EAST WEST UNIVERSITY

Dissertation

on

ADR in Criminal Cases: A Comparative Analysis between India and Bangladesh

Course Code: **LAW406**

Semester: **Summer 2023**

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Word Count: 7963

Date of Submission: 07-09-2023

Acknowledgement

This research is based on the course Law 406 (Supervised Dissertation) of the Department of Law, East West University. This research was conducted for the objective of my undergraduate academic course.

I want to express my gratitude to my respected supervisor, Adity Rahman Shah, Senior Lecturer of the Department of Law at East West University, selecting me and for her direction and mentoring during the dissertation.

Ultimately, I would like to thank Allah for everything and for enabling me pursue this research against all the challenges and my parents for the unwavering backing every step of my life.

Consent Form

The dissertation titled "ADR in Criminal Cases: A Comparative analysis between India and Bangladesh" done by Md. Umar faruk, 2019-1-66-018, submitted to the Department of Law for the fulfillment of the requirements of Course Law 406 for LL.B. (Hons.) degree offered by the Department of Law, East West University is accepted for submission.

…….

Signature of the Supervisor

Date:

Declaration

I, Md. Umar Faruk, hereby certify that this dissertation titled "ADR in Criminal Cases: A Comparative Analysis between India and Bangladesh " is an original and individual work. This research is completed under the guidance of Adity Rahman Shah, Senior Lecturer, Department of Law, East West University. Furthermore, this research paper has never been submitted in whole or in part for any other academic purpose, and it properly acknowledges and cites its sources. To the best of my knowledge, all the data provided in this research is genuine and reliable.

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Contents

List of Abbreviation

Alternative Dispute Resolution(ADR)

The Code of Criminal Procedure(CrPC)

Private Complaint Mediation Service(PCMS)

Victim-Offender Mediation Programs(VOM)

ABSTRACT

ADR is defined as a method of resolving disputes between litigants in a quick and easy way outside of official court proceedings. criminal courts in India and Bangladesh are overburdened with an exorbitant number of pending cases, posing an acute danger to both victim and offender, as well as the state, producing further problems in the criminal justice system. ADR has become increasingly prominent in the realm of criminal justice as a viable substitute for traditional court proceedings. This research examines the changing legal frameworks, current situations, and practical use of ADR methods in the criminal justice systems of the both countries. The application of ADR in criminal justice system in both India and Bangladesh poses a distinctive amalgamation of challenges and prospects. The legal system in India exhibits a wide range of ADR approaches, such as compounding, plea bargaining, and restorative justice, which contribute to its diversified legal environment. In contrast, Bangladesh predominantly relies on compounding as its primary ADR method. This research also highlights the global implementation of ADR in criminal cases. This research applies a comparative methodology to examine the results, shortcomings, and insights gained from the application of ADR in criminal cases. The research encompasses various aspects, including advantages, disadvantages, the level of satisfaction experienced by victims, and the potential for mitigating the number of pending cases inside the courts of both nations. The findings and recommendations provide insight into the difficulties encountered by ADR in criminal proceedings, encompassing concerns pertaining to legal protections, transparency and implementation of ADR in criminal justice system contexts of both nations.

CHAPTER 1: INTRODUCTION

1.0-INTRODUCTION:

ADR is a comprehensive concept that incorporates a diverse range of methods aimed at settling legal issues in a manner that does not involve resorting to the traditional court system. ADR is a viable option in both civil and criminal proceedings, presenting several notable benefits in comparison to conventional litigation. These advantages encompass expeditious resolution, enhanced efficacy, and cost-efficiency.

ADR has been employed in criminal cases in India for a considerable duration, with a firmly defined legislative framework governing its application. CrPC encompasses many ADR methods, such as compounding and plea bargaining. These mechanisms possess the capacity to be employed at any juncture within the criminal justice process, spanning from the initial inquiry to the subsequent trial.

ADR is a very new idea in the context of Bangladesh. Its application in criminal cases is now at an incipient phase. Nevertheless, there is an increasing inclination towards ADR, and the government is thinking to implement certain measures to facilitate its adoption.

The objective of this research is to analyze and compare the practices of ADR in criminal cases in India and Bangladesh. This research will examine the legal frameworks, importance of ADR, techniques for execution, and outcomes of ADR in both countries. This research also aims to provide an analysis of the advantages, difficulties, and possibilities for development in the ADR in criminal justice system in both countries.

1.1-RESEARCH OBJECTIVES:

The main objective of this research proposal are as follows:

a) The objective of this research is to examine the legal framework governing ADR in criminal cases within the jurisdictions of India and Bangladesh.

b) This study aims to analyze the various methods of execution and legal structures used for ADR in criminal cases within both Bangladesh and India.

c)To assess the efficacy of ADR mechanisms in criminal cases, encompassing their influence on the accessibility of justice, expeditiousness of solving cases, and satisfaction of victims.

d) To find out the main impediments and the most effective approaches pertaining to the application of ADR in criminal proceedings within the jurisdictions of India and Bangladesh.

e) To present suggestions for improving the application of ADR in criminal cases in Bangladesh and India, drawing from the comparative analysis.

1.2-RESEARCH QUESTIONS:

To what extent ADR methods are effective in resolving criminal cases in India and Bangladesh?

1.3-RESEARCH METHODOLOGY:

The researcher will use analytical, critical, and descriptive methodologies to conduct the research. The research will rely on qualitative approaches and use primary and secondary sources. No fieldwork will be done, and the research will use case laws, judicial decisions, legislations, reports, books, legal journals, articles, newspaper reports, and online materials.

1.4-RESEARCH SIGNIFIICANCE:

this research will make an original contribution to legal arena. The findings of this research will be beneficial for law students, advocates, paralegals and academics of India and Bangladesh.

1.5-RESEARCH LIMITATIONS:

the research has some limitations. the research may not cover all aspects of ADR in criminal law and it only focuses on comparative analyses between India and Bangladesh. No field work will be done to cover this research due to time constraint.

CHAPTER 2: THE CONCEPT OF ADR

Since it's become a trend to approach ADR instead of litigation across the globe. In this chapter we will discuss about the concept of ADR, kinds of ADR , the origin and purpose of ADR. We will also shed light on ADR in criminal cases.

2.1-DEFINING ADR IN GNENRAL:

Alternative Dispute Resolution (ADR) is a legal framework and modern idea that offers opportunities for informal legal and judicial resolution of disputes, contingent upon the agreement of the involved parties[1]. According to Justice Mastofa Kamal, ADR refers to a non-formal method of resolving legal and judicial conflicts, aimed at expeditiously and cost-effectively disposing of cases[2]. While not a universally effective solution for all problems, it serves as an alternative approach to achieving a more efficient and cost-effective resolution of conflicts. The proposed solution offers a voluntary and collaborative approach to resolving the existing challenges. ADR refers to a method of resolving disputes that differs from traditional litigation[3]. ADR is likewise a socio-legal system that may become an essential necessity for societies such as Bangladesh and India in the foreseeable future. Conciliation, Negotiation, mediation and arbitration are some frequent modes or techniques that fall under the umbrella of ADR[4]. However, the various ADR models that can be found in various nations can be shown as follows[5]:

a) Freestanding or Court-annexed ADR: ADR maybe freestanding or court annexed.in other words, ADR may be tied to a law suit or has no relationship with court cases[6].

b) Binding or Non-binding ADR: Negotiation, mediation and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration can be categorised depending on whether they're binding or non-binding[7].

c) Formal and Informal ADR: When an ADR mechanism gets court annexed, it becomes more formal in the sense that its records and procedures must be provided before the court. When a mode of ADR is freestanding, however, it tends to be informal in the sense that

[1] Dr Jamila A Chowdhury, *ADR Theories and Practices* (LCLS 2023)
[2] Dr Aktaruzzaman, *Concept & Laws on ADR & Legal Aid* (first published 2007, 7th edn, 2018
[3] Ibid.
[4] Ibid.
[5] Abdul Halim, *ADR in BANGLADESH:issues and Challanges* (first published 2010,17th edn,Beacon Publications 2023) .
[6] Ibid.
[7] Ibid.

parties and the mediator are not compelled to retain any record of their activities and are not forced to follow any precise norms of procedure[8].

d) Basic and Hybrid ADR: basic ADR methods such as negotiation, conciliation, mediation, and arbitration and hybrid ADR methods, which combine elements from the basic processes to form various ADR methods. Hybrid ADR methods may include court-based adjudication elements, such as the minitrial, which combines argument presentation, proof, and negotiation[9].

2.2-DIFFERENT KINDS OF ADR:

Understanding different kinds of ADR and their legal ramifications is crucial.

1.Negotiation:- Negotiation is frequently the first alternative for those seeking to settle a conflict[10]. Merely because, in some circumstances, both sides can resolve disagreements by putting all of their cards on the table and seeking to negotiate a settlement[11]. If necessary, negotiation experts can take directives and negotiate on the parties' behalf[12]. Because it is so clear, this type of ADR is typically disregarded. Because there is no neutral party to aid the parties in their negotiations, the parties have to negotiate collectively to obtain an agreement[13].

2.Mediation:- A mediator can be defined as an impartial somebody who is appointed by both parties involved in a dispute to facilitate communication and negotiation[14]. The primary function of mediators is to facilitate effective dialogue between the involved parties in a dispute, with the ultimate goal of reaching a mutually agreeable settlement or resolution[15]. The mediator will engage in frank discussion of the issues at hand and endeavor to facilitate a mutually satisfactory resolution amongst the parties involved[16]. However, it is customary for the mediator to refrain from expressing personal ideas or providing their own evaluation.

3.Conciliation:- Conciliation is a form of mediation in which conflicting parties engage the services of a conciliator who conducts separate meetings with each party, with the aim of

[8] Ibid.,11.
[9] Ibid.

[10] Murray, P.(2022, May 11). *What Are The Four Types Of Alternative Dispute Resolution (ADR)?* Britton & Time Solicitors.https://brittontime.com/2021/02/05/what-are-the-four-types-of-alternative-dispute-resolution-adr/

[11] Ibid
[12] Ibid
[13] Ibid
[14] Ibid
[15] Ibid
[16] Ibid

facilitating the resolution of their disputes[17]. Conciliation and mediation are distinct processes, with conciliation primarily focused on achieving conciliation through the pursuit of concessions[18].

4.Arbitration:- An arbitrator is an impartial third party who has been designated by the involved parties to facilitate the resolution of a conflict[19]. The arbitrator shall possess specialized expertise in the specific subject in which the dispute has arisen[20]. Prior to rendering a final decisions, an arbitrator will provide both parties an opportunity to present their respective arguments and evidence[21]. Nevertheless, in the context of arbitration, the option to appoint a single arbitrator is not the sole one available[22]. Instead, one may opt for a team of arbitrators with a designated chairman overseeing the proceedings. Once an arbitrator or a panel of arbitrators has reached a conclusive conclusion, the decision is formally binding, thereby granting the court the authority to implement it in accordance with the law[23].

2.3-THE ORIGIN OF ADR:

ADR as we know it today originated in England in 1066, through resolving private disputes, the English had their local informal court[24]. Typically, respected male residents of the community conducted these informal gatherings[25]. Sometimes, instead of considering a case in king's court, the monarch would accept the verdict of the citizens[26].

2.4-PURPOSE OF ADR:

ADR can serve multiple purposes. ADR systems can be designed to fulfill a diverse range of purposes. Several of these purposes are specifically focused on upholding the rule of law and enhancing the administration of justice[27].

2.5-ADR IN CRIMINAL CASES:

ADR is widely used in civil lawsuits and court processes. The adoption of ADR mechanisms has exhibited a steady upward trend in its application within the realm of criminal proceedings. The aforementioned practice has gained popularity due to its cost-effectiveness

[17] Ibid.,12.
[18] Ibid
[19] Ibid
[20] Ibid
[21] Ibid
[22] Ibid
[23] Ibid
[24] McManus, M., & Silverstein, B. (2011). Brief History of Alternative Dispute Resolution in the USA. *Cadmus: Promoting Leadership in Thought That Leads to Action, 1*(3), 100-105.
[25] Ibid.
[26] Ibid.
[27] Jamila, *supra* note1

and time-saving nature, particularly in light of the extensive backlog of cases within the criminal justice system[28]. Therefore, in order to facilitate expeditious and efficient resolution of criminal cases, it is imperative to implement ADR mechanisms[29]. Regarding ADR in criminal cases, there are both arguments for and against it. Certain jurisdictions allow for the use of ADR in criminal cases, but only in specific circumstances. The historical genesis of ADR in criminal cases can be traced back to the 17th century within the English Common law courts. During this period, the concept of pardon was extended to abettors involved in criminal cases, contingent upon the defendant's subsequent acquittal or conviction[30]. While it is true that international law does not explicitly outline a clear specific provision pertaining to ADR in criminal cases, it is worth noting that numerous international instruments do express a preference for the incorporation of ADR within the realm of criminal justice[31]. Currently, numerous developed nations across the globe have embraced the tenet of ADR within their respective criminal justice frameworks. The predominant ADR mechanism employed in criminal cases is as follows:

1.Plea bargaining: Plea bargaining is an ADR method applied in criminal cases. It is a process in which the prosecutor and defendant engage in negotiations, wherein the defendant agrees to plead guilty to one or more charges in return for specific compromises, such as a lighter punishment or lesser charges[32].

2.Restorative justice: Restorative is a concept that aims to address the harm caused by criminal offenses through the involvement of the victim, offender, and community in the resolution process. Restorative justice practices are sometimes employed as an alternative to conventional criminal proceedings, enabling the involved parties to engage in discussions regarding the offense's impact and strive towards a mutually agreed-upon resolution that fosters healing and accountability[33].

3.Diversion programs: Diversion programs aim to redirect individuals accused of non-violent offenses away from the criminal justice system and towards alternative interventions[34].

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[28] ANUSHTHA ANUPRIYA and ANUSHA C GUDAGUR, 'Importance of ADR in Criminal Justice' (2021) 2(1) International Journal of Legal Science and Innovation

[29] Ibid.

[30] MohammadAktarulAlam Chowdhury, 'AN OVERVIEW OF THE PRACTICE AND PROSPECT OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE SYSTEM OF BANGLADESH: PROMOTION OF ACCESS TO JUSTICE.' (2018) 6(11) International Journal of Advanced Research 712,<http://dx.doi.org/10.21474/ijar01/8051> accessed 16 July 2023.

[31] Ibid.

[32] "ADR IN CRIMINAL CASES" (ADR IN CRIMINAL CASES)<https://www.lawyered.in/legal-disrupt/articles/adr-criminal-cases/>

[33] Ibid.

[34] Ibid.

4.Compounding: CrPC 1898 allows for the compounding of specific offenses, enabling the victim and the accused to resolve the matter privately without involving the court. Compounding is restricted to offenses that are categorized as compoundable according to legal provisions[35].

2.6-DEVELOPMENT OF ADR IN CRIMINAL CASES IN INDIA AND BANGLADESH:

ADR mechanisms have acquired the spotlight in both Bangladesh and India as a means of resolving criminal cases and alleviating the load on traditional courts. If we look at the historical overview of both countries, ADR was prevalent before the independence of both countries. From the ancient period to the pre-British period, there was informal dispute resolution system in rural areas. It involves community leaders or respected elders who resolve any dispute including cases of a criminal nature; their decision was abided by all. Panchayats, which are made up of elders and respected individuals from the village, were responsible for resolving most conflicts among the villagers.

Both countries were part of Indian subcontinent. In the post-British period, the British tried to formalize the traditional informal dispute resolution system by enacting various laws. but there was no law relating to the application of ADR in criminal cases. Later on, the British regime enacted the code of criminal procedure in 1898, and section 345 deals with compoundable offences. Section 345 of the CrPC1898 includes two tables encompassing a total of 67 compoundable offenses. These tables distinguish between offenses where court permission is irrelevant and offenses where the involved parties must obtain authorization from the relevant court in order to compound the offense.

Later on, In 1947, partition took place. Indian subcontinent is divided into India and Pakistan. After that in 1971, Pakistan divided into Bangladesh and Pakistan.

Bangladesh, after its independence from Pakistan, adopted CrPC 1898 through The Laws continuous and Enforcement Order 1971. Section 345 of the crpc1898 remain unchanged. Many researchers remarked ADR was absent in the criminal justice system, which is not true. ADR had limited application through section 345 in the criminal justice system. Compounding is a form of ADR. However, ADR has not yet been used much in Bangladesh's criminal justice system.

[35] Ibid.,14.

Meanwhile, India also adopted crpc1898 and later amended it 1973 on the report of 41st law commission[36]. Section 320 of the crpc1973 states about compounding particular listed offenses with or without the court's permission. However, the limited application of ADR under section 320 in criminal justice was insufficient to reduce the backlog of the case system. The Law Commission of India proposed reforms, including implementing plea bargaining, to minimize the backlog of criminal cases in India[37]. The 154th Report suggested plea bargaining as an alternative strategy for addressing the backlog of criminal cases[38]. Despite Supreme Court opposition, the Criminal Law (Amendment) Bill of 2003 was passed in order to implement these recommendations[39]. Despite criticism, the amendment was accepted, and Sections 265A to 265L of the CrPC1973, which governs plea bargaining, were added to Chapter XXIA.[40]

2.7- ADVANTAGES AND DISADVANTAGES OF ADR IN CRIMINAL CASES:

ADR methods in criminal justice have both pros and cons. Restorative justice, mediation, and diversion programs have been praised for their potential to reduce the burden on the criminal justice system and promote personalized outcomes[41]. However, there are criticisms associated with their implementation, such as the lack of legal safeguards, inequality and power dynamics, victim pressure, undermining accountability, risk of revictimization, ineffectiveness in serious crimes, and unpredictable outcomes[42]. Traditional criminal justice systems are built on established legal processes and protections for both the accused and victim, but ADR methods may not always provide the same level of legal safeguards, leading to concerns about due process and fairness. Victims may feel pressure to forgive or reconcile with the offender, which can undermine their agency and emotional needs for justice.

2.8-CONCLUSION:

ADR has emerged as a legal mechanism designed to facilitate the expeditious resolution of disputes. This chapter has examined diverse conceptualizations of ADR. Additionally, It has also highlighted the concept and methods of ADR in resolving criminal cases. there is need for continued research for the effective implementation of ADR methods in criminal justice

[36] M Alamin, 'Introducing Alternative Dispute Resolution in Criminal Litigation: An Overview' (2015) 3(11) Quest Journals 68
[37] Anoop Kumar and Aarushi Batra, 'Interface of ADR and Criminal Law' (2021) 12(7) Turkish Online Journal of Qualitative Inquiry (TOJQI) 6
[38] Ibid
[39] Ibid
[40] Ibid
[41] Ibid.
[42] Ibid.

system. In the next chapter we will discuss about the use of ADR in criminal justice system from worldwide perspective.

CHAPTER 3: THE APPLICATION OF ADR IN CRIMINAL CASES IN DIFFERENT COUNTRIES

Numerous ADR methods in criminal justice system are currently being implemented worldwide. Currently, the number of such programs in the United States and Canada exceeds 300, while in commonwealth countries, it amounts to over 500 In criminal cases. In this chapter we will shed light on the practices of ADR in criminal justice system from worldwide perspective.

3.1- THE PRACTISE OF PLEA BARGAINING IN DIFFERENT JURISDICTIONS:

ADR is frequently utilized to refer to the practice of plea bargaining across various jurisdictions worldwide[43]. The application of a process of negotiation between the victim and the offender in settling offences is commonly referred to as 'plea bargaining'. It was originated in USA[44]. In a plea bargaining, the accused willingly consents to enter a plea of guilty, with the understanding that there may be a reduction in the quantity or severity of charges, or a commitment from the prosecutor to refrain from pursuing the harshest possible punishment as permitted by the law. plea bargaining may be found in criminal cases in three ways: Charge, Fact and Sentence bargaining. Charge bargaining is lowering charges in return for a guilty plea, whereas fact bargaining entails the prosecutor not disputing the accused's account of events or disclosing aggravating circumstances[45]. Trial judges generally give less severe penalties than prosecutors seek or enable the accused to retract their guilty pleas during sentence bargaining[46].

The practice of plea bargaining is widely observed in UK and the majority of other countries within the British Commonwealth[47]. Sentencing Act,2020 permits plea bargaining in UK, Section 73 allows the court to consider, additionally to the timing of a guilty plea indication, the situation under which it was made[48]. plea bargaining is permissible solely in instances where the prosecution and defense are able to reach a mutual accord, wherein the defendant

[43] Jamila *supra* note1.
[44] Ibid.
[45] Ibid
[46] Ibid
[47] Ibid.

[48] "Plea Bargain"(*Wikipedia*,June 27,2023) <https://en.wikipedia.org/wiki/Plea_bargain>

agrees to plead guilty to certain charges, while the prosecution agrees to dismiss the remaining charges.[49]

In USA, plea bargaining is a prevalent practice with a substantial proportion of criminal cases being resolved by plea bargains as opposed to trial proceedings[50]. Moreover, there has been a notable surge in their occurrence, with their prevalence escalating federal cases from 84% in 1984 to 94% by 2001[51]. The federal rules of Criminal Procedure allows plea bargaining, rules-11 provides that the person who pleads guilty is not permitted to retract their plea[52]. The court's permission is required for plea bargains[53]. The legality of plea bargaining was affirmed in the landmark case of Brady v. United States in 1970[54]. However, the Supreme Court cautioned that plea incentives of significant magnitude or coercion, which undermine defendants' capacity to exercise free will or result in a substantial number of innocent individuals pleading guilty, could potentially be prohibited or raise constitutional concerns[55].

Plea bargaining reduces caseloads, prosecutors' workloads, and small charges, benefiting society by closing cases faster. It allows offenders to accept responsibility for their trial without costly, time-consuming trials, and reduces trial uncertainty. However, plea bargaining waives fundamental rights, including the right to trials and the ability to testify against oneself.

3.2-THE PRACTICE OF VICTIM-OFFENDER MEDIATION PROGRAMS (VOM):

Canada started the VOM Project in 1974, and the United States followed it in 1978[56]. Many countries have integrated VOM into their criminal justice systems as an alternative or complementary approach to traditional punitive measures. The Correctional Service of Canada is authorized by Section 76 of the Corrections and Conditional Release Act to provide VOM to offenders. VOM is a structured process that enables victims of property crimes and minor assaults to meet their offenders in a safe environment[57]. With the

[49] ANUSHTHA *supra* note28.
[50] Ibid.
[51] Ibid.

[52] "Plea Bargain" (*Wikipedia*,June 2,2023)<https://en.wikipedia.org/wiki/Plea_bargain>

[53] Anupriya *supra* note28.
[54] 397 US.742 (1970).
[55] Ibid.
[56] "Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue" <https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/guide4.html>
[57] Ibid

permission of the court trained mediators facilitate communication, allowing victims to express their impact, seek answers, and participate in restitution plans[58]. Offenders bear direct responsibility and must understand consequences[59]. Non-compliance with restitution agreements can lead to court consequences[60]. VOM benefits include giving victims a voice, allowing offenders to make amends, providing accountability, and reducing reoffending rates. However, VOM is not suitable for all cases, especially those involving violent or dangerous crimes.

3.3-THE PRACTICE OF FAMILY GROUP CONFERENCING:

Family group conferencing is a widely used dispute resolution method in New Zealand, Australia, and the US[61]. It was introduced in New Zealand through Oranga Tamariki Act in 1989 and section 26 describes the procedure[62]. it involves victims, offenders, and their family, friends, and supporters to discuss and repair damage in cases like burglary, arson, minor assaults, drug offenses, vandalism, and child maltreatment[63]. Most cases are resolved by the police via police-led or court-ordered family group conferencing[64]. A mediator explains the process and invites the victim, perpetrator, and their supporters to a conference[65]. The victim identifies key supporters, the perpetrator begins the conversation, and the victims express their emotions and questions. After a thorough conversation, the offender's duties are determined, and everyone helps solve the problem, ultimately determining the best way to restore the damage[66].

3.4-THE PRACTICE OF PRIVATE COMPLAINT MEDIATION SERVICE(PCMS):

PCMS offers mediation as a substitute to the official court process for dealing with criminal misdemeanour issues between private persons[67]. The court system of Hamilton county in USA funds and administers PCMS, which has been in existence since 1974[68]. The Hamilton

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[58] Ibid.,19.
[59] Ibid
[60] Ibid
[61] "Restorative Justice in New Zealand: Family Group Conferences as a Case Study" (*Restorative Justice in New Zealand: Family Group Conferences as a Case Study*) <https://www.ojp.gov/ncjrs/virtual-library/abstracts/restorative-justice-new-zealand-family-group-conferences-case-study>
[62] Ibid
[63] Ibid
[64] Ibid
[65] Ibid
[66] IbId
[67] Anoop *supra* note37.
[68] Ibid

County Municipal Court's Administrative Rule 9.02 gives PCMS its jurisdiction[69]. Hamilton County Court's optional PCMS lets qualifying criminal defendants avoid trial. A neutral third party, termed a mediator, helps conflicting parties achieve an settlement. PCMS requires the accused to be charged with a misdemeanour crime, Participate in mediation[70]. With the permission of court the mediator will meet with the defendant and victim, if the victim agrees[71]. The mediator will assist the parties understand each other and reach a settlement. If the parties agree, the mediator will write a settlement agreement[72]. The settlement agreement will be presented to the judge for approval. The court will dismiss the case if the settlement is approved[73]. The PCMS alternative to criminal justice processes is valuable. It helps defendants avoid the stigma of a criminal conviction and resolve their cases faster and cheaper. PCMS reduces recidivism and improves victim satisfaction.

In addition to the aforementioned programs, there are also other options such as Community dispute resolution program, ex-offender assistance, sentencing circles, community service, school programs etc[74]. These programs indicate a transition in certain countries' criminal justice systems from deterrence to reparation[75].

3.5-NEED OF ADR IN CRIMINAL JUSTICE SYSTEM:

Criminal justice systems globally have backlogs, delaying trials and justice. ADR techniques like plea bargaining or restorative justice can reduce this backlog by redirecting cases from courts[76]. The restorative justice movement focuses victim and community restitution and accountability[77]. It also includes the community in resolution, establishing confidence and collaboration between law enforcement and the community and perhaps increasing public safety[78]. However, ADR in criminal matters varies considerably by jurisdiction. ADR's efficacy depends on crime kind, legal and cultural setting, and party willingness. ADR is usually reserved for non-violent or less serious offences and does not supplant the criminal justice system for significant crimes.

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[69] Ibid.,20.
[70] Ibid
[71] Ibid
[72] Ibid
[73] Ibid
[74] Ibid.
[75] Ibid.
[76] Ibid
[77] Ibid
[78] Ibid

3.6- CONCLUSION:

The application of ADR in criminal cases become very famous in worldwide. In this chapter we shed light on the various practices of ADR in criminal cases in different jurisdictions, its pros and cons. We also discussed the need of ADR in criminal justice system. In next chapter, we will shed light on the applicability of ADR in criminal cases in the context of Bangladesh and India.

CHAPTER 4: THE APPLICATION OF ADR IN CRIMINAL CASES IN BANGLADESH AND INDIA

The application of ADR mechanism in criminal trials is growing trend in the jurisdictions of Bangladesh and India. ADR has the potential to serve as a beneficial mechanism for the resolution of criminal matters in a manner that is efficient. In this chapter we shed light on the applicability of ADR in criminal cases in India and Bangladesh.

4.1-ADR MECHANISMS & PRACTICES IN CRIMINAL COURTS IN BANGLADESH:

Compounding is only form of ADR used in the criminal justice systems of Bangladesh.

In Bangladesh, Section 345 of the CrPC includes provisions for compounding offenses, while there is currently no legislation in place enabling plea bargaining. Section 345 enumerates the offenses that are legally permissible to be compounded. The court is prohibited from permitting the compounding of an offense that does not fall within the scope of compoundable offenses as outlined in section 345. The perpetrator and the victim are prohibited from reaching an agreement to compound, settle, or withdraw a complaint pertaining to an offense that is not explicitly specified in section 345[79]. Any compounding conducted in a manner other than that specified in section 345 shall be deemed unlawful[80]. The person designated in the third column of section 345 is the sole authorized party capable of legally compounding an offense[81]. In order for a composition to be considered legal, it is necessary to demonstrate that the involved parties were devoid of any form of influence and have a comprehensive understanding of their individual rights[82]. A case has the potential to be compounded at any point prior to the pronouncement of a punishment, including instances when the magistrate is in the process of drafting the judgment[83]. Section 345 additionally enumerates a catalogue of offenses that possess the potential to be compounded, either with or without the requisite authorization from the court. Section 345 explicitly stipulates that the compounding of an offence shall result in the acquittal of the accused party involved in said

[79] CrPC 1898,s 345
[80] ibid
[81] ibid
[82] Ibid
[83] Ibid

offence[84]. A special law-created offence is not compoundable under this section. However, offences under special law can be compromised through Section 21A of Legal Aid Act 2000. Section 21A(2) of Legal Aid Act2000 provides Legal Aid Officers have the authority to provide legal advice to litigants seeking aid and resolve disputes through ADR under existing law referred by courts or tribunals within their jurisdiction[85]. Offences under special law such as 11(ga) under Nari-o-Shishu Nirjatan Daman Ain 2000 is compoundable[86]. Nari-o-shishu Tribunal judges often refer such cases to district legal aid officer for compounding. For example: wife x files case against husband Y under section 11(ga) of Nari-o-shishu Nirjatan daman Ain for dowry. At initial stage of case, tribunal judge refers such case to legal aid officer of the same jurisdiction for compounding. Legal aid officer tries to make compromise between two parties. However, successful compromise depends solely on willing of the parties. Compromise through legal aid office amounts to acquittal of the accused of that said offence. Apart from that, Some minor criminal matters can be settled amicably according to the provisions of the Gramme Adalat Ain, 2006 and the Birodh Mimangsha (Paura Elaka) Board Ain, 2004[87]. Under section 4 of the Birodh Mimangsha (Paura Elaka) Board Ain 2004 which allow a paura dispute settlement board to compromise some minor criminal offence involving fine as a punishment does not exceed 25000 taka. Appointing advocate is prohibited for such compromise. Also, as per section 6kha of village courts act 2006, village court has the authority to compromise some minor criminal offences. No advocate may be appointed for such a compromise.

4.2-ADR MECHANISMS & PRACTICES IN CRIMINAL COURTS IN INDIA:

Compounding and plea bargaining are two forms of ADR used in the criminal judicial systems of India. In India Section 320 of the CrPC 1973 pertains to the subject matter of compoundable offences. This section delineates a range of offences under the Indian Penal Code (IPC), 1860 that may be subject to compromise by the victims of those offences[88]. The compromise achieved by both parties involved in the case is commonly known as the 'compounding of an offence'[89]. Consequently, some offences under the IPC that are specifically enumerated in Section 320 of the CrPC have the potential to be compounded by

[84] Ibid.,23.
[85] Legal Aid Act 2000, S 21A
[86] Aktaruzzaman, *supra* note2
[87] Mohammad AktarulAlam Chowdhury, 'AN OVERVIEW OF THE PRACTICE AND PROSPECT OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE SYSTEM OF BANGLADESH: PROMOTION OF ACCESS TO JUSTICE.' (2018) 6(11) International Journal of Advanced Research 712
[88] CrPC 1973, S 320
[89] Ibid.,24.

both parties involved[90]. Compounding the offence under this section will result in the offender being acquitted[91]. However, offences under special law are not compoundable under this section. Offences under special law compoundable under The Legal Services Authorities Act 1987[92]. According to Section 19 (5) of the Legal Services Authorities Act 1987, the Lok Adalat possesses the jurisdiction to examine and facilitate a mutually agreed compromise or settlement between the parties in conflict about any matter pertaining to a compoundable offense under any applicable legislation[93]. The Lok Adalat is a recognized alternative dispute resolution process that serves as a platform for the amicable settlement or compromise of disputes or cases that are either pending in the court of law or at the pre-litigation stage[94]. The Lok Adalat is responsible for solving criminal cases that involve compoundable crimes[95]. However, the Lok Adalat lacks jurisdiction over any case or subject pertaining to an offense that is not eligible for compromise under any legal provision. To clarify, it should be noted that offenses that are non-compoundable according to any legal provision are not within the jurisdiction of the Lok Adalat[96]. Moreover. Plea bargaining in India is regulated under the CrPC 1973[97].The inclusion of plea bargaining in the legal framework of India was implemented by means of the Criminal Law (Amendment) Act of 2005, which brought about amendments to the CrPC of 1973[98]. The inclusion of the provision for plea bargaining may be found in Chapter XXI-A of the Code, which was introduced by the 2005 Amendment[99].

The procedural framework for plea bargaining in India is delineated in Sections 265-A to 265-L of the Code[100].

Indian law allows plea negotiating for offences having a possible prison term of seven years or less[101]. Plea bargaining requires the accused's consent. The court must also ensure that the offender made the plea voluntarily and with full knowledge of its consequences. An application to the court by the accused declares their voluntary desire to enter a guilty plea in India[102]. Then, the court will review the application and decide whether to grant or refuse it

[90] Ibid
[91] Ibid
[92] The Legal Services Authorities Act 1987, S 19
[93] Ibid
[94] Ibid
[95] Ibid
[96] Ibid
[97] Halim *supra* note5
[98] Ibid
[99] Ibid
[100] CrPC 1973
[101] CrPC 1973, S 265A
[102] CrPC 1973, S 265A(1)

based on the case's facts and context. If the court approves the application, it will refer the matter to the prosecutor[103].

The prosecution might offer a lighter sentence or other concessions in return for the accused's confession. In the case that the accused accepts the offer, the court will register the admission of guilt and administer the necessary sentence according to the plea bargaining agreement.

The court has the power to accept or reject the plea bargaining agreement if it is unjust, illogical, or against justice[104]. If the accused breaks the plea negotiating agreement, the court might annul it and continue with the trial.

Plea bargaining applies only to offences with a potential sentence of seven years or a fine. Plea bargaining does not apply to crimes against women, minors, or the Narcotics Drugs and Psychotropic Substances[105]. Plea bargained defendants cannot appeal. However, they may submit a revision petition to challenge the sentence's constitutionality[106]. If the prosecution believes the plea agreement penalty is inadequate, they may file a revision petition.[107]

It is crucial to note that plea bargain terms depend on the case and the prosecution and judge's discretion. The accused and prosecution must agree to the terms of plea bargaining, which is voluntary.

4.3-COMPARISON BETWEEN INDIA AND BANGLADESH:

India and Bangladesh have different legal frameworks for application of ADR in criminal cases.

Compromise is a form of ADR that has been present in criminal justice system in both India and Bangladesh. In India section 320 of the CrPC 1973 allows for the compounding of offenses with or without the authorization of the court. On the other hand, in Bangladesh section 345 of CrPC 1898 permits compounding particular listed offences with or without court's permission. Though the section is different but the contents and procedure is similar. However, the list regarding compoundable offences is not same. India through CrPC (Amendment) Act 2008 amended two table regarding list of compoundable offences[108].

[103] CrPC 1973, S 265A(3)
[104] CrPC 1973, S 265A(4)
[105] CrPC 1973, S 265L
[106] Pradeep Kumar Bharadwaj and Dr Chintala Lakshmana Rao, 'Alternative Dispute Resolution in Criminal Justice System: Need of the Hour?' (2021) 12(7) Turkish Journal of Computer and Mathematics Education 5
[107] ibid
[108] ibid

However, it should be noted that the special offenses that can be compounded and the detailed procedures involved may vary across the two countries as a result of disparities in their respective legal systems and regulations.

Plea bargaining is governed by section 265B of CrPC 1973 in India but there was no provision regarding plea bargaining in Bangladesh[109].

It is apparent that both countries allow compounding of specific offences and have provisions for ADR in criminal justice system. Comparing both countries, Only India has most advanced ADR system in criminal justice system with updated laws and effective ADR procedures.

4.4-CHALLENGES OF ADR PROCESS IN CRIMINAL COURTS IN INDIA AND BANGLADESH:

ADR has been developing popularity in India and Bangladesh in the past few years as a solution to the problems plaguing their respective criminal justice systems. Courts in India and Bangladesh are notoriously backed up, with millions of cases waiting to be heard. This can make it hard for victims and witnesses to take part in the criminal justice process and lead to lengthy delays in delivering justice. Litigation can be prohibitively expensive, making it difficult for low-income and oppressed persons to seek justice. This can be discouraging to those considering legal recourse. People in rural locations or with limited financial means may find it difficult to access the criminal justice system. Because of this, it may be hard for them to seek redress for wrongdoings.

ADR can help with these problems because it's a faster, cheaper, and easier approach to settle legal disagreements between citizens. However, the application of ADR in criminal matters is not without its difficulties. Among these difficulties are: Many individuals either aren't aware of ADR or have a misunderstanding of how it operates. Because of this, it may be hard to get them to agree to adopt other dispute resolution methods. Some legal professionals are afraid of using ADR because they fear it will diminish their authority in the court system. They may also worry that their clients would not receive a fair resolution through ADR. There is a strong tendency for murder for murder in several societies. Because of this, getting people consenting to apply ADR in criminal matters can be challenging.

ADR has great potential to strengthen the criminal justice systems in India and Bangladesh if it is used to overcome these obstacles.

[109] Ibid.,26.

4.5-THE EFFICACY OF PLEA BARGAINING OVER COMPOUNDING :

It is frequently argued that enhancing the list of compoundable offenses, rather than implementing the option of plea bargaining, would serve the objective of minimizing pending cases[110]. Expanding the list of compoundable offenses, on the other hand, is a bad idea. This is due to two major factors[111]. Firstly, compoundable offenses are mainly those of a private nature that can be reconciled in principle with the victim[112]. Some of them can be compounded with the court's consent, while others cannot be compounded with the court's permission. Second, the procedure of compounding offenses has the effect of an acquittal, and no admission of guilt by the accused is contemplated[113]. This cannot, however, be used to significant offenses. Because a crime is basically a wrong against society, a compromise between the accused and the victim does not generally suffice to exonerate the accused of criminal guilt, especially for non-private offenses[114]. This is why, for significant offenses, there is no substitute to plea bargaining, and in this arrangement, the accused must plead guilty even though he would receive a lighter punishment[115]. On this logic, the rationale for broadening compoundable offenses in order to allow courts to function more quickly is flawed.

4.6-IS COMPOUNDING AN ALTERNATIVE FOR BANGLADESH?

The permissibility of compounding criminal cases is observed in numerous common law jurisdictions, including Bangladesh. In the realm of criminal law, compoundable offences refer to those specific offences wherein the complainant has the option to engage in a compromise, thereby consenting to the withdrawal of charges against the accused[116]. In order to ensure the validity of any compromise, it must be established that it is made in good faith and without the inclusion of any consideration to which the complainant is not entitled.

[110] Halim *supra* note5
[111] Ibid
[112] Ibid
[113] Ibid
[114] Ibid
[115] ibid
[116] Jamila *supra* note1

The legality of an offense's composition is contingent upon the offence being of a private nature and capable of resulting in recoverable damages through a civil action[117].

The legality of an offense's composition is deemed invalid if said offence pertains to matters of public concern. As per the provisions outlined in the CrPC, the legislature has established a policy wherein, for specific minor cases that do not significantly impact public interest, the complainant is granted the opportunity to reach a compromise with the party against whom the complaint is lodged[118]. However, in light of the prevailing social condition within the Bangladesh, it is important to note that the compounding of offences is strongly discouraged.

4.7- WHAT BANGLADESH CAN LEARN FROM INDIA?

It is undeniable fact that India has far more advance ADR system in criminal cases compare to Bangladesh. Bangladesh has the potential to acquire valuable insights from India with respect to the implementation of ADR within its criminal justice framework.

India has already incorporated plea bargaining in its legislation to facilitate implementation of ADR in criminal cases. Bangladesh can make strong legal framework for effective implementation of ADR in criminal justice system.

India offers a variety of specialized training programs tailored for ADR practitioners, with a particular focus on criminal matters. Bangladesh has the potential to establish such training initiatives aimed at equipping ADR practitioners with the requisite competencies and expertise essential for proficiently facilitating ADR procedures within the realm of criminal litigation.

India has implemented many awareness-raising initiatives pertaining to ADR, with a special focus on the general people. Bangladesh has the potential to implement analogous awareness-raising efforts aimed at enhancing public knowledge on ADR.

[117] Ibid.,28.
[118] Ibid

Bangladesh can improve its ADR system and settle criminal cases more efficiently, cost-effectively, and restoratively through lessons learned from India.

4.8-CONCLUSION:

ADR has the ability to be a useful asset in Bangladesh and India's criminal justice systems. ADR may serve to minimize case backlogs, foster peace among parties, and offer a less expensive and more effective method of resolving disputes. However, significant problems must be overcome before ADR may be effectively adopted in these nations. A lack of understanding of ADR, a shortage of skilled ADR practitioners, and an absence of legal framework to assist ADR are among the problems. In next chapter we will shed light on findings and recommendations.

CHAPTER 5: CONCLUSIONS & RECOMMENDATIONS

In order to wrap up the research, this chapter summarizes the main conclusions and talks about how they may impact the use of ADR in criminal cases in Bangladesh and India. Additionally, the chapter offers recommendations for how ADR should advance in these nations in the future.

5.1-FINDINGS:

The significant findings of the research are as follows:

1. ADR has emerged as a feasible and efficacious substitute for the conventional criminal justice system in both the jurisdictions of India and Bangladesh.
2. ADR is a viable mechanism that can be applied to effectively address a diverse array of criminal cases, encompassing minor crimes, offences against property, and, in certain instances, even acts of violence.
3. Even though Bangladesh have laws that allow for ADR in criminal matters in limited manner, there aren't any clear rules or standards.
4. India and Bangladesh have been observed to encounter a markedly elevated caseload within their respective criminal justice systems. The substantial burden of cases frequently engenders temporal setbacks within the criminal justice system.
5. The paramount concern in both jurisdictions is to diligently safeguard the safety and well-being of victims and witnesses.
6. In both the jurisdictions of India and Bangladesh, there exists a notable absence of awareness and comprehension pertaining to ADR in the context of criminal cases.
7. The complete implementation of ADR in Bangladesh's criminal justice system is still pending. In comparison with India, Bangladesh does not have a system that allows for plea bargaining.
8. India has successfully implemented ADR in its criminal justice system by incorporating in CrPC.
9. ADR has the potential to mitigate the negative perceptions and societal bias that often accompany individuals with criminal conviction.
10. the concept of ADR may not always be suitable in the context of criminal trials, as many matters pertaining to criminal proceedings can only be resolved through court and legal proceedings.

5.2-RECOMMENDATIONS:

1. Both India and Bangladesh ought to actively encourage the application of ADR mechanisms in criminal proceedings.
2. Both India and Bangladesh should prioritize enhancing the accessibility of their ADR facilities for the general public.
3. Both India and Bangladesh should consider changing current legislation to offer a more effective legal structure for ADR in criminal cases. Ascertain that it adheres to international best practices and protections.
4. India and Bangladesh should conduct research how ADR effects criminal case backlogs, victim satisfaction, and recidivism. This data can guide future policy making decisions.
5. A new and exclusive chapter on plea bargaining may be added to the CrPC in Bangladesh.
6. In order to effectively implement plea bargaining as an ADR method in Bangladesh, it is imperative to maintain impartiality and fairness across all sections of the criminal justice system. In order to strengthen the efficacy of the plea bargaining , it is imperative that not only the judges, but also all administrative staff of the court, consistently uphold principles of fairness in their actions.
7. Plea bargaining may be a potential avenue for addressing offenses falling under the purview of the Penal Code and other relevant penal statutes in Bangladesh, provided that the potential term of imprisonment does not exceed a duration of five years. Plea bargaining may be applicable to certain offenses outlined under specific legislation. The complete autonomy of the plea bargaining system is important, necessitating its complete detachment from any influence from the police department. The primary responsibility for overseeing plea negotiations must lie with the court, which may also conduct a private examination, known as an in camera proceeding, to ensure that the accused's decision to enter into the plea agreement is made voluntarily.
8. There is a need for the amendment of Section 345 of the CrPC in Bangladesh to encompass further offenses that can be potentially resolved through the compounding process at the Magistrate and Sessions Court levels.
9. Both countries should incorporate victim-offender mediation in its legislation to resolve criminal offences like defamation, property crimes etc.
10. In order to enhance the efficacy of plea bargaining in criminal cases, it is recommended that a specialized training institute be formed for judges and lawyers. Additionally, an

awareness program should be implemented at all levels to educate the general public about the concept and benefits of plea bargaining. There is potential for the establishment of a dedicated department focused on the practice of plea bargaining within the given context.

5.3-CONCLUSON:

A comparative analysis of ADR in criminal cases in India and Bangladesh unveils several parallels and distinctions. Both nations possess a legal infrastructure that supports ADR, and both nations exhibit a burgeoning inclination towards its utilization. Nevertheless, it is crucial to note that there exist significant disparities. As an illustration, the application of ADR in criminal cases is more prevalent in India compared to Bangladesh, and India possesses a more well-developed legal precedents pertaining to ADR. In general, ADR possesses the capacity to serve as a helpful mechanism for the resolution of criminal cases in both India and Bangladesh. The use of this approach has the potential to alleviate the accumulation of pending cases inside the judicial system, while concurrently facilitating the attainment of a fair and impartial resolution of conflicts.

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