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Role of Alternative Dispute Resolution (ADR) in the Criminal Justice System: A Bangladesh Perspective

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Abstract

Access to justice through formal litigation becomes a utopian for the mass people of Bangladesh now a days, especially in the case of criminal administration of justice. People's confidence over the judiciary is decreasing randomly. People who come to get Justice are frequently harassed in courts of Bangladesh. Unduly prolonged investigations and trials is a common scenario in the criminal proceedings. Hence to overcome this, it is inevitable to introduce some viable ways like Alternative Dispute Resolution (ADR) in the criminal justice system of Bangladesh. The present study explores the theoretical concerns underlying contemporary appeals to Alternative Dispute Resolution (ADR)in the criminal justice system of Bangladesh along with critical examination how the right to speedy disposal through fair justice, a constitutionally guaranteed right can be actualized through introduction of ADR. The study argues for a balanced introduction and implementation of some mechanisms of ADR like "plea bargaining" to reinstate the confidence of mass people over the criminal justice system of Bangladesh.

Keywords: Alternative Dispute Resolution, Criminal Justice, Criminal Procedure, Conflict, Plea Bargaining, Restorative Justice.

1. Introduction

Effective access to justice is an elementary condition of establishing rule of law in a society. In the broader sense "access to justice" connotes justice delivered to all, especially the poor, through formal or informal non-adjudicative process (Chowdhury, 2013). Since the inception of humanities, conflicts and complexities leading to dispute are a common feature in human life and urge to resolve the dispute is equally natural. This emanates from natural human instinct of self-preservation and progress (SAILS & Bangladesh Law Commission, 2010).The Constitution of Bangladesh guarantees the right to

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access to justice through the expression of many articles, like equality before law [Article 27 (CONST 1972)], the right to enjoy equal protection of law [Article 31 (CONST 1972)] right to get fair trial and speedy disposal of cases [Article 35(3) (CONST 1972)], all these are guaranteed to every citizen in Bangladesh. These rights are also guaranteed in a couple of international and regional documents. Formal administration of justice in Bangladesh has been complained of tremendous pressure due to massive backlogs of cases causing excessive delay in disposal. Fairness and efficiency of the judicial system are subject to question which indicates the weak state of democracy, rule of law and aptitude enforcing human rights. The situation is vulnerable in our criminal justice system. "Criminal justice system refers to the institutional aspect which conjures up the broad spectrum of a set of legal institutions, which include judiciary, police, prosecutors, defense lawyers, and prison authorities as well as a host of other supporting institutions and functions such as investigation, forensics, surveillance and so on" (Faruque, 2007). "The fundamental purpose of criminal law and criminal justice system is to control crime, punish the offenders, prevent crimes, and protect innocents and to maintain a fair degree of cohesion and stability in society" (Faruque, 2007). "Now a days in our country this notion and objectives of criminal justice system is rarely possible to maintain. Our criminal justice system is often characterized as oppressive, unjust, corrupt and ineffective and ordinary people especially the poor people lack confidence over the justice delivery system now a day" (Farouque, 2007). Overburdened courts, huge backlogs of cases, delay in dispensation of cases, shockingly low rate of conviction, overwhelming cost in conducting a case, lack of proper case management, corruption and many other factors are responsible for this frustration over the criminal justice system of Bangladesh. Delay in disposal leading to enormous backlogs of cases reaches at such a level due to which judiciary is getting paralyzed. Grave dissatisfaction is prevailing in the mind of general people over the criminal justice system. To reinstate the confidence of mass people it is inevitable that some sort of alternatives is adhered to in the formal criminal justice system so as to speed up the trial process and relieve the courts from heavy caseloads. Remarkably not only in Bangladesh, the above problems have become a persistent cause for concern in the administration of justice worldwide. Consequently many developed and developing countries in the world, have already introduced alternative methods in formal and informal mechanisms in settling criminal cases. The use of non-traditional dispute resolution processes, falling within the rubric of Alternative Dispute Resolution (ADR), though relatively new phenomenon, is

now widely accepted in criminal justice contexts in most of the legal systems, worldwide. It is noteworthy to state that Bangladesh is able to achieving success in introducing ADR in outside the court and in-court mechanism, in the civil justice delivery system by enacting various statutes and legal provisions. No such mechanism has yet been inserted in the criminal administration of justice of Bangladesh. In the present study there will be an endeavor to state the necessity of Alternative Dispute resolution (ADR) in the criminal administration in Bangladesh. It will it will focus on introducing of some mechanisms in the legal framework of the criminal justice system of Bangladesh. Moreover there will be specific recommendation on the introduction of "plea bargaining" within the existing legal framework of the Code of Criminal procedure, 1898. Although, some legal provisions do exist in the "Code of Criminal Procedure, 1898" (Act No V of 1898) like Summary trial (§§ 260-265) inserted in Chapter XXII and provisions of compoundable offences (§ 345) which aim at the quick and speedy disposal of some specified offences, specially some minor offences though they are found inadequate. In order to try petty and less serious offences quickly in village areas there is a "Village Court Act, 2006" and "Conciliation of Disputes (Pauro Area) Board Act, 2004". Under the above two Acts the local government authorities are empowered to settle specified minor offences[Part 1 of the schedule of "Village Court Act, 2006" and part 1 of the schedule of the "Conciliation of Disputes (Pauro Area) Board Act,2004"] through the form of shalish. Considering the above issues, the present study will recommend to strengthen the above laws so that these laws can be implemented effectively side by side with the formal administration of justice. Throughout the whole research work the key research question is how can the introduction of ADR in the formal judicial system contribute in reducing backlogs of cases and delay in disposal of cases and lessening traditional costs involved in criminal justice system?

2. Loopholes of Criminal Administration of Justice in Bangladesh: An Overview

Criminal justice system of Bangladesh is largely ritualistic and relics of the colonial structure of the British common law. The Administration of Criminal Justice basically knits some agencies which are police administration for the purpose of investigation, the judiciary as trial management agency and the prison. These distinct agencies operate together both in a society as the major means of maintaining rule of law. There are also numbers of agencies who

assist the above prime agencies when it comes to cases of legislative support and law enforcement. A criminal case may be initiated by filing a petition of complaint before a competent Magistrate or by lodging F.I.R. in the concerned Police Station. Since criminal justice system exists for punishment of crimes, an effective, fair and speedy dispensation of justice is a *sine qua non*.

The criminal justice system of Bangladesh has been suffering from myriads of problems, due to huge backlog of cases, delay in disposal of cases, overwhelming cost of litigation and lack of credibility on the process of investigation, prosecution, lack of proper management capacities and many other subjective and procedural loopholes. The prevalence of these factors making the judiciary inefficient and inaccessible by the vast majority of people in Bangladesh. It may not be wrong to say that justice delivery system has failed to respond quickly the cries of poor litigants. The present study attempts to reflect on the situation of the prevailing criminal justice system at hand in Bangladesh due to which it is almost not viable to ensure the right to getting speedy disposal in criminal proceedings-

2.1 Delay in Disposal in Formal Litigation

The greatest challenge that the criminal judiciary of Bangladesh facing today is delay in dispensation of cases which creates extreme backlogs of cases, which creates tremendous pressure on existing pending cases. Fairness and efficiency of the judicial system is affected by unreasonable delay in disposal of cases and backlogs which impacts on the rule of law and enforcing human rights. Delay takes place at each step, from the trial court to the apex court. "Delay in our judiciary has reached a point where it has become a factor of injustice, a violator of human rights" (Alam 2000). "Where it should take one to two years, for the disposal of a case it is dragged for 10 to 15 years, or even more. By the time judgment is pronounced, the need for the judgment in certain cases is no more required" (Alam, 2000). "Protracted delay in criminal justice system not only constitutes violation of fundamental rights of the accused but also causes frustration among victims" (Faruque, 2007). "Currently there are more than 3 million cases pending in the Supreme Court and lower court of our country" (Sinha, 2006). Causes of delay in criminal proceedings are manifold. The following point focuses some of the reasons which are crucial to delay in dispensation of criminal cases.

2.1.1 Delay due to faulty investigation

Initiation of criminal proceedings largely depends on the investigation by the concerned police administration. So, also the execution of different processes like summons, warrant of arrest, warrant for proclamation and attachment etc. Unreasonable time is spent at various stages of doing these works. "Delay at investigation occurs due to delay in starting investigation and submitting investigation report" (Farouque, 2007). In almost all the cases the investigating officer takes prolonged and unnecessary time even for some years for the submission of police report. Sometimes they are deliberate in doing this which is evident from many cases, sometimes it is due to their huge workload and sometimes it can be said due to political influence and sometimes inefficiency and lack of skill of the investigating officers to hold investigation.

2.1.2 Delay in Serving Petitions

Delay in disposal of *naraji* petition regarding the acceptance and rejection of police report and other petitions like discharge petition etc. is another important reason of delay at the stage of investigation. Sometimes it is seen that the investigating officer being influenced fabricate the investigation report in a way that they do not provide the true scenario of investigation in the report. "In some cases particularly in murder cases if the informant side is found not stronger financially and socially or if found to be marginalized in that case the investigating officer just having a perfuntionary investigation submits report or in other words, charge-sheet wherein the names of the principal or vital offenders are found to have been dropped compelling the informant complainant to file *naraji* application" (Khan, 2006).

2.1.3 Delay Due to Faulty Serving of Summons

Slow process of service of the summons by the court, return of summons by the police station due to problems in corresponding with address, intentionally practicing the slow service of summons by parties concerned, indicates a in efficient state of court administration. It is reported in a widely circulated news paper that problem in serving summons becomes a major obstacle in speedy disposal of many cases in various criminal courts in Chittagong (The Daily Prothom Alo, 2015).

2.1.4 Non Attendance of Witness

The prosecution and the police department do not play active role in producing witnesses which contributes extending the life time of a case. "Witnesses lose their patience and appetency causing despair to appear before the court and depose the truth" (Khan, 2006). "Sometimes it is found the ocular witnesses also become disinterested to prove the case due to change of mind and even forgot the role or part of the act committed by a particular accused due to commencement of trial after a long lapse of time" (Khan, 2006). Due to a long gap after occurrence witnesses are found to be reluctant to appear before the court. Sometimes they turned hostile, out of fear of threat, insecurity harassment, being bribed. Women witnesses feel embarrassed in court premises. "Apart from public witnesses the official witnesses particularly police personnel, doctors and expert witnesses sometimes are found to have been transferred from one station to another or retired and being free from official responsibility automatically and then they become disinterested to appear and depose before the court" (Khan, 2006). Public prosecutors are responsible to present the witnesses before the court duly but most of the time it is found that they have failed in doing so. Even it is seen in some of cases that no witness was produced during last 7-8 years nevertheless the proceedings are continuing one.

2.1.5 Under Stuffing of Judicial Officers

Another important reason behind the sad state of affairs in our country the number of judges is highly disproportionate to the population. "In Bangladesh only 5.5 judges in the lower judiciary are serving per one million people while in India 14 judges are serving per one million people" (Chowdhury, 2013). "In our country approved posts of judicial officers is 1,655 and amongst them 457 are post remaining vacant" (Hossain, 2015). "In Bangladesh against around 100 judges of the Supreme Court about 0.38 million cases and against 1400 District Court Judges 2.7 million cases are to be heard and disposed of" (Sinha, 2016). "In essence the present number of judges in Bangladesh, it is quite disproportionate to such huge number of cases" (Sinha, 2016). So it can be seen clearly that the dearth of judges perpetuates the backlogs of cases as every year as more cases are filed over already pending cases putting the disproportionate number of judges in tremendous workload creating obstacles in the way of expeditious disposal of criminal cases.

2.1.6 Delay due to Corrupt Practice of the Court Stuffs

Without proper assistance and cooperation of the court stuffs (clerks) it is very difficult to run a smooth administration of justice. But unfortunately in our country court stuffs most of the time are found to be dishonest, corrupt and bribed. "Payment of bribes to the court officials, and even opposing lawyers often become a deciding factor in the settlement of cases" (Hossain, 2015). It is found that sometimes they are dishonest and sometimes litigants persuade them to become dishonest in order get any unfair opportunity in the case.

Frequent adjournments of the trial caused due to the insistence of the lawyers and reluctance of the judges to restrain these practices is another major factor behind unreasonable length of the life span of a case. Another important issue behind delay is that, in most of the cases it is found that, during trial innumerable applications are filed before the High Court Division against the order of taking cognizance, framing charge and rejecting other miscellaneous applications upon hearing of which rules are issued in maximum case, staying all further proceedings and lower court records are called for hearing of the rules (Khan, 2006). As a result of which the proceedings are stopped for unlimited period.

Besides the above major causes of delay some other areas are also contributing number of stages of procedures that required compulsorily in a criminal case, poor infrastructures of our criminal courts, lack of digital and technological support where one can find that magistrate is working in his court even without electricity. Neither the "Code of Criminal Procedure, 1898" nor any Act provides any prescribed time limit within which the cases must be disposed so that no urgency is felt by the stakeholders to disposal of the case and as a result the cases drag on for year together.

3. Alternative Dispute Resolution (ADR) in Criminal Justice Context

Many developed and developing countries of the world have gained tremendous success in reducing pending cases by incorporating various methods of ADR. Alternative methods have already been introduced globally in formal and informal mechanisms in settling criminal cases as a prescription to the stereo typed adversarial problems. "ADR is a non-formal settlement of legal and judicial disputes as a means of disposing of cases quickly and

inexpensively" (Kamal, the Daily Star, 2007). It covers an area of approaches with a wide variety of dispute resolution methods, which are informal, speedy, less expensive, less time consuming and more satisfactory in comparing adversarial litigation. ADR mechanisms have the potentials to manage a case without causing unreasonable delay and saving the enormous cost of litigation of the disputants. So, some mechanisms like ADR is necessary to introduce in the criminal justice delivery system of Bangladesh following the example of many developed countries where due to initiation of ADR methods at criminal trial, dispensation of justice becomes smooth as well as victim of crime also heals financially, emotionally and socially.

4. Existing Legal Framework of Alternative Arrangements in the Criminal Administration of Justice in Bangladesh

Although no methods like ADR has yet been inserted in the laws relating to criminal justice system in order to ensure quick disposal of cases following speedy trial however it is noteworthy to mention here that some legal provisions do exist in the Code of Criminal Procedure, 1898 and some other Laws which relatively require some attention in discussing introduction of ADR in the criminal context of Bangladesh. They are:

- Summary trial (Section 260 to section 265) [Chapter XXII of *The Code of Criminal Procedure 1898*. (Act No. V of 1898)].
- Compoundable Offences (Section 345) [Chapter XXIV of *The Code of Criminal Procedure 1898*(Act No. V of 1898)].
- *Village Courts Act, 2006* (Act No. XIX of 2006).
- *Conciliation of Disputes (Pauro Area) Board Act, 2004*(Act No. XII of 2004).

4.1 Summary Trial under the Code of Criminal Procedure, 1898

Through summary trial a case can be tried and disposed of quickly having less formalities in framing of charge and recording of evidence. '*Code of Criminal Procedure, 1898*". It authorizes a Magistrate(usually first class) to try in a summary way all or any of the offences as outlined in section 260-261 of the Code (Haque, 2010). Section 260,of The "Code of Criminal Procedure,1898" sets up a list of some specified, especially some minor offences and so also section 261, which may be tried in a summary way by a Magistrate subject to the

provisions of §§ 263-265 of chapter XXII following the procedure as laid down in Chapter XX (Code of Criminal Procedure, 1898). Any metropolitan Magistrate, Magistrate of the First Class and any Bench of Magistrates invested with the powers of a Magistrate of the first Class can try summarily any offences specified in section 260 of the Code of Criminal procedure, 1898. Since the object of summary trial is the quick disposal of a case involving all or any of the offences as specified in §§ 260-261, unlike regular trial in criminal court a Magistrate court while trying summarily simplifies the trial procedure by dispensing with the recording of evidence. A Magistrate cannot impose a sentence exceeding two years in a summary trial (§ 260). The provisions of summary trial under §§ 260 -261 d been incorporated with the hope that the caseloads of criminal courts can be reduced, at least to a limited extent.

4.2 Compoundable Offences under the Code of Criminal Procedure, 1898

Another provision for early disposal of criminal cases is made in Section 345 of the Code of *Criminal Procedure, 1898* which is known as compoundable offences. Compounding of offences means to make a compromise in order to settle an offence mutually between the alleged victim and the offender/accused usually before entering into the formal court procedure. Compounding of some offences is allowed under the 'Code of Criminal Procedure, 1898', with or without the permission of the court as incorporated in Section 345. It provides scope of compromise for 67 crimes of Penal Code and categorized them in two separate set. Subsection 1 of Section 345 provides a list of offences punishable under the "Penal Code, 1860" and suggests that they can be compounded without the permission of the court. Subsection 2 of section 345 contains a list of offences punishable under the offences where compounding can only be possible and allowed by the concerned court. The second column provides a list of more serious offences like voluntarily causing grievous hurt, assault or criminal force to women with intent to outrage her modesty etc. punishable under the Penal Code where punishment range from two to seven years (Penal Code, 1860). Therefore, the clause to take permission from the court acts as a 'safety clause' against any possibility of forced compounding (Chowdhury, The Daily Star, 2013). Although it is imperative to take prior permission of the court before compounding certain offences [§ 345(2)] but no guideline is provided under what circumstances permission may be given by the court or even refused. The consequence of composition is the acquittal of the accused [§ 345(6)]. Such composition is also allowed with the leave of the court when the

accused has been sent for trial or when he has been convicted and an appeal is pending [§ 345(5)]. Even High Court Division may allow any person to compound any offence under section 345 [§ 345(5)(a)] in the exercise of revision jurisdiction under section 439 and a Court of Session so acting under section 439A.

4.3 Shalish Under the Village Court Act, 2006

Village Court is a significant State-led rural justice forum in the history of our judicial system with its origin in the traditional shalish system. "Village court is just a reformed version of traditional shalish, a government form of shalish" (Halim, 2014). "As the lowest formal court is at the District level, the rural poor have to bear travel and logistics costs that pose additional burden" (Chowdhury, 2013). As a result either most of the disputes are settled through shalish without having any statutory back up or some of them are filed in the formal courts which are already overcrowded with congestion of cases causing unusual delay in dispensation of justice and some of them remain unsettled. The above situation led to the introduction of Village Court system in village areas under the statutory authority, administered by the local government personnel, to resolve at least petty disputes both civil and criminal at the grass root level. Village Court is the only institution backed by an enacted law to administer justice at the Union level which is the lowest administrative unit in Bangladesh (Morshed, 2012). 'Village Court Act, 2006' and 'Concilliation of Disputes(Pauro raeas) Board Act, 2004' respectively was enacted in order to settle petty civil and criminal disputes in the villages under the Union Parishad. As it is stated earlier that the feature of dispute settlement mechanism by the VC is basically *shalish* although the initiative to constitute a Village Court comes from any party aggrieved to the dispute. On the basis of receiving petition form any party in the prescribed manner [§ 4(10 & (2)], the Chairman of the Union Parishad can set in motion to constitute a Village Court though he may reject the application and any party aggrieved against it may prefer a revision in a prescribed manner and within a prescribed time to the court of concerned Assistant judge (Rule 5, 'Village Court Ordinance,1976'). Village Court is body of five person chairman of the UP being the Chairperson, two members are the members of UP, and two are the representatives from both the parties to the dispute (§ 5). Village Court can try all or any offences punishable under the 'Penal Code, 1860' as provided in part I of the schedule of the 'Village Court Act, 2006' when any of such offence worth in money or property must not

exceed 75000 taka. Simultaneously it tries some specified civil matters as mentioned in part II of the schedule of the Act where worth of money, property must not exceed 75000 taka (§ 7). The decision of the V C is final if it is decided with the required quorum though there is a scope of appeal by the aggrieved person against the decision of VC before the court of Magistrate of the First class if it is a criminal matter and before the court of Assistant judge if it covers a civil matter to a very limited extent whereby the decision is taken into 3:2 ratio [§ 8(2].) The significant feature is that in both the cases the jurisdiction of VC is exclusive by which is meant that no other court in Bangladesh in entitled to try any such suit or case (§ 3). When formal judicial system of Bangladesh is overburdened with pending cases, access to justice for the poor, women, and other vulnerable people in rural areas becomes utopian. Being the lowest judicial tier in the judicial hierarchy of Bangladesh Village Court can Play a significant role in establishing justice at grass root level in more than 4400 Union Parishad in Bangladesh (Morshed, 2015). Almost with similar provisions regarding jurisdiction, pecuniary limit, power of imposing fine in both civil and criminal cases as specified in part I and part II of the schedule respectively like Village Court, Conciliation Board is functioning shalish under the statutory mandate in the villages under the Pauroshova areas in Bangladesh (Act XII, 2004).

5. Introduction of ADR in the Criminal Justice System of Bangladesh: A New Horizon

From the above discussion it is clear that resolving of criminal cases by alternative ways, sometimes through compromise under the statutory authority or sometimes through *shalish*/arbitration under the statutory authority is prevailing earlier than that of incorporation of ADR in civil judiciary in our country. Supreme Court of Bangladesh also encourages resolving criminal cases with or without the intervention of the court as the necessity of compromise in the criminal cases becomes significant with the pronouncement of Justice Badrul Haider Chowdhury (Chittagong Chamber of Commerce, 2010). The honorable justice opined in *Md. Joynal and Others VS Md. Rustam Ali and others*, 36 DLR (AD) 240, 244 -

"Our criminal administration of justice encourages the compromise of certain disputes and even certain offence can be compound as provided by section 345 Cr.P.C, *shalish* or compromise had been…a mode of settlement of dispute in

this sub-continent from time immemorial". Considering all this the present study endeavors to provide some substantial recommendations regarding the introduction of ADR in the criminal justice system of Bangladesh and how to make the present system more prompt so that it can help in reducing backlogs of cases.

5.1 Remodeling the Provision of Compoundable Offences under the Code of Criminal Procedure, 1898

It is recommended to reschedule the present provision of section 345 of the 'Code of Criminal Procedure, 1898'of Bangladesh in a way that no compromise in any offence should done without the permission of the concerned court. Allowing people to compound is like giving unrestricted license of compounding offences within the purview of section 345, which might lead to miscarriage of justice, especially on the part of the victim. So it is recommended that, all kind of compounding should be done with the intervention of the judicial authority. Prescribed time limit should be maintained in compounding offences to lessen the workload of magistrates/judges and it should be monitored by the court concerned. Scope of offence compoundable with out the permission of the court should be excluded. Offences under section 298, 354, 493, 494 and 509 of the 'Penal Code, 1860' as the stated offences are related with the injury of religious feelings or hurt on a women modesty etc. Replacing them with more offences under the Penal Code, and other laws can be added in the list of compoundable offence under section 345 of the 'Code of Criminal Procedure, 1898'. For example, cases triable under section 138 of the 'Negotiable Instrument Act, 1881' (Act No. XXVI of 1881) should be included as compoundable offence under section 345. Because usually cases are filed under section 138 of the Negotiable Instrument Act, 1881, by the Bank or other financial institutions. If realization of money is possible through compounding between plaintiff and the offender amicably with the intervention of court, it will lessen the burden of hearing such type of cases by Courts of Session. Cases filed under sections 143, 307, 326, 385, 404, 412, 468, 506 (part-2) [110th Report Bangladesh Law Commission], of the 'Penal Code, 1860' of Bangladesh are pending in our courts causing a huge backlogs of cases. So the above stated offences of the 'Penal Code, 1860' should also be considered to include as compoundable under section 345 of the 'Code of Criminal procedure, 1898'. In this way the provision of compoundable offences enumerated under section 345 can play effective role in providing speedy justice at least to a little extent.

5.2 Incorporating Plea Bargaining in the Criminal Justice System

It is inevitable to introduce some new devise like 'plea bargaining' with new attitude and approaches in our criminal justice system to revolutionize the present state of delay and backlogs of cases. In order to keep pace with restorative justice movement and to get rid of the crucial situation of the criminal justice system it is high time to consider seriously on introducing some new tools like plea bargaining. It is the creation of the judicial system of USA (Brady vs. United States, 1970) and had been introduced in Indian criminal jurisprudence since last couple of years by passing Criminal Law Amendment Act, 2005 along with the support of 'Malimath Committee Report' (Malimath, 2003). "Plea bargaining is ubiquitous as the primary method of criminal case disposition in the United States" (Savitsky, 2012). Ninety percent of criminal cases in USA are resolved through plea bargain (Howe, 2005). While in June 2009 the court noted that guilty pleas now account for over 95% of State and Federal convictions (Mamun, 2013). Plea bargaining, a model of ADR, is a negotiation between the prosecutor and the accused usually at the pre trial stage though it can be held at any stage of the criminal proceedings from the time when the prosecution resolved to file charges against the suspect, throughout the accused's trial and often even during an appeal (Hallevy Gabriel), whereby the accused agrees to plead guilty in exchange for some concessions by the prosecution through a mutually satisfactory disposition of the case. "It is a negotiated agreement between a prosecutor and an accused whereby he/she pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor. A more lenient sentence or a dismissal of the other charges" (Fisher, 2005). Hence it is understood that in a plea bargaining the prosecutor, sometimes along with the victim and the accused or his/her pleader sits together and resolves the case whereby the accused may agree to plead guilty in return for some concession from the other side. Though the system has its own positive and negative aspects it can be assumed that introduction of plea bargaining may be helpful for both the accused and the victim and also an effective tool for reducing workload of the judges and courts. Plea bargaining is introduced in the Criminal Procedure of India through Criminal Law (Amendment) Act 2005 (§§ 265A-265L), we can carve up some idea of Indian system in introducing plea bargaining in our criminal justice system. Therefore it is highly recommended to introduce plea bargaining by inserting a separate chapter in the 'Code of Criminal Procedure, 1898' through amendment and it should be taken as a crucial step to reduce

caseloads in the criminal courts of Bangladesh. Bangladesh Law Commission suggested pursuing the provisions of plea bargaining from the Indian criminal justice system in this regard (110th Report of Bangladesh Law Commission). Plea bargaining negotiations may act a pivotal role in the criminal proceedings. Quick disposal of cases can be expedited, workload of courts can be lessened and anxiety of uncertainty regarding the disposal will be lessened from both the accused and the victim's side.

5.3 Initiation of Reforms in the Whole Criminal Justice System of Bangladesh

The present study reveals that reform of the criminal justice system is another important area which requires attention of the stakeholders and policy makers and government. Establishment of separate specialized investigation agency equipped with scientific facilities like using electronic and audio-visual equipment which might be used at the time of investigation is a pressing need. For this admissibility of electronic and scientific evidence should be incorporated in the 'Evidence Act, 1872'. Courts should also be connected electronically with the investigation agencies so that a co-ordination based on accountability can be maintained. Investigation report should be submitted within dateline. Allocation of fund and other resources in proportion should be increased for the reformation of criminal administration of Bangladesh. Number of magistrates/judges should be increased in keeping pace with the volume of cases and number of population. Courts should be under digital logistic, technical and administrative support otherwise speedy disposal of criminal cases by the judges under tremendous pressure will remain far cry. As we all know that public prosecutors play an important role in legal proceedings, it is recommended that a professional and accountable prosecution service should be established, who would have power to decide whether to charge or not. Pending cases which are ready for hearing may be disposed of by all the Criminal Benches and special incentives might be given to the benches in that regard. In order to ensure quick disposal of pending cases especially which are pending for more than ten years retired honest and expert judges/ magistrates might be recruited on contractual basis only to dispose the cases (Hossain, The Daily Kaler Kontho, 2015). Good court administration involves proper record keeping of case to locate records easily; subject wise classification of cases and also classify the cases on the basis of the stages they have reached; to clear the docket so that it cannot clog the schedules; efficient court staffs equipped with digital facilities (Alam, 2016).

5.4 Strengthening Village Courts under the Village Court Act, 2006

It is also pertinent to mention here that Village Court under the 'Village Court Act, 2006' of Bangladesh, though is State-led institution but is a neglected rural justice forum. So in order to ensure smooth carrying out of judicial activities at the rural level effective implementation of 'Village Court Act, 2006' may be a way forward because if some of the criminal cases falls under part 1 of the schedule of 'Village Court Act, 2006' can be resolved through Village Court which may impact reducing the case jam in the criminal courts. Village Court can be an effective institution for ensuring legal protection at the grass root level in rural area of Bangladesh.

6. Conclusion

Law has emerged as a basic need in the society, and changes with the passage of time in keeping pace to fulfill the purposes of the society; it should be implemented in a way that can ensure proper justice in the context of a particular society. In Bangladesh, there is a common concept developed in people's mind that once a criminal litigation started will never be ended because of enormous expense and uncertain time of disposal. Accused or criminals are getting the opportunity of thinking that State mechanism and judicial system is unable to prevent them from criminal activities which encourages them to do more crimes. On the other hand victims and aggrieved persons are thinking that the judiciary and other organs related to courts are all working in favor of the accused and thus losing their confidence over the judicial system. ADR have the potentials to reduce significantly the costs and delays associated with traditional court proceedings. "Critics often argue that the informal, private nature of ADR is hostile to the rule of law- and ultimately to justice itself" (Sternlight, 2007). It should be remembered that lack of proper access to justice is more hostile to the rule of law. ADR is not and cannot expect to be a panacea and certainly it is not the replacement of formal litigation rather effective and controlled practice of such mechanism may make smooth the functions of judiciary. "Use of ADR processes in the criminal justice system is also often associated with the restorative justice movement, which seeks to shift the emphasis from the ideas of violation of the State and punishment towards reparation and inculcating in the offender a sense of responsibility towards the victim and community" (Lewiss & McCrimmon, 2005). "Restorative justice seeks to address the relational aspects of crime, and create justice by being sensitive to the needs and concerns of victims, offenders and the community" (Haque, 2010).

Notes

[1] Justice Badrul Haider Chowdhury (Chittagong Chamber of Commerce, 2010). The honorable justice opined in Md. Joynal and Others VS Md. Rustam Ali and others, 36 DLR (AD) 240, 244 -

"Our criminal administration of justice encourages the compromise of certain disputes and even certain offence can be compound as provided by section 345 Cr.P.C, Shalish or compromise had been…a mode of settlement of dispute in this sub-continent from time immemorial".

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