

Alternative Dispute Resolution in the Criminal Justice System of Bangladesh

A Study on Rajshahi City

Fardeen Bin Abdullah*

Abstract

The concept of Alternative Dispute Resolution (ADR) is gaining popularity due to its simplicity and ability to resolve cases quickly while being more sympathetic to the parties involved. Although ADR has been widely implemented in civil litigation, its application in criminal disputes is more complex due to the difficulty of labelling a crime as a dispute. Despite this, many countries, including Bangladesh, have adopted ADR methods in their criminal justice systems. This study aims to investigate the effectiveness and functionality of the ADR system in criminal cases in Bangladesh. The research seeks to address whether the introduction of ADR in all types of criminal litigation will ensure justice or whether there are concerns that need to be addressed regarding its use. Additionally, the study aims to determine the willingness of litigants to use ADR in criminal cases. The primary objective of this research article is to assess the efficacy of ADR in criminal cases in Bangladesh and identify essential aspects that need to be considered when introducing this tool in the criminal court system.

Keywords: Alternative Dispute Resolution, ADR in Criminal Justice System, ADR in Bangladesh.

Introduction

Alternative Dispute Resolution (ADR) is a process for settling disputes between two or more parties, usually outside the courtroom, using mechanisms such as negotiation, mediation, conciliation, arbitration, compounding offences, and plea bargaining. As members of society, human beings engage in social contact to live a harmonious life, utilizing various forms of social processes such as cooperation, competitiveness, and conflict. While lawsuits and trials may arise from conflict, ADR provides a more cost-effective and timely solution to resolve disputes.

The history of ADR can be traced back to the Twelve Tables, where judges used their reasonable discretionary power to settle issues arising from contracts and property

* LL.B. (Honours) Student, Department of Law, University of Rajshahi

partition. Over time, the system of ADR evolved and found its way into legal systems worldwide, due to the rising number of court cases and lawsuits. The primary objective of establishing the system of ADR was to reduce the burden on courts.

Although ADR has traditionally been used in civil cases, its implementation in criminal cases is gaining popularity worldwide. ADR mechanisms such as plea bargaining, restorative justice, and diversion programs offer a faster and less expensive alternative to traditional court proceedings. However, concerns over the fairness and impartiality of ADR in criminal cases remain, and their use may vary depending on jurisdiction and legal systems.

Against this background, the objective of the current research is to explore the ADR system in criminal cases in Bangladesh and its functions. The research aims to identify the feasibility of introducing ADR in all types of criminal litigation, while carefully assessing the potential benefits and risks involved. The study will investigate the current practice of ADR in criminal litigation in the Rajshahi area, analyze the need for changes in statutes, and assess the level of understanding of ADR among the population.

The main purpose of this study is to understand the implementation of ADR in criminal cases, consider the advantages and disadvantages of this mechanism, and ensure that justice is served. Haphazardly introducing ADR to all criminal systems may have unintended negative consequences, which can impact the fairness of the system. Therefore, it is crucial to carefully evaluate the implications of implementing ADR in the criminal justice system, while ensuring that justice is served, and the rights of all parties involved are protected.

In conclusion, this study seeks to explore the ADR system in criminal cases in Bangladesh and evaluate its effectiveness in resolving disputes. The objective is to establish a framework for the implementation of ADR in criminal cases, balancing the advantages and disadvantages of this mechanism to ensure the proper administration of justice.

Methodology

The study used a qualitative research method to investigate the efficacy, use, and practice of ADR in criminal cases. The data was collected on June 2022 in Rajshahi District. The data for this paper were collected from both primary and secondary sources, and help was taken from statutes, regulations, and Case studies.

The primary data was collected from interviewing the District Legal Aid Officer, the Rajshahi Legal Aid Office, and the BLAST Coordinator of the Rajshahi District. I also briefly interviewed 100 people who came to Rajshahi District Court and CMM Court to file or defend cases. This interview was conducted on specific questions, and the responses were recorded in a form. Among thousands of litigants, 100 were chosen randomly as it was not possible to interview all of them.

The study also reviewed secondary sources such as books, law reports, journals, newspapers, and websites to supplement the primary data. The findings of the study were analyzed and presented descriptively to provide a valuable resource for readers interested in ADR and criminal justice in Bangladesh. This study is an attempt to understand how a legal concept, e.g., ADR in criminal litigations, affects society in general. The research put the criminal justice system and methods of ADR under the lens of critical analysis and evaluated the efficacy of the topic. After collecting the primary data from the Legal Aid Cell and peers, this study summarized it in numerical figures and focused only on criminal cases to present it in this form to make the study more informative, descriptive, and valuable for the readers.

The use of Alternative Dispute Resolution (ADR) is restricted to compounding offences under Section 345 of the Code of Criminal Procedure, 1898¹. The number of cases resolved through ADR for criminal litigations is also low in number. Therefore, I have concluded the study with a limited number of sample cases.

It was a qualitative research project as it seeks to explore the subjective experiences, perspectives, and meanings related to the use and practice of ADR in criminal cases. The data collection methods involve in-depth interviews with key informants and a brief survey of litigants, which are typical methods used in qualitative research. Additionally, I have also supplemented the primary data with secondary sources to gain a more comprehensive understanding of the topic.

Review of Literature

Undoubtedly, ADR is of significant importance in criminal cases and cannot be ignored. It can help reduce the backlog of cases and save time and money for the state and the litigants. However, the study has come across an important question of whether the ADR system is effective or not. After that, compared and reviewed available study materials and organized them in thematic chronological order for the convenience of the readers.

In *Md. Joynal and others* case, the court observed and advised to follow section 345 of the CrPC, 1898 for compromise in terms of criminal trials. The key judgment was-

“That they encourage settlement of dispute either by Panchayet or by Arbitration or by way of compromised or other and if it is a criminal offence, the offence can be compounded within the limit of section 345 of Code of Criminal Procedure.”

This judgment advocates the option of practising ADR through the compounding of offences in criminal cases.²

¹ S 345, “The Code of Criminal Procedure, 1898”. No. V of 1898.

² *Md. Joynal and others. Vs. Md. Rustam Ali Mia & others*, 36 (1984) DLR (AD) 240.

On the other hand, Dr. Jamila A Chowdhury, showed her concern about the decriminalization of crimes if ADR is introduced in criminal matters. She elaborately expressed that the promotion of compounding in criminal cases may be helpful in terms of saving money and time, and it may lead to the decriminalization of crimes. She also thinks it may bring worse than good if we allow compounding of offences or plea bargaining in all types of criminal litigations.³ As this is a newspaper article, it did not provide a comprehensive and in-depth analysis of the introduction of ADR in criminal cases. It also lacked empirical evidence and research data to support the claims made in the article.

Mahua Gulfam's research article on the introduction of ADR in the criminal justice system in Bangladesh evaluates the possible modes of ADR used around the world for criminal litigations and briefly discusses ADR development in Bangladesh. However, one possible lacuna in the article is the lack of specific recommendations or guidance for the practical implementation of ADR in the criminal justice system in Bangladesh.⁴

Md. Abdul Halim in his book ADR in Bangladesh explored the possibilities of implementing the ADR method in terms of resolving criminal matters. The book briefly analyzed the effectiveness of ADR.⁵

Susan Fortney in her paper emphasized the role of advocates and prosecutors in the success of ADR. She expressed her opinion that a good prosecutor can correctly implement criminal ADR and ensure justice.⁶ 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.⁷

³ Chowdhury, Dr. Jamila. (2013, March 9), *Introduction of ADR in criminal cases*, The Daily Star (Bangladesh).

⁴ Gulfam, Mahua, (2014) "Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective", *Banglavisian*, (Vol. 13, No. 1).

⁵ Halim Md. Abdul. (2011). *ADR in Bangladesh: Issues and Challenges*. Second edition. CCB Foundation.

⁶ Fortney, Susan (February 20, 2017), "The Role of 'Good Prosecutors' in Advancing Access to Criminal Justice", *JOTWELL*, Texas A&M University School of Law.

⁷ Chowdhury, M.M. (2017) "Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective," *Bangladesh Research Foundation Journal*, (Vol. 6, No.1).

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.⁸

However, none of the books or articles explored the efficacy of implementing ADR in criminal cases and what the outcome will be for victims where the accused is in 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.

Implementation of ADR in Criminal Cases in Rajshahi City

To implement ADR in criminal trials, it is a must that we evaluate the possibilities and benefits of the mechanism. Whether it allows proper justice or gives the accused the upper hand over the victim, is the primary concern in this regard. Upon careful evaluation of the available options, I conclude that not all cases are suitable for dismissal through ADR. It is imperative to establish limits, and this study intends to deliberate on this matter in further detail.

Assessing the implementation of ADR in criminal offences in Bangladesh can be a challenging task as the country's legal system does not commonly practice ADR in criminal cases. Although a few sections of the Code of Criminal Procedure allow for the compounding of offences for petty crimes, the courts do not widely use ADR in criminal cases. Additionally, the general population does not show much interest in resolving criminal matters outside of the courts, which further limits the use of ADR in such cases.

After visiting the Rajshahi District Court, Chief Metropolitan Magistrate Court, Rajshahi Legal Aid office, and Bangladesh Legal Aid & Services Trust (BLAST), Rajshahi Unit, the study observed the following statistics of ADR in criminal cases in the Rajshahi region.

Data Analysis

After conducting brief interviews with 100 samples (people visiting Rajshahi Court for litigation) I collected the following data.

Gender Diversity of People at the Court for Litigation

It was of no surprise that more males were present at the court premises than females for filing or defending a case. Most of the females who were at the court were for divorce,

⁸ Chowdhury, M.A.A. and Kabir, M.H. (2018) "An overview of the practice and prospect of alternative dispute resolution in criminal justice System of Bangladesh: Promotion of access to justice." *International Journal of Advanced Research*, (Vol. 6, Issue 11).

maintenance or domestic violence-related matters. Unfortunately, the study was unable to include litigants of the third gender as none were encountered during the study.

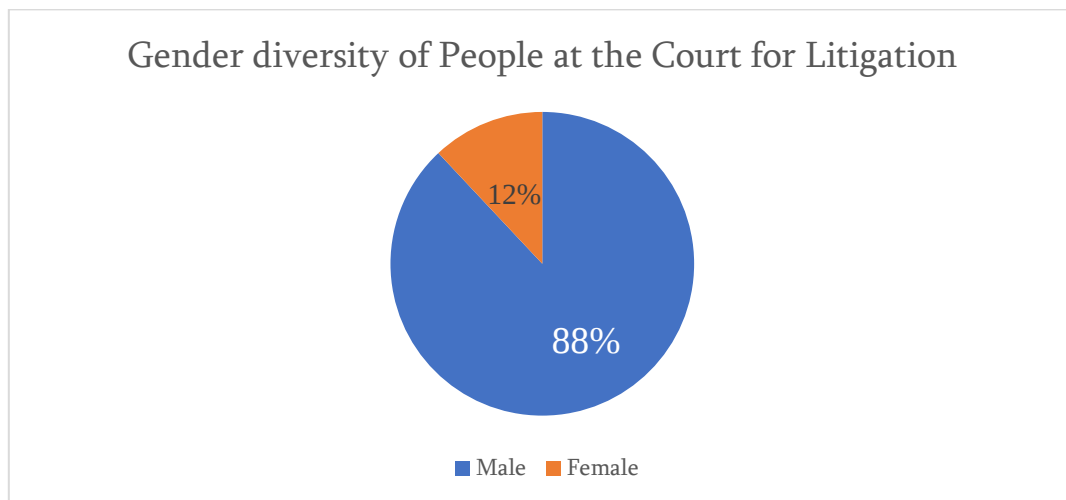


Figure 1 Gender Diversity of People at the Court for Litigation

Number of Criminal Cases Applied for ADR

This study found that not many people are interested in going to alternative methods to resolve their criminal disputes. Most of them prefer filing a complaint case as they think they will get justice that way. As most of the people came to the court for filing severe offences like murder, homicide, extortion, rape, assault, and grievous hurt.

Another reason for not choosing ADR is that more than half of the cases are conducted by the police as GR cases. As the state is directly contesting those litigations, the parties have little option to go to ADR for criminal litigation.

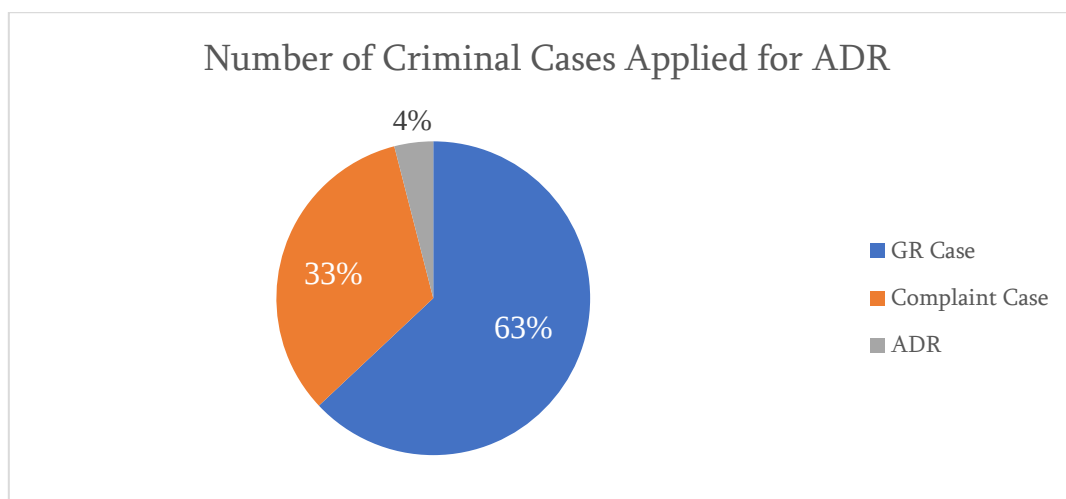


Figure 2 Number of Criminal Cases Applied for ADR

Data Collected from the District Legal Aid Office

This study observed that the District Legal Aid Office has been working to resolve disputes through mediation and conciliation. The Legal Aid Services Act 2000, established the National Legal Aid Services Organization (NLASO) for Alternative Dispute Resolution (ADR) in legal proceedings.

The following data were collected by conducting a thorough interview with the District Legal Aid Officer, Rajshahi Legal Aid Office.

Number of Criminal Cases resolved through ADR

Even though the number of criminal cases applied for ADR is very few compared to Court cases, the District Legal Aid Cell is successful in resolving petty criminal offences through ADR. Since 2018 the cell has been performing well. However, in my observation, it was found that major criminal offences like assault, homicide, rape, or other serious offences were sent back to the respected magistrate court for trial. The Legal Aid Cell did not resolve them through ADR.

On the other hand, BLAST mainly supports litigants who are poor or underprivileged, and they deal with civil and family-related suits. There was not enough criminal ADR worth mentioning.

Year	Total Cases applied for ADR	Dispute Resolved Successfully	Unresolved	Sent to court for Trial
2018	82	55	07	20
2019	102	79	12	05
2020	71	44	05	22
2021	101	78	06	17
June 2022	68	59	03	6

Table 01: Criminal litigations applied for dispute resolving through ADR in Rajshahi Legal Aid Office

Offences Resolved through ADR

It was observed that not all types of criminal offences were resolved through ADR. During the time frame of 2018- June 2022, petty cases regarding minor domestic violence and dispute arising from land or marital violence are resolved through ADR. Below a pie chart is presented to understand offences that are resolved through mediation, arbitration, or negotiations.

Among the offences that are usually resolved through ADR, the most common one is domestic violence. In these cases, usually, the female members are the victims, and they wish to resolve the issue without filing a formal suit.

Normal assault and battery-related cases are usually resolved through the office without going to court. However, some serious cases are transferred to the magistrate courts by the legal aid office.

Another dispute which is resolved by the office is land-related disputes. These disputes are often transferred to courts as parties rarely agree on the terms of the mediation or negotiation. Nevertheless, some disputes among neighbours and family members are resolved successfully. House trespass, usually by domestic animals, is another matter that is resolved by the office.

It was also observed that while the Legal Aid Cell provides legal aid and services to indigent and underprivileged individuals in all types of legal proceedings, including criminal cases, it does not have the power to compel parties to participate in ADR processes. Additionally, the legal system does not widely practice ADR in such cases. Therefore, the office's ability to use ADR in criminal cases would depend on the willingness of the parties involved to participate in such processes.

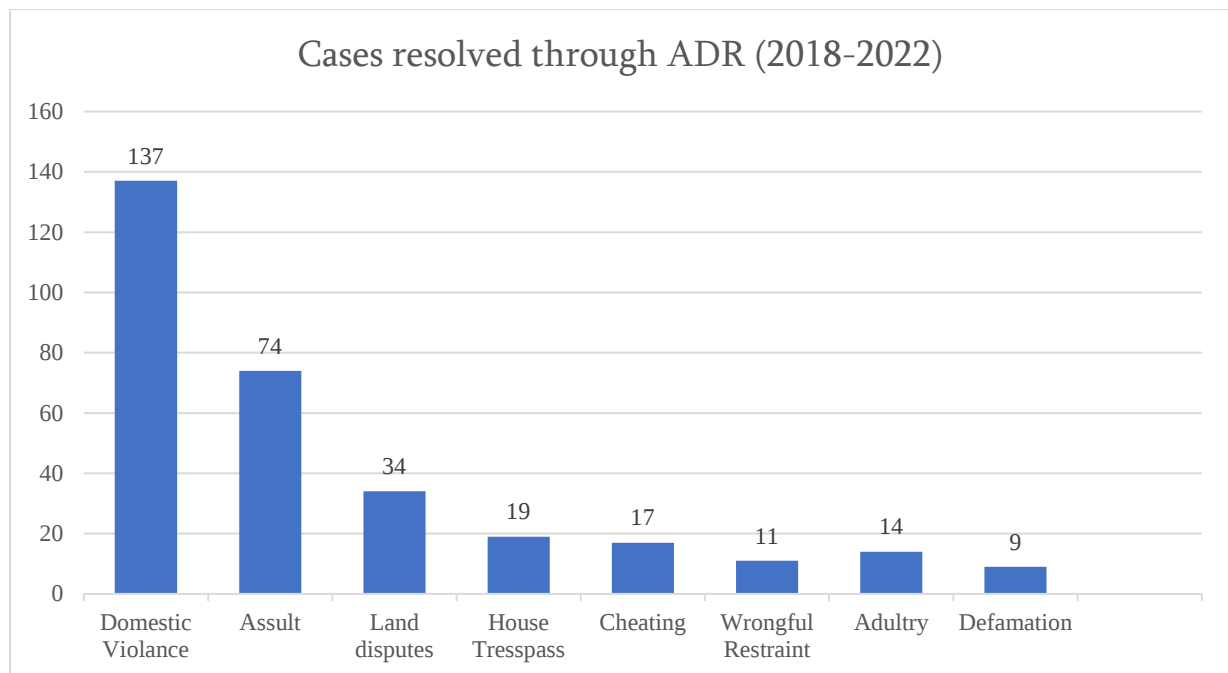


Figure 3 Cases resolved through ADR by Rajshahi Legal Aid Office

Criminal offences which were transferred to court for trial

Major crimes that are not suitable for resolving through ADR under the current mechanism of dispute resolution in Bangladesh such as rape, child abuse, murder, etc. the following cases were transferred to courts for trial. These offences are serious and affect the state directly or indirectly. Under the current system, there is no way of resolving these cases with ADR as plea bargaining or other types of criminal ADR method is not available.

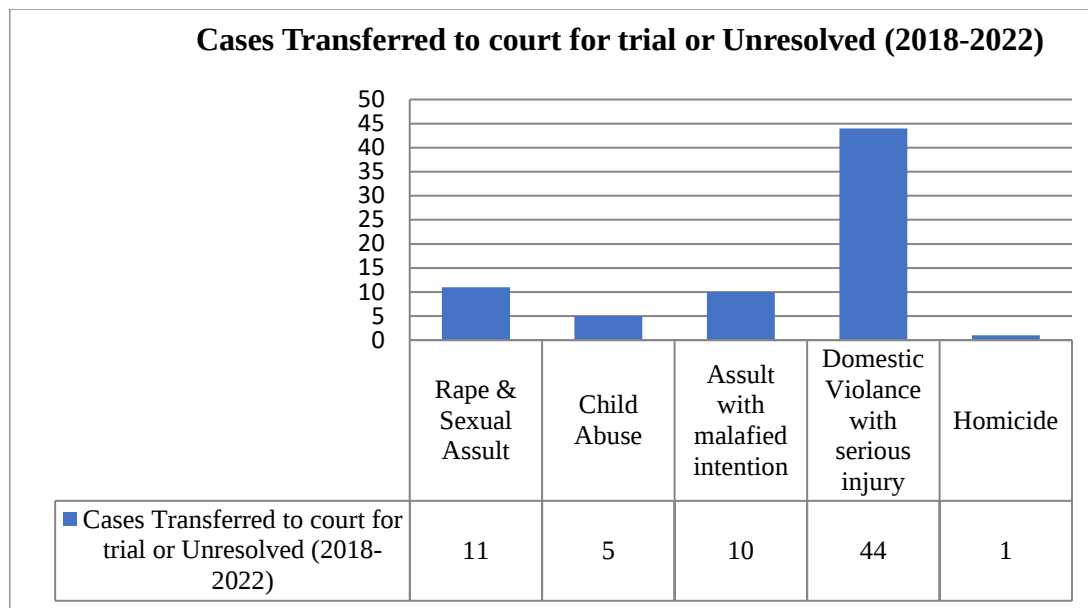


Figure 4 Cases transferred to Courts after coming for ADR by Rajshahi Legal Aid

Challenges of ADR in criminal offences in Bangladesh

Though ADR is an excellent method of reducing the burden of cases and ensures speedy access to resolving disputes, in Bangladesh, it is mainly limited to civil suits. While conducting the field study for the survey, this study found out people are not interested in going to out-of-court settlements for criminal matters. To date, the mass of our country relies upon courts for justice, even if it takes months after months.

People in common have a fear that without the intervention of a formal court, true justice might not be served. They fear that out-of-court settlement might not uphold the rule of law in our country, where muscle power and political power can impose a biased judgment on the victim. There is also a chance that the accused may pressure the victim to surrender their rights and agree to nominal damages.

Another factor that leads to fewer disputes resolved through ADR is our Laws. Unlike CPC, 1908, or Family Court Ordinance, 1985, there are no compulsory provisions in CrPC, 1898, or Penal Code, 1860, for going to ADR before filing a suit in the Court.

Furthermore, in Bangladesh, criminal cases are mainly conducted by the police as GR cases when the complainant files a case with the police. In these cases, the police never opt for ADR. Instead, they present it to the Court and follow the Court's direction of the investigation, filing a charge sheet or final report.

On the other hand, though plea bargaining is not practised in Bangladesh if it were to be introduced, the accused may be pressured by powerful parties, political leaders, or even law enforcement agencies to accept guilt even though they are innocent.

For example, Bangladesh has similarities with India regarding political and judicial practices. Plea bargaining is practised in India, and it has raised issues in their judicial system for being biased and unjustified. Justice V.R. Krishnaiyer in *Murlidhar Meghraj Loya v. State of Maharashtra*⁹ and Justice P Bhagwati in *Kasambhai v. State of Gujarat*¹⁰ did not approve of this concept and criticized the concept of plea bargaining. Further, the Hon'ble Supreme Court, in the case of *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*,¹¹ strongly disapproved of the practice of plea bargaining.

In alternative dispute resolution, we strive for a win-win situation for both parties. It may be easier to achieve in civil matters, but it is not the same in criminal trials. The damages or compensations for criminal offences might not be appropriate for the parties. If the authority implements ADR in criminal offences, there is a possibility that the victim might always be oppressed.¹²

We have to take proper measures and train the persons appropriately involved to ensure the rule of law. The beneficiaries have to feel safe and reliable to trust the process of ADR. It is upon the state, law enforcement agencies, and judiciary to ensure actual access to justice through ADR in criminal litigation. Therefore, this study is arguing that ADR should not be introduced in this unsafe situation in Bangladesh.

Suggestions

The state needs to ensure the practice of ADR in a criminal case should not be a burden on the parties. There should be a balance of power and position while implementing this mechanism in our society. After going through all the data and analyzing documents, legal papers, and books, I would like to present some suggestions regarding the efficacy of ADR in the criminal justice system and how to improve it.

- a. The authorities should consider encouraging litigants to seek resolution of compoundable offences in village courts¹³ where each party can select two representatives for the board. This would alleviate the backlog of cases in formal courts and promote the use of established dispute-resolution mechanisms.
- b. It is advisable to prioritize securing the independence and transparency of our court systems before implementing ADR in criminal trials. While the introduction of ADR may expedite case resolution and reduce the backlog, hastily adopting this method without adequate consideration may compromise the quality of our criminal justice system.

⁹ *Murlidhar Meghraj Loya v. State of Maharashtra*, [1976] AIR 1929, 1977 SCR (1) 1

¹⁰ *Kasambhai v. State of Gujarat*, [1980] AIR 854, 1980 SCR (2)1037

¹¹ *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*, [1980] AIR 854, SC 854.

¹² Chowdhury, Dr Jamila. (2013, March 9), *Introduction of ADR in criminal cases*, The Daily Star (Bangladesh).

¹³ "The Village Courts Act, 2006," No. XLII of 2006, Schedule Part I

- c. It is crucial to exercise caution when introducing mechanisms like plea bargaining, given the political, economic, and geographical realities of our country. Adequate consideration must be given to these factors to ensure that the implementation of plea bargaining does not have unintended consequences.
- d. It is suggested that legal counseling be improved in terms of quality and accountability, to facilitate equitable access to government legal aid programs. This would ensure that all individuals have the opportunity to use these mechanisms to their advantage.

All of the actions, however, may be in vain if societal awareness is not raised to a sufficient level. Building awareness of the right function of ADR through study, practice, and implementation are the essential recommendations that should be followed to assure justice before adopting it into our criminal justice system.

Conclusion

Alternative Dispute Resolution (ADR) has been successfully implemented in the civil litigation system in Bangladesh, and it is essential to extend this system to the criminal justice system to ensure justice, expedite the resolution of disputes, and reduce case backlogs. However, it is important to recognize that the implementation of ADR in the criminal justice system may require certain pre-requisite actions to achieve optimal results. Therefore, the recommendations outlined in this paper must be carefully considered to ensure the correct implementation of ADR mechanisms. Otherwise, the haphazard expansion of ADR in the criminal justice system may lead to negative consequences for our justice system, as it could be used as a means of unequal power distribution in society. Thus, it is crucial to implement ADR thoughtfully and deliberately to achieve the desired outcomes for our justice system.

Bibliography

Akhtaruzzaman M *Concept and Laws on Alternative Dispute Resolution and Legal Aid* (Fourth, Shabdakoli Printers 2011)

Amnesty International, *Amnesty International Annual Report 2003* (Amnesty International Publications 2003) <

<https://www.amnesty.org/en/documents/pol10/0003/2003/en/>> accessed 12 August 2022.

Chowdhury J, 'Introduction of ADR in criminal cases' *The Daily Star* (Dhaka, 9 March 2013).

Chowdhury M.A.A. & Kabir M.H, 'An overview of the practice and prospect of alternative dispute resolution in criminal justice System of Bangladesh: Promotion of access to justice' (2018) 6 International Journal of Advanced Research.

Chowdhury M.M, 'Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective' (2012) 6 Bangladesh Research Foundation Journal.

Fortney Susan, 'The Role of 'Good Prosecutors' in Advancing Access to Criminal Justice' (2017) Texas A&M University School of Law.

Gulfam M, 'Introducing Alternative Dispute Resolution in Criminal Justice System: Bangladesh Perspective' (2014) 13 Banglavisian.

Halim M. Abdul *ADR in Bangladesh: Issues and Challenges* (Second, CCB Foundation 2011)

Hasan K.M, 'A report on Mediation in the Family Courts: Bangladesh experience' (25th Anniversary Conference of the Family Court of Australia, Sydney, 2001)

Islam S, 'Politics-corruption nexus in Bangladesh: An empirical study of the impacts on judicial governance' (2010) Hong Kong: Asian Legal Resource Centre.

Khair S, 'Alternative Dispute Resolution: How it works in Bangladesh' (2004) XV 1 Dhaka University Studies.

Maynard, D.W *Inside Plea Bargaining: The Language of Negotiation* (First, Plenum Press 1984)

S.C. Tripathi *Alternative Dispute Resolution System (ADR)* (First, Central Law Publications 2012)

Samad, Md. Atickus *A Text Book on ADR & Legal Aid* (First, National Law Publications 2013).

United States Agency for International Development *Alternative Dispute Resolution Practitioners' Guide* (Center for Democracy and Governance, USAID, 1998).

Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr [1980] AIR 854, SC 854.

Kasambhai v. State of Gujarat [1980] AIR 854, 1980 SCR (2)1037

Md. Joynal and others. Vs. Md. Rustam Ali Mia & others [1984] 36 DLR (AD) 240.

Murlidhar Meghraj Loya v. State of Maharashtra [1976] AIR 1929, 1977 SCR (1) 1

Sahar Ali vs. Samed Ali [1954] 6 DLR 28.

The Code of Criminal Procedure, 1898.

The Constitution of the People's Republic of Bangladesh, 1972.

The Village Courts Act, 2006.