International Journal of Criminal, Common and Statutory Law

E-ISSN: 2789-9500
P-ISSN: 2789-9497
Impact Factor (RJIF): 5.46
IJCCSL 2025; 5(2): 45-53

www.criminallawjournal.org
Received: 23-05-2025
Accepted: 25-06-2025

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Necessity of introducing the plea-bargaining system in Bangladesh: A comprehensive study

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DOI: https://www.doi.org/10.22271/27899497.2025.v5.i2a.147

Abstract
One of the fundamental tenets of criminal justice is that no one should be forced to testify against himself in a criminal case by coercion, promise, or enticement. It is therefore extremely difficult for the prosecution to find a crime, present witnesses to support his position, refute the defense, and establish the case beyond a reasonable doubt. These obligations become difficult due to a lack of funding, a shortage of prosecution personnel, government officials' tardiness, political disruptions, and a serious systemic corruption in Bangladesh's criminal justice system. In light of this, plea bargaining can be a useful tool for easing a lot of these issues. This article aims to investigate the methods of plea bargaining in various parts of the world and in various legal systems. There are several suggestions for incorporating it into our criminal system based on the experiences of other countries.

Keywords: Plea-bargaining, trial, criminal justice system, backlog of cases

1. Introduction
Justice sector of ours is separated into two corridors *viz.* formal and informal sectors. Court system is within formal sector. Article 35(3) of the Constitution of Bangladesh lays down*," Every person accused of criminal offence shall have the right to a speedy and public trial by an independent and unprejudiced court or tribunal established by law"*. In the atmosphere of the administration of criminal justice system, it has a dual importance as because *'justice delayed is justice denied'* or *'delayed justice is an infliction of injustice in the name of justice'*. In our country justice is often delayed owing to procedural drawbacks. So, we cannot expect a desirable outgrowth from this poor delivery method. The high reasons for these include prolonged disquisition process, outdated recording of evidence, corruption in police report, scarcities in number of cases and last but not the least, long awaited trial. The study mainly focuses on the challenges linked with the criminal justice and its impact on criminal justice delivery system of Bangladesh. This article seeks to point forth the effective usage of plea bargaining to disposal of cases expediently. It underlines the need for successful perpetration of plea bargaining in criminal justice system. Still this composition argues that plea bargaining has little chance of bringing a dramatic effect on the criminal justice system of Bangladesh as a whole but the use of plea bargaining helps tremendously by reducing huge backlog of less important cases and therefore helps everybody combined with the criminal justice delivery system to manage the important cases duly. (Shabnam, 2012) [13].

1.1 Objectives of the study
Although the Indian Supreme Court has numerous times blasted the conception of plea bargaining while the government introduced the idea in the Indian CrPC in line with a suggestion of the Law Commission, the court stated in *Rajinder Kumar Sharma and Anr v. The State* that the council implemented plea-bargaining under law so as to make a profit similar accused persons who rue upon their criminal act and are prepared to suffer some discipline for the act. Plea bargaining is also used to ensure that offenders who confess their shame and regret should receive mild punishment.
The following four perspectives can be used to assess the necessity and goals of implementing plea bargaining in Bangladesh:
1. From the standpoint of the public interest;
2. From the perspective of the accused;
3. From the prosecutors' point of view; and
4. From the perspective of the offender's victim.

Materials and methods

A study design can be conducted using a variety of exploration styles. The nature of the study topic determines the research system. It's possible that a given research system will work for one study but not for another. The logical system of study is the most appropriate framework for this legal studies research. As a result, the logical system of exploration is the one employed in this investigation. A researcher employs facts and knowledge that were previously available to carry out his exploration plan in a logical system of exploration. The information and data previously available in Act, as well as colorful books, papers, journals, and case laws, will be used in the current research design. The purpose of this study is to gather data from those sources and analyze the data in order to meet our research goals. I therefore concluded that the logical system of research would be an appropriate system for this research after carefully examining the nature of the exploration design. Every piece of data and information presented here comes from secondary sources, including local media, case laws, national and international publications, and journal articles.

2.1 Limits of Plea Bargaining

Plea bargaining should not be made available for all offenses in a nation like Bangladesh. In India, for example, three orders of offenses have been excluded from the plea-bargaining net:

1. The offenses that the government would notify that have an impact on the socioeconomic circumstances of this nation.
2. Offenses against women are included in the alternate order of rejection.
3. Repeated offenders will not have the opportunity to plea-bargaining.

There are many offenses for which the accused will be able to benefit from a plea bargain, even while there are similar broad regions of denial.

2.2 Scope and Limitation of the study

A research project ought to be concise, accurate, and distinct. A research project's boundaries need to be clearly defined. Otherwise, it will be redundant and clumsy. Outlining the compass and constraints should be simple. Additionally, the current study has limitations and a narrow focus. The scope of this study on the advent of plea bargaining in Bangladesh is constrained and new concept. Interview and survey data from the field could not be introduced in this article due to budgetary issue.

3. Results and Discussions

3.1 Concept of Plea bargaining

Long investigation times, out-of-date evidence records, skewed police reports, a lack of cases, and, last but not least, a protracted trial are the main causes of these. The study's primary focus is on criminal justice issues and how they affect Bangladesh's criminal justice delivery system. Plea bargaining will undoubtedly be a welcome addition to the court system in order to decrease the delay in delivering justice. This article aims to outline how plea bargaining can be used effectively to quickly resolve cases. It highlights how important it is for the criminal justice system to use plea bargains effectively. Although this article contends that plea bargaining is unlikely to have a significant impact on Bangladesh's criminal justice system overall, it does greatly assist all parties involved in the criminal justice delivery system in managing the significant cases by clearing the backlog of less significant cases.

3.2 What is Plea Bargaining?

The simplest definition of plea bargaining is *"pleading guilty and ensuring less sentence."* Plea bargaining is an arrangement between the prosecution and the accused whereby the accused admits guilt in exchange for a lighter sentence. The prosecution, the accused, and the judge are the three primary parties involved in a plea negotiation. According to the Bevier Law Dictionary, it is *"an agreement whereby the prosecutors drop more serious charges and the defendants plead guilty to a lesser charge."* Plea bargaining was defined by the Canadian Law Commission in 1975 as any arrangement whereby the accused agrees to enter a guilty plea in exchange for the promise of a benefit. The procedure by which the prosecution and the accused in a criminal case come to a mutually agreeable resolution of the case, subject to court approval, is known as plea bargaining, according to Black's Law Dictionary.

3.3 Types of plea bargaining

Plea Bargaining can be of three types: -

1. Charge Bargaining.
2. Sentence Bargaining.
3. Fact Bargaining.

3.3.1 Charge Bargaining

Negotiating the precise charges or offenses the defendant will be charged with at trial is known as charge negotiating. The prosecution may promise the accused that a charge for a lesser offense will be made in exchange for a guilty plea if there is only one charge against them. For instance, any culprit could be charged with responsible homicide rather than murder. (Shabnam, 2012) [13] Charge bargaining could involve:

1. The decrease in charge.
2. The cancellation or suspension of additional charges.
3. A prosecutor's decision not to press charges.
4. A commitment to drop or revoke accusations made against other parties.
5. A deal to combine several charges into a single, comprehensive charge.

3.3.2 Sentence Bargaining

The agreement to enter a guilty plea in exchange for a reduced sentence is known as sentence bargaining. It gives the offender a chance for a reduced sentence and spares the prosecution from a drawn-out trial. (Shabnam, 2012) [13].

Sentence Bargaining may include the following:

1. A prosecutor's suggestion for a particular range of sentences.
2. A suggestion for a range of sentences made jointly by the defense and prosecutor
3. A prosecutor's commitment to not challenge a defense council's recommended sentencing.
4. A prosecutor's commitment to refrain from pursuing further optional punishments, like ban and forfeiture orders.
5. A prosecutor's pledge not to pursue harsher penalties.
6. A prosecutor's pledge to support the imposition of an intermittent sentence as opposed to a continuous one.

3.3.3 Fact Bargaining

When the prosecutor consents to withhold from the court any aggravating factual circumstances that could result in a mandatory minimum term or a harsher punishment under sentencing guidelines, this is known as fact bargaining. Plea bargaining is the term used to describe pre-trial discussions between the prosecution and the accused in which the accused consents to enter a guilty plea in return for specific concessions that the prosecutor guarantees. Plea bargaining requires the judge's approval before it may be enforced. The agreement to enter a guilty plea in exchange for a reduced sentence is known as sentence bargaining. It gives the offender a chance for a reduced sentence and spares the prosecution from a drawn-out trial. Last but not least, fact bargaining occurs when the prosecutor consents to keep any aggravating facts from the court as doing so would result in a required minimum sentence or a harsher penalty in accordance with sentencing guidelines. (Shabnam, 2012) [13].

3.4 Practice of Plea-bargaining in other countries

Plea bargaining has its origins in Great Britain in the seventeenth century, when the English Common Law Courts would pardon accomplices in felonies if the offender was found guilty or execute them if they were found not guilty. The American judiciary of the 19th century likewise frequently engaged in plea bargaining. In both America and Canada, it was estimated that 90% of criminal cases were settled by plea bargains as opposed to a jury. (Friedman, 1979) [8].

The United States Supreme Court ruled in Brady v. United States of America (1970) that it was lawful to grant an accused person a benefit that also benefits the state. After a year, the Supreme Court acknowledged that plea bargaining was necessary for the administration of justice in Santobollo v. New York (1971). Through sections 265-A to 265-L of the Criminal Law (Amendment) Act, 2005, the idea of plea bargaining was introduced into the Indian criminal justice system in 2005. Prior to its inception, the Supreme Court strongly opposed the idea of plea bargaining. The Supreme Court of India ruled in State of Uttar Pradesh vs. Chandrika (1999) that an accused person cannot bargain with the court to have his sentence lowered because he is pleading guilty, nor could his admission of guilt be a basis for a sentence reduction.

According to the counterarguments, if it is implemented in Bangladesh, citizens will be deprived of rights guaranteed by the constitution and the possibility of arbitrary criminal prosecutions will rise. This article examines both sides of the argument and suggests rules and processes for a plea-bargaining system that take into account Bangladesh's particular socio-legal situation. According to the Bangladeshi Constitution, everyone who is charged with a crime has the right to a prompt and open trial. However, systematic and pervasive inefficiencies in criminal investigation, prosecution, and trial plague Bangladesh's criminal justice system (Islam, 2004), resulting in a backlog of cases and overcrowding in prisons. Plea bargaining has been suggested by the Law Commission of Bangladesh and other legal advisors as a solution to these issues (Law Commission of Bangladesh, 2010) (Dewan, 2007) [26]. The prayer Nolo Contendere, which translates to "I do not wish to contend" (Colquitt, 2000) [29], is largely responsible for the development of the concept of plea bargaining in the United States (US) about 200 years ago (Beall, 1977) [5].

According to Varga (Garner, 2009 [48]; Law Reform Commission of Canada, 1975), it is a pre-trial negotiation to enter into a contractual agreement between the prosecution and the defense in which the accused agrees to enter a guilty plea and the prosecutor promises, either explicitly or implicitly, to make one or more concessions to the accused in exchange. "Sentence bargaining" (Piccinato, 2004: 1) [42], in which the accused enters a guilty plea to the original charge or charges in exchange for the prosecutor's recommendation of a shorter sentence (Odiaga, 1988) (Beall, 1977) [5, 39], is the first of three types of bargaining that typically comprise this promise. When the prosecution consents to drop some more serious accusations in order to shorten the maximum possible punishment (Odiaga, 1988) [39]; The third and seventh is "fact bargaining," which is an arrangement between the prosecution and the defense whereby the accused confesses to specific facts and the prosecution agrees to hide certain incriminating circumstances in order to get a lighter sentence from the court (Hoque, 2004); (Nagel and Schulhofer, 1989) [35, 38]. Only when approved by the court of competent jurisdiction is each promise made during a plea negotiation enforceable (Uzlau, 2013). In a plea-bargaining case, the court does not review the witnesses and facts.

Rather, it decides only two questions: first, whether the accused is mentally capable of entering a guilty plea; second, whether the accused's consent to a guilty plea is free and informed. While its proponents believe that many people misunderstand plea bargaining, its detractors view it as a social evil (Feeley, 1982) (Mcdonough, 1979) [32, 37]. Because it lessens the number of court cases and prison overcrowding—two of the biggest issues facing the Bangladeshi legal system—supporters view it as an effective criminal procedure. Two-thirds of the 3.125 million cases that are pending in the High Court Division (HCD) and lower courts are criminal matters, with a conviction rate of roughly 10% (Law Commission of Bangladesh, 2015). There are more than twice as many inmates in the jails as there is space for (ICPS, 2015). For Bangladesh, a system of plea bargaining is unavoidable due to these issues. This article addresses the arguments for and against plea bargaining, the justifications for its inclusion in Bangladesh's legal system, and its potential effects on the rule of law in that nation.

3.4.1 Practice in USA

In the United States, plea bargaining is quite prevalent; instead of a jury trial, plea bargains are used to settle the great majority of criminal cases. Additionally, they have been occurring more frequently; by 2001, they accounted for 94% of federal cases, up from 84% in 1984. Plea agreements must be approved by the court, and the regulations vary by state and area. (Ross, 2006) [12] The plea-bargaining decision has been examined using game theory. *Brady v. United States* established the constitutionality of plea bargaining in 1970, but the Supreme Court cautioned that plea incentives that were so large or coercive as to override defendants' freedom of action, or that were used in a way that resulted in a large number of innocent people entering guilty pleas, might be illegal or raise constitutional questions. According to *Santobello v. New York*, there are legal redress options available when plea agreements are broken. Plea bargaining is often encouraged by a number of aspects of the American legal system. Because of the system's adversarial nature, judges play a passive role in which they are totally reliant on the parties to establish the facts and are unable to gather

information on their own to determine the strength of the case against the defendant. By using their rights or negotiating them away, the parties can thereby influence how the case turns out.

Additionally, prosecutors have more discretion because prosecution is not mandatory. Plea bargaining is also frequently encouraged by victims of crime's limited ability to influence plea deals and their incapacity to pursue a private prosecution. Prosecutors have been characterized as monopsonists and these inducements to plea bargain have been referred to as a "trial penalty".

Brady v. United States (1970) established the legal foundation and validity of plea bargaining. In the same ruling, the U.S. Supreme Court cautioned that this was only conditional and that it needed to be used with the proper safeguards. Specifically, it warned that plea incentives that were so strong or coercive as to override defendants' freedom of action or that resulted in a large number of innocent people entering guilty pleas might be illegal or raise constitutional questions. In a previous ruling in United States v. Jackson, the Court ruled that a law was unconstitutional if it caused a defendant to experience such extreme fear—in this case, the fear of death—that it prevented them from exercising a constitutional right (the right to a jury trial is covered by the 6th Amendment), and if it made them testify against their will, which was against the Fifth Amendment.

3.4.2 Practice in UK

Plea bargaining has its origins in Great Britain in the seventeenth century, when the English Common Law Courts would pardon accomplices in felonies if the offender was found guilty or execute them if they were found not guilty. The American judiciary of the 19th century likewise frequently engaged in plea bargaining. Because of the system's adversarial nature, judges play a passive role in which they are totally reliant on the parties to establish the facts and are unable to gather information on their own to determine the strength of the case against the defendant. By using their rights or negotiating them away, the parties can thereby influence how the case turns out. Additionally, prosecutors have more discretion because prosecution is not mandatory. Plea bargaining is also frequently encouraged by victims of crime's limited ability to influence plea deals and their incapacity to pursue a private prosecution. Prosecutors have been characterized as monopolists and these inducements to plea bargain have been referred to as a "trial penalty". (Friedman, 1979) [8].

3.4.3 Practices in Other Countries

In both America and Canada, it was estimated that 90% of criminal cases were settled through plea bargaining as opposed to a jury. The United States Supreme Court ruled in Brady v. United States of America (1970) that it was lawful to grant an accused person a benefit that also benefits the state. The Supreme Court acknowledged that plea bargaining was necessary for the administration of justice after a year in *Santobollo v. New York (1971)*. Through sections 265-A to 265-L of the Criminal Law (Amendment) Act, 2005, the idea of plea bargaining was introduced into the Indian criminal justice system in 2005. Prior to its inception, the Supreme Court strongly opposed the idea of plea bargaining. The Supreme Court of India ruled in State of Uttar Pradesh vs. Chandrika (1999) that an accused person cannot bargain with the court to have his sentence lowered because he is pleading guilty, nor could his admission of guilt be a basis for a sentence reduction. On the other hand, the Gujarat High Court's Division bench noted in *State of Gujarat v. Natwar Harchanji Thakor (2005)* that the goal of the law is to provide simple, affordable, and quick justice through the settlement of conflicts, including criminal cases. Given the current, realistic profile of pending cases and delays in the administration of justice, fundamental reforms are unavoidable.

The National Accountability Ordinance, an anti-corruption statute, established plea bargaining in Pakistan in 1999. In certain countries, like Victoria, Australia, and Wales, England, "plea bargaining" is permitted at the same time. Plea bargaining was established in limited form in civil law nations like France, Estonia, Italy, and Poland. Additionally, the idea of plea bargaining is gradually gaining legitimacy in European nations.

3.4.4 Bangladesh Perspective

According to the Bangladeshi Constitution, everyone who is charged with a crime has the right to a prompt and open trial. However, systematic and pervasive inefficiencies in criminal investigation, prosecution, and trial plague Bangladesh's criminal justice system (Islam, 2004), resulting in a backlog of cases and overcrowding in prisons. Plea bargaining has been suggested by the Law Commission of Bangladesh and other legal advisors as a solution to these issues (Law Commission of Bangladesh, 2010) (Dewan, 2007) [26]. The phrase Nolo Contendere, which translates to "I do not wish to contend," is largely responsible for the development of the concept of plea bargaining in the United States (US) about 200 years ago (Colquitt, 2000); (Beall, 1977) [5]. According to Varga (1976) and Garner (2009) [29, 48], it is a pre-trial negotiation to enter into a contractual agreement between the prosecution and the defense in which the accused agrees to enter a guilty plea and the prosecutor promises, either explicitly or implicitly, to make one or more concessions to the accused (Law Reform Commission of Canada, 1975).

This promise typically falls into one of three types of bargaining: first, "sentence bargaining" (Piccinato, 2004) [42], in which the accused pleads guilty to the original charge or charges in exchange for the prosecutor's recommendation of a shorter sentence (Odiaga, 1988) [39]; second, "charge bargaining" (Piccinato, 2004) [42], in which the prosecutor agrees to waive certain charges of greater severity in order to reduce the maximum probable sentence length (Odiaga, 1988) [39]; and third, "fact bargaining," which is an agreement between the prosecution and the defense wherein the accused admits certain facts and the prosecutor agrees to conceal specific provoking circumstances in order to impose a lighter sentence (Hoque, 2004) (Nagel and Schulhofer, 1989) [35, 38].

Only when the court of competent jurisdiction authorizes a pledge made during a plea agreement is it enforceable (Uzlau, 2013). In a plea-bargaining case, the court does not review the witnesses and facts. Rather, it decides only two questions: whether the accused is mentally capable of entering a guilty plea, and whether the accused's agreement to a guilty plea is free, informed, and voluntary. While its proponents believe that many people misunderstand plea bargaining, its detractors view it as a social evil (Feeley, 1982) (Mcdonough, 1979) [32, 37]. Because it lessens the number of court cases and prison overcrowding—two of the biggest issues facing the Bangladeshi legal system—supporters view it as an effective criminal procedure. The High Court Division (HCD) and lower courts have over 3.125 million cases pending, two-

thirds of which are criminal cases, and the conviction rate is roughly 10% (Law Commission of Bangladesh, 2015). There are more than twice as many inmates in the jails as there is space for (ICPS, 2015). For Bangladesh, a system of plea bargaining is unavoidable due to these issues. This essay addresses the arguments for and against plea bargaining, the justifications for its inclusion in Bangladesh's legal system, and its potential effects on the rule of law in that nation. It outlines the proper characteristics of such a system and offers recommendations for rules and processes that should be adhered to while implementing plea bargaining in Bangladesh. The sheer volume of outstanding cases poses a threat to Bangladesh's criminal justice system. Plea bargaining will undoubtedly be a practical feature in the criminal justice system's need for an efficient and significant alternative dispute settlement procedure. Like India, a new and comprehensive chapter could be added to the 1898 Code of Criminal Procedure.

3.5 Necessity of Introducing Plea-Bargaining in Bangladesh: Although Bangladesh's civil judicial system has implemented an alternative dispute resolution (ADR) mechanism, the criminal justice system has not. Furthermore, although the guilty plea procedure entrenched in sections 242 and 265D of the Code of Criminal Procedure 1898 (CrPC) is frequently employed to resolve criminal matters, Bangladesh does not have a formal plea-bargaining system. In the case of Md. Joynul Abedin, Justice Badrul Haider Choudhury of the Supreme Court of Bangladesh stated that an ADR mechanism is necessary for the administration of justice in order to settle criminal issues.

Chapter XXII of the CrPC does contain provisions for summary trial. Furthermore, in cases involving "compoundable" offenses, the parties may reach a compromise agreement, according to Section 345 of the CrPC. The Conciliation of Disputes (Municipal Areas) Board Act of 2004 and the Village Court Act of 2006 both address the resolution of specific minor criminal offenses through compromise. Once more, provisions in the Law and Order Disruption Offence (Speedy Trial) Act 2002 permit the prompt resolution of criminal proceedings. Plea bargaining is not the same as confessions, guilty pleas, or offering an accomplice a pardon. According to the ruling in Thakor, as well as sections 242 and 265D of the CrPC and the Schedule to the Law Reforms Ordinance 1978, a guilty plea is only a component of a criminal trial, while plea bargaining is an agreement made by the accused to enter a guilty plea. Similarly, an accused person may freely admit to their guilt during an investigation under sections 164 and 364 of the CrPC and sections 24 and 30 of the Evidence Act 1872, but there is no provision to reward them for doing so. Last but not least, a magistrate may grant a pardon to an accomplice during the course of the investigation or trial of the case under s. 337 of the CrPC in order to gather evidence against others; nevertheless, this is not a plea deal.

Like in many other nations, the implementation of plea bargaining is probably going to reduce the backlog of cases in Bangladesh. Additionally, a plea-bargaining mechanism would enable the parties to spend significantly less time and money on the criminal trial. Judges, attorneys, and other court personnel would also have less work to do. Prior to the US government's formal acceptance of plea bargaining, the courts there were beset by a backlog of cases and lengthy case resolution times (Hodge, 1981). The implementation of a plea-bargaining system has gradually helped to create better mechanisms for handling caseloads there, but it has not completely solved these issues. In addition, the impoverished typically enter guilty pleas because they are unable to pay for a costly and drawn-out trial.

3.6 Difficulties of Plea bargaining in Bangladesh

Plea bargaining is not a question of morality, legality, or even constitutionality; rather, it is a system of expediency and mutual interest. Poverty and illiteracy may prevent the implementation of plea bargaining in Bangladesh from achieving its goals, according to socio-legal theory. Additionally, there is a chance that lawyers will act unethically and corruptly. Despite certain challenges, Bangladesh should implement a plea bargaining mechanism because it is crucial to the well-being of Bangladesh's criminal justice system.

3.6.1 Arguments against Plea-Bargaining and Responses

Plea bargaining is used in civil law nations like Germany, Italy, and France as well as common law nations like the United States, United Kingdom, Canada, Australia, India, and Pakistan (Chowdhury, 2013 [25]; Kader, 2007; Kaur, 2010). However, it continues to be contentious globally. The following are the main defenses and criticisms of plea bargaining:

3.6.2 Advantages of the Plea-Bargaining System

The major advantages of the plea-bargaining system are that it:

1. Ensures that a case is resolved quickly so that the parties can avoid the time and cost of a traditional trial process (Santhy, 2013) [43]c;
2. Guarantees the defendant's certainty and conviction when they enter a guilty plea (Fisher, 2005) [33];
3. Gives defendants the opportunity to avoid receiving lengthier sentences than they might receive if a judge finds them guilty at trial (Colquitt, 2000; Fisher, 2005) [29, 33].
4. Lessens jail overcrowding as inmates do not have to wait a lengthy time on remand until trial (Laub and Sampson, 2003) [36];
5. Reduces the number of court cases by reducing the time it takes for individual cases to get to trial (Santhy, 2013; Colquitt, 2000); and [29]
6. Improves the overall deterrent effect of punishment by guaranteeing that the defendants are convicted promptly (Snyman, 2000; Cheng, 2014) [30, 44].

3.6.3 Disadvantages of the Plea-Bargaining System

The key disadvantages of the plea-bargaining system are that it:

1. Negates the parties' constitutional rights to a fair trial in public and to appeal the decision (Mcdonough, 197; Etienne and Robbennolt, 2007) [31, 37];
2. Allows prosecutors the ability to pressure defendants into entering guilty pleas (Odiaga, 1988; Parker, 1972) [39, 40];
3. Occasionally results in subpar case investigation because the parties will eventually reach agreements that would result in the defendants entering guilty pleas (Fisher, 2005) [33];
4. Coerces innocent defendants into entering a guilty plea, resulting in a permanent criminal record (Colquitt, 2000) [29].

5. Defendants may be given a harsh punishment regardless of the plea deal negotiated since judges' acceptance of the agreements achieved through plea bargaining is uncertain (Cheng, 2014); and [30]
6. May enable prosecutors to guarantee reduced penalties for individuals charged with grave offenses (Haque, 2006) [9].

3.7 Problems of Criminal Justice System of Bangladesh and Plea-Bargaining: In Bangladesh, police officers are frequently charged with criminal intimidation for allegedly misusing their remand authority when questioning arrested individuals. In order to coerce an accused individual into making a confession, they may also be threatened or tortured. They might have more possibilities to abuse their authority under a plea-bargaining system. Proposed procedural protections would have to be implemented to prevent abuse, nonetheless, as it is evident that its introduction is required to lessen the court caseload and prison overcrowding (Tyler, 2003) [46]. Similarly, it is sometimes argued that attorneys would be reluctant to suggest a guilty plea to their clients. There is a common misperception that Bangladeshi attorneys are sophistry experts who make their career by harming innocent people and repeatedly postponing cases since doing so will increase their profits (ALRC, 2009). According to this perspective, they might be reluctant to back a plan for expedited case resolution, like plea bargaining (Schulhofer, 1984) [45]. They could defend their behavior by claiming that some people might stop trusting them if they counsel their clients to enter guilty pleas. *"Inmates convicted in the plea-bargaining process have a tendency to feel that their treatment was unfair,"* according to one research (Alschuler, 1981) [3].

There is a chance that inappropriate enticement will be made during communication between the prosecutor and the accused during discussions for a guilty plea deal, given the existing state of the criminal justice system in Bangladesh. The accused would therefore have to take the initiative to request concessional treatment under the proposed plan, and the application would be sent straight to the "plea-judge," who would then determine whether or not to consider it. In light of the guidelines and the legislative regulations, the plea judge will determine what concessional treatment should be granted after considering all pertinent factors. This could significantly reduce the possibility of the accused being improperly induced. Since the proposed scheme requires the competent authority to determine whether the application was made voluntarily without inducement or threat by conducting an inquiry in the open court and prohibiting any police officer or person objected to by the accused from remaining present, the possibility that threats or improper inducement were offered in a clandestine manner may also be eliminated. Thus, a built-in safety mechanism protects against coercion or danger. The proposed plan also addresses the possibility of an innocent person entering a guilty plea because a judge must consider the evidence presented and must deny the application if there is, on the face of it, no evidence defining the offense for which the applicant was originally charged.

3.8 When is the right time to introduce a plea-bargaining agreement?: A criminal prosecution involves a number of steps that are started with the defendant's arrest. Plea bargaining agreements can occur at any point during the criminal justice process in the majority of countries (Turner, 2017) [47]. In Bangladesh, filing a First Information Report (FIR) is the first step in starting a criminal case. Under s. 173 of the CrPC, the Officer in Charge (OC) of the relevant police station conducts an investigation before forwarding the charge sheet to the concerned court. It claims that the accused person appears to have committed an offense. Similarly, when a magistrate receives a complaint to start a criminal case, he or she examines the complainant and witnesses in accordance with sections 200 and 204 of the CrPC and documents the results of that examination. The magistrate will proceed to take cognizance of the offense and summon the accused for trial if they are convinced that an offense has occurred. In these situations, the accused may be asked under sections 242 and 265D of the CrPC if they wish to enter a guilty plea or proceed with a trial after the court has formally charged them. At this point, the victim, the prosecution, and the defense attorney should all be involved in the accused person's attempt to reach a plea deal. Nonetheless, the victim ought to have the option to protest the plea deal. Any victim's objections should be taken into account by the court before adopting the agreement.

3.9 For whom is it possible to apply for a plea bargain?

A written application for plea negotiating may be submitted by any accused individual over the age of eighteen against whom a trial is either ongoing or scheduled to begin. Because they might not be able to anticipate the repercussions of their actions, juvenile offenders should not be regarded as competent to enter into a plea bargain (Ewing, 1978) [49]. Plea bargaining is based on the well-established rule that the accused must be competent to comprehend the ramifications of their decision. Section 364 of the CrPC, for instance, requires the court to notify the accused that if they enter a guilty plea, they would forfeit certain rights, including the right to a fair and public trial, the right to appeal, the ability to question or cross-examine witnesses, and so forth. The accused person must agree to freely enter a guilty plea after being informed of these consequences. The socio-legal framework of Bangladesh assumes that a person under the age of eighteen cannot comprehend the consequences of plea bargaining, hence their agreement should not be regarded as intelligent and voluntarily.

Additionally, those accused of violence against women, including rape, sexual offenses, bride burning, dowry deaths, dowry demand and acceptance, and so forth, should not be eligible for this plan. The community views these atrocities in light of the lengthy history of women's suffering and injustice. The proverb *"justice hurried, is justice buried"* (Patwari, 1999) [41] ought to be especially relevant in cases involving these kinds of offenses. These crimes against women also rarely include mitigating characteristics like lack of intent or erroneous belief, and ensuring proportionate punishment is far more crucial than expeditiously resolving such cases. If these crimes are downgraded to less serious ones, the victims must be in agony. Thus, generally speaking, the prosecution shouldn't offer plea bargaining to criminals who have committed such crimes.

3.10 Who may Deal with the Cases of Plea-Bargaining?

A metropolitan magistrate or a first-class magistrate specifically designated as a plea-judge by the HCD of Bangladesh may be authorized to act as the competent authority in criminal cases where the applicable law stipulates that the accused offenses carry a sentence of less than seven

years in prison. Similarly, a committee made up of two retired HCD judges appointed by the relevant government after consulting with the chief justice and his or her two seniormost colleagues may serve as the competent authority to accept and consider plea bargaining applications in criminal cases where the applicable law stipulates that the accused offenses carry a sentence of seven years or more in prison. It should be noted that although judicial officers must hold pre-plea conferences with applicants to ensure they are aware of the procedure and potential consequences of plea bargaining, they should not preside over the substantive courtroom proceedings that follow in cases where plea bargaining has taken place. This is because the conversations that occur during the pre-plea conference may become extensive and informal. Therefore, impartiality may be jeopardized if the same judicial officers participate in substantive courtroom proceedings as judges.

3.11 What Procedures should be followed in the Plea-Bargained Cases?: After receiving the requisition, the competent authority should first schedule a preliminary hearing for the plea-bargaining application and ask the trial court to send the pertinent applicant records within ten days. The applicant should then be informed of the hearing date by a court officer, who should also get the applicant's signature to document that the applicant was informed. The competent authority should ask the accused in public on the day of the hearing, or on any subsequent date that the hearing may be postponed, if the application was submitted voluntarily and willingly and free from coercion or inducement. The competent authority must ensure that the public prosecutor and any other police officer, except for the security officer (if any), posted in the courtroom are not present during the initial examination of the accused. This ensures that the application is voluntary and eliminates the possibility of any direct or indirect pressure.

Second, the competent authority may schedule a hearing with the public prosecutor, the aggrieved party, and/or the opposing side to conclude the case and issue a final order after the applicant has been given an explanation of the previously mentioned facts and the competent authority is satisfied that the application was submitted voluntarily. After hearing from the public prosecutor, the aggrieved party, the accused, or his or her advocate, the competent authority may, sentence the accused to a suitable term, release them, or recommend that they be placed on probation; or order them to provide the aggrieved party with any compensation that may be deemed appropriate after hearing both sides. After hearing from the public prosecutor or the party that feels wronged, a plea bargain application may be denied at the outset. The competent authority may reject the application with a brief explanation if they believe that, given the seriousness of the offense or any circumstances that may be brought to their attention by the public prosecutor or the party who was wronged, the case is not one in which they can exercise their authority in a way that would result in a miscarriage of justice, that the matter should go to trial, or that there is no evidence that clearly demonstrates the offense charged or any other offense.

3.12 Loopholes in Existing Criminal Justice Delivery System: The criminal justice system in Bangladesh was passed down from the British colonial authorities. The traces of nineteenth-century colonial ideas about this institution remain evident despite its progressive modifications. More than a century ago, in 1898, the British authorities passed the Code of Criminal Procedure. Although certain changes have been made throughout time, they are still insufficient to expedite the resolution of cases. Two factors are contributing to the delays in the criminal justice delivery system, the investigation stage and the trial stage. Police reports serve as the cornerstone of criminal justice during the inquiry phase. The police make an arrest, file charges, conduct an investigation, and present the charge sheet to the court inspector. In the event of an investigation, the police take too long to provide the investigation report because our code does not provide a deadline for submission. A police station's overwork and manpower deficit are frequently mentioned as the reasons for the delay in presenting the charge sheet. Along with this, it also includes delays in the processing of revisions resulting from the approval or denial of a *naraji* petition (protest petition) or delays in the acceptance or rejection of a police report.

Additionally, criminal justice is impacted by police corruption. When they receive payments from the criminals, they create weak charge sheets. The police handle all of the preparatory work in the current criminal justice system, which serves as the foundation for the court's decision. Therefore, impartial and equitable justice cannot be guaranteed if the report is tainted. The trial phase begins with the submission of the investigation report and the court's recognition of an offense, either based on the investigation report or a complaint petition. Upon submission of this final charge sheet to the court, however, justice becomes stalled. Twenty-five percent of the cases that are charge sheeted, need almost a year to get on trial stage. At this rate, cases are accrued annually, creating a massive backlog. The trial stage is also delayed as a result of the police's inability to guarantee that prosecution witnesses are present during the trial and the laborious process of documenting witness testimony. (Shabnam, 2012) [13].

Another factor contributing to delays is the frequent adjournment of cases at the trial stage on less significant pleas. One of the biggest barriers to a swift trial is the lack of effective prosecution and defense teams. In addition, the prisons are packed with defendants who are on trial. Furthermore, despite the country's growing population, there are still not enough courts or judges. A judge must handle 5,000 to 6,000 cases annually due to a lack of personnel. The cases do not advance because a bench in the Supreme Court's High Court Division was dissolved. Judges are overworked due to the absence of a case management system. Until the disputing parties are given a written copy of the ruling, justice cannot even be served. We must implement a different approach that speeds up the justice delivery system in order to resolve the current perilous state of the criminal justice system. The criminal justice system in Bangladesh was passed down from the British colonial authorities. The traces of nineteenth-century colonial ideas about this institution remain evident despite its progressive modifications. More than a century ago, in 1898, the British authorities passed the Code of Criminal Procedure. We must implement a different approach that speeds up the justice delivery system in order to resolve the current perilous state of the criminal justice system.

Conclusion

4.1 Findings and Recommendation: The sheer volume of outstanding cases poses a threat to Bangladesh's criminal

justice system. Plea bargaining will undoubtedly be a practical feature in the criminal justice system's need for an efficient and significant alternative dispute settlement procedure. Like India, a new and comprehensive chapter could be added to the 1898 Code of Criminal Procedure. Because a lot of instances are still pending at the moment, and it has taken a long time to resolve them. In addition, there are numerous other factors that have been previously considered. Plea bargaining ought to be used right away to address these kinds of issues.

Some recommendations are outlined below for active consideration:

1. Plea bargaining may be appropriate for certain criminal and other special statutes that stipulate imprisonment for a maximum of seven years. Once again, it might not apply to offenses like those that involve the nation's socioeconomic vulnerabilities or aggression against women and children, particularly those under the age of 14. Furthermore, it shouldn't be used against repeat offenders.
2. The accused ought to be well-informed on the consequences of entering into a plea deal. Therefore, it should be the court's responsibility to warn the accused that he will forfeit certain constitutional rights, such as the right to a trial or due process of law, if he proceeds with this procedure. The Code of Criminal Procedure (CrPC) may be amended to include a special clause in this regard.
3. Because it can worsen corruption among police officers, police should not participate in the plea-bargaining process. If the accused is not represented, the court and prosecutors may take this action to prevent a protracted delay in the administration of justice. To prevent misunderstandings, the court must make the decision publicly after the accused and the prosecution have negotiated. The rendered verdict will be final and binding, and it should not be appealed or revised. The accused's voluntary nature of the application must be confirmed to the court. The petition may be denied by the court if it is determined that the use of plea bargaining was not voluntary.
4. Since corruption cases are common and must be resolved swiftly, plea bargaining may be employed in anti-corruption cases. The accused may request that the commission acknowledge his guilt in this regard. After receiving this plea, the commission may set up a special judge court to determine whether or not to accept it. If the plea is accepted, the offender is found guilty but is not given a sentence. In addition to being removed from service, the accused should not be allowed to apply for a bank loan and community service can be introduced.
5. Since corruption cases are common and must be resolved swiftly, plea bargaining may be employed in anti-corruption cases. The accused may request that the commission acknowledge his guilt in this regard. After receiving this plea, the commission may set up a special judge court to determine whether or not to accept it. If the plea is accepted, the offender is found guilty but is not given a sentence. In addition to being removed from service, the accused will not be allowed to vote or apply for a bank loan.
6. Only sentence bargaining, not charge bargaining, should be permitted in Bangladesh during the initial phase of the introduction of plea bargaining. If the contrary is done, there is a chance that the prosecution would be made easier, and in certain situations, the accused's attorney may even abuse their position. Furthermore, fact negotiation is a difficult process that calls for knowledgeable attorneys on both sides.

4.2 Conclusion

Plea bargaining is not a question of morality, legality, or even constitutionality; rather, it is a system of expediency and mutual interest. Poverty and illiteracy may prevent the implementation of plea bargaining in Bangladesh from achieving its goals, according to socio-legal theory. Additionally, there is a chance that lawyers will act unethically and corruptly. Plea bargaining can occasionally result in innocent persons staying incarcerated because they believe they have no choice but to enter a guilty plea. Additionally, a defendant who engages in plea bargaining forfeits their right to an appeal and a fair trial. Furthermore, the defendant's defense against self-incrimination is undermined. Additionally, this method may cause attorneys to violate the due process requirement for a criminal trial, which could force defendants to enter guilty pleas. Lastly, because offenders who enter guilty pleas receive a less sentence, the public may even be incentivized to commit crimes. (Hossain and Afroz, 2019) [10].

Plea bargaining, on the other hand, guarantees accused individuals the right to a prompt trial. Under addition, victims can get justice quickly, which is nearly impossible under Bangladesh's current adversarial system. Plea agreements also save the parties involved in criminal proceedings money and time. These factors make this approach likely to lessen the backlog of cases and the workload of judges, attorneys, and other court employees. At the same time, it might lessen prison overcrowding, which has grown to be a serious issue in Bangladesh. There are now a large number of pending cases in Bangladesh's criminal justice system. Therefore, as long as the compromises are "fair, just, and reasonable," they are justified. Plea bargains may be a necessary evil for our criminal justice system in this regard. Our court system could completely collapse due to the volume of cases that go to trial each year if plea bargaining is not introduced in a timely manner. (Shabnam, 2012) [13]. The criminal justice system in Bangladesh would be severely disadvantaged, time consuming and could potentially collapse without introducing plea bargaining in near future.

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