

# Procedures for Conduct Real Estate Disputes: A Comparison of Bangladesh and India

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**Abstract:** In Bangladesh and India, real estate is the foundation of both personal wealth and economic activity. Real estate is inevitably prone to disputes due to its high value and complexity; these can range from ownership disputes and fraudulent transactions to inheritance problems and developer non-compliance. Investor confidence, market stability, and social harmony are all significantly impacted by how well a country's legal and institutional framework handles these conflicts. This study compares in detail the legal processes that are employed in Bangladesh and India to settle real estate disputes. It highlights the value of specialized tribunals like RERA in India, examines the traditional adversarial litigation system, and examines the growing significance of ADR (alternative dispute resolution) mechanisms. By scrutinizing the legal frameworks, procedural steps, and challenges inherent in both jurisdictions, this study aims to identify best practices, areas for improvement, and potential lessons that each country can draw from the other to foster more efficient, transparent, and equitable dispute resolution landscapes in their respective real estate sectors.

## 1. Introduction

The real estate sector is crucial to the economies of Bangladesh and India due to its significant contributions to GDP, job creation, and infrastructure development. However, real estate is a hotbed of conflict due to the enormous value and complexity of property rights, as well as historical land records, fragmented ownership, and fast urbanization. These conflicts can be anything from straightforward boundary disputes to intricate cases involving evictions, inheritance disputes, fraudulent transfers, and developer noncompliance. The lengthy duration of these disputes not only clogs the legal system, causing major delays and economic stagnation, but it also fosters an atmosphere of uncertainty for homebuyers and investors. India and Bangladesh, both sharing a common legal tradition in the British colonial system, have long relied upon their civil courts for adjudication of real estate disputes. Both countries, however, have been increasingly considering and implementing alternative dispute resolution (ADR) tools in

recognition of the drawbacks of the traditional litigation model, i.e., its time-consuming, costly, and often adversarial nature. The Real Estate (Regulation and Development) Act, 2016 (RERA), a specially crafted piece of legislation to address consumer complaints in the real estate industry, is one such specialized regulatory body that India has also introduced. The Bangladesh and Indian mechanisms for the resolution of real estate disputes are comprehensively compared in this article. It seeks to describe the similarities and divergences in their approaches, assess the performance of both systems, and determine areas for reform and learning from one another.

## **2. Objectives of the Study**

Statutory frameworks, judicial processes, alternative dispute resolution processes, and institutional roles are the most critical areas of discourse. The article seeks to identify best practices and propose enhancements in dispute resolution in the real estate market for the two countries by examining the efficiency, challenges, and reforms for the two nations. The article examines the existing real estate dispute resolution processes in both nations, weighs their advantages and disadvantages, and addresses reforms and recommendations.

## **3. Overview of Real Estate Dispute Landscape**

Real estate disputes in both countries typically stem from a variety of issues, including:

- **Ownership and Title Disputes:** Contesting the rightful owner of a property, often due to forged documents, multiple sales, or unclear inheritance lines.
- **Boundary Disputes:** Disagreements over the demarcation of property lines, frequently arising from inaccurate surveys or encroachment.
- **Inheritance and Succession Disputes:** Conflicts among legal heirs regarding the distribution and ownership of ancestral property.
- **Fraudulent Transactions:** Cases involving forged documents, misrepresentation, or illegal transfer of property.
- **Land Grabbing and Encroachment:** Illegal occupation or seizure of land belonging to others.

- **Developer-Buyer Disputes:** Issues related to delayed possession, non-delivery of promised amenities, quality defects, or breach of contract by real estate developers.
- **Tenancy Disputes:** Conflicts between landlords and tenants over rent, eviction, or terms of lease agreements.
- **Mortgage and Foreclosure Disputes:** Challenges related to loan defaults and the enforcement of security interests in property.

The sheer volume and complexity of these disputes underscore the need for robust and efficient resolution mechanisms.

#### **4. Procedural Mechanisms in India**

India's legal framework for real estate dispute resolution is multifaceted, encompassing traditional civil litigation, various ADR mechanisms, and specialized tribunals.

##### **4.1. Traditional Litigation: Civil Courts**

The primary avenue for resolving real estate disputes in India has historically been through the civil courts. The procedure is governed by the Code of Civil Procedure, 1908 (CPC).

- **Jurisdiction:** Civil courts (Munsiff Courts, Civil Judges Courts, District Courts, and High Courts) have jurisdiction over real estate matters. The pecuniary and territorial jurisdiction of a court is determined by the value of the property in dispute and its location.
- **Steps in Civil Litigation:**
  - **Initial Consultation and Legal Advice:** Parties first consult a lawyer to assess the case, gather relevant documents (title deeds, sale agreements, tax receipts, mutation records, survey maps, etc.), and understand their legal standing.
  - **Drafting and Filing of Plaint:** If out-of-court settlements fail, the aggrieved party (plaintiff) files a formal written complaint called a "plaint" in the appropriate civil court. The plaint must clearly state the facts, legal grounds, and the relief sought (e.g., declaration of

title, possession, injunction, specific performance, damages, cancellation of deeds).

- **Issuance of Summons:** The court issues summons to the defendant(s), informing them of the lawsuit and requiring their appearance and submission of a written statement.
- **Written Statement and Pleadings:** The defendant files a "written statement" admitting or denying allegations and presenting their defense. This exchange of pleadings defines the issues in dispute.
- **Identification of Issues:** The court frames issues based on the pleadings, focusing on the points of contention.
- **Discovery and Inspection:** Parties exchange information and documents relevant to the case.
- **Evidence Submission:** Both parties present their evidence, including documentary evidence (deeds, land records, tax receipts), oral testimony of witnesses, and expert opinions (e.g., from surveyors).
- **Arguments and Hearings:** Lawyers for both sides present their arguments before the court.
- **Judgment and Decree:** The court, after considering all evidence and arguments, delivers a judgment and subsequently draws up a "decree," which is the formal expression of the adjudication.
- **Execution of Decree:** If the judgment is in favor of the plaintiff, the decree needs to be executed to enforce the court's decision (e.g., obtaining possession, registering a transfer).
- **Appeal Process:** Dissatisfied parties can appeal the judgment to higher courts (District Court, High Court, and ultimately, the Supreme Court), leading to potentially lengthy appellate proceedings.

- **Relevant Laws:** Apart from the CPC, key laws governing real estate disputes include:
  - **Transfer of Property Act, 1882:** Governs transfers of immovable property.
  - **Specific Relief Act, 1877:** Provides remedies for specific performance of contracts, injunctions, and recovery of possession.
  - **Indian Contract Act, 1872:** Governs contractual agreements related to real estate.
  - **Registration Act, 1908:** Mandates registration of certain property transactions.
  - **Limitation Act, 1963:** Prescribes time limits for filing various types of suits.

#### 4.2. Alternative Dispute Resolution (ADR) Mechanisms

Recognizing the drawbacks of traditional litigation, India has actively promoted ADR mechanisms, primarily through the Arbitration and Conciliation Act, 1996, and amendments to the CPC.

- **Negotiation:** Direct discussions between the disputing parties, often with the assistance of their lawyers, to reach a mutually agreeable settlement. It is the least formal method and often the first step in dispute resolution.
- **Mediation:** A voluntary and confidential process where a neutral third party (mediator) facilitates communication and negotiation between the parties to help them reach a consensual agreement. The mediator does not impose a decision. Mediation is increasingly encouraged, with some courts referring cases for mediation.
- **Conciliation:** Similar to mediation, but the conciliator may play a more active role in suggesting potential solutions or terms of settlement.
- **Arbitration:** A more formal ADR mechanism where parties agree to submit their dispute to a neutral third party (arbitrator or arbitral tribunal) who hears both sides and renders a legally binding decision called an "arbitral award."

Arbitration can be *ad hoc* or institutional (e.g., through arbitration centers). While often faster than court litigation, arbitration can still be complex and costly.

- **Lok Adalats:** These are "People's Courts" organized by legal services authorities to facilitate amicable settlement of disputes. The Legal Services Authorities Act of 1987 gives them statutory status, and their orders are viewed as orders of a civil court. They are particularly effective where there are small disputes or those which can be resolved by settlement.

#### 4.3. Specialized Tribunals and Regulatory Bodies

- **Real Estate Regulatory Authority (RERA) and Appellate Tribunal:** The Real Estate (Regulation and Development) Act, 2016 (RERA) added a paradigm shift to India's real estate dispute resolution process.
- **Objectives:** RERA was enacted with a view to regulating the real estate sector, promoting transparency, protecting homebuyers, and ensuring completion of projects within time.
- **Complaint and adjudication:** Aggrieved consumers can file complaints against developers before the relevant State RERA authorities in case of delayed possession, non-conformity with approved plans, quality defects, or fraud in advertising.
- **Adjudicating Officer:** For settling grievances pertaining to claims for compensation, each RERA authority has an Adjudicating Officer.
- **Appellate Tribunal:** The forum for appeals against orders made by the Adjudicating Officer or the RERA authority is the Real Estate Appellate Tribunal.
- **Speedy Settlement:** Unlike ordinary courts, RERA demands a specialized and faster settlement process with timelines for redressed of grievances (e.g., 60 days for RERA authority orders).
- **Enforcement:** RERA authorities are vested with the power of imposing fines, directing refunds, and even cancelling project registrations, thereby significantly improving consumer protection.

- **Consumer Protection Forums:** While RERA is specific to real estate development, consumer courts under the **Consumer Protection Act, 2019**, also entertain complaints from homebuyers who qualify as "consumers" for deficiency in services by developers or brokers.
- **Revenue Courts/Land Tribunals:** For disputes primarily related to land records, mutation, partition, and land revenue, specialized revenue courts or land tribunals (varying by state) handle these matters. Their procedures are typically less formal than civil courts.

## 5. Procedural Mechanisms in Bangladesh

Bangladesh's real estate dispute resolution mechanisms largely mirror India's, with a strong reliance on civil courts, a growing emphasis on ADR, and specific laws governing land matters.

### 5.1. Traditional Litigation: Civil Courts

Civil courts in Bangladesh are the primary forum for real estate disputes, operating under the Code of Civil Procedure, 1908 (CPC), which is largely similar to India's.

- **Jurisdiction:** The hierarchy of civil courts includes Assistant Judge Courts, Senior Assistant Judge Courts, Joint District Judge Courts, District Judge Courts, and the High Court Division and Appellate Division of the Supreme Court. Jurisdiction is determined by the monetary value of the dispute and the geographical location of the property.
- **Steps in Civil Litigation:** The procedural steps are essentially the same as in India:
  - Initial Legal Consultation and Document Gathering.
  - Filing of Complaint (Arji) in the competent court, specifying the nature of the claim (e.g., declaration of title, partition, specific performance, injunction, and eviction).
  - Issuance of Summons to the defendant.
  - Submission of Written Statement (Jawab).
  - Framing of Issues.
  - Discovery and Inspection of Documents.
  - Presentation of Evidence (documentary evidence like deeds, Khatians/Record of Rights, mutation certificates, land tax receipts, Mouza maps, and witness testimonies).

- Arguments by Counsel.
  - Judgment and Decree.
  - Execution of Decree.
  - Appeal to higher courts.
- **Relevant Laws:** Key statutes governing real estate disputes in Bangladesh include:
    - **Transfer of Property Act, 1882:** Governs property transfers.
    - **Specific Relief Act, 1877:** Provides remedies like specific performance, injunctions, and recovery of possession.
    - **Limitation Act, 1908:** Prescribes time limits for suits.
    - **Registration Act, 1908:** Deals with registration of documents.
    - **The State Acquisition and Tenancy Act, 1950:** A foundational law governing land tenure and land records.
    - **The Land Reforms Ordinance, 1984:** Regulates land ownership and control.
    - **Public Demands Recovery Act, 1913:** For recovery of government dues related to land.
    - **The Survey Act, 1875:** Pertains to land surveys and boundaries.

## 5.2. Alternative Dispute Resolution (ADR) Mechanisms

Bangladesh has also been actively promoting ADR, primarily through the **Arbitration Act, 2001**, and amendments to the CPC.

- **Negotiation:** Similar to India, direct negotiation is often the first informal attempt at resolution.
- **Mediation:** Sections 89A, 89B, and 89C were inserted into the **Code of Civil Procedure, 1908**, to promote court-annexed mediation and arbitration for pending civil cases. This allows courts to refer cases for mediation if parties agree. Mediation is increasingly popular due to its cost-effectiveness and speed.

- **Arbitration:** The **Arbitration Act, 2001**, provides the legal framework for both domestic and international commercial arbitration. Parties can agree to resolve their real estate disputes through arbitration, and arbitral awards are legally binding.
- **Conciliation:** While not as formally codified for general civil disputes as mediation, conciliation can occur informally or as part of other ADR processes.
- **Village Courts:** Under the **Village Courts Act, 2006**, village courts (Union Parishad level) have jurisdiction over certain minor civil and criminal disputes, including some related to land, up to a certain pecuniary limit. These courts aim to provide informal, quick, and low-cost justice at the grassroots level, often involving local elders or representatives (Shalish). While informal, their decisions can have local enforcement.

### 5.3. Other Specialized Mechanisms

Unlike India's RERA, Bangladesh does not have a dedicated, comprehensive regulatory authority specifically for the real estate sector that mirrors RERA's adjudication powers for developer-buyer disputes. However, certain disputes might fall under:

- **Consumer Rights Protection Act, 2009:** Consumers can seek redress for defective products or services, which might extend to certain aspects of real estate transactions if viewed as a "service."
- **Land Survey Tribunal:** While not a RERA equivalent, there are mechanisms related to land surveys and record corrections. Disputes arising from land surveys or record of rights (Khatian) might be addressed through specific administrative or quasi-judicial processes under land administration laws.
- **Joint District Judge Court/Land Appeal Board:** These bodies handle appeals related to land revenue matters and some land-related disputes.

## 6. Comparative Analysis

Although Bangladesh and India have the same basic laws and legal tradition, there are some remarkable differences in addition to similarities in how they resolve real estate disputes.

### 6.1. Similarities:

- **Dependence on Civil Courts:** Both nations, with almost identical procedural codes (CPC), rely mainly on their civil court systems to resolve complicated real estate disputes.
- **ADR Promotion:** To reduce court backlogs and deliver speedier results at lower costs, both countries have actively promoted ADR mechanisms like arbitration and mediation as alternatives to traditional litigation.
- **Similar Legal Foundations:** Both jurisdictions possess seminal substantive laws in the form of the Transfer of Property Act, Specific Relief Act, and Registration Act that ensure similar legal foundations for interpreting contracts and property rights.
- **Backlog and Delay Issues:** Both nations have huge court backlogs, which mean delayed legal proceedings, expensive, and loss of public confidence in the legal system for property cases.

### 6.2. Differences and Key Distinctions:

| Feature | India \* **India's RERA:** A significant leap in governing real estate, with its own specific tribunal for quicker resolution of developer-buyer disputes. This specialized tribunal streamlines complaints related to project delays, quality issues, and transparency, offering a clear path for consumer redressed.

- **Bangladesh's General Consumer Protection:** While Bangladesh has a Consumer Rights Protection Act, it lacks a dedicated real estate regulatory body like RERA with the specific powers and scope to address developer-buyer issues comprehensively within the real estate sector.
- **Emphasis on Court-Annexed ADR in Bangladesh:** Bangladesh has more explicitly integrated mediation into the CPC for existing civil cases through specific sections (89A, 89B, 89C).

- **Informal Justice Systems:** Bangladesh appears to have a more formalized system of informal justice, particularly through Village Courts (Shalish), for petty civil and land disputes at the grassroots level, aiming for faster and more accessible resolution. While informal community dispute resolution exists in parts of India, it is not as statutorily recognized or integrated as the Village Courts in Bangladesh.
- **Judicial Support for ADR:** India's judiciary has actively and consistently advocated for and promoted ADR mechanisms, with several landmark rulings legitimizing their role. While Bangladesh's judiciary supports ADR, the same degree of institutional endorsement and consistent promotion might still be developing.
- **Urban vs. Rural Dispute Focus:** While both countries face land disputes in both urban and rural areas, discussions on ADR in Bangladesh often highlight its potential for resolving land conflicts in rural areas to bypass the complex court system, whereas in India, RERA specifically addresses urban and semi-urban real estate development issues.

## **7. Challenges in Real Estate Dispute Resolution**

Obvious factors inhibiting effective real property dispute resolution in Bangladesh and India are:

- **Courts' Delays and Backlog:** Congested courts, poor judicial facilities, and excessive procedural norms are responsible for significant delays, sometimes running decades.
- **Excessive Litigation Costs:** Litigation is prohibitively costly to many people, particularly the poor, due to lawyers' fees, court fees, and ancillary costs.
- **Uninformed Public:** Most people are not aware of their rights under law, remedies, or advantage of alternative dispute resolution (ADR) processes.
- **Corruption and Malpractices:** The real estate industry remains beset by problems of counterfeited documents, illegal mutation, and unethical land official or broker activities that make the settlement of disputes difficult.

- **Fragmented Land Records:** Inaccurate, outdated, or incomplete land records are a major obstacle to acquiring a clean title and are frequently the root cause of ownership disputes. Digitization efforts are underway in spite of difficulties.
- **Enforcement of Decrees/Awards:** It can be exhausting and daunting even after securing a favorable judicial order or award.
- **Shortage of Specialist Skills:** Quality and timeliness of civil court judgments may be impacted by the lack of a judge's specialist skills in technical areas, valuations, or complex real estate transactions.
- **Developer Accountability (Bangladesh):** As there is no effective regulatory agency like RERA in Bangladesh, consumer complaints against real estate developers need to run the gauntlet of lengthy and intricate civil courts, which may not be sufficiently geared to deal with the intricacies of these cases.

## 8. Recommendations and Future Outlook

Some suggestions for enhancing real estate dispute resolution in both nations can be made based on the comparative analysis:

- **Setting and Increasing ADR:**
  - **Mandatory Pre-Litigation Mediation:** Enhancing out-of-court settlements, consider making mediation compulsory for some types of real estate disputes before parties are permitted to litigate.
  - **Mediators/Arbitrators Training and Certification:** To be able to have more experienced certified mediators and arbitrators in real estate law, finance extensive training and certification programs.
  - **Promote Institutional Arbitration:** Encourage the use of stable arbitration institutions that provide specialized panels and speedy processes for the purpose of advancing institutional arbitration.
- **Judicial Reforms**
  - **Specialized Courts/Bench:** Consider establishing special land courts with judges knowledgeable in land administration and property law, or special real estate benches in civil courts.

- **Digitization of Land Records:** Digitize and consolidate land records quickly and comprehensively, making them accurate and accessible, as this can cut the number of title disputes considerably.
- **Case Management Systems:** Implement robust electronic case management systems to track cases, identify delays, and improve efficiency.
- **Learning from RERA (Bangalore):**
  - In order to protect homebuyers, ensure project transparency, and offer a specialized, time-bound mechanism to resolve developer-buyer disputes, Bangladesh can examine establishing a Real Estate Regulatory Authority such as India's RERA. Developer responsibility as well as consumer confidence would be significantly improved by this.
- **Increased Legal Aid and Awareness**
  - **Public Awareness Campaigns:** Launch extensive campaigns to inform people about their rights over the property, the necessity of proper documentation, and alternative procedures for settling disputes, i.e., ADR.
  - **Accessible Legal Aid:** To facilitate access to justice in real estate disputes among economically weaker sections of people, legal aid mechanisms need to be reinforced.
  - **Procedural Streamlining:** Simplify procedural issues in civil litigation for plain real estate cases to reduce delays.
  - **Encouraging Title Insurance:** In order to counter the risks of faulty titles and to offer a means of pecuniary compensation in the event of a contest, invite the use of title insurance.
  - **Strong Enforcement Mechanisms:** To enable winning sides to recover the benefits of their legal wars without undue delay, strengthen the enforcement mechanisms of court orders and arbitral awards.

## **9. Conclusion**

Both Bangladesh and India continue to face serious barriers to settle real estate disputes, directly influencing their social stability and economic growth. As India has implemented RERA, it has been more active with a concentrated and largely

effective mechanism of consumer protection for real estate despite the fact that both countries share the same legal origins and employ customary litigation. Despite pronouncing a strong commitment to alternative dispute resolution (ADR), Bangladesh would also stand to gain immensely from an equivalent specialist regulatory agency to expedite developer-buyer disputes. A hybrid system capable of seamlessly integrating strong alternative dispute resolution (ADR) processes, specialist tribunals, and conventional court procedures is the way forward for real estate dispute resolution for both nations. A safer and more desirable property market for all parties can be realized by India and Bangladesh through judicial backlogs reduction, encouraging transparency, turning land records digital, heightening public awareness, and the implementation of policies. A truly effective and fair settlement of disputes will require collaborative efforts and a willingness to learn from one another's successes and failures. The reform process goes on.

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