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RESEARCH ARTICLE

**AN OVERVIEW OF THE PRACTICE AND PROSPECT OF ALTERNATIVE DISPUTE RESOLUTION
 IN CRIMINAL JUSTICE SYSTEM OF BANGLADESH: PROMOTION OF ACCESS TO JUSTICE.**

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Abstract

Alternative Dispute Resolution (ADR) is treated as a scheme to resolve dispute among the litigants in a rapid and easy way out of formal court proceedings. The lower criminal courts of Bangladesh are loaded with horrendous number of pending cases and such backlog of cases pose a great threat to both victim and offender and the state as well causing more afflictions in the field of criminal justice system. This study seeks to provide a comprehensive idea about the plea bargaining along with a brief analysis of the present practices of plea bargaining in different region and legal system over the globe. To this context this article aims to promote and implement the concept of ADR in criminal justice system of Bangladesh like other countries. However, the ADR mechanism in criminal matter is subject to criticism in many ways but there is no alternative for resolving disputes between the offender and victims. Finally, a few suggestions are made for the exhaustive success of ADR towards promotion of fruitful, speedy and leafy access to criminal justice for every citizen.

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Introduction:-

Effective access to justice is treated to be one of the exigent elements of human rights and such rights regarding justice have been guaranteed as fundamental rights in the constitutions of many countries around the world. In this context article 35(3) of the Bangladesh Constitution indicates “Every person accused of criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law”. Equality of every citizen, right to harbor of law and right to be treated with conformity of law come within the mandate of the constitution of Bangladesh. Nevertheless, due to the shortage of resources, lack of manpower, partiality of police department, complex procedural rules, political barrier and most gravely corruption, the perception of justice to common people has become a day dream. Delay in criminal justice system tremendously causes miscarriage of justice occasioning discontent of general citizens over judicial system and recaping Gladstone’s quotes “Justice delayed justice denied” as well. Another problem which has paralyzed our judiciary is the congestion of huge number of pending criminal cases. Certain terms for speedy trial and summary trial by criminal courts are there to dispose few numbers of cases while most other cases have to pass through the prolonged and formal criminal procedure. Such harassment of court proceeding is dropping the confidence and trust of the citizens over law and order of country.

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Practically some of the notable and major issues of criminal cases depend much on police department and it is repeatedly seen that police takes lofty time to accomplish necessary execution and investigation (Al-Mamun, 2013). Such delay by police department may be either premeditated or due to heavy workload. Preparing seizure list, case diary, medical report, statement of the witnesses, investigation etc. are some of the phenomenon without which criminal trial cannot proceed on. Enormous number of criminal cases is pending for years in which police report has not been yet submitted. Even in the pre-trial and trial stages of a case delay occurs due to some procedural complexities. In spite of these, some of the petitions by defense also take additional months to dispose a case. Producing witnesses before the court becomes another cumbersome job for prosecution as non-producing of witness causes irritating delay. Unfortunately it occurs mostly due to inaction of prosecution but sometimes the witnesses try to avoid insecurity and vexation in court.

Furthermore, judges and lawyers also take spare time for official functioning and unavoidable situations. Last but not the least astonishingly low rate of conviction is an interruption towards justice. In order to eradicate such unexpected and unavoidable delay and backlog of criminal cases the ADR mechanism, preferably plea bargaining should be flourished more proficiently in criminal laws of Bangladesh along with the Code of Criminal Procedure. However, the provisions of ADR are already incorporated in many civil laws of Bangladesh but there is debate regarding advantages and drawbacks of introducing ADR graph in criminal justice system. According to the theory of criminal justice system state stands in a position to uplift social control, ensuring security of citizens, clogging crimes and dressing down the offenders but never to compromise. There are some sorts of offences which do not come beneath the shed of crimes prejudicing states but harming only an individual and subsequently ADR can be operative there (Gulfam, 2014).

Notion regarding Alternative Dispute Resolution and Plea Bargaining

“Dispute resolution outside of courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflict” (US Centre for Democracy and Governance, 1998). Around the world people are actually searching for an easy, faster and cheaper means to resolve their disputes within shortest possible time. Alternative Dispute Resolution (ADR) can play a significant role of an alternative to formal litigation. Professor J. R. Sternlight has rightly said ADR as “Appropriate Dispute Resolution” instead of “Alternative Dispute Resolution”. But it must be kept in mind that ADR is only an extra method to ensure justice but not a machinery to replace traditional court system. Basically ADR is nothing but an innovative tactic to settle dispute instead of going to court. It is usually mentioned as a time saving mechanism to resolve disputes other than judicial determination as well as treated to be an external dispute resolution. According to the definition of World Bank Group, “ADR is a wide range of means to resolve conflicts that are short of formal litigations”.

In Bangladesh, though, the concept of ADR is already incorporated in different civil laws particularly applicable in civil litigations. In criminal justice system of Bangladesh ADR has not yet been broadly initiated. The idea of ADR in criminal cases is inspired in the case of *Md. Joynal and others vs. Rustam Ali Miah and others* (1984, 36 DLR, AD). Two types of ADR in criminal justice system are found worldwide namely, ‘Compounding of Offence’ and ‘Plea Bargaining’. In *Abdussatter and others vs. The State and other* (1986, 38 DLR, AD), the Appellate Division opined that “our criminal administration of justice encourages compromise of mere certain disputes and some of the particular cases can be compounded as provided by section 345 of the Code of Criminal Procedure”. Compounding of offences means settlement through compromise and amicable solution with or without the permission of court. Compromise in criminal case is possible in any stage even in appellate stage but before the pronouncement of judgment (karim, 2015). Insertion of ADR in criminal litigation does not substitute the court system but strengthens the criminal judiciary (Gulfam, 2014).

It must be noted that the idea of ADR may not always be appropriate in criminal trials as some issues of criminal trial can only be solved through judicial and legal procedures. Section 345 of the Code of Criminal Procedure (CrPC) 1898 incorporates two charts covering 67 offences which are compoundable and among them one chart shows the offences where permission of court is immaterial and another chart identifies the offences where parties must have authorization of the concerned court to compound. The first chart containing section 345(1) includes offences like uttering words with willful intent to coup the religious feelings of any person, causing hurt on provocation, wrongful detainment or confinement and forced labor etc are compoundable without approval of the court and these offences contain confinement of maximum one year and/or fine. The second chart in section 345(2) indicates more grave offences like rioting with deadly weapon, voluntary causing grievous hurt, act endangering the

personal safety of others and assault to women with intent to outrage her modesty. These offences of second chart involve punishment from two to seven years along with fine and cannot be compounded without approval of court. According to the provision and guideline of the Conciliation of Disputes (Municipal Area) Ordinance, 2004 ADR can be used to dispose cases easily and rapidly in municipal area by instituting a Dispute Conciliation Board. If any offence takes place in the municipal area and among the residents of the municipal area then the aforesaid Board can try the offences summarily mentioned in schedule of chapter XXII of this Ordinance. The Chairman along with two members selected by both sides shall form the Board where one must be commissioner of the municipal area. However, this Board is authorized to give verdict only for remedy of fine and reclamation of property.

Moreover, arrangements of the Gram Adalat Ain, 2006 and Birodh Mimangsha (Paura Elaka) Board Ain, 2004 are there to resolve some light criminal cases through compromise (Karim, 2015). It is necessary to note that compounding of a case may be done only by the victim but not the public prosecutor and such compounding is not possible in cases under special law. (Mamun, 2013). If the person who would compound an offence under section 345 of CrPC is below the age of 18 years, idiot or lunatic, any legal person competent to contract may compound such offence on his behalf.

Another method of ADR is Plea Bargaining which is widely adopted and developed in many countries of the world like India, United States of America, Canada and Australia. This method refers to an agreement as well as negotiation lies between the accused and prosecution where the accused pleads guilty to an inferior crime in lieu of some concession by the prosecutor. According to Bevier Law Dictionary, "as to make an agreement in which the defendants plead guilty to a lesser charge and the prosecutor in return drops more serious charges". Pleas bargaining may be treated as a bond between the prosecutor and defense of a criminal case where the accused consents to admit guilty in return of an offer or in exchange of some allowances from the prosecutor. It is an activity for achieving mutual satisfaction of disputants during trial stage of a criminal case under the approval of court. The ultimate goal of plea bargaining is to ensure unequivocal, cheap and rapid justice by resolving dispute through an amicable agreement.

Plea bargaining has not gained any scope in our criminal justice system of Bangladesh. According to the Code of Criminal Procedure, 1898 and Evidence Act, 1872, an accused may confess his guilt before a magistrate at the time investigation or at trial stage. The essence of both the CrPC and the Evidence Act, 1872 describes that if any accused of criminal offence admits his guilt not by inducement or threat before the magistrate, the court is at liberty to penalize the accused on such confession. Again under section 25 and 26 of the Evidence Act any confession by accused given to police or given under police custody shall not be considered as evidence. But unfortunately no provisions by the Evidence Act or CrPC are there stating that the accused will enjoy a lenient punishment upon his confession (Kader, 2007).

Relevantly under section 337 of the Code of Criminal Procedure, 1898 there is rule of 'Tender of Pardon' which implies that at any stage of trial or investigation a magistrate may tender pardon to any accomplice if the concerned accused fully discloses the circumstances relating the offence. Such provision is a kind of light house for adopting plea bargaining in our criminal justice system. Furthermore, it is almost unimaginable that a person who has not committed an offence but would plead guilty.

Proposal of Compounding against the offences under Penal Code and other laws

In *Murlidhar Meghraj Loyat vs. State of Maharashtra* (2000, Cr.LJ 901), the Indian Supreme Court observed- "Although in civil suits we find compromises actually encouraged as more satisfactory method of settling disputes between individuals, such mechanism of compromise seems immoral in criminal cases. This is because crimes are against the state and the 'State' can never compromise. It must enforce the law". But to resolve the current fatality of criminal courts of Bangladesh and for the ends of justice, following offences may be proposed to be compoundable.

Section 345 of Code of Criminal Procedure (CrPC) has enlisted the offences which are compoundable but still it is realized that some non-compoundable offences cause onerous distress to the litigants. For example, the punishment of Unlawful Assembly under section 143 of the Penal Code, 1860 is the confinement that may increase to six months or with fine or both but section 345 of the CrPC has not treated this offence as compoundable. Apart from this, offence of rioting under section 147 of the Penal Code is compoundable though the punishment is confinement may extend to two years or with fine or both. The CrPC in its schedule prescribed that any other offence except Penal Code is condemnable with confinement for less than two years and more than five years are deemed to be non

compoundable but bail-able. Again any offence other than Penal Code in which the punishment is confinement for less than two years or with fine or both are also non compoundable but bail-able. Pendency of huge cases may be reduced by making these offences compoundable.

Under the Negotiable Instrument Act, 1881 section 138 describes a non compoundable offence but in reality after being dishonored and lodging a case, the concerned figure complained of is conferred to the complainant by the accused during trial stage of the case. The prosecution may no longer be interested to further the case after being paid. So section 138 of NI Act becomes compoundable in this aspect (Alamin, 2015). Even under the Children Act, 1974, ADR mechanism can be introduced to ensure juvenile justice. This is how many offences can be made compoundable and it will assist to avoid delay and backloging of cases in criminal courts.

Implantation of plea bargaining as ADR mechanism in Bangladesh

Plea bargaining may be called such an instrument in which the prosecutor and accused negotiate in an agreement and subsequently the accused pleads guilty for some incentives provided by the prosecution. It is honestly an agreement in criminal proceeding between the prosecution and accused where the accused receives lesser punishment by confessing guilt. It is an amicable method to resolve dispute by reducing cost and time of both the parties. Lack of adequate number of judges and backlog of cases are enormously increasing the sufferings of litigants in criminal courts of Bangladesh and presently low rate of conviction has provoked such distress. In these pending cases if the accused is not released on bail, he is confined in prison and as a result prisons are gradually being overcrowded (Karim, 2015). Under such annoying circumstances, introduction of plea bargaining can play efficient role by giving lesser punishment to the offender instead of rotting in prison.

Through plea bargaining the accused will receive lesser penalty by taking incentives from the prosecution. All sorts of expenditures to run a criminal case and valuable time will be saved. Plea bargaining can also keep the parties free from uncertainties due to long process criminal justice system. It is often debated that if plea bargaining is induced occurrence of crime may be increased. However, this is not factual as the court before granting an application of plea bargaining will scrutinize the overall issues of the crime (Alamin, 2015). Some critics may further argue stating that plea bargaining is a mechanism to defeat due penalty. This is not also substantial because the system of plea bargaining involves concession of treatment but not punishment. Therefore, an efficient and fair prosecution is the pre condition for plea bargaining. As the criminal justice system of Bangladesh got much similarity with India, our country may adopt identical method to implant the principle of plea bargaining just like India. However, it is not argued that all forms of criminal offences should come under the shed of ADR mechanism.

Various methods of plea bargaining

Generally three categories of plea bargaining for criminal cases may be designed namely i.e. Charge bargaining, Fact bargaining and Sentence bargaining.

Charge bargaining is the most common form of plea bargaining. It occurs when the defendant is allowed to plead guilty by the prosecution to a lesser charge or to only some of the charges brought against him. In such bargaining there remains an opportunity for the accused to negotiate with the prosecution and reduce the number of charges against him. When multiple numbers of charges are framed, some of them are exuded if the accused pleads guilty to less grave charge. But while only one charge is there, a grievous charge is exuded in barter for a plea guilty to less significant charge.

Sentence bargaining takes place mostly in high profile cases when the accused in advance gets to know about his conviction and sentence if he pleads guilty. In fact, it is an agreement for a lighter sentence to plead guilty by the accused and recommendation is made by the prosecution for a specific sentence, provided that such recommendation must be approved by the trial court.

Fact bargaining occurs when either some tedious factual circumstances are not revealed to the court by the prosecution to avoid severe punishment. In some other cases, the accused may assist the prosecution by disclosing vital facts to the police of the concerned case. There remains a promise between the litigants not to disclose such facts which may bind the court to pass to an obligatory minimum judgment against the accused.

Suggested mechanism of Plea bargaining

The form of plea bargaining in India may be mimicked to engraft it in criminal justice strait of Bangladesh. Discussing the methods of plea bargaining of India will be helpful to understand. Like India, a new and unique chapter on plea bargaining can be incorporated in the Code of Criminal Procedure. Some basic features of the scheme are as follows:

1. The accused may lodge a petition for plea bargaining in the trial court,
2. The court must examine the application as well as the accused whether he has filed it voluntarily or forcefully. Such negotiation takes place upon the free will of the prosecution and defense and time is given to both parties to work out reciprocally. This involves giving of compensation and case expenditure by accused to the victim.
3. If the case is settled through such mutual satisfaction, the court will sentence the accused by giving one-fourth of the penalty for such offence. The court may award compensation to the victim and release the accused on probation.
4. The confession and admission by the accused in the application for plea bargaining must not be used for other issues except plea negotiation.
5. An appeal against the order in case of plea bargaining shall be barred by law.

Credence of plea bargaining in different countries

The methods of Alternative Resolution were adopted by the Romans in the Twelve Tables at 450 B.C. and the inception of plea bargaining goes back to the seventeenth century at English Common law courts when pardon was granted to abettors in felony cases upon defendant's acquittal or conviction. Actually there is no direct and specific provision of international law regarding ADR in criminal cases but several international instruments prefer the adoption of ADR in criminal justice system (Dana, 2017). Presently many developed and developing countries of the world have already adopted the principle of plea bargaining in their criminal justice system.

Plea bargaining in India

The concept of plea bargaining is successfully incorporated in Indian criminal justice system. A report on "Concessional Treatment for the Offenders who on their own initiatives choose to plead guilty without any Bargaining" was recommended by the twelfth Law Commission of India to incorporate plea bargaining in their criminal justice system. Subsequently by the 154th report on "The Code of Criminal Procedure, 1973" the Law Commission suggested that the introduction of plea bargaining in criminal justice of India fell within the incumbent duty of government. Initially the Indian Supreme Court was not in favor of plea bargaining and in *State of Uttar Pradesh vs. Chandrika* (1999), the apex court concluded that the concept of plea bargaining should not be adopted to dispose criminal cases but few years later Gujarat High Court in *State of Gujarat vs. Natwar Harchanji Thakor* (2005) pondered the necessity of alternative mechanism to resolve the suffering due to caseloads in criminal courts. Accordingly in 2005, the government of India Criminal Law (Amendment) Act, 2005 by which a new Chapter XXIA was added in the Code of Criminal Procedure containing section 265A to 265L. Offences for which the punishment is more than seven years of confinement or committed against woman and child under the age of 14 years are not compoundable through plea bargaining in India. The accused has to file an application for plea bargaining along with an affidavit declaring his voluntariness to do so. Besides when a case is instituted under police report, participation of the police officer, prosecution, victim and accused will take place for negotiation.

Plea bargaining in Pakistan

Principle of plea bargaining was duly incorporated in criminal justice system of Pakistan. In 1999 an anti-corruption law named as National Accountability Ordinance raised the provision of plea bargaining in Pakistan under which if the application of plea bargaining is approved by the court, the blamed person does not face any direct sentence but just stands convicted (Al-Mamun, 2013). Though in other cases the provision of plea bargaining is quite narrow but the prosecutor has the power to drop a case or some of the charges of a case. It is notable that bargaining does not take place over the judgment or sentence of court.

Plea bargaining in the USA

Plea bargaining is tremendously popular in the USA and surprisingly 90% of criminal cases are settled through this mechanism. In 1970, US Supreme Court in *Brady vs. US* (1970) opined that plea bargaining is in no way unconstitutional but immensely beneficial to the disputants in a criminal case. One year later in *Santobello vs. New York* (1971, 404 US 257) the apex court further justified that "plea bargaining is an essential component of the administration of justice. Properly administrated, it is to be encouraged". In the USA with the prior permission of court, the government and the defendant may initiate a plea negotiation where the court notifies the accused about

the effect of negotiation. Before granting the negotiation the court ensures that the negotiation was not performed under any coercion or threat but voluntarily. Another privilege for the accused is he sustains authority to withdraw the plea of guilty before acknowledgement by the court.

Plea bargaining in Canada

The Supreme Court of Canada directed that the view of plea bargaining is an indispensable material of Canadian criminal justice system. In criminal litigations the Crown has authority to recommend and suggest lighter punishment in exchange of pleading guilty by the accused. Like the USA, almost 90% of the criminal cases are resolved through plea bargaining in Canada (Alamin, 2015:70)

Plea bargaining in Europe

Many European countries like the UK, Germany, France, Italy, Poland and Estonia have adopted plea bargaining in confined formation. In the UK, Criminal Procedure and Investigations Act, 1996 has founded the theory of plea bargaining and under the Criminal Courts (Sentencing) Act, 2000 judges have discretionary power to curtail any condemnation where the accused pleads guilty. There is Code of Crown Prosecutor as guideline for the crown prosecutor to handle any case under plea bargaining. Criminal justice system of Britain does not involve any formal negotiation of plea bargaining like the USA but an accused pleads guilty on assurance of lesser punishment.

In 2009, the German government promulgated Law on Arguments in Criminal Proceedings for plea negotiation and bargaining. This law empowers court to scrutinize the confession by the defendant and indicates that the offences effecting economic affairs, drug offences, tax evasion and crime against environment may be resolved by means of plea bargaining. In Germany approximately 50% of criminal cases are settled through plea bargaining (Al-Mamun, 2013:26).

The Criminal Procedure Code, 1989 of Italy does not mention the term plea bargaining but exhibits two methods by which formal trial of court can be avoided. In Italy without going into trial, parties can enter into an agreement to impose specific penalty on the accused and provisions of summary trial is also concluded under which some sentences may be reduced.

In France, crimes are of three types such as minor offences, intermediate and grave offence along with three different courts namely police court, correctional court and assize court. Serious crimes are tried in the Assize Court where the prosecutors have authority to charge an accused with a minor offence in place of grave offence.

Convenience of plea bargaining towards criminal justice system

The criminal courts of Bangladesh are overloaded with pending cases and such pendency of cases brings hideous suffering to prosecution, litigants as well as state. Unbearable pressure on both judges and prosecution is rapidly rising and our criminal judiciary is infected with various drawbacks (Karim, 2015). Taking requisite step in order to win in trial of all cases has become very cumbersome for the prosecution. Success to diminish this outrageous number of unresolved cases lies in the plantation of plea bargaining as it has been significantly fruitful in many countries. Although the mechanisms regarding compounding of offences are mentioned in section 345 of the Code of Criminal Procedure but those are not applicable in serious cases. The most significant grace of plea bargaining for accused is getting lesser penalty by pleading guilty. On the other hand the prosecution also gets the assistance of the accused to prove the case in a successful way. Any person may save huge amount of money specially the poor people who do not have adequate financial ability to consult a renowned lawyer and defend themselves.

The prosecution may lose a case even after long, tiring and bold battle and if accordingly the offender gets acquittal the trial system comes under serious suspicion and dissatisfaction of victim rises over judiciary. Besides, the defense also suffers from anxiety about the uncertainty of sentence after a long and delayed trial. Under such circumstance plea bargaining gives relief to the prosecution and defense from the pain of long and awaited trial proceedings (Alamin, 2015). By adopting plea negotiation the torture in remand and police custody can be removed because both the litigants may primarily enter into an agreement under the approval of court (Karim, 2015). In most of the criminal cases an accused has to rot in prison which is already overcrowded. If plea bargaining is introduced these prisoners would apply for lighter punishment instead of moping in jail. It gives a scope of rectification to the offenders.

There are some famous and well known persons in our society who never want to pass through the enormous proceedings of court due to their reputation. Those people to avoid the harassment of trial system may enter into plea negotiation (Kader, 2007). Some witnesses and victims of sexual and domestic violence do not feel righteous to come at the court due to emotional and sensitive situation. Inception of plea bargaining can ensure justice for them without instead of formal litigation. Huge and material resources of state would be preserved and it would enhance the scope for the court to deal cases which have real merit (Halim, 2014:201).

Inconvenience of plea bargaining towards criminal justice system

Everything around us have both good and bad impacts and plea bargaining is no different from this theory. High rate of possibility is there to create pressure on the accused in case of plea bargaining as the prosecutor may threaten the accused with a gross punishment if he/she cogitates to proceed to trial. Even if the accused agrees to enter into plea negotiation he waives some of his fundamental rights such as the right to trial by a jury, right not to be forced in criminal case to be a witness against himself etc.

In plea bargaining most often the victim may be ignored if negotiation is decided by the prosecution and accused as well as court's ability to separate the guilty from the innocent is mugged away. In some serious cases an accused may plead his guilt under coercion even if he has not committed any wrong and following the situation he has to provide fine and suffer imprisonment. Plea bargaining method may not function in the field of utmost imbalance of power between disputants. Using of plea bargaining will be inappropriate to resolve a multi party case where some of the parties do not give consent to cooperate. In plea bargaining the prosecution always gets the opportunity to dominate over the accused and may determine the charges according to his sweet will. Fairness and equality is hampered in these stages. Besides, plea bargaining curtails the power to court to regulate offence but increase the authority of prosecution in a boundless manner. It must be kept in mind that without proper application of rule of law, the practice of plea bargaining may cause serious anarchy in the criminal justice system (Karim, 2015).

Rationality and challenges of adoption of Plea bargaining in criminal justice system of Bangladesh

In criminal justice scheme plea bargaining is in very repugnant position as many jurists describe that method of plea bargaining is not the perfect means to ensure justice. The legal system of Bangladesh is adversarial in nature and some critics concluded that plea bargaining does not have some basic features of adversarial doctrine, together with the availability of impartial and inoperative conclusion makers and regulations that administer the evidential and arbitration method. It is also altercated that if plea bargaining is adopted in criminal case, occurrence of crimes may be increased as criminal will get opportunity to compound their offences. In plea negotiation the prosecution may coerce the accused and if the victim is wealthy, corruption may take place in plea negotiation. On the other hand the accused may face great hardship is the application of plea bargaining is rejected. Proper education and training system is also absent regarding application of plea bargaining in our country.

Promotion of ADR in criminal justice system may cause decriminalization of crimes which means that crimes will not turn up in our criminal justice system but still insist with all its evils. There will also be a way to settle criminal offences through village shalish but it is already submerged with winged decisions and local politics. In such case the assurance of justice is not expected and people will further need to come at court. So without the involvement of any judicial body in compounding of offences may decriminalize crime and anarchy in society.

Very often it may be seen that at the beginning of a case the prosecution may overcharge the accused and ignores the interest of the victim. Some scholars say that plea negotiation is disrespect to the victim's interest. Plea bargaining is such case may impose huge pressure on accused to plead guilty to an offence which he has not committed. Some of basic fundamental rights of both accused and victim may be badly injured by introduction of plea bargaining in criminal case. Plea bargaining may turn into a tool of prosecution in lieu of a tool of justice. In some cases a co-accused may plead guilty to take the blame for someone else and it may be a trap for others.

Arguments sat that pleading guilty in plea negotiation by an innocent accused may take away his right of taking part in election, holding public office and obtaining a bank loan etc. Even after getting lesser punishment by pleading guilty an accused may be still confined in prison for a specified time. Corrupt investigation report by police may influence the aspects of plea negotiation and cause misery to the accused. Moral message to prohibit may be diluted by plea bargaining. Many criminal may get impunity and exemption from due punishment.

In spite of these drawbacks, some justifications comprehend that to bring appropriate and optimal result in criminal justice system plea bargaining is a must. It will assist both the court and prosecution to come into a conclusion by the facilitation of accused. Satisfactory result will be there for both litigants and resources of state will be saved. It is pertinent to mention that mediation as ADR mechanism in civil suits takes place under the guidance of court. As some of the criminal offences are settled by village courts and municipal dispute settlement boards, settlement by such quasi formal courts may be encouraged instead of compounding by parties.

The “contractarian” theory points out that plea bargaining is a sound machinery and saves judicial resources and ensures the participations of all disputants keeping them free from uncertainty of long trial (A lamin, 2015:77).

Finally to assure fair justice, some requisitions of plea bargaining have to be maintained like, the hearing of application of plea bargaining must occur in court, the voluntariness of the accused must be ensured by the court and he must be aware of such negotiation and lastly if the petition of plea bargaining is rejected by the court then the concerned judge will not further hear the case.

Recommendations

It cannot be denied criminal justice system of Bangladesh is already hunch-back with huge number of pending cases and delay in trial procedures have added extra anguish. Considering such a tremendous situation of complex and prolonged criminal trial proceeding and all the limitations existing as well, this paper suggests that inclusion of plea bargaining in criminal justice system can assist to eradicate affliction due to backlogging of cases in Bangladesh. Following recommendations are pointed out to be considered for smooth performance and prospect of ADR in criminal justice system of Bangladesh that promote access to justice in a positive manner:

At the initial stage of incorporating plea bargaining, it will be wise to apply only sentence bargaining rather than true application of charge bargaining that may not be very fruitful as it may facilitate the prosecution. On the other hand fact bargaining is very complicated issue and depends much on the personal skill of the lawyers.

Before introduction of plea bargaining as ADR mechanism, impartiality and fairness must be ensured from all departments of criminal justice system. Not only the judges but all administrative employees of court must act fairly to enhance plea bargaining mechanism. Accountability of both judges and executives of court must be ensured.

Like India, a new and exclusive chapter on the plea bargaining may be included in the Code of Criminal Procedure, 1989. This chapter shall prescribe both substantive and procedural rules of plea bargaining in a criminal case. This chapter shall further mention the individual duty of both court and disputants entering into plea negotiation along with the consequences of such agreement. The court shall have the duty to disclose how some of the constitutional rights will be excluded if plea bargaining is adopted. Offences which can be compounded under plea bargaining have to be clearly specified within this chapter.

Plea bargaining may be applicable for those delinquencies under Penal Code and other penal legislations for which the confinement is not more than 7 years. Some offences under special law may also be subject to plea bargaining if mentioned therein. Offences like sedition or relating socio-economic vulnerabilities of country, assault against women and children under the age of 14 years shall not come under the feasibility of plea bargaining. Approval of High Court Division or Session Judge along with trial court shall be obligatory in plea negotiation of exceptional cases.

Plea bargaining mechanism shall have to be fully independent from the involvement of police department. The court shall perform the major task in plea negotiation and may arrange a primary examination in camera to assure the voluntariness of the accused. There may be a preliminary conversation between only the accused and judge regarding plea bargaining of a case. In anti-corruption cases the theory of plea bargaining may be implemented. An application for plea bargaining may be made by the accused to the commission as well as to the court confessing his guilt and if the court approves the application, the accused will be convicted but won't face any imprisonment. He might be suspended from his service and might be unfit to take part in election or some of his properties might be attached by law.

While determining lesser penalty for the accused, the reaction of the victim shall never be overlooked. Plea bargaining shall be applied as a process to bring balance and to ensure justice on both sides. Equal consent of

prosecution, victim and accused must be taken to operate plea negotiation. The court must deliver its judgment on the mutual settlement of the disputants and it must be in an open court.

Where a minimum punishment is given for the convict, the accused may face one-third, one-fourth or half of such penalty. Any judgment of court coming through plea bargaining shall be final and application of appeal or revision shall be barred by law.

Any accused pleading guilty may be released on probation but the habitual offenders will not be able to avail the opportunity of plea bargaining.

Special training institute for the judges and lawyers shall be established for the effective application of plea bargaining in criminal cases and awareness program is to be initiated in every level to aware common people about plea bargaining. A specialized department on plea bargaining might be formed in every district court to corroborate litigants in plea agreement.

Concluding remarks

Alternative Dispute Resolution is a machinery to settle disputes in an amicable situation out of traditional court proceedings. Plea bargaining can use as a tool for the smooth functioning of ADR in criminal justice system and to provide relief from backlog of cases and annoyance caused by long procedural trial. Timely disposal of criminal cases has become an unbelievable matter for disputants. In such distress situation inclusion of plea bargaining in criminal justice system can create a new window of hope and opportunity for the litigants especially for the poor. Plea bargaining indicates the formula to confess the guilt by taking some concession from the prosecution or by receiving lesser punishment. Some provisions regarding compounding of offences are found in the Code of Criminal Procedure but not so effective to mitigate the hardship of disputants. Despite multiple debates in favor and against plea bargaining, it might be the proper and effective mechanism to overcome the existing problems of criminal justice system. Dissatisfaction of citizens over judiciary is gradually rising due to delay and backlogging of cases while other forms of repression are also there. It is the time to amend relevant legislations and incorporate the provisions of plea bargaining in criminal laws of Bangladesh. Adequate legal framework, competent judges and skillful lawyers can play momentous role to civilize plea bargaining in criminal cases. Plea bargaining process requires careful oversight to secure that it will not cause coercion and undue influence over any party but guarantees substantial justice. However, it is expected that introduction of plea bargaining as ADR mechanism in criminal justice system of Bangladesh will certainly assist to eradicate affliction of general mass people and promote access to justice in a positive manner:

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