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Access to Justice through Alternative Dispute Resolution in Criminal Justice System

Challenges and Prospects

JAHAN, Eshrat*

- I Introduction
- II Alternative Dispute Resolution in Criminal Justice System in Bangladesh
- III Alternative Dispute Resolution: Scope, Benefits and Challenges in Criminal Justice System
- IV Importance of Integration and Recommendations

Abstract

The prime purpose of this paper is to show the crucial role of the ADR mechanism in the criminal procedure and its significance to the society as a part of comprehensive justice system of a state. Within these pages of research, a meticulous examination unfolds, unfurling the intricate tapestry of various ADR mechanisms delving into the nuanced dynamics of law upholding access to justice ensuring the rule of—their inherent virtues, their challenges, and their potential impact on the delicate fabric of the criminal justice system. Through a comparative analysis of ADR implementation in the criminal justice systems of Bangladesh and other jurisdictions, this study investigates the core objectives, challenges, and transformative potential of ADR. Emphasizing the need for a cautious approach to voluntary party involvement to

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prevent perceptions of coercion, the research underscores the importance of clear procedures thorough reviews to address any allegations of external influence. The paper highlighted on how ADR mechanisms contribute to empowering victims and offenders, restoring relationships, promoting community healing, making strong judicial institution reducing case backlog, improving prison conditions, and ultimately enhancing the efficiency ensuring the rule of law in the criminal justice system. Each mechanism is a brushstroke on the canvas of reformation, offering a glimpse of hope in redefining the narrative of justice, one imbued with empathy, efficiency, and the noble pursuit of restoring societal harmony.

I Introduction

The criminal justice system plays a fundamental role in maintaining and ensuring social order and justice for all members of the society. The hallowed corridors of justice have long echoed with the resounding call for access to justice. The swift delivery of a fair trial an indispensable cornerstone of the world resonating within legal frameworks. Yet, the disheartening absence of victims within the formal judicial tapestry and the languorous pace of resolving criminal cases cast a pall over the public's trust in the sanctity of the criminal justice system. Traditionally, criminal matters have been adjudicated within the paradigm of litigation and court trials, a venerable means of dispute resolution. However, the burgeoning caseloads, the looming spectre of backlog, and an enlightened acknowledgement of the inherent constraints in the traditional system have kindled an ardent interest in seeking alternative pathways to resolve disputes. The Alternative Dispute Resolution (ADR), manifested through diverse methods such as mediation, arbitration, negotiation, etc., among them mediation, restorative justice, and plea bargaining, emerges as an oasis promising unique vistas in the Criminal Justice System to address the multifaceted needs of victims, offenders, and the broader community. These methodologies promise efficiency in accessing justice and bear the transformative potential as a by-product to alleviate the burdens weighing upon the shoulders of the overburdened court system, making it a strong institution administering justice. Within this scholarly exploration, this research paper embarks upon an odyssey, delving into the realms of ADR nestled within the tapestry of the criminal justice system. Its noble pursuit seeks an equilibrium between the towering expectations and the pragmatic realities that underpin this intricate ecosystem.

1.1 Background and Significance of this Research

The exploration of alternative mechanisms within the realm of the criminal justice system is not novel, it bears an ancestry steeped in history's annals, tracing its lineage back to antiquity. Nevertheless, with the formal advent of legislative frameworks governing criminal jurisprudence, this practice gradually faded into obscurity. The earnest quest for alternative avenues within the formal criminal justice system commenced around 1976, marking a pivotal moment in its re-emergence in the world history. In the global narrative, countries like the United States, Canada, Australia, and New Zealand have embraced pioneering roles in integrating Alternative Dispute Resolution (ADR) and restorative justice into their criminal justice frameworks with traditional court system. Remarkably, in certain countries, entities like Mediation Boards have evolved as viable substitutes for conventional courts, garnering staunch endorsement from the judicial apparatus. Elsewhere, countries like South Africa, Nigeria, Bolivia, Haiti, Ecuador, and El Salvador are in the throes of developing government-supported systems fostering independent, localized, informal dispute resolution panels. These initiatives cater to segments of society for whom the formal courts have proven ineffective, carving pathways to access justice that circumvent systemic limitations. Meanwhile, nations such as India, Bangladesh, Sri Lanka and South Africa witnessed the emergence of ADR programs tailored to resolve localized disputes, driven by the exorbitant costs and protracted delays inherent in traditional legal proceedings. There are a lot of study everywhere to integrate and implement ADR mechanism with Criminal Justice System to ensure access to justice for both of the parties. Crucially, the study underscores a universal truth—any country, irrespective of its legal system's foundations, holds the capacity to incorporate Alternative Dispute Resolution mechanisms within its criminal justice architecture.

The reverent tapestry of governance within the confines of Bangladesh's strategic blueprint, the revered 8th five-year plan, allocates a coveted prominence to Sustainable Development Goal 16 (SDG-16) as one among the six esteemed national priorities. It is within this auspicious realm that the symphony of justice, resolute in its march, commands the spotlight, entwined with the pursuit of equitable access, alternative resolutions to justice, and the quality of public service. This resounding commitment to SDG-16, woven intricately into the fabric of national priorities, unfurls an elegant tableau where *access to justice* serves as a guiding beacon, illuminating the pathways to fairness and societal harmony. Embracing the nuanced artistry of alternative justice resolutions, this hallowed mandate seeks to nurture a tapestry of diverse approaches, fostering a mosaic of solutions that transcend the conventional. Amidst this

grand tapestry, the luminescent threads of quality public service weave a narrative of utmost importance. They epitomize the custodianship of excellence, envisaging a realm where service to the populace stands as a paragon of efficiency, empathy, and efficacy.

In the panorama of governance's myriad facets, these three pivotal indicators stand tall as bastions of progress, heralding an era where justice, both traditional and alternative, converges harmoniously with the unwavering commitment to elevate the quality of public service. Their prominence illuminates the ethos of governance, resonating with the aspirations of a nation poised at the vanguard of progress and equitable societal evolution. The historical fabric of Bangladesh itself bears witness to the inception of Alternative Dispute Resolution, an ancient practice that beckons comparisons with global counterparts. It beckons to reimagine the existing system, envisioning reforms that harmonize with international standards and envisaging the integration of alternative dispute resolution mechanisms within the tapestry of the criminal justice system. Such an endeavor promises not impracticability but rather the possibility of evolution, reform, and an inclusive justice system aligned with global best practices.

1.2 Purpose of the Research

Bangladesh is dynamic area of the world; the significance of this region is growing. The Criminal Jurisprudence has enormous importance over peace and prosperity of a country like Bangladesh. The World Justice Project (WJP),¹⁾ an international civil society organization, working to advance the rule of law around the world, released its Rule of Law Index on 25 October 2023. The WJP surveyed citizens and experts in 142 countries and jurisdictions in order to measure the state of the rule of law based on eight factors: Constraints on government powers, Absence of corruption, Open government, Fundamental rights, Order and security, Regulatory enforcement, Civil justice, and Criminal justice. Global ranking of Bangladesh is 127/142 wherein the position of Criminal Justice System is 123/142. Through passage of time, the Justice System are facing mounting challenges such as increasing caseloads, court backlogs, and limited resources which led to delays in justice delivery, higher costs, and the potential for injustices. Accepting these shortcomings, legal professionals, scholars, and policymakers have turned their attention to ADR methods as a means of supplementing or even replacing traditional litigation in Civil cases amending Code of Civil Procedure in 2012 but in Criminal

1) Available at [https://worldjusticeproject.org/news/wjp-rule-law-index-2023-global-press-release#:~:text=The%20top%20country%20in,of%20the%20Congo%20\(138\),](https://worldjusticeproject.org/news/wjp-rule-law-index-2023-global-press-release#:~:text=The%20top%20country%20in,of%20the%20Congo%20(138),) last accessed on 5 January, 2024.

cases there is no such formal initiative. Moreover, the adversarial nature of the traditional criminal justice system often fails to address the individual needs and concerns of victims, offenders, and the community. Sometimes, it is considered that criminal cases are against the public and cannot be resolved through ADR. In fact, there are several types of offences which can be divided into offence against property, offence against person and so on. The offence against property and trivial offences can be resolved through mediation and/or negotiation between victim and offender. The system will help to restore community and victim-offender relationship. The ADR mechanisms in criminal justice system allows the victim to get financial remedy and also to share his/her emotion whereas, it is not possible in the traditional Criminal Justice System.

In these connections, the core objective of this paper is to delve into the multifaceted mechanisms and extensive scope of (ADR within the intricate landscape of the criminal justice system, particularly concerning the facilitation of access to justice. Through an exhaustive exploration, this study aims to furnish a comprehensive understanding of diverse ADR methods, delineating their inherent benefits, challenges, and potential impact on the dynamics of the criminal justice system. Upon scrutinizing the legal frameworks of various countries with a keen focus on their criminal legal structures, it becomes evident that countries exhibiting a robust rule of law framework are poised to endorse access to justice, thereby fostering avenues for alternative dispute resolution methods like mediation and reconciliation within the Criminal Justice System. Notably, such settlements outside the courtroom sphere play a pivotal role in alleviating the overwhelming burden faced by criminal courts. Within the context of Bangladesh, this paper meticulously examines the historical and existing landscape of ADR mechanisms. It endeavors to highlight how these approaches can effectively surmount the constraints inherent in the traditional adversarial system prevalent in Bangladesh. Simultaneously, these mechanisms aim to enhance efficiency, ensure justice, and yield improved outcomes for all stakeholders involved in the criminal justice process.

1.2.1. Research Questions:

Proposed research would like to explore several questions relating to:

- a) What are the objectives of ADR in the criminal judicial system?
- b-1) Whether access to justice is promoted or hindered by ADR in the criminal justice system?
- b-2) Where might it be necessary to restrict the use of ADR in order to protect rule

of law and access to justice?

- b-3) How can judicial proceedings be shaped to ensure access to justice through ADR?
- c) What is the scope of ADR in the criminal judicial system?
- d) What tools of ADR are already available in the criminal justice system in the judiciary of Bangladesh and in other countries?
- e) What changes are required to promote ADR in the criminal justice system?

1.2.2. Extent of the Research

The study aims to explore essential legislative and policy adjustments relating practical implementation and integration of ADR in criminal justice system across various nations. However, owing to constraints in time and resources, this research will focus specifically on three primary methodologies of ADR: Mediation, Plea Bargaining, and the Restorative Justice System, all extensively employed within the realm of the Criminal Justice System. It's crucial to note that the Restorative Justice System embodies a broad concept that encompasses both ADR mechanisms and elements of the formal justice system. Within this research paper, my focus will primarily delve into the Restorative Justice System in connection to ADR, exploring its nuances and intersections within the framework of the criminal justice system.

1.3 Methodologies

The research endeavors to amalgamate a diverse array of scholarly articles, case studies, empirical research, and legal literature to furnish a comprehensive analysis of the subject matter. By synthesizing existing knowledge and scrutinizing real-world instances, this study aspires to enrich the ongoing discourse concerning the reform and enhancement of the criminal justice system.

1.3.1. Study Site

The research adopts an analytical approach, delineating in countries implementing Alternative Dispute Resolution (ADR) as focal points for investigation. Beyond the confinement of single countries, this inquiry transcends borders, encompassing insights from a spectrum of global sources, including books and articles from various scholarly sources.

1.3.2. Method of Data Gathering

The methodology hinges on a multifaceted approach encompassing court visits, extensive library research, examination of legislations, perusal of journals and articles, scrutiny of customary practices, exploration of international treaties, archival examination of historical records, field visits, and meticulous online information retrieval.

1.3.3. Data Gathering Issues

The data collection process will diligently address the following key issues:

- a) Mediation
- b) Plea Bargaining
- c) Restorative Justice

1.3.4. Analytical Technique

Harnessing its methodologies to navigate the intricate labyrinth of data analysis and interpretation, this research work will draw upon following analytical framework-

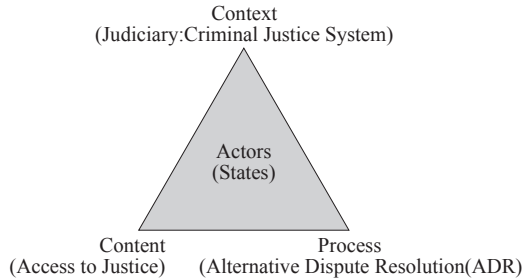


Figure 1: Proposed analytical framework by Walt and Gilson (1994)

1.4 Literature Review

In my research endeavor, I aspire to delve into previously unexplored facets by synthesizing prior scholarly contributions. My intention is to synthesize existing literature strategically, addressing identified factors to shed light on research questions and issues that have previously remained unexplored.

1.4.1. Bangladesh Perspective

In Bangladesh, several newspaper articles have shed light on the pressing issue of pending cases and the overwhelming backlog within the legal system of Bangladesh. One such article, titled ***“More than 40 lakh cases now pending: law minister,”***²⁾ was published on February 1, 2023. Additionally, on April 28, 2023, another piece titled ***“Huge case backlog only hurting citizens”***³⁾ echoed the concerns regarding the substantial backlog. Meanwhile, a news article dated July 20, 2023, highlighted ***‘Disposal of cases are raising in Country,’***⁴⁾ signaling some improvements in case disposal rates. Throughout this timeframe, these articles have artfully emphasized the burdensome caseloads, highlighting the critical need for Alternative Dispute Resolution (ADR) methods to alleviate the strain on Bangladesh's legal system. Various studies have delved into alternative dispute resolution (ADR) within the criminal justice system. Md. Abdul Halim extensively examined the potential avenues for implementing Alternative Dispute Resolution (ADR) methods specifically in the resolution of criminal cases in his book titled ***“ADR in Bangladesh: Issues and Challenges”***.⁵⁾ The book provided a succinct analysis, briefly delving into the efficacy and effectiveness of ADR mechanisms. Conversely, the newspaper article published on June 19, 2018, titled ***“Compromising Crimes: Legally Possible?”***⁶⁾ expressed apprehension about compromising in non-compoundable offenses. For instance, it highlighted the potential issues with compromising discriminately under section 304B of the Penal Code, 1860. Moreover, the article suggested the need to establish a more accessible and victim-friendly judicial system. It emphasized the importance of encouraging victims to engage in the proper judicial process instead of turning to local mediation.

2) <https://www.thedailystar.net/news/bangladesh/news/more-40-lakh-cases-now-pending-law-minister-3236396>, accessed on 6 January 2024.

3) <https://www.thedailystar.net/opinion/editorial/news/huge-case-backlog-only-hurting-citizens-3306391?fbclid=IwAR2wYxEDNawmiAZV9aywPwaz2JWrNtwQdnrfHCvMpsEGFPyko-3phqpMsPE>, accessed on 6 January 2024.

4) <https://samakal.com/bangladesh/article/2307184670/দশো-মামলা-নিষ্পত্তি-বিভেছে>, accessed on 6 January 2024.

5) Halim Md. Abdul. (2011). *ADR in Bangladesh: Issues and Challenges*. Second edition. CCB Foundation.

6) The Daily Star, <https://www.thedailystar.net/law-our-rights/compromising-crimes-legally-possible-1591837>, accessed on 6 January 2024.

7) Chowdhury, Dr. Jamila A. (9 March 2013). “Introduction of ADR in criminal cases.” The Daily Star (Bangladesh), <https://www.thedailystar.net/news/introduction-of-adr-in-criminal-cases>, last accessed on 07 January 2024

Dr. Jamila A. Chowdhury in *“Introduction of ADR in criminal cases”*⁷⁾ raised pertinent concerns regarding the potential consequences of introducing Alternative Dispute Resolution (ADR) in criminal matters, particularly regarding the decriminalization of offences. She extensively articulated that while promoting compounding in criminal cases might offer advantages in terms of time and cost-saving measures, it could inadvertently lead to the decriminalization of crimes. Her viewpoint suggested that permitting the compounding of offences or plea bargaining across all criminal litigations could yield unfavorable outcomes outweighing the benefits. However, the discussion in the newspaper article lacked depth and comprehensiveness in its analysis of the introduction of ADR in criminal cases. Furthermore, it lacked substantiating empirical evidence and research data to buttress the assertions made within the article, highlighting a limitation in providing a well-supported argument on the subject matter.

Mahua Gulfam’s research article *“Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective”*⁸⁾ regarding the implementation of Alternative Dispute Resolution (ADR) in Bangladesh’s criminal justice system meticulously assesses the diverse modes of ADR adopted globally for handling criminal litigations. Additionally, the article provides a concise overview of the evolution of ADR practices within the context of Bangladesh. However, a potential gap in the article is the absence of explicit recommendations or practical guidance for the effective implementation of ADR within the country’s criminal justice system.

Md. Mamun Chowdhury in *“Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective”*⁹⁾ put forth guiding principles aimed at enhancing the effectiveness of criminal Alternative Dispute Resolution (ADR). He emphasized the importance of implementing plea bargaining within our judicial system. Nonetheless, his exploration did not encompass an examination of the drawbacks associated with plea bargaining or the potential adverse effects it might impose on the system.

In her paper on *“The Role of ‘Good Prosecutors’ in Advancing Access to Criminal Justice,”*¹⁰⁾ Susan Fortney highlighted the pivotal role of advocates and prosecutors in driving the success of Alternative Dispute Resolution (ADR). She conveyed the view that a profi-

8) Gulfam, Mahua, (2014) “Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective”, *Bangla vision*, (Vol. 13, No. 1).

9) Chowdhury, M.M. (2017) “Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective,” *Bangladesh Research Foundation Journal*, (Vol. 6, No.1).

cient prosecutor plays a critical role in effectively implementing criminal ADR processes, ultimately ensuring fair and just outcomes. However, being a scholarly review article, the piece lacks original research data or in-depth analysis. Consequently, it might not provide novel insights or additional evidence for readers already acquainted with the role of prosecutors in the criminal justice system.

Md. Aktarul Alam Chowdhury and Md. Hasnath Kabir Fahim, in their article published in the Amity Law Review titled *“An Overview of the Practice and Prospect of Alternative Dispute Resolution in the Criminal Justice System of Bangladesh: Promotion of Access to Justice,”*¹¹⁾ primarily concentrate on the issue of Plea Bargaining, without exploring other modes of alternative dispute resolution within the criminal justice system of Bangladesh.

Fardeen Bin Abdullah’s research article titled *“Alternative Dispute Resolution in the Criminal Justice System of Bangladesh”*¹²⁾ primarily centers on ADR conducted by legal aid offices within the Rajshahi District. The article delves into various challenges associated with ADR in handling criminal offenses in Bangladesh. However, a notable potential gap¹³⁾ within the article is the absence of universal applicability and clear recommendations or practical guidance for the effective implementation of ADR across the broader spectrum of the country’s criminal justice system.

1.4.2. International Perspective

In *“Victim/Offender Mediation: Japanese and American Comparisons,”*¹⁴⁾ *“Victim Restitution and the Japanese Criminal Justice System,”*¹⁵⁾ *“The Role of Conciliation in the Japanese Legal System,”*¹⁶⁾ the historical underpinnings of the modern Japanese

10) Fortney, Susan (February 20, 2017), “The Role of ‘Good Prosecutors’ in Advancing Access to Criminal Justice”, *JOTWELL*, Texas A&M University School of Law.

11) Chowdhury, Md. Aktarul Alam, Fahim, Md. Hasnath Kabir, *An Overview of the Practice and Prospect of Alternative Dispute Resolution in the Criminal Justice System of Bangladesh: Promotion of Access to Justice*, Amity Law Review, 2019.

12) Abdullah, Fardeen Bin (2023) “Alternative Dispute Resolution in the Criminal Justice System of Bangladesh” *Law and Society Students’ Journal*, Vol 1, No. 1 [2023]

13) Community-based mediation as an auxiliary to formal justice in Bangladesh: the Madaripur Model of Mediation (MMM), <https://cdn.penalreform.org/wp-content/uploads/2013/06/man-0000-alternative-dispute-resolution-en.pdf>, accessed on 05 January 2024.

14) Haley, J. O. “Victim/Offender Mediation: Japanese and American Comparisons.” In H. Messmer and H. U. Otto (eds.), *Restorative justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation International Research Perspectives*, Dordrecht: Kluwer Academic, 1992.

legal system have been explored. authors highlight that despite substantial Western influence from the 1850s and especially during the post-World War II occupation, the fundamental values of the Japanese legal system remain deeply rooted in tradition. This legal system prioritizes alternative resolution over adjudication, underscoring the emphasis on harmony in conflict resolution rather than fostering conflict.

Remarkable research has surfaced in the European Union. A scholarly article titled *“Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives”*¹⁷⁾ focuses on various case examples of ADR across different countries. Notably, the article lacks specific clarification regarding the types of offenses resolvable through ADR and the stages at which ADR is applicable. Additionally, the absence of a specific universally applicable ADR mechanism across these countries prompts my research pursuit to identify a common mechanism suitable in diverse legal contexts.¹⁸⁾

In their qualitative study, Abrams, Umbreit, and Gordon in *“The impact of restorative justice conferencing: A review of 63 empirical studies in 5 countries”*¹⁹⁾ identify some of the underlying motivations for the offenders' participation in the victim offender mediation program. This brings up an issue of VOM within the juvenile justice system.

Yet, within the vast array of books and articles on the subject, an intriguing void persists an absence of exploration into the effectiveness of implementing Alternative Dispute Resolution (ADR) within criminal cases, and its consequential impact on the access to justice and rule of law. The central focal point of this research revolves around comprehending the intricate mechanisms by which Alternative Dispute Resolution operates within the Criminal Justice System, endeavoring to illuminate its role in ensuring access to justice. The primary ambition

15) Yamaguchi, A. “Victim Restitution and the Japanese Criminal Justice System.” In V. Kusuda- Smick (ed.), *Crime Prevention and Control in the United States and Japan*. Dobbs Ferry, N.Y.: Transnational Juris Publications, 1990.

16) Berat, Lynn. “The role of conciliation in the Japanese legal system.” *Am. Uj Int’l L. & Pol’y* 8 (1992): 125.

17) https://www.academicexcellencesociety.com/using_alternative_dispute_resolution_adr_in_the_criminal_justic.pdf, accessed on 07 January 2024.

18) “Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives”https://www.academicexcellencesociety.com/using_alternative_dispute_resolution_adr_in_the_criminal_justic.pdf

19) Umbreit, M. S., Coates, R. B., & Vos, B. (2002). *The impact of restorative justice conferencing: A review of 63 empirical studies in 5 countries*. University of Minnesota Centre for Restorative Justice & Peacemaking, School of Social Work, University of Minnesota.

of this inquiry is to meticulously analyze and appraise the effectiveness of ADR within the criminal justice system focusing on data gathering issues. Subsequently, the aspiration extends to offering recommendations aimed at fortifying and advancing this system, forging a robust institution steeped in the principles of the rule of law.

1.5 Structure of the Research

Within the sphere of the criminal justice system, this paper embarks on an odyssey, unraveling the concept of ADR in search of an equilibrium between lofty expectations and pragmatic realities. The ADR methods, notably mediation, restorative justice, and plea bargaining, present distinctive avenues to cater to the diverse needs of victims, offenders, and the broader community, all the while fostering efficiency and alleviating the strain on the court system. Delving into the intricate tapestry of ADR mechanisms, this paper meticulously dissects their merits, confronts the challenges they pose, and contemplates their potential influence on the criminal justice system's intricate fabric. The structure of this research paper unfolds across distinct chapters, each meticulously crafted to ensure a coherent presentation of information and analysis. The forthcoming chapters encompass:

Chapter I is the inaugural chapter which serves as a compass, offering a panoramic view of the research paper. Within its confines lie the foundational elements the background, significance, purpose, and scope of the study. Therefore, delving into the specifics of Bangladesh's criminal justice system, Chapter II chapter scrutinizes the landscape of alternative dispute resolution. It seeks to illuminate the nuances, frameworks, and intricacies of employing alternative methods within this legal realm. In this connection, expanding the discourse, Chapter III ventures into the broader domain, traversing the scope, confronting the challenges, and elucidating the myriad benefits inherent in integrating alternative dispute resolution mechanisms within the criminal justice system. Finally, the concluding chapter, Chapter IV synthesizes the preceding discussions, focusing on the practical dimensions implementation strategies, seamless integration of alternative methods, and recommendations poised to propel the discourse forward. This sequential arrangement of chapters crafts a narrative tapestry, guiding the reader through an intricate exploration that traverses introductory vistas, navigates specific landscapes, and culminates in actionable insights, thus presenting a comprehensive outlook on the intricate interplay between alternative dispute resolution and the criminal justice system.

II Alternative Dispute Resolution in Criminal Justice System in Bangladesh

2.1 History and Development of the Concept of ADR in Bangladesh

The present judicial system of Bangladesh has been evolved through a gradual historical journey spanning over thousands of years. Across ancient epochs, justice was intertwined with societal norms, where the supreme authority vested in the King (be it a raja, maharaja, or sultan) encompassed the legislative, executive, and judiciary branches. This historical evolution unfolds across four pivotal eras: the Hindu period, the Muslim period, the British colonial era, and the period following independence, each contributing significantly to the shaping of Bangladesh's legal history. The essence of many fundamental beliefs and doctrines ingrained in contemporary legal ideologies traces its roots to ancient times. Among these enduring principles is the concept of ADR, which finds resonance in the traditions and practices of bygone eras, imprinting its significance on the legal landscape of Bangladesh.

2.1.1. Hindu Period

During the span of approximately 1500 years known as the Hindu period, the legal framework relied upon by the Kings drew from various sources such as shrutis, smritis, puranas, and dharmashastras.²⁰⁾ Among these, the Arthashastra and Manusmriti held authoritative sway, providing legal guidance. In rural settings, local village councils, akin to today's panchayats, comprised a board of five or more members entrusted with dispensing justice to villagers.²¹⁾ These councils presided over various matters, including endowments, irrigation, cultivatable land, and the administration of justice in both civil and criminal cases. Village councils were instrumental in addressing disputes within communities, playing a multifaceted role as leaders, mediators with the government, and arbitrators in resolving conflicts.²²⁾ Panchayats,²³⁾ assemblies of respected elders in villages, often served as forums to adjudicate dis-

20) <https://www.judiciary.gov.bd/en/judiciary/history-of-judiciary>, accessed on 16 December 2023.

21) <http://aclawresearch.blogspot.com/2013/01/historical-development-of-adr-in.html>, accessed on 17 December 2023.

22) V.D. Kulshreshtha, *Landmarks in Indian Legal and Constitutional History*, 7th ed. (Lucknow: Eastern Book Company, 1995), p.6.

23) A former group of five influential older men acknowledged by the community as its governing body. The term "Panch" means "five". In the old Sanskrit scriptures, word 'Panchayatan' has been mentioned which means a group of five persons, including a spiritual man. (see Panchayati Raj Institution (PRI), Bates, Crispin. "The Development of Panchayati Raj in India." *Rethinking Indian political institutions* (2005): 169).

putes among inhabitants. Meanwhile, disputes within clans were typically resolved by the elders within the clan. Each cluster had its Panchayat, a council of five eminent individuals responsible for both executive and judicial affairs. Each panchayat contains several wards which correspond closely to villages. A defining feature of these traditional institutions was their recognition as an established system for administering justice, rather than mere alternatives to the formal justice system established by sovereign rulers or feudal lords. Both systems—the traditional village councils and the formal court systems introduced by ruling groups—operated in parallel.²⁴⁾ Remarkably, the procedural aspects and the nature of proceedings within these traditional institutions comprising council of village such as Panchayat, which was an informal way of mediation, bore striking similarities to the principles underlying ADR.²⁵⁾

2.1.2. Muslim Period

The Muslim period commenced with the significant Muslim invasion in the 7th century. Under the governance of Muslim emperors, the legal framework was founded upon the laws derived from the Holy Quran, Sunnah, Ijma, and Qias. Within this period, the Sultan held authority in both civil administration and as the head of the highest court. The Sultan was aided in judicial matters by two esteemed Muftis, and the legal system operated under two principal Muslim Codes, namely Fiqh-e-Firoz Shah and Fatwa-i-Alamgiri.²⁶⁾

During the Sultanate era, a Parganah, a territorial division, comprised clusters of villages. Each cluster had its Panchayat, a council of five eminent individuals responsible for both executive and judicial affairs. The Sarpanch, appointed by the Nezim or Faujdar, oversaw these Panchayats. These councils resolved local civil and criminal cases, and their decisions were typically binding, without provisions for appeal.

In the Mughal period, the village served as the smallest administrative unit. Panchayats, deeply rooted in ancient traditions, were authorized to arbitrate and adjudicate petty civil and criminal disputes among villagers. While significant cases weren't within their purview, the Panchayats could impose penalties, fines, or ostracism. Comprising five elected Panchs,²⁷⁾ these councils meticulously listened to both parties before rendering judgments. Generally, the Sarpanch presided over the Panchayat meetings, and once a decision was made, no avenue for

24) <https://elearn.daffodilvarsity.edu.bd/mod/forum/discuss.php?d=295197>, accessed on 18 December 2023.

25) <https://elearn.daffodilvarsity.edu.bd/mod/forum/discuss.php?d=295197>, accessed on 18 December 2023.

26) *Ibid*, p.20.

appeal existed.²⁸⁾

2.1.3. British Period

The era of British rule commenced in the mid-18th century, spanning two centuries in Indian Sub-continent. Under the Charter of 1661 issued by Charles II, the East India Company was authorized to govern individuals residing in the Company's factories or trading centers within the three presidency towns: Madras, Bombay, and Calcutta. This empowerment extended to the administration of both civil and criminal justice, governed by English law. India's legal evolution traces back to the establishment of Mayor's courts in Calcutta, Madras, and Bombay in 1728, initiated by King George I's charter of 1726.²⁹⁾ These courts were designated to handle civil actions, and the charter also conferred criminal jurisdiction upon the Governor and five senior Council members in each presidency town, empowering them as justices of the Peace.³⁰⁾ Additionally, provisions for appeals from India to the Privy Council in England were introduced through this charter. The formalized system of justice administration implemented during British rule supplanted the older feudal mechanisms for dispensing justice. Despite this transformation, traditional institutions continued their role in dispute resolution under different guises.³¹⁾ Subsequently, arbitration and conciliation emerged as recognized methods of ADR, securing legal acknowledgment within the Code of Civil Procedure, 1908. The Arbitration Act of 1940 echoed these provisions, mirrored from the Code of Civil Procedure. However, the application of these statutes often fell short, with courts not consistently enforcing these provisions, leading to their non-mandatory application in practice.³²⁾

27) Supra Note 20 (**Medieval Period:** During the Sultanate period, the Sultans of Delhi divided their kingdom into **provinces called 'Vilayat'**. For the governance of a village, there were three important officials - Mukkaddam for administration, Patwari for collection of revenues, and Choudhrie for settling disputes with the help of the Panch.)

28) Kazi Ebidul Hoque, *Administration of Justice in Bangladesh*, 1st ed., (Dhaka: Dhanshiri Printing and Publishing Co. Ltd, 2003), p.3.

29) SK. Golam Mahabub, *Alternative Dispute Resolution in Commercial Disputes: The UK & Bangladesh Perspectives*, 1st ed., (Dhaka: SK. Golam Mahabub, 2005), p.16.

30) The High Court of Bengal (Order) 1947 promulgated under the provisions of section 9 of the Indian Independence Act, 1947 providing for establishing a separate High Court for East Pakistan as the High Court of Judicature of East Bengal at Dhaka.

31) <https://elearn.daffodilvarsity.edu.bd/mod/forum/discuss.php?d=295197>, accessed on 18 December 2023.

2.1.4. Present Development (after Independence)

After independence of Bangladesh in 1971 the Acting President promulgated the Laws Continuance Enforcement Order, 1971 by which all laws that were in force in Bangladesh on 25th March 1971 continued to be so in force. At present we have about 740 acts, 507 Ordinances and some Regulations in Bangladesh.³³⁾ The ADR has expanded over the last several years to include many areas in addition to the traditional commercial dispute in the form of negotiation, arbitration, mediation, conciliation.

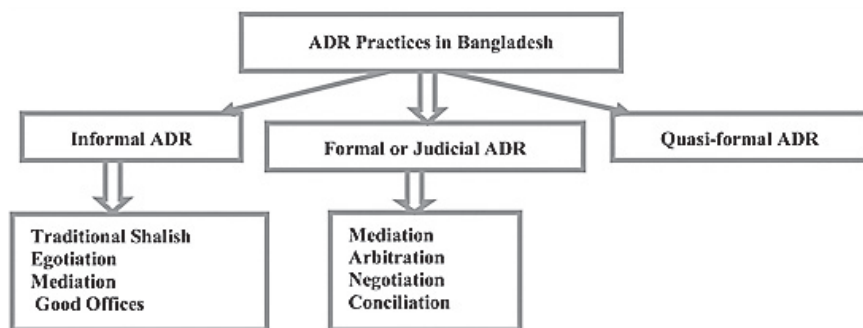


Figure 2: Prevailing ADR Practice in Bangladesh³⁴⁾

Source: <https://www.scirp.org/journal/paperinformation?paperid=99458>

32) During the period of 1834 to 1861, two sets of courts were administering justice in India. The king's Court and Company's Court formed the dual system of courts having their separate jurisdiction. The Mutiny in 1857 necessitated rethinking on the administration of India and reorganization of the law of courts. In 1858 the East India Company was abolished and the assumption of direct responsibility of the Government of India by the Crown made the problem of uniting the two sets of courts much easier. As a result, Indian High Court Act, 1861 was passed. The act of 1861 empowered the Crown to establish by Letters Patent, High Courts of Judicature at Calcutta, Madras and Bombay abolishing the Supreme Courts and the Courts of Sadar Diwani Adalat and Sadar Nizamat Adalat. The Government of India Act, 1915 was passed by British Parliament which provided for the constitution, jurisdiction and powers of the High Courts. Under the Provisions of the Government of India Act, 1935 a Federal Court was established in India in 1937 having power to hear appeals from the decisions of the High Courts. But the said appellate power was limited to the interpretation of laws vis-a-vis the Government of India Act and did not affect the jurisdiction of the Privy Council to hear appeals from the decisions of the High Courts on merit. *History of Judiciary of Bangladesh*, Judicial Portal Bangladesh, <https://www.judiciary.gov.bd/en/judiciary/history-of-judiciary>, accessed on 18 December 2023.

33) History of Judiciary of Bangladesh, Judicial Portal Bangladesh, <https://www.judiciary.gov.bd/en/judiciary/history-of-judiciary>, accessed on 18 December 2023.

Besides the above-mentioned measures adopted as the process of ADR, Bangladesh Government has promulgated the following acts for the effective application of ADR procedure in civil, commercial and family disputes for dispensing the dispute outside the court:

The arbitration Act, 2001

1. The arbitration Act, 2001
2. Code of Civil Procedure, 1908 (sec. 89A, 89B, 89C)
3. Arthorin Adalat Ain, 2003 (sec. 21, 22)
4. Bangladesh Labor Law, 2006 (sec. 210)
5. Muslim Family Laws Ordinance 1961 (sec. 7, 8)
6. Family courts Ordinance, 1985 (sec. 10)
7. Dispute conciliation board Act, 2004.³⁵⁾

2.2 Criminal Laws allowing ADR in Bangladesh

The afore-mentioned historical background and present development of ADR provide a clear picture that ADR is not a new legal device in Bangladesh. It already exists in many Civil Statutes, and it has been resolving disputes successfully. ADR has proven that society needs the new legal devices to solve its legal problems and uprising issues. As law itself is a social mechanism, thus, to fulfill the new needs in the society, as well as in the legal system, new socio-legal devices are needed. The ADR is the most practical socio-legal device that has already proven itself in civil justice system. Just like civil courts, criminal courts in Bangladesh are also overburdened and expensive to maintain. Thus, the concept and idea of ADR should also be introduced in criminal justice system.

The legal and judicial system of Bangladesh is adversarial in nature. In criminal cases the concept of ADR has no wide implication. However, the ADR is nothing but an alternative way to resolve disputes, wherein otherwise invoke court procedure. However, the devices like ADR cannot always function in criminal trials as criminal trials have a lot of issues which can only be solved in a judicial and legal procedure. There are two methods to apply the concept of ADR in criminal cases in Bangladesh. The compounding of minor criminal offences is

34) Patoari, Md. Manjur Hossain & others, 2020, Legal and Administrative Challenges of Alternative Dispute Resolution (ADR) as a Peaceful Means of Resolving the Land Dispute in the Rural Areas of Bangladesh, <https://www.scirp.org/journal/paperinformation?paperid=99458>, last accessed on 07 January, 2024.

35) Historical Development of ADR in Bangladesh, available at <http://aclawresearch.blogspot.com/2013/01/historical-development-of-adr-in.html>, accessed on 18 December 2023.

permitted in Bangladesh under the Code of Criminal Procedure 1898 (CrPC). The particular provision of CrPC allows compromise between the adversary parties to the extent of specific offences mentioned thereby. The acts which allow ADR in some petty criminal offences are -

1. The Code of Criminal Procedure, 1898,
2. The Village Court Act, 2006,
3. Women and Children Repression Prevention Act, 2000,
4. Dowry Prohibition Act, 2018, and
5. The Dispute Resolution (Urban Region) Board Act, 2004.

2.2.1. ADR under the Code of Criminal Procedure 1898 (CrPC)

There is no restriction to compromise in civil proceedings, rather there are lots of ways of compromise between plaintiff and defendants through mediation, conciliation, negotiation etc. In criminal proceedings, general philosophy is that all crimes are against the state and therefore no compromise is possible between the offender and the victim without the intervention of the state. Taking into consideration the above-mentioned philosophy, the Criminal Justice System of Bangladesh does not allow compromise in all cases. Moreover, the CrPC makes some provisions which allow some specific offences to be compounded.³⁶⁾

A. Compoundable Offences

The provision of Section 345 of Code of Criminal Procedure 1898 (CrPC) provides a table which follows the offences punishable under several sections of the Penal Code, 1860 that can be compounded by the persons mentioned in the section.

The first list in section 345 (1) of CrPC provides the list of offences which can be compoundable without the permission of the Court by the persons mentioned the third column of the table:

Offences relating to Uttering works, etc., with deliberate intent to wound the religious feelings of any person (S 298), Causing hurt (S 323,334), Wrongfully restraining or confining any person (S 341, 342), Assault or use of criminal force (S352, 355, 358), Unlawful compulsory labour (S 374), Mischief (S426, 427), when the only loss or damage caused is loss or damage to a private person (S 447,

36) Compounding means compromise or amicable settlement.

448), Criminal trespass, Criminal breach of contract of service (S 490, 491, 492), Adultery, Enticing or taking away or detaining with criminal intent a married woman (S 497, 498), Defamation, Printing or engraving matter, knowing it to be defamatory (S 500, 501, 502), Insult intended to provoke a breach of the peace (S 504), Criminal intimidation except when the offence is punishable with imprisonment for seven years (S 506), Act caused by making a person believe that he will be an object of divine displeasure (S 508).

Most of the offences included in the first list are minor offences punishable with maximum one year imprisonment or fine. The second list in section 345 (2) of the CrPC provides the list of offences which are not compoundable without the permission of the Court.

The second set in section 345 (2) of the CrPC provides the list of offences which are not compoundable without the permission of the Court. The second set of compoundable offences includes more grievous offences, such as:

Rioting with deadly weapon, voluntarily causing grievous hurt, act endangering the personal safety of others, and assault or criminal force to women with intent to outrage her modesty.³⁷⁾

Punishment for these offences varies from two to seven years along with fine. These offences are also compoundable by the aggrieved person but only with the permission of a court.

B. When Compounding is possible

At any stage of Criminal Proceeding before pronouncing final judgment, the parties may take the initiative to compound the offence. The parties may take the initiative to submit a deed of compromise and even in appellate stage it can be submitted before the Court. However, compromise deed must be filed before the pronouncement of judgment.

37) Chowdhury, Dr Jamila A. (9 March 2013) "Introduction of ADR in criminal cases", The Daily Star (Bangladesh) 7 <http://archive.thedailystar.net/beta2/news/introduction-of-adr-in-criminal-cases/>, accessed on 13 December, 2023.

C. Limitations to Compound

Compounding offences are acts which can be compounded expressly with the permission of the Court or without the permission of the Court. Compounding is not allowed other than section 345. The court cannot allow compounding of an offence which is not compoundable under section 345. Neither the offender nor the victim can make an agreement to compound, settle, or withdraw a complaint regarding an offence which is not mentioned in section 345. If any compounding is made otherwise than mentioned in Section 345, that compounding will be illegal and section 213 and 214 of Penal Code provide punishment for illegal compounding.

D. Cases regarding ADR

In the case of *Md. Joynal and others v Rustom Ali and others*, the Supreme Court of Bangladesh highly appreciated the compromise which is the basic form of ADR.³⁸⁾ The appeal by special leave was directed against the judgment and order in Civil Revision No. 1255 of 1979 passed by the High Court Division. In the Court of Munsif, Natore,³⁹⁾ the respondents Nos. 1 and 2 filed Title Suit No. 200 of 1974 for a declaration that the 4 kabalas alleged to have been executed by them on 24.5.73 in favour of the defendant's appellants were hit by section 23 of the Contract Act and also for possession of the land.

Plaintiff's case was that the land described in schedule Ka of the plaint belonged to Haji Mohan Ali and Abdul Hoque who out of this land sold Ka schedule land to some other party in 1970 and sold the Kha schedule land to the plaintiff by executing kabala on 18.9.70 but the kabala was not presented for registration and the vendors refused to register the same when the plaintiffs presented it to the Sub-Registrar Office and got the same registered. The defendant Abdul Hannan and others filed Criminal case against the plaintiff under section 144 Cr. P. C. and subsequently the proceeding was drawn up under section 145 Cr. P. C. and a receiver was appointed. The defendant Joynal Abedin brought a Criminal case against plaintiff No. 1 and his relation under section 385/148/448 and warrants were issued. Another case brought against the plaintiff under section 143 and 379 B.P.C Plaintiff's further case was that a

38) *Md. Joynal and others. Vs. Md. Rustam Ali Mia & others*, 36 (1984) DLR (AD) 240.

<https://www.thedailystar.net/law-our-rights/news/adr-the-criminal-justice-system-2920271>, accessed on 07 December 2023.

39) Recent name of the Court is Assistant Judge Court.

salish was held by the relations of defendants and the plaintiffs and in pursuance of the salish the plaintiff was directed to execute kabala in favour of the defendant who in turn withdrew the criminal cases. Accordingly, the kabala was executed, and defendants withdrew the Criminal case. The plaintiff contended that the kabalas concerned in Kha schedule land were without consideration and the plaintiffs executed them in the face of pressure of the Criminal cases and they were of no effect.

Justice **Badrul Haider Chowdhury** advocating the option of practicing ADR through the compounding of offences observed that:

*“That they encourage settlement of dispute either by Panchayet or by Arbitration or by way of compromised or other and if it is a criminal offence, the offence can be compounded within the limit of section 345 of Code of Criminal Procedure.”*⁴⁰⁾

In *Mohammad Abdul Kader alias Karim vs. the state*,⁴¹⁾ the Appellate Court relied its decision on the case of *Md. Joynal and others vs. Md. Rustam Ali Mia and others*⁴²⁾ wherein it was held that “our criminal administration of justice encourages compromise of certain disputes and some of the cases can be compounded as provided by section 345 Cr.P.C”. By endorsing the same view, the Appellate Court allowed compromise by acquitting the accused holding as follows:

“Section 379, Penal Code is compoundable by the owner of the property stolen. ... As we have noticed that the law encourages the compromise of the offence and since this matter is pending by way of special leave before this Court, we have no hesitation in allowing the composition and as a result this composition shall have the effect of acquittal of the accused.”

2.2.2. ADR under the Village Court Act 2006

The communal and restorative principles inherent in the traditional village assemblies is a useful mechanism of ADR in Bangladesh. The basic legal jurisdictions of the village court refer to the Village Courts Act, 2006 and its amendment. In addition, the village court

40) *Supra* Note 36.

41) Mohammad Abdul Kader alias Karim v the state, Criminal Appeal No. 6140 of 2019, http://www.supremecourt.gov.bd/resources/documents/e_1542014_CrIApl_6140_2019.pdf

42) reported in Bangladesh Case Reports 1984 AD 29

may follow the provisions of the Village Courts Rules, 1976. A village court is composed of a Chairman and four members (Section 5). Out of these four members two members are to be nominated by each party to the dispute. Moreover, one of the two members is to be a member of the Union Parishad concerned. The Chairman of the Union Parishad shall be the Chairman of the Village Court (Sub-section 2 of the Section 5). If the Chairman is unable to act as Chairman for any reason, or if his impartiality is challenged by any party to the dispute, any other member of the Union Parishad will become Chairman of the Village Court. The decision of the court is given based on majority. The court has jurisdiction to try all petty civil and criminal matters specified in the schedule.⁴³⁾ The Village Courts Act, 2006 contains a Schedule with two parts, which specifies the nature of cases and disputes a Village Court can deal with.

2.2.3. ADR under the Dispute Resolution (Urban Region) Board Act, 2004

Like the village court, in Paurashava or Urban area the dispute resolution conducted by the Dispute Resolution Board constituted under the Dispute Resolution (Urban Region) Board Act, 2004. The conciliation of disputes board shall consist of five members. Whereas the Chairman of the Paurashava shall be the chair of the board and the parties have to select two members one of them must be a commissioner of the Paurashava. The board shall have jurisdiction to try petty civil and criminal cases as mentioned in the schedule of the Act. In land dispute, the board can pass an order for damages or compensation wrong to immoveable prop-

43) Criminal offences included in the Schedule of the Village Court Act, 2006 are-

1. Sections 143 and 147 of the Penal Code read with the Third or the Fourth clause of section 141 of the Code, when the common object of the unlawful assembly is to commit an offence under sec. 323 or 426 or 447 of that Code, and when not more than ten persons are involved in the unlawful assembly.
2. Sections 160, 334, 341, 342, 352, 358, 504, 506 (first part) , 508,509 and 510 of the Penal Code
3. Sections 379, 380 and 381 of the Penal Code when the crime against the cattle and the value involved does not exceed seventy-five thousand taka.
4. Sections 379, 380 and 381 of the Penal Code when the crime against any other property other than the cattle and the value of property involved does not exceed fifty thousand taka.
5. Sections 403, 406, 417 and 420 of the penal Code when the amount in respect of which the offence is committed does not exceed seventy-five thousand taka.
6. Section 427 of the Penal Code when the value of the property involved does not exceed seventy-five thousand taka.
7. Sections 428 and 429 of the Penal Code when the value of the animal does not exceed seventy-five thousand taka.
8. Attempts to commit or the abetment of the commission of any of the above offences.

erty and restitution of immoveable property but cannot impose any fine or imprisonment. The board shall give decision on the basis of the majority. If the decision is given unanimously or one fourth majority (4:1) or one third majority (3:1) in case where one of the members was absent, the decision is final and no appeal shall be allowed and if the decision is given on two third (3:2) majority the aggrieved party can file an appeal to the concerned joint district judge within thirty (30) days from the date of decision.⁴⁴⁾

2.2.4. ADR under the Nari o Shishu Nirjatan Daman Ain, 2000⁴⁵⁾ (Women and Children Repression Prevention Act, 2000)

The Nari o Shishu Nirjatan Daman Ain is a special act to prevent repression against women and children. The act contains 34 Sections and strict in nature and considered to be one of the most effective laws addressing violence against women and children despite having “Penal Code” in our judicial system. It deals with offences related to oppression on women and children, trafficking and kidnapping of children and woman, rape, death resulting from rape and dowry, sexual harassment etc. Moreover, the act clearly states there shall be a special tribunal which shall try offences cover by this act and the tribunal is named as ‘Nari o Shishu Nirjaton Damon Tribunal’. The presiding judge of this tribunal shall be qualified as ‘District Judge or Session Judge’. According to Section 19 (1) of the Act, only compoundable section of the act is Section 11 (ga).⁴⁶⁾ As per the Section 11 (Ga) of the law, one shall be sentenced for maximum three years but minimum one year’s rigorous imprisonment and will be awarded pecuniary (monetary) penalty as the punishment for making ‘simple hurt’ for dowry. Any simple injury for dowry is compoundable offence (the complainant can compromise to drop the charge against the accused) in accordance with the section 11 (Ga) of the Act.

2.2.5 ADR under the Dowry Prohibition Act, 2018

The Dowry Prohibition Act of 2018 (the “Act”) of Bangladesh prohibits the giving or receiving of a dowry. The primary purpose of the Act is to end the custom whereby the bride’s family makes a financial payment to the groom’s family upon a marriage.⁴⁷⁾ The system is now seen to be a “social curse,” which frequently leads to disputes between the families and

44) <https://www.scirp.org/journal/paperinformation?paperid=99458>, accessed on 22 December 2023

45) Available at <http://bdlaws.minlaw.gov.bd/act-835.html> (Bangla Version of the Act), accessed on 24 January 2024.

46) <http://bdlaws.minlaw.gov.bd/act-835/section-32534.html>, accessed on 24 January 2024.

the harassment of innocent parties. Section 3⁴⁸⁾ of the Act criminalizes the act of directly or indirectly demanding a dowry, punishable by imprisonment of up to five years and/or a significant fine. Section 4 of the Act makes it an offense to give or receive a dowry, or to abet such actions, which is likewise punishable by a fine or imprisonment. Section 2 provides that the parties who may be prosecuted for such actions may include the bride, the groom, their parents or legal guardians, “or any other person directly involved in the marriage” from the side of the bride or the groom. Finally, the offenses committed under the Act are “cognizable, non-bailable, and compoundable.” This means that, as a “cognizable” offense, the police may arrest the accused without a warrant; as a “non-bailable” offense an accused does not have an automatic right to be released on bail; and as a “compoundable” offense the parties are allowed to settle the issue outside of court.

2.3 Existing Authority to Implement ADR Mechanism

2.3.1. Legal Aid Officers’ Role as Mediators

In Bangladesh, Legal aid officers play a multifaceted role, encompassing legal counseling, dispute resolution, appointing lawyers for legal aid cases,⁴⁹⁾ coordinating with stakeholders,⁵⁰⁾ and conducting monthly meetings⁵¹⁾ for feedback. According to Section 21A of the Legal Aid Act, 2000, legal aid officers possess the authority to provide legal advice to litigants seeking legal aid and if any matter is referred to the legal aid officers by a court or tribunal for alternative dispute resolution under existing law, they are empowered to settle the issue. To enhance the effectiveness of legal aid officers, there should be a concerted effort to focus on elevating their role through specialized training in mediation techniques and conflict resolution skills. Given that legal aid officers also serve as judges in each district, their role as mediators is widely acceptable. Under existing laws, legal aid officers can effectively act as mediators in compoundable cases, contributing significantly to the resolution of legal disputes.

47) The Dowry Prohibition Laws in Bangladesh, 2022, <https://www.sweducarebd.com/2022/04/dowry-prohibition-laws-in-bangladesh.html>, accessed on 26 December, 2023

48) Dowry Prohibition Act, 1980, <http://bdlaws.minlaw.gov.bd/act-1256.html>, accessed on 11 January 2024.

49) Under Section 10 of Legal Aid Act, 2000 (as amended in 2014), https://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/law/bda36638_49da_4803_9845_6917dc0d64ab/Legal%20Aid%20Law%20-English.pdf, accessed on 12 January, 2024.

50) Under Section 9, *ibid.*

51) Under Section 11, *ibid.*

2.3.2. Probation System

Umbreit and Armour urge that “we have the opportunity to build a far more accountable, intelligible, and healing system of justice and law, which can lead to a greater sense community through active victim and citizen involvement in restorative initiatives”⁵²⁾ In Bangladesh, the restorative justice includes probation and rehabilitative programs. The Probation and Aftercare Program, managed by the Department of Social Services, holds significant importance. The program traces its origins back to the issuance of the ‘Probation of Offenders Ordinance’ in 1960, with the correctional initiative officially launched in 1962 under the 2nd five-year Plan. This comprehensive program is currently operational in 70 units across 64 districts, including 6 CMM Courts. Implementing various legal frameworks such as the Probation of Offenders Ordinance, 1960 (amended 1964), Children Act, 2013 (amended 2018), and Karagare Atok Sajaprapto Narider Bishes Subidha Act, 2006, and related rules, the program aims to correct criminal behavior through non-institutional and social remedial approaches. With 70 probation officers at the district level and additional responsibilities assigned to Upazila and Urban Social Services Officers, the program focuses on preventing re-offending and facilitating the reintegration of offenders into society. The issuance of a ‘Probation Order’ by the court, considering various factors, marks the commencement of this socially transformative process.⁵³⁾

2.3.3. Victim Support Centre

The establishment of an efficient Victim Support Center is imperative. In Bangladesh, there are victim support center under Bangladesh Police. There are few victim support facilities under Ministry of Women Affairs. Those centers are doing great job, but they are not enough. However, it should serve as a dedicated resource hub, offering comprehensive assistance to victims navigating the criminal justice process. It should provide emotional support, guidance, and necessary information to victims, ensuring their rights are upheld and their needs are addressed throughout legal proceedings. This approach intends to create a more inclusive and supportive system, ensuring that every individual, particularly victims and under-

52) Umbreit, M. S., & Armour, M. P. (2011). Restorative justice and dialogue: Impact, opportunities, and challenges in the global community. *Wash. UJL & Pol’y* (p. 89).

53) Mediation and Restorative Justice Practices in Europe: Improving the Probation Process, May, 2023, (<https://prisonsystems.eu/mediation-and-restorative-justice-practices-in-europe-improving-the-probation-process/>) accessed on 15 January 2024.

served populations, can access quality justice and receive the necessary assistance during their interaction with the legal framework.

2.4 Limitation, Challenges, and Concerns of Implementing ADR in the Criminal Justice System

2.4.1. Limitation and Challenges

A. Pervasive Fear of Out-of-court Settlements

Presently, the populace of our nation predominantly relies on the judiciary, even if it entails enduring prolonged waiting periods. Concerns linger regarding the potential manipulation of outcomes by influential entities wielding muscle power or political influence, potentially skewing justice in favor of biased judgments. There persists a pervasive fear that out-of-court settlements might undermine the sanctity of the rule of law in Bangladesh.

B. Palpable Lack of Enthusiasm of ADR in Criminal Matters

While Alternative Dispute Resolution (ADR) stands as a remarkable approach in alleviating case overload and facilitating swift resolution of disputes, its application in Bangladesh remains predominantly confined to civil suits. There exists a palpable lack of enthusiasm among individuals for pursuing out-of-court settlements concerning criminal matters, fearing that it might not ensure genuine justice without the formal intervention of a court. There are instances of practicing compromise but not in any constructive or systematic way.

C. Traditional Prosecution System

Notably, in Bangladesh, criminal cases primarily fall under police purview when registered as GR cases.⁵⁴⁾ Regrettably, the inclination of the police is often directed towards

54) Criminal cases are generally of two types: CR and GR. GR cases are usually filed with the police. The CR case has to be filed in the criminal court. In the GR case, the state itself appoints lawyers for the plaintiffs, who are called public prosecutors (PPs). And in CR cases, the complainant has to personally appoint a lawyer to handle the case. The decision to withdraw a case may be taken due to lack of sufficient evidence in a case or compromise between the parties to the case. There are two types of provisions in the criminal procedure for withdrawal of cases. In cases where the state itself is a party to the GR case, the public prosecutor can apply to withdraw the case under Section 494 of the Criminal Procedure Code. In a CR case, the complainant or a lawyer appointed on his behalf can apply for withdrawal of the case under Section 247 of the Criminal Procedure Code. <https://bdplaw.com/withdrawal-of-civil-criminal-suits-in-bangladesh.html>, accessed on 24 January 2024.

court proceedings rather than considering ADR options, adhering to the court's directives throughout the investigative and filing stages. The prosecution system of Japan exercises discretionary power in these cases by police and public prosecutors extensively use the discretion in the prosecution stage.

D. Challenge of Initial Use of Plea Bargaining

Furthermore, while plea bargaining remains unpracticed in Bangladesh, its potential introduction could impose undue pressures on the accused, compelling them to admit guilt even if innocent. Drawing parallels with India, where plea bargaining exists, it has stirred controversies within their judicial system, with eminent jurists disapproving of its principles due to inherent biases and unjustifiable nature.

2.4.2. Concerns of ADR in Criminal Justice

A. Ensuring Fairness and Due Process

One of the primary concerns associated with Alternative Dispute Resolution (ADR) methods in the criminal justice system is ensuring fairness and due process. While ADR processes provide flexibility and informality, they must adhere to fundamental principles of fairness to maintain the integrity of the justice system.⁵⁵⁾ Procedural safeguards must be in place to protect the rights of both victims and offenders. This includes ensuring that participants have access to legal representation, are adequately informed about their rights and options, and have the opportunity to make informed decisions. Additionally, mechanisms for addressing power imbalances and ensuring that participants can freely express their concerns without coercion or intimidation are crucial in maintaining fairness in ADR processes. Moreover, transparency and accountability are vital components of fair ADR practices. The decision-making processes, criteria for determining outcomes, and the reasons behind

B. Addressing Disparities and Power Imbalance

Power imbalances between victims and offenders can significantly impact the effectiveness and fairness of ADR processes. Victims may feel intimidated or coerced by offenders, particularly in cases involving domestic violence or other forms of abuse. Ensuring that power

55) Chowdhury, Dr. Jamila A. (9 March 2013). "Introduction of ADR in criminal cases." The Daily Star (Bangladesh), at <https://www.thedailystar.net/news/introduction-of-adr-in-criminal-cases>, last accessed on 07 January 2024.

dynamics are adequately addressed is essential for creating a safe and equitable environment for all participants.⁵⁶⁾ The role of the mediator or facilitator becomes crucial in addressing power imbalances during ADR processes. They must be trained to recognize and mitigate. Imbalances provide result in lenient outcomes or inadequate punishment for offenders, potentially undermining the perception of justice. To address these concerns, it is crucial to strike a balance between the interests of victims, offenders, and the community. Accountability measures, such as restitution, community service, or rehabilitation programs, can be integrated into ADR processes to ensure that offenders are held responsible for their actions. Transparency in decision-making and the involvement of all stakeholders in the resolution process can help build public confidence in the fairness and effectiveness of ADR methods. Additionally, public education and awareness campaigns are necessary to inform the public about the purpose, benefits, and limitations of ADR in the criminal justice system. This can help dispel misconceptions, address scepticisms, and foster a better understanding of how ADR methods complement traditional justice approaches.

C. Ensuring the Protection of Victims' Rights

In any criminal justice system, the protection of victims' rights is of utmost importance. ADR methods must prioritize the safety, well-being, and rights of victims throughout the resolution process. Confidentiality is a critical concern when dealing with sensitive information shared during ADR processes. Safeguards must be in place to protect victims' privacy and prevent the misuse of information. Victims should have the option to seek legal advice, access support services, and be informed about their rights throughout the ADR process. Furthermore, victims should not feel pressured or coerced into participating in ADR processes if they are uncomfortable or do not wish to engage with the offender. Alternative pathways for victims seeking justice should always be available to pursue criminal charges in traditional court proceedings.

In the realm of criminal trials, achieving a win-win scenario akin to civil matters remains a formidable challenge. The compensations or damages in criminal offenses might not aptly serve the interests of the involved parties, potentially leading to the continuous oppression of victims if ADR is not implemented cautiously. For genuine access to justice through

56) The Daily Star, <https://www.thedailystar.net/law-our-rights/compromising-crimes-legally-possible-1591837>, accessed on 6 January 2024.

ADR in criminal litigation, it is imperative to adopt rigorous measures and provide adequate training to all stakeholders involved. Establishing trust and confidence in the ADR process necessitates concerted efforts from the state, law enforcement agencies, and the judiciary. In the current state of vulnerability, this study contends that the introduction of ADR in Bangladesh's criminal justice system should be approached cautiously, ensuring the creation of a safe and reliable environment before its implementation.

III Alternative Dispute Resolution: Scope, Benefits and Challenges in Criminal Justice System

The means of Judicial Dispute Resolution can be traced throughout history in various laws and religious codes over the past 5000 years, starting with the laws of a Babylonian ruler Hammurabi from about 2500 (2125–2080) BC.⁵⁷⁾ While the Alternative Dispute Resolution perhaps can be founded even long before the development of code and laws but with the existence of human being in the earth. The basis of ADR is social consciousness and moral obligation with voluntary participation to settle the disputes to restore social harmony and peace. In ancient China, inspired by Confucianism, ADR became the primary method of settling disagreements. The philosophical basis of ADR drawn from Confucian phrase 'calling for ruling by virtue' during 551–478 BC.⁵⁸⁾ The philosophy of Confucius, in essence, was of harmony, of peace and of compromise. According to him, the best way of resolving disagreement or dispute is by moral persuasion and compromise instead of by sovereign coercion. The Confucian theory influenced several Asian countries, such as, Japan, Korea, Vietnam, and ancient Indian Sub-continent.⁵⁹⁾ Within the framework of rule of law initiatives, ADR programs aim to:

- ⇒ Support and enhance court reform efforts
- ⇒ Provide an alternative to ineffective and discredited court systems and procedures
- ⇒ Enhance public satisfaction with dispute resolution processes

57) Urch, Erwin J. "THE LAW CODE OF HAMMURABI." *American Bar Association Journal*, vol. 15, no. 7, 1929, pp. 437–41. *JSTOR*, <http://www.jstor.org/stable/25707711>. Accessed 7 Jan. 2024. (See also Harper, R. F., *The Code of Hammurabi* (2 vols, containing a translation and exposition of the Code; Jones, G. H. W., *The oldest Code of the Laws in the World*)

58) <https://www.britannica.com/topic/Confucianism>, accessed on 15 December 2023.

59) <https://www.lawyersnjurists.com/article/criminal-justice-admisintration-and-adr/>, 19 December 2023.

- ⇒ Improve access to justice, particularly for disadvantaged groups
- ⇒ Expedite the resolution of disputes, reducing delays
- ⇒ Lower the overall cost of dispute resolution.⁶⁰⁾

Purposes in the Context of Other Developments: In the context of broader development objectives, ADR programs can:

- ⇒ Foster civic engagement and establish public processes to facilitate economic restructuring and social change
- ⇒ Contribute to reducing tension and conflict within a community
- ⇒ Effectively manage disputes and conflicts that may directly hinder community development initiatives.⁶¹⁾

3.1 The Scope of Alternative Dispute Resolution in the Criminal Justice System

The criminal justice system predominantly exists to safeguard the public and uphold the rule of law. ADR is widely used and associated with civil and commercial disputes. In the context of criminal justice system, the use of ADR mechanisms is carefully managed to ensure that justice is served. However, the ADR can play a role in specific aspects of criminal dispute resolution while its scope is limited due to the unique nature of criminal law.⁶²⁾ The ADR is not typically used for resolving the core issues of criminal cases, such as determining guilt or innocence, imposing criminal penalties, or deciding matters of public safety. Instead, the ADR in the Criminal Justice System is mainly applied to ancillary issues and in certain specific cases. The most important thing to note that the uses and application of ADR in criminal dispute resolution varies from country to country and the specific circumstances of the case. In this paper, the scope of ADR will be examined under widely practiced ADR mechanisms. Scrutinizing global practice, the ADR mechanisms such as, victim-offender Mediation, plea Bargaining and Restorative justice is widely found in criminal justice system.

60) CRIMINAL JUSTICE ADMISINTRATION AND ADR, <https://www.lawyersnjurists.com/article/criminal-justice-admisintration-and-adr/>, last accessed on 07 January 2024.

61) Ibid.

62) The Scope of Alternative Dispute Resolution in the Criminal Justice System https://heinonline-org.kras.lib.keio.ac.jp/HOL/LuceneSearch?terms=The+Scope+of+Alternative+Dispute+Resolution+in+the+Criminal+Justice+System&collection=journals&searchtype=advanced&typea=text&tabfrom=&other_cols=yes&submit=Go&sendit=, accessed on 15 December, 2023.

3.1.1. Victim-offender Mediation

The Victim-Offender Mediation is a voluntary and confidential process in which a neutral third party, the mediator, assists the parties involved in a dispute to reach a mutually acceptable resolution. In the context of the criminal justice system, mediation offers an alternative to traditional court trials, allowing victims, offenders, and other affected parties to actively participate in the resolution process. In certain cases of non-violent crimes, victim-offender mediation may be commissioned. This process brings the victim and offender together in a controlled setting to discuss the impact of the crime and agree on restitution or other forms of resolution and encourages open dialogue, empathy, and understanding, with the goal of addressing the underlying causes of the conflict and finding solutions that meet the needs of all parties involved. The goal is to provide redress to victims and help offenders make amends. The mediator does not impose a solution but instead guides the parties towards a mutually agreed-upon resolution.

A. Offences Eligible for Mediation and Initiative in the World

It may be a question that who are supposed to handle the cases as mediator and which offenses are possible to mediate in criminal cases. The extent of mediatable criminal cases varies from country to country depending on criminal legal jurisprudence of that particular country. Following are some examples of countries taken into consideration from common law, civil law and socialist legal system.

(1) Criminal Mediation in Singapore

Chief Justice Professor of Singapore, Dr Muhammad Syarifuddin in his *SPEECH TO THE INDONESIAN JUDICIARY* says, 'Mediation is a fundamental tool for the resolution of disputes, because it advances two core ideals of a justice system: the rule of law and the maintenance of peace'. In Singapore, criminal mediation⁶³⁾ has started in 2010. The criminal mediation is initiated through the Criminal Case Management System (CCMS).⁶⁴⁾ An unresolved case may be referred for criminal mediation by the pre-trial judge or by both consenting parties where the defendant is represented. In the State Courts for example, the Court Dispute Resolution Cluster (CDRC) actively manages all personal damage cases arising out of motor accidents, professional negligence cases and cases arising out of other negligent torts. More than 85% of all cases managed by CDRC judges are amicably resolved without trial.⁶⁵⁾ The role of a Judge mediator is limited to the extent that he or she is only allowed to facilitate the

session and not evaluate the case.⁶⁶⁾ However, the main aim of CCR is to supplement the adversarial system in a most efficient manner with effective utilization of state resources. Criminal mediation should only be applied to minor cases⁶⁷⁾ as it creates effective efficiency in the criminal justice system.

At the Criminal Mediation, the following can happen:

1. The Magistrate may refer both parties to a Community Mediation Centre where there are a panel of trained and respected mediators or to a Court Mediator,

63) Criminal mediation spells a different note in resolving crimes against the state. Simply put, although the prosecution still initiates the criminal process, a Judge mediator acts a neutral party to mediate the resolution of the case between the adversaries in an informal setting. It provides a “neutral forum, facilitated by a judge, for parties to discuss and explore the possibility of early resolution of criminal cases” (Subordinate Courts, 2011) so as to avoid, amongst others, “cracked trials” or withdrawal of prosecution on the day of trial. There are variants in criminal mediation models across jurisdictions. Essentially the variation is dictated by the role played by the judge in mediating the session. In certain American jurisdictions, the Judge mediator plays an extensive role in resolving/facilitating the session. He is allowed to give an evaluation of the strengths and weaknesses of the case Gottsfield, R., & Michowski, M. (2007). Settlement Conferences in Criminal Court. Arizona Attorney, 43, 8–16, Chen, Ruihua. *Models of Criminal Procedure System*, Springer, 2022, <https://ebookcentral-proquest-com.kras.lib.keio.ac.jp/lib/keio/detail.action?docID=7102982>.

64) A criminal case goes through the CCMS between the Attorney General’s Chambers (AGC) and defense counsel prior to criminal mediation, known as Criminal Case Resolution (CCR), Section 151–153, Criminal Procedure Code of Singapore, REGISTRAR’S CIRCULAR NO. 4 OF 2011, CRIMINAL CASE RESOLUTION (CCR), https://www.judiciary.gov.sg/docs/default-source/circulars/2011/registrars_circular_no_4_2011_state_courts.pdf?sfvrsn=466a999a_2
<https://www.judiciary.gov.sg/criminal/criminal-mediation#:~:text=Criminal%20mediation%20is%20one%20of,them%20find%20their%20own%20solutions.>

65) Introduction To Singapore and Its Legal Framework, <https://www.int-jdrn.org/files/SG%20Country%20Report.pdf>, accessed on 07 January 2024

66) Apart from clearing the criminal docket for more serious crimes, criminal mediation of minor/low impact crimes is seen to be more effective in addressing the underlying issues of these crimes (Simms, 2006–2007 [https://www.scirp.org/\(S\(1z5mqp453edsnp55rrgjt55.\)\)](https://www.scirp.org/(S(1z5mqp453edsnp55rrgjt55.))) /reference/referencespapers.aspx?referenceid=1836295.)

67) Minor or low impact crimes include simple offences against persons such as assaults and threats, unlawful entries, offences against property such as destruction of property, theft etc. Koman, R. (2016) Balancing the Force in Criminal Mediation. *Beijing Law Review*, 7, 171–180. Doi: 10.4236/blr.2016.73018, last accessed on 12 January 2024.

- Personal injury or non-injury motor accident (PIMA or NIMA) claims.
 - These will automatically be referred for neutral evaluation.
- Complaints under the Community Disputes Resolution Act or Protection from Harassment Act.
- Magistrate’s Complaints.
 - These may be referred for mediation. <https://www.judiciary.gov.sg/alternatives-to-trial>,

2. Any person who fails to comply with the order of the Magistrate shall be guilty of contempt of court.⁶⁸⁾

The Magistrate may also mediate the matter. If there is no settlement agreement here, the Complainant may wish to proceed to trial by way of a Private Summons (there is a small fee payable for each summons.⁶⁹⁾

The mediation session may be conducted by one of the following centres.⁷⁰⁾

- The State Courts Centre for Dispute Resolution,
- The Ministry of Law's Community Mediation Centre.⁷¹⁾

The mediators are liable for their act done in good faith which is not done with fraud or wrongful misconduct.⁷²⁾ This is prudent and a wise approach as it is obvious that all cases subject to State Court jurisdiction are capable of testing.

(2) Mediation and Reconciliation in Criminal Cases in Thailand

In Thailand, the Mediation Center has authority to mediate compoundable offences⁷³⁾ when the crime victim or injured person files the complaint by himself or herself, while the Reconciliation Center deals with non-compoundable cases the public prosecutor brings it as a lawsuit before the court. Unlike Bangladesh, instead of a list given in the criminal procedure, whether an offence is compoundable or not is referred in the related penal law. Offence to trade (Sec.71, 96, 272, 281), Offences relating to sexuality (Sec. 283, 284), Offence against liberty (Sec 321), Disclosure of Private Secrets (Sec 325), Defamation (Sec 333), Cheating and Fraud (Sec 348), Offence of misappropriation (Sec 356), Offence against creditors (Sec 350), and offence of mischief (Sec 361) are Compoundable under Thailand Criminal Code, 1956.⁷⁴⁾ The Mediation Center and Reconciliation Center allow offenders, victims, and their family members to participate in every session. During the mediation and reconciliation

68) Section 8, the State Courts Act.

69) <https://www.singaporecriminaldefencelawyer.com/what-happens-at-the-criminal-mediation-for-a-magistrates-complaint/>, accessed on January 8, 2024.)

70) <https://www.judiciary.gov.sg/criminal/criminal-mediation>, January 8, 2024.

71) <https://cmc.mlaw.gov.sg>, accessed on January 8, 2024

72) Under section 68 of State Courts Act, 1970, <https://sso.agc.gov.sg/Act/SCA1970?WholeDoc=1>, accessed on 11 January 2024.

73) Sections 3, 35, 36, 39, 72, 121, 126, 166, The Criminal Procedure Code of Thailand, <https://www.icj.org/wp-content/uploads/2012/12/Thailand-Criminal-Procedure-Code-1934-2008-eng.pdf>

process, the offender and victim participate in a face-to-face victim-offender meeting, including both joint and caucus sessions.⁷⁵⁾ The mediation and reconciliation system have a *special concern* for the needs of crime victims. The crime victim has a chance to express his or her emotion, agony and insecure feelings as well as to ask for compensation and restitution from the offender. At the same time, the offenders can show their responsibility, sympathy and regret. During the mediation process, a mediator will conduct and facilitate both parties to express their real interest and finally get to the agreement. On the other hand, during the reconciliation process, a judge has a duty to explain the charge, the accused's rights and liability and victim's rights.⁷⁶⁾

(3) *Prosecutor's Role in Japan as a Mediator*

In Japan, Public Prosecutors are assigned to one of the Public Prosecutors Offices and engaged in prosecution.⁷⁷⁾ Public Prosecutors are usually appointed from those who have passed the bar exam and finished the legal apprenticeship.⁷⁸⁾ Each District Public Prosecutors Office is headed by a Chief Prosecutor assigned among experienced Public Prosecutors.⁷⁹⁾ They have the power to investigate any crimes,⁸⁰⁾ as well as issue orders to the police about specific investigations.⁸¹⁾ Also, they have the authority to prosecute criminal cases.⁸²⁾ The Japanese law allows a public prosecutor not to prosecute a suspect when the prosecution is unnecessary due to the character, age and environment of the offender, the gravity of the offence and the circumstances or situation after the offences.⁸³⁾ A suspect will be prosecuted if and only if it is obvious based on evidence that he/she has committed a crime in question and the prosecutor finds it necessary to prosecute him/her.⁸⁴⁾ From the white paper of 2023 it can be

74) <https://www.samuiforsale.com/law-texts/thailand-penal-code.html>, accessed on 07 January 2024.

75) https://www.unafei.or.jp/publications/pdf/RS_No93/No93_PA_Khotcharit.pdf

76) https://www.unafei.or.jp/publications/pdf/RS_No93/No93_PA_Khotcharit.pdf

77) [https://en.wikipedia.org/wiki/Public_Prosecutors_Office_\(Japan\)#:~:text=Public%20Prosecutors%20\(検事%2C%20Kenji\),authority%20to%20prosecute%20criminal%20cases](https://en.wikipedia.org/wiki/Public_Prosecutors_Office_(Japan)#:~:text=Public%20Prosecutors%20(検事%2C%20Kenji),authority%20to%20prosecute%20criminal%20cases), accessed on 26 December 2023.

78) Public Prosecutor's Office Act, Art 18.

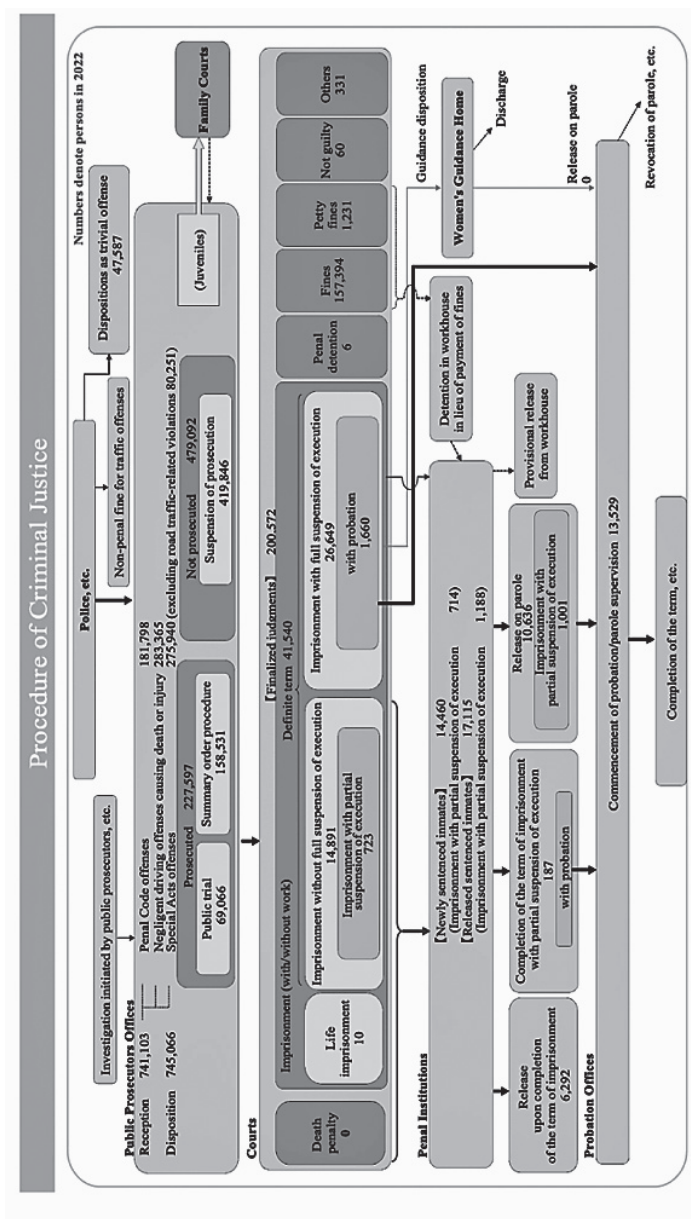
79) Public Prosecutor's Office Act, Art 9 (1).

80) Public Prosecutor's Office Act, Art 6 (1).

81) Code of Criminal Procedure, Art 193 (3).

82) Public Prosecutor's Office Act, Art 4.

83) Code of Criminal Procedure, Art 248: Where prosecution is deemed unnecessary owing to the character, age, and environment of the offender, the gravity of the offense, and the circumstances or situation after the offense, prosecution need not be instituted.

Figure 3: The structure of Procedure of Criminal Justice in Japan. ⁸⁵⁾

found that out of 741, 103 offences which received in Public Prosecutors office, 227,597 offences prosecuted rather 419, 846 offences had been non-prosecuted by the Public Prosecutors. In Japanese criminal procedure there is a principle known as the opportunity principle (Kiso Bengi Shugi) found in Article 248 of the Code of Criminal Procedure.⁸⁶⁾ This principle is designed to ensure fairness, justice, and equity in the prosecution of criminal defendants. This principle grants the prosecution the power to suspend prosecution for certain humanitarian reasons. The nature of suspending prosecution for humanitarian reasons resembles alternative dispute resolution. The Public Prosecutors in that situation play the role of mediator.

(4) Mediation and Reconciliation in Criminal Cases in Viet Nam

Court-annexed mediation and dialogue is a new dispute resolution mechanism in Viet Nam, introduced through a pilot program launched in 16 localities throughout the country.⁸⁷⁾ At the court session, the presiding judge shall ask whether the involved parties can reach mutual agreement⁸⁸⁾ on the resolution of the cases or not. Cases submitted to court will be first transferred to Mediation and Dialogue Centres at the Court, which are established under the pilot program, except cases not under the court's jurisdiction, cases not subject to mediation or dialogue, and cases where the parties don't wish for mediation or dialogue at the court.⁸⁹⁾ Court-annexed mediation and dialogue is recognized as an important initiative to help reduce the number of cases submitted to court and to enhance the quality of court process for complicated cases.⁹⁰⁾ According to current regulations, procedure-conducting agencies may

84) How does a prosecutor decide whether to prosecute a case or not?] (in Japanese). Public Prosecutors Office, <https://www.kensatsu.go.jp/qa/qa2.htm#q5>, accessed on 22 December 2023.

85) White Paper on Crime 2023, Page 4, <https://www.moj.go.jp/content/001407883.pdf>, last accessed on 07 January 2024.

86) The Code of Criminal Procedure: (Opportunity principle)

Article 248. In case it is unnecessary to prosecute according to the character, age and environment of an offender, taking into consideration the weight and conditions of an offense as well as the circumstances after the offense, the public prosecution may not be instituted.

87) <https://www.undp.org/vietnam/publications/court-annexed-mediation-and-dialogue-eu-jule-policy-brief-no-7>

88) In cases where they reach agreements on the resolution of the cases and their agreements are voluntary, not contrary to law or social ethics, the trial panels shall issue decisions to recognize their agreements on the resolution of the cases. The court decisions recognizing the involved parties' agreements on the resolution of the cases shall take legal effect.

89) <https://www.undp.org/vietnam/publications/court-annexed-mediation-and-dialogue-eu-jule-policy-brief-no-7>

only prosecute criminal cases charging crimes specified in Clause 1, Articles 134, 135, 136, 138, 139, 141, 143, 155, 156 and 226 of the Penal Code. This must be done at the request of the victim or the victim's representative if the victim is under the age of 18, mentally or physically impaired or deceased (hereinafter referred to as the victim).⁹¹⁾ In about one-third of the cases exempted under Clause 3, Article 29 of Penal Code 2015, the victim or their lawful representative voluntarily reconciled and proposed to exempt the defendant from criminal liability. Persons exempt from criminal liability in these cases mainly committed one of the following crimes: intentionally causing injury or harm to the health of others, theft, destroying or intentionally damaging property, tax evasion, and violation of regulations on participating in road traffic, according to the provisions of Clause 1 of Articles 134, 173, 178, 200 and 260 of Penal Code 2015 respectively.⁹²⁾

According to crime statistics, since the application of the 2015 Penal Code and 2015 Criminal Procedure Code, first-instance courts on average suspend cases for about 500 offenders in about 350 criminal cases each year, according to the regulations defined in Article 282 of the Criminal Procedure Code.⁹³⁾ Of these, it is estimated that about 50% of the suspensions were due to the victim withdrawing the petition for prosecution. Persons whose cases were suspended due to the victim's withdrawal of the petition for prosecution occurred for nine types of crimes that are prescribed by law to institute criminal cases at the request of the victim.⁹⁴⁾

The mediator, conciliator is decided by the chairman of the commune People's Committee in accordance with the procedures to elect accredited mediator, conciliator regulated by

90) The majority of mediators are retired judges, procurators, lawyers, legal experts who have experience and capability in resolving disputes.

91) Criminal Procedure Code 2015: clause 1, Article 155.

92) Research Study, Jury Trials, Plea Bargaining, and Restorative Justice, International Experience and Recommendations for Viet Nam, 2023, UNDP, https://www.undp.org/sites/g/files/zskgke326/files/2023-02/Jury%20Trial_ENG_FINAL.pdf, accessed on 06 January, 2024.

93) Grounds for the termination of the case include: i) the victim withdraws his/her request for criminal prosecution cases at the request of the victim, ii) the person who commits an act dangerous to society is under the age for criminal liability; iii) persons whose criminal acts have had a legally effective judgment or decision to stop the case; iv) the statute of limitations for criminal prosecution has expired; v) the crime has been pardoned; vi) and the person who committed the act dangerous to society has died.

94) Tran Kim Chi, Hochiminh City University of Law, Victim's Participation in Adversary Procedure of the Russian Federation's Criminal Procedure Code and Lessons for Vietnam, <https://intapi.sciendo.com/pdf/10.2478/vjls-2021-0015>, last accessed on 07 January, 2024.

the Law on the grassroots conciliation, mediation. The following cases which are not subject to mediation, conciliation:

- i) Conflicts and disputes infringe upon the interests of the State or the public interest;
- ii) Violation of the laws on marriage and family that prescribed by law shall be settled by competent state agencies, civil transactions in violation of law or social ethics;
- iii) Legal infringements which should be prosecuted for criminal liability, except in cases specified in 1.c.v mentioned above;
- iv) Violation of the provisions of law which should be handled by administrative sanction, except for cases prescribed at Point 1.c.vi mentioned above;
- v) Conflicts and disputes which are not subject to grassroots mediation.⁹⁵⁾

B. Benefits of Mediation

One of the primary benefits of mediation in criminal justice is the empowerment it provides to victims. By directly engaging with the offender, victims can express their feelings, voice their concerns, and participate in the decision-making process. This can contribute to a sense of closure, validation, and healing for victims, as well as a greater likelihood of offender accountability. For offenders, mediation offers an opportunity to take responsibility for their actions, understand the impact of their behaviour on the victim and the community, and work towards repairing the harm caused. By actively engaging in the resolution process, offenders may gain insight, develop empathy, and demonstrate genuine remorse. Mediation can also provide a more constructive and rehabilitative approach for low-level offenses, diverting individuals away from the formal court system and its potential negative consequences.

C. Challenges and Limitations

There are challenges and limitations to consider in the application of mediation in criminal justice. The suitability of mediation depends on the *nature and severity of the offense*,

95) Dispute resolution by mediation, conciliation in Vietnam, Vietnamese regulations on dispute resolution by mediation, conciliation, <http://www.lawyervn.net/en/dispute/dispute-resolution-by-mediation/dispute-resolution-by-mediation-conciliation-in-vietnam.html>, last accessed on 07 January, 2024.

the willingness of the parties to participate, and the presence of power imbalances. Issues such as domestic violence cases or cases involving vulnerable victims may require careful assessment ensure the safety and well-being of all participants.

3.1.2. Plea Bargaining

Plea Bargaining is another type of ADR mechanism suggested for criminal cases which is widely practiced in many developed countries like USA, UK, and Australia. Plea bargaining may be defined as an agreement in a criminal case between the prosecution and the defense by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally made the accused aware that his sentence will be minimized if the accused pleads guilty. Plea bargaining is a negotiated agreement between the prosecution and the defence, where the defendant pleads guilty in exchange for concessions, such as a reduced sentence or a lesser charge. Plea bargaining is widely used in criminal justice systems worldwide and is considered an essential alternative to trial-based litigation.

A. Plea Bargainable Criminal Cases and Initiative of the World

While not typically considered a form of ADR and distinct from civil cases, plea bargaining is a common practice in criminal law. Prosecutors and defence attorneys negotiate to reach an agreement that avoids a full trial. Although it doesn't fit the classic ADR model, it is a form of alternative resolution in criminal cases. There are several ways of Plea Bargaining. Charge bargain happens when the prosecution allows a defendant to plead guilty to a lesser charge or to only some of the charges framed against him. Prosecution generally has vast discretion in framing charges and therefore they have the option to charge the defendant with the highest charge that are applicable. 'Charge Bargain' gives the accused an opportunity to negotiate with the prosecution and reduce the number of charges that may have framed against him. A sentence bargain may allow the prosecutor to obtain a conviction in the most serious charge, while assuring the defendant of an acceptable sentence. As far as sentence bargain is concerned, it happens when an accused or defendant is told in advance what his sentence will be if he pleads guilty.

(1) Plea Bargaining in Germany

In Germany, during 1970s Germany started to implement plea bargaining in their

criminal justice system without formally changing the criminal procedure. German legal actors were strongly encouraged to change their attitudes towards plea bargains and agreements with defendants by external societal processes that increased the amount and complexity of criminal proceedings. German criminal procedure has undergone substantial modifications over the past 20 years, as seen by the rising use of usually informal plea deals by those involved in the proceedings, including the public prosecutor and defence attorneys, but especially the courts. Plea agreements, according to estimates, are used to settle almost half of all criminal cases before German courts. Plea agreements are becoming widespread, especially in cases of drug offences with an international component and sophisticated evidence, as well as in the context of economic crimes, where thorough evidence gathering has become rare.

(2) Plea Bargaining in France

The French Criminal Procedure Code was revised in 1999, plea negotiations were first made legal in France. The prosecution may provide the defendant with the option of foregoing a traditional criminal trial in exchange for an admission of guilt and the accomplishment of a condition like paying a fine, handing over any items used in the crime (or obtained during the crime), or giving up his driving or hunting privileges for a period. This option may be presented to the defendant before formal proceedings begin. The prosecution will ask the court to confirm the plea agreement if the defendant accepts it. The composition can only be used to prosecute certain offences that are specifically listed in the French Code, such as simple assault, threats, simple robbery, criminal damages, criminal libel and slander, animal cruelty, possession of specific weapons, or driving under the influence. In other words, for minor offence only plea bargaining can be used in France.

(3) Plea Bargaining in UK

In the UK, plea bargaining is conducted in a different way. It calls for the court to suggest sentence reduction on particular situations after consulting with the solicitors for both sides. The accused chooses to enter a guilty plea in exchange for a less sentence without having to engage in formal talks with the opposing counsel. With one exception, the judge should never state what punishment he will assign. With this exception, a judge should be able to rule that the sentence will or won't take a particular form regardless of what happens, whether the accused pleads guilty or not. With the exception of information about which the accused should remain ignorant, such as cancer, which he is unaware of, the defence attorney should

inform the accused when such a dialogue regarding punishment has occurred. Thus, in England and Wales, a plea agreement is only permitted if both the prosecution and defence agree that the defendant will admit guilt to some charges while the prosecution will drop the others.

(4) Plea Bargaining in USA

In United States of America, the Plea Bargaining started in the later part of 19th century in some states of America. It later became a norm rather than an exception. They have been occurring more frequently; from 84% of federal cases in 1984 to 94% in 2001.⁹⁶⁾ **Brady v. United States**,⁹⁷⁾ which was decided in 1970, established the constitutionality of plea negotiations. In **Santobello v. New York**,⁹⁸⁾ it was observed by US Supreme Court that, Plea bargaining is a crucial component of the criminal justice system in the United States. Without it, the States and the Federal Government would need to double the number of judges and court offices, which is not feasible. The Court is obligated to make sure that the accused entered his or her plea voluntarily and without being under coercion. The accused must be given confidentiality protection. The overpopulation in American prisons gave Plea bargaining more traction. In **Brady Vs. United States**,⁹⁹⁾ according to the US Supreme Court, the agreement reached out of concern that the trial will result in the death penalty does not render the plea-bargaining procedure invalid. Plea Bargaining is legitimate if it has been properly managed and carried out. Plea Bargaining can be exercised on all offences irrespective of the nature of the offence. Anyone accused of committing a crime has the option to pursue plea bargaining. However, the victim does not actively participate in the Plea-Bargaining process in the USA. Once an agreement is reached between parties, the case reaches its finality and there is no appeal even in the form of Writ.¹⁰⁰⁾

(5) Plea Bargaining in India

In India, the concept of Plea Bargaining was not accepted till the criminal law

96) Fisher, George (2003). *Plea Bargaining's Triumph: A History of Plea Bargaining in America*. Stanford University Press. ISBN 978-0804744591

97) 397 U.S. 742.

98) 404 U.S. 257 (1971).

99) 397 U.S. 742 (1970).

100) Lumina L, **An Analysis on the efficiency of Alternative Dispute Resolution in Criminal Justice System with emphasis on Plea Bargaining**, National University of Advanced Legal Studies, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4566301, accessed on 26 December, 2023.

amendment in 2005. Supreme Court was very much hesitant to apply plea bargaining as an alternative means to settle dispute and this can be observed in various cases namely, in **Kachhia Patel Shanthilal Koderlal v. State of Gujarat and others**,¹⁰¹⁾ where Supreme Court ruled that the practice of Plea Bargaining is unlawful citing corruption as the main reason for the same and in **State of Gujarat vs. Bhai Ardul Rehman Bhai Shaikh**,¹⁰²⁾ where the court observed that Plea Bargaining induces the accused to plead guilty for which he would be awarded with lighter sentence and hence in no way benefits public interest. In **State of U.P. v. Nasruddin**,¹⁰³⁾ in a matter involving fine the application of plea bargaining as a means of alternative dispute resolution was deemed illegal. Thus, it may be concluded that courts in general did not accept the notion of plea bargaining as an alternative dispute resolution in criminal justice system till the Criminal Law Amendment of 2005. Plea Bargaining is covered under Sections 265A through 265L¹⁰⁴⁾ permits plea bargaining following situations-

1. where the maximum penalty is a seven-year jail sentence,¹⁰⁵⁾
2. the offences have no impact on the nation's socioeconomic standing,
3. the offences have not been committed against women or children under the age of 14,¹⁰⁶⁾
4. Where the accused is not a repeated offender, and
5. Where the accused is not a juvenile.

Even though the Indian legal system acquired the “Plea Bargaining” concept from the US, it nevertheless stands apart from how “Plea Bargaining” is practiced in the US. In the Indian judicial system, the judge has the authority to accept or reject a plea bargain proposal submitted by the accused. To ensure that the application for plea bargaining is made willingly by the accused, the negotiating procedure with the accused does not even begin in India before the application is submitted. In accordance with Indian law, the punishment imposed in any Plea-Bargaining case may be overturned by filing an SLP under Article 136 or a writ petition

101) [1980] 3 SCC 120, reiterated also in *Kasambhai vs State of Gujarat* (1980 AIR 854).

102) AIR 1980 SC 854.

103) (2000) Cri.L. J 4996.

104) Chapter XXIA of the Criminal Procedure Code. The Criminal Law (Amendment) Act of 2005 included it.

105) Section 265 A, The Code of Criminal Procedure, 1973, <https://www.indiacode.nic.in/bitstream/123456789/16225/3/a1974-02.pdf>

106) Section 265 L, The Code of Criminal Procedure, 1973, <https://www.indiacode.nic.in/bitstream/123456789/16225/3/a1974-02.pdf>

under Articles 226 and 227 of the Indian Constitution if the court believes it to be insufficient or justified by unfair circumstances. The victim plays a significant role in the plea-bargaining process under Indian law. In the event where a mutually agreeable resolution cannot be reached, the victim has the right to reject or veto. Recently, Plea bargaining is seen as an alternative method to deal with the huge arrears of criminal cases in India.

B. Plea Bargaining and Compounding of Offences

It is sometimes argued that instead of introducing the provision of plea bargaining expanding the list of compoundable offences would serve the purpose of reducing pending cases. However, extending the list of compoundable offences is not a wise option. This is because of two main reasons. First, compoundable offences are essentially those offences which are of private nature and can be reconciliated in principle with the victim. Some of them are compoundable with the permission of the court and some are compoundable without permission of the court. Second, compounding of offences has the effect of an acquittal and there is no admission of guilt by the accused envisaged in the process. This, however, cannot be applicable to serious offences. Since a crime is essentially a wrong against society, a compromise between the accused and the victim does not ideally serve to absolve the accused from criminal responsibility particularly for those offences which are not private in nature. This is why there is no alternative to plea bargaining for serious offences and in this scheme the accused must plead guilty although he will come out with lesser punishment. It is on this basis that the argument for extending compoundable offences so as to allow courts to function expeditiously is misplaced.

C. Benefits of Plea Bargaining

Plea bargaining offers several advantages to the criminal justice system. It helps expedite case resolution, reducing the burden on courts and minimizing the backlog of cases, by avoiding lengthy trials, plea bargaining can also save significant costs associated with investigations, legal proceedings, and the use of resources. Moreover, plea bargaining allows for the allocation of limited resources towards more serious or complex cases, ensuring that justice is efficiently administered.

3.1.3. Restorative Justice Programs

Restorative justice is an approach that focuses on repairing the harm caused by crim-

inal behaviour and promoting healing for all those affected by the offense. The unique role of community within the restorative justice model offers encouragement of victim-offender reconciliation, which helps to transform the criminal justice system with a sense of empathy and compassion. Unlike the traditional criminal justice system in which two parties are the state and the person charged with committing an offence, restorative justice involves ***the victim, the responsible party, and the community***. Restorative justice often attempts to reach beyond punitive measures, such as incarceration, probation, home confinement, education etc. to meet the needs of all those involved. Cases within the criminal justice system progressively are being resolved through a form of alternative dispute resolution which is called restorative justice.¹⁰⁷⁾

A. How Restorative Justice Differs from Mediation and Other ADR Mechanisms

There are significant similarities and dissimilarities between restorative justice and mediation. However, both of them provide opportunities to consider issues beyond the court case that are important to the parties. Both seek enduring outcomes. Moreover, the practice varies from country to country. While restorative justice focuses on repairing and involves many interviews are taken from the victim, the offender, and the people affected by the crime, in mediation focuses on conflict resolution and it is not compulsory to take an interview.¹⁰⁸⁾ Three guiding pillars¹⁰⁹⁾ of restorative justice are-

- The system recognizes and addresses the harm to each person or entity involved in and impacted by the harmful act.
- It encourages the participants to identify and fulfil their obligation to right the wrong caused by the harmful act.
- It involves engaging the participants in the process.

B. When this Program May Occur

There are several programs in different Countries which aims to reconcile offenders

107) <https://www.pon.harvard.edu/daily/dispute-resolution/alternative-dispute-resolution-examples-restorative-justice/>, accessed on 06 December 2023.

108) <https://timesofindia.indiatimes.com/readersblog/hail-to-feminism/restorative-justice-in-relation-to-mediation-40493/>, accessed on 06 December 2023.

109) <https://www.aboutrsi.org/special-topics/restorative-justice-what-is>, accessed on 06 December 2023.

with their victims and the community at large. They are often used in *juvenile justice cases* and can involve group conferences, circle processes, or other methods to address harm, responsibility, and repair.

C. *The Initiative in the Countries*

Restorative justice programs are being developed all over the world in places like: “Australia, Canada, most European countries, Japan, China, Liberia, New Zealand, South Africa, several South American countries, South Korea, Russia and Ukraine”¹¹⁰⁾ It emphasizes the involvement of victims, offenders, and the community (A recent news story¹¹¹⁾ has prompted discussion of how restorative justice is defined—and how it can be implemented fairly. According to the prosecutor, Joan Illuzzi-Orbon, the goal of the “alternative, restorative justice resolution” was “not just to punish but to educate and promote community healing.” She said that Cooper’s therapist said the sessions were “a moving experience” and that Cooper had “learned a lot.”¹¹²⁾ USA situation in addressing the underlying causes of crime, promoting accountability, and achieving meaningful resolution. Restorative justice processes vary from country to country, but they commonly include practices such as victim-offender dialogues, circle conferences, and community reparation programs. These processes provide opportunities for dialogue, empathy, and understanding, allowing victims to express their experiences, offenders to take responsibility, and the community to actively participate in the resolution process.

D. *Challenges of Implementation of Restorative Justice*

There exist challenges in the implementation of restorative justice. Concerns about power imbalances, ensuring the voluntary participation of all parties, and protecting victims’

110) Umbreit, M. S., & Armour, M. P. (2011). Restorative justice and dialogue: Impact, opportunities, and challenges in the global community. *Wash. UJL & Pol’y*, 36, 65.

111) On May 25, 2020, a video went viral of a white woman, Amy Cooper, arguing with a Black man, Christian Cooper (no relation), in New York City’s Central Park and then calling the police on him. Christian had asked Amy to follow park rules and leash her dog. She refused, and when Christian offered her dog a treat, called 911. Saying Christian was threatening her and her dog, she asked for the police to come. By the time the police arrived, the two had left. Amy was pilloried on social media for falsely accusing a Black man and potentially endangering him. She was charged with filing a false police report, a criminal misdemeanor.

112) <https://www.pon.harvard.edu/daily/dispute-resolution/alternative-dispute-resolution-examples-restorative-justice/>, accessed on 06 December 2023.

rights need to be carefully addressed. Additionally, the successful implementation of restorative justice requires adequate resources, trained facilitators, and community support, provide opportunities for dialogue, empathy, and understanding, allowing victims to express their experiences, offenders to take responsibility, and the community to actively participate in the resolution process. However, challenges exist in the implementation of restorative justice. Concerns about power imbalances, ensuring the voluntary participation of all parties, and protecting victims' rights need to be carefully addressed. Additionally, the successful implementation of restorative justice requires adequate resources, trained facilitators, and community support.

E. Outcomes of Restorative Justice

The application of restorative justice in criminal cases can lead to a range of outcomes, such as restitution, apology, community service, or a combination of these measures. By involving victims and offenders directly, restorative justice aims to repair the harm caused, restore relationships, and promote the reintegration of offenders into the community. The potential benefits of restorative justice in the criminal justice system are numerous. It offers victims the opportunity to be heard, receive apologies, and actively participate in decisions that affect their lives. It provides offenders with a chance to make amends, gain insight into the consequences of their actions, and work towards personal growth and rehabilitation. Restorative justice also allows communities to play a role in addressing crime, fostering social cohesion, and reducing the likelihood of reoffending.

Victims---It offers victims the opportunity to be heard, receive apologies, and actively participate in decisions that affect their lives.

Offenders---It provides offenders with a chance to make amends, gain insight into the consequences of their actions, and work towards personal growth and rehabilitation.

Community--- Restorative justice also allows communities to play a role in addressing crime, fostering social cohesion, and reducing the likelihood of reoffending.

IV Importance of Integration and Recommendations

4.1 Importance of Integrating ADR in the Criminal Justice System in Bangladesh

The protracted duration of criminal trials in Bangladesh's courts often leads to defendants spending significant time in judicial custody awaiting trial commencement. This pro-

longed process not only frustrates the accused but also affects victims and other involved parties. The excessive backlog of pending cases contributes to unduly extended trial periods. Moreover, even less severe cases incur substantial trial expenses. The persistent delays in adjudicating criminal trials and appeals pose a significant challenge in ensuring access to criminal justice. Traditionally, the formal judicial system primarily focuses on securing punishment for the offender, providing little recourse for victims, especially in property-related crimes, to seek pecuniary damages. The implementation of Alternative Dispute Resolution (ADR) presents an opportunity for victims to seek redress and offenders to experience a faster and more equitable resolution through Restorative Justice. The importance of integrating ADR into the Criminal Justice System becomes apparent in the following circumstances-

4.1.1. To Ensure the Rule of Law

The paramount objective woven into the fabric of the Constitution of Bangladesh is the preservation and establishment of the rule of law. At its core, the State aspires, through a democratic framework, to realize the vision of a robust socialist society. Substantive provisions of the Constitution upholds and safeguards fundamental human rights and freedoms, ensuring equality and access to justice while fostering a political, economic, and social environment free from all forms of exploitation. Article 7, 26, Part II, Part III, Articles 44 and 102 serve as a beacon, emphasizing the centrality of the rule of law in governing the Republic. These constitutional provisions stand as pillars, fortifying the structure of a society that cherishes and safeguards the inherent rights and dignities of its citizens. Still, as per the Rule of Law Index 2023, Bangladesh's standing in terms of its *criminal justice system* ranks at 123 out of 142 countries.¹¹³⁾

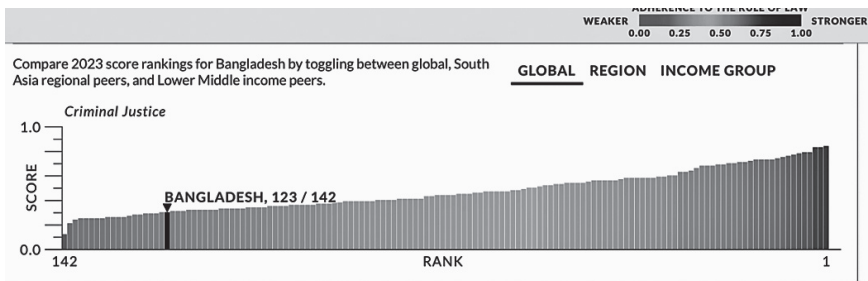


Figure 4: Overall Position of Rule of Law by WJP.¹¹⁴⁾

Among the seven contributing sub-factors of factor 8, three pivotal elements i.e. 8.2, 8.3, 8.7 could witness positive transformation through the expeditious resolution of cases. Achieving a swift disposal of cases becomes plausible when offenses are systematically categorized and treated based on their severity and nature. Presently, within the criminal justice system, all cases are consolidated and presented before the same court without specific measures to discern compoundable cases for potential settlement. Introducing measures to identify and potentially resolve compoundable cases could lead to a significant reduction in their volume within the system, thereby fostering a notable decrease in caseloads. This approach holds the potential to streamline and expedite the resolution process, subsequently contributing to the overall efficiency and effectiveness of the criminal justice system.

4.1.2. A Cultural Heritage in Administering Criminal Justice

The practice of an alternative justice system within the criminal justice framework dates back to ancient times. The custom of admitting guilt before a village assembly was a commonplace occurrence in ancient Indian Sub-continent.¹¹⁵⁾ Within these assemblies, commonly referred to as Panchayats, village elders heard both sides of a dispute. In such intimate settings where everyone has known each other since birth and lives together in small communities comprising 100–500 families until their passing, the concept of deceit or falsehood held little ground. However,¹¹⁶⁾ societal dynamics have evolved over time due to increased interactions among larger populations. Despite these changes, there remains a social inclination towards acknowledging guilt and seeking restorative justice through compromise.¹¹⁷⁾ In the continuance of traditional system some of the criminal offences are settled by village courts¹¹⁸⁾ and municipal dispute settlement boards. The people are familiar with the culture.¹¹⁹⁾ Seeking

113) <https://worldjusticeproject.org/rule-of-law-index/global/2023/Bangladesh/Criminal%20Justice/>, accessed on 20 December 2023.

114) Ibid.

115) Mahabir P Jain, *Outline of Indian Legal History* (Bombay: Tripathy, 1999).

116) Shiva M Jaamdar, 'Restorative Justice in India: Old and New' in *Restorative Justice in India: Traditional Practices and Contemporary Applications* eds. R. Thilagaraj and Jianhong Liu, (Spring 2017).

117) Jamila Ahmed Chowdhury and other, *Juridical Possibilities of Compoundable Offences: Potentials and Perils under the Current Socio-Legal Context of Bangladesh*, https://www.researchgate.net/publication/349071373_Juridical_Possibilities_of_Compoundable_Offences_Potentials_and_Perils_under_the_Current_Socio-Legal_Context_of_Bangladesh, accessed on 2 January 2024.

118) Under the Village Courts Act, 2006, No. XLII of 2006, Schedule Part I.

119) The Birodh Mimangsha (Paura Elaka) Board Ain, (2004).

resolution of offences in village courts,¹²⁰⁾ each party can select two representatives for the board. The settlement by such quasi-formal courts is maintaining cultural heritage of Panchayat in administering criminal justice.

4.1.3. Empowerment of Victims and Offenders

Traditional court proceedings often place victims in a passive role, where they may feel excluded or marginalized. ADR methods provide victims with a more active role, allowing them to participate in the resolution process and have their voices heard. Through mediation and restorative justice, *victims have the opportunity to express their concerns*, share their experiences, and play a significant role in shaping the outcome of the case. This empowerment can contribute to *victims' healing process, provide them with a sense of closure, and restore their confidence in the criminal justice system*. Similarly, ADR methods can empower offenders by offering them a chance to take responsibility for their actions, understand the consequences of their behaviour, and actively participate in repairing the harm caused.

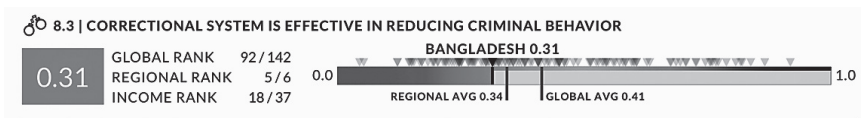


Figure 5: Position of Sub-factor 8.3 (Correctional System is effective in reducing Criminal Behavior) of Rule of Law by WJP.¹²¹⁾

By involving offenders in the resolution process, ADR methods promote rehabilitation and transformation which will endure more effective correctional system in reducing criminal behaviour.

4.1.4. Restoration of Relationships and Community Healing

ADR methods in the criminal justice system focus on repairing the harm caused by criminal behaviour and promoting healing within the community. Mediation and restorative justice processes emphasize dialogue, empathy, and understanding, creating opportunities for

120) The Village Courts Act, 2006, No. XLII of 2006, Schedule Part I.

121) Ibid.

reconciliation and rebuilding relationships. Through direct communication and engagement, ADR methods allow victims and offenders to humanize one another and recognize each other's perspectives. This can foster empathy, empathy understanding, and facilitate the healing process for both parties. Moreover, the involvement of community members in restorative justice processes helps rebuild trust, address underlying community issues, and strengthen social bonds. The restoration of relationships and community healing achieved through ADR methods can contribute to long-term crime prevention and reduce the likelihood of reoffending. By addressing the root causes of criminal behaviour and involving the community in the resolution process, ADR promotes a sense of shared responsibility and collective problem-solving.

4.1.5. To Make Strong Institution

Considerable resources of the state can be saved by introducing and implementing effective ADR in the criminal justice system. It also provides alternative way for the court to avoid dealing with cases that can be compounded or mediated outside courtroom and enables the court to try only those matters where there is a real basis for dispute. By diverting cases to ADR mechanisms, the criminal justice system can focus its resources and judicial capacity on more complex or high-priority cases. This enables the timely resolution of cases, reduces waiting times for trials, and ensures that justice is administered in amore expeditious manner. Ultimately, the reduction in court backlog and caseloads improves the overall efficiency and effectiveness of the criminal justice system and help to make strong judicial institution.¹²²⁾

4.1.6. Cost-effectiveness and Efficiency

The integration of ADR methods in the criminal justice system can lead to significant cost savings and increased efficiency. Traditional court proceedings involve substantial expenses, including legal fees, court personnel, expert witnesses, and courtroom resources. By diverting cases to ADR mechanisms, these costs can be reduced. Mediation and restorative justice processes are generally less time-consuming and resource-intensive compared to lengthy court trials. Plea bargaining, in particular, offers an efficient mechanism for resolving cases, as it allows for negotiated agreements and avoids the need for full-fledged trials. The cost savings achieved through ADR methods can be redirected towards improving the overall

122) 8the 5 Year Plan, Access to Justice, Page 177, <http://oldweb.lged.gov.bd/UploadedDocument/UnitPublication/1/1166/8FYP.pdf>, accessed on 15 January 2024.

functioning of the criminal justice system, investing in crime prevention programs, or providing support services for victims and offenders. Furthermore, the efficiency of ADR methods contributes to timely resolution, which is beneficial for all stakeholders involved. Victims receive prompt attention, offenders can address their actions sooner, and the community gains closure and moves towards healing.

4.1.7. To Reduce Court Backlog and Caseloads:

One of the significant benefits of integrating ADR methods in the criminal justice system is the potential to reduce court backlog and caseloads. The traditional adversarial system often leads to lengthy court proceedings, which can result in significant delays in justice delivery. The ADR methods such as mediation, restorative justice, and plea-bargaining offer more streamlined and efficient processes for resolving disputes, thereby alleviating the burden on the courts. In the statistics of 2023, a staggering total of 2,090,507 criminal cases remain pending before lower courts, with only 1,664 judges and magistrates available (comprising 64 Sessions Judges, 98 Additional Sessions Judges, and 583 Magistrates, not all of whom are trial magistrates). This alarming backlog poses a significant concern for both the state and the individuals involved, including prisoners and victims.

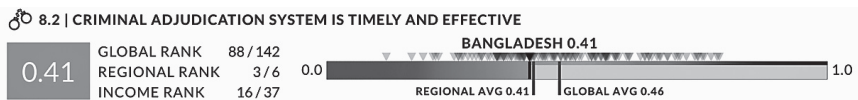


Figure 6: Position of Sub-factor 8.2 (Criminal Adjudication System is timely and effective) of Rule of Law by WJP.¹²³⁾

Therefore, the urgent objective is to introduce plea bargaining as an ADR mechanism to alleviate this overwhelming number of pending cases which will ensure criminal adjudication system is timely and effective.

4.1.8. To Administer Justice Faster and Easier

The traditional legal system cannot provide easy and speedy substantive justice due

¹²³⁾ Ibid.

to various reasons. There is a way to get a speedy disposal of criminal trial. The way includes increasing resources, both in the form of finance and manpower in the criminal justice system, which is very difficult for a country like Bangladesh.¹²⁴⁾ Introduction of ADR system in criminal cases of Bangladesh is the only way that can provide a strong ground to ensure justice faster and easier.¹²⁵⁾ As the ADR system provides the provisions for compounding of offences and plea bargaining, an accused may avoid the remand or judicial custody by admitting the guilt or through mediation. At the same time, the procedure will take short time to determine the offence and the punishment. Furthermore, the practice of ADR will reduce case backlog, and court will be able to focus on grievous cases to give speedier judgement.

4.1.9. To Solve Lengthy Ignored Cases

Regarding the cases where no witness is appeared before court. The accused is already behind the judicial bar and waiting for the justice. At least, allowing pleading guilty, he or she may get out of the bar as he already completed minimum punishment.

4.1.10. Improvement of Prison Condition and Access to Justice

The rate of conviction in Bangladesh is very low.¹²⁶⁾ Faulty, weak and manipulated police investigation; political and transitory nature of public prosecutors' work; and lack of evidence specially it is very difficult to produce witness in front of the criminal courts are the reasons for this low rate of conviction.¹²⁷⁾ In this connection, there are lots of pre-trial detainees and/or remand prisoners. The prisons in Bangladesh are not usually capable of holding all the prisoners. The total number of prisoners in 68 (2022–55 district prisons, 13 central prisons) prisons in Bangladesh stood at about 84 851 (9.12.2023) (*national prison administration*).

124) INTRODUCTION OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE SYSTEM OF BANGLADESH, Ridoan Karim, <https://www.aarcentre.com/ojs3/index.php/jaash/article/view/32/217>, accessed on 18 December 2023.

125) Humann, Milton. (1981). *Plea Bargaining: The Experiences of Prosecutors, Judges and Defense Attorneys*. The University of Chicago Press, 1st edition, 47.

126) Halim, Barrister Md. Abdul. (3 December 2010), 'Prospects of introducing plea bargaining in Bangladesh, The Daily Sun (Bangladesh)', http://www.daily-sun.com/details_yes_03-12-2010_Prospects-of-introducing-plea-bargaining-in-Bangladesh_56_3_5_1_0.html

127) Ibid.

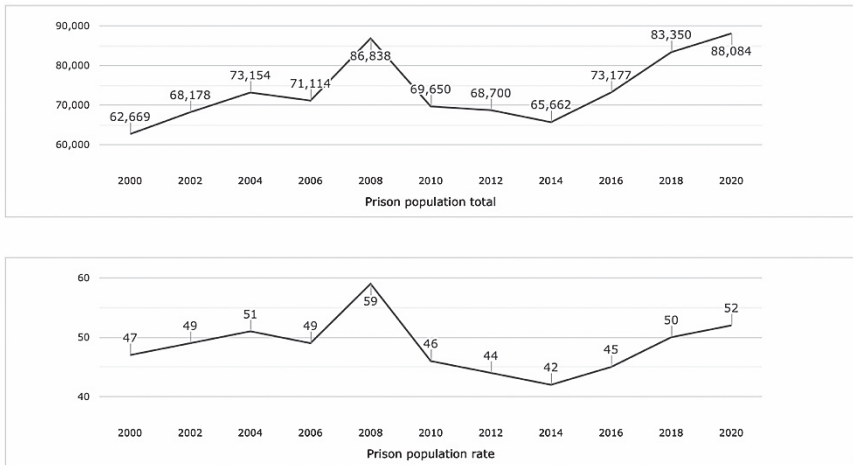


Figure 7: Total Prison Population and Prison Population Rate in Bangladesh.¹²⁸⁾

against official capacity of 42,866 (9.12.2023).¹²⁹⁾ Hence, the languishing in jail of an accused for an indefinite period will come to an end by practicing ADR in criminal justice system in Bangladesh and access to justice will be ensure to the accused.

4.2 Recommendations

Malinowski and Radcliffe-Brown have suggested in their 'Functionalism Theory' that all the organs (including customs, norms, values, behavior, patterns etc.) of the society need to function properly to maintain the society as a whole.¹³⁰⁾ If we consider law as a social organ, it can be easily determined that law is the heart of the society which needs to function well to maintain the social and political balance. ADR is the proper device which really needs to be introduced in our Criminal Cases to maintain the justice system. However, to ensure proper practice of ADR, there are some recommendations which show the way how to introduce it in our criminal justice system. Thus, before introducing the alternative dispute resolution (ADR) in our criminal justice system, the recommendations provided by the paper need

¹²⁸⁾ Ibid.

¹²⁹⁾ World Prison Brief Data, Bangladesh, <https://www.prisonstudies.org/country/bangladesh>, accessed on 07 January 2024.

¹³⁰⁾ Kottak, Conrad Phillip. (2002). Cultural Anthropology. McGraw Hill, 10th edition, 77.

to be considered to ensure the proper implementation of the mechanism. Otherwise, an immature and whimsical introduction of ADR in criminal cases may reduce case backlog and may increase quick disposal, but such success may lead to a harmful impact¹³¹⁾ on our justice system and can be used as a vehicle of imbalanced power in the society.¹³²⁾

4.2.1. To Improve Synchronization with Existing Law and Practice

The provision of compounding of offences is already there in the CrPC of Bangladesh, an optional but informed step to compound may be fruitful for disposal of cases. First, we need to introduce the alternative dispute resolution in our criminal justice system through practicing more of our existing laws which already provides us the opportunity to exercise the mechanism (such as compounding of offences). To improve synchronization of existing laws relating to ADR in criminal justice system and practice may be improved by following ways-

A. Effectiveness of Village Court and Dispute Resolution Board

If we intend to introduce ADR in criminal cases apart from our current structure, we have to think about all the cons of that mechanism beforehand. Thus, it is best to use our existing structure first (such as compounding offences in *Criminal Court, Gram Adalat, Birodh Mimangsha Board*), before implementing new/amended law or institution. It is true that our existing laws of ADR has not been practiced highly, thus, we are unable to justify the advantages of existing laws of ADR.

B. Highlighting Legal Aid Officers' Role as Mediators-

To enhance the effectiveness, there should be a concerted effort to focus on elevating the role of Legal Aid Officers through specialized training in mediation techniques and conflict resolution skills. As legal aid officers also serve as judges in each district, their role as mediators is widely acceptable. Under existing laws, legal aid officers can effectively act as mediators in compoundable cases, contributing significantly to the resolution of legal disputes.

131) Chowdhury, Dr. Jamila A. (9 March 2013). "Introduction of ADR in criminal cases." The Daily Star (Bangladesh), <https://www.thedailystar.net/news/introduction-of-adr-in-criminal-cases>, last accessed on 07 January 2024.

132) Introduction of Alternative Dispute Resolution in Criminal Justice System of Bangladesh, Ridoan Karim, <https://www.aarcentre.com/ojs3/index.php/jaash/article/view/32/217>, accessed on 18 December 2023.

C. Active Role of Victim Support Center

The active role of an efficient Victim Support Center is imperative. This center should serve as a dedicated resource hub, offering comprehensive assistance to victims navigating the criminal justice process. It should provide emotional support, guidance, and necessary information to victims, ensuring their rights are upheld and their needs are addressed throughout legal proceedings. This approach intends to create a more inclusive and supportive system, ensuring that every individual, particularly victims and underserved populations, can access quality justice and receive the necessary assistance during their interaction with the legal framework.

D. Probation Officer to Help Restorative Justice-

In Bangladesh, the restorative justice includes probation and rehabilitative programs. Since there are 70 probation officers at the district level and additional responsibilities assigned to Upazila and Urban Social Services Officers, they can play a vital role focusing on preventing re-offending and facilitating the reintegration of offenders into society. The issuance of a 'Probation Order' by the court, considering various factors, marks the commencement of this socially transformative process.

4.2.2. To Develop Legislation for the Implementation of ADR

To formulate and enact suitable legislation and policies that facilitate the integration of ADR within the Criminal Justice System of Bangladesh is a pivotal step towards fostering effective dispute resolution mechanisms. Moreover, the legislation and policies should outline procedural safeguards, ethical standards, and confidentiality measures to uphold the rights and interests of all parties involved in ADR proceedings. This endeavor requires a meticulous approach, engaging key stakeholders including legal experts, policymakers, judiciary, law enforcement agencies, and community representatives. An integrated legislative framework should encompass clear guidelines delineating the scope, applicability, and procedures for employing various ADR methods within the criminal justice domain. Crafting robust and contextually relevant ADR implementing laws and policies necessitates a comprehensive understanding of the intricacies and dynamics of the criminal justice landscape.

A. Supreme Court Circular

Supreme Court Circulars can play a pivotal role in driving the implementation of ex-

isting laws. An illustrative example is the REGISTRAR'S CIRCULAR NO. 4 OF 2011 in Singapore, which offers guidelines for CRIMINAL CASE RESOLUTION (CCR) in the Subordinate Courts, contributing to the increased adoption of Criminal Mediation in the country. Similarly, in Bangladesh, despite the mandatory provisions of Section 89A & Section 89C of the Code of Civil Procedure, the utilization of Alternative Dispute Resolution (ADR) mechanisms in civil cases has experienced a noteworthy surge following the issuance of Circular No.03 dated 21 March 2021, Circular No.04 of 5 August 2021 of the Supreme Court.¹³³⁾ Therefore, the issuance of Supreme Court Circulars is instrumental in fostering the resolution of compoundable cases outlined in Section 345 of CrPC and other special laws, thereby allowing the referral of compoundable criminal cases to Legal Aid Officers.

B. Amendment of Section 345

Emphasis should be placed on delineating the types of criminal cases suitable for ADR, ensuring due consideration for the gravity and nature of offenses. Section 345 of the Code of Criminal Procedure delineates compoundable offenses; however, it is evident that some non-compoundable offenses cause significant distress to the litigants.¹³⁴⁾ For instance, the punishment for Unlawful Assembly under *section 143 of the Penal Code, 1860 entails confinement for up to six months or a fine or both*, yet this offense remains non-compoundable according to section 345 of the CrPC. Pendency of huge cases may be reduced by making these offences compoundable. Conversely, the offense of rioting under *section 147 of the Penal Code is compoundable despite its punishment of confinement for up to two years or a fine or both*. The CrPC schedule specifies that offenses, excluding those under the Penal Code, punishable with imprisonment for more than two years and up to five years are deemed non-compoundable but bailable. Similarly, offenses other than those under the Penal Code, punishable with imprisonment for less than two years or a fine or both, are also non-compoundable but bailable. Such inconsistencies in the law require clarification and an expanded, more comprehensive list of compoundable offenses through appropriate amendments. A considerable number of cases filed under section 385 of the *Penal Code* are pending in the Courts of Session for

133) I am indebted to Mr. Selim Reza, Senior Assistant Judge, Law, Justice and Parliamentary Affairs, who acted as Legal Aid Officer of Meherpur for sending me the circulars and raising this point.

134) Chowdhury, Md. Aktarul Alam, Fahim, Md. Hasnath Kabir, *An Overview of the Practice and Prospect of Alternative Dispute Resolution in the Criminal Justice System of Bangladesh: Promotion of Access to Justice*, Amity Law Review, 2019.

years together; however, such cases are suitable for compromising through Court, if necessary, amendment be made in our procedural laws.¹³⁵⁾ Hence, opportunity of ADR in criminal cases can be increased by enlarging the scope of Section 345 of the *Code of Criminal Procedure*.¹³⁶⁾

C. Introduction of Plea-Bargaining System

There is no explicit provision of Plea Bargaining in Bangladesh. As discussed earlier, plea bargaining is widely used in criminal justice system in the world. It reduces unreasonable harassment of the accused accepting his or her guilty plea. To introduce the system an amendment of addition of Section in the CrPC is needed. Collaborative efforts aimed at drafting legislation and policies must consider the unique socio-cultural context of Bangladesh while aligning with international best practices in ADR. Lessons may be considered from comparative analysis of Plea bargain. Even if USA is pioneer to introduce Plea Bargaining System, the practice of India can be considered as Bangladesh and India have common culture. We should learn from failure story too. Considering following situations Plea Bargain provision may be introduced in Bangladesh-

- The legislature should bring laws to contain provisions mandating probation officers and jail administrators to conduct sessions in prisons informing convicts who are awaiting trial of the conditions of Plea Bargaining and the various benefits to which they are entitled.
- The scope of the section's application should be increased, and plea bargains ought to be described in a way that considers factors like probation etc. rather than merely the length of a possible sentence.
- It is necessary to create a separate system like-Mediation to take plea bargaining instances into account. If the forum determines that a suitable resolution is not possible, the case should be sent back to the court, which should continue from the point where the plea-bargaining application was filed. A deadline for coming to a mutually agreeable agreement should be set.

D. New Law for City Corporation Level

Petty disputes in villages find resolution through village courts at the union level,

135) Gulfam, Mahua. (2014). Introducing Alternative Dispute Resolution in Criminal Justice System: Bangladesh Perspective13. Banglavisision 208

136) Ibid.

and at the Municipality level, the Municipal Board serves a similar purpose. However, approximately 20 million residents in the 12 city corporations lack a specific legal framework for settling such matters. The newspaper article titled “Call to Enact Law to Settle Petty Disputes at City Corp Level”¹³⁷⁾ underscores the necessity for a new law addressing petty disputes within city corporations. The article draws attention to expert opinions, with Prof Tofail Ahmed, a local governance expert, advocating for considering this process as an alternative dispute resolution system. Zakir Hossain, Chief Executive of Nagorik Uddyog, stresses the need for an overall reevaluation of the governance system to ensure people’s access to justice. Therefore, to guarantee access to justice, there is a pressing need for a new law that can effectively resolve petty disputes at the city corporation level, serving as a proactive mechanism for Alternative Dispute Resolution (ADR).

4.2.3. Collaboration and Coordination Among Stakeholders

The successful implementation of Alternative Dispute Resolution (ADR) mechanisms within the criminal justice system hinges on robust collaboration and seamless coordination among diverse stakeholders. This multi-faceted engagement necessitates a harmonized approach, mutual understanding, and collective commitment to drive effective change and adoption of ADR practices. Effective collaboration between-

- Stakeholders,
- Legal professionals,
- Policymakers,
- Law enforcement agencies,
- Academia, and
- Researchers.

with a comprehensive understanding of prevailing issues, their root causes, and potential solutions is vital in fostering a robust research ecosystem. This collaboration ensures that research efforts are aligned with the practical needs of the criminal justice system, leading to the systemic development and implementation of evidence-based interventions that are contextually relevant and responsive to the evolving landscape of crime and justice. By fostering an inclusive environment that encourages open dialogue and mutual cooperation, stakeholders can col-

137) The Daily Observer, 11 October 2020, <https://www.observerbd.com/news.php?id=279122>, accessed on 07 January 2024.

lectively contribute their expertise and perspectives towards the implementation of ADR mechanisms. Coordinated efforts among stakeholders are crucial for shaping the structural framework, identifying the scope of ADR applicability in criminal cases, and delineating the procedural guidelines. Each stakeholder brings unique insights and experiences to the table, allowing for a comprehensive understanding of the challenges and opportunities in integrating ADR within the criminal justice system. To facilitate this collaboration, structured platforms, such as task forces, working groups, or committees, can be established to foster *ongoing dialogue, exchange of knowledge, and joint decision-making*. These platforms can serve as avenues for sharing best practices, addressing challenges, and devising strategies for effective ADR implementation. Educating communities about the *benefits, principles, and safeguards of ADR fosters trust and encourages* the utilization of alternative avenues for resolving disputes. Through collective efforts, shared responsibilities, and synergistic actions, stakeholders can navigate challenges and collectively work towards establishing an ADR-inclusive system that promotes fairness, expediency, and improved outcomes for all involved parties.

4.2.4. Training and Capacity-building for Professionals

Training programs for legal professionals, law enforcement, and judiciary personnel are critical for fostering a conducive environment for ADR implementation. This initiative demands a forward-looking approach, leveraging insights from research, international experiences, and consultation with stakeholders to establish a legal and policy framework that not only fosters effective dispute resolution but also upholds the principles of fairness, equity, and access to justice within the Criminal Justice System of Bangladesh. These programs should be tailored in the following way-

- Firstly, training modules should provide an *in-depth understanding of the fundamental principles, theories, and types of ADR mechanisms*, including mediation, and restorative justice. These modules should elucidate the role, scope, and applicability of ADR in criminal cases, highlighting the benefits and limitations of each method.
- Secondly, emphasis should be placed on developing *practical skills necessary for conducting ADR proceedings*. This includes training in effective communication, conflict resolution, negotiation techniques, impartial decision-making, and maintaining neutrality throughout the ADR process. Practical scenarios and simulations can be incorporated to enhance participants' abilities to navigate real-life situations.
- Thirdly, *ethical considerations and professional conduct guidelines* should be an inte-

gral part of the training. Professionals must understand the ethical standards, confidentiality protocols, and the importance of upholding fairness, impartiality, and integrity while facilitating ADR sessions within the criminal justice framework.

- Additionally, capacity-building efforts should extend beyond theoretical knowledge to practical implementation. *Workshops, seminars, and mentorship programs can provide a platform for hands-on experience*, allowing professionals to apply ADR techniques in simulated scenarios and real-case simulations under supervision.
- Establishment of ADR training institute and allocation of fund is another basic requirement for introducing ADR in Criminal Justice.
- Training and capacity-building programs are essential components in preparing professionals within the Criminal Justice System to effectively implement Alternative Dispute Resolution (ADR) mechanisms.

Therefore, establishing mechanisms for ongoing education, skill enhancement, and knowledge-sharing platforms is essential for sustaining a competent and adept workforce within the Criminal Justice System adept at incorporating ADR methodologies effectively while upholding the principles of justice and fairness.

4.2.5. Promoting Research and Evidence-Based Practices

Promoting research and evidence-based practices within the realm of the criminal justice system stands as an imperative cornerstone for fostering systematic improvements, informed decision-making, and the pursuit of justice. By embracing a culture deeply rooted in research and evidence-backed methodologies, the criminal justice system can evolve and adapt to address the multifaceted challenges it faces. Research serves as the guiding beacon illuminating pathways towards more effective policies, interventions, and approaches within the criminal justice domain. Furthermore, the integration of research-driven methodologies enables the identification of gaps and deficiencies within the system. It paves the way for innovative solutions, interventions, and reforms designed to enhance fairness, equity, efficiency, and the overall efficacy of the criminal justice system. Evidence-based practices play a pivotal role in shaping the operational frameworks of the criminal justice system.

4.3 Conclusion

Since highlighted previously in this discourse, the law has emerged as an elemental necessity within society, and its institutions and mechanisms continually evolve to meet the

evolving needs of the populace. Within this intricate ballet, the ADR mechanism in the criminal justice system emerges across the world as a poignant exemplar of this elemental necessity. The evidence substantiates that the ADR mechanism not only adeptly navigates the intricacies of justice but also stands as a vigilant guardian, upholding the foundational tenets of the rule of law within the intricate tapestry of the criminal justice system. ADR not only empowers victims and offenders by providing an inclusive platform for dialogue but also emphasizes the restoration of relationships and community healing, fostering harmony among the parties involved. Furthermore, its role in strengthening institutional frameworks, ensuring cost-effectiveness and efficiency, and reducing court backlog underscores its significance in shaping a more effective criminal justice system. By administering justice faster, addressing ignored cases, and improving access to justice, ADR contributes indispensably to the overarching goal of upholding the rule of law within the intricate tapestry of the criminal justice system.

The objectives of ADR in criminal procedure primarily revolve around promoting access to justice, with additional by-products contributing to its efficacy reducing the recidivism, case load, ensuring strong institution, and maintaining harmony in the society. The findings affirm that ADR, on balance, promotes rule of law within the Criminal Justice System. To safeguard the rule of law and access to justice, it may be necessary to exercise caution and restrict the use of ADR in specific situations, particularly, where concerns arise related to ensuring fairness and due Process, addressing Disparities and power Imbalance, Ensuring the Protection of Victims' Rights. Before introducing ADR in criminal cases, we need to build the proper institutions for ensuring justice. Ensuring the integrity of the rule of law and access to justice in the context of ADR requires a careful approach to voluntary party involvement. It is essential to exercise caution to prevent any perception of coercion or undue influence. Clear procedures should be established to investigate and address any allegations of pressure or manipulation during the ADR process. If a decision is challenged on the grounds of external influence, a thorough review should take place, and the decision may be nullified if the claim is substantiated. After all, this meticulous approach serves as a protective measure, maintaining the principles of the rule of law and safeguarding the access to justice within the ADR framework.

The scope of ADR in the Criminal Judicial System encompasses mediation, plea bargaining, and restorative justice, reflecting the diverse approaches available for dispute resolution. Existing tools of ADR in the criminal justice system, both in the judiciary of Bangladesh and other countries, include mediation offices (judge mediators in Singapore, legal aid

officer as mediators in Bangladesh), victim support centers, and probation systems, showcasing a comprehensive toolkit. They allow for the identification and implementation of strategies, interventions, and protocols validated through rigorous empirical evidence, ensuring that decisions and policies are not merely speculative but grounded in proven effectiveness. The judicial proceedings can be shaped emphasizes the institutional aspect, highlighting the need for a thoughtful and well-structured implementation of ADR mechanisms within the criminal justice framework.

Examining the implementation of various ADR mechanisms in the Criminal Justice system, underscores that these countries have undergone multifaceted transformations to adapt to the evolving demands of society. By embracing alternative dispute resolution, a society can augment its capacity to ensure the effective delivery of justice in line with its unique societal dynamics and needs. Consequently, as an essential facet of society, the implementation of ADR is orchestrated in a manner that guarantees equitable justice within the context of that particular societal milieu. Therefore, alternative dispute resolution stands out as a legal mechanism that has surfaced as a fundamental requirement for societies like Bangladesh. The ADR has been successfully implemented in Bangladesh's civil litigation system. It is possible to extend this system to the criminal justice system through its existing system utilizing existing laws and roles of legal aid officers, probation officers and officers of victim support center. To promote the ADR in criminal cases, we need to ensure the independence and transparency of our judiciary proceedings. The laws and regulations should be public friendly and transparent. Aligning with the eighth five-year development plan for 2020–2025, within the broader framework of sustainable development goals, the ADR in the criminal justice system will foster peace, ensure justice, and bolster the resilience of institutions.

In Bangladesh, these initiatives are pivotal in equipping ADR methodologies, procedural nuances, ethical standards, and practical application within the criminal justice context. The design and execution of comprehensive training programs should encompass various actors related to legal practitioners, law enforcement personnel, and judiciary members with the requisite skills, knowledge, and understanding to facilitate. It is examined and proved that the access to justice is promoted by ADR in Criminal Justice System. However, an immature and whimsical introduction of ADR in criminal cases may reduce case backlog and may increase quick disposal, however, such success may reduce quality of our criminal justice system which will hinder access to justice. Otherwise, the haphazard expansion of ADR in the criminal justice system may lead to negative consequences, as it could be used as a means of unequal pow-

er distribution in society. Therefore, it is important to recognize that implementing ADR in the criminal justice system may require certain pre-requisite actions to achieve optimal results. Therefore, the authorities must carefully consider the recommendations outlined in this paper to ensure the correct implementation of ADR mechanisms and it is crucial to implement ADR thoughtfully and deliberately to achieve the desired outcomes for justice system of Bangladesh.

In conclusion, to further promote ADR in the criminal justice system, the study recommends making brief yet impactful changes. These changes could involve refining and expanding existing ADR tools, enhancing training for legal aid officers, reinforcing victim support initiatives, and continuously evaluating and updating ADR processes to align with evolving legal landscapes. This comprehensive approach aims to strengthen the role of ADR in ensuring access to justice within the criminal justice system. In essence, promoting research and evidence-based practices in the criminal justice system serves as a catalyst for systemic improvements, fostering a fairer, more equitable, and effective system that upholds the fundamental principles of justice and serves the needs of society at large. Moreover, the implementation of ADR mechanisms within the criminal justice system stands as an essential pillar, navigating the complexities of justice and serving as a vanguard in upholding the core tenets of the rule of law.