



## Introducing Alternative Dispute Resolution in Criminal Litigation: An Overview

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**ABSTRACT:-** This article discusses and analyzes the introducing Alternative Dispute Resolution (ADR) in criminal litigation, which refers to the process of dispute resolution, denotes the idea of making the system of delivering justice friendly to the disputed parties and ensuring quick resolution of the cases. For its simplicity the popularity of this system is increasing day by day. The justice seekers of Bangladesh are frequently harassed in the area of courts. In this respect this system can make them harassment free. Most of the statutory laws including the main procedural law for civil matters follow this system. The ADR System, preferably plea bargaining, should be developed more and more in other main Statutes including the Code of Criminal Procedure. ADR can act a viable option for resolving disputes between the victim and the offender. This overview explores theoretical concerns underlying contemporary appeals to ADR in the Criminal Justice System.

**Keywords:-** Alternative Dispute Resolution, Criminal law, Criminal Litigation, Justice, Criminal Procedure, Conflict, Settlement, Plea Bargaining.

### I. INTRODUCTION

Man lives in a society. With a view to lead a harmonious life in society, human being undertakes their social interaction, through the different forms of social process-cooperation, competition and conflict. Conflict creates suits and cases. Unlike the suits and trial cases, Alternative Dispute Resolution (ADR) includes processes that are out of court proceedings. Due to fact that pendency of court cases and suits have gone through roofs, ADR has gained paramount significance in almost every civilized dispensation. It becomes must to recall the famous words of US President Abraham Lincoln emphasizing the deep significance of ADR.

*"Discourage litigation; persuade your neighbors to compromise, whenever you can. Point out to them the nominal winner is often a real loser, in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good person."*

The System for resolving dispute alternatively did not evolve in a day or even in a country rather it has been developed in different times, places, and forms of the need of people. The provisions of Alternative resolution exist at 450B.C. in the Twelve Tables adopted by the Romans. According to the rules of Twelve Tables the judges applied their reasonable discretionary power with respect to the settlement of stipulations arising from the contracts and the partition of lands acquired by inheritance. However, Alternative Dispute Resolution (ADR) is a term which is frequently used in civil suits and proceedings. Like many other countries Bangladesh has also introduced this process in civil litigation system. With regard to criminal litigation the adoption of the process of ADR has been advocated by some researchers. Criminal justice system is a practice of governments directed at upholding social control, deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. There are arguments both for and against with regard to ADR in criminal

Justice system because the criminal justice system emphasizes the role of the state in resolving offences to ensure peace and to protect the life and property of its subjects. State can never compromise. In spite of its objection with regard to ADR in criminal cases, it has been playing a significant role to reduce backlog of case.

*"Our judicial and legal system has a rich tradition of common law culture and it can boast of a long record of good delivery of justice. Like any other legal system, common law with its adversarial or accusatorial*

features, has both its merits and demerits. But in recent years, certain objective and subjective factors have led our judiciary to a situation where its demerits are ruling over the merits, manifesting in crippling backlogs and delays. Delayed justice fails to pay even the winning party of the litigation, for its costs in terms of time, money, energy and human emotions are too high”.<sup>1</sup>

Although no country has a pure accusatorial or a pure inquisitorial system, common law countries use procedures inspired by the accusatorial tradition; and our country belongs to common law legal system, which is adversarial one, where the parties are inclined to contest each other. In general, the accusatorial system seems to be sensitive to the liberty of the citizen and a serious drawback exist in the criminal administration of justice is delay. Usually delays occur in the disposal of cases by the courts. An example of unusual delay is manifested by the fact that, according to rough figure, more than two-third of the jail inmates comprise of under trial prisoner. Such phenomenon erodes people’s trust and confidence in the criminal administration of justice. Here plea bargaining concept can play an important role by reducing delay and backlog in criminal offence.

## II. CONCEPT DEVELOPED AS REGARDS TOADR (ALTERNATIVE DISPUTE RESOLUTION) & PLEA BARGAINING

*Thomas J. Stipanowich states that the name of ADR is an outmoded acronym that survives as a matter of convenience only.*<sup>2</sup> *Professor Jean R. Sternlight has preferred the phrase ADR as “Appropriate Dispute Resolution” rather than “Alternative Dispute Resolution”.*<sup>3</sup> *However, the term ‘alternative’ in ADR needs to be understood as an additional means to access justice, not as a means which may replace the traditional court system.*<sup>4</sup>

Alternative Dispute Resolution is a practice that has been brought with the evolution history to bring real pace to human existence through consensus. People have been searching a real alternative to resolve disputes in social, political and economic area and to make litigation process much cheaper, quicker and more effective.<sup>5</sup> The offender, the victim and the community each has equal responsibility within the process, and solutions are achieved through consensus, currently restorative justice is most often used in juvenile’s cases.<sup>6</sup> Although widely known for its propensity for litigation, the USA has one of the world’s most advanced and successful systems for settlement of disputes outside the formal legal system through mechanisms of mediation and arbitration. More extensive use of this system internationally and by other countries can dramatically enhance the speed and quality of social justice globally. Usage within the USA varies widely.<sup>7</sup> Plea bargaining, a model of ADR, is the process by which a prosecutor and a criminal defendant, in the USA the accused is called defendant, negotiate an agreement, where the defendant pleads guilty to lesser offense or to a particular charge in exchange for some concession by the prosecutor, such as more lenient sentence or a dismissal of other charges. Thus, plea bargaining gradually become a widespread practice and it was estimated that 90% of all criminal convictions in the USA were through guilty pleas. In 1970, the constitutional validity of plea bargaining was upheld in *a famous case*<sup>8</sup> where it was stated that “it was not unconstitutional to extend a benefit to a defendant who in turn extends to a benefit to the state.” One year later, in *another case*<sup>9</sup> the United States formally accepted that plea bargaining was essential for the administration of justice. From that Validity, in the USA plea bargaining becomes a significant part of the criminal justice. The vast majority of criminal cases are settled by plea bargaining rather than by a jury trial. For successful adoption of plea bargaining for first time in USA, this concept is speedily evolving in many countries, and different states and jurisdiction have different rules on this.

Plea bargaining may be defined as an agreement in a criminal case between the prosecution and the defense, by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally let it be known that he will minimize the sentence if the accused pleads guilty. It is an instrument of criminal procedure which reduces enforcement costs for both parties and allows the

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<sup>1</sup>M. Shah Alam, ‘A Possible Way out of Backlog in Our Judiciary’, *The Daily Star*(Dhaka, 16 April 2000) 5

<sup>2</sup>Thomas J. Stipanowich, *ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution*, (Journal of Empirical Legal Studies, Volume 1, Issue 3, P-845)

<sup>3</sup> Jean R. Sternlight, *Is Binding Arbitration a Form of ADR? 2000*(Justice Disposal Resolution 97)

<sup>4</sup>JamilaA. Chowdhury, *ADR Theories and Practices* 1st edition, London College of Legal Studies, South, P-42

<sup>5</sup>Jean R.Sternlight*s, alternative dispute resolution consistent with the rule of law* (UK: Blackstone Press Limited, 2001.)

<sup>6</sup><http://www.abanet.org/genpractice/magazine/2008/apr-may/restoringjuvenilejustice.html>,(Accessed time: 12:28 AM, Date: 12.07.2014)

<sup>7</sup><http://www.cadmusjournal.org/node/98>, (Accessed at 4:50 PM, Date 14.07.2014)

<sup>8</sup>*Brady vs. United States*, (1970)397 US 742

<sup>9</sup>*Santobello vs. New York*, (1971) 404 US 257

prosecutor to concentrate on more meritorious cases. It's generally seen in these days that most of the criminal defendants are offered plea bargain because of the fact that it gives an opportunity to the criminal to reduce his punishment by honestly accepting his own guilty.

### **III. COMPARATIVE STUDY OF PLEA BARGAINING IN DIFFERENT COURTIER**

#### **3.1. Plea Bargaining in India**

The 154<sup>th</sup> report of the Law Commission recommended that plea bargaining should be included as a separate chapter in the Indian Criminal Jurisprudence. In the 12<sup>th</sup> Law Commission Report the conception of idea behind incorporating the idea of plea bargaining was mentioned wherein it was stated that there needs to be some remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the sufferings of under trial prisoners awaiting the commencement of trials. The Indian government formed a committee, headed by the former Chief Justice of the Karnataka and Kerala High Courts, where Justice Malimath came up with some suggestions to tackle the overgrowing number of criminal cases. In its report, the Malimath Committee recommended that a system of plea bargaining be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts. Accordingly, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament. The statement of objects and reasons, inter alia, mentions 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. Though it could not be recognized by the criminal jurisprudence, it is seen as an alternative method to deal with the huge arrears of criminal cases. The bill attracted enormous public debate. Critics say that it should not be recognized as it would go against the public policy under our criminal justice system.<sup>10</sup> Plea Bargaining was introduced in India by the Criminal Law (Amendment) Act, 2005 by the Parliament in the winter session of 2005, which amended the Code of Criminal Procedure and introduced a new chapter XXI A in the code containing sections 265A to 265L which came into effect from July 5, 2006. It was due to the inspiration that has been gained from America which made Indian to experiment the concept of plea bargaining in the country.

#### **3.2. Plea Bargaining in Pakistan**

Plea bargaining as a legal provision was introduced in Pakistan by the National Accountability Ordinance 1999, an anti-corruption law. Special feature of this plea bargain is that the accused applies for it accepting his guilt and offers to return the proceeds of corruption as determined by investigators/prosecutors. After endorsement by the Chairman National Accountability Bureau the request is presented before the court which decides whether it should Plea Bargain as a form be accepted or not. In case the request for plea bargain is accepted by the court, the accused stands convicted. He is disqualified to take part in elections, hold any public office, obtain a loan from any bank and is dismissed from service if he is a government official<sup>11</sup>.

#### **3.3. Plea Bargaining in UK**

Nearly a quarter of all merger and acquisition deals in Britain show signs of irregular share trading activity just before they are announced. It looks as if the UK is suffering from an alarming level of insider activity. This is not victimless crime: it robs shareholders of profits and can cause otherwise sound deals to collapse, destroying value and possibly putting jobs at risk. If London is to retain its reputation as the leading global financial center, the Financial Services Authority must crack down on this illegal activity. This is easier said than done, as all too often it has proved too difficult to catch the culprits and, even when identified, too complicated to obtain a successful prosecution. To combat the problem, the Attorney General is considering importing a mechanism from the US that has proved useful in securing a better conviction rate - plea bargaining. In countries such as England and Wales, Victoria, Australia, 'Plea Bargaining' is allowed only to the extent that the prosecutors and defense can agree that the defendant will plead to some charges and the prosecutor shall drop the remainder<sup>12</sup>.

#### **3.4. Plea Bargaining in Canada**

In Canada, it appears that about 90% of criminal cases are resolved through the acceptance of guilty pleas: many of these pleas are the direct outcome of successful plea negotiations between Crown and defense counsel. Where a plea bargain has been implemented, the Crown and the accused effectively determine the nature of the charge(s) that will be laid. Since the nature and *quantum* of sentences are primarily based on the

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<sup>10</sup>Md. ZakirHossain, *Synopsis Of Criminal Litigation, The Northern University Journal of Law, Volume-IV, 2013, 40*

<sup>11</sup>.<http://www.ADR under Criminal Litigation in Pakistan.com> (Accessed on 27<sup>th</sup> July 2015)

<sup>12</sup>.<http://www.ADR under Criminal Litigation in UK.com> (accessed on 2<sup>nd</sup> July 2015)

charge(s) brought against the accused, it is clear that the parties to a successful plea negotiation enjoy the *de facto* power to exercise a considerable degree of influence over the sentence that is ultimately imposed by the trial judge<sup>13</sup>.

### **3.5. Plea Bargaining in USA**

Plea bargaining in the United States is very common; the vast majority of criminal cases in the United States are settled by plea bargain rather than by a trial. They have also been increasing in frequency—they rose from 84% of federal cases in 1984 to 94% by 2001.<sup>14</sup> Plea bargains are subject to the approval of the court, and different States and jurisdictions have different rules. Game theory has been used to analyze the plea bargaining decision.<sup>15</sup>

The constitutionality of plea bargaining was established by *Brady v. United States* in 1970,<sup>16</sup> although the Supreme Court warned that plea incentives which were sufficiently large or coercive as to over-rule defendants' abilities to act freely, or used in a manner giving rise to a significant number of innocent people pleading guilty, might be prohibited or lead to concerns over constitutionality.<sup>17</sup> *Santobello v. New York* added that when plea bargains are broken, legal remedies exist.<sup>18</sup>

## **IV. CONCEPT DEVELOPED OF PLEA BARGAINING IN BANGLADESH**

There is no direct provision in our criminal jurisprudence on plea bargaining. But there comes a beacon that is becoming enlightened by the ruling of the higher courts on this concept. The Appellate Division, Supreme Court of Bangladesh in a case,<sup>19</sup> considering the nature of section 345 observed that our criminal administration of justice encourages compromise of certain disputes and some of the cases can be compounded as provided under section 345 of the Code. It says that “the law encourages settlement of disputes either by Panchayet or by Arbitration or by way of compromise or others. That is to say, the word “others” refers to some possible alternatives so that justice can be more efficiently served to its seeker. However it is good to say that provides 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 and no offence shall be compounded except as provided by the Code.”<sup>20</sup>

Further in another case<sup>21</sup> the Appellate Division observed that “our criminal administration of justice encourages compromise of mere certain disputes and some of the particular cases can be compounded as provided by section 345 of the Code. The complainant has filed an affidavit praying for composition of the offences as the parties in the litigation are inter-related. As it can be noticed that the law encourages the composition of the offences and since this matter is pending by way of special leave before this court, we have no hesitation in allowing the composition and as a result this composition shall have the effect of acquittal of the accused.” From the terms “mere certain disputes” in the judgment it is ocular that all are concerned to rethink whether the existing principles and philosophy of our criminal justice system are efficacious anymore.

In the case reported in [4 MLR (HCD) 87] it is also observed that “the common law adversarial system in our criminal administration of justice is not working well with the colossal failure in matters of punishing the real offenders due to technical flaws of the laws which eventually goes to provide premium to the criminals in the proliferation of crimes shaking at the root the social peace and security.”

Since the present criminal justice mechanism suffers with numerous flaws and consequently makes the system vitiated, it is high time to introduce a new method that bring real pace to human existence through consensus. The criminal justice system machinery must also meet the challenges of effective dealing with the emerging forms of crime and behavior of the criminals.

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<sup>13</sup><http://www.ADRunderCriminallitigationinCanada.com>(accessed on 2<sup>nd</sup> July 2015)

<sup>14</sup>Fisher, George, *plea bargaining's triumph: a history of plea bargaining in america* (Stanford University Press, 2003)

<sup>15</sup>Baker S Mezzotint, C, Prosecutorial resources, plea bargaining, and the decision to go to trial. *Journal of Law, Economics, and Organization* 17 (1), 2001, 149–167.

<sup>16</sup>*Supra* note 9

<sup>17</sup>Dervan, Lucian E, *Bargained Justice: Plea Bargaining's Innocence Problem and the Brady Safety-Valve*, *Utah Law Review* (1), 2012, 51–97.

<sup>18</sup>Westin Peter; Westin David, *A Constitutional Law of Remedies for Broken Plea Bargains*, *California Law Review*, 66 (3), (1978), 471–539.

<sup>19</sup>*Md. Joynal and others vs. Mohammed Rustum Ali Miah and others*, 36 DLR (AD) 240, 245: 4 BCR (AD) 29

<sup>20</sup>Section 345 (6), (7) of the Code of Criminal Procedure, 1898 (Act No. XLV of 1898)

<sup>21</sup>*Abdussatter and others vs. The State and other*, 38 DLR (AD) 38, 40

#### 4.1 The Conciliation of Disputes (Municipals Area) Ordinance 2004

The relevant provision of Conciliation of Disputes (Municipals Area) Ordinance 2004 can use as guiding provision for ADR. To dispose the suit easily and quickly of the Municipal area institution of a Dispute conciliation Board is necessary. All the words must be used according to this Paurashova ordinance.

#### 4.2 Board of dispute regulation

Under this Ordinance every municipal area must have a board of dispute resolution which named by its area and dispute resolution board runs the processing in the municipal office.<sup>22</sup>

#### 4.3 Cases decided by the court and Jurisdiction board

Notwithstanding contains in this act. It can decide all the case mentioned in the schedule. The board can try the offence of matter mentioned in schedule-if the offence committed such municipal area whenever for the municipal board is instituted and two parties of the case must live in that municipal area.<sup>23</sup>

#### 4.4 Structure of Board

The board constitute of members such as-Chairman of Municipality, two mediators selected by the both parties. Provided that the selected person among the two members. One must be commissioner of that municipal.<sup>24</sup>

#### 4.5 Remedy passed by the board

This Board cannot give the punishment of imprisonment or fine except give the order for remedy, and under the schedule on the mentioned matters give order for remedy, fine and recovery of property<sup>25</sup>

### V. PROPOSED COMPOUNDABLE OFFENCE AGAINST PENAL LAWS & OTHER LAWS

The Supreme Court of Indian in a case<sup>26</sup> observed that “*Although in civil suits we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals, such mechanism of compromise seems immoral in criminal cases. This is because crimes are against the state and the "State" can never compromise. It must enforce the law.*” In spite of having the above mentioned verdict of Indian Supreme Court, for ensuring the ends of justice the following matter may be proposed for compounding the offence.

It is absolutely established in the criminal justice system that all the offences permitted by section 345 of Code are only be compromised except those,<sup>27</sup> others are non-compoundable. But during study period it was a prevalent feeling that some offences those are non-compoundable cause injustice and harassment to the litigating parties. Some examples may clear this proposal.

Section 143 of the Penal Code, 1860 enumerates the punishment of Unlawful Assembly. It provides whoever a member of an unlawful assembly is, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both. But this section is not compoundable under section 345 of Code of Criminal Procedure whereas In spite of having two years imprisonment or fine or both for the offence of rioting, section 147 is compoundable.<sup>28</sup>

This observation may be enlightened by the Decision of Appellate Division-

“The category of offence compoundable have been enlarged by the Law Reforms Ordinance and at the moment all the offences which are subject matter of criminal case No: 207 of 1973, 400 of 1973 e.g. offence under sections 380/148/448/143 and 379 of the Penal Code are compoundable.”<sup>29</sup>

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<sup>22</sup>Section-3, the Conciliation of Disputes (Municipals Area) Ordinance, 2004.

<sup>23</sup>*Ibid*, Section-4&5

<sup>24</sup>*Ibid*, Section-6

<sup>25</sup>*Ibid*, Section-8

<sup>26</sup>*MurlidharMeghrajLoyat v. State of Maharashtra*,2000 Cr.L.J. 384 (386)

<sup>27</sup>As per Code of Criminal Procedure 1898, compoundable offences without permission of the court are:- Sections 298, 323, 334, 341, 342, 352, 355, 358, 374, 426, 427, 447, 448, 490, 491, 492, 500, 501, 502, 504, 506, and 508 of the Penal Code. Offences compoundable with the permission of the courts:- Sections 147, 148, 324, 335, 336, 337, 338, 343, 344, 346, 347, 348, 354, 356, 357, 379, 380, 381, 403, 406, 407, 408, 411, 414, 417, 418, 419, 420, 421, 422, 423, 424, 428, 429, 430, 451, 482, 483, 486,493, 494,509, and 511 of the Penal Code.

<sup>28</sup> Md. Aktaruzzaman, *concept and law of adr and legal aid*, 5<sup>th</sup>edn,2013, P 236

<sup>29</sup>*MdJoynalAnd Others vs.Rustam Ali Miah And Others*, 36 DLR (AD) 240

In the light of this observation, some offences of the Penal Code 1860 maybe made compoundable and which have been mentioned in the Annexure-I.<sup>30</sup> The schedule of the Code of Criminal Procedure provides that any offence other than penal code is punishable with imprisonment for less than two years and not more than 5 years were made bail-able but non compoundable, and any offence other than penal code is punishable with imprisonment for less than two years or with fine only also made bail-able but non compoundable. If those offences are made compoundable, backlog of criminal cases will be reduced.

Section 138 of Negotiable Instrument Act 1881 is non-compoundable. But practically it is observed that after being dishonor and complaining a case, the prescribed amount complained of is paid by the accused to the complainant during the trail of that case. After being paid, the prosecution may not be eager more to further the case. But the point is that if section 138 becomes compoundable, it might reduce the number of cases in the court. Some other compoundable offences against other have been mentioned in Annexure- II.<sup>31</sup>

In addition to the practice of judicial ADR, different forms of quasi-formal ADR are also practiced in Bangladesh. Unlike Judicial ADR, quasi formal ADR are conducted by local government representatives under a statutory mandate, not by courts or tribunals. Different forms of quasi- formal ADR are being practiced in Bangladesh, Village Courts Act, 2006 is significantly notable. Section 3 (1) of the Village Courts Act, 2006 authorizes the courts to try the criminal cases as incorporated in the 1<sup>st</sup> part of the schedule.<sup>32</sup>

## **VI. INTRODUCING ADR MECHANISM IN CRIMINAL JUSTICE SYSTEM IN THE FORM OF PLEA BARGAINING**

“Plea bargaining is the process by which a prosecutor and a criminal defendant (in the USA the accused is called defendant) negotiate an agreement, where the defendant pleads guilty to a lesser offense or to a particular charge in exchange for some concession by the prosecutor, such as a more lenient sentence or a dismissal of other charges”.<sup>33</sup>

Plea bargaining may be defined as an agreement in a criminal case between the prosecution and the defense by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally let it be known that he will minimize the sentence if the accused pleads guilty. It is an instrument of criminal procedure which reduces enforcement costs for both parties and allows the prosecutor to concentrate on more meritorious cases. It is generally seen in these days that most of the criminal defendants are offered plea bargain because of the fact that it gives an opportunity to the criminal to reduce his/her punishment by honestly accepting his own guilt.<sup>34</sup>

### **6.1 Types of Plea Bargaining**

Three different types of plea bargaining may be practiced in criminal cases:

- (a) Charge bargaining,
- (b) Fact bargaining,
- (c) Sentence bargaining.

Charge Bargaining can be further classified into multiple charge and unique charge. In multiple charges some charges are dropped in return for a plea guilty to one of them. In a unique charge, a serious charge is dropped in exchange for a plea of guilty to a less serious charge. In fact bargaining, a prosecutor agrees not to contest an accused version of the facts or agrees not to reveal aggravating factual circumstances to the court. There is an agreement for a selective presentation of facts in return for a plea of guilty. In cases of sentence

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<sup>30</sup> Md. ZakirHossain, *Synopsis Of Criminal Litigation, The Northern University Journal of Law, Volume-IV, 2013, 43*

<sup>31</sup> *ibid, PP 44-45*

<sup>32</sup> The offences under purview of section 323, 426, 447 of penal code read with section 143 and if the unlawful assembly does not exceed 10 persons. Section 160, 334, 340, 341, 352, 358, 504, 506 (part one), 508, 509 and 510 of the penal code. Section 379, 380 and 381 if the offence is committed by and in connection with cattle and the value of the said cattle is not more than Taka Twenty Five Thousand only. Section 379, 380 and 381 of penal code for the offences other than cattle related and the value of the case does not exceed Taka Twenty Five Thousand only. Section 403, 406, 417 and 420 of penal code when the value of the case does not exceed Taka Twenty Five Thousand only. Section 427 of penal code when the value of the case does not exceed Taka Twenty Five Thousand only. Section 428 and 429 of penal code when the value of the case does not exceed Taka Twenty Five Thousand only. Section 24, 26 and 27 of the Cattle Trespass Act.1871 (Act I of 1871). To make any attempt or to abet such crime as mentioned above.

<sup>33</sup> *Supra Note 30, P 49*

<sup>34</sup> *Ibid*

bargaining, trial judges, ordinarily, opt to impose sentences not more severe than those recommended by prosecutors or else afford accused an opportunity to withdraw their guilty pleas

## **6.2 Proposed Procedure of the Plea Bargaining System**

The system of Plea Bargaining may be introduced in Bangladesh which has been introduced in India in the Code of Criminal Procedure. It would be helpful to discuss the Indian provisions of plea- bargaining. A new chapter, that is Chapter XXIA on plea bargaining, has been introduced in the Criminal Procedure Code. It was introduced through the Criminal Law (Amendment) Act, 2005. The main features of the scheme are as under<sup>35</sup>:

(a) A person accused of an offence may file an application for Plea Bargaining in the court in which such offence is pending for trial.

(b) 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.

(c) 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 offences 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.

(d) 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,

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

## **VII. ADVANTAGES OF PLEA BARGAINING**

### **7.1 Benefit in Relation to the Criminal Justice System on Public Interest**

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 the disposal of criminal trials and appeals have been a matter of great concern from the view point of administering criminal justice. According to available statistics as on 31 December, 2006 a total of 7,69,582 criminal cases were 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 were not trial 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 prisoners which have been accommodating triple the number of its capacity of inmates.

According to available statistics as per July, 2008, the total number of prisoners in 67 prisons in Bangladesh stood at about 87,011 against 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%. In other words, at the end of long awaiting trial if majority offenders get 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. 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.<sup>36</sup>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

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<sup>35</sup> Md. Abdul Halim, *ADR in Bangladesh: Issues and challenges*, 3<sup>rd</sup>edn, CCB Foundation, 2013, P 196

<sup>36</sup> Abdul Halim, *adr in bangladesh: issues and challenges* (Dhaka, CCB Foundation, 2013) P 201

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.

### **7.2 Benefit to the Accused and Prisoner**

For most of the accused 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 that the accused 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 case loads 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.<sup>37</sup>

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 prisoner and suffering imprisonment for a lesser or similar period, the latter would be the rational choice as long periods in jail brought about economic and social ruin.

### **7.3 Benefit to the Prosecutors**

The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by provisional 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.<sup>38</sup>

### **7.4 Benefit to the Victim**

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% 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.<sup>39</sup>

Besides the above mentioned there are common advantages of plea bargaining, those mentioned below:

- (a) In plea bargaining, the state and the court are aided in dealing with caseloads. Also, the process decreases the prosecutors' work load by letting them prepare for more serious cases by leaving effortless and petty charges in order to settle through.
- (b) For the judge, the key benefit of accepting a plea bargain agreement is that he can alleviate the need to schedule and hold the trial on a docket that is already overcrowded. Judges are also aware of overcrowding in jails, so they might be receptive to process out offenders who are unlikely to do much jail time anyway. This means cases will be closed much quicker, which is good for the society as the method de-clogs court systems for more serious cases.
- (c) Plea bargains are a significant factor in restructuring offenders by letting them agree to the blame for their trial and by letting them voluntarily submit before the law—without having expensive and time-consuming trials.
- (d) From the criminal defense's perspective, the most useful benefit of this type of agreement is its ability to remove the uncertainty of a trial. It helps defendants with making sure they will not receive more serious charges for the criminal acts filed against them.
- (e) When it does happen that the prosecution is feeble or that the court wants proper witnesses or evidence, and the outcome is likely acquittal, it is possible that the prosecuting party will still find the accused guilty.

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<sup>37</sup>Kazi Ebadul Haque, Plea Bargaining and Criminal Workload, *Bangladesh Journal of Law, Volume-VII*, 2003

<sup>38</sup>Abdul Halim, *adr in bangladesh: issues and challenges* (Dhaka, CCB Foundation, 2013), P 203

<sup>39</sup>*ibid*



## VIII. JUSTIFICATION OF APPLICATION OF PLEA BARGAINING IN CRIMINAL JUSTICE SYSTEM

Plea bargaining occupies an ambivalent position in the criminal justice system. Most observers of the System subscribe to its practical benefits, but acknowledge that it is an imperfect method for dispensing justice.<sup>40</sup> The academic literature has consisted largely of attempts to provide a theoretical justification for plea-bargaining.<sup>41</sup> In order to identify a loadstar for determining the justness of plea bargaining process or results, one must be able to refer to particular premises or expectations regarding how plea bargaining system should work. These premises change one considers different rationales for plea bargaining. as figure out justification for plea bargaining can be divided into categories, first, some justification assume that plea bargaining process will bring about an appropriate, perhaps even an optimal, result as measured by the traditional purpose of criminal prosecution and punishment.<sup>42</sup> Some proponents of plea bargaining argue that the system reflects the likely result of trial system, but at lower cost<sup>43</sup>

Others suggest that flexible plea bargaining produces results for defendants that are fairer than the results of the trial process because: (1) prosecutors will take equitable factors into account in pleas that simultaneously encompass guilt and sentencing issues; and (2) prosecutors will equalize results among similarly situated defendants and limit the effects of rigid legislation.

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<sup>40</sup> See, e.g., JAMES E. BOND, PLEA BARGAINING AND GUILTY PLEAS § 1.04 (1978) (arguing the importance of plea bargaining to the criminal justice system); MILTONHEUMANN, PLEA BARGAINING: THE EXPERIENCES OF PROSECUTORS, JUDGES, AND DE-FENSE Attorney's 157-62 (1978).(identifying the reasons why plea bargaining is "in-evitable"); WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 21.1, at 898-904 (2ded.1992)(describing and critiquing the plea bargaining system); Albert. AL Schuler, The Prosecutor's Role in Plea Bargaining, 36 U. CHI. L. REV. 50, 51(1968) (noting that most "observers recognize that the guilty-plea system is in need of reform, but he legal profession now seems as united in its defense of plea negotiation as it was united in opposition less than a half-century ago"); Charles P. Bubany & Frank Skillern, Taming the Dragon: An Administrative Law for Prosecutorial Decision Making, 13 AM. CRIM. L. REV. 473, 502 (1976) (calling for administrative guidelines to structure plea negotiations); Theodore S. Green et al., Plea Bar-gaining: Fairness and Inadequacy of Representation, 7 COLUM. HUM. RTS. L. REV. 495, 507-12 (1975-76) (criticizing the quality of defense counsel in many plea bargaining settings); H. Richard U viller, Pleading Guilty: A Critique of Four Models, Law & CONTEMP. PROBS., Winter 1977, at 102 (analyzing various codes governing plea bargaining); Welsh S. White, A Proposal for Reform of the Plea Bargaining Process, 119 U. PA. L. REV. 439, 440 (1971) ("The advisability of attempting to provide sufficient resources to eliminate the need for guilty pleas is doubtful."); Frank V. Ariano & John W. Countryman, Note, The Role of Plea Negotiation in Modern Criminal Law, 46 CM.-KENT L. REV. 116, 122 (1969) (accepting the necessity of plea bargaining, while also noting problems with the practice); John A. Lundquist, Comment, Prosecutorial Discretion-A Re-evaluation of The Prosecutor's Unbridled Discretion and its Potential for Abuse, 21 DEPAUL L. REV. 485, 517-18 (1971) (criticizing prosecutorial discretion as a part of plea bargaining, but conceding its necessity for the operation of the criminal justice system); cf Stephen J. Schulhofer, Criminal Justice Discretion as a Regulatory System, 17 J. LEGAL STUD. 43, 80-81 (1988) (describing market failures and other flaws inherent in plea-bargaining system).

<sup>41</sup> See, e.g., Thomas W. Church, Jr., In Defense of "Bargain Justice," 13 L. & Soc YREV. 509, 511 (1979) (reviewing empirical evidence and defending the rationality of the plea bargaining system against critics); Frank H. Easterbrook, Criminal Procedure as a Market System, 12 J. LEGAL STUD. 289, 308-09 (1983) (arguing that plea bargaining is desirable as a mechanism for setting the price of crime); Robert E. Scott & William J. Stuntz, Plea Bargaining as Contract, 101 YALE L.J. 1909, 1910-11 (1992) (set-ting forth a contract theory of plea bargaining and urging structural modifications to account for innocent defendants); cf William F. McDonald et al., Prosecutorial Bluff-ing and the Case against Plea-Bargaining, in PLEA-BARGAINING 1, 21-22 (William F. McDonald & James A. Cramer eds., 1980) (defending plea bargaining against the criticism that prosecutors induce unjust bargains through bluffing)

<sup>42</sup> Fred C. Zacharias, Justice in Plea Bargaining, 39 Wm. & Mary L. Rev. 1121 (1998), <http://scholarship.law.wm.edu/wmlr/vol39/iss4/>

<sup>43</sup> Supra note 43 (stating that negotiated dispositions in a properly constructed system will approximate the probable results of trial); cf Robert B. Gordon, Private Settlement as Alternative Adjudication: A Rationale or Negotiation Ethics, 18 U. MICH. J.L. REFORM 503, 504 (1985) (arguing that "a proper goal of negotiation is to produce a pattern of outcomes that reflects the would-be results of the controversies were they formally litigated")

Finally, some commentators suggest that a plea-bargaining system empowers defendants by giving them choices regarding the outcome over which they have no control in the trial process. The second category of justifications rests on notions of efficiency or resource preservation. A few proponents of the system simply accept plea bargaining as inevitable, in the sense that prosecutors and defendants would find a way to bargain even in the absence of an accepted plea bargaining process. Most efficiency-oriented proponents, however, focus on the comparative costs of convictions obtained through pleas and convictions obtained after trial. At the most basic level, some justify plea bargaining simply because it saves prosecutorial and judicial resources. Frank Easterbrook's more sophisticated account argues that the plea-bargaining system releases law enforcement resources in a way that enables prosecutors to maximize deterrence, while at the same time being fair to defendants (i.e., because they benefit from bargains).<sup>44</sup>

A related, "contractarian" theory suggests that the plea-bargaining system is sound, in a utilitarian sense, because it both saves judicial resources and makes all participants better off than they would be if they had taken the risk of losing at trial.

Let us consider what assumptions the just result justifications make about how the system will bring those results about. There are two ways in which plea bargaining might approximate trials. First, adversary bargaining might be expected to produce similar results as adversary trials. Second, prosecutors might refuse to agree to pleas that reflect anything other than likely trial results. On the surface, it seems improbable that the first Scenario can hold true. As a process, plea bargaining lacks many of the building blocks of adversarial theory, including the presence of neutral and passive decision makers and rules that govern the evidentiary and arbitration process." For a convergence to be plausible, several premises need to be satisfied. The bargainers, like trial lawyers, must be active and aggressive on behalf of their clients. They must have roughly equal access to resources and information. They must also respond to one another in a fashion that in some way makes up for the absence of a judge and jury. Perhaps most importantly, their goals-the desired outcome-must be the same as at trial. For the most part, that goal is to gain an advantage in the determination of legal, rather than factual guilt.<sup>45</sup>

Alternatively, one might replace the notion that adversarial bargaining works like adversarial trial advocacy with a notion that some independent feature of the bargaining system most likely, the actions of prosecutors-assures that results will be similar. For this to hold true, one must believe that prosecutors can accurately estimate the likelihood of conviction and will gear plea offers exclusively to that factor. One could interpret the trial approximation model in a more systemic way. Rather than viewing individual plea bargains as a "snapshot" of what would occur at trial, one could conceive the corpus of plea bargains as producing a body of results that parallels trial results.<sup>46</sup>

From the view point of another, it is often argued that if plea bargaining is introduced; incidence of crime might increase due to criminals being let-off easily. However experience suggests that this is not factual 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. It is also argued that if plea bargaining is introduced, criminals may escape with impunity and escape due punishment. This is also not factual because the plea bargaining scheme provides for concessional treatment and not for any punishment and the stigma of conviction would persist always.

There are some other concerns with plea bargaining which are as follows: (a) Involving the police in plea bargaining process would invite coercion

(b) By involving the court in plea bargaining process, the court's impartiality is impugned

(c) Involving the victim in plea bargaining process would invite corruption

(d) If application of the accused pleading guilty is rejected then the accused would face great hardship to prove he innocent

Therefore to ensure fair justice, plea bargaining must encompass the following minimum requirement: (a) the hearing must take place in court, (b) The court must satisfy itself that the accused is 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;(c) Any court order rejecting a plea bargaining application must be kept confidential to prevent prejudice to the accused.<sup>47</sup>

## **IX. DISADVANTAGE OF PLEA BARGAINING**

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<sup>44</sup>Fred C. Zacharias, Justice in Plea Bargaining, 39 Wm. & Mary L. Rev.1121(1998),<http://scholarship.law.wm.edu/wmlr/v0139/iss4/>

<sup>45</sup>*ibid*

<sup>46</sup>*Supra note 43*

<sup>47</sup>Abdul Halim, *adr in bangladesh: issues and challenges* (Dhaka, CCB Foundation, 2013), P 204

The bargaining part of the story is that sometimes the prosecutor forces the accused to admit his guilt with unconscionable pressures. Even the accused may go escape with less punishment by pleading his guilt and thereby diverting a little favorable decision in his favor.

There are some other important limitations; those have been given below:

(a) Plea bargaining programs do not set precedent, define legal norms, or establish board community or national standards, nor do they promote a consistent application of legal rules.

(b) Plea bargaining programs cannot correct systemic in justice, instead of that sometimes it discriminates & violates of human rights.

(c) Plea bargaining programs do not work well in the context of extreme power imbalance between parties.

(d) Plea bargaining settlements do not have any educational, punitive, or deterrent effect on the population.

(e) It is inappropriate to use Plea bargaining to resolve multi-party cases in which some of the parties or stakeholders do not participate.

(f) Non consistent with rule of law.

Besides the above mentioned there are some common disadvantages of plea bargaining, those mentioned below:

(h) Some judges and attorneys argue that plea bargaining has led to attorneys not taking the time to properly prepare their cases and poor police investigations. They believe that, rather than pursuing justice, the parties would rely on making a deal, where the details of what happened and their legal consequences will become less important.

(i) Plea bargaining might allow prosecutors to take full advantage of accepting criminal acts in the weakest trials. The more beneficial will be a guilty claim for the prosecution is if the trial ends in acquittal.

(j) Even if you are innocent, but agreed to a guilty plea, you still have to pay a fine or be imprisoned for a crime you did not commit. Not only this, but you will also have a criminal record that cannot be erased.

(k) It is argued that plea bargaining is unconstitutional, as it takes away the defense's constitutional right to a trial by jury. If the defendant is pressured or coerced into such an agreement, then this argument may have a considerable weight. But if the defendant, at all times in the criminal case, retains his right to a trial by jury without pressure to make an agreement, then the court finds that this procedure remains constitutional.

## **X. RECOMMENDATIONS**

A new chapter like Chapter XXA or XXIII A may be incorporated in the Code of Criminal Procedure, 1898 (Act V of 1898) which will exclusively deal with Plea Bargaining in respect of offences relating to Penal Code & other special penal laws like, the Women and Child Repression Act, 2000, the Special Powers Act, 1974 etc.

There are some other important recommendations; those have been given below, which may be necessary to make effective ADR mechanism in criminal litigations.

(a) The offences listed out under section 345 of Criminal Procedure Code and schedule 11 column 6 (Compoundable with the Consent of the court & compoundable without the consent of the court) must be brought under the aforesaid Chapter for Plea Bargaining. There must be provision for fact bargaining, Charge Bargaining and Sentence bargaining.

(b) The "Plea Bargaining" may be applicable in respect of those offences of Penal and other special penal laws for which punishment of imprisonment is up to a period of 7 years. (c) The "Plea Bargaining" may be applicable in respect of all offences where child is accused except the offences for which the highest punishment is life imprisonment or death sentence. On behalf of Child the legal guardian will take part in negotiation.

(d) The application for Plea Bargaining shall be made in the court while the offence is pending for trial. The plea Bargaining is to be initiated after the accused makes an application to the court or Court may *suomotu* make an offer for plea Bargaining and may fix a certain period for Plea Bargaining.

(e) The Court shall play the dominant role in Plea Bargaining. The court may hold a preliminary examination in camera to be sure as to whether the accused filed the application voluntarily. If it is found the Plea Bargaining involuntary the court may reject the petition for Plea Bargaining. And if the Plea Bargaining is rejected the proceedings can't be used as evidence.

(f) There may be provision that the accused may be released on probation and to the effect Probation of Offenders Ordinance, 1960 (Ordinance No. XIV of 1960) may be amended.

(g) If a minimum sentence is provided for the offence committed, the accused may be sentenced to half of such punishment.

(h) The accused may also, avail of the benefit of section 35A of the Code of Criminal Procedure, 1898 for setting off the period of detention undergone by the accused against the sentence of imprisonment on the basis of Plea-Bargained settlement.

(i) The court must deliver the judgment in open court according to the terms of the mutually agreed disposition

and the formula prescribed for sentencing including victim compensation.

(j) The judgment delivered in Plea Bargain cases is final and no appeal or revision lies against such judgment.

(k) Plea Bargaining may be applicable in respect of anti-corruption cases. In this respect the accused may apply to the Anticorruption Commission accepting his guilt and offers to return the proceeds of corruption as determined by commissions. After endorsement by the commission the request shall be presented before the court of Special Judge which will decide whether it should be accepted or not. It will be the absolute domain of the court whether it would accept the Plea Bargain or not. In the case the request for plea bargain is accepted by the court, the accused stands convicted but is neither sentenced if in trial nor undergoes any sentence previously pronounced by a lower court if in appeal. He is disqualified to take part in elections, hold any public office, obtain a loan from any bank and is dismissed from service if he is a government official.

(l) Plea Bargaining may be made at any stage of the case,

(m) Plea bargaining should not be applicable in respect of habitual offenders,

(n) Consequential amendment has to be made in different legislations relating to offence where there is scope for plea bargaining.

(o) The government can take help of NGOs and monitor them to implement plea bargaining in local area. When the number of the local disputes becomes decreasing, the backlog of the cases automatically will reduce. Main thing is that to change the situation the government should take those which will be the way of getting easy, cheap and quick remedy.

(p) We have to ensure implementation and awareness about plea bargaining among the people and pleader from the root level to upper level. The institution of the village court 1976 has contributed to the maintenance of law and order in the rural communities. But the implementation of the village court has become decreased for lacking of proper monitoring. We can apply plea bargaining system as local initiative to solve the local dispute

(q) To make plea bargaining more effective, extensive, and pro-active, coordination is needed among different agencies. Other initiatives are creating awareness about plea bargaining, spreading the success story of plea bargaining, encouraging NGOs to become involved in plea bargaining, involving the Bar Associations in plea bargaining, providing training for mediators, involvement of local government, by imposing proper guiding provision about plea bargaining, joint efforts of Government and NGO, train more lawyers on mediation technique for greater, seminars, workshops, discussion groups at national, divisional, and local levels, organized to reach different types of people, develop consciousness on alternative dispute resolution, encourage local initiatives, develop involvement of local people in the local dispute resolution, provide technical information on local dispute resolution, empower people through participatory discussion.

(r) A national center for plea bargaining may be established at the initiative of the government of Bangladesh to Propagate, promote and popularize plea bargaining

(s) Develop infrastructure for education, research and training in the field of plea bargaining; (t) Impart training in plea bargaining and related matters and to arrange for fellowships, scholarship, stipends and prizes.

## **XI. CONCLUSION**

ADR method in criminal litigation can serve as practical vehicles for promoting rule of law and other upgrading objectives. Properly studied ADR programs, undertaken in appropriate conditions, can support court reform, improve access to justice, increase disputant satisfaction with outcomes, reduce delay, and reduce the cost of resolving disputes. A general concept developed to the people, once a criminal litigation started will never be ended, because the adjudication of criminal case in our criminal justice delivery system is a long time and cost consuming, for which the litigant parties are facing an alarming situation waiting for justice on the doorsteps of various courts. Only ADR processes have potentiality to reduce significantly the costs and delays associated with traditional court proceedings. This system has already been introduced in Civil Litigation System. ADR can be introduced in Code of Criminal Procedure by enlarging the scope of section 345 and inserting a new section, chapter and empower the Criminal courts to dispose of criminal cases through ADR. Though there exist some criticism, it's still helping the common people in getting the judicial service cheaply. That is why ADR mechanism may be timely medicine for all those who suffer because of the serious delay in disposal. Although ADR system cannot be substituted of judicial system; it can apply as a blessing of modern legal system. To get realize from the present situation we must apply ADR system in wider way, and to decrease the caseload we should enforce ADR system from the root level. Increasing awareness and effective initiatives are the tools of ensuring proper justice through ADR system. When people know and realize the advantages of ADR, then it is possible to ensure the quick and substantial justice. At the end of conclusion we can say effective ADR initiatives can ensure the proper and speedy justice among the majority people of Bangladesh.

**Annexure-I Proposed Compoundable Offence against Penal Laws**

Section of the Penal Code, 1860	Offences
279	Driving or Riding on a public way so rashly or negligently as to endanger human life etc
304A	Causing death by rash or negligent act.
304B	Causing death by rash driving or riding on a public way.
307	If such act cause hurt to any person.
325	Voluntarily causing hurt by dangerous weapons or means.
326	Voluntarily causing grievous hurt by dangerous weapons or means.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.
382	Theft, preparation having benefit made for causing death, or hurt,
384	Extortion.
385	Putting or attempting to put in fear of injury, in order to commit extortion
399	Making preparation to commit dacoity.
402	Being one of five or more persons assembled for the purpose of committing dacoity.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.
436	Mischief by fire or explosive substance with intent to destroy a house, etc.
449	House trespass in order to the commission of an offence punishable with death.
457	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. If the offence is theft.
462A	Negligent conduct of bank officers and employees.
462B	Defrauding banking company.
465	Forgery.
468	Forgery for the purpose of cheating.
510	Appearing in a public place, etc. in a state of intoxication, and causing annoyance to any person.

<b>Offences other than penal laws</b>	
<b>Offences</b>	
<b>Section 138 of the Negotiable Instrument Act 1881</b>	Dishonor of cheque for insufficiency of fund etc
<b>Section 6(5)(b) of the Muslim Family Laws ordinance, 1961</b>	Any man who contracts another marriage without the permission of the Arbitration council
<b>The Forest Act 1927 Offence relating to forest</b>	the transit of forest and duty leviable on timber.
<b>Section 11(c) of The Women and Child Repression Act 2000</b>	Causing simple hurt for dowry.
<b>The Children Act , 1974</b>	Any offence committed by child except murder
<b>The Narcotics Act, 1990</b>	Section 19(b) and(c)-highest punishment is five years lowest six months and clause ga highest punishment is one year lowest six months.
<b>Anti- Corruption case</b>	Offences relating to corruption
<b>The Protection of Conservation of Fish Act, 1950</b>	Offence relating to catching, carrying, transporting, offering, exposing or possession for sale or barter of fishes below the prescribed size and prohibition of using current jail. The offences which are permitted to be tried summarily for any Penal offences under section 260 of Cr.P.C.
<b>The Public Examination ( offences) Act 1980</b>	Publication or distribution of question paper before public examination, helping examinees, obstruction in public examinations.

Annexure- II Proposed Compoundable Offence against Other Laws

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- [41]. Less than a half-century ago"); Charles P. Bubany & Frank Skillern, Taming the Dragon: An Administrative Law for Prosecutorial Decision Making, 13 AM. CRIM. L. REV. 473, 502 (1976) (calling for administrative guidelines to structure plea negotiations); Theodore S. Green et al., Plea Bargaining: Fairness and Inadequacy of Representation, 7 COLUM. HUM. RTS. L. REV. 495,

- 507-12 (1975-76) (criticizing the quality of defense counsel in many plea bargaining settings); H. Richard U viller, *Pleading Guilty: A Critique of Four Models*, *Law & CONTEMP. PROBS.*, Winter 1977, at 102 (analyzing various codes governing plea bargaining); Welsh S. White, *A Proposal for Reform of the Plea Bargaining Process*, 119 *U. PA. L. REV.* 439, 440 (1971) ("The advisability of attempting to provide sufficient resources to eliminate the need for guilty pleas is doubtful."); Frank V. Ariano & John W. Countryman, Note, *The Role of Plea Negotiation in Modern Criminal Law*, 46 *CM.-KENT L. REV.* 116, 122 (1969) (accepting the necessity of plea bargaining, while also noting problems with the practice); John A. Lundquist, Comment, *Prosecutorial Discretion-A Re-evaluation of The Prosecutor's Unbridled Discretion and its Potential for Abuse*, 21 *DEPAUL L. REV.* 485, 517-18 (1971) (criticizing prosecutorial discretion as a part of plea bargaining, but conceding its necessity for the operation of the criminal justice system); cf Stephen J. Schulhofer, *Criminal Justice Discretion as a Regulatory System*, 17 *J. LEGAL STUD.* 43, 80-81 (1988) (describing market failures and other flaws inherent in plea-bargaining system).
- [42]. See, e.g., Thomas W. Church, Jr., *In Defense of "Bargain Justice,"* 13 *L. & Soc YREV.* 509, 511 (1979) (reviewing empirical evidence and defending the rationality of the plea bargaining system against critics); Frank H. Easterbrook, *Criminal Procedure as a Market System*, 12 *J. LEGAL STUD.* 289, 308-09 (1983) (arguing that plea bargaining is desirable as a mechanism for setting the price of crime); Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 *YALE L.J.* 1909, 1910-11 (1992) (setting forth a contract theory of plea bargaining and urging structural modifications to account for innocent defendants); cf William F. McDonald et al., *Prosecutorial Bluffing and the Case against Plea-Bargaining*, in *PLEA-BARGAINING* 1, 21-22 (William F. McDonald & James A. Cramer eds., 1980) (defending plea bargaining against the criticism that prosecutors induce unjust bargains through bluffing)
- [43]. Fred C. Zacharias, *Justice in Plea Bargaining*, 39 *Wm. & Mary L. Rev.* 1121 (1998), <http://scholarship.law.wm.edu/wmlr/vol39/iss4/>
- [44]. *Supra* note 43 (stating that negotiated dispositions in a properly constructed system will approximate the probable results of trial); cf Robert B. Gordon, *Private Settlement as Alternative Adjudication: A Rationale or Negotiation Ethics*, 18 *U. MICH. J.L. REFORM* 503, 504 (1985) (arguing that "a proper goal of negotiation is to produce a pattern of outcomes that reflects the would-be results of the controversies were they formally litigated")
- [45]. Fred C. Zacharias, *Justice in Plea Bargaining*, 39 *Wm. & Mary L. Rev.* 1121 (1998), <http://scholarship.law.wm.edu/wmlr/vol39/iss4/>
- [46]. *ibid*
- [47]. *Supra* note 43
- [48]. Abdul Halim, *adr in bangladesh: issues and challenges* (Dhaka, CCB Foundation, 2013), P 204