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**Research Monograph
On**

Alternative Dispute Resolution in Criminal Justice System in Bangladesh

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Dedication

Dedicated to my Parent's

Acknowledgement

First of all, I wish to Acknowledge the immeasurable grace and propound kindness of the almighty Allah. I express my gratitude to my honorable thesis supervisor Sharmin Jahan Runa, Assistant Professor & Head (Acting) Department of Law Sonargaon University (SU) for allowing me to complete my thesis under his supervision. She gave me his valuable time and important information to complete the thesis. Without his proper guidance, I could not complete the thesis. I am personally indebted to some book writers for their kind and valuable writings

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Declaration

I do hereby declare that the Research Monograph titled, "Alternative Dispute Resolution in Criminal Justice System of Bangladesh" has been carried out by me. This is an original research work to the best of my knowledge and further,

I confirm that this thesis presented for the degree of, has

- i) been composed entirely by myself
- ii) been solely the result of my own work
- iii) not been submitted for any other degree or professional qualification

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Certification by Research Supervisor

This is hereby certified that the research Monograph on the topic, “**Alternative Dispute Resolution in Criminal Justice System in Bangladesh**” submitted by **Md. Tariqul Islam**, (LLB2101022008) in fulfillment of the requirements for LLB (Hons) from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as I know.

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Abstract

The popularity of Alternative Dispute Resolution (ADR) in the criminal justice system is increasing day by day across the world. All types of courts, lower or higher, are burdened with a huge number of litigations. According to the former Chief Justice of the Supreme Court of Bangladesh Mr. S. K. Shinha, the number of pending cases only in the High Court Division shall need 100 years to be resolved. These problems have arisen due to the defects of the adversarial criminal justice system. The justice seekers are frequently harassed in the area of courts in most cases, especially in the criminal justice system, and justice is not so ensured. In this respect, ADR comes to make harassment-free, less-time consuming Criminal Law Legal System to ensure the proper justice without contradiction the natural justice. Most of the statutory laws including the main procedural law for criminal matters allow this system in most countries all over the world, but Bangladesh. There are some statutes of Bangladesh in which this popular system has been inserted. The ADR system should be developed more and more in other main statutes including the Code of Criminal Procedure, 1898&the Penal Code, 1860, not standing inconsistent with natural justice. The article aims to uphold the importance of ADR in Criminal Justice.

Keywords: ADR, Criminal Trial, Plea Bargain, Sentence Bargain, Fact Bargain, Restorative Justice, Compounding Offense, Criminal Legal System.

Chapter-1

1.1. Introduction

ADR stands for Alternative Dispute Resolution. It is a process where a neutral third party, a mediator or an arbitrator, assist the disputing parties to come to an agreement.¹ Most common forms of ADR are Mediation², Arbitration³, and Negotiation⁴ etc. These are alternative litigation. The significance of ADR can be perceived easily as the caseloads are increasing in the traditional court, it is less costly and time-consuming, protects the confidentiality, and solved the dispute in a win-win situation in the disputes. Some of the criminal legal systems, especially in England and Wales, are in favor of the ADR to settle disputes. Disputes are an inevitable part of human life. It may be termed as a conflict of right and interest between or among parties regarding properties, resources, opinions, power, prestige, and others. The conflicting parties desire to gain advantages over the dispute or defeat the other.⁵ADR is a shade to be used to describe multiple

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¹“Alternative Dispute Resolution” Cornell Law School, accessed September 12, 2023, https://www.law.cornell.edu/wex/alternative_dispute_resolution.

² Katie Shonk, “What Is Alternative Dispute Resolution?”, PON - Program on Negotiation at Harvard Law School, accessed November 26, 2019, <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-disputeresolution/>.

³Katie Shonk, “What Is Alternative Dispute Resolution,” PON - Program on Negotiation at Harvard Law School, November 26, 2019, <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/>.

⁴“Alternative Dispute Resolution,” Cornell Law School, accessed September 12, 2023, https://www.law.cornell.edu/wex/alternative_dispute_resolution.

⁵ Dr. Jamila A. Chowdhury, ADR Theories and practices (Dhaka: London College of Legal Studies 2013): 43

methods for solving disputes outside the traditional method i.e., adversarial court system, Salish,⁶ etc. which makes both parties pleased. The Constitution of Bangladesh ensures a right to a speedy trial of the person accused of criminal activities.⁷ But the adversarial criminal legal system is a time-consuming system to decide over a dispute.⁸ Here ADR can play a vital role to decide on a criminal case with a specific direction of the court. The laws related to the civil suit, as the Code of civil procedure, 1908⁹; the Artha Rin Adalat Ain, 2003¹⁰; the Arbitration Act, 2001¹¹; the Bankruptcy Act, 1997¹²; the Family Court Ordinance, 1985¹³; the Gram Adalat Ain, 2006¹⁴; the Labour Code, 2006¹⁵ hold the provisions for ADR. But the Code of Criminal procedure, 1898¹⁶ doesn't denote provision for ADR in the criminal legal system. However, section 345 of the Code of Criminal Procedure, 1898 holds the provision of 'Compounding offenses' which is very narrow and thus cannot be termed as ADR.¹⁷ There are numerous researches on ADR in a civil suit, for that reason ADR was successfully introduced and is being implemented in a civil suit; but hardly anyone emphasized the study of ADR in the criminal law legal system in Bangladesh. As a result, the criminal law legal system lags, in contrast to developed countries that implemented ADR in the criminal case already and didn't get updated with the change of time. This study has been significant to focus on the application of ADR in the criminal legal system of Bangladesh. ADR in criminal cases may be of two types: compounding of offenses and plea bargaining. In Bangladesh section 345, subsection (1) & Subsection (2) of the Criminal Procedure Code provides for in-built provisions for ADR.¹⁸ ADR, compared to litigation, is generally time-saving, and cheap; protects privacy and the decisions are not necessarily final. However, ADR does not always guarantee an agreed-upon decision and with arbitration the decision is final. The Code of Criminal Procedure, 1898 has no, but the process of compromising the disputes among the parties mentioned in section 345 of the Code. The criminal offenses cannot be mediated. For these reasons, the CrPC doesn't hold the provisions of ADR. But a gross amendment is needed to be held in this respect that the provisions of ADR are needed to be inserted in the Code of Criminal Procedure, 1898

⁶ "Shalish" Banglapedia, accessed June 18, 2022, <<https://en.banglapedia.org/index.php/Shalish>> ⁷The Constitution of the People's Republic of Bangladesh, Article 35(3). ⁸Mahmudul Islam, Constitutional Law of Bangladesh, 3rd ed. 296–9 (Dhaka: Mollick Brothers, 2012), 296. ⁹The Code of Civil Procedure, 1908, Section 89A-89C, <http://bdlaws.minlaw.gov.bd/act-86.html>. ¹⁰The Artha Rin Adalat Ain, 2003, Section 21, 22, 23, 24 § (2003), <http://bdlaws.minlaw.gov.bd/act-901.html>. ¹¹The Arbitration Act, 2001, <http://bdlaws.minlaw.gov.bd/act-850.html>. ¹²The Bankruptcy Act, 1997, Section 43-46, <http://bdlaws.minlaw.gov.bd/act-812.html>. ¹³The Family Court Ordinance, 1985, Section 10, 14 (1985), <http://bdlaws.minlaw.gov.bd/act-details-682.html>. ¹⁴The Gram Adalat Ain, 2006, Section 4, 5, <http://bdlaws.minlaw.gov.bd/act-938.html>. ¹⁵The Labour Act, 2006, Section 210, <http://bdlaws.minlaw.gov.bd/act-952.html>. ¹⁶The Code of Criminal Procedure, 1898, 265A-265L, (1980; repr., Bangla bazar, Dhaka: Kamrul Book House, 2021), 780–92. ¹⁸Md. Aktarul Chowdhury and Md. Hasnath Kabir Fahim, "An Overview of the Practice and Prospect of Alternative Dispute Resolution in Criminal Justice System of Bangladesh: Promotion of Access to Justice an Overview of the Practice and Prospect of Alternative Dispute

This is why the author has completed this qualitative research to find out the importance of ADR in the criminal law legal system, how it can be introduced, the states already enacted ADR in the criminal legal system, and what problems Bangladesh would likely face to insert ADR in Criminal Legal System and finally the solutions. The article has got some objects to be full-filled in some fields, those are to find the extent of acceptability of ADR in the light of the present context; what situation makes the ADR necessary to be applied to the Criminal Law; the loophole of the ADR to be applied in CrPC, 1898 without making any contradiction; as well as the result and solution. In addition, if ADR is applied in Criminal Law, what benefits are to be got and what effects are to be seen.

1.2 ADR and Restorative Justice

It was said earlier in the introduction that ADR stands for Alternative Dispute Resolution. Alternative means beyond the traditional process to solve a criminal case. It is not a separate process rather than it is a complementary and strengthening process to the criminal legal system.¹⁹ A dispute can be defined as a disagreement between parties on fact, law, or policy where someone claims and the other party denies or make a counterclaim. The main difference between ADR and the traditional criminal legal system is resolution. Resolution of a dispute means where both the parties agree to settle their dispute on their mutually agreed terms. In the case of ADR, as the parties choose their own decision, the resolution results in the permanent disposal of a dispute. Restorative justice is a theory of criminal justice as well as a social movement that was developed in the 20th century which the purpose to reform and replacing the existing criminal justice system with a retributive or rehabilitative purpose.²⁰ Restorative justice and ADR are reproduction. The author has defined and described ADR earlier. The restorative justice process is a participatory criminal justice process where the victims and the offenders play a key factor. In this process, the victim and the offender are brought face to face so that they can talk about the crime and the consequences and how to make things right again. In this process, society and the state also have important roles. The community must accept the outcome of the RJ (Restorative Justice) process whereas the state must provide conditions for the RJ process and secure the rights of both parties.²¹ RJ practice exists in the countries such as Germany, Belgium, Spain, and France. The process is termed as VOM (Victim-Offender Mediation) process in Germany, Penal Mediation in Spain and France, and VORP (Victim-Offender Reconciliation Process) in continental Europe.²² Belgium and the Netherlands have established the process of VOM. In continental Europe, the parties are forced

¹⁹ Dr. Jamila A. Chowdhury, *ADR Theories and practices* (Dhaka: London College of Legal Studies 2013): 42
²⁰ Alejandra Díaz Gude and Iván Navarro Papic, "Restorative Justice and Legal Culture," *Criminology & Criminal Justice* 20, no. 1 (September 5, 2018): 57–75, <https://doi.org/10.1177/1748895818796549>.

²¹ Vikrant Sopan Yadav, "ADR as a Means of Restorative Justice in Criminal Justice System: An Analytical Appraisal," *International Journal of Law* 3, no. 2 (March 2017): 59–61,

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3621192. ²² Gude and Papic, "Restorative", 60-61.

to use professional mediators in the process of RJ practices. The agreement or the result reached by the parties is not necessarily produced before the court through penal proceedings. Therefore, ADR in the Criminal Legal System isn't new.

1.3 ADR in the Criminal Legal System in Different Countries

Is ADR appropriate in the context of criminal disputes? It is a matter of fact. Here the author documented a brief description of the countries that have already introduced ADR in the criminal justice system. This will provide an empirical idea about ADR in the criminal justice system.

ADR in the Criminal Justice System of Germany: Germany uses ADR in the criminal justice system routinely. In German language, it is termed TOA (Tater Opfer Ausgleich). In English, it means offender-victim balancing. It is a kind of Victim Offender Mediation Program that means both conflict settlement and reconciliation.²³ Germany started it a long time ago. About 400 ADR programs are running and one-third of the criminal cases are solved through ADR. ADR process operates under the direct shadow of the court.²⁴

ADR in the Criminal Justice System of the USA: The Criminal Law Legal System of the USA also supports plea bargaining.²⁵ Plea bargaining is a very practical and popular part of the criminal justice system. Over 90% of criminal cases are settled under plea bargaining. Except for plea bargaining, the USA also includes the VOM. It has established Victim-Offender Reconciliation Program Information and Research Centre²⁶. It has been working for over 20 years. It must be noted that the program handles two-thirds of the cases in court and 90% of the cases are solved within one year.²⁷

ADR in the Criminal Justice System of Australia: Australia has enacted the Crimes (Restorative Justice) Act, 2004.²⁸ The Act aims to divert young people from the former justice system and to contribute to the development and rehabilitation of the offenders. It also protects the interests of the victim. So, it can be said that Australia is very active in using ADR in the criminal justice system. The process in the criminal justice system of Australia includes VOM

²³ Chukwunweike Ogbuabor and Clara Obi-Ochiabutor, "Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives," *Bassey Andah Journal* 6 (2013): 215–38, <https://academicexcellencesociety.com/using-alternative-dispute-resolution-adr-in-the-criminal-justic.pdf>.

²⁴ Thomas Trenzcek, "Victim-Offender Mediation in Germany – ADR under the Shadow of the Criminal Law?," *Bond Law Review* 13, no. 2 (January 1, 2001), <https://doi.org/10.53300/001c.5377>. ²⁵ Ogbuabor and Obi-Ochiabutor, "Using", 221. ²⁶ Mohammad Aktarul Alam Chowdhury, "AN OVERVIEW of the PRACTICE and PROSPECT of ALTERNATIVE DISPUTE RESOLUTION in CRIMINAL JUSTICE SYSTEM of BANGLADESH: PROMOTION of ACCESS to JUSTICE.," *International Journal of Advanced Research* 6, no. 11 (October 31, 2018): 712–21, <https://doi.org/10.21474/ijar01/8051>. ²⁷ Roger A. Fairfax, Jr., "FROM 'OVERCRIMINALIZATION' to 'SMART on CRIME': AMERICAN CRIMINAL JUSTICE REFORM—LEGACY and PROSPECTS," *JOURNAL of LAW, ECONOMICS & POLICY* 7, no. 4 (2011): 597–616, https://heionline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jecoplcy7§ion=35. ²⁸ Ogbuabor and Obi-Ochiabutor, "Using", 220.

(Victim-Offender Mediation), community conferencing, family group conferencing, and RISE (Reintegrative Shaming Experience).²⁹

ADR in the Criminal Law Legal System in India: The Indian Law Commission suggested in report no. 154 on The Code of Criminal Procedure, 1973 to introduce ADR in the criminal law legal system. In the year 2005, the Gujarat High Court also argued to adopt plea bargaining to resolve the criminal case to reduce the caseloads upon the court. According to the suggestion in 2005 the government of India enacted the India Criminal Law (Amendment) Act, 2005 which inserted a new Chapter 21A that contains sections 265A to 265L.³⁰ The sections deal with the terms, procedures, and criteria of the offenses to be solved through ADR. The offenses in which the punishment is less than 7 years and not committed against women and children under the age of 14 years can be compounded. The accused voluntarily must apply to the court to solve the criminal dispute through ADR.

ADR in the criminal legal system in Pakistan: The use of ADR in Pakistan's criminal legal system is very narrow.³¹ The National Accountability Ordinance, 1999 inserted the provision of plea bargaining in Pakistan, which is only applied in anti-corruption law.³² Under the ordinance, if the court approves the application of plea bargaining of the accused person, he need not face any direct sentence. Here the prosecuted has the power to reduce a case or some of the charges in the case related to corruption.

1.4 ADR in Criminal Legal System in Bangladesh

ADR has not yet been formally or explicitly introduced in the criminal justice system in Bangladesh. Only section 345 of the Code of Criminal Procedure, 1898 deals with the compounding of offense which can be termed as ADR. Besides, Gram Adalat Ain, 2006 and Birodh Mimangsha Board Ain, 2004 also deal with compounding some petty criminal offenses. The application of section 345 of the CrPC should be increased.³³ It will ensure the absolute opportunity of ADR in criminal cases. The success of ADR will ensure peace and harmony in society. ADR in criminal cases means compromise of an amicable settlement. Compounding

²⁹Melissa Lewis and Les McCrimmon, "The Role of ADR Processes in the Criminal Justice System: A View from Australia" (ALRAESA Conference, Uganda: ALRAESA Conference, 2005), https://www.justice.gov.za/alraesa/conferences/2005uganda/ent_s3_mccrimmon.pdf.

³⁰Md. Aktarul Chowdhury and Md. Hasnath Kaibir Fahim, "An Overview of the Practice and Prospect of Alternative Dispute Resolution in Criminal Justice System of Bangladesh: Promotion of Access to Justice an Overview of the Practice and Prospect of Alternative Dispute Resolution in Criminal Justice System of Bangladesh: Promotion of Access to Justice," *Amity Law Review* 6, no. 11 (February 2018): 68–82, <https://www.researchgate.net/profile/Md-HasnathFahim/publication/341756256>.

³¹ Chowdhury and Fahim, "An Overview", 70.

offense may be two types compounding of offense with the permission of the court and compounding of the offense without the permission of the court.³⁴

The Penal Code, 1860 holds the definition and formation of offenses and their punishments. On the other hand, the Code of Criminal Procedure, 1898 prescribed the procedures to try the offenses compoundable outside the court. But all types of offenses are not compoundable. Section 345 of the CrPC notes a list of offenses that can be compounded by the parties to the dispute. It should be noted that only the party, the victim, or the accused, may compound an offense.³⁵ Not even the public prosecutor has any power to compound an offense. Moreover, an offense denoted by a special law is not compoundable.

Rules for compounding criminal offense

The offense described in the list only can be compounded by the parties described in the third column.³⁶ Any other offense cannot be compounded. Abetment of the offenses and attempt to commit the offenses described on the list can also be compounded. Any parties in the dispute can compound offenses unless he is a minor, lunatic, or idiot. If he bears such incapacity, he also may compound the offenses with the permission of the court. The court doesn't allow compounding of offense when the accused has been convicted, or an appeal is pending. The accused person is presumed to be acquitted where the offense has been compounded.³⁷

Principle for compromising in criminal cases

Some points, as described, should be considered when compromising and criminal offense. For example; no compromise should be allowed before the charge sheet is submitted.³⁸ Compromising offenses should be strictly followed by the legal process and it should not be violating any legal provision.³⁹ The authority or, the person who is heading the compromise should give a patient hearing to both parties. He should not force any decision on any parties. Moreover, any extra benefit should not be given to either party. The accused should not be declared guilty or convicted of compromising preceding. The disputing parties must make a written 'compromise deed or solenama' and that deed must be signed by the court.⁴¹ And the court must provide a copy of the compromise deed to both parties.

³⁴ Zahirul Huq, Law and Practice.³⁵ Md. Mamun Chowdhury, "Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective," Bangladesh Research Foundation Journal 6, no. 1 (January 2017): 173–83.

³⁶The Code of Criminal Procedure, 1898, Section 345, <http://bdlaws.minlaw.gov.bd/act-75.html>. ³⁷Zahirul Huq, Law and Practice. 788. ³⁸Sahar Ali Vs. Samad Ali, 6 DLR 28 (1954). ³⁹Kaleb Mchale, "Improving ADR in the States' Criminal Justice Systems: A Case That States Should Adopt the U.S. Military's System of Nonjudicial Punishment," OHIO STATE JOURNAL on DISPUTE RESOLUTION 30, no. 1 (2014): 147–72,

Chapter-2

2.1 Criminal Court Structure of Bangladesh

The apex criminal court is the Appellate Division and High Court Division of Bangladesh. Besides those there are some other ordinary criminal Courts which have their legal basis in the Code of Criminal Procedure, 1898. Section 6 of the Cr.P.C provides the following two types of courts

1. Court of Sessions and
2. Court of Magistrates.

The Court of Sessions is presided over by the following three types of judges

1. Session Judge,
2. Additional Judge,
3. Joint Session Judge.

The Court of Magistrates may be of the following classes

1. Judicial Magistrate,
2. Executive Magistrate.

The Courts of Judicial Magistrates may be presided over by as many as five types of Magistrate

1. Chief Judicial Magistrate or Chief Metropolitan Magistrate,
2. Additional Chief Judicial Magistrate or Additional Chief Metropolitan Magistrate,
3. Senior Judicial Magistrate (First Class Magistrate, Metropolitan Magistrate),
4. Second Class Magistrate,
5. Third Class Magistrate.

Akhtaruzzaman Md, Conflict Resolution: Introducing ADR in Criminal Justice Administration in Bangladesh, Journal of 10th Human

Rights Summer School (ELCOP), 2009.

The adjudicating authorities perform its proceeding through following two stages

1. Proceeding Stage and

2. Trial Stage.xx

Proceeding stage consists of taking cognizance of a criminal proceeding and transfer to an appropriate court. Under Section 190, any CMM,CJM,MM, 1st class Magistrate or other Magistrate specially empowered may take cognizance of an offence on the basis of any of the three sources-(a) upon a charge sheet (b) upon a complaint (c)upon own knowledge or private information. Under Section 193, the Court of Sessions can take cognizance of offence. xxi

Trial stages has two phases-(a) trial in Magistrate Court and (b) trial in Session Court.

This is because the nature and procedure of trial in these two courts are different. Trial in Magistrate Court takes two forms-Summery trial and Regular trial. In Summery trial, the Court shall try the accused in short. Here the Court is dispensed with the recording evidence. The distinctive features of this system is that the Magistrate can impose sentence not exceeding 2years. Strict rules of evidence may not be followed here. xxii In regular trial, the Magistrate will first consider the record of the case and he will hear the parties. Having done that if he considers the charge to be groundless, he may discharge the accused. But if he is of opinion that there is a prima facie case for the accused, he shall frame a formal charge. After framing charge, if the accused pleads his guilt, he may convict him accordingly. If the accused does not plead his guilt, magistrate shall proceed to hear the case on the basis of evidence. If after hearing evidence, the Magistrate finds the accused not guilty, he shall record an order of acquittal. But if the Magistrate finds the accused guilty, he shall pass the sentence. xxiii Trial in Sessions Court starts with the opening of the prosecution case. The Public Prosecutor (PP) opens the case by describing the charge brought against the accused and starting by what evidence he will prove the guilt of the accused.

Akhtaruzzaman Md. Conflict Resolution: Introducing ADR in Criminal Justice Administration in Bangladesh, Journal of 10th Human Rights Summer School (ELCOP), 2009.

Then the Session Judge will give both the sides chance to argue in favour of framing charge or discharge. After such hearing and considering the record of the case, if the judge finds no sufficient ground he will discharge the accused. But if the Judge is of opinion that there is a prima facie case, he will frame a formal charge. After framing formal charge, if the accused pleads the guilt, he will be convicted. If the accused does not plead his guilt, the PP will first examine all prosecution witnesses. Cross- examination and re-examination will also be held accordingly. After considering prosecution evidence and arguments, the court will pass the order of acquittal or conviction. Xxiv

Akhtaruzzaman Md. Conflict Resolution: Introducing ADR in Criminal Justice Administration in Bangladesh, Journal of 10th Human Rights Summer School (ELCOP), 2009.

2.2 Necessities and Advantages of ADR in the criminal Legal System

The main advantage of ADR is that it will not consume huge time and money to decide on a criminal dispute. It will be speedy and cheap.⁴² Some other major advantages are such as- It will improve the advocate-client-court relationship. It will ensure justice for disadvantaged groups who fear facing a lengthy court system. Both the parties shall have control over the process and outcome of the dispute. So, it will ensure the satisfaction of the parties. Moreover, the court system is taboo for women. ADR process will ensure privacy and a confidential process for them. Finally, the ADR process will keep social harmony and protect businesses or corruption.⁴³

Article 35 of the Constitution of Bangladesh ensures the right to a speedy and public trial for the accused in the trial. But the criminal legal system of Bangladesh is slowed by long procedures and inefficiency in the investigation, prosecution, and pre-trial and trial.⁴⁴ This leads to a backlog of cases and overcrowding in the prison. Different legal advisors, law commissions, and legal scholars have already recommended ADR in the criminal law legal system. Law Commission of Bangladesh also has recommended the introduction of ADR in the criminal law legal system. Here, the author noted some specific significance of introducing ADR in the criminal law legal system in our country as follows

2.3 Protection of Constitutional Rights

ADR in the criminal law legal system protects the fundamental right to a speedy trial of the accused. Bangladesh follows a very lengthy process to decide on a criminal case. The processes of deciding over a criminal dispute under Chapter 20 and Chapter 23 of the CrPC, 1898 are very lengthy.⁴⁵ Moreover, the accused and the victim need to pay a sum of money to the advocate. During the trial, the witness of the case may be easily manipulated and the evidence of the prosecution is likely to be destroyed as there is no procedure to protect the witness and it preserves with preserve the evidence of the prosecution.⁴⁶ ADR in the criminal law legal system will help the accused to avoid pre-trial delays and the risk of witness tampering. Before the trial starts in the criminal court, a number of procedures needs to be followed such as filing Ejahar and FIR (First Information Report), Police Investigation, Examination of witness by Police, Police Report, etc. These delay the trial and by this time the wrongdoer gets opportunity to influence the witness.

⁴² Mohammad Omar Faruk, Sanjeev P. Sahni, and Gerd Ferdinand Kirchhoff, "Absence of Respect and Recognition of Victims in the Criminal Justice System in Bangladesh," *International Journal of Emerging Trends in Social Sciences* 8, no. 2 (2020): 51–56, <https://doi.org/10.20448/2001.82.51.56>. ⁴³Chowdhury and Fahim, "An Overview", 180. ⁴⁴Mahmudul Islam, *Constitutional Law of Bangladesh*. ⁴⁵The Code of Criminal Procedure, 1898, Section 241-249 and 265A–265L. ⁴⁶Faruk, Sahni, and Kirchhoff, "Absence of Respect

2.4. Procedural safeguards

ADR in the criminal law legal system will not be against due process and natural justice. Moreover, it will develop and upgrade the existing criminal law legal system. Fairness and all other rights of the accused shall be strictly followed.⁴⁸The process of ADR must not be enforced without the proper authority of the court. If the process of ADR takes place under the actual supervision of the court there is no scope of unfairness and arbitrariness.⁴⁹ It will be the duty of the accused to make the court know about the breach of his legal rights. In India, a case court specified plea bargaining as an appropriate alternative to the adversarial system and noted that it only aims to provide easy, cheap, and low-cost justice by solving a criminal dispute. Introducing ADR to the victims and the accused can also revive the trust of the public in the legal system.⁵⁰

2.5. Caseloads in the court

There are 1449219 cases in the Metropolitan Magistrate Court, 690964 cases in Sessions Court 464872 cases in the High Court, and 179209 cases in the Nari O Shishu Nirjatan Daman Tribunal which are yet to be decided.⁵¹ Moreover, 216370 police investigations are running.⁵² 1700 judges and magistrates, and 90 judges in High Court Division are handling these cases. The growth rate of the case is higher than the growth rate of the population in Bangladesh. Therefore, every year a huge number of cases get added. The traditional adversarial system used in criminal courts causes delay to decide on a criminal case. The introduction of ADR in the criminal law legal system can play a vital role here.⁵³ Legal scholars have suggested the appointment of judges to prevent case-loads on courts. Last few years, BJSC (Bangladesh Judicial Service Commission) has appointed judges however the rate of disposal of cases has not increased. In the meantime, the introduction of ADR is likely to decrease the case-loads in the criminal courts in Bangladesh like in other countries.⁵⁴

⁴⁸Jack B. Weinstein, "Some Benefits and Risks of Privatization of Justice through ADR," *THE OHIO STATE JOURNAL on DISPUTE RESOLUTION* 11, no. 2 (1996): 241–95, https://heinonline.org/hol-cgibin/get_pdf.cgi?handle=hein.journals/ohjdpr11&ion=18. ⁴⁹Hossain and Afroz, "Plea-Bargaining", 200. ⁵⁰Brian D. Johnson, Ryan D. King, and Cassia Spohn, "Socio-legal Approaches to the Study of Guilty Pleas and Prosecution," *Annual Review of Law and Social Science* 12, no. 1 (October 27, 2016): 479–95, <https://doi.org/10.1146/annurev-lawsocsci-110615-084755>. ⁵¹ See the report, "JUSTICE SYSTEM CASE FLOW," Bangladesh.justiceaudit.org (DHAKA: JUSTICE AUDIT BANGLADESH, 2021), <https://bangladesh.justiceaudit.org/national-data/system-overview/justice-system-caseflow/>.

⁵²The report, "JUSTICE SYSTEM CASE FLOW".

⁵³Justice Kazi Ebadul Hoque, "Plea Bargaining and Criminal Work-Load Plea Bargaining and Criminal Workload," *Bangladesh Journal of Law* 7, no. 1 & 2 (2003): 1–3. ⁵⁴Hossain and Afroz, "Plea-Bargaining", 203.

2.6. Overcrowd in the prison

According to the report of the Justice Audit Bangladesh⁵⁵, there are 541052 people arrested on FIR and under police investigation. As per the World Prison Brief Data report, the present prison population is 83107 till March 2021.⁵⁶ Unfortunately, the prison capacity of Bangladesh is about 35000. So, the Government and the prison authority suffer a lot to provide food, shelter, medical, and recreational facility to the people in the prison. It must be noted that a huge number of prisoners are innocent as the investigation on them is going on and they are on trial. This is why the introduction of ADR in the criminal law legal system is a crying need for speedy and more just disposal of criminal cases.

Chapter-3

3.1 Key Findings: ADR in Criminal Cases

1. Legal Provisions for ADR in Criminal Cases:

- **The Code of Criminal Procedure (CrPC), 1898:**
 - Allows for compounding (settlement) of certain offenses listed as compoundable under Section 320.
- **Village Courts Act, 2006:**
 - Facilitates resolution of minor criminal cases (e.g., petty theft, trespassing) in rural areas through community-based dispute resolution.
- **Arbitration Act, 2001:**
 - Though primarily for civil matters, arbitration can sometimes address criminal complaints in overlapping commercial disputes.
- **Mediation and Conciliation:**
 - Some family-related criminal disputes, such as dowry cases, can be resolved through mediation under the **Family Courts Ordinance, 1985**.

2. Types of Criminal Cases Suitable for ADR:

- **Compoundable Offenses:**
 - Examples include defamation, criminal trespass, hurt, and theft where the value is minor.
- **Family Disputes:**
 - Dowry-related cases, domestic violence, or maintenance disputes are often mediated for reconciliation.
- **Juvenile Cases:**
 - The **Children Act, 2013** emphasizes restorative justice for juvenile offenders, promoting ADR mechanisms like diversion and reconciliation.

3. Benefits of ADR in Criminal Cases:

- **Reduction of Case Backlog:**
 - ADR eases the burden on the formal criminal justice system, allowing courts to focus on serious offenses.
- **Reconciliation:**
 - Encourages parties to resolve disputes amicably, particularly in cases where relationships are ongoing (e.g., family or neighbor disputes).
- **Victim-Centric Approach:**
 - Empowers victims by involving them in the resolution process, often resulting in better outcomes such as restitution or apologies.
- **Time and Cost Efficiency:**
 - Resolves disputes faster and at lower costs compared to prolonged criminal trials.

4. Challenges in Criminal ADR:

- **Legal Limitations:**
 - ADR cannot be applied to non-compoundable or serious offenses (e.g., murder, rape, terrorism).
- **Cultural Resistance:**
 - In some communities, ADR is perceived as less authoritative than formal justice, particularly for criminal matters.

- **Power Imbalances:**
 - ADR processes can be influenced by local elites or power dynamics, leading to unfair settlements.
 - **Lack of Enforcement:**
 - Agreements reached through ADR in criminal cases may not be legally binding, limiting their effectiveness.
5. **Role of Village Courts and Local Bodies:**
- Village courts often serve as an ADR mechanism for minor criminal disputes, particularly in rural areas. These courts focus on maintaining community harmony and resolving issues quickly.
 - Union Parishads (local government bodies) play a key role in facilitating ADR in criminal matters under the Village Courts Act.
6. **Judicial Encouragement:**
- Courts in Bangladesh are increasingly encouraging mediation for criminal cases where applicable, aiming to promote restorative justice principles.
7. **International Influence:**
- Restorative justice practices, particularly for juvenile cases, have been inspired by global trends and incorporated into the **Children Act, 2013**

3.2 Challenges to Introduce ADR Mechanism in Criminal Legal System

It cannot be denied that the ADR system will play an important role in the speedy disposal of criminal disputes. But the state must face some challenges as well. For example, there is no precedent of ADR in criminal justice.⁵⁷ There is hardly any legal expert to play role in compromising criminal offenses. The party which has extreme power and money will influence the process and the outcome.⁵⁸ ADR in criminal justice will decrease the power of the criminal court.⁵⁹ Moreover, some wrongdoers shall use it as a weapon to save themselves.

ADR in family violence

The Domestic Violence (Prevention and Protection) Act, 2010 deals with family violence or domestic violence. In section 29 of the aforesaid Act, the provision of compounding offense was inserted. Therefore, husbands are allowed to negotiate with their wives and settle the issue of family violence by themselves without the involvement of any third party to monitor and control the process. Neither the Act nor the CrPC, 1898 holds any provision for the process of ADR. Moreover, there is no well-trained mediator who knows the process of mediating extreme family violence whether it is physical or mental. The husband or the male person always dominates the mediation of the family violence. We must consider that extreme family violence should not be compounded. Therefore, the dominating party takes the chances and influences the result.

⁵⁵ It was established by the Government in 2013. This organization keeps data collected from citizens, court users, criminal justice institutions and actors across the country and by each of the 64 districts. Website: <https://bangladesh.justiceaudit.org>. ⁵⁶“World Prison Brief Data,” www.prisonstudies.org (World Prison Brief, 2021), <https://www.prisonstudies.org/country/bangladesh>. ⁵⁷Chowdhury and Fahim,“An Overview”, 180. ⁵⁸Chukwunweike A. Ogbuabor, Edith O. Nwosu, and Edwin Obimma Ezike, “Mainstreaming ADR in Nigeria’s Criminal Justice System,” *European Journal of Social Sciences* 45, no. 1 (November 2014): 32–42, <http://www.europeanjournalofsocialsciences.com/>. ⁵⁹Carrie Menkel-Meadow, *Empirical Studies of ADR: The Baseline Problem of What ADR Is and What It Is Compared To* (California: OXFORD HANDBOOK OF EMPIRICAL LEGAL STUDIES, 2009), 1–48, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1485563

Codified procedures for ADR in family violence must be introduced very soon. For the reason that the women are reluctant to speak up in the court and if there is no involvement of the third party the male party shall dominate the compounding process.⁶²

Necessary Steps to Be Taken

The Government should take the necessary steps to introduce ADR in criminal justice. It can enhance the scope of ADR under section 345 of the Code of Criminal Procedure, 1898 very carefully. The introduction of ADR in criminal justice will reduce the malpractice and lengthy process in the court and reduce the cases pending in the court which is non-compoundable offenses. Thousands of cases are filed and pending under section 138 of the Negotiable Instrument Act, 1881 which are non-compoundable.⁶³ ADR process may be allowed in this case. The parties will be benefited from this. Moreover, a huge number of cases are filed and pending under section 385 of the Penal Code in the Court of Session for years. This type of case is suitable for compromising if the government takes steps to introduce ADR in procedural law.⁶⁴ Under the Children's Act, 2013 ADR system can also be introduced to ensure juvenile justice. ADR in this area shall be very effective and less time consuming. It will protect the rights and interests of the children. It will also uphold and preserve human rights. The Supreme Court also encourages ADR in solving disputes. Moreover, the Government must take the necessary steps to establish ADR training institutes and the funds required for introducing ADR in the criminal justice system. Finally, to gain the actual purpose of ADR, public awareness should be built.

3.3 Plea Bargaining as a Method of ADR

Like the other developed and developing countries, Bangladesh has also introduced ADR in its justice system in a limited context. However, ADR and its practice were present in the history of Bangladesh from time immemorial.

Following the successful practice of ADR in civil cases, many countries around the world already enacted ADR to settle criminal cases. ADR in criminal cases refers to plea bargaining. A plea bargain includes a plea agreement, a plea deal, copping a plea, or a plea in mediation in a criminal case between the prosecution and the accused. It means that the accused will plead guilty to decrease serious charges or it may mean that the accused will plead guilty to the original criminal charges in return for minimum charges. In plea bargaining, the defendant.

⁶²Chowdhury, "ADR", 10-12.

⁶³Khademul Islam, "Cheque Protarona Mamla: Bochore Tarikh Pore Akbar!" *banglanews24.com*, October 30, 2022, <https://www.banglanews24.com/law-court/news/bd/979648.details>.

⁶⁴Mahua Gulfam, "Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective," *Banglavisision* 13, no. 1 (January 2014): 205–16. Perspective," *Banglavisision* 13, no. 1 (January 2014): 205–16.

⁶⁵Akash Gupta and Tarazi Mohammed Sheikh, "Legal Challenges of ADR in India and Bangladesh: A Comparison," *The Daily Star*, February 17, 2023, <https://www.thedailystar.net/law-our->

agrees to plead guilty in exchange for a promise by the prosecutor not to seek the highest penalty by the law. Often the bargains are fixed in terms of punishment to be imposed, conditional probation, and restriction to the victim, and so on.⁶⁹In plain words, it is a process of negotiation where the accused admits his offense and negotiates for lower charges. The prosecution may agree to decrease the number of charges.

Methods of plea bargaining

There are three methods of plea bargaining for criminal cases as follows:

Facts bargaining: Here the accused assists the prosecution by disclosing the vital circumstantial and relevant facts to the police concerning the concerned case. And there is a promise between the prosecution and the accused that such facts may force the court to pass judgment against the accused will not be disclosed.⁷⁰

Charge bargaining: It is the most common form of plea bargaining. It occurs when the prosecution permits the accused to confess his crime to a lesser charge or only some of the charges brought against him. It's an opportunity for the accused to negotiate with the prosecution and reduce the charges brought against him. If there is only a charge the accused may negotiate for a less significant charge.⁷¹

Sentence bargaining: It takes place when the accused knows in advance that he will be convicted if he confesses his guilt. It is a mutual agreement between the accused and the prosecution for a lighter sentence to plead guilty. The prosecution pledges the accused a specific sentence with permission from the court.⁷²

3.4 Plea Bargain and Criminal Legal System in Bangladesh

The whole world is looking for a simple, faster, and cheaper process to decide on a dispute within a brief time. Here ADR can play a significant role. ADR should be termed as Appropriate Dispute Resolution instead of Alternative Dispute Resolution; because the method of applicable ADR process may vary from case to case, dispute to dispute. But it must be kept in mind that it is

⁶⁹Md. Mohidul Islam, "Sentencing in Criminal Cases in Bangladesh: Pronouncements as Guideline," *Journal of Judicial Administration Training Institute* 19 (May 21, 2020): 108, <https://doi.org/10.2139/ssrn.3586041>.

⁷⁰Jamila Chowdhury and Nushera Darin, "Juridical Possibilities of ADR through 'Plea Bargaining' of Compoundable Offences: Potentials and Perils under the Current Socio-Legal Context of Bangladesh," *University of Asia Pacific Journal of Law and Policy* 4-5, no. 1 (February 6, 2021): 1-18, https://www.researchgate.net/publication/349071373_Juridical_Possibilities_of_Compoundable_Offences_Potentials_and_Perils_under_the_Current_Socio-Legal_Context_of_Bangladesh.

⁷¹Chowdhury and Darin, "Juridical Possibilities," 7.

⁷²Chowdhury and Darin, "Juridical Possibilities," 8.

an alternative method to ensure justice but not a mechanism to replace the traditional court system.⁷³

The method of ADR in criminal justice is Plea Bargaining which is widely adopted and enforced in many developed countries like India, the USA Canada, and Australia. Plea bargaining may be termed as a bond between the accused and the prosecutor in a criminal case where the accused consent to confess his guilt in return for an offer or in exchange for some privilege from the prosecutor. The ultimate purpose of plea bargaining is to ensure cheap and fast justice by resolving disputes through negotiation.⁷⁴

But plea bargaining has not obtained any scope or chance in our criminal justice in Bangladesh. As per the CrPC, 1898 and the Evidence Act, 1872 the accused must confess his guilt before a magistrate. The law, CrPC, and the Evidence Act, 1872 described that if any accused of criminal law offense confesses his guilt before the magistrate, it is the discretion of the court to penalize the accused on the confession. Moreover, section 25 and 26 of the Evidence Act, 1872 denotes that any confession given to police or given under police custody shall not be considered as evidence. Unfortunately, neither of the law states any provision that the accused will enjoy lesser punishment for his confession.

But under section 337 of the CrPC, there is a provision termed as ‘tender of pardon’ which states that a magistrate may tender pardon to an accomplice if he discloses the circumstances with his knowledge relative to the offense and other people concerned. This provision may be the key to adding plea bargaining to our criminal law legal system. But it must be kept in mind at the prosecution may create extreme pressure on the accused in plea negotiation as he already confessed the crime.⁷⁵

Plea bargaining as a mechanism in Bangladesh: Plea bargaining is an amicable method to solve disputes by decreasing the cost and time of both parties. An inadequate number of judges and a huge number of criminal cases are creating extreme suffering for the parties in criminal courts in Bangladesh. And the rate of conviction has decreased. If the accused is not released on bail and is confined in prison, the prisons will be overcrowded. Considering these facts introduction of plea bargaining can play a vital role by giving lesser punishment to the offender instead of rotting in jail custody. It must be noted that the state bears the cost for the prisoner in jail. Although the accused will receive lesser punishment the cost of running a criminal case and valuable time will be saved. It is also argued that plea bargaining will increase crime. In this regard, the court before granting and application of plea bargaining must check the overall seriousness of the crime. Moreover, some scholars argue that a plea bargain will defeat the

⁷³Larysa Simms, “Criminal Mediation Is the BASF, of the Criminal Justice System: Not Replacing Traditional Criminal Adjudication, Just Making It Better,” OHIO STATE JOURNAL on DISPUTE RESOLUTION 22, no. 3 (2007): 797–838, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ohjdpr22&ion=29.⁷⁴Nadia Shabnam, “Plea Bargaining: An Analysis of Its Prospects in the Criminal Justice Administration of Bangladesh,” UITS Journal 1, no. 2 (2020): 136–45.⁷⁵ Simms, “Criminal Mediation”, 835.

3.5 DIFFICULTIES IN ACCESSING JUSTICE

Access to justice has many dimensions of which the ability to reach the process of law is but one. The capacity to access the judicial process depends on myriad factors involving the parties, objectives, resource base and discords arising from the existing socio-economic and cultural context. Broadly speaking, access to justice connotes more than simple entry into formal courts of law but includes the ability to reach lawmakers, lawyers, law enforcing officials and the capacity to pay for these services.

The existing legal process in Bangladesh is cumbersome, time consuming and costly. The procedure for pressing charges is complex and generally beyond the comprehension of simple minded poor people who have little knowledge, much less understanding, of their legal rights and privileges. The administration of justice is circumscribed in two ways: one, the substance of the laws is in itself incomprehensible to the poor and illiterate and is largely dependent on the production of documents of which the poor people have very little knowledge, and two, faulty and partial enforcement by law enforcing agencies which is more dependent on their servitude to people with money and political power rather than service to the community.

Moreover, the exorbitant costs of professional legal services place the formal legal system beyond the reach of the average citizen. Justice is meted out on the basis of power relations within the social structure, which means that service delivery is assured for those who command greater resources or benefaction in the society. Therefore, poverty is a fundamental obstacle that effectively impedes economically disadvantaged groups' access to justice.

For those who do reach the Courts, the corruption in justice delivery is enough to deter any further attempts in seeking legal redress. Apart from the enormous congestion in Courts which results from inordinate delays in disposal of cases and dispensing justice, procedural wrangles, multiplicity of appeals, revisions, reviews and remands are but some factors that leave litigants embittered and frustrated, not to mention worn out, physically, mentally and monetarily. Payment of bribes often becomes a deciding factor in the settlement of cases. Lawyers, in collusion with court officials, charge clients extortionate sums of money as fees and persuade court officials to change the dates of cases. One of the major drawbacks of law and its enforcement mechanism is that women, especially when they are poor, remain largely outside the ambit of the legal system which has led even law enforcing agencies to trivialize women's problems. Owing to their upbringing and socialisation in a patriarchal society, most women do not perceive themselves as having any rights. Submerged in domestic activities, women are not aware of what law has to offer them. Even if they knew the parameters of law, they would not be able to deal with the complexities of the formal legal system. The fact that women are economically disempowered greatly reduces their potential for taking legal action and enforcing their rights in Courts. Moreover, culture and tradition demand that women mute their needs and be content to live with their problems instead of challenging them. In the circumstances, they are willing at the most to submit to procedures with which they can

identify more easily instead of approaching the more formal legal system for conflict resolution.

3.6 INSEARCH of ALTERNATIVES: LOOKING BEYOND FORMAL MEASURES

Evidently, the philosophy of access to justice is rooted in roles, rules, procedures, arrangements; in other words, institutions, frameworks, objectives, values and ends.[^] An effective and efficient judicial system is fundamental to service delivery without which citizens are obstructed in the enjoyment of their rights and privileges. The judicial procedure in Bangladesh is adversarial by nature where the parties to the dispute are pushed towards a win-lose situation. While this process may well settle a dispute, but the inherent differences between the parties subsist, the competing interest of the parties remains unresolved and the interpersonal relationship of the parties becomes more hardened.¹ Moreover,

since recourse to the formal legal system is costly, time consuming and largely inaccessible, particularly to the poor and the disadvantaged, when legal problems arise poor clients constantly look for viable alternatives to get out of quandaries and resolve their difficulties.

This section explores the various mechanisms utilised by people, both extra-judicial as well as within the formal legal and judicial system, in their quest for justice in speedy and inexpensive ways. Currently, there are three streams of A DR in Bangladesh: extra

judicial or community-based initiatives, ADR in quasi-formal systems and finally, AD R in the formal legal system.

See Baxi, Upendra, 'Access, Development and Distributive Justice: Access Problems of the Rural Population, *Journal of the Indian Law Institute*, Vol.18, No,3, p.176. Chandra, Sarvesh, 'ADR: Is Conciliation the Best Choice?', Rao, P.O., and Sheffield, William (eds.). *Alternative Dispute Resolution. What it is and how it works. The International Centre for Alternative Dispute Resolution*, 19— pp. 82-92, at p. 82.

Chapter-4

4.1. Extra-Judicial or Community-based Initiatives

Justice delivery at local or community levels has always been preferred over formal courts, particularly by rural people. Travelling great distances, foregoing a few day's work and consequent earnings, spending money to marshal facts, engaging a lawyer and paying court fees and incidental expenses are some of the obvious factors that deter the poor from gaining meaningful access to the formal justice system. In the circumstances, there is a great demand amongst the people for an alternative dispute resolution system that would ensure due protection in the event of rights violation.

In Bangladesh extra judicial or community based A D R is commonly practiced through "shalish and more recently, through informal mediation. Bangladesh has a long tradition of community based initiatives for settling local disputes through what is commonly known as" shalish'. The advent of NGOs has facilitated the conversion of the traditional shalish to the more informal mediation for settlement of disputes at local levels.

(a) Shalish

Shalish has traditionally been a principal mode of preserving peace and justice at local levels in Bangladesh. It is basically a practice of gathering village elders and concerned parties, exclusively male, for the resolution of local disputes. Sometimes Chairmen and elite members of the Union Parishad are invited to sit through the proceedings. Shalish has no fixed dimension and its size and structure depend entirely on the nature and gravity of the problem at hand.

Local people have a tremendous faith in shalish as a first step towards seeking justice and settlement of disputes. The fact that the process saves time and money gives an added incentive to people to involve the community in settling their problems. It is a platform whereupon people air their grievances and introduce to the parties and audience present the various dimensions of law, rights and obligations. It provides people with the opportunity to learn from others' experiences and adopt strategies in the event of future crises in their own lives.

Although shalish members have the option of engaging in both mediation and arbitration processes in their attempts to assist disputants in reaching a mutually acceptable solution, arbitration remains the most commonly used method for dispute resolution in the traditional shalish system. Officiating members themselves decide how to address the problem. The process is far from tranquil; rather, it is wrought with tension and heated arguments. Although the decisions are not always fair and equitable, they nevertheless carry a great deal of weight within the community as, they are declared by established members of the village. Women are particularly vulnerable to extreme judgements and harsh penalties meted out by a system fraught with corruption, gender bias, power, money and influence. As mentioned earlier, the traditional shalish is composed exclusively of male members and as such, engenders an environment that discriminate against women disputants instead of playing a judicious role.

Although traditional Shalish as a method of dispute resolution has potential utilities, benefits and effectiveness, it is increasingly losing credibility on account of the arbitrary imposition of

solutions upon reluctant disputants by powerful personnel of villages or local communities. Such 'solutions' are often fixed by the elite themselves to ensure the continuity of their leadership roles rather than in response to specific needs of the parties concerned. As such, shalish processes do not take into account the grievances of the parties, nor their desired solutions, but impose what is deemed as correct and proper according to the officiating elites. These initiatives more often than not reflect and perpetuate the existing power relations within the community instead of making any meaningful contribution towards conflict resolution. The practice is also susceptible to manipulation by corrupt touts and local musclemen who, for a bit of money, may guide the pace and direction of the process in a certain manner by offering comments.

However, when a shalish is arranged and undertaken to resolve a conflict peacefully and amicably, the process does not project social power structures and patterns of domination. Shalish of such a nature can, in fact, become the most efficient, cost effective, socially acceptable and cohesive mode of sustaining community relationships.

(b) Informal Mediation

NGOs have attempted to remodel the traditional shalish by adopting a more innovative and moderate approach to dispute resolution in an effort to alleviate the common problems associated with the traditional system. NGOs prefer the mediation approach to resolve disputes whereby disputants are encouraged to express their own views without bias or fear. The N G O initiated shalish generally comprises a mediation committee, village elders, community leaders and others who have received some training in mediation services.

Mediation remains the primary mechanism for resolving disputes without resorting to formal courts. In view of the abject poverty and virtual inaccessibility of the poor to the legal system, mediation services provide more easily acceptable choices for settlement of disputes. In mediation, conflicts are resolved and consensus forged through participatory negotiating exercises under the keen supervision of the mediator. However, all disputes are not amenable to mediations. For those, particularly serious criminal matters, recourse to the formal legal system is the only available option.

In some instances, mediation is conducted by a formally constituted mediation committee comprising lawyers or trained individuals, who hear all cases of that area. In others, mediation is conducted by individuals who are selected by the disputants to represent them. These mediators may be trained individuals, N G O workers or relatives/neighbours chosen by respective disputants. While N G Os play a monitoring role in their respective areas, they also ensure neutrality, at the same time representing the interests of a particular client.

a shalish are bound The distinction between mediation and shalish in its better forms is that while shalish essentially carries the characteristics of arbitration, in the sense that it aims towards a win-lose situation, mediation concentrates more on a win-win situation. In other words, whereas the parties in by the decisions of the shalishkars (officiating individuals), mediation is conducted by actively engaging both parties in arriving at a mutual solution. There is no imposition on the parties who are allowed the space to decide for themselves the outcome of the process. This is why people prefer to have NGOs assisting in traditional shalish as it then assumes a more democratic dimension.'

4.2 ADR in the Quasi-Formal System

There are mechanisms at the local level for settlement of disputes through arbitration/conciliation. Legally mandated, these apparatuses are headed by local government personnel who dispense justice with the aid of nominees of the parties to the dispute.

(a) The Village Courts Ordinance 1976

Village Courts Ordinance 1976 has been promulgated for trial of certain cases in rural areas. Where a case is triable under this Ordinance by a Village Court, any party to the dispute may, in the prescribed manner, apply to the Chairman of the Union Parishad for the constitution of a Village Court for the trial of the case.” A Village Court so constituted shall comprise of a Chairman and two members to be nominated by each of the parties to the

Khair, Sumaiya, Legal Literacy for Supporting Governance. Bangladesh Country Study prepared for The Asia Foundation, commissioned by the Asian Development Bank, May 2000, pp. 23-24.

Section 4, The Village Courts Ordinance, 1976.

dispute. However, one of the two members nominated by each party shall be a member of the concerned Union Parishad. Moreover, the Chairman of the Union Parishad shall normally be the Chairman of the Village Court/’

A Village Court shall be constituted and shall have jurisdiction to try a case only when the parties to the dispute ordinarily resides within the limits of the union in which the offence has been committed or the cause of action has arisen/

If the decision of a Village Court is unanimous or by majority of four to one, the decision shall be binding on the parties and shall be enforceable in accordance with the provisions of this Ordinance. However, if the decision of a Village Court is a by a majority of three to two, any party may, within thirty days of the decision, apply to either the Assistant Judge or Sub-divisional Magistrate as the cases may be, for setting aside or modification of the decision. The concerned authority may refer the dispute back to the Village Court for reconsideration.* Notwithstanding anything contained in any other laws for the time being in force, any matter decided by a Village Court shall not be tried in any Court, including a Village Court."^

(b) The Conciliation of Disputes (Municipal Areas) Ordinance 1979

The Conciliation of Disputes (Municipal Areas) Ordinance of 1979 provides for settlement of certain cases in municipal areas through conciliation. Where a case under this Ordinance is required to be settled through a Conciliation Board, any party to the case may apply to any Commissioner for ward within which the dispute has arisen for the constitution of a Conciliation Board for the settlement of the case. If the application is made in the prescribed form, the Commissioner shall proceed to constitute the

Section 5,

Section 6,

Section 8,

Conciliation Board in the prescribed manner within the prescribed time.’®

A Conciliation Board shall comprise of a Chairman and two members to be nominated, in the prescribed manner, by each of the parties to the case. However, one of the two members to be nominated by each party shall be a commissioner of the Pourashava (municipal area) concerned. The Commissioner to whom an application is made under this Ordinance shall be the Chairman of the Conciliation Board." If the decision of a Conciliation Board is unanimous by a majority of four to one, the decision shall be binding on the parties and shall be enforceable in accordance with the provisions of this Ordinance. On the other hand, if the decision is by a majority of three to two, any party may, within thirty days of a decision, apply to the Assistant Judge or Sub-divisional Magistrate for an order setting aside or modifying the decision. If the concerned authority is satisfied that there has been a failure in justice, he may set aside or modify the decision or direct that the case be sent back to the Conciliation Board for reconsideration. Notwithstanding anything contained in any other law for the time being in force, any matter settled by a Conciliation Board in accordance with this Ordinance shall not be tried in any Court.

(c) The Conciliation (Municipal Areas) Board Act 2004

This new law replaced The Conciliation of Disputes (Municipal Areas) Ordinance of 1979. The Act empowers the municipalities to settle minor disputes in municipal areas through conciliation under the auspices of a five-member board with the municipal chairman acting as president. Under the new law the municipality conciliation boards are empowered to resolve disputes involving not more than Taka 25, 000. The limit was much lower in the earlier Ordinance of 1979.

Section 1,
Section 4,
Section 5,
The Conciliation of Disputes (Municipal Areas) Ordinance. 1979.

4.3. ADR in the Formal Legal System

As pointed out by Justice Mustafa Kamal, former Chief Justice of Bangladesh, the purpose of alternative dispute resolution is not to substitute consensual disposal for adversarial disposal or to abolish or discourage informal mediation or arbitration outside the Courts. Rather, it is about making the process part and parcel of the formal legal system, preserving at the same time, the trial Court's statutory authority and jurisdiction to try the case should ADR fail.

Although extra-judicial initiatives like, Shalish and mediation by village elders and NGOs have indeed made commendable impact in specific contexts, these efforts, by themselves, have not been able to solve the civil Court's own particular problems, namely, backlog of cases, delay and expenses in litigation. In other words, the extra-judicial exercises have not actually benefited the formal Court system since the parallel application of informal mediation and formal adversarial system is unlikely to either reduce the huge backlog or lower the costs involved. In the circumstances, it would be useful to import some elements of consensual resolution into the formal judicial system in order to enable litigants or for that matter, potential litigants, to be assured of justice delivery with speed and with less cost.¹ ^ Initiatives in this area culminated in the practical application of ADR provisions in The Family Courts Ordinance 1985 and the incorporation of ADR provisions in The Code of Civil Procedure 1908 and The Arbitration Act 2003 respectively.

(a) The Family Courts Ordinance 1985

Provisions for mediation may be found in Sections 10 and 13 of
The Family Courts Ordinance 1985,

Kamal, Justice Mustafa, 'Introducing ADR in Bangladesh', Keynote Paper presented at the National Workshop on Alternative Dispute Resolution: In Quest of a New Dimension in Civil Justice Delivery System in Bangladesh, under the auspices of Legal and Judicial Capacity Building Project, Ministry of Law, Justice and Parliamentary Affairs, GOB, Dhaka, 31 October, 2002, p. 3.

According to Section 10 of the Act when a written statement is filed, the Family Court shall fix a date ordinarily of not more than thirty days for a pre-trial hearing of the suit. On the date fixed for pre-trial hearing, the Court shall examine the plaint, the written statement (if any) and the summary evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties. At the pre-trial hearing, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties. If no compromise or reconciliation is possible, the Court shall frame the issues in the suit and fix a date for recording evidence.

Section 13 of the Act provides that after the close of evidence of all parties, the Family Court shall make another effort to effect a compromise or reconciliation between the parties. If such compromise or reconciliation is not possible, the Court shall pronounce judgement either at once or on some future day not beyond seven days of which due notice shall be given to the parties or their agents or advocates and, on such judgment a decree shall follow.

Where a dispute is settled by compromise or conciliation, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between parties.

4.4 MAJOR ISSUES ON THE ADR AGENDA

Law often plays a critical role in reinforcing the vulnerability of disadvantaged groups within a given society. In Bangladesh law in many ways plays a key role in designating power relations along lines of age, gender, class and so on. The inherent difficulty within the legal system of Bangladesh is not so much the lack of laws, but the absence of proper implementation. Ignorance and impoverishment, not to mention expensive and cumbersome legal procedures, effectively impede poor citizens' right to equity and justice. Although the poor as a whole are vulnerable to exploitation, the vulnerability of a poor woman in Bangladesh assumes different dimensions having far-reaching implications. A poor woman in Bangladesh is subjected to dual hierarchies, one, on account of her gender and, two, her impoverishment. Having very little access to material resources women lack autonomy and decision-making power, which precipitates their disempowerment within the family, community and the wider society. It is said that three factors are instrumental in sustaining women's subordination and powerlessness; discriminatory laws, gender-biased Court judgements and the ignorance of the law and the law-making processes.¹ In the circumstances, it is common for women, like other disadvantaged groups, to seek out alternative methods of rights redress and conflict resolution with which they can relate without difficulty rather than submit to the formal legal system which tends to be elitist in nature.

¹Section 22 (i), *ibid.* Section 22 (8), *ibid.* Hasan, Fatema Rashid, 'Limits and Possibilities of Law and Legal Literacy; Experience of Bangladesh women, Economic and Political weekly October 29. 1994, p.69.

While land and property disputes form a significant part of ADR activities NGOs, marital disputes and incidences of violence against women predominate the ADR agenda as the major crosscutting legal issue affecting the beneficiaries. Although spousal violence often arises out of the most trivial of causes, like delay in cooking and serving food to the man of the house, dowry demands form a common ground for inciting violence against women within the family. Although prohibited by the Dowry Prohibition Act 1980, the practice of demanding dowry is rampant and is now rooted in the socio-economic and cultural background of the people. This practice encourages multiple marriages, i.e. polygamy, as a means of acquiring more money with each successive marriage. Since Muslim Law permits men to have four wives at a time, the man may marry again by or without divorcing his existing wife/wives. Divorce leaves in its wake problems of maintenance and custody, which form crucial aspects of ADR interventions. Other legal issues include child marriages, lack of marriage registration which makes it easier for men to shirk their marital and legal responsibilities, arbitrary divorces, denial of inheritance rights and so on. Traditionally backward, illiterate and economically dependent, rural women are incapable of tackling complex legal problems let alone resolve them equitably. The entire scenario is compounded by normative ideology that perceives women as inferior and unequal in the economic, social and cultural context.

In case of land and property disputes problems arise mainly due to delays and difficulties in transferring title, falsifying documents, encroaching upon land by neighbours or others and so on. A lot of these problems are not simply the result of red tape, but the laws themselves. There is a perceptible reluctance amongst rural families to part with shares belonging to orphans or children of divorced parents, in the circumstances. ADR initiatives play an effective role in ensuring equitable distribution of resources amongst legitimate heirs. Such initiatives appear to have been similarly effective in ensuring rights of the fishing community over water bodies. Criminal offences are in principle not dealt by ADR initiatives but are referred to formal courts. However, cases, for example, of petty theft are often disposed of in an informal way subject to mutual consent of the parties.

Mediation appears to be the single most favourite method of resolving disputes at the local level and the most widely used of ADR mechanisms amongst the implementing partners. Mediation has the objective of resolving disputes locally, within a reasonable time and is geared towards a win-win solution. This process of dispute resolution is favoured by the majority of the rural poor for its neutrality and promptness in arriving at decisions, which is congenial for both parties to the dispute. Since the bulk of the population in Bangladesh are poor and illiterate and as such, are unable to seek justice in courts, mediation services provide poor people the advantage of free legal assistance. The NGOs combine mediation services with legal aid in their attempts to aid citizens in the redress of their rights. Where organisations lacked the legal grounding and expertise, legal aid services were provided through the network and partnership developed with legal organisations under respective programmes.

4.5. BEST PRACTICES: ASSESSING THE IMPACT OF ADR

ADR activities have established viable alternatives for conflict resolution amongst citizens by providing them with the means of recourse, alternative to courts, for vindication of their rights. On the basis of experiences of a few NGOs dispensing informal mediation services and the developments in the Family Court, this section assesses the overall impact of ADR interventions in relevant areas.

Impact of Community Mediation

L Transformation of the traditional Shalish

The process of shalish in its customary form invariably operated for and by the powerful people in society. Having socio-economic leverage and political clout they manipulated shaiish processes in their favour. Represented frequently by a body of men, shaiish traditionally worked to the detriment of women and the poor, as judgements were arbitrary, opinionated, harsh and one-sided. The introduction of legal services by NGOs has developed an altogether new system of administering justice and conflict resolution. Working parallel to traditional systems, the organisations have remodelled the traditional shalish by replication of mediation services. Under the new system mediators take special care to ensure satisfaction of both parties by providing them the opportunity of expressing their views and experiences and airing their grievances. Disputants are given the space to express their concerns freely and without hindrance or interruption. It is the disputants who are given the option of identifying solutions acceptable to both. The neutrality maintained throughout the process convinces the parties of the fairness of decisions. This is a principal reason why people have more confidence in the NGO supervised mediations. Although mediation does not necessarily undermine the formal legal system, it has acquired considerable credibility and popularity amongst the rural people as a means of accessing equitable justice. This has been the outcome of continued commitment and faith of community members, sound communication skills in dealing with people during programme interventions and an overall dissemination of knowledge about law and human rights by implementing partners.

Cost effective justice delivery

As far as cost effective and timely service delivery are concerned the most prevalent extra-judicial measure appears to be community mediation. In the absence of an effective and efficient court system, it is better if states widen the parameters of the machinery of justice by developing methods of dispute resolution that would ensure quality and accessibility. Mediation conducted by NGOs have many advantages, chief among them being informality, speed, absence of backlog, economy, privacy, harmony and easy accessibility.

The most tangible gain from mediation services is the lesser cost in disposing of disputes. This leads to a general enhancement of material circumstances of disputants. There are numerous examples of clients whose financial circumstances have improved, even if on a modest scale, as

a result of mediation processes. There are instances where women have been provided with maintenance or dower or simply taken back by their husbands who treat them better than before. Although these small victories are not necessarily sustainable for an indefinite period of time, they nevertheless offer the clients a measure of choice in the absence of realistic alternatives.

Moreover, since disputes submitted to mediation are resolved more swiftly than those submitted to the formal judicial system, this, in some ways, assists the judicial system by actually reducing the burgeoning caseloads of courts. When cases, which need not be taken to court, are informally settled, the quality of formal Justice is also enhanced as judges are then in a position to devote more time to cases that must be heard in courts.

4.6 Enhanced knowledge base

One of the significant impacts that have emerged from ADR interventions is the increased level of awareness and sensitivity about law and rights amongst citizens. Training imparted by legal NGOs to local level ADR committees provide an excellent opportunity for them to acquire knowledge of the legal rights and wrongs in respect of specific issues. The shalish sessions are also educational in themselves in the sense that all the people present and participating have the opportunity of learning what protection they have under the law'. Similarly, they are acquainted with the risks and liabilities of circumventing the law'. While beneficiaries may not exactly have become legal experts, they have certainly acquired substantial knowledge about specific legal issues that impinge on their daily lives. Most importantly, they are aware about the gaps between law, culture and practice and recognise the need to respect the rule of law at all events.

Women have benefited from this knowledge in more intense ways as they stood to suffer the most in the absence of legal knowledge. For example, in cases where legal provisions have been misapplied, like pronouncement of three talaks without going through the required procedure, knowledge of the law helped couples get back together without having to endure the hassles of separation. Again, where divorced couples wanted to remarry, knowledge of the law gave them the option of doing so without going through an intermediate marriage as was the norm in hilla marriages. Women now know what their rights are and where to go in the event of violation of their rights. On the other hand, men and influential people also know' their obligations and the limits to their power.

Attitudinal and behavioural change

ADR programmes have wrought changes in the attitudes of citizens in ways that enable them to take control of their own lives and make their own decisions. Steeped in traditional misconceptions, the general trend among rural people was to cling to age-old customs even when it came to dispensing justice. Far from democratic, traditional biases impinged sharply on disadvantaged groups more particularly, women and the poor. The advent of community legal services has helped citizens reassess their situation and plan their future accordingly. For

example, legal awareness and access to community justice have contributed to a reduction in child marriages and dowry demands. Similarly, polygamy, spousal violence and arbitrary divorce also show a downward trend as more and more people realise their rights and their potential to achieve equitable justice at the local level. Initiatives like family planning also seem to have greater effect as a result of legal services as men are increasingly consulting their wives in planning their families.

Thus, legal interventions at the community level have led people to make educated choices about their lives. In the same way, alternative dispute resolutions have initiated a shift in the attitude of men who have come to accept, albeit grudgingly, that, women have to be treated equitably. Women are also coming out of their shells and articulating their demands publicly. They resist oppression in ways hitherto unknown to them, much less practiced. Thus, ADR initiatives bring forth distinct changes in behavioural patterns amongst beneficiaries.

Mediation processes also bring changes in the attitude of the mediators. They do not regard themselves as judges; rather, they consider their services as essential for settling disputes and maintaining a social balance. They no longer look at women as a gendered entity but as individuals vested with rights and in need of protection. This has facilitated the neutral operation of shalish at the local level.

The impact of mediation as an ADR mechanism is strongly felt amongst the village elite and the Union Parishad leaders. They are convinced about the credibility of the modified shalish and often refer cases to implementing partners for settlement. In many cases the Chairmen of the local Arbitration Council requests implementing partners and ADR committees to settle matters that had originally come before them for settlement. This indicates not only the acceptance of ADR across boards but also signifies a change in attitude of locally elected personnel about their roles in governance. Corruption and misuse of power are also curbed as the implementing partners' role as watchdog of people's rights and providers of local justice is well known.

Participation of women in decision-making

One of the distinct features of the modified shalish is the inclusion of women as mediators and active contributors to the process of dispensing justice. The selection of a cross section of individuals, including women, by implementing partners for training has altered the customary composition of shalish, which originally consisted of senior male members only. The present scenario sees a departure from this stereotypical arrangement as women and younger people are increasingly officiating as mediators. There are instances where women participate in dispute resolution through group mobilisation. In others, women are not official members of the implementing organisations but are selected by the parties. During mediation, women who are non-members are also seen to interject, protest and rebut motions, in any case, the thrust is on active participation by women thereby engendering an enabling environment for equitable dispensation of justice.

Experiences of NGOs reveal that women, whether project staff, field workers or shalish members, have not only wrought considerable changes in the traditional shalish but also have imported qualitative changes within the community and family. While not retiring entirely from the traditional system of dispute resolution, women are increasingly using their collective strength in voicing their demands and ensuring for themselves the benefits of law and justice. Women disputants speak more freely when there are women mediators and this ensures a transparent process of communication between parties and shalish committees. Women mediators are confident and assertive and are committed to protecting women from exploitation. This, together with the knowledge that they can hold their male kinsmen accountable for injustices done to them, have given rural women some degree of autonomy in determining their own futures. This is evidenced by the secondary changes that have occurred as a result of ADR interventions. For instance, there is a marked disinclination amongst people to agree to marriage proposals with dowry demand as they are aware of the consequences. This has resulted in a reduction of marital violence and polygamy. In cases of divorce, maintenance and dower money have been successfully recovered in many cases.

Ensuring gender justice

ADR initiatives by NGOs have made considerable headway in respect of protecting women's rights in the family and outside. Legal issues pertaining to women have been communicated through training and legal literacy programmes. Under these initiatives women have been encouraged to identify the forum of their choice for justice delivery. Women's issues, which have gained prominence in the shalish process, are no longer trivialised. Women now have a forum for pressing their demands without inhibitions. With the introduction of ADR initiatives women have been able to access an alternative system of justice, which in essence restored their faith in the community.

Whereas previously women suffered in silence on account of their inaccessibility to the formal legal system, the NGO assisted dialish has given them the opportunity of challenging the injustices done to them in more familiar settings. Problems are resolved in presence of all and upon consensus of both parties. Consequently, there is a reduction in hostilities and aggression between parties as both realise the obligation they incur as a result of involving the community in decision-making. The fact that the primary beneficiaries of ADR activities are women, demonstrate that women's issues are being taken seriously after all. The involvement of women in mediation facilitates the process, as it is women who can identify more easily with the difficulties faced by women clients. Moreover, ADR activities appear to have equipped the community with a new sense of justice, which is manifest in their attempts to ensure the rule of law in justice delivery.

4.7. Development of negotiating strength through collective bargaining

All mediations involve intense negotiation between disputing parties. workers strive to engage disputing parties in active negotiation in an attempt to engender an environment within which balanced debate about the issue in question may emerge. The process is participatory and democratic since both parties are given ample opportunity to give their views and articulate their demands without fear or Mediation intimidation. The exercise strengthens the bargaining capacities of disputing parties by engaging them in an objective dialogue. The success of negotiation, however, depends upon a host of factors. While flexibility of the mental condition of the parties is fundamental to any negotiation, prevalent socio-cultural and economic contexts are equally important in arriving at just and realistic solutions. For example, a female client having been mistreated by her husband and his family may well choose to go back as she has very limited options. She is illiterate, unemployed and her parents/ family will not/cannot take her back. In the circumstances, she may prefer to stay with her husband even at the risk of continued maltreatment. At this stage it becomes a matter of choosing between two evils for clients.

The other benefit women derive from A D R activities is the opportunity to bargain for their rights and privileges in a collective way. Poverty and oppression impinge more sharply on women, particularly when they are on their own. It is found that women respond to crises in more effective ways when they have other women to rely on. Their collective strength helps them develop strategies that enable them to brave and overcome the daily challenges of life. The sharing of experiences in a group lessens women's feelings of alienation and reassures them that they are not alone in the struggle for existence. There is a visible increase in the presence and participation of women in mediation processes. Backed by collective power, women are thus able to withstand oppression and secure their rights and privileges.

However, although the most significant advantage of mediation is the continued involvement of the parties in the negotiation process, it is only right to find out whether the disputants are indeed satisfied with the results and whether they actually believe in the fairness of the results. Apart from the outcome, the perception of the process itself is important in ascertaining the benefits of the initiative. In this regard participation by parties is vital for a successful negotiation. Unless disputants can be induced to participate in the process on an equal footing and share in the decision-making and outcome, the purpose of mediation would be undermined. It is important to remember that mediation processes are more effective when there is a discreet sanction force behind the initiatives. In other words, the fact that in the event of one party refusing to be bound by mediation decisions, the implementing partners are prepared to assist the other party in court is enough to compel parties to agree to abide by the decisions arrived at through mediation.

4.8. Community participation and ownership

The community on the whole benefits from mediation services provided by the implementing partners. Local level shalish, which requires the involvement of the community at large, instils a deep sense of responsibility and ownership amongst individuals to resolve their own problems and control their own destinies. An individual who believes that s/he can obtain meaningful and enduring relief through a relatively neutral, cheap, expeditious and above all, accessible forum is more likely to rely on community support rather than resort to self help. This effectively reduces the need for State intervention and instead enables individuals to regulate their lives in a more constructive and meaningful fashion. In Other words, community participation transforms the traditional village shalish in ways that give individuals a renewed sense of hope, well-being and empowerment. The community on the whole also benefits from the lessons learnt as a result of participating in and witnessing mediation processes. The knowledge of rights and wrongs gleaned from these sessions by other members of the community come in handy when it comes to settling their own conflicts when the situation arises. Moreover, the involvement of the entire community increases the accountability of both mediators and disputing parties whereby their commitment to the cause is ensured.

Impact of ADR in the Quasi-Formal System

Although state mandated local justice systems are headed and operated by personnel in local governance, have backing of the Government and have necessary structures and functionaries in place, these systems are virtually redundant. The fact that the Union Parishad personnel have, over the years, been far more occupied with making personal gain rather than dispensing justice has made their offices practically defunct as far as resolution of conflicts at the local level are concerned. This is also evident from the fact that disputes brought before the Conciliation Board or the Village Court are often referred to the NGO assisted ADR committees for resolution. The alleged preoccupation of the local government organs with issues other than dispute resolution has gradually deviated their focus from justice dispensation to other areas of service. Consequently, the local population sees these bodies less as a forum for justice and more as a development oriented service provider. Therefore, local government bodies are fast losing their credibility in providing justice to local communities despite having clear sanctions of the law.

Moreover, the fact that justice delivery mechanisms of the quasi formal system are clearly distinct from that used in community mediation both in terms of quality and effectiveness make informal mediation more acceptable to local people. The inherent distinction between justice dispensed through NG O mediation and that by the Village Court is that the proceedings in the latter are premised on the arbitration model. In other words, while in mediation parties themselves arrive at a solution with the assistance of the mediator who simply facilitates the process, decisions at the Village Court evolve by way of arbitration based on the opinion of the majority members. Compensation is awarded by the Village Court on the basis of the value of the suit whereas, in mediation compensation is agreed upon by both parties. While there is no

scope for appeal under The Village Courts Ordinance 1976, mediation offers the disputants the opportunity to reopen their cases and reapply for mediation where the first attempt fails. Finally, although the Ordinance is silent about the sex of the members of the Village Court, the participation of women as members of the Village Court is rare. Contrarily, women are increasingly officiating as mediators on ADR committees.

Impact of ADR in the Formal Legal System

Activating ADR in the Family Courts

Within the formal judicial system, the scope of mediation through The Family Courts Ordinance 1985 has been tested with positive results. Although options for ADR were available under the Ordinance, the provisions were hardly utilised by the Family Courts in the past. This was largely due to ignorance and lack of motivation amongst lawyers and judges who, confined within the traditional adversarial system, made no attempts to take cognizance of or apply these provisions.

Given the multi-dimensional problems besieging the Courts of Bangladesh, particularly the civil justice system, initiatives were undertaken by Justice Mustafa Kamal, former Chief Justice of Bangladesh, to commence reforms in the legal system. To this end cooperation was sought from the Institute for the Study and Development of Legal Systems (ISDLS) of USA for effectively resolving the problems faced by the Civil Courts. Drawing upon the American experience, a Project was designed and launched to investigate avenues of judicial reform for dealing with the backlog of cases. Comprising of several phases the initiative produced a report that underscored specific reforms that could be initiated in Bangladesh. One of the recommendations of the report was to start a pilot project on mediation, a non-mandatory consensual dispute resolution system, in the Family Courts of Dhaka, gradually expanding the practice to other judgements in the country.

Mediation in the Family Courts was recommended on a careful assessment of the pervasive problems, their causes and likely solutions. The idea was to build, as far as possible, on the existing foundation of the country's legal system. The reason why the Family Courts were earmarked for the pilot project is that since The Family Courts Ordinance of 1985 itself provides for conciliation there was no need for a new legislation. Thus, while inclusion of other Courts at that stage would have necessitated new legislation or amendment of The Code of Civil Procedure 1908, the plan sought to commence reforms in ways that did not require a change in the procedural rules. The other reason for recommending mediation in the Family Courts is that the process entails direct participation of the parties to the dispute. They are required to attend confidential meetings along with their lawyers and other interested persons in the presence of a neutral third party, who, a judge, is trained to facilitate dispute resolution. The parties are allowed to talk about their positions in joint sessions before settlement options are discussed in private. Parties are able to interact freely without inhibitions; this enables them to anticipate the likely result, should they choose to litigate

Hasan, Justice K.M., 'A Report on Mediation in the Family Courts: Bangladesh Experience', presented at the 25th Anniversary Conference of the Family Courts of Australia, Sydney, 26-29 July, 2001,

Chapter-5

3.1 RECOMMENDATION

In India, Judiciary along with the two other organs, Legislature and Executive have been established to safeguard the rights of the citizens, but for its violation, the citizens have to question it only before the Judiciary. India is a country with enormous population and that's one of the main reasons for increase in number of cases which is resulting in exhaustion of the courts. There are many attempts being made in the country to reduce this burden but these attempts are not satisfactory and Courts are still in need of a strong mechanism. Alternative Dispute Resolution (ADR) is one such tool which can successfully lessen the burden of pending-litigation on courts by resolving the disputes outside the courts. In recent years, the scope for Alternative Dispute Resolution in India is gradually increasing.

It has many merits such as; it is inexpensive, less rigid, less time consuming... In this connection, Alternative Dispute Resolution (ADR) has a significant role in criminal trial as well especially to the convicts who are devoid of basic facilities. It is agreeable that applicability of ADR in criminal trial has limitations, but as our research has stated that, it is convenient for India to adopt victim-offender model of ADR where offender can feel sorry for what he has committed, which will also reduce the increasing no. of prisoners in India and speedy trial can be rendered in a positive way. ADR system, undertaken in appropriate conditions, can support court reform, improve access ¹⁸Alternative dispute resolution: <https://en.m.wikipedia.org> ¹⁹HMRC "Tax disputes: ADR' 2015. ²⁰"The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

ADR processes have capability to decrease significantly the costs and delays associated with traditional court proceedings. In present situation we must apply ADR system in wider way, and to decrease the caseload we should enforce ADR system from the root level. Rising awareness and effective initiatives are the tools of ensuring proper justice by ADR system. People should realize the importance of ADR, only then it is possible to ensure the quick and substantial justice. ADR initiatives can ensure the cost-effective and speedy justice among the common people of India.

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<https://en.m.wikipedia.org> 536 International Journal of Legal Science and Innovation [Vol. 2 bs 1, 3261 0 2020 linal of Legal Science and Innovation [ISSN 2581-9453] to justice and to increase disputant satisfaction

5.2 Conclusion

The Indian Supreme Court denoted that despite we find compromise is encouraged in civil suits and it is the most satisfactory method of settling a dispute between individuals. But such a mechanism of compromise of criminal offenses is immoral in Criminal Justice System. For the reason that crimes are committed against the state and the state cannot compromise. The state must enforce the law to uphold rule of law.⁹⁶It is also unfair that the common people will lose faith in the criminal law legal system for its lengthy, time-consuming, costly adversarial process. And thus, it will fail to ensure our constitutional rights to a speedy trial. The timely disposal of criminal cases has become very rare. Such a critical situation in the criminal justice system can create a new opportunity of hope for both the prosecution and the accused. Section 345 of the CrPC, 1898 states the procedure regarding compounding of offenses but isn't sufficient and effective to mitigate the hardship and requirement of the criminal legal system. ADR in the criminal law legal system is beneficial to the victim and the accused too. The victim doesn't require to go to court for providing evidence which sometimes creates a distressing experience regarding the nature of the case. It will also help the victim to get compensation from the accused. ADR might also be beneficial to the accused. He may escape the maximum sentence for his crimes. Moreover, he need not spend a huge sum of money on his defense. It will ensure a speedy trial for both parties in a case. Regarding the present critical situation of the court burdened with a huge volume of case backlog, the author supports the introduction of ADR in the form of charge beginnings and sentence burning in the criminal legal system of Bangladesh. can ensure prompt justice for the victim and a spirit trial for the accused.

⁹⁶ Chowdhury and Fahim, "An Overview", 71.

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