges to conduct *Artha Rin* mediation. 77.5 percent respondents asked for the greater authority of bank officials attending ADR, and thereof, better consideration of borrowers' business loss. Another two major areas of improvement identified were the need for a penal of mediators and an independent committee to scrutinize business loss for parties attending ADR. Other related issues identified include a need for proper consideration for borrowers position by the bank, ADR institution to train professionals and an interest waiver by the banks for the legitimate business loss sustained by borrowers.

7.4 Borrowers' satisfaction with the process of ADR conducted in ARA

7.4.1 Techniques of fair procedural justice applied in *Artha Rin Adalat*

The procedure of the mediation session is very much fair and justifiable in the mediation session, the borrower has full right and freedom to say about their problems, demand, In this respect, from the Figure 7.6 it appears that 97.50 % respondents answer that *Artha Rin* ADR can provide fair chance to raise borrowers' voice during ADR and 2.5% respondents answer that *Artha Rin* ADR cannot provide fair chance to raise borrowers' voice during ADR.

7.4.2 Easy to understood mediation procedure used in resolving *Artha Rin* ADR

The borrowers always understand the mediation procedure as the mediators explain complex terms of the mediator opinion. In this regard, it is found from the Figure 7.5 that 82.5% respondents answered that the *Artha Rin* mediator explain complex terms before inviting opinion, 10% respondents answered that the *Artha Rin* mediator does not explain complex terms before inviting opinion and 7.5% respondents answered that this question is not applicable to them as they do not attend the mediation session.

7.4.3 Borrower satisfaction on *Artha Rin* ADR: the fair justice criteria

As demonstrated in Figure 7.6, 92.5% respondents answered *Artha Rin* ADR could ensure fair justice to NPL borrowers, 7.5% respondents answered that *Artha Rin* ADR could not ensure fair justice to NPL borrowers.

7.4.4 Majority of the borrowers are satisfied with ADR the process

Majority of the borrowers are very much satisfied with the process of the ADR under *Artha Rin Adalat*, 2003 as the procedure is very much low cost than contesting trial, in this respect it is found from the Figure 7.2 that about 87.50 borrowers reply that *Artha Rin* ADR is a low-cost alternative to contested trial and 12.5% respondents reply that *Artha Rin* ADR is not a low-cost alternative to contested trial.

7.5 Conclusion

Intention of borrowers is important for successful recovery of NPL without having protracted delay in courts. Though more the 90% NPL borrowers perceive that ADR can provide fair justice and understand the process well, they are still concerned about rigid position of banks, and inadequate authority of bank officials attending *Artha Rin* ADR. Though it was not explicitly mentioned by the respondents, inadequate authority of bank officials to make negotiation with borrowers could be one good reason for such rigidity. NPL borrowers further urged for more authority of Judges in conducting ADR, and creation of a panel of mediators from which they may choose according to their need.

CHAPTER 8

CONCLUSION AND RECOMMENDATIONS

8.1 Findings of the research

8.1.1 *Artha Rin* ADR has not improved NPL resolution and recovery significantly

It is found from the empirical data that very few cases have been completed successfully through ADR. Only 0.04 percent of total outstanding (Table-4.3) *Artha Rin* cases in 2013 has been resolved through ADR. Once we deduct out-of-court disposal through solenama and withdrawal only 0.36 percent of total in-court disposal (Table-4.4) has been made through ADR. On the other hand, 2.48 percent of total outstanding cases were resolved through contesting trial (Table-4.3) that constitute 18.02 percent (Table-4.4) of total in-court disposal in 2013. If we consider solenama and withdrawal as a form of out-of-court disposal Table 4.4 indicate that out-of-court disposal is 1.7 percent more than in-course disposal made in 2013. The 13.80% out-of-court disposal (Table 4.3) also constitutes the largest mode of disposal for all outstanding cases in 2013.

It indicates that parties through negotiation with their banks might have settled a large number of *Artha Rin* cases; through Mediations conducted in *Artha Rin Adalats* remain largely ineffective. Moreover, cases resolve through mediation takes 18 months (Table 4.5) in comparison with a 18.5 months time-to-resolution (Table 4.5) for contesting trial cases of cases have been taken 18.5 months. It indicates that practice of mediation is not able to reduce time to resolution significantly, in comparison with the trial.

8.1.2 Non-diligent borrowers remain mostly liable for extended delay in disposal

Along with other reasons for such delayed resolution, one significant factor, as indicated by mediators, is a lack of interest or even reluctance of borrowers to settle cases through mediation. According to mediators' perception, as indicated in **Figure 5.2**, only 25% percent of borrowers show a genuine interest to resolve their cases through mediation. In more than 80 percent cases borrowers use time petition that in many cases cause a protracted delay in the disposal. This rate of time petition is in sharp contrast with a more than 90 percent rate that bakers make time petition to adjourn their cases (Figure 5.4). As perceived by bankers, large industrial borrowers are causing more wilful default than SME borrowers (Figure 6.5).

In contrast, 90 percent of the borrowers responded that they were encouraged by their lawyers to participate in ADR (Table 7.2). For 87.5 percent of borrowers, lawyers remain the first person who informed them about the possibility of resolving their NPL dispute through *Artha Rin* ADR (Figure 7.3). Though it is alleged that lawyers remain deliberately non-diligent to resolve quickly through ADR, both 90 percent of NPL borrowers and 90 percent of bankers consider lawyers as their first choice as mediators.

8.1.3 Reported political influence on recovery is better than expected

The unstable political situation of the once greatly affect the profitability of businesses, and therefore, set a vicious circle of loan default, especially for SME borrowers who couldn't run their businesses smoothly as such they have fallen into a loss. However, 70% banker respondents asserted that political instability affects recovery of NPL only slightly or moderately (Table 6.6). According to all of the banker respondents, except one, direct political influence in loan sanctioning remain as low as 20% of all loans sanctioned by banks (Figure 6.3).

8.1.4 Enforcement rather than the enactment of law should be the key

It is found from the data that enforcement is very much essential for the recovery of the loan than the enactment of the law. In this regard, 70% banker respondents (Table 6.3) replied that amendment of existing *Artha Rin Ain* is not required for attaining a better NPL recovery, whereas another 30% respondents from opined that new law is enacted for better NPL recovery. On the other hand, 83.3% respondents (Table 6.2) also think that no even any amendment to ARA is not necessary. What remains importan is a better implementation of existing laws.

8.1.5 Need for more authoritative mediators

As the bank representative present in the mediation session, they have no or limited power to take a decision, and always have to depend on the decision of the higher authority. In this regard, 47.5 percent respondents (Table 7.5) replied that Bank officers could not take a decision without the approval of the higher management to resolve NPL disputes through *Artha Rin Adalat* ADR. This could be the reason why 40 percent of NPL borrowers perceive that bank officials with limited negotiation authority take rigid adversarial position and make ADR ineffective, in consequence (Table 7.5). Furthermore, 15 mediator respondents replied that Judges could not apply sufficient power during mediation (Figure 5.8). 82.25 percent and

67.50 percent NPL borrowers respectively also opined for more authority of judge mediators to conduct mediation and also the formation of a formal panel of mediators to provide a better recognition to mediators conducting *Artha Rin* ADR (Table 7.6). respondents say that mediator should have full power to settle the case through ADR.

8.1.6 Inadequate authority to bank official for making meaningful negotiation

To have a meaningful principled negotiation and to attain a win-win solution each of the parties to mediation must have adequate authority to make a concession and generate options to resolve the dispute. However, from the response of mediators and NPL borrowers interviewed in this research, it seems that banks officials attending *Artha Rin* ADR don't hold sufficient authority to make any concession from attaining a consensual solution. In this respect, 77.50 percent NPL borrowers (Table 7.6) recommended for assigning bank officials with greater authority to make informed decisions during mediation.

8.1.7 Better remuneration and training to lawyer mediators may improve the situation

It is very regretful that the mediators are not well trained up for conducting mediation session for settlement the cases through ADR under *Artha Rin Ain*, 2003. 30 percent (Figure 5.8) of mediators interviewed in this research considered mediators' remuneration and training as the prime factor to promote more effective mediation in *Artha Rin Adalats*. 70 percent of all mediators interviewed, however, considered mediators' remuneration and training as one of the key factors to promote ADR in *Artha Rin Adalats*. Others key factors identified by mediators to promote more effective mediation include, but not limited to, a better internal recovery process (9 percent), reduced interest rate (9 percent), strict application of rules to discourage delay (27 percent) (Figure 5.8).

8.1.8 Power disparity is not a major hindrance to effective *Artha Rin* ADR

In the mediation session, there is arisen power disparity among bank representative and the borrower, but such types of hindrances do not affect the recovery of loan. 25 percent mediators responded that they never find extreme power disparity between borrowers and bank representatives (Figure 5.5). However, 25 percent mediators replied that if power disparity is revealed they try to solve the dispute in next session and another 37 percent mediators request both parties to show patience (Table 5.8). As perceived from table 5.8 in more than 80 percent cases mediators exercise purely facilitative approach that is fine in case

of an absence of extreme power disparity between parties. However, a greater reluctance of borrowers to repay loan call for a more robust evaluative approach and more authoritative interventions, as suggested earlier in this Chapter.

8.1.9 Satisfaction on *Artha Rin* ADR: borrowers vs. Bankers

Borrowers are not satisfied by the procedure of the recovery of loans, as the bankers are not interested in waiving the interests for settlement of cases through ADR. According to less than one-third of borrowers interviewed in this thesis (Table 7.4) banks never consider borrowers' business position and waive interest on outstanding loans. Among them, 15 percent reply that due not to waive the interest by the banks to their borrowers considering business loss, the borrower cannot repay the bank outstanding as for such they become a defaulter. During ADR session 93 percent borrowers demand a waiver of their interest (Table 6.8). In this regard, 40 percent respondents from the borrowers reply that the bankers do not want to wave. As a result, the borrowers cannot repay their bank outstanding.

Further, present literature express that it is common phenomenon and scenarios not only in Bangladesh but also in the world that the changing laws are caused by increasing NPL in the Banking sector. The Government change laws on various fiscal years that greatly affect the business of the borrower and borrower loss the business, in case borrower could not pay bank dues results in them to default.

However, Bankers are not satisfied with NPL recovery through ADR under *Artha Rin Adalat Ain* 2003. As perceived by bankers, since the borrowers are wilful defaulter, they don't want to pay banks dues, in this respect 35 percent borrowers are unwilling to pay bank dues as such they are treated as will full defaulter, they have the ability to repay the bank loans but they do not pay intentionally (Figure 6.5). Further, as indicated in section 6.3.5 of Chapter 6, 40 percent respondents reply that borrowers are disinterested to pay bank loans. Borrower-borrowers always think that they are not bound to pay bank loans and also consider a bank, money as public money not to be repaid. payable as 10 percent (Chapter-5) mediators responded that borrowers try to embezzle the bank money by means of fraud.

8.2 Limitations of the Research and Future Research Directions

The study of this kind is generally encountered with some limitations. Accuracy and availability of data always remain a concern for NPLs. Since NPL is a financially sensitive

issue for both lender banks and borrowers themselves, data presented in published financial statements are sometimes manipulated or disguised to protect their financial health in appearance. Though financial institutions and borrower organizations maintain internal data on NPL, these confidential data are not always available for external researchers. Therefore, a variety of sources including the annual report of NCBs, CIB reports, and different third-party reports from World Bank, IMF, and other related organizations were used to get a more accurate picture of NPL in Bangladesh.

However, the manipulation of the extent of NPLs by banks and borrowers not necessarily affected the main objectives of the research, i.e., judging the effectiveness of ADR on the recovery of NPLs, understanding the mechanism to conduct *Artha Rin* ADR, and users' satisfaction on *Artha Rin* ADR. Observation of *Artha Rin* ADR sessions and interview with borrowers and managers of NCBs were conducted to understand how effectively ADR is being used to resolve *Artha Rin* cases for NPLs of NCBs in Bangladesh, and users' satisfaction thereof. Furthermore, data collections from the court registers are very difficult as the ministerial staffs of courts are not interested in showing the court register. They excused that all court register are very confidential as well important and for the importance of the case they try to avoid for giving the court register.

The present efforts are directed to ***“Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks in Bangladesh”*** study the borrower's relationship management in banks for recovery loan through ADR. This is an empirical study which would be a useful contribution to loan recovery and decreased NPL in the Banking sector of Bangladesh. However, for arriving at any generalization, it is highly desirable to undertake more such empirical studies. The further research must direct itself for conducting such investigations. This will make the applications more meaningful to make ADR more effective.

Further, the suggested model needed to be tested for its application across the sector and benchmarks to be identified for others to follow. Furthermore, the views suggested are macroscopic; this can be further extended to the microscopic level.

8.3 Recommendations

8.3.1 Judges Power and training are necessary for successful mediation

Section 22 of the *Artha Rin Adalat Ain*, 2003 has not empowered sitting *Artha Rin* Judges for mediation of the *Artha Rin* cases, as such the *Artha Rin* judges cannot handle the *Artha Rin* cases during mediation. Under current law, judges are totally dependent on the report of Mediators. Though family courts in Bangladesh have attained considerable success in mediation by engaging family court judges into mandatory pre-trial mediation, ADR under the *Artha Rin Adalat Ain*, 2003 has not bestowed similar power to *Artha Rin* judges. 25 percent respondents from the bankers' part recommended for engagement of judges for mediation, and they suggested to appoint *Artha Rin* judges as a chairman of the mediation session. 15 percent respondents (Figure 5.8) from the mediators (mostly lawyers) have recommended for enhanced power of judges, for successful mediation.

On the other hand, 82.25 percent respondents (Table 7.6) from NPL borrowers have recommended for judges' power with a view to settle through ADR. Furthermore, 75 percent expert judges have opined that during mediation judges should have sufficient power for conducting a successful mediation between parties attending *Artha Rin* ADR. This opinion is consistent with the impressive success attained in Family Courts in Bangladesh in attaining a low-cost, quick resolution of family disputes and put an effective control on case backlog existed before starting the reformed ADR movement in 2000. In this regard, the Law Commission of Bangladesh has made a recommendation to instead the repealed section 21 of *Artha Rin Adalat Ain* 2003 for settlement conference as follows. Section 21 states that:

(i) Provided whatever provisions contained under chapter-4 relating to trial or hearing of the suit, subject to the provision of Section-24 of this Act if the Court deems proper may convene a Settlement conference for settlement of dispute after submission of written statement by the defendant in an alternative way keeping pending all proceedings of the suit; and the Court may ask the parties, their engaged lawyers and their representatives to remain present in the said Settlement conference.

(ii) The Judge of the Artha Rin Adalat shall preside over such conference and shall determine the venue, procedure, and functions of the Settlement conference, and the Settlement conference as scheduled to be held under this procedure shall take place in camera.

(iii) *The Court shall explain the points of disputes before the parties, their engaged lawyers and the representatives and shall streamline his endeavors in arriving at a settlement; but in his efforts, the Court shall not exert any influence upon the parties to accept his own proposal.*

(iv) *If the dispute is settled through the Settlement Conference, the terms and conditions of the settlement shall be recorded in agreement, and the parties in dispute shall sign as executors, lawyers and the representatives present shall sign the agreements as witnesses; afterwards, the Court shall pass an order or necessary decree under the provisions of related rule of Order-XXIII of the Code of Civil Procedure, 1908.*

(v) *The process of settling the dispute shall be completed within 60 days of passing order by the Court for settling the dispute through Settlement Conference until the time is extended not exceeding 30 days on the basis of written representation of the disputed parties or Courts own initiatives sufficient cause being shown in the record,*

(vi) *The initiative as taken for settling the dispute through Settlement Conference, if failed and the Judge of the aforesaid Court if not transferred in the meantime, next hearing of the suit shall not be made; the suit shall be transferred for hearing to any other Court having jurisdiction and the next hearing of the suit shall be resumed from its previous position in a such a manner as if no efforts were taken for Settlement of the disputes through Settlement conference.*

(vii) *If the suit could not be transferred to a Court having proper jurisdiction according to sub-section-(vi) for any other reasons, the District Judge may appoint any other Judge to that Court under his jurisdiction on ad-hoc-basis for making the hearing of the suit.*

(viii) *The process of Settlement Conference under this Section shall be held in camera and any suggestions, advice or counseling amongst the parties, their lawyers and the representatives as adduced, an admission, deposition or comment shall should be considered to be strictly confidential and at later stage the aforesaid matters cannot be cited or shall not be accepted to be evidence.*

(ix) *Despite having anything in the Court Fees Act, 1870 (Act No. VII of 1870), if the dispute of any suit is settled in the Settlement Conference, if any of the parties, submits petition for refunding Court fee as deposited with the plaint or written statements: the Court shall issue a certificate on the above, so that the parties may*

take back the Court fees on that basis which was deposited with the plaint or written statement.

(x) No appeal or revision shall lie in the higher Court against any order pronounced by the Court or any issue settled through Settlement Conference under the provision of this Act.

Explanation.— *Under the provision of this Act Settlement Conference shall mean, which shall be presided over by the Judge of the (Artha Rin Adalat) and where the parties to the suit, lawyers engaged by the parties, their representatives are authorized to be present, and the Court shall play a Co-operation role in disposing the Suit in a non-formal way, where an atmosphere of voluntary will, un-conflicting attitude, mutual Co-operation and the basis of which shall be fellow feelings and compromise.*

Furthermore, disposal of mediation session shall be completed within shortest possible time, i.e., maximum 15 days. Respondents from the banker's part replied that court should not allow time during mediation so that borrower cannot waste time.

8.3.2 Existing laws should be enforced further

Lacking enforcement of the law, rather than lack of laws, is identified by respondents as factor liable for increasing NPL in the Banking sector of Bangladesh. Though Bank got a decree from the honorable court, the decree execution is quite impossible due to the negligence of the law enforcement Agents. Defaulters always avoid the capture of law enforcement agency or manage them at any cost. 26.66 percent respondents from the bankers reply that due to lack of law enforcement is liable for increasing NPL in the Banking sectors of Bangladesh. 83.3 percent (Table 6.2) respondents from Bankers also recommend for amendment in ARA for it better implementation in the recovery of NPL. As the borrowers thought that the law could not be enforced by the Bank against them through law enforcement agency, they are not interested in settling the loan.

8.3.3 Formation of mediators' panel and proper training for mediators

It appears from the empirical data that the mediators are not paneled to settle the cases through mediation as such any person from the banker's side, lawyers side can be appointed as a mediator. As no panel mediator is not possible to identify who is a skilled mediator and

who is not skilled. Sometimes it also appears that the ministerial staffs of the court select mediators without considering the quality, qualification, experience, and integrity of that mediator as such bank as well the borrower fall in problem even the valuable time of the court is a waste. As the borrower is not interested in accepting ADR as shown in Chapter 5, 40 percent mediators reply that the borrower is not interested in settling cases through ADR.

Therefore, with a view to solving case through ADR, 70 percent respondents recommended for a paneled, honest, expert, trained up mediator for successful mediation. Furthermore, the borrower also waste time through mediation and seen that bankers also not interested in attending mediation. The borrower lawyers are interested in lengthening the cases. So, a mediator should be appointed from panel mediators who can convince both bankers and borrower even the dealing lawyers of the bank and borrowers. However, with a view to appointing panel mediator there should have a committee comprising judges who select the mediator as a panel from the reputed, honest and sincere lawyers of the concerned Bar Association. 18.75 percent respondents from the bankers part and 67.5 percent respondents from the borrowers part say that mediator should be paneled.

8.3.4 Well trained up mediator should be appointed

The mediators should be well trained up so that they can settle the *Artha Rin* cases through mediation successfully. In this respect, 7.5 percent respondents from the borrowers expressed that mediator should be well trained up. 70 percent respondents from the mediators part recommend for the training of the mediators for successful mediation.

8.3.5 Bank Officer should have the power to settle the loan through mediation

The Bank official has no power to settle through ADR. Though the nominated officer of the Bank has been attended and participated in the mediation session, they cannot take the decision due to lack of power for giving a decision; they took time during mediation for a decision from the bank's higher authority. In this respect, 32.5 percent respondents from the borrowers have replied that Bank officer cannot take a decision without the approval of the higher management even though the bank cannot waive the interest or other expenses and the 77.5 percent respondent borrowers have recommended for bankers power with a view to settling *Artha Rin* cases through ADR. Furthermore, 55 percent respondents have recommended that bankers should have power for settlement *Artha Rin* cases through ADR. Moreover, 12.5 respondents have recommended that Banks officer decision is final and

should have a defense for bankers with a view to settle through ADR. In this regard, section 24 of the *Artha Rin Adalat Ain*, 2003 states that.’

(i) If a financial institution agrees to solve disputes through Settlement Conference or arbitration as provided under Section- 22 and in order to materialize the said objectives, the financial institution may delegate powers to the central, regional or it local level competent officers for the exercise of delegated power resolving in the meeting of Board of Directors may issue appropriate order or circular accordingly.

(ii) When the financial institution issuing such order or circular according to sub-section (i), it shall clearly indicate the extent of power, limitation of delegated power, the procedure and principle exercising such power.

(iii) Under the provision of sub-section-(i), the financial institution shall send a copy of such order or to the concerned Artha Rin Adalat of the said area,

(iv) After arriving at a solution or Settlement under this chapter through Settlement Conference or alternative arbitration procedure before issuing Order, the Court shall confirm that the aforesaid solution and settlement has been completed under the provision of sub-section-(ii), and the same has duly been approved by the Managing Director or the Chief Executive of the related financial institution.

In practical no circular has been issued by the concerned Bank by giving delegation power so that the attending authority may give decision without delay proceedings, In this regard law or circular should be provided designation wise financial delegation. In addition to the above, *Artha Rin Ain* may specify the delegation power of the Bank officers so that specific officer can take decision instantly at the time of mediation session and time will not waste both the bank and court.

8.3.6 Partial interest waiver

The interest rate is very vital for increasing NPL not only in Bangladesh but also whole over the world. Literature shows that interest rate is increasing in the Banking sector rapidly as

such the amount of NPL is also increasing rapidly. It is found that respondent of Bankers that interest rate effects to demand of credit as 55 percent respondents reply that prevailing interest rate affect the demand for credit moderately and 80 percent respondents say that high-interest rate affects the repayment of the loan. Furthermore, 10 percent respondents from the mediators opined that with a view to settling through ADR interest rate should be decreased as due to interest rate the amount of NPL is increasing.

It again appears from the reply of the borrowers that due to high-interest rate the NPL is increasing. In this regard, Chapter-7 Show that 32.5 percent respondents reply that due to high-interest rate the amount of NPL is increasing rapidly as such interest rate should be decreased for ADR. Considering the increasing of NPL, we think that interest rate of the banking sector in Bangladesh should be decreased with a view to avoid/control the NPL in Bangladesh. With a view to controlling the NPL, it is badly needed to amend, or specific law about NPL or a specific guideline should be issued from the Bangladesh Bank for decreasing interest rate of the Banking sector in Bangladesh especially National Commercial Banks. So, that the amount of NPL is decreased day by day.

8.3.7 Strong collateral security and scrutinize borrower properly before sanction loan

Literature shows that due to weak collateral security the borrowers have been a defaulter, they thought that as the security is less valuable than loan outstanding so they can easily embezzle the loan. In this regard, 25 percent respondents say that as the security is less than outstanding as such when bank go to auction for selling the security than if the security is high valuable then borrower come settle as the borrowers do not want to lose their security due to default at any cost they will protect their property and come to settle the case through mediation.

Moreover, 50 percent respondent says that before sanctioning loan bank should scrutinize borrower properly so that borrowers come to a settlement through ADR. If the borrower's intention is bad, they never come to a settlement through ADR. So, it is found that if the security is low, then the borrower is not interested in paying their banks dues but if the security is high in that case borrower is much more interested in paying the bank dues. In this situation, I strongly recommend for strong and defectless security for any credit with a view to the interest of the Bank even for decreasing the status of NPL and settle the cases through ADR and should scrutinize borrower properly.

8.4 Conclusion:

Successful of ADR lies with the establishment of a competent ADR mechanism without biases of the persons engaged in the ADR procedures. The aims of ADR under *Artha Rin Ain*, 2003 is to promote the economic/ financial development of the country by creating an NPL free banking sector for the private and public Banks of the Country with a view to coping with the world financial position so that both the borrower and the bankers will be benefitted. An effective ADR policy is very much important in regulating the recovery of NPL, promoting the growth of the financial sector and economic development, reducing poverty, curbing corruption, improving good governance and protecting the financial structure of the country. At present, though Bangladesh has ahuge backlog of cases specially *Artha Rin* cases if the proper ADR system will be started in proper method, system, without corruption, then the backlog of cases may be reduced automatically. Most importantly, it contains a provision for a strong competitive committee for appointment of Mediators for settlement the loan disputes.

Moreover, Bangladesh does not have any clearly defined ADR policy at the international level or any sector-specific policy that addresses disputes of loan issues. The government does not have any institutional mechanism to review and administer the existing law that affects the recovery of NPL of NCBs in smooth ways. Our neighboring countries such as India and Pakistan have adopted ADR policy. But a sound, independent and accountable regulatory mechanism ADR is needed to recover loan from the defaulter borrower effectively. Implementation of the ADR committee for recovery the loan is only possible under an independent and powerful commission for selecting mediators for ADR. The government will need a strong political will to properly select the members of the commission for selecting the Mediators and allow them to work independently.

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LIST OF APPENDICES

Appendix 1: Application to Dhaka District Judge Court for Collection of Data

DEPARTMENT OF LAW
UNIVERSITY OF DHAKA
DHAKA-1000, BANGLADESH
Phone : 9661900-73/6810
Fax : 880-2-3615583
E-mail : {registrar@du.ac.bd
lvcoffice@du.ac.bd
E-mail : law@du.ac.bd



আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়
ঢাকা-১০০০, বাংলাদেশ
ফোন : ৯৬৬১৯০০-৭৩/৬৮১০
ফ্যাক্স : ৮৮০-২-৩৬১৫৫৮৩
ই-মেইল : {registrar@du.ac.bd
lvcoffice@du.ac.bd
ই-মেইল : law@du.ac.bd

No: 129/2014-15
নং

তারিখ 17/09/2014

To
The District Judge
Dhaka.

Subject: **Seeking permission to collect empirical data from Dhaka Artha Rin Adalots for PhD research purpose.**

Dear Sir,

This is for your kind information that AMINUL ISLAM, son of Late Sona Mia Kazi and Yaroon Begum, is a PhD student at the Department of Law, University of Dhaka, under the supervision of Associate Professor Dr. Jamila A Chowdhury from the same Department. The data which he intends to collect relates to filing and resolution of cases, and few details from case files resolved through mediation and litigation in Dhaka Artha Rin Adalots (1,2,3 & 4).

He is doing research on "Impact of ADR on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on nationalized Commercial Banks (NCBs) in Bangladesh", and intends to conduct his empirical study over relevant case data.

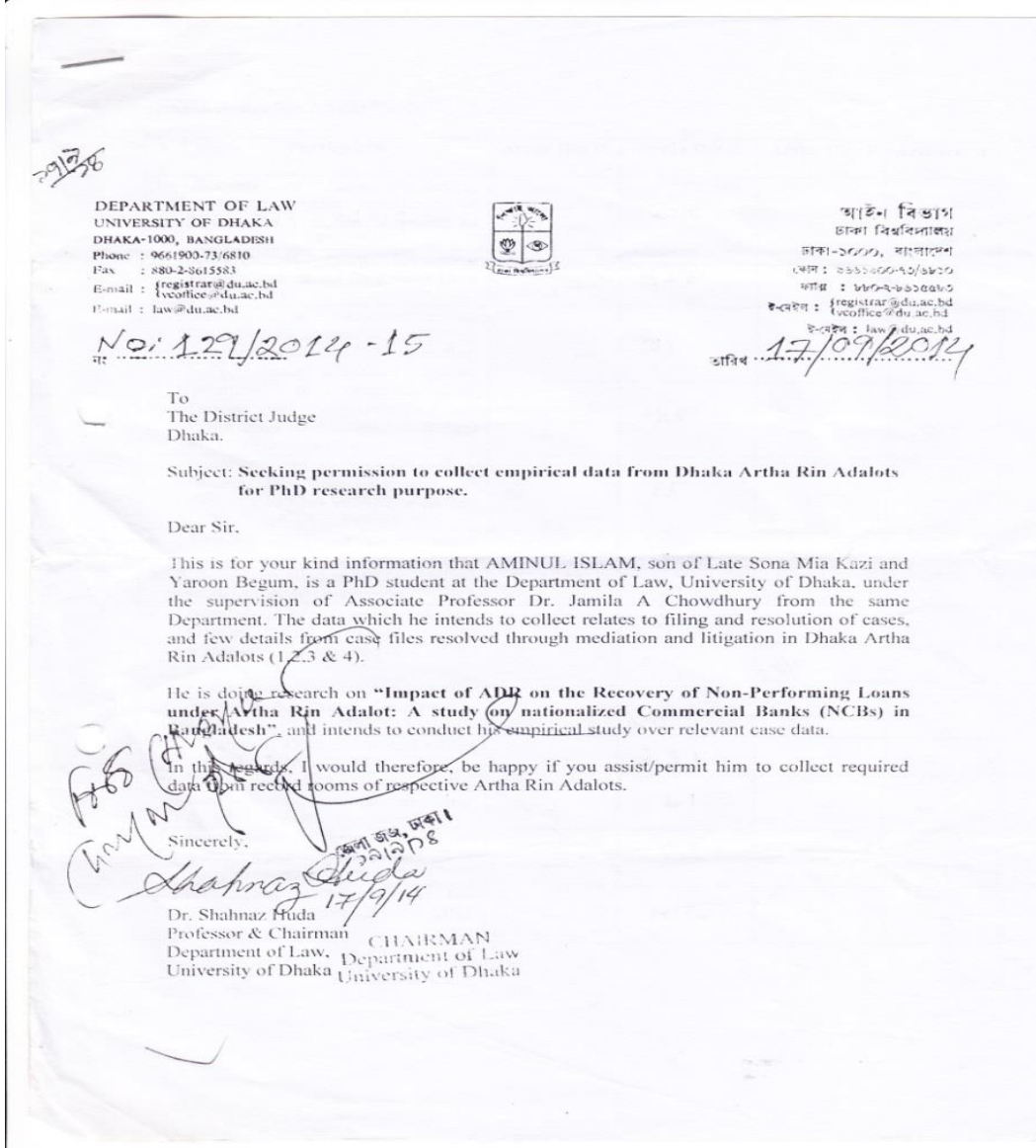
In this regards, I would therefore, be happy if you assist/permit him to collect required data from record rooms of respective Artha Rin Adalots.

Sincerely,

Shahnaz Huda
17/9/14
Dr. Shahnaz Huda
Professor & Chairman
Department of Law,
University of Dhaka

CHAIRMAN
Department of Law
University of Dhaka

Appendix 2: District Judge Permission



Appendix 3: Application to Sonali Bank Limited for collection of data

DEPARTMENT OF LAW
UNIVERSITY OF DHAKA
DHAKA-1000, BANGLADESH
Phone : 9661900-73/6810
Fax : 880-2-8615583
E-mail : {registrar@du.ac.bd
lvcoffice@du.ac.bd
E-mail : law@du.ac.bd



আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়
ঢাকা-১০০০, বাংলাদেশ
ফোন : ৯৬৬১৯০০-৭৩/৬৮১০
ফ্যাক্স : ৮৮০-২-৮৬১৫৫৮৩
ই-মেইল : {registrar@du.ac.bd
lvcoffice@du.ac.bd
ই-মেইল : law@du.ac.bd

N. 34/2015-16
নং

তারিখ ১১/০৪/১৫.....

To,
The Deputy General Manager
Human Resources Division.
Sonali Bank Limited
Head Office:
35-42, 44 Motijheel Commercial Area
Dhaka-1000, Bangladesh.

Subject: **Seeking permission to collect data/information from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for PhD research purpose.**

Dear Sir,

This is for your kind information that AMINUL ISLAM, son of Late Sona Mia Kazi and Yaron Begum, is a PhD student at the Department of Law, University of Dhaka, under the supervision of Associate Professor Dr. Jamila A Chowdhury from the same Department. The data/information which he intends to collect from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for partial requirements of his PhD research purpose.

He is doing research on “ **Impact of ADR on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks (NCBs) in Bangladesh**” and intends to collect information through questionnaire.

In this regards, I would therefore, be happy if you assist/permit him to collect required data/information through questionnaire.

Sincerely,


(Dr. Borhan Uddin Khan)
Professor & Chairman
Department of Law
University of Dhaka.



Appendix 4: Obtained Permission from Sonali Bank



সোনালী ব্যাংক লিমিটেড
Sonali Bank Limited

মাননব সম্পদ উন্নয়ন ব্যবস্থাপনা
প্রধান কার্যালয়, মতিঝিল বাণিজ্যিক এলাকা
ঢাকা-১০০০, বাংলাদেশ।
ফোন : ৯৫৫০৬৫৩ (ডিজিএম)
: ৯৫৬৭৮৯১ (এজিএম)
- পিএবিএক্স : ৯৫৫০৮২৬-৩১, ৩৩, ৩৪
- এক্সটেনশন : ৩২৪৭, ৩২৫১, ৩২৫৯

নং-এইচআরডিডি/ট্রেনিং/২০১৫/২৮৭৪
তারিখঃ ২৮ সেপ্টেম্বর, ২০১৫

জেনারেল ম্যানেজার/ ডেপুটি জেনারেল ম্যানেজার/ এসিস্ট্যান্ট জেনারেল ম্যানেজার/ ম্যানেজার

সোনালী ব্যাংক লিমিটেড

স্থানীয় কার্যালয়/ বন্দর কর্পোরেট শাখা/ ওয়েজ অর্নিং কর্পোরেট শাখা/ বঙ্গবন্ধু এভিনিউ কর্পোরেট শাখা/ দিগ্বিশা কর্পোরেট শাখা/ ফরেন
এক্সচেঞ্জ কর্পোরেট শাখা/ বি-ওয়াপদা ভবন কর্পোরেট শাখা/ সদরঘাট কর্পোরেট শাখা/ শিল্পভবন কর্পোরেট শাখা/ ঢাকা বিশ্ববিদ্যালয়
কর্পোরেট শাখা/ বায়তুল মোকাররম শাখা/ বঙ্গভবন শাখা/ ডিবি হল শাখা/ ফকিরাপুল শাখা/ কাকরাইল শাখা/ কামনাপুর রেলওয়ে স্টেশন
(এইচডিডি) শাখা/ সুনি ভবন শাখা/ লক্ষ্মীবাজার শাখা/ মনিক মিয়া এভিনিউ শাখা/ নসার ভবন শাখা/ নওয়াবপুর রোড শাখা/ নয়া বাজার শাখা/
এনসিটি রোড শাখা/ নর সাইথ রোড শাখা/ রাজউক ভবন শাখা/ সেভন ব্যণ্ডা শাখা/ শাহজাহানপুর শাখা/ সুইডেন কোর্ট শাখা/ ভিকরুন্দিয়া নুন
কুল শাখা
ঢাকা।

**Seeking permission to collect data/information from officers/executives of
different Branches in Dhaka District of your Bank through questionnaire for PhD
research purpose.**

মহোদয়,

উপর্যুক্ত বিষয়ে জানানো যাচ্ছে যে, ঢাকা বিশ্ববিদ্যালয়ের আইন বিভাগের সহযোগী অধ্যাপক ড. জামিলা এ টৌদুয়ী এর
তত্ত্বাবধানে পিএইচডি অর্জনে জনাব আমিনুল ইসলাম "Impact of ADR on the Recovery of Non-Performing
Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks (NCBs) in
Bangladesh" এর উপর গবেষণা কাজ করছেন। এ লক্ষ্যে তিনি এই ব্যাংকের বিভিন্ন কার্যালয়/শাখা হতে একটি নির্দিষ্ট
প্রশ্নমালার মাধ্যমে কতিপয় তথ্য সংগ্রহ করার আশ্রয় প্রকাশ করে প্রয়োজনীয় তথ্য সংগ্রহে ব্যাংকের সহযোগিতা/অনুমতি কামনা
করেছেন।

২.০০: এমতাবস্থায়, পিএইচডি অর্জনে উপরোক্ত শিক্ষার্থী আপনাদের কার্যালয়/শাখায় তথ্য সংগ্রহের জন্য পমন করলে
নিম্নোক্ত শর্তাদি পরিপালন সাপেক্ষে তথ্য সংগ্রহকারীকে তথ্য সরবরাহ করার জন্য কর্তৃপক্ষের অনুমোদনক্রমে অনুরোধ করা
যাচ্ছেঃ

- ক) যে সকল তথ্য প্রদানে ব্যাংকের স্বার্থ অক্ষুণ্ণ থাকবে কিংবা ব্যাংকের জন্য ক্ষতিকর হবে না শুধুমাত্র সে সকল তথ্য
সরবরাহ করা যেতে পারে;
- খ) ব্যাংকার্স বুকস্ এভিভেল এন্ড (BBEA), ১৮৯১ এর ৫ ও ৬(১) ধারা এবং কোড অব জির্মিনাল প্রসিডিউর
(CrPC), ১৮৯৮-এর ৯৪(১) ধারা অনুযায়ী আদালতের সুনির্দিষ্ট আদেশ বাতীত আমানতকারী/হিসাবধারীর
হিসাব সংক্রান্ত তথ্য প্রদান করা যাবে না; এবং
- গ) ব্যাংক থেকে সংগৃহীত তথ্যাদি গোপন রাখতে হবে এবং শুধুমাত্র শিক্ষা কার্যক্রম/রিসার্চ এ ব্যবহৃত হবে - এই মর্মে
একটি অঙ্গীকারনামা নিতে হবে।

আপনাদের বিশ্বস্ত,

(মোহাম্মদ আশরাফ উল্লাহ)
ডেপুটি জেনারেল ম্যানেজার

- সংযুক্তিঃ ১। আইন বিভাগ, ঢাকা বিশ্ববিদ্যালয়, ঢাকা এর ১১/০৮/২০১৫ তারিখের ৩৪/২০১৫-১৬ সংখ্যক পরসহ
প্রশ্নমালা; এবং
২। ব্যাংকার্স বুকস্ এভিভেল এন্ড (BBEA), ১৮৯১ এর ৫ ও ৬(১) ধারা এবং কোড অব জির্মিনাল প্রসিডিউর
(CrPC), ১৮৯৮-এর ৯৪(১) ধারা।

Appendix 5: Application to Agrani Bank Limited for collection of data

DEPARTMENT OF LAW
UNIVERSITY OF DHAKA
DHAKA-1000, BANGLADESH
Phone : 9661900-73/6810
Fax : 880-2-8615583
E-mail : {registrar@du.ac.bd
vcoffice@du.ac.bd
E-mail : law@du.ac.bd



আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়
ঢাকা-১০০০, বাংলাদেশ
ফোন : ৯৬৬১৯০০-৭৩/৬৮১০
ফ্যাক্স : ৮৮০-২-৮৬১৫৫৮৩
ই-মেইল : {registrar@du.ac.bd
vcoffice@du.ac.bd
ই-মেইল : law@du.ac.bd

নং No. 34/2015-76

তারিখ 11/08/15

To,
The Deputy General Manager
Human Resources Division.
Agrani Bank Limited
Head Office:
9/D Dilkusha Commercial Area
Dhaka-1000, Bangladesh.

Subject: **Seeking permission to collect data/information from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for PhD research purpose.**

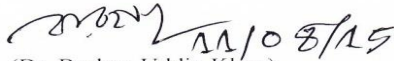
Dear Sir,

This is for your kind information that AMINUL ISLAM, son of Late Sona Mia Kazi and Yaroon Begum, is a PhD student at the Department of Law, University of Dhaka, under the supervision of Associate Professor Dr. Jamila A Chowdhury from the same Department. The data/information which he intends to collect from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for partial requirements of his PhD research purpose.

He is doing research on “**Impact of ADR on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks (NCBs) in Bangladesh**” and intends to collect information through questionnaire.

In this regards, I would therefore, be happy if you assist/permit him to collect required data/information through questionnaire.

Sincerely,


11/08/15

(Dr. Borhan Uddin Khan)
Professor & Chairman
Department of Law
University of Dhaka.



Appendix 7: Application to Janata Bank Limited for collection of data

DEPARTMENT OF LAW
UNIVERSITY OF DHAKA
DHAKA-1000, BANGLADESH
Phone : 9661900-73/6810
Fax : 880-2-8615583
E-mail : {registrar@du.ac.bd
{vcoffice@du.ac.bd
E-mail : law@du.ac.bd



আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়
ঢাকা-১০০০, বাংলাদেশ
ফোন : ৯৬৬১৯০০-৭৩/৬৮১০
ফ্যাক্স : ৮৮০-২-৮৬১৫৫৮৩
ই-মেইল : {registrar@du.ac.bd
{vcoffice@du.ac.bd
ই-মেইল : law@du.ac.bd

নং No. 34/2015-16

তারিখ 14/08/15.....

To,
The Deputy General Manager
Human Resources Development Department.
Janata Bank Limited
Head Office:
Janata Bhaban, 110 Motijheel C/A
Dhaka-1000, Bangladesh.

Subject: **Seeking permission to collect data/information from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for PhD research purpose.**

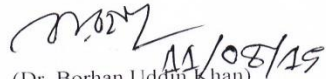
Dear Sir,

This is for your kind information that AMINUL ISLAM, son of Late Sona Mia Kazi and Yaroon Begum, is a PhD student at the Department of Law, University of Dhaka, under the supervision of Associate Professor Dr. Jamila A Chowdhury from the same Department. The data/information which he intends to collect from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for partial requirements of his PhD research purpose.

He is doing research on “ **Impact of ADR on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks (NCBs) in Bangladesh**” and intends to collect information through questionnaire.

In this regards, I would therefore, be happy if you assist/permit him to collect required data/information through questionnaire.

Sincerely,


(Dr. Borhan Uddin Khan)
Professor & Chairman
Department of Law
University of Dhaka.



Appendix 8: Obtained Permission from Janata Bank



জনতা ব্যাংক লিমিটেড

প্রধান কার্যালয় : জনতা ভবন
১১০, মতিঝিল বাণিজ্যিক এলাকা, ঢাকা-১০০০
পোস্ট বক্স নং : ৪৬৮, গুয়ের সাইটঃ
www.janatabank-bd.com
পিএবিএক্স : ৯৫৬০০০০, ৯৫৬৬০২০,
৯৫৫৬২৪৫-৪৯, ৯৫৬০০২৭-৩০, ৯৫৬০০৪২-৪৫

হিউম্যান রিসোর্সেস ডেভেলপমেন্ট ডিপার্টমেন্ট
ফোন : ৯৫৫২০৭৮, ৯৫৬৫০৪৪
পিএবিএক্স : ৪৮৮, ২৭২, ২০৩, ৩৫৬ ও ৫০৮
ফ্যাক্স : ৮৮০-২-৯৫৫৮৬১৩

সূত্রঃ এইচআরডিভি/বশির/প্রশিক্ষন-বিভিন্ন তথ্য সংগ্রহ/১৫

তারিখঃ ২৬/০৮/২০১৫

ড. বোরহান উদ্দিন খান
প্রফেসর এন্ড চেয়ারম্যান
ডিপার্টমেন্ট অব 'ল'
ঢাকা বিশ্ববিদ্যালয়, ঢাকা।

বিষয়ঃ জনাব আমিনুল ইসলাম পিএইচডি স্টুডেন্টস, ডিপার্টমেন্ট অব 'ল', এর পিএইচডি রিসার্চ পেপার তৈরীর জন্য জনতা ব্যাংক লিমিটেড এর বিভিন্ন শাখা হতে প্রয়োজনীয় তথ্য ও ডাটা সংগ্রহের অনুমতি প্রসঙ্গে।


মহোদয়,

উপর্যুক্ত বিষয়ে আপনার পত্র সূত্র নং- ৩৪/২০১৫-১৬ তারিখঃ ১১/০৮/২০১৫ এর প্রেক্ষিতে বিষয়টি আমাদের উর্ধ্বতন কর্তৃপক্ষ বরাবরে উপস্থাপন করা হয়। কর্তৃপক্ষ জনাব আমিনুল ইসলাম পিএইচডি গবেষক কে নিম্ন বর্ণিত শাখা সমূহ হতে আপনার প্রেরিত ছক মেতাবেক তথ্য ও প্রশ্ন সমূহের জবাব সংগ্রহের জন্য অনুমতি প্রদান করেছেন:-

ক্রঃ নং	শাখার নাম
০১	জনতা ভবন কর্পোরেট শাখা, ১১০ মতিঝিল বা/এ, ঢাকা।
০২	স্থানীয় কার্যালয়, ১ নং, দিলকুশা বানিজ্যিক এলাকা, ঢাকা।
০৩	৪৮, মতিঝিল কর্পোরেট শাখা, মতিঝিল বা/এ, ঢাকা।
০৪	রমনা কর্পোরেট শাখা, ১৫, বিবি এডেনিউ, ঢাকা।
০৫	তোপখানা রোড কর্পোরেট শাখা, মেহেরবা প্রাজা, ৩৩, তোপখানা রোড, ঢাকা।
০৬	নগরভবন কর্পোরেট শাখা, নগর ভবন ঢাকা।
০৭	সদরঘাট শাখা, সদরঘাট, ঢাকা।
০৮	ইসলামপুর রোড শাখা, ইসলামপুর, ঢাকা।
০৯	ইমামগঞ্জ কর্পোরেট শাখা, ২০, ইমামগঞ্জ ঢাকা।
১০	দিলকুশা কর্পোরেট শাখা, রাজভবন, ২৯ দিলকুশা বা/এ, ঢাকা।
১১	যাত্রাবাড়ী কর্পোরেট শাখা, যাত্রাবাড়ী, ঢাকা।
১২	হাজারীবাগ শাখা, হাজারীবাগ, ঢাকা।
১৩	সাতমসজিদ রোড কর্পোরেট শাখা, ধানমন্ডি, ঢাকা।
১৪	রায়ের বাজার শাখা, রায়ের বাজার, ঢাকা।
১৫	শ্যামলী কর্পোরেট শাখা, শ্যামলী, ঢাকা।
১৬	মুগদাপাড়া শাখা, মুগদাপাড়া, ঢাকা।
১৭	মিরপুর সেকশন-১০ শাখা, মিরপুর, ঢাকা।
১৮	রজনীগন্ধাসুপার মার্কেট শাখা, কচুক্ষেত, ক্যান্টনমেন্ট, ঢাকা।
১৯	পল্লীবিদ্যুতায়ন বোর্ড শাখা, খিলক্ষেত, ঢাকা।
২০	উত্তরা মডেল কর্পোরেট শাখা, উত্তরা, ঢাকা।
২১	গুলশান সার্কেল-০২ কর্পোরেট শাখা, ঢাকা।
২২	গুলশান সার্কেল-০১ কর্পোরেট শাখা, ঢাকা।
২৩	মহাখালী কর্পোরেট শাখা, মহাখালী, ঢাকা।
২৪	মৌচাক কর্পোরেট শাখা, মৌচাক, ঢাকা।
২৫	শান্তিনগর কর্পোরেট শাখা, শান্তিনগর, ঢাকা।

বর্ণিত শাখা প্রধানগনকে ডিপার্টমেন্ট কর্তৃক সরবরাহকৃত প্রশ্নপত্রের জবাব জনাব আমিনুল ইসলাম কে প্রদানে সার্বিক সহযোগিতা প্রদানের অনুরোধ করা হলো। উল্লেখ্য যে, প্রশ্ন পত্র বহির্ভূত কোন জবাব বা তথ্য প্রদান করা যাবে না।

আপনার বিশ্বস্ত,


মোঃ সাজেদুর রহমান
উপ মহাব্যবস্থাপক



Appendix 9: Application to Rupali Bank Limited for collection of data

DEPARTMENT OF LAW
UNIVERSITY OF DHAKA
DHAKA-1000, BANGLADESH
Phone : 9661900-73/6810
Fax : 880-2-8615583
E-mail : {registrar@du.ac.bd
lvcoffice@du.ac.bd
E-mail : law@du.ac.bd



আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়
ঢাকা-১০০০, বাংলাদেশ
ফোন : ৯৬৬১৯০০-৭৩/৬৮১০
ফ্যাক্স : ৮৮০-২-৮৬১৫৫৮৩
ই-মেইল : {registrar@du.ac.bd
lvcoffice@du.ac.bd
ই-মেইল : law@du.ac.bd

নং No-34/2015-16

তারিখ 11/08/15

To,
The Deputy General Manager *QEM HRD*
Human Resources Development Department.
Rupali Bank Limited
Head Office:
Rupali Bhaban,
34 Dilkusha Commercial Area,
Dhaka-1000, Bangladesh.

Subject: **Seeking permission to collect data/information from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for PhD research purpose.**

Dear Sir,

This is for your kind information that AMINUL ISLAM, son of Late Sona Mia Kazi and Yaroon Begum, is a PhD student at the Department of Law, University of Dhaka, under the supervision of Associate Professor Dr. Jamila A Chowdhury from the same Department. The data/information which he intends to collect from officers/executives of different Branches in Dhaka District of your Bank through questionnaire for partial requirements of his PhD research purpose.

He is doing research on “Impact of ADR on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks (NCBs) in Bangladesh” and intends to collect information through questionnaire.


In this regards, I would therefore, be happy if you assist/permit him to collect required data/information through questionnaire.

Sincerely,

[Signature]
(Dr. Borhan Uddin Khan)
Professor & Chairman
Department of Law
University of Dhaka.



Appendix 10: Obtained Permission from *Rupali Bank*

 **রূপালী ব্যাংক লিমিটেড**
RUPALI BANK LIMITED

HO/Admin/Services/ ৩৬২৪ Administration & Human Resources Division Date: 18/10/2015

Dr. Borhan Uddin Khan
Professor & Chairman
Department of Law
University of Dhaka
Dhaka-1000.

Subject: Permission to collect data/ information from officers/executives of different branches of Rupali Bank Limited.

Dear Sir

In pursuance of your letter No- 34/2015-16 dated 26/08/2015 we are pleased to inform you that our management has already approved the following student of your university to visit different branches of Rupali Bank Limited for collecting required information from officers/executives through questionnaire for PhD research purpose.


Sl No.	Name	Program	Proposed Branch
01	Aminul Islam	Impact of ADR on the Recovery of Non-performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks (NCBs) in Bangladesh.	List enclosed

This is for your kind Information and Necessary action.

Best wishes
Sd/-
(Wahida Begum)
Deputy General Manager

cc.

01. Manager, Rupali Bank Limited, 24 Branches in Dhaka District (List enclosed) is requested to allow the person to complete his program
02. Mr. Aminul Islam is requested to start the program
03. Office Copy


Deputy General Manager

প্রধান কার্যালয় : রূপালী ভবন
৩৪, লিফটপা কা/এ ঢাকা-১০০০, বাংলাদেশ।
E-mail: rblhocom@bdcom.com
Website : www.rupalibank.org
SWIFT BIC : RUPBDDDH

টেলিফোন : সরকারি ৯৫৫২৪৮১, ৯৫৫২৬৩১, ৯৫৫২২৪০, ৯৫৫১৮৯১, ৯৫৬৭০৯০
৯৫৫২৬৩৪, প্রাইভেট ৯৫৫২৫২৫, ৯৫৫১৯২৪-২৫, ৯৫৫১৮৮০, ৯৫৫২১৮৪
৯৫৫২২১৪, ৯৫৫২৭৪৩, ৯৫৫০৯০ ফ্যাক্স : ৮৮-০২-৯৫৪১৪৮
P.O. Box No. 719, Telegram : RUPABANK DHAKA

Appendix 11: Questionnaire for Mediators

Dear Respondent,

I, Aminul Islam - Ph.D. student, Department of Law, University of Dhaka is hereby requesting you to participate in a questionnaire survey of around 40-45 minutes. Through this questionnaire you are requested to provide information for my study *“Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks in Bangladesh”* that would constitute a partial fulfillment of my degree.

Please be assured that your name and responses will be treated with utmost confidentiality and will not be used for any purpose other than academic as mentioned above.

Your co-operation in his regard would be highly appreciated.

Thanking you.

Aminul Islam

Lawyer, Dhaka Bar

High Court Division of Supreme Court

PhD student

Department of Law, University of Dhaka

Contact: 0172-9978002

Supervisor

Dr. Jamila A. Chowdhury

Associate Professor and Student Advisor

Department of Law, University of Dhaka

SECTION A: BACKGROUND INFORMATION

1. Gender: Male Female
2. Age group: 20-29 30-39 40-49 50 and above
3. Marital Status: Married Single Never married
5. Full Designation _____
6. No. of years you are working in the judicial sector
 Less than 2 years 2-5 years 5-10 years Above 10 years
7. Years of experience as a mediator
 Less than 2 years 2-5 years 5-10 years Above 10 years

SECTION B: SURVEY QUESTIONNAIRE

1. Is *Artharin Ain* enough for loan recovery or further amendment is necessary for more effective recovery of NPL?
 Yes required No amendment required
2. Should new law be enacted for this purpose?
 Yes No
3. How interested are clients to accept ADR procedure to resolve NPL cases?
 Highly moderately indifferent oppose to take
4. How interested are bankers to accept ADR procedure to resolve NPL cases?
 Highly moderately indifferent oppose to take
5. How interested are lawyers to resolve NPL cases through ADR?
 Highly moderately indifferent oppose to take
6. What type of mediators do borrowers want to appoint more?
 Lawyers Retired Judges *Artharin* judges Businessmen Others _____
7. What type of mediators do bankers want to appoint more?
 Lawyers Retired Judges *Artharin* judges Bankers Others _____
8. What percentage of clients shows genuine interest to resolve cases through ADR
_____ %

9. Are provisions of *Artharin Ain* enough to ensure fair justice through ADR?

Yes No

10. How often bankers may file time petitions to stress the dispute resolution process?

Always Frequently In few cases Never

11. How often clients may file time petitions to stress the dispute resolution process?

Always Frequently In few cases Never

12. How often do you find extreme power disparity between clients and bank representatives?

Always Frequently In few cases Never

13. What might you do in case of extreme power disparity?

14. If clients' monetary cost and outcome from ADR is compared with that of contested trial, in what percentage of cases ADR may provide net benefit to clients?

_____ %

15. What do you think is the major obstacle for effective use of *Artharin* ADR for NPL recovery?

16. What would be your recommendation for more effective use of *Artharin* ADR?

Thank You

Appendix 12: Questionnaire for Bankers

Dear Respondent,

I, Aminul Islam - Ph.D. student, Department of Law, University of Dhaka is hereby requesting you to participate in a questionnaire survey of around 40-45 minutes. Through this questionnaire you are requested to provide information for my study *“Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha RinAdalat: A study on Nationalized Commercial Banks in Bangladesh”* that would constitute a partial fulfillment of my degree.

Please be assured that your name and responses will be treated with utmost confidentiality and will not be used for any purpose other than academic as mentioned above.

Your co-operation in his regard would be highly appreciated.

Thanking you.

Aminul Islam

Lawyer, Dhaka Bar

High Court Division of Supreme Court

PhD student

Department of Law, University of Dhaka

Contact: 0172-9978002

Supervisor

Dr. Jamila A. Chowdhury

Associate Professor and Student Advisor

Department of Law, University of Dhaka

SECTION A: BACKGROUND INFORMATION

1. Gender: Male Female
2. Age group: 20-29 30-39 40-49 50 and above
3. Marital Status: Married Single Never married
4. Department where you work: _____
5. Designation: _____
6. No. of years you are working in the financial sector
 Less than 2 years 2-5 years 5-10 years Above 10 years

SECTION B: SURVEY QUESTIONNAIRE

1. What percentage of clients of your bank pay their loan regularly?
_____ %
2. What type of waivers do clients mostly claim during NPL recovery suit?
 Interest principal both other _____
3. Does this branch always comply with Bangladesh Bank regulations in writing off loans?
 Yes No
4. Does Management in Charge of loans always made accountable for loan mismanagement?
 Yes No
5. Does high interest rate greatly affect loan repayment rates?
 Yes No
6. Is there any detailed procedure for screening clients' before sanctioning loan?
Yes _____
_____ No
7. Are loan officers given adequate incentives on exclusive performance?
 Yes No
8. How prevailing interest rate may affect the demand for credit?
 Highly moderately slightly no effect
9. Does higher number of loan defaults cause higher backlog of cases in *Artharin* courts?
 Yes No

10. Does this branch loose clients to other financial institutions due to higher interest rate?

Yes No

11. How far political instability may affect the recovery rate?

Highly moderately slightly no effect

12. In what percentage of cases loan sanctioning is influenced by political leaders

_____ %

13. From your experience, what percentage of clients' are willful defaulters?

_____ % SME _____ % Large industrial borrowers

14. How satisfied are you with the ADR process to recover NPL?

Fully satisfied Mostly Satisfied Mostly dissatisfied Fully dissatisfied

15. In your best estimate what percentage of business clients may lose their collateral for their inability to repay loans? _____ %

16. How much necessary is it to amend existing *Artharin Ain* for better recovery through ADR?

Very important Important Not so important Unimportant

17. Should new law be enacted for this purpose?

Yes No

18. What do you think is the major obstacle for effective use of *Artharin* ADR for NPL recovery?

19. What would be your recommendation for more effective use of *Artharin* ADR?

Thank You

Appendix 13: Questionnaire for Borrowers

Dear Respondent,

I, Aminul Islam - Ph.D. student, Department of Law, University of Dhaka is hereby requesting you to participate in a questionnaire survey of around 40-45 minutes. Through this questionnaire you are requested to provide information for my study *“Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha RinAdalat: A study on Nationalized Commercial Banks in Bangladesh”* that would constitute a partial fulfillment of my degree.

Please be assured that your name and responses will be treated with utmost confidentiality and will not be used for any purpose other than academic as mentioned above.

Your co-operation in his regard would be highly appreciated.

Thanking you.

Aminul Islam

Lawyer, Dhaka Bar

High Court Division of Supreme Court

PhD student

Department of Law, University of Dhaka

Contact: 0172-9978002

Supervisor

Dr. Jamila A. Chowdhury

Associate Professor and Student Advisor

Department of Law, University of Dhaka

SECTION A: BACKGROUND INFORMATION

- 1. Gender: Male Female
- 2. Age group: 20-29 30-39 40-49 50 and above
- 3. Marital Status: Married Single Never married
- 4. Profession: _____
- 5. Designation: _____
- 6. *Artharin* case filed in: _____

SECTION B: SURVEY QUESTIONNAIRE

- 1. Do you know *Artharin* ADR is a low cost alternative to contested trial?
 Yes No **if No**, go to the end.
- 2. How do you first came to know about *Artharin* ADR?
 Lawyer *Artharin* judge family/friend/colleague Other _____
- 3. Does your lawyer encourage you to use *Artharin* ADR for resolving your NPL case?
 Highly encouraged moderately encouraged never encouraged discouraged
- 4. Have you attended *Artharin* ADR?
 Yes No
If yes, go to next question. **If no**, go to question no. 8
- 5. Do you think *Artharin* ADR can provide fair chance to raise borrowers' voice during ADR?
 Yes No **if no**, Why? _____
- 6. **If yes**, how? _____
- 7. Does the *Artharin* mediator explain complex terms before inviting opinion?
 Yes No
- 8. Do you think *Artharin* ADR can ensure fair justice to NPL borrowers?
 Yes No
- 9. What are the problems of taking *Artharin* ADR to resolve NPL disputes?

- 10. What would be your recommendation for more effective use of *Artharin* ADR?

Thank You

Appendix 14: Question to Experts and Judges

Dear Respondent,

I, Aminul Islam - Ph.D. student, Department of Law, University of Dhaka is hereby requesting you to participate in a questionnaire survey of around 40-45 minutes. Through this questionnaire you are requested to provide information for my study *“Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha RinAdalat: A study on Nationalized Commercial Banks in Bangladesh”* that would constitute a partial fulfillment of my degree.

Please be assured that your name and responses will be treated with utmost confidentiality and will not be used for any purpose other than academic as mentioned above.

Your co-operation in his regard would be highly appreciated.

Thanking you.

Aminul Islam

Lawyer, Dhaka Bar

High Court Division of Supreme Court

PhD student

Department of Law, University of Dhaka

Contact: 0172-9978002

Supervisor

Dr. Jamila A. Chowdhury

Associate Professor and Student Advisor

Department of Law, University of Dhaka

1. MLCA has suggested a number of different ADR techniques for the settlement and recovery of NPL cases.

Among these different types of ADR techniques as suggested in MLCA which one would you consider the most effective for quick recovery of NPLs?

2. Do you think ADR under MLCA is effectively reducing the backlog of NPL cases, as desired?

Yes N

3. According to your opinion why ADR under MLCA failed to attain remarkable success in quick resolution and recovery of NPLs?

(e.g. Family Court attained remarkable success in resolving cases through ADR)

4. The option of settlement conference, as mentioned in section 21 of the *Artha RinAdalat* Ain, 2003, was omitted by a subsequent amendment?

What do you think is the reason behind that?

5. While attending ADR sessions, do you think bankers always show their genuine interest in quick recovery of NPLs through ADR?

Yes N

6. If not, what are the reasons behind that?

7. Do all different types of borrowers including SMEs and large industrial borrowers show their genuine interest in settling NPLs through ADR?
8. If not, what could be the reasons behind that, for different types of borrowers?
9. Besides, bankers and borrowers, is there any other group who may have lower motivation or even reluctance towards quick recovery of NPL cases through ADR? (If names of lawyers and judges are not expressed by the respondents themselves, remind them with one or two supplementary questions like i) do you think lawyers may have lower motivation or even reluctance towards quick recovery of NPL cases through ADR? Or ii) do you think judge may have lower motivation or even reluctance towards quick recovery of NPL cases through ADR?)
10. For all these groups discussed so far, how motivation for quick recovery through NPL can be enhanced? Please answer for each group separately. (remind the respondent, if any one or two groups are not mentioned explicitly)
11. Do you think increased punishment in terms of imprisonment or fine may improve the situation?
12. What other remedies-like better training, more authoritative power to judges in strict time management for cases, or any other- would you suggest to improve the NPL recovery through ADR?

ক্রেডিট পলিসি
এন্ড
ক্রেডিট রিস্ক ম্যানেজমেন্ট পলিসি-২০১৫



সোনালী ব্যাংক লিমিটেড
SONALI BANK LIMITED

সূচিপত্র

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০৩	ঋণ নীতিমালায় উদ্দেশ্য (Objectives)		০৩
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০৬	১.১	ঋণ নীতিমালা	০৬
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Appendix 16: Credit Policy of Agrani Bank



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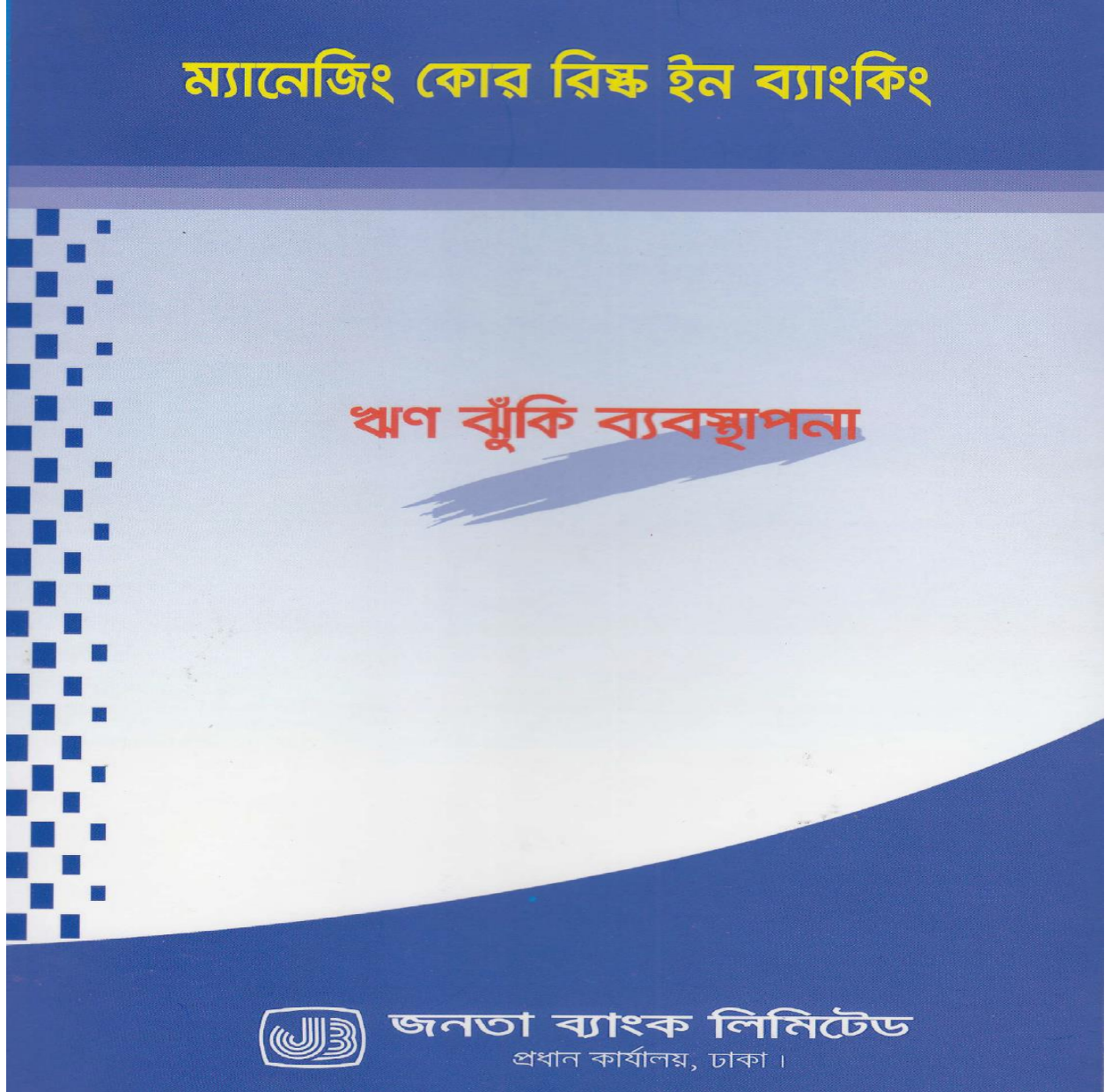
Section-I

INTRODUCTION:

Agrani Bank Limited has adopted this Credit Policy as per guidelines in the revised Memorandum of Understanding (MOU) signed by Agrani Bank Limited with Bangladesh Bank on 29th September, 2013. This policy is designed to cover the entire cycle of lending (i.e., processing, sanction, disbursement, implementation, monitoring and recovery). It is developed by Agrani Bank Limited in order to assure that its objectives are met through sound lending activities and practices, i.e., that the portfolio of credit risk exposure is diversified, secured and profitable. However, it will need to be updated further from time to time due to the evolving nature of the business and regulatory environments in which the Bank operates. The Credit policy (CP) includes:

- a) Detailed and formalized credit evaluation/appraisal process;
- b) Credit origination, administration and documentation procedures;
- c) Formal credit approval process;
- d) Approval procedure of credit extension beyond prescribed limits and other exceptions to the CP;
- e) Risk identification, measurement, monitoring and control;
- f) Internal rating (risk grading) systems including definition of each risk grade and clear demarcation for each risk grade in line with BB regulations and policies;
- g) Risk acceptance criteria;
- h) Credit approval authority at various levels including authority for approving exceptions and responsibilities of official involved in credit operations;
- i) Roles and responsibilities of staffs involved in origination and management of credit;
- j) Acceptable and unacceptable types of credit. These types can be on the basis of credit facilities, type of collateral security, types of borrowers, or geographic sectors on which the bank may focus;
- k) Clear and specific guidelines for each of the various types of credits, including maximum loan-to-value (LTV) ratios;
- l) Concentration limits on single party or group of connected parties, particular industries or economic sectors, geographic regions and specific products. Bank has set stringent internal exposure limits, as long as they are at least as strict as prudential limits or restrictions set by Bangladesh Bank (BB);
- m) Pricing of credits;
- n) Review and approval authority of allowances for probable losses and write offs;
- o) Guidelines on regular monitoring and reporting systems, including borrower follow up and mechanisms to ensure that loan proceeds are used for the stated purpose;
- p) Guidelines on management of problem loans;
- q) Policies on loan rescheduling and restructuring;
- r) The process to ensure appropriate reporting;
- s) Procedures to ensure the establishment of lending policy exception tolerances and
- t) Procedures to ensure that loan policy underwriting standards are consistently applied.

Appendix 17 Credit Policy of Janata Bank



ম্যানেজিং কোর রিস্ক ইন ব্যাংকিং
ঋণ ঝুঁকি ব্যবস্থাপনা

Aminul Islam
LL.B (Hon's), LL.M (D.U)
Advocate
Supreme Court of Bangladesh
Mob: 01720-076002



জনতা ব্যাংক লিমিটেড

রিস্ক ম্যানেজমেন্ট ডিপার্টমেন্ট
প্রধান কার্যালয়, ঢাকা

ঋণ ঝুঁকি ব্যবস্থাপনা

পরামর্শক

ওমর ফারুক

উপ-ব্যবস্থাপনা পরিচালক

মো: গোলাম ফারুক

মহাব্যবস্থাপক

সংকলন

খন্দকার আতাউর রহমান

উপ-মহাব্যবস্থাপক

মো: আব্দুল হালিম

সহকারী মহাব্যবস্থাপক

সঞ্জয় কুমার সরদার

এফএজিএম

মোহাম্মদ কামরুজ্জামান

এফএজিএম

সুশান্ত কুমার মন্ডল

সিনিয়র এক্সিকিউটিভ অফিসার

সার্বিক সমন্বয়কারী

খন্দকার আতাউর রহমান

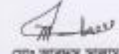
উপ-মহাব্যবস্থাপক

মুখবন্ধ

ব্যাংকের সবচেয়ে বড় সূচী হল ঋণ সূচী। বর্তমান সময়ে ব্যাংকসমূহ পর্যায়ক্রমিক ঋণ সূচীতে মনোনিবেশ করেছে। সূচীকে কখনো শক্তজাল দূর করা সম্ভব নয়। তবে যথাযথ মনিটরিং এবং ব্যবস্থাপনার মাধ্যমে সূচী নিয়ন্ত্রণে রাখা সম্ভব। ঋণ সূচী চিহ্নিত করা, পরিমাপ করা এবং নিয়ন্ত্রণের জন্য পর্যায় সতর্কতা অবলম্বন করা প্রয়োজন হতে পারে ঋণ সূচী মাত্রা মূল্যায়ন সহনীয় পর্যায়ে থাকে। যথাযথ ঋণ সূচী ব্যবস্থাপনা নিশ্চিত করার লক্ষ্যে ঋণ সূচী ব্যবস্থাপনা গাইডলাইনস প্রস্তুত করা হয়েছে। এ গাইডলাইনস প্রণয়নে ঋণ ব্যবস্থাপনার প্রতিটি ক্ষেত্রে অনুসরণীয় নীতি, বাংলাদেশ ব্যাংকের জরুরী নীতিমালা, ব্যাংক কোম্পানী আইন, শিল্প নীতি, আমদানি নীতি, রপ্তানি নীতি, এমওইউ এর নির্দেশনা অনুসরণ করা হয়েছে। ব্যাংকের ঋণ কার্যক্রম সুষ্ঠুভাবে পরিচালনা, ঋণ ব্যবস্থাপনায় শৃঙ্খলা বৃদ্ধি, জামানতকারীর জামানতের সুরক্ষা এবং সর্বোপরি ঋণ কার্যক্রমের সাথে সংশ্লিষ্ট নির্বাহী/কার্যকর্তাদের নিরাপত্তা বিধান করার লক্ষ্যে ঋণ সূচী ব্যবস্থাপনা গাইডলাইনস প্রদানযোগ্য ও সুপারিশযোগ্য করা হয়েছে।

সদস্যমালিক প্রেক্ষাপটে প্রণীত এ গাইডলাইনস অনুসরণে সঠিক স্বচ্ছতা নির্বচন, জামানতকৃত সম্পত্তির সঠিকতা নির্দেশন, ঋণের বাস্তবায়নকল্পে নিবন্ধ তদারকির মাধ্যমে ঋণের গুণগত মান বৃদ্ধি, খেলাপি ঋণ গ্রাস এবং ঋণ খাতে সুদ আয় বৃদ্ধি করে ব্যাংকের কার্যকর মূল্যবান অর্জন করা সম্ভব। নিয়মতান্ত্রিকভাবে সূচী ব্যবস্থাপনার মাধ্যমে জনতা ব্যাংকে একটি কার্যকর ঋণ ব্যবস্থাপনা সংস্কৃতি গড়ে উঠবে বলে আমি আশা করি।

এ গাইডলাইনস প্রণয়নের সাথে সম্পৃক্ত সকলকে ধন্যবাদ জানাচ্ছি।



মোঃ আব্দুল আলম
সিইও এবং ব্যবস্থাপনা পরিচালক

সূচিপত্র

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ঋণ প্রস্তাব/ঋণসীমা মূল্যায়ন পত্র	৩০
ঋণ কেন্দ্রীভূতকরণ রোধ ও ঋণ প্রবাহ বহুমুখিকরণ	৩০
ঋণ মঞ্জুরি ক্ষমতা বিকেন্দ্রীকরণ	৩২
ক্রেডিট কমিটি	৩২
ঋণ প্রশাসন	৩৬
এজেন্সি ব্যবস্থাপনা	৩৯
গ্রাহক রেটিং	৩৯
গ্রীন ব্যাংকিং	৪০
পরিবেশ ঝুঁকি ব্যবস্থাপনা	৪০
অধ্যায় ৫ প্রক্রিয়াগত দিক নির্দেশনা:	

বিষয়	পৃষ্ঠা
অধ্যায় ৬ ঋণের খাতসমূহ:	
শিল্প খাত	৪৪
ব্যবসা খাত	৪৪
সেবা খাত	৪৪
কৃষি ভিত্তিক শিল্পে মেয়াদী ঋণ/প্রকল্প ঋণ	৪৫
শিল্পে মেয়াদী/ প্রকল্প ঋণ	৪৫
রপ্তানি খাত	৪৬
আমদানি খাত	৪৬
অগ্রাধিকারপ্রাপ্ত খাত	৪৬
প্রচলিত ও অন্যান্য ঋণ খাত	৪৭
নতুন ঋণ খাত	৪৭
নিরুৎসাহিত/ নিষিদ্ধ খাতসমূহ	৪৭
ঋণ সুবিধার প্রকৃতি	৪৭
ফিন্যান্সিয়াল অবলিগেশন/রেকারিং ডিপোজিট এর বিপরীতে এসওডি (SOD) প্রদান	৪৮
খ. ঋণ প্রস্তাব মূল্যায়ন (Credit Assesment) ও রিস্ক গ্রেডিং (Risk Grading):	
ঋণ প্রস্তাব মূল্যায়ন	৪৯
ঋণ প্রস্তাব/ঋণসীমা মূল্যায়ন পত্র (Credit Application Template)	৫২
গ. ঝুঁকি ব্যবস্থাপনার সাংগঠনিক কাঠামো এবং দায়-দায়িত্ব:	
রিস্ক ম্যানেজমেন্ট কাঠামো	৬২
শাখার সেগ্রিগেশন অব ডিউটিজ (Segregation of Duties of Branches).....	৬৩
ডিভিশনাল অফিস/এরিয়া অফিস এর সেগ্রিগেশন অব ডিউটিজ (Segregation of Duties of Divisional/Area Office)	৬৩
ঘ. বিবিধ নির্দেশনা:	
প্রয়োজনীয় বিবরণী প্রেরণ ও অনুশাসন পরিপালন (Compliance Requirement)....	৬৫
ঋণ আদায়ের নিমিত্তে তদারকি জোরদারকরণ	৬৫
ঋণ আদায়ে গৃহীত পদক্ষেপ	৬৫
ঋণ আদায়ের পুরস্কার ও উৎসাহ প্রদান	৬৬
হিসাবের গ্রেডেশন পরিবর্তন পদ্ধতি	৬৬
সুদ মওকুফ, পুনঃতফসিল, ঋণ অবলোপন এবং প্রভিশন সংরক্ষণ	৬৬
ইন্টারনাল অডিট (Internal Audit)	৬৬
পরিবেশ ঝুঁকি রেটিং (EnvRR-Environmental Risk Rating)	৬৬
ঙ. সংযুক্তি	৬৭-১৩১

Appendix 18: Credit Manual of *Rupali Bank*

ক্রেডিট ম্যানুয়েল

২০১৩



রূপালী ব্যাংক লিমিটেড

ক্রেডিট ম্যানুয়েল

২০১৩

রূপালী ব্যাংক লিমিটেড এর পরিচালনা
পর্ষদের ১৫/০১/২০১৪ তারিখে অনুষ্ঠিত
৯২৬ তম সভায় ক্রেডিট ম্যানুয়েল
২০১৩ অনুমোদিত হয়।

ক্রেডিট ম্যানুয়েল

প্রণয়নে	৪ মোঃ কোরবান আলী ক্রেডিট কন্ট্রোলার
সহযোগিতায়	৪ মোঃ ইকবাল হোসেন খাঁ সহকারী মহাব্যবস্থাপক ফয়সলা আহমদ প্রিন্সিপাল অফিসার
খসড়া চূড়ান্তকরণ	৪ * খালেদ হোসেন মল্লিক উপ-মহাব্যবস্থাপক, শিল্প ঋণ বিভাগ * এম খায়রুল হাসান উপ-মহাব্যবস্থাপক, এস.এম.ই বিভাগ * মোঃ সাহিবুল্লাহ উপ-মহাব্যবস্থাপক, সাধারণ ও পল্টী ঋণ বিভাগ * হাসনে আলম উপ-মহাব্যবস্থাপক, মৈশেখি মানিভ্য ঋণ ও আন্তর্জাতিক বিভাগ * সুলতানা মন্সেরারা খানম উপ-মহাব্যবস্থাপক, দিগ্রীকা ও পরিদর্শন বিভাগ * পেয়ার আহমেদ হুদেয়া রিকভারী স্পেশালিষ্ট, আদায় বিভাগ * সানতিয়া মিনতে আলী সহকারী মহাব্যবস্থাপক, রিস্ক ম্যানেজমেন্ট বিভাগ
কম্পিউটার কম্পোজ	৪ কানিজা ফাতেমা সহকারী কর্মকর্তা

রূপালী ব্যাংক লিমিটেড

মুখবন্ধ

ব্যাংকের শাখা, ওয়ার্কশেপ, বিভাগীয় কার্যালয় ও প্রধান কার্যালয়ে নিয়োজিত সকল পর্যায়ের কর্মকর্তাগণের ঋণ পরিচালনার বিষয়ে দিক নির্দেশনা প্রদানের উদ্দেশ্যে বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত ঋণ তুঁকি ব্যবস্থাপনা গাইডলাইনসের আলোকে এই ফ্রেডিট ম্যানুয়াল প্রণীত হয়েছে যা রূপালী ব্যাংকের সকল শাখা ও কার্যালয়সমূহে সমভাবে প্রযোজ্য হবে।

পরিমার্জিত ও বর্ধিত পরিসরে এই ম্যানুয়াল তৈরীর উদ্দেশ্য হলো :

- ক) ব্যাংকের ঋণ পলিসি ও ঋণ তুঁকি ব্যবস্থাপনা গাইডলাইনস পরিপালনে অবিচল থাকা ;
- খ) ব্যাংকের ঋণ পরিচালনার ক্ষেত্রে পদ্ধতিগত বিষয়ে বিস্তৃত গাইডলাইনস প্রদান করা ;
- গ) সরকার ও বাংলাদেশ ব্যাংক প্রদত্ত এবং অত্র ব্যাংকের পরিচালনা পর্ষদ কর্তৃক অনুমোদিত বিধি-বিধানের প্রতি অবিচল থাকা ;
- ঘ) সহজ ও সরাসরি কর্মপদ্ধতি অনুসরণ করা ;
- ঙ) ঋণ পলিসি ব্যাংকের সকল পর্যায়ের প্রয়োগের ক্ষেত্রে সমজাতীয়তা নিশ্চিত করা ;
- চ) সঠিকতা ও কর্মকৃৎশলতা নিশ্চিত করা ;
- ছ) ব্যাংকের কর্মকর্তাদের আস্থা বিনির্মাণ ও গঠনমূলক উদ্যোগের সাথে ঋণ পরিচালনার বিষয়ে কর্মকর্তাদের প্রয়োজনীয় দিক নির্দেশনা প্রদান।

ব্যাংকের সকল পর্যায়ের শাখা ব্যবস্থাপকসহ কর্মকর্তাবৃন্দ এই ম্যানুয়ালে প্রদত্ত দিক নির্দেশনা সম্যক অবগত হবেন এবং এই ব্যাংকে চাকুরীরত নন এমন কারো কাছে প্রকাশ করবেন না। এর কপি (সমূহ) শাখা ব্যবস্থাপক/স্থিতীয় কর্মকর্তার ব্যক্তিগত জিন্দায় থাকবে কিন্তু অন্যান্য কর্মকর্তাগণ এটা ব্যবহার করতে পারবেন।

ম্যানুয়ালে প্রদত্ত মূলনীতিসমূহ ব্যাংকের স্বার্থ সংরক্ষণের ক্ষেত্রে রক্ষাকবচ এবং অবশ্যই সূচভাবে পরিপালনীয়। ম্যানুয়ালে প্রদত্ত নির্দেশনাসহ ব্যবস্থাপক ও সকল কর্মকর্তাগণ প্রধান কার্যালয় হতে সময়ে সময়ে জারীকৃত ইস্তহার/নির্দেশনাবলী অনুসরণ করবেন। যাহোক, ম্যানুয়ালটি ভবিষ্যতে অধিকতর উন্নত/পরিশীলিত করা বা এতে আরো উৎকর্ষতা আনয়নে যে কোন ধরনের পরামর্শ/সুপারিশ সাদরে গৃহীত হবে এবং পরীক্ষা-নিরীক্ষার মাধ্যমে গ্রহণযোগ্য বিবেচিত হলে ম্যানুয়ালে সন্নিবেশিত হবে।

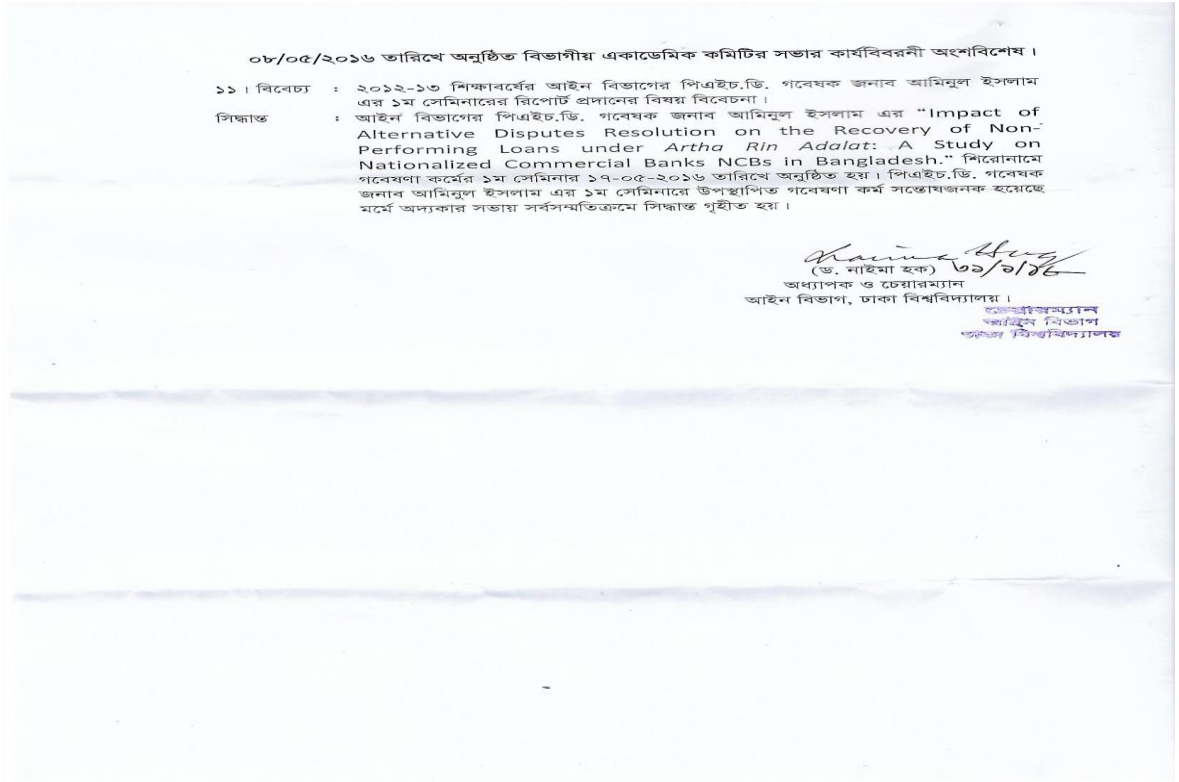
ম্যানুয়ালখানি প্রণয়নে নিযুক্ত ফ্রেডিট কনসালট্যান্ট জনাব মোঃ কোরবান আলী যথেষ্ট পরিশ্রম ও চর্চায় মাধ্যমে কাজটি সুষ্ঠুভাবে সম্পাদন করেছেন যা পর্ষদ কর্তৃক ৯২৬ তম সভার অনুমোদিত হয়েছে। তাকে এবং তার সহযোগীসহ বিভিন্নভাবে এ কর্মসম্পাদনে যারা সহযোগিতা করেছেন তাদের সকলকে আন্তরিক ধন্যবাদ।



(এম. ফরিদ উদ্দিন)
ব্যবস্থাপনা পরিচালক

তারিখ : ২০/০১/২০১৪

Appendix 19: Approval of the First Seminar



Appendix 20: Approval of the Second Seminar

১০/১০/২০১৭ তারিখে অনুষ্ঠিত বিভাগীয় একাডেমিক কমিটির সভার কার্যবিবরণীর অংশবিশেষ।

- ৭। বিবেচ্য : ২০১২-১৩ শিক্ষাবর্ষের পিএইচ.ডি. গবেষক আমিনুল ইসলাম এর ২য় সেমিনার অনুষ্ঠিত হয়েছে তা অনুমোদনের বিষয় বিবেচনা।
- সিদ্ধান্ত : ২০১২-১৩ শিক্ষাবর্ষের পিএইচ.ডি. গবেষক আমিনুল ইসলাম এর ২য় সেমিনার অনুষ্ঠিত হয়েছে তা অনুমোদনের জন্য অধ্যকার সভায় উপস্থাপন করা হয়। গত ১২-০৯-২০১৭ তারিখে “Effectiveness of Alternative Disputes Resolution on the Recovery of Non-Performing Loans under *Artha Rin Adalat: A Study on Nationalized Commercial Banks in Bangladesh*” শিরোনামে গবেষণা কর্মের ২য় সেমিনার অনুষ্ঠিত হয়। পিএইচ.ডি. গবেষক জনাব আমিনুল ইসলাম এর ২য় সেমিনারে উপস্থাপিত গবেষণা কর্ম সন্তোষজনক হয়েছে মর্মে অধ্যকার সভায় সর্বসম্মতিক্রমে সিদ্ধান্ত গৃহীত হয়।

Mamun Hossain
(ড. নাইমা হক) ১২/১০/১৬

অধ্যাপক ও চেয়ারম্যান
আইন বিভাগ, ঢাকা বিশ্ববিদ্যালয়।

চেয়ারম্যান
আইন বিভাগ
ঢাকা বিশ্ববিদ্যালয়