Sonargaon University

Research Monograph

On

Alternative Dispute Resolution in Criminal Justice System in Bangladesh

Research monograph submitted in the partial fulfilment of the requirements for the degree of Bachelor of Laws (Honours).

Submitted to

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Finally, I would like to thank my family for their love and support. Their encouragement has been a source of strength throughout this process, and I am grateful for their understanding and patience.

Letter of Transmittal

To,

Sharmin Jahan Runa

Assistant Professor & Head (Acting)

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Subject: For the submission of research Monograph titled "Alternative Dispute Resolution in Criminal Justice System in Bangladesh".

Dear Sir,

This is matter of joy that me to submit the research monograph title "Alternative Dispute Resolution in Criminal Justice System in Bangladesh" while doing this research monograph, I have tried my level best to keep the required standard. I hope, this research monograph will fulfill your expectation. I hope that you would be kind enough to go through this thesis for your kind evaluation. I'm always available for any clarification or any other necessity of any part of this Research Monograph at your convenience.

Yours obediently

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Certification by the Supervisor

The research monograph is entitled "**Alternative Dispute Resolution in Criminal Justice System in Bangladesh**" by **Md. Mushahid Ali** under my supervision is satisfactory for submission to the Department of Law, Sonargaon University for the award degree of Bachelor of Laws (LLB). The information's collected from different sources have been duly acknowledged in this research monograph.

Sharmin Jahan Runa

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Declaration

To the best of my knowledge, I confirm that this research monograph contains no material previously published or written by another person except by way of quotation and duly acknowledged. It is based on my own research work and has not previously been submitted for a degree or diploma of any University at home or abroad.

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Abstract

The Criminal Justice System (CJS) is a collection of organizations, policies, and procedures that a government establishes to maintain social order, prevent criminal activity, enforce laws, and ensure justice. It aims to protect the public and bring about justice for all. The CJS includes judicial systems and legal processes that address criminal offenses. It consists of three main components: the judicial system, penitentiary systems, and law enforcement, often referred to as the law enforcement system. The primary responsibilities of the CJS are to locate and apprehend criminals, enforce court orders, and uphold the rule of law. It investigates potential crimes, ensures fair trials, and applies appropriate penalties or corrective actions. Its overarching goal is to preserve public safety, advance justice in communities, and uphold the rule of law.

Alternative Dispute Resolution (ADR) has emerged as a promising approach to resolving legal conflicts efficiently and amicably. This research examines the historical evolution, procedures, applications, and effectiveness of ADR within Bangladesh's criminal justice system. It identifies issues in dispute resolution and provides original responses regarding criminal cases. Since there is no specific law governing ADR in Bangladesh’s criminal justice system, this study draws on examples from other countries to explore ADR's potential. It also investigates the willingness of parties involved in criminal cases to use ADR. The research evaluates the effectiveness of traditional legal processes, analyzes the benefits of ADR, and aims to contribute to the development of a more efficient and fair justice system.

The study explores various ADR mechanisms, such as mediation, arbitration, and negotiation, assessing their suitability for different criminal cases. It also examines the legal and institutional frameworks necessary for integrating ADR into the criminal justice system. By addressing challenges and limitations, the research offers recommendations for the successful implementation of ADR in Bangladesh, improving the accessibility and efficiency of the justice system.

In conclusion, the research monograph provides a practical understanding of ADR in Bangladesh’s criminal justice system and serves as a foundation for decisions on implementing plea bargaining. The research aims to develop a comprehensive analysis of ADR’s effectiveness, contributing to reforms and the development of fairer justice mechanisms in Bangladesh.

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Chapter 1

Introductory Remarks

1.1 Introduction

The criminal justice system, a cornerstone of any society, aims to ensure justice and maintain law and order. However, traditional adversarial litigation often proves time-consuming, expensive, and emotionally draining for all parties involved. In recent years, Alternative Dispute Resolution (ADR) has emerged as a promising approach to resolving disputes, including those arising from criminal offenses.

This research monograph delves into the intricate relationship between ADR and the criminal justice system of Bangladesh. It explores the potential benefits, challenges, and limitations of implementing ADR mechanisms in a context where traditional legal processes are deeply ingrained. The study aims to contribute to the ongoing discourse on justice reform while providing valuable insights for policymakers, legal practitioners, and academics.

The monograph examines various ADR mechanisms, such as mediation, arbitration, and negotiation, and assesses their suitability for different types of criminal cases. It analyses the legal framework governing ADR in Bangladesh, including relevant statutes, rules, and regulations. The study also explores the roles of various stakeholders, including the judiciary, law enforcement agencies, and civil society organizations, in promoting and facilitating ADR in criminal cases.

Furthermore, the monograph delves into the practical challenges and ethical considerations associated with implementing ADR in criminal matters. It discusses issues such as the adversarial nature of criminal proceedings, the role of victims, the rights of the accused, and the public interest in ensuring justice.

By examining these issues, this research monograph seeks to provide a comprehensive understanding of the potential of ADR in Bangladesh's criminal justice system. It aims to contribute to the development of effective and efficient dispute resolution mechanisms that enhance access to justice, reduce case backlogs, and promote restorative justice principles.

1.2 Objectives

The specific objectives of the research monograph is :

1. To comprehensively examine the potential and challenges of Alternative Dispute Resolution (ADR) mechanisms within Bangladesh's criminal justice system.

2. To explore various ADR mechanisms suitable for the Bangladeshi context, such as mediation, conciliation, and community justice.
3. To assess the legal and institutional frameworks necessary to support the integration of ADR into the criminal justice system.
4. To evaluate the potential benefits of ADR in reducing case backlogs, improving access to justice, and promoting restorative justice principles.
5. To identify challenges and limitations in implementing ADR within the criminal justice system, including cultural, social, and legal barriers.
6. To develop recommendations for policymakers and practitioners to facilitate the effective implementation of ADR in Bangladesh.

1.3 Methodology

This research monograph on Alternative Dispute Resolution (ADR) in the Criminal Justice System of Bangladesh will employ a mixed-methods approach, combining qualitative and quantitative research techniques. This methodological synergy will provide a comprehensive understanding of the current state of ADR in the Bangladeshi criminal justice system, its effectiveness, and potential for future development.

1.3.1 Literature Review:

A thorough review of existing literature on ADR, both globally and specifically within the Bangladeshi context, will be conducted. This will involve exploring academic articles, legal journals, government reports, and case studies. The review will identify relevant theoretical frameworks, such as restorative justice, conflict resolution, and procedural justice, to provide a conceptual foundation for the research.

1.3.2 Qualitative Research:

In-depth interviews will be conducted with key stakeholders, including judges, lawyers, law enforcement officials, ADR practitioners, and victims of crime. The interviews will explore their perceptions of ADR, its challenges, and potential benefits. Focus group discussions will be held with various groups, such as community leaders, civil society organizations, and legal aid providers, to gather diverse perspectives on ADR and its implementation. Detailed case studies will be conducted on specific ADR cases to examine their outcomes, challenges, and lessons learned.

1.3.3 Quantitative Research:

A structured questionnaire will be developed to collect quantitative data from a sample of individuals who have participated in ADR processes, including victims, offenders, and mediators. The questionnaire will be administered through online surveys and face-to-face interviews to ensure a diverse and representative sample.

1.3.4 Data Analysis:

Qualitative data from interviews and focus group discussions will be analysed using thematic analysis to identify recurring themes and patterns. Quantitative data will be analysed using statistical software to generate descriptive statistics and test hypotheses. The findings from both qualitative and quantitative research will be triangulated to enhance the credibility and validity of the research.

1.3.5 Ethical Considerations:

Participants will be informed about the research objectives, procedures, and potential risks and benefits. All participant information will be kept confidential and anonymized to protect privacy. The research will be conducted in accordance with ethical guidelines and will be maintained by the relevant ethics rules.

By combining these research methods, this monograph aims to provide a comprehensive and nuanced understanding of ADR in the Bangladeshi criminal justice system, contributing to the development of effective and equitable justice mechanisms.

1.4 Literature Review

ADR offers a promising approach to address the challenges of criminal case backlogs. By providing an alternative dispute resolution mechanism, ADR can save time and resources for both the state and the individuals involved in legal proceedings. However, the effectiveness of ADR in criminal cases is a complex issue. This study explores this topic by reviewing existing research and organizing it chronologically.

Dr. Sumaiya Khair's research article[1] shows the working procedures of Alternative Dispute Resolution in Bangladesh. In his thirty-four-page research, he outlined practical ADR interventions based on the experiences of various NGOs under a project funded by The Asia Foundation, Dhaka. He argued in his article that the administration of justice in Bangladesh

[1] Sumaiya Khair, "Alternative Dispute Resolution : How It Works in Bangladesh" (2004) XV The Dhaka University Studies 59.

faces two significant constraints. First, the very fabric of the law is often a maze, impenetrable to the poor and uneducated, demanding documents and formalities that lie beyond their grasp. Second, its enforcement is tainted by bias, swayed more by allegiance to wealth and political influence than by the ideal of serving the community.

In Md. Joynal and others case[2], The court, referencing Section 345 of the Code of Criminal Procedure, 1898, suggested promoting dispute resolution through methods such as panchayat, arbitration, compromise, or other amicable means. In cases of criminal offenses, the court indicated that such offenses could be compounded within the limits prescribed by Section 345 of the CrPC. This judgment promotes the application of ADR principles through the mechanism of compounding offenses in criminal proceedings.

Ridoan Karim[3] by his research article, provided certain recommendations which need to be observed before the implementation of ADR in criminal justice system of Bangladesh. He mentioned some notable thoughts that alternative dispute resolution has certain disadvantages and we need to implement ADR in a way that it cannot harm our justice system. An immature and whimsical introduction of ADR in criminal cases may reduce case backlogs and increase quick disposals, but such success may have a harmful impact on the justice system and could be used as a vehicle for imbalanced power in society.

Mehrab Hasan, in his article, described the importance of ADR for the criminal justice system. He also described the methods and mechanisms of plea bargaining in criminal justice in Bangladesh. He explained why ADR for criminal cases should not be introduced for all offenses. He observed that some specific crimes, such as cheque dishonor, fraud, criminal misappropriation of property, theft, mischief, and criminal breach of trust, may be subject to ADR. However, I strongly disagree with his view on that point. Theft, mischief, and fraud are very dangerous crimes that can break relationships, damage social dignity, disrupt societal peace, and undermine state authority."

Md. Abdul Halim, in his book *ADR in Bangladesh: Issues and Challenges*, gathered various resources on ADR development, enforceability, and challenges in the context of Bangladesh. He also mentioned how compoundable offence and plea bargaining is usable for Bangladesh criminal justice system.

[2] Md Joynal and others Vs Md Rustam Ali Mia & others (1984) 36 240 (DLR) .
[3] Karim R, 'Introduction of Alternative Dispute Resolution in Criminal Justice System in Bangladesh' (2015) 1 Journal of Asian and African Social Science and Humanities 98

Susan Fortney in her paper emphasized the role of advocates and prosecutors in the success of ADR. She expressed her opinion that a competent prosecutor could effectively implement criminal ADR and ensure justice. However, as a scholarly review article, the piece does not present any original research data or analysis. Therefore, it may not offer new insights or evidence to readers who are already familiar with the role of prosecutors in the criminal justice system.

Md. Mamun Chowdhury introduced some guiding principles for making criminal ADR more effective, and he emphasized implementing plea bargaining in our judicial system. However, he didn't explore the demerits of plea bargaining and the possible negative impact on the system.

Chowdhury and Kabir explored the possibilities of Alternative Dispute Resolution in the Criminal Justice System of Bangladesh. They tried to connect the promotion of access to justice with the help of dispute resolution outside the courts in criminal trials.

Fardeen[4] Bin Abdullah in his research article presenting that how the alternative dispute resolution is applied in the criminal justice system of Rajshahi City.

However, none of the books or articles explored the efficacy of implementing ADR in criminal cases or the outcomes for victims when the accused holds power. Will they be able to get access to justice, or will it only safeguard those who are in a powerful position in society? This research aims to answer these questions and evaluate the efficacy of ADR in the criminal justice system.

[4] Abdullah FB, "Alternative Dispute Resolution in the Criminal Justice System of Bangladesh: A Study on Rajshahi City" [2023] Zenodo (CERN European Organization for Nuclear Research) https://zenodo.org/record/7954451.

Chapter 2

Evolution & Development of Alternative Dispute Resolution

2.1 Evolution of Alternative Dispute Resolution

The evolution of Alternative Dispute Resolution (ADR) traces back to ancient times when informal methods were used to resolve conflicts outside of formal legal systems.

Informal mediation and arbitration were practiced in various ancient civilizations, including Egypt, Greece, and Rome. Community leaders and respected individuals often acted as mediators to resolve disputes within villages and towns.

From the viewpoint of court-annexed ADR and its modernization, the history of ADR development in the USA is pioneering. Since the 19th century, the Industrial Revolution led to increased commercial disputes, prompting the development of formal arbitration processes. Since the 1970s, there has been widespread public discussion of a crisis in the civil justice system, caused by excessive delays, expenses, inflexibility, and technicalities. The high cost of litigation, driven by excessive technicality and high lawyer fees, makes the judicial system inaccessible to the poor.

Following significant movements and U.S. Chief Justice Warren Burger's thoughts on addressing the problems of the judicial system, two acts were enacted: the Civil Justice Reform Act of 1990 and the Alternative Dispute Resolution Act of 1998. These acts required all U.S. federal courts to develop plans to reduce costs and delays in civil litigation.

Professor Catherine Stone, in her research paper, stated that one-quarter of the 94 U.S. federal district courts and one-half of all state courts have either mandatory or voluntary arbitration programs as part of their judicial process. Additionally, 51 federal district courts have court-annexed mediation, and 48 report offering summary jury trials as an ADR option. Furthermore, 14 federal districts have early neutral evaluation programs. In all, three-quarters of federal district courts now authorize one or more forms of ADR, compared to only a small handful in the late 1970s.

ADR has made rapid progress in the U.S. with the establishment of government agencies like the Federal Mediation and Conciliation Service (FMCS). This agency is tasked with preventing or minimizing the impact of labour-management disputes on the free flow of commerce by providing mediation, conciliation, and voluntary arbitration.

ADR in the U.S. has also grown rapidly under private initiatives. The American Arbitration Association received 92,000 arbitration requests in 1998, an increase of 21% compared to

1994. The Center for Public Resources, an organization formed by the general counsels of 500 major corporations and law firms to promote the use of ADR, secured pledges from 4,000 corporations to explore ADR options before resorting to litigation.

The rising costs and delays of traditional litigation have fueled the growth of ADR, making it a more attractive option for resolving disputes.

The evolution of ADR demonstrates its increasing importance in today's legal landscape. As technology continues to advance and societal needs evolve, ADR is likely to play an even greater role in resolving disputes in the future.

Effective access to justice is one of the fundamental conditions for establishing the rule of law in a society. "Justice" and "access to justice" are two different concepts. Sometimes, justice is said to be the goal, and access to justice is the means to that goal. Access to justice is much more than improving an individual's access to courts or guaranteeing legal representation. It must be defined in terms of ensuring access to justice in the following categories:

1. Easy access to both formal and informal justice mechanisms for all, particularly for poor and marginalized people.
2. Legal and judicial outcomes that are just and equitable.
3. A dispute resolution process that does not take more than a reasonable time to dispense with a dispute.

Here lies the importance and emergence of Alternative Dispute Resolution (ADR). Increasing delays, unmanageable backlogs of cases, and the lack of sufficient judges and courtrooms, coupled with corruption among judges and court officials, political influence in the administration of justice, and widespread poverty, have hampered access to justice and diminished the quality of justice in recent times.

Against the backdrop of these drawbacks and difficulties in the formal adjudication system, there has been a global movement toward ADR. Various modes of ADR, as alternatives to the formal adjudication system, are gaining increasing recognition and acceptance in almost every country. While ADR cannot fully replace a formal adjudication system, it complements it. Its significance lies in addressing the defects of the formal adjudication system. Some researchers suggest that ADR is more than a substitute for trial. Professor Thomas J. Stipanowich states that in the U.S., the vast majority of disputes never reach the courtroom, having been negotiated or resolved in some other way short of trial or even the

onset of litigation. He further notes that, in most circumstances, the best practice of effective ADR is not as a surrogate for public adjudication.

2.2 Aims of Alternative Dispute Resolution

The primary aims of implementing Alternative Dispute Resolution (ADR) within the criminal justice system of Bangladesh are multifaceted and encompass both societal and individual benefits:

Societal Aims:

ADR processes, such as mediation and arbitration, offer efficient and timely resolution of disputes, thereby alleviating the burden on the overburdened court system. It provides accessible and affordable mechanisms for resolving disputes, particularly for marginalized groups who may face barriers in accessing traditional legal channels. By promoting restorative justice principles and emphasizing reconciliation, ADR can foster a more positive public perception of the justice system. ADR processes can facilitate dialogue and understanding between parties, leading to improved community relations and reduced social tensions. It's often involves lower costs compared to traditional litigation, making it a more economical option for both individuals and the state.

Individual Aims:

ADR processes can empower victims by providing them with a voice and agency in the resolution of their cases. It can facilitate restorative justice, allowing victims and offenders to engage in dialogue and seek reconciliation, which can lead to healing and closure. It can minimize the trauma associated with traditional court proceedings, particularly for victims of crime who may be re-traumatized by the adversarial nature of litigation. It can help preserve relationships, especially in cases involving family members, friends, or business partners, by promoting understanding and compromise. This processes often lead to quicker resolution of disputes compared to traditional litigation, reducing anxiety and uncertainty for all parties involved. By effectively implementing ADR mechanisms, the criminal justice system of Bangladesh can achieve a more just, efficient, and humane approach to resolving disputes, ultimately contributing to a safer and more harmonious society.

2.3 Goals of Alternative Dispute Resolution

The primary goal of Alternative Dispute Resolution (ADR) in the criminal justice system of Bangladesh is to provide an efficient, cost-effective, and restorative approach to resolving

disputes, particularly those that are non-violent and have a significant impact on the community. Specifically, ADR aims to achieve the following three objectives:

Core Goals

By providing an alternative forum for dispute resolution, ADR can significantly reduce the burden on the already overwhelmed court system. This can lead to quicker resolution of cases and a more efficient allocation of judicial processes. ADR processes, such as mediation and arbitration, are often faster than traditional court proceedings, leading to quicker resolution of disputes and reducing delays in justice delivery. ADR procedures are generally less expensive than traditional litigation, as they involve fewer legal fees and court costs. This can make justice more accessible to individuals from lower socioeconomic backgrounds.

By providing a less formal and intimidating setting, ADR can increase access to justice for marginalized groups and victims of crime who may be hesitant to engage with the formal legal system.

Restorative Justice Goals

ADR processes can empower victims by providing them with a platform to voice their concerns, seek restitution, and participate in the resolution of the dispute. This can lead to a sense of closure and healing for victims. It can offer opportunities for offenders to take responsibility for their actions, make amends to victims, and participate in restorative justice programs. This can promote rehabilitation and reduce the likelihood of recidivism.

By involving community members in the ADR process, it can foster a sense of community ownership and responsibility in resolving disputes. This can lead to stronger community bonds and reduced crime rates.

Procedural Goals

ADR processes are often confidential, allowing parties to discuss sensitive issues without fear of public disclosure. This can encourage open and honest communication, leading to more effective resolutions. These procedures are flexible and can be tailored to the specific needs of each case. This allows for creative solutions and innovative approaches to dispute resolution. It empowers parties to take control of the dispute resolution process and make their own decisions. This can lead to greater satisfaction with the outcome of the process.

By pursuing these goals, ADR can contribute to a more just, efficient, and restorative criminal justice system in Bangladesh.

Chapter 3

Exordium of Alternative Dispute Resolution in Criminal Justice in Bangladesh

3.1 Definition of Alternative Dispute Resolution in Criminal Justice

Alternative Dispute Resolution (ADR) in the Criminal Justice System involves methods of resolving conflicts outside of traditional court proceedings. These methods often focus on finding solutions that address the harm caused by the crime and promote reconciliation between the victim and offender. In a case of theft, restorative justice might involve a meeting between the offender, the victim, and community members. The offender could apologize for their actions, make amends to the victim (e.g., returning stolen property or performing community service), and participate in a rehabilitation program. The goal is not only to punish the offender but also to repair the harm caused to the victim and the community.

ADR methods are not suitable for all crimes, especially serious offenses. The victim's safety and well-being are always a top priority. ADR methods can be effective in reducing recidivism and promoting restorative justice outcomes.

Alternative Dispute Resolution (ADR) in the criminal justice system focuses on resolving disputes outside of traditional court processes. It aims to reduce the burden on courts, enhance victim participation, and promote offender accountability. While ADR is more common in civil matters, it has applications in criminal justice through restorative and rehabilitative approaches.

3.2 Characteristics of Alternative Dispute Resolution in Criminal Justice

Alternative Dispute Resolution (ADR) encompasses a range of methods designed to resolve disputes outside of traditional litigation. While each ADR approach has its unique features, they share several common characteristics. Both parties generally agreed to reach the easy solve of disputes by the Alternative Dispute Resolution. ADR sessions are private, ensuring protection of sensitive information of the parties. ADR proceedings are often confidential, allowing parties to discuss sensitive matters without fear of public disclosure. This confidentiality can encourage open and honest communication, leading to more constructive solutions.

A neutral third party, such as a mediator or arbitrator, facilitates the Alternative Dispute resolution process. The process is less formal and more flexible than traditional court procedures. ADR is generally less expensive than formal litigation. ADR is generally less expensive than traditional litigation. By avoiding court fees, attorney's fees, and other associated costs, parties can save significant amounts of money. ADR offers greater flexibility compared to formal court proceedings. Parties can tailor the process to their specific needs, choosing the method, timing, and location that best suits their circumstances. This flexibility can lead to more efficient and timely resolution. ADR can resolve disputes more quickly than the court system. Agreements reached through ADR can be enforceable by law, particularly in arbitration cases. Alternative Dispute Resolution (ADR) encompasses a range of methods designed to resolve disputes outside of traditional litigation. ADR processes are typically voluntary, meaning parties choose to participate rather than being compelled by a court order. This voluntary nature fosters a more cooperative and solution-oriented approach. ADR empowers parties to take control of the dispute resolution process. They have a greater say in shaping the outcome and are encouraged to actively participate in finding solutions. This autonomy can lead to greater satisfaction with the resolution. ADR emphasizes finding practical solutions that address the underlying issues of the dispute. Rather than focusing on assigning blame or determining legal rights and wrongs, ADR prioritizes resolving the conflict in a way that meets the needs of all parties involved. ADR can help preserve relationships between parties, particularly in business or personal disputes. By fostering cooperation and understanding, ADR can minimize the negative impact of the conflict on ongoing relationships. ADR often involves neutral third-party experts who have specialized knowledge in the subject matter of the dispute. These experts can provide valuable insights and facilitate constructive dialogue, leading to more informed and effective resolutions.

These common characteristics make ADR an attractive option for resolving disputes, offering a more efficient, cost-effective, and amicable approach to conflict resolution.

3.3 Kinds of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) offers a diverse range of methods to resolve disputes outside of traditional litigation. These methods are often more efficient, cost-effective, and less adversarial than traditional court proceedings. In the context of the criminal justice system, ADR can provide a valuable tool for resolving certain types of cases, particularly those involving minor offenses or disputes between parties.

Here are some of the most common types of ADR:

3.3.1 Plea Bargaining:

Plea bargaining is a significant part of Alternative Dispute Resolution (ADR) in many legal systems, and its application in Bangladesh is an evolving aspect of the criminal justice system. Plea bargaining refers to the process where the defendant agrees to plead guilty to a lesser charge or receive a reduced sentence in exchange for cooperation with the prosecution, such as providing information or confessing to the crime. This process aims to resolve cases more efficiently than a full trial, reducing the burden on courts and ensuring a faster resolution for both the victim and the offender.

3.3.2 Compounding Offence:

In the context of the criminal justice system, compounding of offenses refers to the process by which the victim of a criminal act voluntarily agrees to forgive the offender, leading to the withdrawal of criminal charges or the reduction of the severity of punishment. Compounding an offense is often seen as an effective Alternative Dispute Resolution (ADR) method, particularly in cases involving minor crimes or where the victim seeks restitution or reconciliation with the offender rather than formal punishment. In Bangladesh, the concept of compounding offenses plays an essential role in resolving certain types of criminal cases without the need for full judicial proceedings. It offers an alternative to the formal trial process, emphasizing settlement and reconciliation rather than prosecution.

3.3.3 Mediation:

A neutral third-party mediator facilitates communication between the disputing parties. The mediator does not impose a solution but helps the parties reach a mutually agreeable settlement. It is particularly effective in cases involving interpersonal conflicts or disputes where a cooperative solution is desirable.

3.3.4 Arbitration:

A neutral third-party arbitrator hears arguments from both sides and makes a binding decision. It is often used in complex commercial disputes, but it can also be applied to certain types of criminal cases, such as those involving property disputes or contractual disagreements.

3.3.5 Negotiation:

A direct negotiation process between the disputing parties, with or without the assistance of legal counsel. It is a flexible approach that allows parties to control the outcome and reach a settlement that meets their specific needs.

3.3.6 Conciliation:

A neutral third-party conciliator assists the parties in reaching a mutually agreeable settlement. It is similar to mediation but often involves a more active role for the conciliator in suggesting potential solutions.

3.3.7 Victim-Offender Mediation:

A specialized form of mediation that brings victims and offenders together to discuss the impact of the crime and explore restorative justice options. It can help victims heal, offenders take responsibility for their actions, and communities rebuild.

3.3.8 Community Mediation:

A community-based approach to resolving disputes, often involving trained volunteers. Community mediation can be particularly effective in addressing minor offenses and neighbourhood disputes.

It is important to note that the suitability of ADR for specific criminal cases will depend on various factors, including the nature of the offense, the severity of the harm caused, and the willingness of the parties to participate. While ADR can offer a valuable alternative to traditional court proceedings, it is essential to ensure that the process is fair, impartial, and respects the rights of all parties involved.

3.4 Negotiation

Negotiation, a cornerstone of Alternative Dispute Resolution (ADR), is a process where two or more parties engage in dialogue to reach a mutually agreeable solution. In the context of the criminal justice system, negotiation can be a powerful tool to resolve disputes, reduce caseloads, and promote restorative justice.

Plea Bargaining is a common form of negotiation in criminal cases, where the defendant pleads guilty to a lesser charge or fewer charges in exchange for a reduced sentence. While it can expedite the legal process and reduce court backlogs, plea bargaining raises concerns about potential coercion and the erosion of due process rights.

Mediation is a facilitated negotiation process where a neutral third party, the mediator, helps disputing parties reach a voluntary agreement. In criminal cases, mediation can be used to resolve disputes between victims and offenders, or between the prosecution and the defence. It can lead to more restorative outcomes, as it focuses on repairing the harm caused by the crime and addressing the needs of all parties involved.

Conciliation is a less formal form of negotiation, where a neutral third party, the conciliator, assists the parties in reaching a settlement. It can be used in criminal cases to resolve disputes between the prosecution and the defence, or between victims and offenders. Unlike mediation, the conciliator may suggest solutions but does not have the authority to impose them.

Negotiation can help reduce the number of cases that go to trial, freeing up court resources. Negotiation can lead to faster resolution of cases, reducing delays and uncertainty for victims, offenders, and the justice system. Negotiation can promote restorative justice by focusing on repairing the harm caused by the crime and addressing the needs of all parties involved. Negotiation can lead to more satisfying outcomes for all parties involved, as they have a greater sense of control over the process and the outcome.

Power imbalances between the parties can hinder the negotiation process, as the weaker party may feel pressured to accept an unfavourable settlement. Negotiators must be mindful of ethical considerations, such as avoiding conflicts of interest and ensuring that the process is fair and transparent. Negotiation, particularly plea bargaining, can be viewed negatively by the public, as it may be seen as a way to avoid punishment for serious crimes. Negotiation is a valuable tool in the criminal justice system, but it must be used judiciously and ethically. By understanding the different types of negotiation and their advantages and challenges, policymakers and practitioners can work to ensure that negotiation is used to promote justice and fairness.

3.5 Mediation

Mediation is a structured process where a neutral third party, the mediator, helps disputing parties reach a mutually agreeable resolution. It’s a valuable alternative to traditional litigation, offering several benefits Mediation focuses on finding common ground, which can help maintain or even improve relationships, especially in family or business disputes.

It is often quicker than litigation, saving time and money for all parties involved. It is generally less expensive than going to court, as it avoids legal fees and court costs. It is a

private process, allowing parties to discuss sensitive issues without public scrutiny. It empowers parties to actively participate in finding solutions, giving them a sense of control over the outcome. Mediators can tailor the process to the specific needs of the dispute, making it adaptable to various situations.

Parties agree to participate in mediation and select a mediator. The mediator meets with both parties together to explain the process and establish ground rules. The mediator meets with each party individually to understand their perspective, needs, and interests. The mediator facilitates joint sessions where parties discuss their issues and explore potential solutions. The mediator helps parties negotiate and find common ground, offering suggestions and creative solutions. If an agreement is reached, it's typically written into a legally binding contract.

Mediation can be effective for various types of following disputes:

Family related disputes: Divorce, child custody, and property division.

Dispute between business parties: Contract disagreements, partnership breakdowns, and shareholder conflicts.

Dispute between employees: Workplace conflicts, discrimination, and wrongful termination.

Dispute between neighbours: Property line issues, noise complaints, and other neighbourhood conflicts.

It's crucial to choose a qualified mediator with experience in the specific type of dispute. The mediator's knowledge and experience in the relevant field. ability to maintain impartial and unbiased. effectiveness in facilitating communication and building rapport. ability to help parties identify creative solutions. If you're considering mediation, consult with an attorney to discuss your options and determine if it's the right approach for your situation.

3.6 Conciliation

Conciliation is a voluntary process where a neutral third party, known as a conciliator, helps disputing parties reach a mutually agreeable settlement. It is a form of alternative dispute resolution (ADR) that aims to resolve conflicts without resorting to formal legal proceedings like litigation or arbitration.

Both parties must agree to participate in the process. Discussions and proposals made during conciliation are typically kept confidential. The process is adaptable to the specific needs of

the parties, allowing for a tailored approach. The conciliator helps the parties communicate effectively, identify common ground, and explore potential solutions. The conciliator does not have the authority to impose a settlement; any agreement reached must be voluntary.

The parties agree to engage in conciliation and select a conciliator. The conciliator meets with the parties separately and jointly to understand their positions and interests. The conciliator facilitates communication, helps clarify issues, and encourages the parties to explore options for settlement. In some cases, the conciliator may suggest potential solutions or proposals to help the parties reach an agreement. If the parties reach a mutually agreeable settlement, they formalize it in a written agreement.

Conciliation is generally less expensive than litigation or arbitration. The process can be completed relatively quickly compared to formal legal proceedings. Conciliation can help maintain or improve relationships between the parties. The process can be tailored to the specific needs of the parties. Discussions and proposals are kept confidential, protecting sensitive information. Conciliation encourages the parties to focus on their underlying interests rather than just their positions.

Resolving conflicts between employers and employees, such as disagreements over contracts, disciplinary actions, or workplace harassment. Settling disagreements between businesses, such as contract disputes, partnership breakdowns, or intellectual property issues. Resolving conflicts within families, such as divorce proceedings, child custody arrangements, or inheritance disputes. Addressing conflicts within communities, such as neighbourhood disputes or land use issues. Conciliation is a valuable tool for resolving disputes in a fair, efficient, and amicable manner. By providing a structured and confidential process for communication and negotiation, conciliation can help parties reach mutually agreeable solutions and maintain positive relationships.

3.7 Arbitration

Arbitration is a formal, binding process where a neutral third party, known as an arbitrator, hears arguments and evidence from both sides of a dispute and then issues a decision. This decision, known as an arbitration award, is legally binding and enforceable. Arbitration is a valuable tool for resolving disputes outside of the traditional court system. By understanding its advantages and disadvantages, parties can make informed decisions about whether arbitration is the right choice for their specific need. Many contracts include arbitration clauses that specify the terms and conditions for resolving disputes through arbitration.

There are various organizations that administer arbitration proceedings, such as Bangladesh International Arbitration Centre (BIAC), the American Arbitration Association (AAA) and the International Chamber of Commerce (ICC).

The arbitrator's decision is final and cannot be appealed, unlike court decisions which may be appealed. Parties can choose the arbitrator, the location of the arbitration, and the applicable rules of procedure. Arbitration proceedings are generally private and confidential, unlike court proceedings which are parties. Arbitration is often faster and more efficient than traditional litigation, as it avoids the delays associated with court schedules. Parties can choose an arbitrator with expertise in the specific area of dispute, ensuring a more informed and relevant decision.

It can be less expensive than litigation due to reduced legal fees and court costs. The streamlined process of arbitration can lead to faster resolution of disputes. Parties have more control over the process, including the choice of arbitrator and the applicable rules. Arbitration proceedings are private, protecting sensitive business information. Arbitrators can be chosen based on their expertise in the specific area of dispute.

Arbitration is one of the most confidential dispute resolution processes of ADR. Arbitration awards are generally final and binding, with limited opportunities for appeal. While arbitration can be less expensive than litigation, it still involves legal fees and arbitrator fees. Complex disputes may require more time and resources to resolve through arbitration. Arbitration decisions do not create binding precedent, unlike court decisions.

Arbitration is often a good choice for resolving disputes that involve:

1. Complex commercial contracts
2. International disputes
3. Disputes involving specialized industries or technical issues
4. Disputes where confidentiality is important.

3.8 Informal ADR in Bangladesh

Informal ADR (Alternative Dispute Resolution) refers to the various non-judicial methods used to resolve disputes outside of the formal court system. In Bangladesh, informal ADR has a long history and plays a significant role in resolving conflicts, particularly in rural areas. Shalish is the most common form of informal ADR in Bangladesh. It involves a panel

of respected community members who mediate disputes between parties. The Shalish process is often informal, flexible, and tailored to the specific needs of the community.

Many NGOs in Bangladesh have established their own ADR programs to help resolve disputes, especially in marginalized communities, these are known as NGO-based shalish. These programs often use similar principles to the Shalish system but may incorporate additional training and support for mediators.

In some communities, informal mediation processes have developed organically over time, these known as community-based mediation. These processes may be based on local customs, traditions, or religious beliefs.

Informal ADR is often more accessible to people who may not have the resources or knowledge to navigate the formal legal system. It is generally more affordable than litigation, as it avoids the costs associated with lawyers and court fees. It processes can be much faster than formal legal proceedings, allowing for quicker resolution of dispute. It often emphasizes reconciliation and maintaining social harmony, which can be beneficial for long-term relationships within communities.

Informal ADR processes can vary widely across different communities, leading to inconsistency and unpredictability. Mediators may be biased or influenced by personal relationships or community pressure. Informal ADR decisions may be difficult to enforce, especially if one party refuses. Some people may worry that informal ADR processes do not provide adequate protection for their rights. Despite these challenges, informal ADR remains a valuable tool for resolving disputes in Bangladesh. It provides an accessible, affordable, and culturally appropriate means of justice for many people, particularly in rural areas.

The ADR process can be adapted to suit the specific needs of the dispute. Parties can agree on the specific rules and procedures to be followed.

Chapter – 4

Criminal Law and Justice System in Pre-Independence Bangladesh

4.1 Evolutionary History of Criminal Justice System of Bangladesh

The criminal justice system in Bangladesh has evolved through a combination of historical influences, colonial legacies, and domestic legal reforms. Before the British colonization, the criminal justice system in Bengal was governed by Islamic law (Sharia) and local customary practices. The judicial structure was mainly cantered around the king or local rulers, who appointed judges to resolve disputes based on religious or customary norms.

The British introduced a formal criminal justice system in Bengal during their rule (1757-1947). The British legal system, based on common law principles, was implemented. They established courts like the Magistrate's Court and Sessions Court, and the Indian Penal Code (IPC) of 1860 was adopted to define criminal offenses and procedures. The Criminal Procedure Code (CrPC) of 1898 and the Evidence Act of 1872 were also introduced, and these codes continue to serve as the foundation of Bangladesh’s criminal justice system today.

After Bangladesh gained independence in 1971, the criminal justice system inherited the colonial-era structure but underwent significant changes to align it with the new country's needs. The Constitution of Bangladesh, adopted in 1972, guaranteed fundamental rights and fair trials, establishing the legal framework for the criminal justice system. Over time, the system has seen reforms, including the creation of specialized courts, police reforms, and efforts to address issues like overcrowding in prisons and delays in trials.

The criminal justice system in Bangladesh faces significant challenges, such as delays in trials, corruption, overcrowded prisons, and the need for better police and judicial reforms. Additionally, issues such as human rights violations, extrajudicial killings, and lack of access to justice for marginalized groups remain ongoing concerns.

Today, the criminal justice system is based on the principles of fairness, rule of law, and protection of rights, with a continued focus on reform to improve efficiency, accountability, and access to justice.

4.2 Criminal Justice under Mughal rule in the Indian Subcontinent

The Mughal Empire, which ruled over the Indian subcontinent for centuries, established a complex legal system that blended Islamic law (Sharia) with local customs and practices. This system was also implemented in the Bengal region, which was an integral part of the empire. Sharia provided the foundation for the legal system, particularly in matters of personal law, criminal law, and civil law. Mughal rulers recognized the importance of local customs and traditions, particularly in matters of land ownership, inheritance, and social norms. The Mughal Empire had a hierarchical court system, with the emperor at the apex. The system included:

(i) Diwan-i-Ala: These courts were directly under the emperor's control and dealt with important cases. (ii) Provincial Courts: These courts were established in provinces and were responsible for administering justice within their respective jurisdictions.

(iii) Local Courts: These courts were established at the local level and dealt with minor offenses and disputes.

Qadis were Islamic jurists who were responsible for interpreting Sharia law and applying it to specific cases. They played a crucial role in the administration of justice. Muftis were legal scholars who provided legal opinions (fatwas) on complex legal issues.

Punishments under the Mughal system varied depending on the severity of the crime. They included:

(i) Corporal punishment: This included flogging, amputation, and execution.

(ii) Financial penalties: Fines were imposed for various offenses.

(iii) Imprisonment: Imprisonment was used for serious offenses.

Corruption was a significant problem within the Mughal legal system, particularly at the local level. The system often favoured the wealthy and powerful, while the poor and marginalized were often subject to injustice. There was a lack of standardization in the application of laws, leading to inconsistencies and arbitrariness.

The Mughal criminal justice system, despite its limitations, laid the foundation for the development of modern legal systems in the Indian subcontinent. Its influence can still be seen in the laws and legal practices of many countries in the region.

Before the advent of the British, Muslim Criminal Law prevailed in this locality. During the Sultanate period (1100-1526) the Sultan or the King was the supreme authority to administer

justice. When the foundation of Muslim dominion was laid towards the beginning of the thirteenth century, the earlier system of customary laws based on Hindu religious dicta remained operative in this country with some sporadic reforms until the Mughals established their rule in this part of the subcontinent in the sixteenth century.

During the Mughal period (1526-1857) the Mughal emperor was considered the fountain of justice. In particular, Mughals applied Muslim Criminal Law on its subjects irrespective of their religious beliefs. The Quran, Sunna, Ijma, and Qiyas would regulate the principles and practice of penal laws.In principle, rulers were not absolutely free to criminalize any act at their caprice. Rather, they could legislate in the form of imperial regulations within the ambit of Sharia that could supplement it. Besides these holy sources, there were secular elements including ancient customs that also played an important role in the legal system of the Mughals. Further, there was scope for the judges to apply the dictum of equity, good conscience, and justice as at times Ihsan was applied to arrive at a just decision. In practice, the judges used to exercise wide discretionary powers in their own spheres. Basically, the royal pronouncements of the emperor were the explicit laws. Qisas, Diyat, Hadd, and Tazir were modes of punishments permitted in Islamic Law. The basis of Islamic sentencing principles were vividly depicted by a scholar. Though only few offenses were criminalized with Sharia-based principles, Hadd and Tazir tend to resemble deterrent, retributive, and reformative theories respectively. It may be mentioned that the 'blood money system' (Diyat) involved some kind of pecuniary compensation paid to the victim or the nearest relative of the deceased victim in lieu of other forms of punishments prescribed for the offender.

As the rulers did not disturb the grass-roots institution of justice, principles of crime and punishment of Hindu law were also in unofficial application at local levels as both the landlords and the tenants mostly belong to the majority Hindu population in the then Bengal.

The hallmark of Muslim jurisprudence was that with little exceptions, the crime was considered to be a private wrong done to the injured party alone, not an offense against the state, and the punishment was regarded as the private right of the aggrieved party. In principle, Muslim law of evidence fully Allah-given rules. For instance, no Muslim could be convicted with capital punishment on the evidence of an infidel. Further, a Muslim's depositions were equivalent to those of two infidels. Evidence of two females was equal to that of one male. The testimony of ocular witnesses was of paramount importance. Though examining the witnesses was adversarial in nature with rare presence of lawyers in court

proceedings, the judges used to exercise inquisitorial power with a view to ascertain the real controversy. The judicial administration system was sporadic and to some extent vague in the sense that Muslim Criminal Law was not always certain and uniform. Further, criminal law was regarded as a branch of private law. In many cases, a murderer could escape simply by paying money to the dependents of the deceased. Too much discretion was given to the judges. It is true that though there was no check on arbitrary powers of the Mughal Emperors, the people were left undisturbed in their traditional village life and their life, liberty, and property were most of the part safe in the days of Great Mughals. In essence, Mughals were credited for introducing and developing a well-organized system of law.

Mughals retained the ancient system of village panchayets that used to settle the petty disputes in mostly the form of compromise. In town, there was a regular Town Court presided over by a Qazi known as Qazi-e-Parganah. Town Courts had jurisdiction over both civil and criminal matters. There were also Fouzders who tried petty criminal cases. There was existence of Kotwal who functioned as chief of town police. He performed the functions of Police Magistrate and tried petty criminal cases. The principal judicial authorities in district level were the District Qazi who exercised appellate power against the decisions of Qazi-e-Parganah and Kotwals. At the provincial level, there existed the Provincial Governor's Court namely Adalat-e-Nizam-e-Subah, presided over by the Governor or Subadar of Adalat-e-Nizam-e-Subah had original and appellate jurisdiction. Its original jurisdiction included the trial of serious offenses like murder while its appellate jurisdiction included hearing of appeals preferred against the judgments of the District Qazi and Fouzders. Appeals from and against the decision by this Court would lie to the Emperor's Court or to the Court of Chief Justice.

In courts and prisons, the European convicts arguably received soft treatment while growing unrest and mass uprising of peasants and political workers, dissidents, and writers were governed through criminal laws. Though mutilation was replaced with capital punishments and imprisonment was replaced with transportation in apparently just legal system, the application of criminal laws was excessively harsh, disproportionate, and even racial. Capital punishment of Raja Nana Kumar is a classic example of judicial killing among series of punishments of many nationalists and poor natives. In particular, the preferential treatment of the Europeans in court left a plethora of tyranny, misdeeds, oppressions, and serious crimes committed to Bengali peasants in the name of indigo plantation and managing law and order in most cases virtually unpunished during the colonial era. Though

criminal justice agencies including police, courts, and prisons were employed to further colonial dominance, mass-uprising and nationalist movements virtually challenged and ridiculed the legal system as trial as festivals, prisons as temples.

Obviously, the newly imposed legal regime, standard court structure, the Penal Code, and the value system of justice, though not applied equally, are fair legacies. In the process, the British, however, have saddled the natives with colonial prejudices, pecuniary greed, and brutal coercion. For instance, the draconian concept of sedition was enacted as an offense in 1870 to suppress any criticism of British policies. A new justice system was installed by a foreign race and imposed upon a conquered people who had never been consulted in its creation. Sentences handed down by the British judges showed marked disparity as justice either imposed less sentence or exonerated for defence plea in case a European was rarely found guilty. Among series of incidents of brutal assault, physical injury, and murder committed to the servants and peasants by the British during 190 years rule, only very few Europeans were reportedly awarded capital punishment in Bengal.

4.3 Criminal Justice under other several Muslim Regimes in Indian Subcontinent

Several Muslim empires ruled parts of the Indian subcontinent before the Mughals, each with its own system of criminal justice. Here is a brief overview of the criminal justice system under the rule of the Muslim regime in Indian subcontinent -

Delhi Sultanate (1206-1526):

The Delhi Sultanate primarily relied on Islamic law (Sharia) to govern criminal justice. The Qazi (Islamic judge) was the highest judicial authority, interpreting and applying Sharia law to cases. Punishments varied based on the severity of the crime and could include fines, imprisonment, corporal punishment, and in some cases, capital punishment.

Ghurid Dynasty (1173-1215):

Similar to Delhi Sultanate: The Ghurids, who established the Delhi Sultanate, also followed Islamic law principles in their administration of justice. The Ghurid rulers aimed to ensure fair trials and just punishments.

Khalji Dynasty (1290-1320):

The Khalji dynasty continued the tradition of using Islamic law as the basis for criminal justice. The Khalji rulers established a strong central authority, which helped maintain law and order.

Tughlaq Dynasty (1320-1414):

The Tughlaq period saw a complex legal system that incorporated elements of Islamic law, Hindu customs, and local practices. Qazis continued to play a significant role in administering justice, but their authority was sometimes challenged by powerful nobles.

Sayyid Dynasty (1414-1451):

The Sayyid dynasty faced challenges in maintaining law and order due to a weakened central authority. Local rulers often had more autonomy in administering justice, leading to variations in legal practices across different regions.

Lodhi Dynasty (1451-1526):

The Lodhi dynasty continued to rely on Islamic law as the foundation of their legal system. The Lodhi rulers made efforts to strengthen law and order, but faced challenges due to internal conflicts and external threats. It's important to note that these are broad generalizations, and the specific practices of criminal justice varied across time and regions within these empires. Additionally, the influence of local customs and traditions often played a role in shaping the administration of justice.

Chapter 5

Criminal Law and Justice System in Independent Bangladesh

5.1 Definition of Criminal justice system of Bangladesh

The Criminal Justice System of Bangladesh refers to the framework of laws, institutions, and processes established to prevent, detect, prosecute, and punish criminal activities while ensuring the protection of individuals' rights and maintaining social order. It is governed by combination of legislative statutes, judicial interpretations, and executive enforcement mechanisms. Agencies like the police and Rapid Action Battalion (RAB) are responsible for investigating crimes and apprehending offenders. Courts at various levels, including Magistrate Courts, Sessions Courts, and the High Court Division, oversee the trial and resolution of criminal cases.

Prisons and rehabilitation centres focus on punishing and rehabilitating convicted individuals. Public prosecutors represent the state in bringing charges against offenders in court. The system operates under various laws, including the Penal Code of 1860, the Code of Criminal Procedure (CrPC) of 1898, and the Evidence Act of 1872, among others.

The Criminal Justice System in Bangladesh faces challenges such as case backlog, limited resources, corruption, and delays in trials, but efforts are ongoing to reform and modernize its operations.

5.2 Basic theme of Criminal Justice System in Bangladesh

The core theme is to ensure that laws are respected, crimes are punished, and society is safe. This involves protecting individuals from harm, maintaining order, and preventing future criminal activity.

The system strives to treat everyone equally, regardless of their background, race, or social status. It aims to provide a fair process for both the accused and the victim. This means that everyone has the right to a fair trial, including the right to legal representation, the right to confront witnesses, and the right to remain silent.

The punishment should fit the crime. This means that the severity of the sentence should be appropriate to the seriousness of the offense. While punishment is important, the system also aims to help offenders become productive members of society. This is often achieved through rehabilitation programs that offer education, job training and counselling. The threat of punishment is intended to discourage people from committing crimes in the first place.

It’s important to acknowledge that the system has historically been impacted by biases and discrimination. Efforts are being made to address these issues and create a more equitable system. Many prisons and jails are overcrowded, which can lead to problems such as violence and limited access to rehabilitation programs. The rate of recidivism (offenders re-offending after release) is a significant concern. The system needs to focus on strategies to reduce recidivism rates.

5.3 The Existing Criminal Laws of Independent Bangladesh

The criminal law of Bangladesh is primarily rooted in the legal framework inherited from British colonial rule, with some adaptations and amendments made after the country’s independence in 1971. The major components of criminal law in Bangladesh include:

5.3.1 Penal Code, 1860

The Penal Code is the foundational criminal law in Bangladesh. It defines offenses, punishments, and general principles of criminal liability. Key sections cover offenses like murder, theft, robbery, assault, rape, defamation, and criminal breach of trust.

The Penal Code, 1860, originally enacted during the British colonial era, is a comprehensive code that forms the basis of criminal law in Bangladesh. Its primary aim is to define offenses and prescribe punishments for those offenses.

The Code lays out general principles of criminal liability, including definitions of various terms like "offense," "punishment," "dishonestly," etc. It includes offenses such as treason, sedition, and other acts that threaten the sovereignty and integrity of the country.

This covers riots, unlawful assembly, affray, and other activities that disturb public peace.

This section includes assault, criminal force, kidnapping, abduction, murder, culpable homicide, and other crimes affecting the physical safety of individuals. It details crimes such as theft, robbery, dacoity, misappropriation, and criminal breach of trust. It includes provisions against bigamy, adultery, and cruelty by husband or relatives of the husband. The Code also deals with offenses related to defamation and the harm caused to a person's reputation. The Code prescribes various types of punishments, including imprisonment, fines, and the death penalty for certain severe offenses. The Penal Code, 1860 remains a foundational legal document in Bangladesh’s criminal justice system, guiding the legal framework for addressing criminal activities and maintaining law and order in the country.

5.3.2 The Code of Criminal Procedure, 1898 (CrPC)

The CrPC provides procedural law, outlining the processes for investigation, prosecution, trial, and appeals in criminal cases. It also details the powers and responsibilities of police, magistrates, and courts. The Code of Criminal Procedure, 1898, commonly referred to as the CrPC, is a comprehensive statute that outlines the procedure for the administration of criminal law in Bangladesh. It covers all aspects of the criminal justice system, from investigation to trial to sentencing. The CrPC defines the hierarchy and powers of criminal courts, specifying the jurisdiction of different levels of courts for various types of offenses.

It lays down the procedures for police investigations, including filing of First Information Reports (FIRs), conducting searches and seizures, and arresting suspects.

The CrPC provides detailed guidelines for conducting trials, including the stages of the trial, examination of witnesses, and presentation of evidence. It includes provisions for granting bail, outlining the circumstances under which bail can be granted or denied. The Code specifies the procedures for appealing and revising decisions made by lower courts, ensuring a fair and just appellate process.

It outlines the various types of punishments that can be imposed, including imprisonment, fines, and capital punishment. There are also special provisions for dealing with juveniles, women, and mentally ill individuals involved in criminal cases.

The CrPC, 1898 remains a fundamental legal framework for ensuring the efficient and fair administration of criminal justice in Bangladesh. It helps maintain law and order by providing a structured process for dealing with criminal offenses.

5.3.3 The Evidence Act, 1872

Governs the admissibility of evidence in criminal and civil trials. Sets rules for oral, documentary, and circumstantial evidence. The Evidence Act, 1872 is a crucial legal document that lays down the rules and guidelines for the admissibility of evidence in legal proceedings within Bangladesh. Initially enacted during the British colonial period, this Act has been adopted and continued in post-independence Bangladesh. The Act aims to provide a clear framework for what constitutes admissible evidence in courts, ensuring fair trials and justice. It covers a wide range of topics, including the types of evidence, the manner of presenting evidence, the examination of witnesses, and the burden of proof. The Act distinguishes between various forms of evidence such as oral evidence, documentary evidence, and circumstantial evidence. Only relevant evidence is admissible in court, and

the Act outlines criteria for determining the relevancy and admissibility of evidence. It includes detailed procedures for the examination, cross-examination, and re-examination of witnesses. The Act specifies who holds the burden of proof in different types of cases. The Evidence Act, 1872 remains a fundamental piece of legislation that guides the judicial process in Bangladesh, ensuring that evidence presented in court is reliable and pertinent.

5.3.4 The Constitution of Bangladesh

The Constitution guarantees fundamental rights, including protections against arbitrary arrest and detention (Article 33) and the right to a fair trial (Article 35). No person can be prosecuted and punished for the same offense twice (double jeopardy). The Constitution of Bangladesh, which was adopted on November 4, 1972, and came into effect on December 16, 1972, is the supreme law of the country. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It declares the fundamental principles and values on which the Constitution is based, such as nationalism, socialism, democracy, and secularism. It guarantees a range of fundamental rights to the citizens, including equality before the law, freedom of speech and expression, and the right to life and personal liberty. The Constitution provides for a parliamentary system of government with a President as the ceremonial head of state and a Prime Minister as the head of government. The Jatiya Sangsad (National Parliament) is a unicameral body responsible for making laws. The President, elected by the Parliament, and the Prime Minister, who is the leader of the majority party in the Parliament, form the executive branch. An independent judiciary is established to interpret the Constitution and ensure justice, with the Supreme Court being the highest court. The Constitution has provisions for amendments, allowing for changes to be made as necessary to address evolving needs and circumstances. The Constitution of Bangladesh has undergone several amendments to adapt to the changing political and social landscape. It remains a vital document ensuring the rights and governance of the people.

5.3.5 Women and Children Repression Prevention Act, 2000:

Addresses crimes such as rape, acid attacks, and trafficking of women and children. The Women and Children Repression Prevention Act, 2000 is a significant piece of legislation in Bangladesh aimed at protecting the rights of women and children from various forms of violence and exploitation. This law was enacted to address the growing concerns over violence against women and children, including physical, mental, and sexual abuse. It

provides legal protection against a wide range of abuses, including domestic violence, dowry-related violence, acid attacks, and sexual offenses. The law includes specific provisions for the protection of children from sexual abuse, trafficking, and exploitation. It criminalizes the rape and sexual harassment of minors. The Act specifically criminalizes acid attacks, prescribing strict penalties for perpetrators, including life imprisonment or the death penalty in certain cases. It addresses dowry-related violence, making it a punishable offense. The law discourages the practice of dowry, which often leads to harassment and abuse. The law facilitates the creation of family courts to handle cases of violence against women and children. These courts provide a quicker and more specialized process for justice. The Act emphasizes preventive measures to combat abuse and exploitation, including the establishment of safe houses and support services for victims. The law prescribes stringent punishments for offenders, which may include fines, imprisonment, or both, with specific penalties for different types of abuse. The Women and Children Repression Prevention Act, 2000 is a cornerstone of Bangladesh's legal framework aimed at protecting vulnerable members of society. However, the effectiveness of the law has been a subject of debate due to issues related to enforcement, societal attitudes, and the legal system.

5.3.6 The Narcotics Control Act, 2018:

The Narcotics Control Act, 2018 of Bangladesh is a comprehensive law aimed at controlling and regulating the production, distribution, and use of narcotics[5]. It establishes strict penalties for drug-related offenses and outlines measures for prevention, treatment, and rehabilitation of drug users1. The Act also focuses on international cooperation to combat drug trafficking.

5.3.7 The Anti-Terrorism Act, 2009:

The Anti-Terrorism Act, 2009 of Bangladesh was enacted to provide a legal framework for the prevention of terrorist activities, effective punishment of offenders, and related matters. The Act applies to the entire territory of Bangladesh and extends to persons on Bangladeshi-registered ships and aircraft. It defines various terms such as "arms," "explosive substances," and "terrorist activities". The Act[6] establishes Anti-Terrorism Special Tribunals for the trial of offenses. It prescribes stringent penalties, including imprisonment and capital punishment

[5] legilativediv.portal.gov.bd
[6] www.satp.org

for severe offenses. The Act mandates that investigations by the police must be completed within 60 days. This Act aims to strengthen the country's ability to combat terrorism effectively.[7]

5.3.8 Cyber Security Act, 2023

Governs cybercrime and digital offenses. The Cyber Security Act, 2023 of Bangladesh was enacted to address digital security and regulate activities online [8]. It replaced the controversial Digital Security Act of 2018 and aims to prevent, detect, and prosecute offenses committed through digital or electronic means. Covers the entire territory of Bangladesh and applies to digital activities.[9]Establishes protocols for data protection and cybersecurity. Sets up tribunals for handling cyber-related offenses. Prescribes penalties for offenses like identity fraud, cyberbullying, and spreading false information. Mandates timely completion of investigations and outlines procedures for search and seizure. The Act has faced criticism for retaining some repressive clauses from the previous law, but it also includes provisions to protect citizens' rights and privacy.[10]

5.3.9 The Muslim Personal Law (Shariat) Application Act, 1939he Muslim

Although Bangladesh is a secular state, certain personal and family matters like marriage, inheritance, and guardianship are influenced by Islamic law and other customary practices. Shariah principles can occasionally intersect with criminal cases involving morality and family disputes. The Muslim Personal Law (Shariat) Application Act, 1939 of Bangladesh applies Islamic law (Shariat) to Muslims in matters of personal law Application Act, 1937. Covers personal matters like marriage, divorce, inheritance, and maintenance Application Act, 1937] Overrides any conflicting customs or usages Application Act, 1937]

Allows Muslims to declare their intention to follow Shariat for personal matters Application Act, 1937[11] Empowers the government to make rules for implementing the Act. This Act ensures that personal legal matters among Muslims are governed by Shariat.

5.3.10 Abolishment of Capital Punishment for Minors:

Laws now prohibit executing anyone under age of 18 at the time of committing the offense.

[7] en.wikipedia.org
[8] www.icnl.org
[9] legislativediv.portal.gov.bd
[10] The Daily Star
[11] https://bdlaws.minlaw.gov.bd/act-details-173.html).

5.4 Criminal Justice Enforcement Agencies in Bangladesh

In Bangladesh, legal practitioners and the court are responsible for the judicial process. The success of this process depends on effective collaboration between judges and advocates. There has many criminal justice enforcement agencies in Bangladesh like that -

5.4.1 Police:

Responsible for maintaining law and order, investigating crimes, and enforcing laws. The Bangladeshi police have been conducting their operations in a methodical manner ever since the British Parliament passed the Police Act of 1861. This law was put into effect to create a police force in every British Indian province, with authority granted to the corresponding provincial administration.14 Pakistan adopted the pre-existing policing system after British India was divided in 1947. The East Pakistan Police was subsequently created as a local law enforcement agency. But after Bangladesh gained its independence on December 16, 1971, the country's police force underwent a major reorganisation, and the Bangladesh Police was created as a national law enforcement organisation.15. The Ministry of Home Affairs oversees the Bangladesh Police, which is the main law enforcement organisation and plays a vital role in maintaining the rule of law. They are committed to delivering services in an effective and flexible manner while also advancing social justice and caring throughout the state.16 The Bangladesh Police offers a number of specialised units and services in addition to its standard law enforcement responsibilities. These include cybercrime units, fast action battalions, traffic police, and counterterrorism teams, among others. All things considered, the Bangladesh Police are essential to upholding law and order, defending individual rights, and creating a secure atmosphere for all Bangladeshis. It keeps changing and adjusting to new situations in an effort to maintain professionalism, honesty, and commitment in its national service.

5.4.2 Higher Judiciary

The higher judiciary of Bangladesh composed of Magistrate Courts, Sessions Courts, and the Supreme Court. The Appellate Division (AD) and the High Court Division make up the Supreme Court of Bangladesh, which is the country's highest court (HCD). Appeals contesting judgements, decrees, orders, or penalties made by High Court Division may be reviewed and discussed by the Appellate Division. The Constitution and other laws give the High Court Division the authority to do what it is supposed to do. As a result, offences under the Penal Code 1860 may be tried by the High Court Division.23 The appellate jurisdiction,

the power of revision, and the exercise of inherent power are some of the branches that make up the High Court Division's criminal jurisdiction.24 It proudly maintains its judicial review authority.25 The High Court Division uses its innate authority to guarantee the achievement of significant justice and

5.4.3 The Subordinate Judiciary :

The Courts of Sessions

To ensure the effective implementation of criminal justice, Bangladesh is geographically divided into various 'Sessions Divisions', each of which houses a 'Court of Sessions'. In metropolitan areas, however, the Court of Sessions is called the 'Metropolitan Sessions Court'. Generally, the Court of Sessions is presided over by three categories of judges – the Sessions Judge, the Additional Sessions Judge, and the Joint Sessions Judge. The Sessions Judge conserves a higher position in comparison to the Joint Sessions Judges who exercise their jurisdiction within the Court of the Sessions Judge. The Sessions Judge's Court possesses jurisdiction in matters of original, appellate, and revisional nature. The jurisdiction of the Additional Sessions Judge is akin to that of the Sessions Judge. But the Joint Sessions Judge exercises original jurisdiction only.

The Courts of Magistrates

There are two classes of magistrates in Bangladesh – the Judicial Magistrates and the Executive Magistrates. The Judicial Magistrates are of four categories – Chief Judicial/Metropolitan Magistrate (CJM/CMM), Magistrates of the First Class/Metropolitan Magistrates, Magistrates of the Second Class, and Magistrates of the Third Class. The government has the authority to appoint Executive Magistrates (EM) in each district and metropolitan area and designate one of them as the District Magistrate (DM), at its discretion. Additionally, the government has the power to allocate and regulate the authority of the EMs as deemed appropriate. Indeed, the EMs are subordinate to the DM. On the contrary, the CJM sustains a higher rank than all other Judicial Magistrates, and the Metropolitan Magistrates are subordinate to the CMM. Furthermore, all Judicial Magistrates, including the CJM, are subordinate to the Sessions Judge, while the Metropolitan Sessions Judge has authority over the Metropolitan Magistrates, including the CMM. The CMM or the Metropolitan Magistrate exercises original jurisdiction only. This is also true for the CJM or the Judicial Magistrate of First Class. In addition, the CJM can

exercise the jurisdiction of hearing and disposing of any appeal that has been brought to it from any sentence passed by the Magistrates of Second or Third Class.

Special Tribunals:

Special tribunals handle cases under specific laws like anti-terrorism or narcotics control. Following the declaration of independence in 1971, Bangladesh experienced one of the most harrowing conflicts in South Asian history. The ensuing violence led to widespread allegations of murder, rape, and forced displacements. In response to these atrocities, the government of Bangladesh initiated the International Crimes (Tribunals) Act in 1973, setting the groundwork for a tribunal that would later become instrumental in addressing these grave injustices. This tribunal, formed years later, was a testament to Bangladesh's dedication to the rule of law and its commitment to bringing perpetrators to justice.

5.5 Systematic Sector of Criminal Justice System of Bangladesh

The criminal justice system of Bangladesh can be broadly divided into three main sectors:

Law Enforcement: This sector is responsible for investigating crimes, apprehending suspects, and gathering evidence. It includes various agencies like the police, Rapid Action Battalion (RAB), Detective Branch (DB), and Border Guard Bangladesh (BGB).

Judicial System: This sector handles the prosecution of accused individuals, adjudication of cases, and the imposition of punishments. It comprises courts at various levels, including lower courts, sessions courts, the High Court Division, and the Supreme Court Appellate Division. Additionally, it includes public prosecutors and defense lawyers who represent the state and the accused, respectively.

Correctional System: This sector focuses on the rehabilitation and reintegration of convicted offenders. It encompasses prisons, rehabilitation centres, and probation and parole boards. These institutions aim to reform individuals and prepare them for a law-abiding life upon their release.

These three sectors work together to ensure the effective functioning of the criminal justice system in Bangladesh.

5.6 Challenges and Reforms of Criminal Law in Bangladesh

The judiciary and law enforcement face criticism for inefficiency and corruption. Many prisoners await trial for years due to procedural delays. Efforts are ongoing to modernize laws, improve the judicial system, and align with international human rights standards. The

criminal law of Bangladesh continues to evolve to address contemporary challenges and uphold justice effectively.

The effectiveness of criminal law in Bangladesh is a complex issue with a range of perspectives and opinions. Some argue that the laws themselves are adequate but suffer from poor implementation and enforcement, while others contend that the laws themselves need to be reformed to better address modern challenges.

Bangladesh has a comprehensive legal framework that covers a wide range of criminal offenses, including those related to property crimes, violent crimes, and white-collar crimes. The government has enacted several new laws in recent years to address emerging threats, such as cybercrime and terrorism. Efforts have been made to strengthen law enforcement agencies and improve their capacity to investigate and prosecute crimes.

Despite the existence of strong laws, their impel mentation is often weak, leading to a high rate of impunity. Corruption and political interference can hinder the effective administration of justice. Some laws are outdated and do not adequately address modern forms of crime. The judiciary and law enforcement agencies often lack the resources to effectively investigate and prosecute crimes. Overcrowded prisons can undermine the rehabilitation of offenders and contribute to recidivism. The effectiveness of criminal law in Bangladesh is a mixed bag. While the country has a strong legal framework, challenges such as weak implementation, corruption, and outdated laws continue to hinder its effectiveness. To improve the effectiveness of criminal law, it is essential to address these underlying issues and implement comprehensive reforms. Public perception of the effectiveness of criminal law can also impact its overall effectiveness. If the public perceives the justice system as being unfair or ineffective, it can erode public trust and cooperation with law enforcement. Bangladesh should strive to align its criminal justice system with international standards to ensure fairness and human rights protections. The effectiveness of criminal law in Bangladesh is a complex issue that requires a multifaceted approach. By addressing the underlying issues of weak implementation, corruption, and outdated laws, Bangladesh can improve the effectiveness of its criminal justice system and promote a safer and more just society.

5.7 Enactment of Criminal Law in Bangladesh

On January 1972, Bangladesh Collaborators (Special Tribunals) Order 1972 was promulgated for the trial of those who were collaborators during liberation war.[12] As newly independent state became hostage to decline in law and order, food autarky, natural disaster, black marketing, hoarding and other prejudicial activities, enactment of Scheduled Offences (Special Tribunals) Order 1972 followed. In 1973 International Crimes (Tribunal) Act 1973 was set in motion with a view to book the perpetrators of killing, arson, rape etc committed[13]during liberation war.

[12] Kazi Habibul Awal, Moinul Kabir and Gavin Murphy. The Legislative Process in Bangladesh (The Cooperation Group 2004) 3-6
[13] Laws Continuance Enforcement Order 1971

Chapter 6

The Practice of Compounding Offence

6.1 Introduction of Compounding Offence

Compounding offenses serves as a form of ADR in Bangladesh, offering several benefits within the criminal justice system. The practice of compounding can significantly reduce the number of cases that go to trial, thus alleviating the burden on Bangladesh's overburdened judicial system. It enables quicker resolutions, saving time and resources for both the courts and the involved parties. Compounding allows the victim and the offender to resolve the dispute privately, without going through a lengthy and often adversarial court process. It promotes reconciliation, where the victim may receive compensation or an apology, fostering restorative justice. In compounding, the victim plays an active role in deciding whether they want to pursue a formal case or resolve the matter privately. This can lead to outcomes that are more personally satisfying to the victim, as they have more control over the process. Legal costs for both the prosecution and defense are reduced when offenses are compounded. The state also saves resources by not having to invest in lengthy trials for cases that could be resolved privately. Compounding offenses can help restore peace between the offender and the victim, particularly in cases where personal relationships (e.g., family or community ties) are involved. By resolving conflicts outside the courtroom, the process can prevent prolonged disputes and promote social cohesion.

Compounding means compromise or amicable settlement. In civil proceedings there are provisions of arbitration, mediation, conciliation and lots of other compromise between plaintiff and defendants in criminal proceedings, on the other hand, the usual rule is that all crimes are against the state and therefore no compromise is possible between the offender and the victim without the intervention of the state. However, the law on Code of Criminal Procedure makes some provisions which allow some specific offences to be compounded. Offences which may lawfully be compounded are mentioned in section 345 of the Code of Criminal Procedure, 1898. An offence created by a special law is non-compoundable the court cannot allow compounding of an offence which is not compoundable under section 345. Neither can the offender and the victim make an agreement to compound, settle or withdraw a complaint with regard to an offence which is not mentioned in section 345. If any compounding is made otherwise than mentioned in section 345, that compounding will be illegal and section 213 and 214 provide punishment for illegal compounding. Thus, for

the purpose of compromise in criminal proceedings all offences in the Penal Code may be divided into two groups compoundable offences and non-compoundable offences. Offences mentioned in section 345 are compoundable and the rest are non-compoundable.

6.2 Procedures of Compounding Offence

6.2.1 Who can compound?

(1) Only the person named in the third columns of section 345 can legally compound an offence. Any person may set the criminal law in motion, but it is only the person specified in the third column who can compound the offence.

(2) To constitute a valid composition it must be shown that the parties were free from influence of any kind. And were fully aware of their respective rights. If the consent of a party is obtained by threat or coercion there is no valid composition.

6.2.2 Difference between Withdrawal and Composition:

(1)A withdrawal cannot be made without the permission of the court whereas in many cases composition can be affected without the permission of the court.

(2) A withdrawal is the result of act of one of the parties, namely the complainant whereas the right to compound an offence does not always belong to the complainant.

(3) On withdrawal of complaint the Magistrate may award compensation to the accused but compensation cannot be awarded when a case is compounded.

(4) A Magistrate has the option to permit the complainant to withdraw or not but if the offence is compoundable without the leave of the court, and a petition for compromise is put, the Magistrate is bound to give effect to it.

6.2.3 When compounding possible?

A case may be compounded at any time before sentence is pronounced even whilst the magistrate is writing up the judgment.

6.2.4 Effect of Composition:

Effect of composition is specifically mentioned in section 345 of the Code of Criminal Procedure,1898 that the composition of an offence shall have the effect of an acquittal of the accused with whom the offence has been compounded.

6.3 Compounding without the permission from the Court

Section 345(1) provides the list of offences which can be compounded without permission from the court. They are as follows -

The offences punishable under the section of the Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table-

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Uttering works, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323,334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass House-trespass	447 448	The person in possession of the property trespassed upon.
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.

Enticing or taking away or detaining with criminal intent a married woman.	498	
Defamation Printing or engraving matter, knowing it to be defamatory. Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	500 501 502	The person defamed.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

6.4 Compounding with the permission from the Court:

Section 345(2) provides the list of offences which can be compounded only with the permission from the court. They are as follows -

The offences punishable under the section of the Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table-

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Rioting.	147	The person against whom force or violence has been used.
Rioting armed with deadly weapon.	148	Ditto.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom hurt is caused.
Act endangering human life or the personal safety of others.	336	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others. House-trespass	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more	343	The person confined.
Wrongfully confining for ten or more days.	344	Ditto.
Wrongfully confining a person in secret.	346	Ditto.
Wrongfully confinement to extort property or constrain to illegal act.	347	The person wrongfully confined.
Wrongful confinement to extort confession or compel restoration of property.	348	Ditto

Assault or criminal force to women with intent to outrage her modesty.	354	The women assaulted or to whom the criminal force was used.
Assault or criminal force in attempt to commit theft of property worn or carried by a person.	356	The person assaulted or to whom criminal force is used.]
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft	379	The owner of the property stolen.
Theft in dwelling house.	380	Ditto
Theft by clerk or servant of property in possession of master	381	Ditto
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc.	407	Ditto.
Criminal breach of trust by a clerk or servant.	408	Ditto.
Dishonestly receiving stolen property, knowing it to be stolen.	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	414	Ditto.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	Ditto.
Cheating and dishonestly inducing delivery of property or the making,	420	Ditto.

alteration or destruction of a valuable security.		
Fraudulent removal or concealment of property, etc. to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief by killing or maiming animal	428	The owner of the animal.
Mischief by killing or maiming cattle, etc.	429	The owner of the cattle, or animal.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person is possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods	486	Ditto

marked with a counterfeit trade or property mark.		
Cohabitation caused by a man deceitfully including a belief of lawful marriage.	493	The woman with whom cohabitation was caused.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.
Attempting to commit offences punishable with transportation or imprisonment.	511	The person against whom such attempt was made for committing the offence.

6.5 Object on Compounding Offence

The principle of English law is that the composition of an offence is illegal if the offence is one of public concern, but lawful if the offence is of private nature and for which damages may be recovered in a civil action. This principle is adopted in our system and the CrPC lays down the cases which are compoundable The tabulation of the offences removes all uncertainty and must be taken as a complete guide The policy of the legislature adopted in section 345 is that in the case of certain minor offences, where the interests of the public are not vitally affected, the complainant should be permitted to come to compromise with the party against whom he complains other Conditions about Compounding:

There are some other conditions with regard to compounding offences under section 345 which are as follows -

(1) When any offence is compoundable under this section, 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.

(2) When the person who would otherwise be competent to compound an offence under this section 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.

(3) 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, as the case may be, before which the appeal is to be heard.

(4) The High Court Division acting in the exercise of its powers 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 this section.

(5) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(6) No offence shall be compounded except as provided by this section. Therefore, offences punishable under laws other than the Penal code are not compoundable

Chapter 7

The Practice of Plea Bargaining

7.1 Introduction of Plea Bargaining

The prosecution and defence negotiate an agreement where the offender pleads guilty in exchange for a reduced charge or lighter sentence. Used in a wide range of criminal cases, except the most severe. Saves court time and resources, while providing some certainty for both parties. It is sometimes argued that instead of introducing the provision of plea bargaining expanding the list of compoundable offences would serve the purpose of reducing pending cases. However, extending the list of compoundable offences is not a wise option. This is because of two main reasons. First, compoundable offences are essentially those offences which are of private nature and can be reconciliated in principle with the victim. Some of them are compoundable with the permission of the court and some are compoundable without permission of the court. Second, compounding of offences has the effect of an acquittal and there is no admission of guilt by the accused envisaged in the process. This, however, cannot be applicable to serious offences. Since a crime is essentially a wrong against society, a compromise between the accused and the victim does not ideally serve to absolve the accused from criminal responsibility particularly for those offences which are not private in nature. This is why there is no alternative to plea bargaining for serious offences and in this scheme the accused must plead guilty although he will come out with lesser punishment. It is on this basis that the argument for extending compoundable offences so as to allow courts to function expeditiously is misplaced.

In researching about the all existing criminal laws in Bangladesh, we found something like about the plea bargaining:

(I)A person accused of an offence may file an application for plea Bargaining under the provisions of the code of criminal procedure, 1898; other criminal laws specifically under the special laws.

(ii) The court, on receiving the application, must examine the accused in camera to ascertain whether the application has been filed voluntarily. The court must then issue notice to the Public Prosecutor or the complainant to work out a mutually satisfactory disposition of the case. The negotiation of such a mutually acceptable settlement is left to the free will of the prosecution (including the victim) and the accused. The complainant and the accused are given time to work out a mutually satisfactory disposition of the case, which may include

giving to the victim by the accused, compensation and other expenses incurred during the case.

(iii)Where a satisfactory disposition of the case has been worked out, the Court shall dispose of the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offence. If a settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment. The court may release the accused on probation if the law allows for it; if a minimum sentence is provided for the offence committed, the accused may be sentenced to half of such minimum punishment, if the offence committed does not fall within the scope of the above, then the accused may be sentenced to one-fourth of the punishment provided or extendable for such offence The accused may also avail of the benefit under Section 428 of the Code of Criminal Procedure, 1973 which allows setting off the period of detention undergone by the accused against the sentence of imprisonment in plea-bargained settlements.

(iv) The statement or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose other than for plea bargaining.

(v) Once the court passes an order in the case of 'Plea Bargaining no appeal shall lie to any court against that order

7.2 Objects on Plea Bargaining

Although the Indian Supreme Court has time and again blasted the concept of plea bargaining when the Government introduced the concept in the CrPC in line with the recommendation of the Law Commission[14], the court stated in *Rajinder Kumar Sharma and others v. The State* that the legislature has introduced plea bar-gaining under law so as to benefit such accused persons who repent upon their criminal act and are prepared to suffer some punishment for the act. The purpose of plea bargaining is also to see that the criminals who admit their guilt and repent upon, a lenient view should be taken while awarding punishment to them The statement of objects and reasons in the Indian Bill on Plea Bargaining specifies that the disposal of criminal trials in the courts takes considerable time and that in many cases trial do not commence for as long as 3 to 5 years after the accused was remitted to judicial custody Plea bargaining although not recognized by the criminal

[14] In its 154th Report, the Law Commission reiterated the need for remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners.

jurisprudence, it is seen as an alternative method to deal with the huge arrears of criminal cases.

We introducing plea bargaining may be viewed from the following four aspects

(1) From the viewpoint of public interest (the criminal justice system as a whole);

(2) From the viewpoint of the accused person,

(3) From the viewpoint of the prosecutors, and

(4) From the viewpoint of the victim of the offence

7.3 Plea Bargaining from the Viewpoint of Public Interest :

Bangladesh courts are overburdened with pending cases, the trial life span is inordinately long and the expenditure is very high. The abnormal delays in the disposal of criminal trials and appeals have been a matter of great concern from the view point of administering criminal justice As of December, 2006 a total of 7,69,582 criminal cases are pending before lower courts (2,05,211 in Sessions Courts and 5,64,371 in Magistrates courts) against a limited number of 583 judges and magistrates (64 Sessions Judges, 98 Additional Sessions Judges, 583 Magistrates of which all are not final magistrates). This huge number of pending cases is a matter of great concern not only for the state but also for prisoners and victims. Introducing plea bargaining is likely to reduce this horrendous number of pending cases as the introduction of the same in various countries has resulted in tremendous success.

If an accused person is not released on bail, he rots in the jail custody increasing the already over crowded prisons which have been accommodating triple the number of its capacity of inmates As of July, 2008, the total number of prisoners in 67 prisons in Bangladesh stood at about 87.011 against a capacity of 27,4511 There are huge number of inmates who cannot bear the financial burden of taking his case in the higher court for bail and they rather prefer to be in prison. It is likely that if plea bargaining is introduced thousands of inmates would apply for plea bargaining with lighter sentence rather than languishing in jail for an indefinite period.

The rate of conviction is very low Although there is no official statistics on conviction and acquittal, one researcher suggests that the conviction rate in all courts of Bangladesh is only around 10%[15]. In other words, at the end of long awaiting trial if majority offenders get

[15] Md Ashrafuzzaman, Programme Assistant, Asian Legal Resource Centre, Hong Kong, The Disposable Prosecutors of Banglades (http://www.article2 org/mainfile php-0701/309/) (accessed on 20.02.2010).

acquittal, the merit-based trial system is bound to come under serious question. The reasons for this low rate of conviction is weak, faulty and manipulated police investigation, inefficient, political and transitory nature of public prosecutors work and large scale corruption practiced in the law courts by stakeholders[16]. Thus if the legal system cannot for these reasons provide easy and speedy substantive Justice, there are strong grounds for providing justice through plea bargaining.

Resources both in the form of finance and manpower would have to be significantly increased to provide a trial for every charge which is almost impossible for a country like Bangladesh If plea bargaining is introduced, this burden on the part of the state would be reduced considerably Considerable resources of the state would be saved. It would also enable the court to avoid dealing with cases that involve no real dispute and try only those where there is a real basis for dispute.

7.4 Plea Bargaining from the Viewpoint of Accused and Prisoner

For most defendants the principal benefit of plea. Bargaining is receiving a lighter sentence than what might result from taking the case to trial and losing. Another benefit which the defendant gets is that they can save a huge amount of money which they might otherwise spend on advocates. It always takes more time and effort to bring a case to trial than to negotiate and handle a plea bargain. Incentives for accepting plea-bargaining, as far as judges and prosecutors are concerned are obvious Overcrowded courts do not allow the judges to try every case that comes before them. It also reduces the caseloads of the prosecutors.

The defense is saved from the anxiety of uncertainty of the result of the trial and the cost of defending the case on the assurance of lighter known sentence to be suffered by him. If an accused deprived of the privilege of bail, especially indigent ones, spends long period in jail custody he may be persuaded to enter a guilty plea in exchange for his release from jail custody This initiative can be taken by the prosecutor or the judge in case the accused is undefended.[17]

Rehabilitation process of offender would be initiated early alleviate the suffering of under trial prisoners and prison conditions would certainly improve in the trade-off between languishing in jail as an under-trial prisoners and suffering imprisonment for a lesser or

[16] Aminul Hoque Mithu. Low Convictione in Bangimarsh Sume Relevant Thoughts. Law and Ourt Rights, Daily Star Issue 237, May 13, 2006.
[17] Hoque, Kajı Ebadul, ibid

similar period, the latter would be the rational choice as long periods in jail brought about economic and social ruin.

7.5 Plea Bargaining from the Viewpoint of Prosecutors:

The prosecutor is relieved of the long process of proof. Legal technicalities and long arguments, punctuated by revisional excursions to higher courts. By using plea bargaining both the prosecution and judges can save times and avoid uncertainty of the result of a contested trial in disposing of criminal cases.

7.6 Plea Bargaining from the Viewpoint of Victim of the Offence:

Victims would be spared the ordeal of giving evidence in court, which could be a distressing experience depending on the nature of the case. Victim would be benefited in the sense that accused is at the end of the day coming out with a guilty verdict, although with a lesser punishment. At present through a long and tiring saga of trial in lower court, appeal and/or revision in the higher court when the accused comes out with acquittal in almost 90-95%[18] criminal cases, every languishing hope of the victim is dashed and very often he or she feels cheated by justice system itself. In such a situation the victim will get the sense of justice by introducing plea bargaining. In view of the above points, it is clear that although plea bargaining is a disputed concept and it undermines the public's confidence in the criminal justice system, we have no other choice but to adopt this technique like India, the criminal courts are too overburdened to allow each and every case to go on trial.

7.7 Concerns with Plea Bargaining:

First, it is often argued that if plea bargaining is introduced. The incidence of crime might increase due to criminals being let- off easily However, experience suggests that this is not true because the judge or the authority considering the acceptance or otherwise of the request for concessional treatment would weigh all pros and cons and look into the nature of the offence and exercise its discretion in granting or rejecting the request. Second, it is also argued that if plea bargaining is introduced, criminals may escape with impunity and escape due punishment This is also not true because the plea-bargaining scheme provides for concessional treatment and not for any punishment and the stigma of conviction would persist always be solved easily.

[18] There is no statistics or research on the rate of acquittal in Bangladesh. This figure is based on personal assumption by the author on the basis of Indian statistics In India the acquittal rate is 90-95% (See Sowmya Suman. Plira Bargaining Practical Solution, http.//www.legalserviceindia.com/article/187 Pica-Bargaining html (accessed on 20.02.2010)

There are some other concerns with plea bargaining which are as follows

(I) Involving the police in plea bargaining process would invite coercion.

(ii) By involving the court in plea bargaining process, the court's impartiality is impugned.(iii) Involving the victim in plea bargaining process would invite corruption.

(iv) If the plead guilty application of the accused in rejected then the accused would face great hardship to prove himself innocent

Therefore, to ensure fair justice, plea bargaining must encompass the following minimum requirements:

(1) The hearing must take place in court.

(2)The court must satisfy itself that the accused pleading guilty knowingly and voluntarily. Since substantial public interest is involved in plea bargaining, the court is required to approve each of them in order to protect such interest and to ensure they are given due weight.

(3) Any court order rejecting a plea bargaining application must be kept confidential to prevent prejudice to the accused.

Chapter 8

Concluding Remarks

8.1 Limitation of Alternative Dispute Resolution processing in Criminal Justice System in Bangladesh

Alternative Dispute Resolution (ADR) has emerged as a promising approach to resolving disputes outside of traditional court proceedings. In Bangladesh, ADR has been increasingly utilized in civil matters, but its application in the criminal justice system remains limited. This essay delves into the limitations of ADR in the criminal justice system of Bangladesh and explores potential avenues for its expansion.

The Code of Criminal Procedure (CrPC) primarily focuses on formal adjudication and lacks comprehensive provisions for ADR in criminal cases.

While Section 345 of the CrPC allows for compounding of offenses, it is limited to specific offenses and requires the consent of both parties.

The absence of a clear legal framework hinders the widespread adoption of ADR in criminal matters. Many criminal offenses involve serious societal harms and require the imposition of punishment to deter future wrongdoing. ADR processes, which often prioritize compromise and reconciliation, may not be suitable for cases where the public interest demands a formal legal resolution.

The potential for victim dissatisfaction and compromised justice outcomes is a significant concern. In criminal cases, the state often holds significant power over the accused, potentially leading to unequal bargaining positions. Victims may feel pressured to accept settlements that do not adequately address their harm or provide justice. The risk of coerced or unfair agreements undermines the integrity of ADR processes.

Many stakeholders, including legal professionals, law enforcement officials, and the public, may lack awareness of ADR procedures and their potential benefits. Inadequate training and capacity-building initiatives hinder the effective implementation of ADR in the criminal justice system. The current legal framework restricts the application of ADR to a limited range of criminal offenses. More serious offenses, such as those involving violence or significant public harm, are generally excluded from ADR processes. This limitation reduces the overall impact of ADR in the criminal justice system.

Despite the limitations, there are opportunities to expand the use of ADR in the criminal justice system of Bangladesh, Amendments to the CrPC can provide a stronger legal

foundation for ADR in criminal cases. Clear guidelines and procedures can be established to ensure fairness, transparency, and accountability in ADR processes. Implementing pilot projects in specific jurisdictions can help assess the feasibility and effectiveness of ADR in different types of criminal cases. Rigorous evaluation of these projects can inform future policy decisions and identify best practices. Investing in training programs for legal professionals, law enforcement officials, and mediators can enhance their understanding of ADR principles and techniques. Raising public awareness about ADR can encourage its use and promote its acceptance as a legitimate means of dispute resolution.

Collaborating with civil society organizations, legal aid providers, and international experts can strengthen the implementation of ADR in the criminal justice system. Sharing best practices and lessons learned can facilitate the development of effective ADR programs.

8.2 Recommendations for Effective Implementation

Enhancing the Role of Alternative Dispute Resolution (ADR) in Bangladesh's Criminal Justice System, some Alternative Dispute Resolution (ADR) offers a promising avenue to alleviate the burden on Bangladesh's criminal justice system while promoting restorative justice. To effectively implement ADR in criminal cases, the following recommendations are proposed:

Develop a dedicated law outlining the scope, procedures, and enforceability of ADR in criminal matters. Modify the Code of Criminal Procedure (CrPC) to explicitly incorporate ADR mechanisms, such as mediation and plea bargaining, for suitable offenses. Designate specialized courts to handle ADR cases, staffed with trained judges and mediators. Provide comprehensive training to judges, magistrates, and public prosecutors on ADR principles, techniques, and ethical considerations.

Set up dedicated ADR centres within the court system to offer mediation and conciliation services. Recruit qualified mediators with legal and social work backgrounds to facilitate ADR processes. Conduct public awareness campaigns to educate the public about the benefits of ADR and its application in criminal cases.

Provide free legal aid to marginalized groups to ensure equal access to ADR processes. Offer incentives, such as reduced penalties or expedited proceedings, to encourage voluntary participation in ADR. Ensure that parties fully understand the implications of ADR and provide informed consent before proceeding.

Create a dedicated body to monitor the implementation of ADR in criminal cases and assess its effectiveness. Regularly collect data on the number of cases resolved through ADR, outcomes, and satisfaction levels of the parties involved.

Undertake periodic impact assessments to identify areas for improvement and refine the ADR system. By implementing these recommendations, Bangladesh can harness the potential of ADR to reduce case backlogs, promote restorative justice, and enhance the overall efficiency and fairness of its criminal justice system.

8.3 Conclusion

The exploration of Alternative Dispute Resolution (ADR) within the criminal justice system of Bangladesh unveils a complex interplay of legal, social, and cultural factors. While the traditional adversarial system remains the primary mechanism for resolving criminal disputes, the increasing caseload and delays in the formal justice system have necessitated the consideration of alternative approaches.

ADR offers a promising avenue to address these challenges. Mediation, arbitration, and negotiation can provide efficient, cost-effective, and restorative solutions to certain types of criminal offenses. However, the implementation of ADR in criminal matters requires careful consideration of several factors. These include the nature of the offense, the rights of victims, the role of the state, and the potential for abuse.

To fully realize the benefits of ADR, a comprehensive legal framework is essential. This framework should clearly define the scope of ADR in criminal cases, establish guidelines for the selection of appropriate cases, and ensure the rights of all parties involved. Additionally, the training and capacity-building of legal professionals, law enforcement officers, and mediators are crucial to the successful implementation of ADR.

While ADR cannot replace the formal justice system entirely, it can complement it by providing a more accessible and flexible approach to resolving certain types of criminal disputes. By embracing ADR, Bangladesh can improve the efficiency and effectiveness of its criminal justice system, promote restorative justice, and ultimately enhance the overall well-being of its citizens.

While the limitations of ADR in the criminal justice system of Bangladesh are significant, there is potential for its expansion through legislative reforms, capacity building, and innovative approaches. By carefully considering the specific needs and challenges of the criminal justice context, it is possible to harness the benefits of ADR and promote a more just and efficient system.

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