

Introduction of ADR in Criminal Justice System in Bangladesh: Prospects and Challenges

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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.

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.⁵ ADR 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-dispute-resolution/>.

³ Katie 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>>

⁷ *The Constitution of the People's Republic of Bangladesh*, Article 35(3).

⁸ Mahmudul Islam, *Constitutional Law of Bangladesh*, 3rd ed. 296–9 (Dhaka: Mollick Brothers, 2012), 296.

⁹ *The Code of Civil Procedure, 1908*, Section 89A-89C, <http://bdlaws.minlaw.gov.bd/act-86.html>.

¹⁰ *The Artha Rin Adalat Ain, 2003*, Section 21, 22, 23, 24 § (2003), <http://bdlaws.minlaw.gov.bd/act-901.html>.

¹¹ *The Arbitration Act, 2001*, <http://bdlaws.minlaw.gov.bd/act-850.html>.

¹² *The Bankruptcy Act, 1997*, Section 43-46, <http://bdlaws.minlaw.gov.bd/act-812.html>.

¹³ *The Family Court Ordinance, 1985*, Section 10, 14 (1985), <http://bdlaws.minlaw.gov.bd/act-details-682.html>.

¹⁴ *The Gram Adalat Ain, 2006*, Section 4, 5, <http://bdlaws.minlaw.gov.bd/act-938.html>.

¹⁵ *The Labour Act, 2006*, Section 210, <http://bdlaws.minlaw.gov.bd/act-952.html>.

¹⁶ *The Code of Criminal Procedure, 1898*, 265A-265L, <http://bdlaws.minlaw.gov.bd/act-75.html>.

¹⁷ Zahirul Huq, *Law and Practice of Criminal Procedure*, 10th ed. (1980; repr., Bangla bazar, Dhaka: Kamrul Book House, 2021), 780–92.

¹⁸ Md. 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 Resolution in Criminal Justice System of Bangladesh: Promotion of Access to Justice," *Amity Law Review* 2018, no. 6 (2018): 74.

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.

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 Pápic, "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 Pápic, "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.

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 (Täter 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 Trenczek, "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://heinonline.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.

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.

³²Chowdhury and Fahim, "An Overview".

³³Md. 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.

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.⁴⁰ 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.

4. Necessities and Advantages of ADR in the criminal Legal System

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.

³⁶ The Code of Criminal Procedure, 1898, Section 345, <http://bdlaws.minlaw.gov.bd/act-75.html>.

³⁷ Zahirul Huq, *Law and Practice*. 788.

³⁸ *Sahar Ali Vs. Samad Ali*, 6 DLR 28 (1954).

³⁹ Kaleb 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, https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/ohjdpr30&ion=8

⁴⁰ *MD. Joyanal vs. Md. Rustom Ali Meah*, 36 DLR 240 (AD) 1984.

⁴¹ *Sharif H. Chowdhury and others vs. the State and others*, 22 BLT 204 (HCD) 2014.

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-

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.⁴⁷ 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.

Procedural safeguards

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>.

⁴³ Chowdhury and Fahim, "An Overview", 180.

⁴⁴ Mahmudul Islam, *Constitutional Law of Bangladesh*.

⁴⁵ *The Code of Criminal Procedure*, 1898, Section 241-249 and 265A–265L.

⁴⁶ Faruk, Sahni, and Kirchhoff, "Absence of Respect".

⁴⁷ Md. Pizuar Hossain and Tureen Afroz, "Plea-Bargaining: Socio-Legal Impacts on the Criminal Justice System of Bangladesh," *Australian Journal of Asian Law* 19, no. 2 (2019): 197–215. 199.

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.⁴⁸ The 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

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

Overcrowd in the prison

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/cgi-bin/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-case-flow/>.

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.

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.

5. 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.⁶⁰ The husband or the male person always dominates the mediation of the family violence.⁶¹ 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>.

⁵⁷ Chowdhury and Fahim, “An Overview”, 180.

⁵⁸ Chukwunweike 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/>.

⁵⁹ Carrie 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.

⁶⁰ Dr. Jamila A Chowdhury, “ADR in CRIMINAL CASES and DECRIMINALISATION of VIOLENCE: A GENDER PERSPECTIVE,” *Indian JL & Just* 7, no. 1 (2016): 1–19, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ijlj7§ion=26.

⁶¹ Chowdhury, “ADR”, 9.

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.⁶⁵ 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.

6. 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.⁶⁶

Following the successful practice of ADR in civil cases, many countries around the world already enacted ADR to settle criminal cases.⁶⁷ 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.⁶⁸ 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," *Banglavisian* 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-rights/news/legal-challenges-adr-india-and-bangladesh-comparison-3249936>.

⁶⁶"Shalish" Banglapedia.

⁶⁷Chowdhury, "Alternative," 173.

⁶⁸Hossain and Afroz, "Plea-Bargaining".

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.⁶⁹ In 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

7. 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_Potential_s_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.

⁷⁵Simms, “Criminal Mediation”, 835.

right penalty.⁷⁶ It is not also factual because the process of plea-bargaining deals with the concession of treatment but not punishment. So, a skilled and fair prosecution is the prior condition for plea bargaining.⁷⁷ Since the criminal law legal system of our country is much similar to India and Pakistan, our country may implement the principle of plea bargaining just like India and Pakistan. However, all kinds of criminal offenses should not come under the shade of the ADR mechanism.

Plea bargaining in the context of Bangladesh: Although plea bargaining has the benefit to settle small criminal offenses without going to court, sometimes it is criticized for its misuse by offenders in society.⁷⁸ Moreover, random use of plea bargaining without the authority of the criminal court may encourage habitual offenders to avail themselves of the benefit of plea bargaining and continue their evil deeds without suffering punishment for their criminal acts.⁷⁹ As a result, plea bargaining must not be used for habitual offenders, thug (The person is habitually involved in robbery, or child-stealing by means of or accompanied with murder)⁸⁰, and those who commit crimes against women and children. Moreover, plea bargaining has some lacking as-

- i. Plea bargaining program doesn't set any precedent, define legal norms and promote the application of legal rules.⁸¹
- ii. Plea bargaining doesn't correct systemic injustice despite it sometimes discriminates and violates human rights.
- iii. It doesn't have any educational or, moral effect on society or, the population.
- iv. It fails to ensure justice one of the parties possesses extreme power.⁸²
- v. Plea bargaining of grievous offenses shall encourage the wrongdoer for committing the offense further, etc.⁸³

8. Findings and Recommendations

The author pointed out some of the important issues to be discussed below at the same time some recommendations have been described as well. Comparing with litigation, ADR is an

⁷⁶Simms, "Criminal Mediation".

⁷⁷ Simms, "Criminal Mediation", 822.

⁷⁸Chowdhury and Darin, "Juridical Possibilities".

⁷⁹ A. Ogbuabor et al, "Mainstreaming ADR".

⁸⁰*The Penal Code, 1860*, Section 310.

⁸¹Mark Bakker, "NORTH CAROLINA LAW REVIEW Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System," *NORTH CAROLINA LAW REVIEW* 72, no. 6 (January 9, 1994): 1479–1526, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nclr72&ion=53.

⁸²Lynn A. Kerbeshian, "ADR: To Be Or...," *North Dakota Law Review* 70, no. 2 (1994): 382–416, <https://commons.und.edu/ndlr/vol70/iss2/11>.

⁸³Gulfam, "Introducing Alternative," 1485.

inexpensive and quick process; Moreover, it private and informal; it involves the both parties in the settlement of the dispute; and however, decisions made by the parties are not final, except the decision taken through Arbitration.

Some scholars will argue that ADR in criminal justice will waive the Constitutional right of the parties like the right to a fair trial, public trial, and right to appeal.⁸⁴ The adversarial process of taking witnesses, making, and rebutting the witness arguments by the prosecution and the defendant, and proving the charges beyond a reasonable doubt will not be followed strictly in the ADR process. But the fact is that ADR in criminal justice will also uphold a Constitutional right to a speedy trial. A lengthy process of investigation, framing of charges, and taking witnesses shall be removed. Thus, ADR will ensure a speedy trial.

It will also be argued that ADR in criminal justice will curtail the principle of presumption of innocence and influence the accused to confess his crime.⁸⁵ As the author has described earlier some of the developed countries have introduced ADR in their legal system. The precondition is that the guilty plea must be voluntary consent of the accused. It will be the duty of the court to check it. There will be a prescribed process that the accused will be free to accept or avoid ADR in the criminal law legal system.⁸⁶ If the accused is innocent, he definitely will not go for the guilty plea. It will depend on the evidence collected by the prosecution and the defendant. Even if the accused confessed the crime, the court must consider the merit of the case before sentencing him.

Another criticism of ADR in the criminal law legal system will be that it will remove the deterrent theory (Deterrent Theory is one of the 5 theories of punishments that aims to stop criminals or individuals from doing criminal deeds)⁸⁷ of punishment. ADR would likely impose lesser punishment on the criminal and thus it will encourage the offender to commit further crimes. Truly speaking, in the process of ADR, the criminal has the chance to escape heavy sentences, because the accused gets chance to bargain the charges against him and reduce the punishment as accordingly. Well, ADR can decrease the criminal activity of the habitual offenders who continue committing the crime while released on investigation and pre-trial preceding. It provides time for the habitual offenders to commit further crimes while their previous act is under investigation. As a speedy process, ADR will prevent him from committing a crime as he can be convicted soon through ADR.

Moreover, it is naturally unfair to negotiate with criminals. Well, the adversarial legal system follows the principle of presumption of innocence. We cannot name a person a criminal until and

⁸⁴ Awol Alemayehu Dana, "Factors Deterring Enhanced Application of Alternative Dispute Resolution (ADR) in Criminal Litigation in Ethiopia: The Case of Wolaita, Southern Ethiopia," *International Journal of Humanities & Social Science Studies (IJHSSS)* 4, no. 2 (September 30, 2017): 183–202, <https://doi.org/10.29032/ijhss.v4.i2.2017.183-202>.

⁸⁵ Awol Alemayehu Dana, "The Status of Alternative Dispute Resolution (ADR) in Criminal Justice System under the Legal Frameworks of Ethiopia & Its Challenges," *Research on Humanities and Social Sciences* 7, no. 23 (2017): 69–79, <https://core.ac.uk/download/pdf/234676172.pdf>.

⁸⁶ Islam, 'Sentencing'.

⁸⁷ Simran Srivastava, "Relation between Deterrent and Preventive Theory of Punishment," [legalserviceindia.com](https://www.legalserviceindia.com/legal/article-6209-relation-between-deterrent-and-preventive-theory-of-punishment.html), accessed July 8, 2022, <https://www.legalserviceindia.com/legal/article-6209-relation-between-deterrent-and-preventive-theory-of-punishment.html>.

unless his guilt is proved. Therefore, an accused person is innocent. So, it is not against natural justice to negotiate with an innocent person. In a criminal case, the prosecution has to prove its case beyond a reasonable doubt. Sometimes the criminal goes free however he has sufficient evidence but failed due to the lengthy process of the adversarial legal system. So, the conviction rate goes low. Here, ADR can play a vital role. The prosecution can bargain with the accused with the evidence he has. The prosecution can ask for a guilty plea and sentence bargaining.

Nowadays several steps are being taken to include the offense of murder in the ADR system, but the concern is that if the offense of section 302 is included in ADR the principle of Natural Justice will be omitted from the word Justice as grievous crimes are considered to be committed against the community. In certain situations, one side can dominate the other, for example, grievous heart, rape, wrongful confinement, etc.

ADR for criminal cases should not be introduced for all offenses.⁸⁸ For instance, offenses affecting the socio-economic conditions of this country, which the Government would notify; grievous offenses committed against women such as rape acid terrorism, etc.; heinous offenses committed against children below the age of 14.⁸⁹ Despite such vast areas of exclusion, there are many offenses for which the accused will be entitled to avail themselves of the advantages of ADR in criminal Laws, but the state has to make sure that the principle of natural justice is not being subjected to neglect; And finally, the offense against the religious faith, as it will escalate the blasphemy across the country and surely make the country unstable.

ADR on criminal justice may be introduced on the offenses for which the punishment is imprisonment of fewer than 7 years.⁹⁰ Moreover, some special crimes may be subject to ADR such as cheque dishonour, fraud, criminal misappropriation of property, theft, mischief, criminal breach of trust, etc.

The parties of a criminal case, the prosecution, and the defence may not have sufficient evidence and resources to prove their case. They can be encouraged to suggest the client go for ADR in his criminal case. While considering plea bargaining in a criminal case, the prosecution and the defence counsel must consider their resources evidence, information about the crime, background information of the accused, his life goals, and his career.⁹¹ Finally, if there is any probability of conviction. The prosecution has a very limited role here. Being addressed by the lawyer, the accused must apply to the magistrate. To ensure transparency, both parties must keep their record of discussions. The court may appoint experts, for instance, retired judges of the High Court Division to check the discussion among parties.⁹²

⁸⁸ Shabnam, "Plea Bargaining", 142.

⁸⁹ Shabnam, "Plea Bargaining".

⁹⁰ Marinah Rahmat, Nor Syaliati Mohd Sobri, and Syed Ahmad Naquib Syed Zulkifli, "A LEGAL ANALYSIS on the APPLICABILITY of ALTERNATIVE DISPUTE RESOLUTIONS (ADR) in the CRIMINAL JUSTICE SYSTEM: WITH REFERENCE to the UNITED STATES of AMERICA and AUSTRALIA" (Undergraduate Dissertation, 2014), <https://ir.uitm.edu.my/id/eprint/31629/>.

⁹¹ Md. Mohidul Islam, "Sentencing in Criminal Cases in Bangladesh: Pronouncements as Guideline," *Journal of Judicial Administration Training Institute* 19 (May 21, 2020), <https://doi.org/10.2139/ssrn.3586041>.

⁹² Hazel Genn, "What Is Civil Justice For? Reform, ADR, and Access to Justice," *Yale Journal of Law & the Humanities* 24, no. 1 (2012): 397–417, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/yallh24§ion=21.

Like our neighbour country India, a new chapter on ADR in criminal justice may be included on CrPC, 1898 holding the provision regarding areas both procedural and substantive.⁹³

The process of ADR must be kept out of any authority of the police department.⁹⁴ The process may take place in-camera trial to ensure the free consent and willingness of the accused. At the primary stage, there could also be a conversation between the accused and therefore the judge regarding ADR on his case. When an accused applies to plea bargaining, he may be released on bail but the habitual offender and the offender of crime gravies in nature must not be released on bail.

While deciding less punishment for the criminal voluntariness of the victim should not be ignored. The name of ADR in criminal justice is to bring justice to both sides. Free consent of the prosecution of the accused and the victim must be ensured. Well, the actual result of ADR is not the result of bargaining among the parties as the ultimate decision must be pronounced by the judges regarding the report of bargaining. As there will be court-appointed experts to check the procedure of ADR between the parties, there is no risk of coercion, undue influence, or force. Moreover, the accused and the prosecution will have the right to be heard and convey their argument before the court.

The Government must take immediate steps to coach lawyers and judges to form them skilled in ADR in criminal justice for the effective and efficient application in criminal cases.

Prescribed process of plea bargaining: The process of plea bargaining in India may be followed by Bangladesh in criminal justice. Description of the method of Plea bargaining of India will be helpful to understand. A specific chapter on plea bargaining can be inserted in the Code of Criminal Procedure, 1898 of Bangladesh.⁹⁵ However, some basic rules may be as follows-

- a) The accused may voluntarily submit an application for plea bargaining during the trial of the crime.
- b) The court would examine the application and the accused if it is filed voluntarily. The accused must provide compensation and the cost of the case to the victim.
- c) When the case is decided to such mutual negotiation, the court will pronounce the judgment by giving one-fourth of the penalty for such an offense.
- d) The confession of the accused will not be used for another issue except plea bargaining.
- e) No party shall be allowed to appeal against the order in the case of plea bargaining.

9. Conclusion

⁹³ Ridoan Karim, "INTRODUCTION of ALTERNATIVE DISPUTE RESOLUTION in CRIMINAL JUSTICE SYSTEM of BANGLADESH," *Journal of Asian and African Social Science and Humanities* 1, no. 2 (2016): 98–114, <https://www.researchgate.net/publication/321527042>.

⁹⁴ Mchale, "Improving".

⁹⁵ Mohammad Saidul Islam, "Efficiency and Effectiveness of Alternative Dispute Resolution Schemes towards the Promotion of Access to Justice in Bangladesh," *IIUC Studies* 8 (September 10, 2014): 95–112, <https://doi.org/10.3329/iiucs.v8i0.20405>.

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.⁹⁶ It 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. It can ensure prompt justice for the victim and a spirit trial for the accused.

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