Chapter-1

1.1 ABSTRACT

Alternative Dispute Resolution or simply ADR is the procedure for settlement of disputes between two or more disputant parties, usually outside the court without following rigid litigation processes, by means of mediation, arbitration or negotiation. The main purpose behind the establishment of the system of ADR was to reduce the burden on courts, to make the litigation inexpensive and less rigid to those who can't afford more time and money. In the Criminal Jurisprudence any criminal acts/offences are regarded as crimes against the State, but not against the victim and only State has the Jurisdiction to address it. Since, ADR is a dispute resolver, it is very difficult to call crime a dispute and hence, ADR is only restricted to petty crimes like matrimonial disputes, motor vehicle cases etc. But the Indian Courts today are flooded with numerous cases resulting in pending litigation. But it is also very necessary to reduce the over-burden of litigation on the Courts. Thus, this paper focuses on the essentiality of ADR in Criminal trial and to increase its scope for the same. The main purpose behind this paper was to educate people and make them realise the importance of ADR. In addition, this study also analyses the system of Alternative Dispute Resolution in India, its types, their functions, role in the Indian Criminal Judicial system and a brief comparison of ADR in different countries.

1.2 INTRODUCTION

Lon L. Fuller describes Alternative Dispute Resolution (ADR) as: "a road that parties must travel to arrive at their goal of mutually satisfactory settlement."Any dispute is just like a Cancer. If it is resolved sooner, it is better for all the parties concerned to it. In Indian courts the no. of cases pending are huge.The present system falls short to deliver rapid and reasonable support to the party. The procedure is also very complex. This leads to a search for an alternative mechanism which should be inexpensive and quick.

1. Author is a student at KLE Society's Law College, Bengaluru, India.

2. Author is a student at KLE Society's Law College, Bengaluru India.

A new inclination that can be observed in the realm of alternate dispute resolution is its applicability in criminal matters. Alternative Dispute Resolution (ADR) includes methods that are out of court proceedings. It usually includes negotiation, mediation, arbitration, collaborative law and conciliation. Thus, there are different types of ADR for facilitating in different civil as well as criminal matters. The foundation of justice administration in any state-based formal justice system involving civil and criminal justice, institutions like police, public prosecution, and courts3. However, in spite of well-established formal mechanism of criminal justice system in India, there is huge backlog and pendency of cases, due to which the justice has often been delayed. The essence of Criminal Justice is speedy trial and it is certain that delay in trial by itself be equivalent to denial of justice. The emphasis on the need of ADR can't be enough. This paper tries to shed some light on it. ADR, particularly mediation, focuses on resolving the disputes between the parties and maintaining the harmonious relations between them. Hence, it is perfect tool for rendering the restorative justice in criminal matters. When it comes to ADR in criminal cases there are arguments both for and against it because there are certain limitations that have also been pointed out in this study. There is a judicially recognized 'right to speedy trial' as part of Art 21 of the Indian Constitution. However, the right to speedy trial is not made accessible to the citizens making the trial procedure prolonged because of undue delays. Although, the Indian Constitution has provided its citizens with right to speedy trials, Indian Courts' system is suffering with huge number of cases pending. The saying "justice delayed is justice denied" perfectly applies to the Indian Judicial system. Therefore, to solve this issue, the successful implementation of ADR in India is very much essential. There are countries which has given importance to to ADR long before and are gradually adapting it in every day matter. The paper has lso mentioned a comparative study on this to seen where Indian stands when it comes to implementation of ADRs.

1. Author is a student at KLE Society's Law College, Bengaluru, India.

2. Author is a student at KLE Society's Law College, Bengaluru India.

1.3 Definition of ADR

Alternative dispute resolution (ADR) (also known as external dispute resolution in some countries, such as Australia) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. Despite historic resistance to ADR by many popular parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. In fact, some courts now require some parties to resort to ADR of some type, usually mediation, before permitting the parties' cases to be tried (indeed the European Mediation Directive (2008) expressly contemplates so-called "compulsory" mediation; attendance that is, not settlement at mediation). The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. Some of the senior judiciary in certain jurisdictions (of which England and Wales is one) are strongly in favor of the use of mediation to settle disputes.

"Alternative dispute resolution" (ADR) is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their dispute in a way that is less formal and often more consensual than is done in the courts. While the most common forms of ADR are mediation and arbitration, there are many other forms: judicial settlement conferences, fact-finding, ombudsmen, special masters, etc. Though often voluntary, ADR is sometimes mandated by the courts, which require that disputants try mediation before they take their case to court.[3]

Md. Abdul Halim ADR in Bangladesh: Issues and Challenges, 2nd ed. (CCB Foundation: Dhaka, 2011).

[htt://en.wikipedia.org/wiki/Alternative_resolution]

1.4 History of Criminal Justice System in Bangladesh

The phrase Criminal Justice System refers to the system of State and Local Public Agencies that deal with the crime problem. Proper dispensation of Criminal Justice System is no doubt sine qua none for a healthy secured society. The present criminal justice system of Bangladesh owes its origin mainly to 200years British rule in Indian Sub-Continent; tough it has been gradually developed as a continuous historical process through Hindu and Mughal administration. There are at least five periods by passing which our present administration of justice has been developed. In Hindu Period, the King was considered as the King's Court, Chief Justice Court, Village Council etc. xiii In Muslim period, the criminal justice system was administered through three consecutive sub-periods that was period of Turkish Muslims (1100A.D-1206), the Sultanate of Delhi (1206A.D.-1526) and the Mughal Empire(1526A.D.-1857A.D.).The theory of Muslims was based on Quran and their religious book. xiv Somuzat, Diwan-e-Mazalim, Sarde Jehan's Court, Adalat Nazim Subha, Adalat Qazi-eSubha, Faujder Court etc. The modernization of ancient criminal justice system took place by the interference of the East India Company. The administration of justice was regulated by several Charters and Act. Gradually, Supreme Court and High Court were established. In the last era of British India there were Courts of Session, Presidency Magistrate,1st Class,2nd Class and 3rd Class Magistrate which was established by the Code of Criminal Procedure,1898. Bangladesh has adopted this Criminal Justice System. The judicial procedure is regulated by the Code of 1898 and the Act of 1860 has defined the crimes and prescribed the punishment. This system is considered as the staircase of Criminal Justice System of Bangladesh. xv

Lecturer, Dept. of Law, Dhaka International University.

1.5 Nature of Criminal Justice System

Followings are the nature and features of the Criminal Justice System of Bangladesh1. Criminal Justice System is adversarial in nature meaning that the whole process is a contest between two parties one of whom is State and the other is accused of crime. The judge acts as an umpire between parties. xvi 2. A person accused of a crime is presumed to be innocent until the prosecution proves his guilt. 3. Guilt of the accused must be proved beyond any reasonable doubt. This is the criminal standard of proof. 4. In criminal proceeding, the basic rule is that the prosecution bears the legal burden (onus) of proving every fact in issue. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence.xvii 5. Criminal Justice System consists in the punishment of wrongs. Normally in a criminal justice, the injured person claims no right, but accuses the defendant of wrong. 6. In Criminal Justice System, there is no retrospective operation of Criminal law. Retrospective means looking backwards having reference to a state of things existing before the Act in question. It is a settled principle that criminal laws have no retrospective operation in the eye of law. Constitution of Bangladesh also ensures that no person shall be convicted to any offence which is not in force at the time of the commission of the act.xviii 7. It is a general rule that Penal enactments are to be interpreted strictly and not extended beyond their clear meaning. A penal Statute must be construed according to its plain, natural and grammatical meaning. Special criminal law prevails over the general criminal law.

Lecturer, Dept. of Law, Dhaka International University.

Chapter-2

2.1 Criminal Court Structure of Bangladesh

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

1. Court of Sessions and

2. Court of Magistrates.

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

1. Session Judge,

2. Additional Judge,

3. Joint Session Judge.

The Court of Magistrates may be of the following classes

1. Judicial Magistrate,

2. Executive Magistrate.

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

1. Chief Judicial Magistrate or Chief Metropolitan Magistrate,

2. Additional Chief Judicial Magistrate or Additional Chief Metropolitan Magistrate,

3. Senior Judicial Magistrate (First Class Magistrate, Metropolitan Magistrate),

4. Second Class Magistrate,

5. Third Class Magistrate.

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

The adjudicating authorities perform its proceeding through following two stages

1. Proceeding Stage and

2. Trial Stage.xx

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

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

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

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2.2 Causes of delay in disposal of Criminal Cases

Article 35(3) ensures the right to speedy justice as fundamental rights. But due to some unavoidable circumstances, it is impossible to ensure the right of speedy disposal of cases. From the analysis of the disposal procedure of cases, the following causes of delay can be remarked1. Absence of completion of trial of criminal cases within time. 2. Inadequate number of judges. 3. Non attendance of witness at trial. 4. Absence of skilled and experienced regular prosecution. 5. Absence of exclusive criminal courts of session. 6. Absence of regular inspection of the subordinate session court by the Session judges or Supreme Court. xxv

2.3 Types of ADR in Criminal Cases

ADR in criminal cases may be of two types

1. Compounding Offence.

2. Plea Bargaining. xxvi

2.4 ADR in Criminal Cases in Bangladesh

The term Alternative Dispute Resolution is often used to describe a wide variety of dispute resolution mechanism that are short of, or alternative to, full scale court process. In short, it means to resolve any dispute between the parties outside the court. Bangladesh has introduced this system in the Civil Justice System. ADR has not been yet widely introduced in criminal justice system. Section 345 of the Code of Criminal Procedure enacts provision for compromise between the adversary parties to a little extent. Besides this Gram Adalat Ain, 2006xxvii and Birodh Mimangsha (Paura Elaka) Board Ain,2004xxviii deals to dispose of some petty criminal offences by compromise. The Criminal Court has no other alternatives but to acquit the offenders if compromise petition is submitted in case of compoundable offences.

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The opportunity of ADR in criminal cases should be increased by widening the scope of Section 345 of Cr.P.C. It is needed to widen the ambit of compoundable offences may have the adverse effect on the public peace and tranquility. The success of the ADR will ensure the peace in society

Compounding means compromise or amicable settlement. Generally, a criminal act in which a person agrees not to report the occurrence of a crime or not to prosecute a criminal offender in exchange for money or other consideration is called compounding offences. One the other hand, it can be said that compoundable offences are those which can be compromised by the parties to the dispute. The permission of the Court is not necessary. Note that the aggrieved party or the victim may compound an offence. Not even the public prosecutor has the power to compound an offence. xxix Offences which may lawfully be compounded are mentioned in section 345 of the Cr.P.C. An offence created by a Special Law is not compoundable. The Court cannot allow compounding of an offence which is not compoundable under Section 345. Compoundable offence may be of two types: (a) Compounding with the permission of the Court; (b) Compounding without the permission of the court. Section 345 (1) provides the list of offences which can be compounded without the permission of court. Section 345 (2) provides the list of offences which can be compounded only with the permission of the Court. Penal Code, 1860 covers wide range of offences, defining the offences and the provisions of punishment. Whereas the Code of Criminal Procedure prescribes the procedure to try the offences compoundable can also be compromised outside the court. Main object of compounding to maintain peace in the society. But all kinds of offences are not compoundable, basically in case of heinous offences. Except the offences mentioned in the column of section 345 of the Code of Criminal Procedure cannot be compounded, such as murder, rape, kidnapping, dacoity, smuggling, abduction etc.

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2.5 General Rule of Compounding of Offences

1. Compounding of Abetment of Offences: When any offence is compoundable under section 345 of Cr.P.C, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner. xxx

2. Person Competent to Compound: When the person who would otherwise be competent to compound an offence under section 345 of Cr.P.C is (under the age of eighteen years or is) an idiot or a lunatic, any person competent to contract on his behalf may (with the permission of the Court) compound such offence. xxxi

3. No Composition in Some Case: When the accused has been sent for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is sent or the case may be, before which the appeal is to be heard. xxxii

4. Direction of High Court Division to Compound Cases: The High Court Division acting in the exercise of its power of revision under section 439(and a court of session so acting under section 439A) may allow any person to compound any offence which he is competent to compound under section 345 of Cr.P.C. xxxiii

5. Acquittal: The composition of an offence under section 345 of Cr.P.C shall have the effect of an acquittal of the accused (with whom the offence has been compounded)).

6. No Compounding except Section 345: No offence shall be compounded except as provided by section 345 of Cr.P.C. xxxiv

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2.6 Guiding Principles in Compromise of Criminal Cases

No compromise can be made before charge sheet is submitted. Following points should be kept in mind while compromising an offence:

1. The compromise proceeding should be guided by legal process and no legal provisions shall be hampered by compromise.

2. Patience hearing should be given to both the parties.

3. Conciliator should not impose any decision over the parties.

4. Extra benefit should not be given to any parties.

5. No one should be declared guilty or convicted in conciliation proceeding.

6. Equality should be ensured in case of male and female.

7. Deed of compromise should be in written form.

8. Copy of the deed of Compromise should be provided both the parties.xxxv

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2.7 When Compounding Possible

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.xxxvi The Pakistan Supreme Court permits submission of deed of compromise after serving the conviction and acquit the accused in appellate stage.xxxvii But when the lower Courts record is called for under section 435 of the Code of Criminal Procedure, Magistrate can not permit the parties to submit compromise deed.

2.8 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.

*idid

5. Improve Attorney-client relationship.xxxviii

6. ADR supports Court reformxxxix

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.xl

10. ADR is a consensual process to enhance social harmony.

11. There is no scope for bias or corruption.

*idid

2.9 Disadvantages of ADR:

It is true that ADR system plays an important role in speedy disposal of dispute but there are some limitations of this system too, which are as under

1. No system of precedent.

2. Lack of legal expertise.

3. A court action may still be required.

4. Extreme power in balance between the parties.

5. Settlement is not determent.

6. Undermining judicial reforms efforts. xli

2.10 Necessary Steps to Introduce ADR in Criminal Justice Delivery System

The opportunity of ADR in Criminal Cases can be increased by enlarging the scope of Section 345 of the Code of Criminal Procedure carefully. It would eliminate the various malpractices now resorted to be the parties to put an end to criminal proceedings pending in the Courts in which a non-compoundable offence has, in fact, been compounded out of court. In Criminal Jurisdiction, thousands of cases filed under section 138 of the Negotiable Instrument Act, 1881 which are not compoundable. But in this case, ADR system may be very much effective and the Complainants will be benefited. A considerable number of cases filed under section 385 of the Penal Code are pending in the Courts of Session for years together. These types of cases are suitable for compromise through Court if necessary amendment be made in the procedural laws. ADR system can also be introduced to confirm juvenile justice under the Children Act, 1974. This system can also be effective for the trial of environmental cases under the Environmental laws.

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*idid

To preserve Human Rights it is necessary to introduce ADR system in Criminal Justice delivery system. In the case of Md. Joynal and others v. Rustam Ali and others, Supreme Court encourages compromise in criminal cases. xlii Establishment of ADR training institute and allocation of fund is another requirement for introducing ADR in Criminal Justice. For the success of this system, mass awareness should be built.

*idid

2.11 Can ADR be used in criminal cases

Alternative Dispute Resolution or simply ADR is the procedure for settlement of disputes between two or more disputant parties, usually outside the court without following rigid litigation processes, by means of mediation, arbitration or negotiation. The main purpose behind the establishment of the system of ADR was to reduce the burden on courts, to make the litigation inexpensive and less rigid to those who can't afford more time and money. In the Criminal Jurisprudence any criminal acts/offences are regarded as crimes against the State, but not against the victim and only State has the Jurisdiction to address it. Since, ADR is a dispute resolver, it is very difficult to call crime a dispute and hence, ADR is only restricted to petty crimes like matrimonial disputes, motor vehicle cases etc. But the Indian Courts today are flooded with numerous cases resulting in pending litigation. But it is also very necessary to reduce the over-burden of litigation on the Courts.

Thus, this paper focuses on the essentiality of ADR in Criminal trial and to increase its scope for the same. The main purpose behind this paper was to educate people and make them realise the importance of ADR. In addition, this study also analyses the system of Alternative Dispute Resolution in India, its types, their functions, role in the Indian Criminal Judicial system and a brief comparison of ADR in different countries.

https://madhavuniversity.edu.in/critical-study-on-adr.html 5 Criminal cases and ADR: https://www.lawctopus.com/academike/criminal-cases-adr/bargaining;

2.12 NEED FOR ADR IN CRIMINAL TRIAL

Judiciary is regarded as the most vital organ where people have faith. Judiciary exists to solve all kinds of disputes, to render justice to the innocents by punishing the offenders by being impartial and independent. But now-a-days people are losing their trust in Indian Courts, and one of the reasons is delay in Justice due to pending litigation. Hence, Alternative Dispute Resolution (ADR) is one such mechanism established in the Indian Judicial system to reduce the burden on courts to some extent. During this COVID19 lockdown situation, the no. of pending cases are increasing exponential and ADR has become necessity in certain cases more then just an option. Chhattisgarh High Court and Legal Authority pioneered e-Lok Adalats in the state during the lockdown time. Chhattisgarh has become the first state in the country to do so. Through video conferencing amicably the litigants were connected to the concerned court and as many as 156 cases has been taken up out of which 155 has already been settled. Thus, ADR has always facilitated in reducing the burden of the courts no matter the situation are Alternative Dispute Resolution mechanism in criminal cases was developed to provide easy and accessible remedy to poor criminals who are guilty of motor accident cases and other petty criminal cases, to save them from for huge time consumption, high litigation cost and rigid procedure. The Legal Services Authorities Act, 1987 has accorded legal status to such alternative attempts to solve the disputes of the parties outside the court, which are known as Lok Adalat and the award passed by it is given the status of a 'Civil Court decree'. Lok Adalats are now acquiring a new dimension in order to reduce the litigation miseries of the weaker sections of the society. It provides a statutory forum to the litigants to resolve their disputes through negotiated settlements in presence of the Lok Adalat judges. The amendment effected to the Legal Services Authorities Act, 1987 in 2002 provides the establishment of permanent Lok Adalat for the settlement of disputes relating to public utility services by applying ADR mechanism in order to decongest the courts.

https://madhavuniversity.edu.in/critical-study-on-adr.html 5 Criminal cases and ADR: https://www.lawctopus.com/academike/criminal-cases-adr/bargaining;

4 As already discussed above, the traditional courts' system is too much time consuming and expensive, which is unaffordable to many, resulting in injustice to the innocents. There are approximately 59,867 criminal cases pending before the Supreme Court of India. The condition is even worse in subordinate judicial system like there are 44.75 lakhs pending cases before the various High Courts of India, out of which 13.1 lakhs are criminal cases and 3.14 crores pending cases before the district and subordinate Courts. Flooding in the number of cases also results in over-population of convicts and increase in the number of prisoners. There is a saying, "Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated, but when there is enormous delay in deciding the criminal cases."5 Speedy trial is an essence of criminal justice, but it is getting trotted in the Indian Judicial system. Therefore, due to this alarming situation of the Indian Judicial system, ADR mechanism is the need of the hour, especially to resolve the criminal cases. The preference to ADR is more because of its inexpensive litigation, less wastage of time and the confidentiality that is being maintained in this process of ADRs. Certain basic steps are to be taken by the State in order that the rule of law and justice can be directed as it should be. But there is some hesitation upon the solicitation of ADR in criminal justice. In the instance of the criminal justice, the term ADR comprehends various practices which are not contemplated as a part of conventional criminal justice such as victim/offender mediation; family group conferencing; victim offender-panels; victim support programs; communal crime prevention programs; sentencing circles; community service; plea 4 A Critical study on ADR in Criminal Trial:

https://madhavuniversity.edu.in/critical-study-on-adr.html 5 Criminal cases and ADR: https://www.lawctopus.com/academike/criminal-cases-adr/bargaining;

But still the scope of ADR in Criminal Justice is very less because crime is regarded as violation against the State and not against the victim. Also only State has the Jurisdiction to address it. This kind of system came with the Norman invasion of Britain in 12th century. Prior to it, Western Law had viewed crime as conflict to be dealt between an offender and victim. This may make an offender realize his crime, repent it and also helps him to make sense of the tragedy or heal his wounds.6 This discussion highlights the need of ADR, as it facilitates the communication and conciliation between the victim and offender rather than leading to deterrence. As consequent to this, Western Developed Countries like U.S.A have embraced ADR models like victim-offender mediation, in their criminal justice system. ADR is not to punish the offender, but rather to guide them to repent for their crime, strive to mend the injury they have done, and reintegrate them into the community. 7 The model for example, which the victim-offender mediation contributes to and exercises, is a response against the model of traditional justice8 . Revenge is not the answer to all the crimes committed against the victims. It does not restore the losses of victims, answer questions, relieve fears, provide closure, or help to make sense of a tragedy. For all the victims, that the offender has been punished by the state does not necessarily restore the losses they have suffered—it does not "answer their questions, release their distresses and help them understand their tragedy or heal their injuries. The formerly mentioned line of reasoning emphasizes the need of ADR, as it promotes the communication and resolution between the parties rather than, discouraging it. And hence, for the smooth functioning of the judicial system, it is very much necessary for India also to adopt U.S.A's model of victim-offender mediation which enhances the scope of ADR in Criminal Justice, at the same time reduces the over-burden of cases on the Indian courts. Therefore, we can regard that ADR mechanism in Criminal trial is need of the hour. 6 Alyssa H Shenk. Victim-Offender Mediation: The road to Repairing Hate Crime Injustice from: http://www.vorp.com/articles/crime.html 7 Ric Simmons, Private Criminal Justice, Wake Forest Law Review. 2007; 42:945 8 Markus D Dubber: The Victim in American Penal Law: A Systematic Overview, Buff. Crim. L. Rev. 1999; 3(6):3

https://madhavuniversity.edu.in/critical-study-on-adr.html 5 Criminal cases and ADR: https://www.lawctopus.com/academike/criminal-cases-adr/bargaining;

2.13 LIMITATIONS OF ADR IN CRIMINAL JUSTICE:

The following are the limitations of application of ADR in Criminal Jurisprudential System faced in India: ● Alternative Dispute Resolutions can only be used in petty criminal offences and not on serious offences. ● Existence of dispute is one of the prerequisite of ADR. But in certain criminal cases like rash and negligent driving, drunken driving etc. resulting in injuries or even death of the pedestrians, there may not be any dispute between the criminal and victim, and such difficulties limit the scope of ADR in Criminal trial. ● Arbitration decisions are final. There are very few exceptions where the decision arbitration can be appealed, with fraud being an obvious exception. Additionally, certain states does not enforce decisions of arbitrators that have unfair penalty. The scope of arbitration is limited to specic disputes because some clauses are broad, others are narrowly. If we take the case of any court then the decisions of a court, usually can be appealed to an appellate court for a variety of legal grounds and for numerous alleged procedural errors

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Chapter-3

3.1 RECOMMENDATION

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

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

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

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Chapter-4

4.1 CONCLUSION

Society, law and legal mechanisms changes over time through various changing process to fulfill the demand of the people. As it is mentioned earlier in this paper, law has emerged in the society as a basic need, and its institutions and mechanisms may change over time to fulfill its purposes in the society. Therefore, as a basic organ of the society, law should be implemented in a way that can ensure proper justice in the context of a particular society. Thus, alternative dispute resolution is a mechanism of law which emerged as a basic need for the society like Bangladesh to execute the functions of Judicial System properly. Alternative Dispute Resolution (ADR) is generally used to reduce the cost and delays associated with traditional court proceedings. This system has already been introduced in Civil Litigation System in Bangladesh; however, it is time that we should introduce it in our Criminal Justice System to ensure justice, to get the quick disposal of disputes and to reduce case backlog. It is also important for us to understand that such introduction of ADR may include various pre-requisite steps to achieve the best results in our legal justice system. Despite of some disadvantages, ADR may rise as a most useful mechanism in the practical legal system of Bangladesh. Thus, before introducing the alternative dispute resolution (ADR) in our criminal justice system, the recommendations provided by the paper need to be considered to ensure the proper implementation of the mechanism. Otherwise, an immature and whimsical introduction of ADR in criminal cases may reduce case backlog and may increase quick disposal, but, such success may lead to a harmful impact on our justice system and can be used as a vehicle of imbalanced power in the society.

Introduction of ADR in Criminal Justice System of Bangladesh. / Ridoan Karim

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10. Lecturer, Dept. of Law, Dhaka International University.

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12. Author is a student at KLE Society's Law College, Bengaluru, India./ Author is a student at KLE Society's Law College, Bengaluru India.