Policy Research Journal
ISSN (E): 3006-7030 ISSN (P) : 3006-7022 Volume 3, Issue 9, 2025

ALTERNATIVE DISPUTE RESOLUTION IN PAKISTAN'S CRIMINAL JUSTICE SYSTEM: A COMPARATIVE ANALYSIS

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DOI:https://doi.org/10.5281/zenodo.17222211

Keywords
ADR, Criminal, Punishments, Disputes, High Court, Comparative perspective

Article History
Received: 08 July 2025
Accepted: 18 September 2025
Published: 29 September 2025

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Abstract
The process of resolving conflicts is referred to as Alternative Dispute Resolution (ADR). It relates to devising a method for delivering justice to the disputing parties while guaranteeing that the cases are resolved as quickly as possible. The use of ADR is gaining more and more attention on a daily basis. ADR is a model that the majority of laws, particularly the fundamental procedural legislation for civil disputes, have modelled after. The ADR needs to be expanded upon in several other important statutes, most notably the Code of Criminal Procedure. ADR can potentially be a viable method for resolving conflicts between a victim and an offender. In this work, we investigate the theoretical and comparative concerns that lie behind the increasing calls for ADR in the criminal justice system.

INTRODUCTION

A man lives in a changing society (Elder Jr, 1996). Human beings conduct their social activities to live a harmonious life through various social processes, including cooperation, competition, and conflict, and engage in court cases. Unlike suits and trial cases, ADR requires procedures independent of legal trials. ADR has acquired supreme importance in almost every civilised dispensation because the pendency of court cases and suits has increased significantly. ADR is generally categorised into at least four forms: arbitration, negotiation, conciliation and mediation (Ong, 2013). The ADR approach was developed through time and in many places in response to different types of human needs. It did not emerge overnight or even in a single region(Grenig, 2016). According to the Western Australian Law Reform Commission, ADR has no place in criminal law, especially when significant offences are involved.

ADR is a phrase that is frequently used in civil litigation and court cases. Like many other nations, Pakistan has incorporated this technique into its civil litigation procedures. The criminal justice system is a law enforcement system specifically involved in the arrest, investigation, prosecution, and punishment of accused or convicted individuals.

There are arguments in favour of and objections to the use of ADR within the framework of the criminal justice system. The institutional structure of the criminal justice system places a focus on the state's role in the adjudication of criminal cases, aiming to maintain peace and safeguard the lives and possessions of its citizens. There can be no give-and-take from the state on this issue. Yet, it is essential to note that the majority of offences do not qualify as state crimes because they involve only one or more individuals. ADR can be useful in these kinds of situations. The use of ADR in criminal cases has been met with resistance, although it has significantly sped up the process. It is challenging to ensure equal justice, and ADR can play a crucial role in expediting the resolution of disputes and ensuring people's access to justice. Although the Constitution of Pakistan guarantees justice, there are still many pending disputes; it is difficult to ensure equal justice (Atickus, 2013).

Black's Law Dictionary claims that ADR has long captured the public's imagination in the context of criminal justice. Pakistan has a colonial past, and much remains to be done in terms of legislation and the criminal justice system in the ever-changing world. Due to its criminal justice system, the country's affairs have consistently been marked by high tension and backwardness. Over time, Pakistan started to review the legislation, and the methods of ADR were needed to cope with the massive pending cases and restore the public trust in courts meant to provide justice.

All forms of courts in Pakistan have a litigation burden. These problems have arisen due to the weaknesses of the adversarial system. This study's main objectives are to examine the vital role of the ADR system for the rapid disposal of cases in the Criminal Justice Administration and to recognise the principle of ADR in procedural law for criminal matters. This article will also discuss the advantages and disadvantages of ADR, as well as the progression of ADR's use in Pakistan's criminal justice system.

It will be socio-legal research. The essence of this paper will be suggestive and descriptive. This work will be based on primary and secondary data collected from textbooks, law journals, newsletters, articles, newspapers, and training sessions for ADR in the criminal justice system. The data obtained will be analysed, and then preparations will be made to enhance the study's descriptive, analytical, comparative and beneficial aspects.

Development of the Concept of ADR in Pakistan

Pakistan's courts are overburdened with lawsuits. That is why the principle of ADR has already been implemented in civil cases. However, the term has little use in criminal cases. Pakistan's legal and judicial systems are adversarial in nature.

Throughout the 1970s and 1980s, several litigation mechanisms, such as mediation, conciliation, and arbitration under ADR's umbrella, gained traction as an alternative to conventional litigation. ADR is often termed as a process for resolving disputes among parties outside of formal court adjudication. On the other hand, the field of criminal justice sees criminal behaviour primarily as a struggle between the offender and the state. In Pakistan, the use of ADR methods in criminal cases is a relatively recent development. However, ADR in the criminal justice system has been subject to a number of criticisms, including the following: it is regarded as insufficient in reducing recurrence rates, it demeans victims of crime, and it fails to acknowledge crime as a source of social conflict.

Various Provisions of ADR in Pakistani Laws

Pakistan usually has the following laws with ADR elements:

Sr. No.	Relevant Law	Relevant Provisions
1.	Constitution of the Islamic Republic of Pakistan, 1973	Articles 153 to 155
2.	Code of Civil Procedure, 1908	Section 89-A, Order IX-B and Order X Rule 1-A
3.	Small Claims and Minor Offences Courts Ordinance, 2002	Sections 14 to 16
4.	The Arbitration Act, 1940	Complete
5.	The Family Court Act, 1964	Sections 10 and 12

6.	The Probation of Offenders Ordinance, 1960	Complete
7.	National Accountability Ordinance, 1999	Section 25
8.	Qanun-e-Shahdat Order, 1984	Article 163
9.	Income Tax Ordinance, 2001	Section 134-A
10.	Income Tax Rules, 2002	Rule 231-C
11.	The Sales Tax Act, 1990	Section 47-A
12.	The Sales Tax Rules, 2004	Chapter X
13.	The Customs Act, 1969	Section 195-C
14.	The Customs Rules, 2001	Chapter XVII
15.	The Federal Excise Act, 2005	Section 38
16.	The Federal Excise Rules, 2005	Rule 53

Provisions of ADR in the Criminal Justice System of Pakistan

a) Provisions of Summary Trial

The Code of Criminal Procedure, 1898 (CrPC) allows summary trials of specific offences that are not heinous in nature. Sections 263 and 264 of the CrPC deal with the summary trial procedure in criminal cases. According to these sections, the trial court must only record the substance of the evidence and does not need to conduct a full trial. But as per provisions of CrPC, only those magistrates can exercise these powers that are empowered through a notification duly issued. The summary trial refers to the expedited disposal of criminal cases, which does not follow the complete procedure required for any criminal case.

b) Non-Appearance of Complainant

A criminal case may be initiated in two ways: Firstly, by informing the police about the commission of an offence, and the police shall, on such intimation, begin the investigation and also record a First Information Report (FIR); secondly, by filing a complaint before a magistrate and informing him about the commission of an offence. According to Section 247 of the CrPC, if the complainant fails to appear before the magistrate after filing the complaint, the court may dismiss the complaint and acquit the accused. But the complaint must be about a non-cognisable offence, and the offence must be compoundable in nature. The reason behind such a provision is that the cases should not be prolonged because of the non-interest of the complainant, and cases should be disposed of expeditiously.

c) Withdrawal of Complaint

Section 248 of the CrPC provides an opportunity for the litigants of a criminal case to withdraw the complaint by applying to the court. The complainant of the case shall file such an application on sufficient grounds, and if the court is satisfied, it may allow the withdrawal of the complaint and acquit the accused.

d) Conviction on Admission/ Confession

Another relevant provision in the CrPC for the speedy disposal of cases is section 243. Section 243 of the CrPC provides two ways. Firstly, convicting the accused on the basis of their admission to the truth of the charge is a directory in nature; therefore, the court may decide to hear the complainant and consider all evidence that the prosecution may produce, as provided in Section 244 of the CrPC. Secondly, the court may convict the accused forthwith. It will help the courts to end criminal litigation and save the courts, parties, and the State time and costs. Moreover, superior courts held that such an admission/ confession should be an admission of the facts and constitution of the offence. Criminal courts must also use this clause wisely and efficiently to prevent needless prosecution where the accused pleads guilty. It would help the justice system minimise the backlog in criminal trials and have more time for heinous cases.

e) Acquittal of Accused at Any Stage

According to section 249-A, if the magistrate believes that the charge against the accused is without merit or that there is no reasonable chance that the accused will be found guilty of an offence, then the magistrate has the authority to acquit the accused at any time in the proceedings. The magistrate may use such powers by applying their judicial mind. Moreover, such powers may be exercised by the Court of Session under Section 265-K of the CrPC. But before using such powers, the courts must send notice to the prosecution for their view. These provisions help the courts dispose of cases without lengthy trials. The courts should apply these provisions to save the time of their litigants.

f) Compounding of Offence

The compounding of offence is also one of the ways to settle disputes alternatively. Section 345 of the CrPC provides that victims or their relatives may compound the offences mentioned in the Pakistan Penal Code (PPC). Such compounding of offences helps the accused in two ways: they are acquitted and sent to jail for years, and secondly, the victim or their relatives are compensated financially. Such monetary compensation is also referred to as Badl-e-Sulah in murder cases, as provided in Section 310 of the PPC.

ADR Centres by Lahore High Court

The Lahore High Court has established ADR centres in all districts of the Punjab province, aiming to resolve criminal matters amicably. These centres were established in 2017. These ADR centres aim to resolve disputes amicably among litigants. The related statistics, shown in Figure 1, indicate an upward trend in the number of year-wise references received by ADR courts in criminal cases. Figure 2 shows that the ADR centres received 30240 references in various matters, including both criminal and civil cases. Moreover, Figure 3 shows that out of 30240 mediations, 13965 were successful.

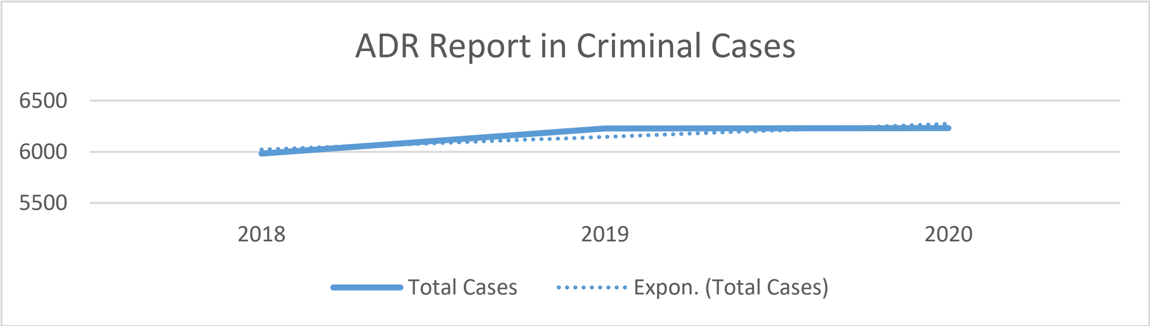

Figure 1: Year-Wise ADR Reference Report in Criminal Cases

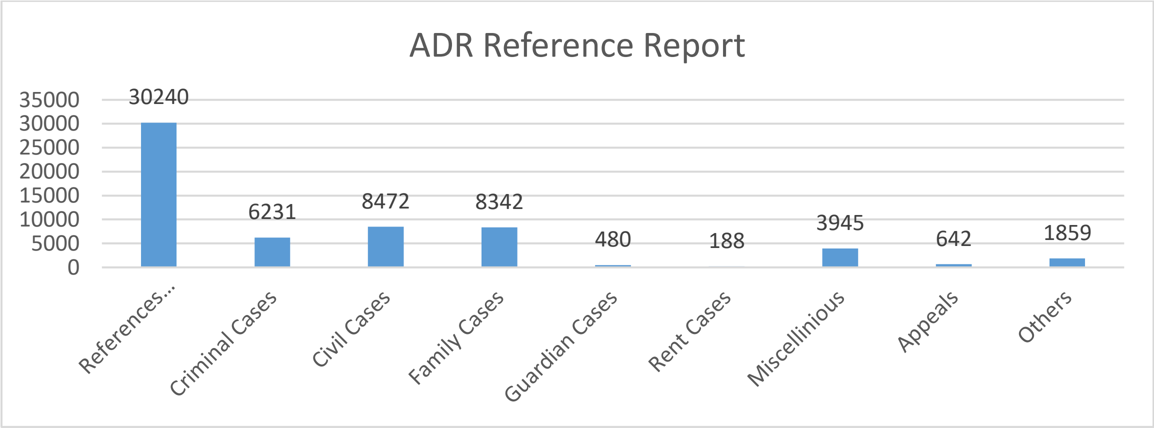

Figure 2: ADR Reference Report in 2020

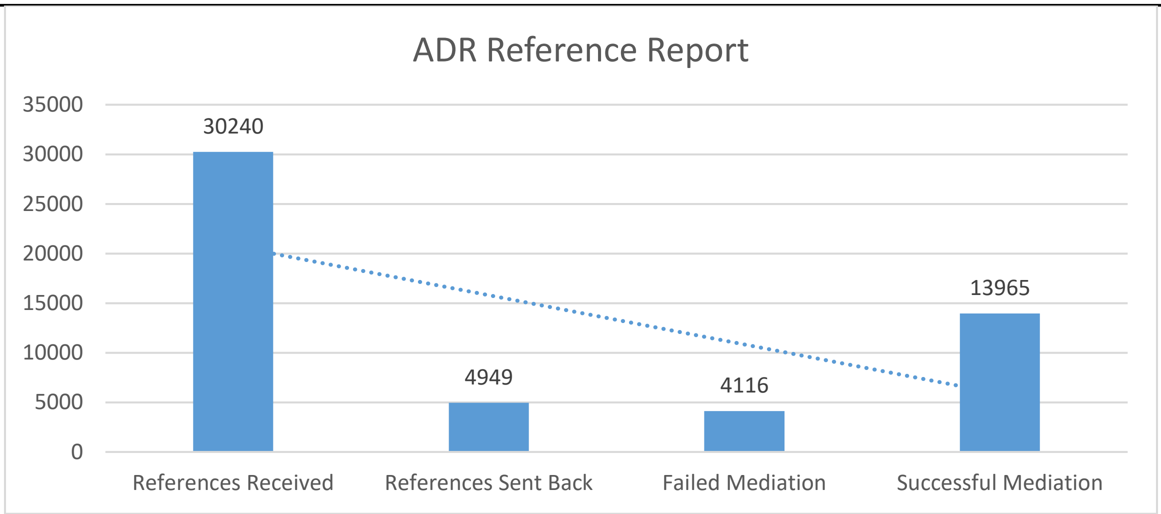

Figure 3: ADR Reference Report in 2020

ADR in Canada

It would appear that the United States, Canada, Australia, and New Zealand have all implemented ADR and restorative justice in their respective legal systems. All possible forms of ADR appear to be utilised in the Canadian criminal court system. Activities such as victim-offender mediation, sentencing circles, group conferencing, and community crime prevention programmes are included in this category. In point of fact, Canadian law recognises the role of ADR in the process of administering criminal justice. Alternative sentencing methods, such as healing and sentencing circles and projects run by Aboriginal Community Councils, are becoming increasingly popular and are recognised by the Criminal Code of Canada. These approaches are founded on the same fundamental principle, the importance of community-based societies, as the Canadian Criminal Code.

ADR in Australia

In the world of ADR, Australia is considered to be at the forefront. The New South Wales "Wagga Wagga" Program, the Australian justice system has responded to criminal ADR with Victim Offender Mediation, Family Group Conferencing, Community Conferencing, and the Reintegrative Shaming Experiment. The significant aspect of Australia is that, except for Victoria, all states have statutory-based programmes that include conferencing as a component of the hierarchy of responses to young offending in the criminal justice system. Victoria is the only state that lacks such a programme. The Crimes (Restorative Justice) Act 2004 was passed into law by the Australian Capital Territory in 2004. These legislative measures aim to divert young people from the traditional judicial system, help offenders grow and reintegrate, and create a criminal justice response that meets the needs of both victims and offenders. Australia has focused on developing new, more effective strategies for dealing with criminals, particularly juvenile and indigenous offenders.

ADR in New Zealand

Family group conferencing originated in New Zealand from Maori customs. After that, juvenile delinquency treatment became standard (Condliffe, 2004). So, there is no doubt that the New Zealand Criminal Court System allows ADR to be a part of its procedures. The administration of juvenile justice in New Zealand is governed by the Children, Young People, and Their Families Act of 1989. It begins with a declaration of principles, one of which is that criminal actions should be used only as a last resort when other options are available. It emphasises keeping youth in their communities and supports those unfairly accused. These principles prohibit criminal accusations against children and youth before a family group session. Australia and New Zealand are unique in maintaining statutory-based structures for conferencing (Lewis & McCrimmon, 2005).

ADR in the USA

Plea bargaining, also known as plea negotiation, is the most effective type of ADR in the criminal court system; thus, the American legal system recognises it. Plea bargaining is an entrenched part of the American criminal justice system due to its pervasiveness; less than 10 per cent of criminal cases actually end up in court, while more than 90 per cent are resolved through plea bargains. As a result, ADR is accepted inside the United States legal system. The University of Colorado Sturm College of Law reports that ADR is gaining popularity as an alternative to traditional forms of retributive justice in many parts of the United States and around the world, and that the criminal justice system is one of the most recent adopters of ADR. As a result, ADR techniques beyond plea bargaining have been included in the American criminal court system.

ADR in Germany

Germany is a country with a civil law system, and its approach to ADR in the criminal justice system is typical of that of other civil law countries. The German criminal justice system is very open to ADR, especially mediation. Even though it is frequently promoted as a substitute for the adversarial process of the court system, mediation takes place "under the shadow of the law." This is especially the case for various forms of mediation within the framework of the criminal court system. Mediation in Germany is utilised most commonly, not in civil law, as it is in criminal justice through Victim-Offender Mediation (VOM) programmes. This is in contrast to the situation in other nations, particularly in common law jurisdictions. In Germany, there are over 400 ADR programmes, the majority of which are community-based and/or funded by the state. Approximately two-thirds of these programmes operate within the context of juvenile justice, while the remaining one-third work with adult offenders.

ADR in Islamic Law

In Islamic law, Westerners' concept of criminal law can be broken down into three distinct categories. Quranic offences and their punishments (called hadood); the laws regarding homicide and injury; in addition to other offences whose punishments are left up to the discretion of the court (called tazir) (Peters & Barends, 2003). The term "hadood" refers to a crime with a predetermined penalty. These offences or crimes outlined in the Quran are subject to predetermined punishments under Sharia law. Stealing, also known as sariqa; armed robbery, also known as hiraba; drinking alcohol, also known as shurb al-khamr; and making a false claim of engaging in sexual activity, also known as qazf. A crucial aspect of Quranic offences is that the court has no discretion in determining the appropriate penalty once they are legally established. The term Qisas translates to retribution. This is the area of offences, including bodily harm, homicide, and assault. Here, the law and punishment path primarily determine whether the victims choose to retaliate or abstain.

Tazir is Arabic for "penalty at the judge's discretion." This area of Islamic criminal law lacks adequately defined offences. It is up to the judge to decide how severely to punish conduct that is sinful or otherwise unacceptable. If an act or omission is forbidden by the Quran, the Sunnah, or Ijtihad but is not explicitly specified in the Sharia Criminal Code, it is nonetheless regarded as an offence and subject to punishment.

We derive a variety of benefits from Islamic criminal law. Criminal law may not compromise prosecution and punishment. The Criminal Code also prohibits compounding and the arbitrability of offences. In some circumstances, the Islamic Criminal Code allows ADR and restorative justice. A principle called Sulah can be found in Islamic Penal Law. It would appear that ADR is equivalent in the Islamic legal system. It is known as sulah and has been an integral part of the Islamic legal system since its inception. The idea of sulah appears to be very similar to that of a peaceful settlement. Sulah is a religious agreement mandated by the Quran, the Sunnah, and the consensus of jurists to achieve agreement in place of disagreement and end animosity between the disputing parties. It resolves issues amicably.

ADR and International Crimes

A legal wrong is referred to as a crime, and it can be prosecuted through a criminal process, which may result in a sentence. An international crime is an illegal act that is considered a global issue and cannot be left under the exclusive jurisdiction of the state that would ordinarily have responsibility over it.

International crime is defined as wrongs that most civilised nations consider to be a violation of humanity. Jus cogens, a form of international law, is closely tied to international crimes.

States generally implement their criminal laws within their borders. This means that a state's courts will only investigate or prosecute crimes committed within their borders. The rule of territoriality, based on national sovereignty, asserts that one state's courts cannot adjudicate disputes that arise in another state's territory. This idea underpins territoriality. Two further practical concerns support the regulation. Firstly, a state may not have the necessary resources to conduct an investigation into incidents that occur outside its borders. Second, there is a great disparity between the states' penal codes. An act that is entirely legal in one state may be considered a crime in another. It is unreasonable to expect a state to penalise one of its own citizens for behaviour that, although unlawful in another jurisdiction, would have been permissible had it been carried out on the state's own soil, even though it occurred in another. The exclusive territorial jurisdiction of the state's overall crimes can result in criminals evading trial and justice by fleeing into neighbouring states or countries, provided that the suspects in question are not successfully extradited. On the contrary, the same holds for acts performed outside the state's territory but then returning to it.

The concept of international crime is a response to the realisation that certain actions violate the rules of all civilised nations, necessitating the ability to apprehend and convict the criminal in any state. Crime jure gentum, from the Latin for "crime against the laws of all civilised nations," dates back to the origins of international law, which seeks to prevent such acts or violations. This was done to prevent further violations or acts of violence. There is little doubt that the traditional strategy for dealing with foreign crimes is prosecutorial, litigious, confrontational, and retribution-based.

The Geneva Conventions of 1949, Additional Protocol I of 1977, the Genocide Convention, the Convention against Torture, the Convention against Apartheid, and the Rome Statute all make it quite plain that the crimes set down in those protocols must be prosecuted. Although there are many interpretations of retributive theory, they all adhere to the principle that a criminal should receive a sentence commensurate with the seriousness of their crime. Retribution is given a very high priority on the list of purposes that these agencies, which punish extraordinary international crimes, have for the purpose of punishment. This is a roundabout way of saying that retributivism has not been successful in punishing foreign crimes, but it makes the point just as well. Because of this, ADR has had to manifest itself in a wide variety of shapes and colours. Yet, it is important to remember that the ADR possibilities do not come without any challenges whatsoever. Although it is not an option in many national jurisdictions for serious cases of everyday crime, plea bargaining is generally available for extraordinary international crimes at all levels of judicialisation. This contrasts with the situation in many national jurisdictions where it is not an option. The fact that plea bargains are widely accessible for atrocity crimes, but are not available in many jurisdictions for major regular crimes, reduces the apparently heightened retributive value of punishing atrocity crimes. There are, without a doubt, a significant number of arguments in favour of using plea bargaining and ADR for heinous crimes.

Disadvantages of ADR

ADR also has some drawbacks. Although ADR plays a role in the quick resolution of disputes, it has some limitations, including the following arguments: ADR is not a precedent-setting system, it lacks legal expertise, and sometimes ADR settlements are not ultimately a deterrent for ensuring justice, so court action may still be required. Plea bargaining, as a sort of ADR, has various disadvantages for the legal procedure and criminal justice system, which might be addressed as a significant problem in Pakistan. For example, when a criminal accepts a plea bargain, they waive some of their constitutional rights (Maynard & Maynard, 1984). These rights include the freedom from self-incrimination, the right to a jury trial, and the ability to confront one's accuser.

When a defendant chooses to go to trial, they retain these rights. The most severe downside of plea bargaining is that the prosecution can put the accused under excessive pressure to accept guilt, which gradually increases the likelihood of coercion. If we adopt plea bargaining without ensuring adequate openness in our legal system, the prospect of innocent convicts being pressured into pleading guilty by the prosecution or other government methods remains.

Recommendations and Conclusions

Regarding the forms of ADR to be applied in the context of criminal justice, a systematic and thorough study should be undertaken to determine how to properly coordinate or institutionalise them to ensure consistent implementation across the country. It is best to understand the perspectives of other countries such as Australia, the USA, Canada, and New Zealand. Moreover, the government should adhere to the basic principles of the UN Economic and Social Council regarding the use of Restorative Justice Programs in criminal matters.

ADR is used when there is a particular situation of disagreement between two parties. When the two parties cannot find a solution, they go to ADR. Only ADR processes can significantly reduce costs and delays associated with conventional court proceedings. The civil litigation system has already adopted this system. To apply this structure in the criminal justice system, such as the Code of Civil Procedure, the CrPC should be revised. The CrPC may incorporate ADR by broadening the reach of section 345, adding a new section, and empowering criminal courts to handle criminal cases through ADR. Critics say ADR promotes compromise. Compromise can be a reasonable way to resolve some conflicts, but not for others. While criticism exists, it still helps ordinary citizens access judicial services at a lower cost.

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