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Acknowledgment

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Declaration

I do hereby declare that the Research Monograph titled, "**Scope and Prospective of ADR in Criminal proceedings: Bangladesh perspective**" has been carried out by me. This is an original research work to the best of my knowledge and further,

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

i) been composed entirely by myself

ii) been solely the result of my own work

iii) not been submitted for any other degree or professional qualification

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Certification by Research Supervisor

This is hereby certified that the research Monograph on the topic **‘‘Scope and Prospective of ADR in Criminal proceedings: Bangladesh perspective’’** submitted by **Afnan Evan**(Id No: LLB-1803015021) in fulfillment of the requirements for LLB (hones.) from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as I know.

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Abstract

ADR or alternative dispute resolution is a very well-known term in the legal field. It's a game-changing form of dispute settlement in the coming times. ADR is already been established in many first-world countries but as a developing country, Bangladesh is still working on it. Using it in a civil dispute is much easier than using it in a criminal suit.As a civil offense is much more compoundable and can be solved by plea bargaining and mediation or arbitration. But criminal offenses are very cognizable and sensitive. So they need much attention and time to solve. With ADR process criminal justice system can find a new route to faster dispute settlement. Cases where criminal offences are not that much serious as rape, murder or other non compundable offence can be settle by plea bargainng or mediation as a form of ADR.It removes the burden of cases from the court and make a path of faster and cheap dispute settlement. The legal framework for dispute resolution through alternative methods has reached a level of maturity in Bangladesh. In the last three decades, the government has introduced many legislative reforms for the progress of Alternative Dispute Resolution (ADR) system in the country. There are many private orginiazation and institutes which working to establish the ADR system in Bangladesh. Bangladesh International Arbitration Center (BIAC), which was launched in Bangladesh on April 9, 2011 as a private institute for ADR. By this research, I'll briefly explain ADR in Bangladesh and it's scope of establish it in the criminal justice system. I'll also give my recomondation to make it better and how it can be one of the best alternative dispute settlement system in the criminal justice.

Dedicated To: My beloved parents and family

Table of Contents

Acknowledgment	i
Decleration	ii
Certification by Research Supervisor	iii
Abstract	iv
Dedication Page	v
Chapter-One	
Introduction	
	1-3
1.1. Definition	1
1.2 Rational of the study	2
1.3. Objectives of the study	2
1.4 Scope of the study	2
1.5 Limitation of the study	2
Chapter-Two	
History and origin of ADR	
	4-5
2.1 History of ADR in Bangladesh	4
2.2. Foundation of ADR	4
2.3. ADR in England	5
Chapter-Three	
ADR and criminal justice system	
	6-11
3.1. Laws related to ADR	6
3.2. ADR in Criminal Cases	6
3.3 Plea bargaining Under CRPC	7
3.4 Compounding of Offences under CRPC	8

3.5. Possibility of Compounding 9

3.6. ADR in the village court 10

3.7. ADR in Muslim Family court 10

3.8. ADR in Artha Rin Adalat 11

Chapter-Four

Different form of ADR

12-15

4.1. Arbitration 12

4.2. Advantages of Arbitration 12

4.3. Arbitration in criminal case 13

4.4. Mediation 13

4.5. Mediation in criminal case 14

4.6. Advantages of Mediation 14

Chapter-Five

Plea bargaining in different states

16-19

5.1. Types of plea bargaining 16

5.2. Plea bargaining in Bangladesh 16

5.3. Plea bargaining in India and U.S.A 17

5.4. England and Wales 18

5.5. Benifits of plea bargaining 19

Chapter-Six

Famous cases related to ADR

20-22

6.1. K.K. Modi vs. K.N. · Modi 20

6.2. Marmet Health Care Ctr., Inc. v. Brown 21

6.3. Kindred Nursing Ctrs. Ltd. P'ship v. Clark 22

Chapter-Seven

Advantages and drawbacks of ADR

23-24

7.1. Advantages of ADR 23

7.2. Drawbacks of ADR 23

Chapter-Eight

Criticism and limitation of ADR

25-27

8.1. Criticism of ADR in Bangladesh 25

8.2. Limitation 26

Chapter-Nine

Recommendation and conclusion

28-30

9.1. Recommendations 28

9.2. Conclusion 29

Bibliography **31-33**

Chapter-One

Introduction

1.1.Definition

Alternative dispute resolution (ADR) refers to the different ways people can resolve disputes without a trial. These processes are generally confidential, less formal, and less stressful than traditional court proceedings.[1] According to Cornell Law School, "Alternative dispute resolution refers to any method of resolving disputes without litigation. ADR regroups all processes and techniques of conflict resolution that occur outside of any governmental authority."[2]Alternative Dispute Resolution (ADR), which refers to the process of dispute resolution, denotes the idea of making the system of delivering justice friendly to the disputed parties and ensuring quick resolution of the cases.[3]One of the primary reasons parties may prefer ADR proceedings is that, unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's positions. ADR also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose.Alternative Dispute Resolution is intended to reduce the costs, stress, and formality associated with going to court.[4] According to the **Cambridge Dictionary** "alternative dispute resolution: a set of actions that are used by organizations to try to solve disagreements without using a court of law."[5] So, after putting all the legal definitions together we can say it's a route for reaching a speedier and less-expensive mode of settlement of disputes which includes mediation, settlement of disputes, arbitration, and other ways that are voluntary and not compulsory. Most countries of the world have adopted the ADR mechanism and achieved tremendous success.

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[1] https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml

[2] https://www.law.cornell.edu/wex/alternative_dispute_resolution

3*Gulfam,Mahua.January 2014Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective,Vol. 13. No. 1*

[4] https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/alternative-dispute-resolution.html

[5] https://dictionary.cambridge.org/dictionary/english/adr

1.2 Rational of the study

Alternative dispute resolution (ADR) is a famous and established term to most countries legal system. Infirst world countries, they facilitate and develop the ADR skills of a student within the law school community. It helps a practitioner under certain legislation. A one day or a week is not enough for a student to get an in depth idea on ADR. A fairly longer time is needed to prepare professionals.There are hundreds of universities in the USA and Europe which provides ADR as an LLM subject. So, in a modern time a student must study and get skilled at ADR system.

1.3. Objectives of the study

The main objective study of the ADR system is to minimizing the number and frequency of disputes. So that the other critical disputes can be deal smoothly. There are so many cases which are pending in court trail or to be heard. If the nature of a dispute matches with the criteria of ADR then It must be try within ADR legal system. It also helps to maintaining good relationships with stakeholders.

1.4 Scope of the study

There is an increase in the number of cases that ADR's takes up and the public has opted them for speedy and cost efficient incentives. There have been recent developments in the arena of ADR such as the Shalish and Gram Panchayat. These alternates would develop the scope of ADR. In the coming years, Mediation would probably grow to be the most efficient as it promises a win-win situation.Village court and Board of Conciliation have originated in Bangladesh from the informal shalish system and this is why they all have been shown in the same ADR diagram.

1.5 Limitation of the study

Research on ADR in criminal legal system is also a good work because the criminal justice system of the country is suffering from much disabilities and through this research problem behind the criminal justice system shall be definitely specify as well as reasonable remedial measures may be drawn from critical analysis on such disabilities and from the suggestion.

As a researcher I had to go through following limitations namely,

- The research is subjected to the vast knowledge in the criminal justice system and as a researcher I had to suffer from the reference of book, internet and newspaper
- It was hard to communicate or have the appointment of the jurists on criminal justice system,
- Finally, due to time constraint many of the aspects could not be discussed and presented in the assigned report.

Chapter-Two

History and origin of ADR

2.1 History of ADR in Bangladesh

Bangladesh has an age-old history of Alternative Dispute Resolution (ADR). The term "Alternative Dispute Resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms, which fall short of, or is alternative to, full-scale court proceedings. It is applied in different situations in different ways, both formally and informally. The village people usually preferred settling disputes amongst themselves and do not appreciate any intervention from other villages. They relate this intervention with loss of face for themselves and image of their village. With the gradual breakdown of the more traditional values of the social fabric, the traditional system of resolving disputes now stands virtually extinct and has been replaced by police cases, legal procedures and other methods.

The community sometimes takes a leading role in resolving local disputes. In Bangladesh, these are popularly known as Shalish and Mimangsha. These are usually undertaken through mediation, negotiation, and reconciliation. In the Shalish or Mimangsha the community leaders delve deep into the root cause/s in the presence of both parties, hear viewpoints of disputants, and try to find a solution agreeable to the parties concerned. Resolving disputes through community initiatives with the above tools are commonly known as Alternative Dispute Resolution.[6]

2.2. Foundation of ADR

Ancient Greek roots of Arbitration are the founder of ADR system.In the Western world, the story of ADR can be traced back to the ancient Greeks. One famous story of arbitration comes down through mythology. The procedure of arbitration set up by the Greeks was surprisingly formal. A lottery was used to choose an arbitrator for a given case. His foremost duty was to attempt to have an amicable settlement between the parties. If this didn't work out, then witnesses would be called and evidence was submitted in writing by the parties. Having said that, the parties often adopted various stratagems to postpone rulings or challenge the decision of

[6] https://www.lawyersnjurists.com/article/14442/

the arbitrator. An appeal would be brought before the Arbitrators, who would further refer the matter to the courts. In such an appeal, Demosthenes had once alleged that one Midias had used discourteous language towards Demosthenes. This outcome may seem like a setback at a very early age but also be seen as a self-policing mechanism. A traditional later upheld the board's censure of the arbitrator. [7]Back in the 1980s, experts and executives alike heralded alternative dispute resolution (ADR) as a sensible, cost-effective way to keep corporations out of court and away from the kind of litigation.[8]

2.3. ADR in England

In 2015 the UK gave effect to a piece of European law called the Alternative Dispute Resolution (ADR) directive. This law expressed the need for alternative ways of resolving contractual disputes between consumers and businesses to be widely available across the UK and the EU.[9]The government wants to encourage the development of ADR. Better ADR and easier access to it should also be good for all businesses committed to giving their customers the best possible service. In the UK, there are already several large and well-established ADR schemes in regulated sectors.

These include:

- financial services
- energy
- telecoms

Outside the regulated sectors, many businesses are already members of voluntary ADR schemes. But the number taking part in ADR schemes is now likely to increase, with the change in the law.[10]

[7] https://viamediationcentre.org/readnews/MjY3/Origin-of-ADR-across-the-globe

[8] https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does

[9] https://www.financial-ombudsman.org.uk/who-we-are/governance-funding/adr

[10] https://www.gov.uk/government/publications/alternative-dispute-resolution-for-consumers/alternative-dispute-resolution-for-consumers

Chapter-Three

ADR and criminal justice system

3.1. Laws related to ADR

These are the laws where ADR can be used:

1. The Code of civil procedure, 1908.
2. The Code of Criminal procedure, 1898.
3. The Artha Rin Adalat Ain, 2003.
4. The arbitration Act, 2001.
5. The Bankruptcy Act, 1997.
6. The Muslim Family Court Ordinance, 1985.
7. The Muslim Family Law Ordinance, 1961.
8. The Gram Adalat Ain, 2006.
9. The Settlement of Disputes (Paura Area) Board Act, 2004.[11]

3.2. ADR in Criminal Cases

ADR in criminal cases may be of two types:

i. compounding of offences
ii. plea bargaining.

In Bangladesh section 345 of the criminal Procedure Code provides for in-built provisions in for compounding although there is no such provision of plea bargaining in the Code.[12]

Section 345 of the Code of Criminal Procedure, 1898 refers to the compoundable offences. Now-a-days, minor offences are compoundable by the consent of the parties.

[11]https://www.lawyersnjurists.com/article/criminal-justice-admisintration-and-adr/

[12]https://www.lawyersnjurists.com/article/criminal-justice-admisintration-and-adr/

Consent of court is not necessary in compounding as offence if the parties are being agreed to do so amicably. However, compromise is not really possible in the grievous offences such as murder. Simultaneously, pity offences can be settled by compromising of the parties where the natural justice should be ensured, and the process needs to be guided by the legal activities.

3.3 Plea bargainingUnder CRPC

Section 265 (A)basically says that a person can go for plea bargaining if he has committed an offence which is not punishable with life imprisonment or imprisonment of more than seven years or with death also this concept will be applied only if the magistrate has taken the cognizance or if the final report is submitted by the police that a person is charged with some offences which is not punishable with life imprisonment, imprisonment for seven years or with death.

Section 265 (B)talks about the person who can give the application for plea bargaining so it states that a person who is accused of an offence is allowed to file an application for plea bargaining. It is to be noted that this application should be filed before a trial as it is a pretrial procedure so the accused will file it through his lawyer before the commencement of the trial. Here the accused will also provide an affidavit with the application which he has filed for plea bargaining to the magistrate and the magistrate has to satisfy himself that the act of filing an application along with the affidavit is not done under compulsion rather it should be done voluntarily but if the magistrate finds that the accused was previously convicted for the same offence by some of the lower courts then in such cases the magistrate will reject the application of the accused.

Section 265 (C)deals with the instructions of negotiations or the agreements between the accused and the victim so here it says that if the case was initiated upon the final report which was given by the police authorities then in such cases the court will issue notice to the police officer who submitted the report, accused and the victim to participate in a meeting to work on such negotiations or agreements only to ensure that the negotiation

was done by the accused voluntarily and not under any compulsion but if the case was initiated upon the complaint upon which the magistrate took the cognizance then in such cases the court will issue notice to the victim and the accused to participate in a meeting where they will work on some negotiations regarding the case like deciding some of the amount which will be given to the victim or any other expenses etc.

Section 265 (E) said that If the parties have already decided about the amount or any other expense which will be given to the victim and the report is submitted to the court then in such cases the court will discard the case by giving the victim the amount which was decided by both the parties during the time of such negotiations between the accused and the victim and also the court will hear the parties in case of punishment which will be given to the accused by taking certain things on consideration such as good conduct, time served in prison which prescribing the quantum of punishment.

The court may release the accused by proper warning or give him lesser punishment or give him an opportunity to reform. if a court finds that minimum punishment has been provided under law for such offence committed by the accused then in such cases the court may reduce the sentence of the accused to half of such minimum punishment but if there is no such minimum punishment provided then in such case one fourth of the punishment will be given to the accused.[13]

3.4 Compounding of Offences under CRPC

Section 320 of CRPC specifies a list of offences under Penal Code which can be compounded by the victims of those offences. Compounding of offence refers to a compromise that is arrived at by both the parties pertaining to a case. So, those offences of Penal Code which are specifically mentioned under section 320 of CrPC, can be compounded by both the parties. Compounding of offences is done only for those offences which are not very severe in nature. Offences such as rape, murder, dacoity are offences of serious nature and hence are non- compoundable offences.

[13] https://www.legalserviceindia.com/legal/article-5773-explained-concept-of-plea-bargaining-under-crpc-265a-265l-.html

Difference between compoundable offences and non-compoundable offences -

COMPOUNDABLE	NON-COMPOUNDABLE
Less serious offences	Grave/more serious offences
Impacts only an individual	May impact an individual as well as the society
Offences mentioned under 320 CrPC	Every other offence except for those mentioned in 320 CrPC
Compromise can happen with and without the permission of the court. It depends on the offence which is committed.	No compromise can happen under any circumstance.
Trial stops after the compromise has been reached at.	Trial continues till the end where the judgement is passed.
Generally, the cases under this are filed by individuals.	Cases are generally filed by the state because of the involvement of many people.

3.5. Possibility of Compounding

At any stage of Criminal Proceeding the parties may take initiative to submit deed of compromise and even in appellate stage it can be submit before the Court. The order is discharge of the accused when the deed is filed before framing of charge whereas the accused is to be acquitted if the compromised deed is submitted after framing of charge whereas the accused is to be acquitted if the compromised deed is submitted after framing of charge.Before pronouncement of judgment compromise deed can be filed.But when the lower Courts record is called for under section 435 of the Code of Criminal Procedure, Magistrate cannot permit the parties to submit compromise deed.

3.6. ADR in the village court

The village court act 2006 or Gram Adalat Ain 2006 deals with the offence which occurred in a village or rural are. The nature of the offence also a consideration for the village court. If the offence is non-compoundable then the regular court will deal with that matter. According to section 5 of the act village court shall contain a Chairman and four members of team. Village court is also a format of ADR as the burden cases are already running in that time in general court. This can deal with less serious criminal offences. According to section 3(1) village court cannot start a trail of an accused person who is already been accused before in village court or in anyother court. Section 7 define the power of a village court and says that a village court can deal with any sort of civil or criminal offences and the compensation cannot be more than 75,000 taka. Village court can also order to return possession of the property to the real owner of the property.

3.7.ADR in Muslim Family court

The jurisdiction of the Family Courts is restricted so that if any criminal offence arises in the context of a civil case, it comes under the jurisdiction of Criminal or Magistrates Courts. This has created some inconsistencies within the legal system with Magistrates still hearing maintenance claims under section 488 of the Criminal Procedure Code while Family Courts are supposed to retain exclusive jurisdiction to try and determine maintenance cases.[14]ADR mainly consists of negotiation, conciliation, mediation, arbitration and a series of hybrid procedures.The primary objective of ADR system is avoidance of complexity, expense and delay, and promotion of easy access to justice. Family conflicts are very sensitive matters. They must be handle and fix with very confidential way and that's how ADR play the role. It helps to negotiate both parties in front of a judge and reach at a satisfactory point. But if any type of criminal offence accrued under penal code then the trail will be shift to its related trail court.

[14] https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/bangladesh-people%EF%BF%BDs-republic-of/

3.8. ADR in Artha Rin Adalat

Section 22 of the Artha Rin Adalat Ain, 2003 provides for Settlement Conference after filing of written statement. The Court shall refer the matter to the parties or their lawyer for mediation.Unlike before the adoption of the process of mediation is compulsory after Submission of written statement. Once the written statement is submitted, the court must send the suit to appointed lawyer or to ite parties to settle the suit matter by way of mediation.[15]

[15] https://www.lawyersnjurists.com/article/introducing-adr-in-various-spheres-of-bangladesh/

Chapter-Four

Different form of ADR

4.1. Arbitration

It is one of the form of ADR system. According to CPC section 89B.(1) If the parties to a suit, at any stage of the proceeding, apply to the Court for withdrawal of the suit on ground that they will refer the dispute or disputes in the suit to arbitration for settlement, the Court shall allow the application and permit the suit to be withdrawn; and the dispute or disputes, thereafter, shall be settled in accordance with Salish Ain, 2001 (Act No. 1 of 2001) so far as may be applicable.[16]Arbitration is an adversarial process whereby a neutral third party is empowered to decide the outcome of a dispute. It is often a preferred means of resolving conflicts in order to avoid the expense, delay, and acrimony of more formal litigation and trial. Disputes in arbitration can be resolved by a single arbitrator or a panel of three arbitrators (tribunal). When parties submit their dispute to arbitration, they agree to be bound by and comply with the arbitrator's decision, also called an award. The award is given after each side presents evidence and witnesses, and has the same force and effect as a contract in writing between the parties. The award can later be confirmed or vacated by the court based upon a petition by the prevailing or non-prevailing party. Once confirmed, the award is entered as a judgment.[17]

4.2. Advantages of Arbitration

- The parties are encouraged to work together peaceably and often participate in structuring the resolution, which avoids the escalation of anger and hostility often associated with litigation.
- Since arbitration is a less formal and more flexible process, it is typically faster and more cost-efficient than the more cumbersome court process.
- Unlike trials, arbitration proceedings can be scheduled around the needs and availabilities of the parties.

[16] http://bdlaws.minlaw.gov.bd/act-86/section-15220.html
[17] https://www.adrservices.com/services/arbitration/

- There are limited grounds for judicial review in order to effectuate the parties' agreement that the award be
- The parties select their arbitrator or panel of arbitrators directly, enabling them to pick someone with the requisite amount of experience and subject matter expertise to render an accurate and appropriate award.
- The arbitration process is private and confidential.[18]

4.3. Arbitration in criminal case

Arbitraion is in criminal case is much rare to use of. The idea of ADR mechanism in criminal trail grew out of a critical need to give simple and available solution for poor criminals who are blameworthy and guilty of motor accident cases and other unimportant criminal cases other than some matrimonial cases, debt recovery etc to spare them from extreme deferral, high suit cost and rigid procedures. Arbitration can take place on that point to avoid those cost and time.

4.4. Mediation

Mediation is one of the forms of alternative solution of disputes, aimed at ending a dispute by settlement, without conducting long and costly judicial proceedings. Mediation is voluntary and depends on consent of the parties, both the aggrieved party and the defendant. Mediation is conducted out of court, with participation of an independent and impartial mediator. Mediation proceedings are free of charge and confidential. Most importantly, mediation gives a chance toresolve a dispute amicably, faster and sometimes more efficiently than in judicial proceedings. It is emphasized that owing to mediation the aggrievedperson has a chance to express more fully his or herfeelings connected with the harm or damagesustained and possible claims associated with them. From the perspective of the defendant/suspect who decides to adopt a conciliatory attitude, the most important advantages are possibly milder treatment by the court, lower costs of the proceedings, and a chance to reach an agreement with the aggrievedperson concerning compensation or redress.[19]

[18] https://www.adrservices.com/services/arbitration/
[19] http://karne.pl/en/mediation.html

4.5. Mediation in criminal case

Mediation is not limited in any way by the CriminalProcedure Code. It means that theoretically it is possible to apply for mediation in any case. Certainly, the consent of both parties is necessary also in this case. The court or the prosecutor refers the matter to mediation by a relevant decision. In accordance with article 23A (amedent by **The Criminal Law Amendment Act, 1958)** of the **Criminal Procedure Code**, the court can refer the matter to an institution or a trustworthy person. Detailed criteria which must be fulfilled by mediators are specified in the regulation. An institution entitled to conduct mediation proceedings must be entered in the relevant register maintained by a regional court and should be established to perform tasks in mediation. Once the case reaches the trial stage, depending on whether the offense is compoundable or not, the scope for mediation can be gauged. The Compoundable criminal offenses are given in Section 320 of the CrPC and allow for settlement. it can be concluded that criminal cases pertaining to sexual harassment may be mediated in the court of law under special circumstances. It is possible on the discretion of the respective High Court under section 482 of the CrPC, that too only when both parties are equally willing to reach a compromise and resolve the dispute using mediation.

4.6. Advantages of Mediation

- **Greater Control.** Mediation increases the control the parties have over the resolution. Each party are directly involved in negotiating their own agreement and no settlement can be imposed upon you. In comparison, dissatisfaction is often experienced in court where parties have little choice but to accept the judgement made, which they may not be happy with.
- **Its confidential.** Unlike the potential publicity of court proceedings, everything said at the mediation is entirely confidential to the parties (unless specifically agreed otherwise).
- **Its voluntary.** Any party may withdraw at any time.
- **Convenience.** The mediation is arranged at a venue convenient to the parties, who each have their own room as well as a separate room for joint meetings. The Mediator listens to everyone's view, talks to the parties privately and together, guiding them towards a settlement.

- **Reduced Costs.** Generally the cost is greatly reduced in comparison with trying to settle the matter through court. Traditional litigation is very expensive and the total cost is highly unpredictable.
- **Faster outcome.** Because mediation can be used early in a dispute, an agreement can usually be reached quicker than if pursuing through the courts.
- **Support.** Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and supports each party through the process.
- **Preservation of Relationships.** Whether is may be a business or family dispute, preservation of relationships can be a key benefit of mediation. Mediation helps participants focus on effectively communicating with each other as opposed to attacking each other.[20]

[20] https://thelibertygroup.com.au/8-benefits-of-mediation/

Chapter-Five

Plea bargaining in different states

5.1. Types of plea bargaining

Plea Bargaining can be of three types: -

1. Charge Bargaining.

2. Sentence Bargaining.

3. Fact Bargaining.

Charge Bargaining: Charge bargaining involves a negotiation of the specific charges or crimes that the defendant will face at trial. Where there is only one charge against any person, the prosecution may promise the accused that a charge for a lesser offence will be brought in return for a plea of guilt. For example, a charge for culpable homicide instead of murder could be brought against any offender.

Sentence Bargaining: Sentence bargaining involves the agreement to a plea of guilty in return for a lighter sentence. It saves the prosecution from long trial as well as provides the defendant with an opportunity for a lighter sentence.

Fact Bargaining: Fact bargaining arises when the Prosecutor agrees not to reveal any aggravating factual circumstances to the court because that would lead to a mandatory minimum sentence or to a more severe sentence under sentencing guidelines.

5.2. Plea bargaining in Bangladesh

The bargain between the prosecution and defendant to lessen, reduce or withdraw the sentence or charge in return of the defendant's guilty pleading, can be termed as plea bargaining. In Bangladesh, there is still no specific provision for plea bargaining, and when an accused confesses under the provisions of section 164, 364 of Code of Criminal Procedure 1898 and 24-30 of Evidence Act 1872. It does not grant the accused any

escapade from the prosecution and trial. The very notion of plea bargaining demands that both parties in a criminal case can come under a negotiation where the defendant agrees to plead guilty and in return the prosecution rewards by overlooking more serious charges. Plea Bargaining can be categorized into three types which are charge bargaining, sentence bargaining and fact bargaining. The first one comes into play when both parties agree to the drop some charges if the accused confesses. For example, it might be an agreement to reduce, withdraw or even agreement to acquit the defendant from multiple charges. The second one which is sentence bargaining has the most potential to be recognized in the context of Bangladesh.

The idea of pre-trial negotiations to lessen the terms of the sentence is gaining popularity preferably due to its potential for a speedy trial. Fact bargaining, on the other hand, offers both parties to conceal some facts in order to gain their own demands. However, until and unless the judge recognizes plea bargaining at trial, it has little to no value.[21]

5.3. Plea bargaining in India and U.S.A

Plea bargaining refers to pre-trial negotiations between the accused and the prosecutor whereby the accused pleads guilty to a less serious offence or to only some of the multiple charges in return for some concessions promised by the prosecutor. It has been defined as a process of reaching a "mutually satisfactory disposition" between the accused and the prosecutor subject to the approval of the court.

Plea bargaining forms the core of the U.S. criminal justice system and is a widely resorted tool used to dispose of criminal cases. However, the Indian system of plea bargaining is different from that practiced in the U.S. and incorporates *sui generis* modifications. Under the Indian scheme of plea bargaining, a person accused of an offence for which the maximum punishment does not exceed 7 years has the choice to file an application for plea bargaining in the court where his trial is awaited. It is after receiving the application that the court notifies the public prosecutor. This is starkly different from the practice in the U.S. where the prosecutor submits the application in

[21] https://www.observerbd.com/details.php?id=162656

court after negotiating with the accused.The Court is then enshrined with the duty to assess the accused on camera and confirm that the application has been made voluntarily. If the court is satisfied that the application is voluntary, then the prosecutor, the accused and the victim are given time to work out a mutually satisfactory disposition. The mutually satisfactory disposition is limited to determining the quantum of compensation to the victim as the discretion to award sentences lies with the court.[22]

5.4. England and Wales

Plea bargaining is permitted in the legal system of England and Wales. The guidelines by the Sentencing Council require that the discount it gives to the sentence be determined by the timing of the plea and no other factors. The guidelines state that the earlier the guilty plea is entered, the greater the discount to the sentence. The maximum discount permitted is one third, for a plea entered at the earliest stage. There is no minimum discount; a guilty plea entered on the first proper day of the trial would be expected to provide a discount of one tenth. The discount can sometimes involve changing the type of punishment, such as substituting a prison sentence for community service.

Plea bargaining in Magistrates' Court trials is permitted only to the extent that the prosecutors and the defense can agree that the defendant will plead guilty to some charges and the prosecutor will drop the remainder.However, although this is not conducting a plea bargain, in cases before the Crown Court, the defense can request an indication from the judge of the likely maximum sentence that would be imposed should the defendant decide to plead guilty.[23]

[22] https://criminallawstudiesnluj.wordpress.com/2022/05/20/plea-bargaining-a-comparison-between-usa-and-india/#:~:text=Under%20the%20Indian%20scheme%20of,court%20notifies%20the%20public%20prosecutor.
[23] https://en.wikipedia.org/wiki/Plea_bargain#Italy

5.5. Benifits of plea bargaining

If the person accused of the crime was involved or did commit the crime, there will be some advantages of plea bargaining. Some of those advantages include:

- The defendant may wind up with a lighter sentence than if they had taken their chances with a court trial. Fines and restitution may be reduced.
- It removes the uncertainty of the trial for the defendant.
- It creates the certainty of conviction for the prosecutor.
- A length jury trial is avoided. If the accused wishes to avoid a long trial and the expenses and emotional investment that it may include, a plea bargain can be advantageous.
- It can reduce the jail population. Lower sentences mean less people incarcerated at one time.
- It frees up resources in the criminal justice system since the case is processed quicker and easier.[24]

[24] https://www.robertagrelaw.com/blog/2021/05/what-are-the-advantages-and-disadvantages-of-plea-bargaining/

Chapter-Six

Famous cases related to ADR

6.1. K.K. Modi vs. K.N. · Modi & Ors. AIR 1998

- **Facts:**

The Modi family divided into GROUP A (KN Modi, Younger brother of Mai Modi and his sons) and Group B (Mai Modi's sons,including KK Modi), owned a number of public limited companies. Disputes arose between the two groups and to resolve these conflicts, many financial institutions were called, including the one who invested in the companies.A memorandum of agreement was signed specifying that the consultation of all matters will be done by the Chairman of IFCI (Industrial Finance Corporation of India) Or his nominees, whose decision will be final and binding.Both the groups were dissatisfied with the report that was submitted to them which mentioned details of splitting of all the assets for which the groups sought the help of chairman and managing director of IFCI. The latter formed a committee and discussed all the problems arising Out of the report.The Chairman of IFCI gave out its final report, claiming it as its final decision in the matter. He also gave out some directions to both the groups in the same report. While this report was not filed in the court, a series of directions were given for the implementation of the same by the nominated chairman.On 18th May, 1996 Group B filed an arbitration petition in the Delhi High Court Under section 33 of the arbitration act, 1940. They challenged the legality and validity of the directions issued by the chairman and managing director of IFCI. They also filed a civil suit in the Delhi High Court with similar arguments, except for one paragraph Where they stated That they sought relief because the directions of the chairman and managing director of IFCI were a decision and not an arbitration award.

- **Judgement:**

The court declared that the clause did not constitute an arbitration clause because there is no mention of the disputes being referred to the "arbitration" of an "arbitrator". The court mentioned a set of guidelines which would help ascertain whether the parties involved agreed for arbitration or not. Following those guidelines, it was concluded that this decision did not constitute an arbitral award.It was also declared that the civil suit was an abuse of process since the same issue was being addressed through two different proceedings. However, the council of

the Appellants mentioned that since the memorandum of understanding did not have an arbitration clause, and the decision did not constitute an arbitration award,they were allowed to file a suit challenging the decision of IFCI. The court partly accepted these arguments and declared the civil suit as not being abusive of the court process, Except for the reliefs which were sought similar to the arbitration petition.[25]

6.2.Marmet Health Care Ctr., Inc. v. Brown - 565 U.S. 530, 132 S. Ct. 1201 (2012)

- **Facts:**

These are two consolidated case involving negligence suits against nursing homes in West Virginia. In both cases, the children of nursing home patients signed an agreement with the nursing home requiring arbitration for any disputes. In both cases, the patients died under the nursing homes' care and the children sued in state court for negligence. The trial court dismissed both suits because of the arbitration agreements. The Supreme Court of West Virginia reversed, holding that the forcing arbitration for personal injury and wrongful death cases violated public policy. The court also held that the Federal Arbitration Act (FAA) did not preempt state public policy despite recent U.S. Supreme Court precedent to the contrary.

- **Conclusion:**

The United States Supreme Court determined that remand was warranted because the Supreme Court of Appeals of West Virginia's interpretation of the FAA was both incorrect and inconsistent with clear instruction in the precedents of the United States Supreme Court. West Virginia's prohibition against predispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes was a categorical rule prohibiting arbitration of a particular type of claim, and that rule was contrary to the terms and coverage of the FAA. The Court noted that the FAA's text included no exception for personal-injury or wrongful-death claims. It required courts to enforce the bargain of the parties to arbitrate.[26]

[25] https://lawlex.org/lex-bulletin/case-summary-k-k-modi-vs-k-n-modi/24001
[26] https://www.oyez.org/cases/2011/11-391

6.3. Kindred Nursing Ctrs. Ltd. P'ship v. Clark - 137 S. Ct. 1421 (2017)

- **Facts:**

Beverly Wellner and Janis Clark, the wife and daughter of Joe Wellner and Olive Clark, respectively, each held a power of attorney affording her broad authority to manage her family member's affairs. When Joe and Olive moved into a nursing home operated by petitioner Kindred Nursing Centers. Beverly and Janis used their powers of attorney to complete all necessary paperwork. As part of that process, each signed an arbitration agreement on her relative's behalf providing that any claims arising from the relative's stay at the facility would be resolved through binding arbitration. After Joe and Olive died, their estates filed suits alleging that Kindred's substandard care had caused their deaths. Kindred moved to dismiss the cases, arguing that the arbitration agreements prohibited bringing the disputes to court. The trial court denied Kindred's motions, and the Kentucky Court of Appeals agreed that the suits could go forward. The Kentucky Supreme Court consolidated the cases and affirmed. The court held that both arbitration agreements were invalid because neither power of attorney specifically entitled the representative to enter into an arbitration agreement.

Conclusion:

The Supreme Court of the United States reversed the Kentucky Supreme Court's decision in part and vacated it in part, and remanded the case for further proceedings. It held that the Kentucky Supreme Court's decision invalidating clauses in agreements a wife and a daughter entered with an entity that operated nursing homes, using powers of attorney they obtained from family members, which required the family members to submit claims or controversies to binding arbitration, had to be reversed because it violated the FAA by singling out arbitration agreements for disfavored treatment. In ruling that a person holding a general power of attorney was not allowed to enter into an arbitration agreement for the person granting the power unless the representative possessed specific authority to waive his principal's rights under the Kentucky Constitution to access the courts and to trial by jury, the Kentucky Supreme Court flouted the FAA's command to place arbitration agreements on an equal footing with all other contracts.[27]

[27] https://www.lexisnexis.com/community/casebrief/p/casebrief-kindred-nursing-ctrs-ltd-p-ship-v-clark

Chapter-Seven

Advantages and drawbacks of ADR

7.1. Advantages of ADR

The main advantage of ADR is that like the normal court system it does not consume huge time which helps to resolve the dispute speedily and cheaply. The method of ADR contains the following typical advantages-

1. It is cost effective and produces quicker resolution of dispute.
2. It facilitates the maintenance if continued relationship between the parties even after the settlement or at least the period the settlement is attempted.
3. Increase control over the process and the outcome.
4. Increase satisfaction of the disputants.
5. Improve Attorney-client relationship
6. ADR supports Court reformation
7. Ensure justice for disadvantaged group.
8. Higher abidance leads to a permanent resolution of conflicts.
9. In rural areas, the court is a taboo for women, ADR process ensure privacy. That means it is a confidential process.
10. ADR is a consensual process to enhance social harmony.

7.2. Drawbacks of ADR

Some disadvantages of alternative dispute resolution are:

1. It can be used as a stalling tactic.
2. Parties are not compelled to continue negotiations or mediation.
3. Does not produce legal precedents.
4. Exclusion of pertinent parties weakens final agreement.

5. Parties may have limited bargaining power. Parties do not have much of a say.
6. Little or no check on power imbalances between parties.
7. May not protect parties' legal rights. The rights of the parties may not be protected by alternative dispute resolution.
8. There is no guaranteed resolution. With the exception of arbitration, alternative dispute resolution processes do not always lead to a resolution.[28]

[28] https://www.lawyersnjurists.com/article/advantages-disadvantages-alternative-dispute-resolution/

Chapter-Eight

Criticismand limitation of ADR

8.1. Criticism of ADR in Bangladesh

In rural areas, going to the court is a taboo, especially for women, and appearing in a formal court often offends family tradition or prestige. In practice, the court processes are open and often do not respect people's privacy. This situation is more important in the case of family disputes, when especially females, are examined, crossexamined or re-examined with extremely dehumanizingtactics by opposing lawyers who ask very private questions in an open court.

In NGO-modified ADR and in-court ADR, women can obtain better access to justice in situ without requiring them to break social norms, as the process of mediation is more private. This advantage of the ADR system prompts parties to resolve their disputes through ADR where the closeprocedure is followed in case of resolving the disputes. This closed procedure and confidentiality are also beneficial for large companies which may want to resolve sensitive. disputes through ADR without affecting their good will and status in the market.[29]

Through plea bargaining, the law reduces the punishment of the offender sometimes, which may increase the de-criminalization of violence. Many countries have increased punishment for a habitual offender whereas through plea bargaining the offender may be benefitted. It may create an opportunity to solve through village 'Salish'; which is already inundated with partisan decisions and local politics which can rarely ensure the justice for the disadvantaged people.

Many compoundable criminal offences are dealt with quasi-formal institutions like village court and municipal dispute settlement board which are composed of local government bodies like ward commissioners, union parishad chairmen and union

[29]Dr. Jamila A Chowdhury, ADR theories and practice – A glimpse on access to justice and ADR in Bangladesh

parishad member. Each of the parties can choose two representatives in a five members panel.Parties can also challenge and appeal to an Assistant Judge Court with appropriate jurisdiction, in case they are not satisfied with the decisions of village courts or dispute settlement boards. Therefore, to reduce burden from formal courts, these quasi-formal courts may be encouraged, rather than compounding by the parties out of court.

Most lawyers andcompanies theystill view ADR as the alternative rather than the primary or preferred method of settling disputes. Such companies see the procedure as a way of settling peripheral, less important disputes, or, as in the electronics case, they simply abandon it when they fail to get the result they want. In any event, they have not decided to make dispute avoidance and early resolution the prime mission of the legal department.[30]

8.2. Limitation

Numerous limitations are blocking the approach of winning this alternative dispute resolution :

- **Uneven Negotiating Command**

In convinced situations, one side is capable to have power over the other. For that reason, a noteworthy discrepancy of power exists. Employment and annulment cases, making the courts an improved alternative for a weak party.

- **Short of Legal Expertise:**

Where an argument involves complicated legal points a mediator or arbitrator is doubtful to have the same legal proficiency and knowledge as a judge. The dispute can be of a range of situations such as viable conflicts, social conflicts, legal conflicts, and many others which necessitate dedicated mediators. Most of the cases, the mediator does not acquire a judge's perspective.

[30] https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does

- **No Organization of Specific mock-up:**

It is not easy to envisage the conclusion of a dispute determined through ADR as there is no method of precedent. Therefore, it is easier to get evidence from the other party in a lawsuit. Short of system fallout in the restricted prediction of outcomes.

- **Enforceability:**

Usually, ADR is not lawfully compulsory making any award complicated to implement Legal arbitration has some kind of course of action for internal appeals, which enables the assessment as an obligatory and only issue to the assessment of Court.

- **Required Court Action:**

The arbitrator's verdict can necessitate a court action if one of the parties declines to acknowledge the arbitrator's conclusion. This would not only generate pandemonium but also an obligatory review by the court. Thus, ADR occasionally elevates the question of biasness of the arbitrator's pronouncement. Also, there is a very flawed panorama for judicial assessment of an arbitrator's decision.

- **Limits Discovery Process:**

ADR normally happening without the fortification obtainable parties in litigation, such as those rules administrated during innovation. Courts commonly allocate an enormous arrangement of leeway in the sighting procedure, which is not vigorous in substitute dispute resolution.[31]

[31] https://viamediationcentre.org/readnews/NjQx/LIMITATIONS-OF-ALTERNATIVE-DISPUTE-RESOLUTION

Chapter-Nine

Recommendation and conclusion

9.1. Recommendations

Resolving the dispute outside the court is a good alternative option. Mediation is an alternative dispute resolution process which is growing rapidly in Bangladesh as a good alternative dispute option. It is chosen to address disputes by way of a voluntary procedure with the aid of a neutral facilitator who helps the parties in reaching a settlement that is satisfactory to all the concerned parties involved in the dispute. It is cost-effective and less time-consuming, unlike court litigations. There is no judge and hence, no one is there to impose any decision. It is the parties who decide the outcome. One of the most important rules in mediation is that the whole process is entirely confidential and no offer, concession or admission made by any party can be used up until a settlement is reached.

Bangladesh is a country where there are numerous cases pending before various courts. The backlogs and delays in our courts, have reached such a proportion that it effectively denies the rights of citizens to redress their grievances, especially of the poor people. It has become an instance of injustice, a violation of human rights. While praying for justice, the parties become part of a long protracted and torturous process, not knowing when it will end. Another important factor that hinders people's access to justice is the cost of the dispute resolution process. Cost is important because we live in a system in which money often matters more than merit. People silently bearing the agonies and burns of injustice done to them in various spheres of life without any legal relief is something that is witnessed frequently. Here are some recommendations for better output in ADR with criminal justice system-

1. Plea bargaining must not be within abuse of power.
2. Lawyers should consider the nature of offence and suggest ADR to the clients.

3. There should be more mediation center and agencies to improvise the path of mediation in society.
4. The judges and lawyers should be properly trained up.
5. Public awareness should be made
6. A body of Government should be planned to monitor the ADR system and it's planning, rules etc.
7. Positive impressions should be shown among the advocates regarding ADR.
8. Corruptions should be removed.

9.2. Conclusion

For action like, voluntarily causing hurt, wrongfully restraining a person, wrongfully confining a person, unlawful compulsory labour, criminal trespass, defamation, rioting, voluntarily causing grievous hurt, wrongfully confining a person in secret, criminal breach of trust and other compoundable offence can be solving by mediation.

Bangladesh government has successfully incorporated the policy of the Alternative Dispute Resolution in civil matter to ensure justice. And the result is praiseworthy. But the question is -why this type of praiseworthy result is not seen in criminal justice system. ADR has not been yet widely introduced in criminal justice system. Section 345 of the Code of Criminal Procedure, 1898 enacts provision for compromise.From the analysis made above, it can be concluded that mediation is still a developing concept as an alternate dispute resolution mechanism in Bangladesh. Despite its limitations, it can be said that it is playing a vital role in ensuring justice to the public. With the courts of Bangladesh being flooded with an overwhelming number of claims, it is perhaps about time that we appreciate this concept of alternative dispute resolution and take appropriate steps to facilitate mediation not merely by bringing amendments in the laws but also enforcing them properly in the future. It should not be denied that with the increasing number of NGO mediations, court-connected mediations and law provisions regarding

mediation Bangladesh is surely going to have a bright future in resolving disputes through mediation.

The police are often accused of committing criminal intimidation in Bangladesh by abusing their powers of remand during interrogation of those arrested. Additionally, accused persons aresometimes subjected to threat and torture to force them to make a confession. A plea-bargaining system might give them more opportunities to misuse their powers. So undoubtedly, mediation is the only left process for criminal matters in ADR and by adopt its full version our criminal justice can lead a new path of faster and less expensive disputes resolution.

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