

INTRODUCTION OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE SYSTEM OF BANGLADESH

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ABSTRACT

Alternative Dispute Resolution has been developed as a mechanism of law for speedy disposal of disputes. For the time being, alternative dispute resolution becomes a popular device in countries like Bangladesh as the courts here are overburdened with cases. As law itself is a changing process, we need more efficient devices to change the current structure of our criminal justice system. The research/paper aims to develop new concept, theories and ideas about how ADR can be implemented in the criminal cases in Bangladesh. Generally, compounding of offences and plea bargaining are the two major phrase which we can implement in our criminal justice system as a device/tools of ADR to achieve speedy disposal of criminal disputes. However, alternative dispute resolution has certain disadvantages and we need to implement ADR in a way that it cannot harm our justice system. Thus, finding the proper way to implement alternative dispute resolution is the essence of the paper so that we can use the mechanism effectively. An immature and whimsical introduction of ADR in criminal cases may reduce case backlog and may increase quick disposal, but, such success may lead to a harmful impact on our justice system and can be used as a vehicle of imbalanced power in the society. Thus, there are certain recommendations provided by the paper which need to be observed

before the implementation of ADR in criminal justice system of Bangladesh.

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INTRODUCTION

What is “Law”? The scholars, academicians or the theoreticians defined law as the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions that are used to govern a society and to control the behavior of its members. Legal systems are particular ways of establishing and maintaining social order.¹ For example, John Austin defined ‘law’ as ‘A body of rules fixed and enforced by a sovereign political authority’², Hart defined law as a ‘system of rules, a union of primary and secondary rules’³, Greek philosopher Plato and Aristotle defined law as ‘an embodiment of reason, whether in the individual or the community’.⁴ Similarly, Hobbes said of the role and functions of law in his polemic work “Leviathan” (1651) and defined that ‘Law is the formal glue that holds fundamentally disorganized societies together’.⁵ My perception of the law is quite different, but not in contradiction with the respected scholars, academicians and the theoreticians. According to me, “Law” is a social mechanism that is created by the society to control the human behavior and nature. It is recognized by the sociologists and anthropologists that religion emerged in society far earlier than the law. Religion attempted to provide rules, regulations,

¹ Sixth Form Law, Module , Explaining the terms “Law” and “Morality” or “Justice”, <http://sixthformlaw.info/01_modules/other_material/law_and_morality/0_what_is_law.htm>

² Austin, John. "Province of Jurisprudence Determined", quoted in Sixth Form Law, Module , Explaining the terms “Law” and “Morality” or “Justice”, <http://sixthformlaw.info/01_modules/other_material/law_and_morality/>

³ Professor Hart. (1961). The Concept of Law (Oxford University Press)

⁴ Explaining the terms “Law” and “Morality” or “Justice”, above n 1

⁵ Hobbes, Thomas. Leviathan (1651), quoted in Sixth Form Law, Module , Explaining the terms “Law” and “Morality” or “Justice”, <http://sixthformlaw.info/01_modules/other_material/law_and_morality/>

morals and values in the society in order to control human nature and behavior and to maintain the social order. However, history tells us that religion has failed in many prospects to control human nature as the moral obligations were not always performed by the people of the society. Thus, the importance of law has played its role and emerged as a device in the society to control human behavior and nature. To start my argument on ‘introduction of alternative dispute resolution (ADR) in criminal justice system’, it is important to understand that “law” is nothing but a social mechanism which is created by the society itself to maintain social order. Defining “law” as a social mechanism means the law is a changing process and it often changes when the society demands.

DEFINITION OF ADR

Alternative Dispute Resolution (ADR) is a legal system as well as an innovative modern institution of society which provides a scope for non-formal legal and judicial dispute settlements with the consent of the parties. According to the Wex Legal Dictionary, ‘Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom’. In the words of Justice Mostofa Kamal, ADR is a non-formal settlement of legal and judicial disputes as a means of disposing of cases quickly and inexpensively. It is not a panacea for all evils, but an alternative route to a speedier and less expensive mode of settlement of disputes. It is a voluntary and co-operative way out of the impasses.⁶

Thus, ADR is nothing but an alternative method of resolving disputes other than by litigation. As “law” itself is a social institution and a social need, ADR is also a socio-legal system which can be a basic need for the societies like Bangladesh in the near future. Courts in Bangladesh which are burdened with litigants may encourage the ADR system, so that the disputes may be easily settled and can be less inexpensive.

⁶ Akhtaruzzaman, Md. (2011). Concept and Laws on Alternative Dispute Resolution and Legal Aid. Shabdakoli Printers, 4th ed. 09.

DEVELOPMENT OF THE CONCEPT OF ADR IN BANGLADESH

The courts of Bangladesh are overburdened with cases. That is why; the concept of ADR has already been introduced in civil cases. However, in criminal cases the concept has no implication. The legal and judicial system of Bangladesh is adversarial in nature. The founding father of the ADR in Bangladesh legal system is Justice Mr. Mustafa Kamal. His contribution along with Justice Mr. K. M. Hasan (then the senior most judge of the High Court Division, later the Chief justice of Bangladesh), Justice Mr. Anwar-UL-Haque (then Joint Secretary, Ministry of Law justice and Parliamentary Affairs, later elevated as a justice of High Court Division), Prof. Dr. M. Shah Alam (then a member of the law commission) and Barrister Shafique Ahmed (then President of the Supreme Court Bar Association), helped us to construct a broad area in order to resolve civil cases under the idea of alternative dispute resolution.⁷

The above mentioned personals have formed Bangladesh Legal Study Group and their findings have provided a recommendation that a Pilot project on mediation, a non mandatory consensual dispute resolution system in the family Courts in Dhaka, would provide a help to resolve civil cases swiftly and cheaply.⁸ The ultimate reason to include ADR in the Family Court was that it did not involve any new legislation as *The Family Courts Ordinance, 1985* itself provides for conciliation. This Ordinance deals with the divorce, restitution of conjugal rights, dower, maintenance and custody of children. The Ordinance empowers the trial judge to effect reconciliation between the parties both before and after trial.⁹ After the implement of Pilot project, the total realization of the money through execution of decrees in family suits is far below than the total realization of money in

⁷ Ibid 32.

⁸ Gulfam, Mahua. (2014). 'Introducing Alternative Dispute Resolution in Criminal Justice System: Bangladesh Perspective' 13. *Banglavision* 208

⁹ Hasan, K.M. (former chief justice of Bangladesh). "A report on Mediation in the Family Courts: Bangladesh experience" (paper presented in the 25th Anniversary Conference of the Family Court of Australia, Sydney, 26-29, July 2001.)

disputes settled through mediation.¹⁰ The success of ADR has changed the legal concept about the mechanism and introduced a new path to resolve disputes. Thus, keeping the idea of the success of ADR, the Government of Bangladesh has promulgated the following acts for the effective application of ADR procedure for dispensing the disputes outside the court:

- (a) *The Arbitration Act 2001* (Act no I of 2001)
- (b) Insertion section 89A, 89B and 89C in the CPC as the mechanism of ADR to dispose the pending civil cases which have laying without any decision for a long period of time.
- (c) *Arthorin Adalat Ain, 2003*
- (d) *Bangladesh Labour Law, 2006*
- (e) *Family Court Ordinance, 1985*
- (f) Act for Dispute Resolution of the municipal area.

The above arguments and information provide a clear picture that ADR is not a new legal device in Bangladesh. It already exists in many Civil Statutes and it has been resolving disputes successfully. ADR has proven that society needs the new legal devices to solve its legal problems and uprising issues. As law itself is a social mechanism, thus, to fulfill the new needs in the society, as well as in the legal system, new socio-legal devices are needed. ADR is the most practical socio-legal device that has already proven itself in civil justice system. Just like civil courts, criminal courts in Bangladesh are also overburdened and expensive to maintain. Thus the concept and idea of ADR can also be introduced in criminal justice system. However, the devices like ADR cannot always function in criminal trials as criminal trials have a lot of issues which can only be solved in a judicial and legal procedure. Thus, the question arises on various issues such as how ADR can be used in criminal cases? Whether we need any separate law to incorporate ADR into the criminal justice system? Whether we are prepared enough to introduce such new laws? The following part of the essay shall deal with the questions and will provide answers with references of socio-legal circumstances.

¹⁰ Ibid

HOW ADR CAN BE USED IN CRIMINAL JUSTICE SYSTEM/ TYPES OF ADR IN CRIMINAL CASES

There are two types of ADR in criminal cases, in another word; we can say that there are two ways to use the concept of ADR in criminal cases. They are:

Compounding of Offence.

Plea Bargaining.¹¹

Compounding of Offence

Generally, alternative dispute resolution is nothing but an alternative way to resolve disputes, which otherwise, shall be a subject of court procedure. Thus, ADR provides a wide range of resolution mechanism which is in time become a necessity for the society as well as for the legal system. It has already been submitted in the article that ADR has already in existence when it comes to civil cases, where in criminal cases ADR is not expressly recognized. However, compounding of minor criminal offences is permitted under the *Code of Criminal Procedure 1898* (CrPC), which enacts provision for compromising between the adversary parties to a little extent. Again the provisions of the *Gram Adalat Ain, 2006*¹² and *Birodh Mimangsha (Paura Elaka) Board Ain, 2004*¹³ deals to dispose of some petty criminal offences by compromise.

The provision of section 345 of the *Code of Criminal Procedure* provides a table which follows the offences punishable under the section of the *Penal Code* that can be compounded by the persons mentioned. Mahua Gulfam, the writer of the “Introducing Alternative Dispute Resolution (ADR) in Criminal Justice System: Bangladesh Perspective” have submitted that ‘Compounding means compromise or amicable settlement. Generally, a criminal act in which a person agrees not to report the occurrence of a crime or not to prosecute a criminal offender in exchange for money or other

¹¹ Halim, Md. Abdul. (2011). ADR in Bangladesh : Issues and Challenges (CCB Foundation, 2nd edition) 194.

¹² Akhtaruzzaman, Md. (2011) Concept and Laws on Alternative Dispute Resolution and Legal Aid (Shabdakoli Printers, 4th ed) 173.

¹³ Ibid 203

consideration is called compounding offences.¹⁴ Thus, compounding offences are acts which can be compounded expressly with the permission of the Court or without the permission of the Court. Two different types of compounding are suggested in CrPC under two different lists. The first list in section 345(1) of CrPC provides the list of offences which can be compoundable without the permission of the Court. The first one suggests offences like uttering words with deliberate intent to wound the religious feelings of any person, causing hurt on provocation, wrongful detainment or confinement, and forced labour etc. as compoundable with the intent of the aggrieved person.¹⁵ Most of the offences included in the first list are minor offences punishable with maximum one year imprisonment or fine. The second list in section 345 (2) of the CrPC provides the list of offences which are not compoundable without the permission of the Court. The second set of compoundable offences includes more grievous offences like rioting with deadly weapon, voluntarily causing grievous hurt, act endangering the personal safety of others, and assault or criminal force to women with intent to outrage her modesty.¹⁶ Punishment for these offences varies from two to seven years along with fine. These offences are also compoundable by the aggrieved person but only with the permission of a court.

Our existing legislation thus has already accepted one form of ADR. Moreover, the Supreme Court also encourages compromise in criminal cases in the case of *Md. Joynal and others v. Rustam Ali and others*.¹⁷ Promoting the idea of compounding in criminal cases is actually providing us the concept that the offences shall not emerge in the court as a crime, but still, the offences has all its effects as a crime in the society. Compounding offences also provide certain advantages to the accused. For example, if the Judge permits any case to be compromised, under section 345 clause 6 of the

¹⁴Gulfam, above n 8

¹⁵ Chowdhury, Dr Jamila A. (9 March 2013) ‘ Introduction of ADR in criminal cases’, The Daily Star (Bangladesh) 7 <<http://archive.thedailystar.net/beta2/news/introduction-of-adr-in-criminal-cases/>>

¹⁶ Ibid

¹⁷ *Md. Joynal and others v. Rustam Ali and others* (1984) 36 DLR(AD) 240

CrPC, the judge has no alternative but to acquit the accused and set aside the conviction and sentence.¹⁸ However, the question may arise that when compounding is possible? At any stage of Criminal Proceeding the parties may take the initiative to submit a deed of compromise and even in appellate stage it can be submitted before the Court. However, compromise deed must be filed before the pronouncement of judgment. The Pakistan Supreme Court permits the submission of the deed of compromise after serving the conviction and acquit the accused in appellate stage.¹⁹ But when the lower Court record is called for under section 435 of the *Code of Criminal Procedure*, Magistrate cannot permit the parties to submit compromise deed. Thus, for compounding offences as an instrument of ADR, we have proper legal structure to impose the device in order to function it practically.

Plea Bargaining

There is also another type of ADR mechanism suggested for criminal cases. The name of the mechanism is plea bargaining which is widely practiced in many developed countries like USA, UK and Australia. Barrister Md. Abdul Halim in his newspaper article named “Prospects of introducing plea bargaining in Bangladesh” have defined ‘Plea Bargaining’ as a ‘pre-trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution.’²⁰ Thus, plea bargaining also provides a lenient view of the criminals, who admit their guilt and repent, while awarding punishment to them. Generally, ‘Plea Bargaining’ can be of two types including charge bargain and sentence bargain. Charge bargain generally gives the accused an opportunity to negotiate with the prosecution and to reduce the number of charges that may have been framed against him. Whereas, a

¹⁸ Sahar Ali vs. Samed Ali (1954) 6 DLR 28

¹⁹ PLD (1980) SC161, as cited in Gulfam Mahua, (2014). ‘Introducing Alternative Dispute Resolution in Criminal Justice System: Bangladesh Perspective’ 13, *Banglavisision* 208

²⁰ Halim, Barrister Md. Abdul. (3 December 2010) ‘Prospects of introducing plea bargaining in Bangladesh’, *The Daily Sun* (Bangladesh), <http://www.daily-sun.com/details_yes_03-12-2010_Prospects-of-introducing-plea-bargaining-in-Bangladesh_56_3_5_1_0.html>

sentence bargain gives the information to the accused in advance what will be his sentence if he pleads guilty. Thus, a sentence bargain allow the prosecutor to obtain a conviction in a serious charge, while assuring that the accused will not be convicted with the maximum penalty allowed by law.²¹ Thus, in a simple sentence we may say that a plea bargaining is the process of negotiation where an offender admits his/her offence and negotiates for lower criminal charges.

ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

Criminal trials in the Courts of Bangladesh takes considerable time and in many cases the accused have to remit in the judicial custody as the trials do not commence in due time. The question may arise that why we need the mechanism like ADR in the legal system of Bangladesh. In Bangladesh, courts are overburdened with pending cases, the trial life span is inordinately long and the expenditure is very high. The abnormal delays in disposal of criminal trials and appeals have become a great concern from the view point of administering criminal justice. In a statistics of 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 trial magistrates).²² This huge number of pending cases is a matter of great concern not only for the state but also for prisoners and victims.²³ So, the first and foremost point is that introducing plea bargaining as a medium of ADR is likely to reduce this horrendous number of pending cases.

The second point may be concentrated around the argument about torture in remand and police custody as both of them are still ongoing phenomenon in Bangladesh. For many years, torture has been the most widespread and

²¹ Ibid

²² Ibid

²³ Ibid

persistent human rights violation in Bangladesh.²⁴ However, the fact of torture in police custody has been routinely ignored by successive governments. Successive governments in Bangladesh have always failed to prevent torture in judicial custody, despite the fact that we have provisions in the *Constitution of Bangladesh* to protect the people in the country against torture. Along with the constitutional provision for fundamental human rights which specifically forbids torture, the *Penal Code* also recognizes torture as a criminal act and provides punishment for the offence. The most commonly used provision is section 54 of the *Code of Criminal Procedure*, which enables the police to arrest anyone without a warrant of arrest and keep them in detention. Lack of independent investigation bodies, misuse of the provisions of *Special Powers Act* and section 54 of the *Code of Criminal Procedure*, and lack of proper police training are the reasons of torture in remand and judicial custody.

However, the High Court provided mandatory guidelines to prevent torture in custody and remand on a writ petition in public interest, which was filed before the court in November 1998 by three Bangladeshi human rights organizations and five concerned individuals.²⁵ The judgment restricts arbitrary use of administrative detention law including the *Special Powers Act*; makes mandatory for the police to inform the family members of anyone arrested; provides rule which elaborates that the accused shall be interrogated by an investigation officer in prison instead of police interrogation cell; and empowers the courts to take action against the investigating officer on any complaint of torture if it is confirmed by medical examination.²⁶ The Government has preferred an appeal (Civil Appeal No. 53/2004), which is now pending before the Appellate Division. However, no stay was granted and the Guidelines

²⁴ Amnesty International's Report on Bangladesh, Death in custody, torture, arbitrary arrest and other human right violations routinely ignored by government (2003) <<http://archive.thedailystar.net/law/200306/02/index.htm>>

²⁵ BLAST and others vs. Bangladesh and others (2003) 55 DLR 363

²⁶ Ibid

are still in force.²⁷ Though the High Court Division has provided guidelines, the practical scenario of the torture in remand and custody has not been changed. Thus, the alternative dispute resolution system may help to change the practical picture of remand and police custody and it may also make the criminal procedural system much faster and easier. As the ADR system provides the provisions for compounding of offences and plea bargaining, an accused may avoid the remand or judicial custody by admitting the guilt or through mediation (compounding of offence). At the same time, the procedure will take short time to determine the offence and the punishment and the accused may also avoid the capital punishment for the crime. Thus, the ADR system provides advantages for both the accused and the prosecutor, as well as also for the victim. Again, the prisons in Bangladesh are not usually capable of holding too much prisoners. The total number of prisoners in 67 prisons in Bangladesh stood at about 87,011 against a capacity of 27,451,²⁸ and thus, the languishing in jail of an accused for an indefinite period will come to an end by practicing ADR in criminal justice system in Bangladesh.

The rate of conviction in Bangladesh is very low.²⁹ Faulty, weak and manipulated police investigation; political and transitory nature of public prosecutors work; and a large scale corruption practiced in the courts are the reasons for this low rate of conviction.³⁰ As the traditional legal system cannot provide easy and speedy substantive justice due to these reasons, introducing ADR system in criminal cases of Bangladesh is the only way that can provide a strong ground to ensure justice. There is another way to get a speedy disposal of criminal trial. The way includes increasing resources, both in the form of finance and manpower, which is very difficult for a country like Bangladesh. Considerable resources of the state can be saved by introducing and

²⁷ Bangladesh Legal Aid and Service Trust, BLAST and others vs. Bangladesh and others [‘Section 54 Guidelines Case’, or ‘Rubel Killing Case’ or ‘Guidelines on Arrest and Remand Case’] <<http://www.blast.org.bd/issues/justice/214>>

²⁸ Chowdhury, above n 15

²⁹ Halim, above n 20

³⁰ Ibid

implementing effective alternative dispute resolution in criminal justice system. It also provides alternative way for the court to avoid dealing with cases that can be compounded or mediated outside courtroom, and enables the court to try only those matters where there is a real basis for dispute.

The alternative dispute resolution provides advantages for the accused and prisoners, prosecutors, and as well as for the victims. Plea bargaining is one of the most important type of ADR mechanism which is suggested for criminal justice system. The principal benefit of plea bargaining for the accused is that they can receive a lighter sentence because of admitting their guilt.³¹ Again, defendant can also save a huge amount of money through alternative dispute resolution, which otherwise they might spend on advocates. Barrister Md. Abdul Halim in his newspaper article named “Prospects of introducing plea bargaining in Bangladesh”, have pointed out the advantages of ADR mechanism by arguing that ‘the defense is saved from the anxiety with regard to the 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’.³² In addition, if an accused is deprived of the privilege of bail and spends a long period in jail custody, he may be persuaded to enter a guilty plea in exchange for his release from jail custody.³³ However, such initiative can be taken by the prosecutor or the judge if the accused is undefended.

The alternative dispute resolution in criminal justice system also provides benefits for the prosecutors and victims. The ADR mechanism relieves the prosecutor from the long process of legal technicalities, long arguments and proof. By using alternative dispute resolution in criminal justice system, both the prosecution and judges can save time and avoid the uncertainty of the result of a contested trial in disposing of criminal cases.³⁴ It is also distressing experience for the victim depending on the nature of the case, to spare time in

³¹ Humann, Milton. (1981). Plea Bargaining: The Experiences of Prosecutors, Judges and Defense Attorneys. The University of Chicago Press, 1st edition, 47.

³² Halim, above n 20

³³ Ibid

³⁴ Ibid

producing evidence in the court to get the sense of justice. Therefore, the ADR mechanism also provides benefit for the victims in the sense that an accused is coming out with a guilty verdict at the end of the day, although with a lesser punishment but in a short period of time.

DISADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

However, we cannot deny certain disadvantages of alternative dispute resolution. Although, ADR system plays role in speedy disposal of dispute, ADR has certain limitations, including the arguments such as, ADR is not a system of precedent, it has lack of legal expertise, sometimes ADR settlements may not be ultimately deterrent for ensuring justice and finally court action may still be required.³⁵ As a type of ADR, plea bargaining has also some disadvantages towards the legal procedure and criminal justice system which can be raised as a great phenomenon in Bangladesh. For instance, when a defendant agrees to plea bargain, he also at the same time waives his some of constitutional rights.³⁶

These rights include the right not to incriminate oneself, the right to a jury trial, and the right to confront one's accuser.³⁷ When a defendant chooses trial, he or she preserves these rights. The greatest disadvantage of plea bargaining is that the prosecution can present the accused with unconscionable pressure to admit the guilt, which eventually creates the chances of it being coerced. The possibility may not be eliminated that in some cases innocent convicts may be forced to plead guilty by the prosecutor or by any means of the Government if we introduce plea bargain without ensuring proper transparency of our judicial system.³⁸ Thus, the practice of plea bargaining in Bangladesh Criminal Justice System should not be introduced without ensuring the proper practice of the rule of law.

³⁵ Gulfam , above n 8, 214.

³⁶ Maynard, D.W. (1984). Inside Plea Bargaining: The Language of Negotiation (Plenum Press, 1st edition. 87

³⁷ Ibid

³⁸ Chowdhury, above n 15

Generally, plea bargaining works on the assumption that those who are actually innocent of the crime that they are accused of, and therefore are confident of winning in court, will never plead guilty to those allegations. Thus, it is essential to ensure the delivery of justice for the practice of plea bargaining as a mechanism of ADR. If the rule of law exists in society, the practice of plea bargaining can indeed bring positive results by speeding up the trial process and allowing for quicker disposal of the backlogged cases. It is important for us to understand that, if there is absence of rule of law, the practice of plea bargaining may lead to great abuses of power and authority of the state.

RECOMMENDATIONS THAT SHOULD BE FOLLOWED IN CASE OF INTRODUCING ADR IN CRIMINAL JUSTICE SYSTEM

It is important for us to make sure that the practice of ADR in providing quick access to justice should not be used as a vehicle of power in the society. Malinowski and Radcliffe-Brown have suggested in their 'Functionalism Theory' that all the organs (including customs, norms, values, behavior, patterns etc.) of the society need to function properly to maintain the society as a whole.³⁹ If we consider law as a social organ, it can be easily determined that law is the heart of the society which needs to function well to maintain the social and political balance. ADR is the proper device which really needs to be introduced in our Criminal Cases to maintain the justice system. However, to ensure proper practice of ADR, there are some recommendations which show the way how to introduce it in our criminal justice system.

First, we need to introduce the alternative dispute resolution in our criminal justice system through practicing more of our existing laws which already provides us the opportunity to exercise the mechanism (such as compounding of offences). If we intend to introduce ADR in criminal cases apart from our current structure, we have to think about all the

³⁹ Kottak, Conrad Phillip. (2002). Cultural Anthropology. McGraw Hill, 10th edition. 77

cons of that mechanism beforehand. Thus, it is best to use our existing structure first (such as compounding offences in *Criminal Court, Gram Adalat, Birodh Mimangsha Board*), before implementing new/amended law or institution. It is true that our existing structure of ADR has not been practiced highly, thus, we are unable to justify the advantages of ADR. Again, we have to think about all the disadvantages which can emerge in our justice system because of the introduction of the ADR system. We also do not have sufficient institutional framework for implementing ADR in civil cases, thus, before introducing ADR in criminal cases we need to build the proper institutions for ensuring justice.

Secondly, before introducing ADR in criminal cases we need to ensure the independence and transparency of our judiciary proceedings. An immature and whimsical introduction of ADR in criminal cases may reduce case backlog and may increase quick disposal, however, such success may reduce quality of our criminal justice system.⁴⁰ Again, the quality and responsibility of legal counseling should be improved so that everyone can access quality justice under government legal aid schemes.

Thirdly, the opportunity of ADR in criminal cases can be increased by enlarging the scope of Section 345 of the *Code of Criminal Procedure*.⁴¹ A considerable number of cases filed under section 385 of the *Penal Code* are pending in the Courts of Session for years together; however, such cases are suitable for compromising through Court if necessary amendment be made in our procedural laws.⁴² Lastly, establishment of ADR training institute and allocation of fund is another basic requirement for introducing ADR in Criminal Justice. However, all the actions may not provide result if the mass awareness in the society cannot be created. Thus, building awareness through studying, practicing and implementing the proper function of ADR are the basics recommendation that should be followed to ensure justice before introducing it in our criminal justice system.

⁴⁰ Chowdhury, above n 15

⁴¹ Gulfam, above n 8, 214

⁴² Ibid

CONCLUSION

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

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