



**Criminal Case-backlogging in Bangladesh:
An Assessment of the role of the Significant Actors and
Factors**

by

Naurin Aktar Kankon
MPPG 9th Batch
ID- 1929010085

October 2020



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Dedicated to—

Fatihah & Faatir

The innocent souls I am gifted with to accomplish my motherhood.

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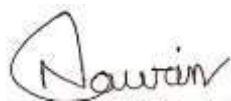
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Declaration

I declare that the dissertation entitled “Criminal Case-backlogging in Bangladesh: An Assessment of the role of the significant Actors and Factors” submitted to the PPG Program of North South University, Bangladesh for the Degree of Master in Public Policy and Governance (MPPG) is an original work of mine. No part of it, in any form, has been copied from other sources without acknowledgement or submitted to any other university or institute for any degree or diploma. Views and expressions of the thesis bear the responsibility of mine with the exclusion of PPG for any errors and omissions to it.



28.10.2020

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Abstract

The government has taken several initiatives to reduce case backlogs in recent years and in doing so, regular recruitment of the judges is being taken place by Bangladesh Judicial Service Commission. Moreover, new infrastructures are being erected countrywide to facilitate increasing demand of justice. In spite of such measures and initiatives the number of pending case is not being decreased to a satisfactory extent. Therefore, there are certain factors or actors dominant yet not properly detected behind the trend of hyper-wave of the case backlogs for which people of Bangladesh is suffering in getting speedy justice. Hence, in broad sense, this research attempts to explore and identify the dominant factors or actors contributing the constant yet latent flow of criminal case-backlogs in Bangladesh. But for the purpose of brevity and specification, the concentration of this research was to inquire into the most influential factor that potentially affects the condition of growing case backlogs in Bangladesh. Among multiple factors affecting the case backlogs in Bangladesh, as argued in this research no other factor of case backlog functions to the maximum extent as over-criminalization, originating from the policy-level 'law-making process' developed to the practice level 'law enforcement and judicial process'. In that way over-criminalization potentially impacts the judicial governance. The 'over-criminalization' factor, being one of the major factors behind case backlog involves several actors to get accomplished throughout its journey resulting in case backlogs. It has the far-reaching effect throughout the life and mission of a criminal law. As a matter of fact, over-criminalization has multiple adverse effects on the justice system and on the governance in any democracy and the most detrimental one of which is the case backlog. This research examined the extent of effect of over-criminalization on criminal case backlogs in Bangladesh through qualitative and quantitative survey. In doing so special focus was given to examine the effect of policy-level over-criminalization analyzing the laws of Bangladesh in relation to those the phenomenon of over-criminalization took place and to examine the effect of over-criminalization in law enforcement level analyzing the cases relating to domestic violence and financial dispute from selected criminal courts potentially affected by over-criminalization.

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List of Acronyms and Terminologies

Albeit	Though
Case Backlog	Pending Cases Of A Given Year
CB	Case Backlogs
CJS	Criminal Justice System
Criminal Statutes	Criminal Laws
Criminalization	Making Actions Punishable In Criminal Law
Inter Alia	Among Other Thing
Judicial Reform	Gradual Development Of Judiciary
Mens Rea	Guilty Intent
Over-criminalization	making human actions punishable offences in criminal law
Overlapping Statutes	Laws Having Repeating Contents
Subordinate Judiciary	District-level Judiciary
Ultima Ratio	The Last Resort

Chapter 1

Introduction

In spite of recent legal and judicial reforms the number of pending case has not declined to a satisfactory extent in Bangladesh. Therefore, there are certain factors or actors dominant yet not properly detected behind the trend of hyper-wave of the case backlogs with which people of Bangladesh is suffering in getting speedy justice. Hence, in broad sense, this research attempts to explore and identify the dominant factors or actors contributing the constant yet latent flow of criminal case-backlogs in Bangladesh. But for the purpose of brevity and specification, the concentration of this research shall be to inquire into the most influential factor that potentially affects the condition of growing case backlogs in Bangladesh.

This chapter includes the introductory discussion comprising background of the proposed research, statement of problem, the significance of the study, research objective, research question, scope and limitation of the study. A glimpse of the methodology of the study that this study shall adopt is also discussed in this chapter.

1.1. Background and context of the Study

To protect the constitutional guarantee the disposal of criminal cases is very significant assuring the justice for all. As the provision of the Article 27 and 44 of the constitution of the People's Republic of Bangladesh speaks about the equality before the law, each individual has the right to seek the relief coming before the court.(Bangladesh Constitution, 1972) .The backlog of cases is one of the reasons why the justice is denied. Therefore, the rate of the case disposal in the subordinate judiciary needs to be increased in comparison to filing of the cases.

The Supreme Court of Bangladesh and United Nations Development Programme (UNDP) in the Summary Report on Judicial Strengthening Project and Summary Report on Court Services Situation Analysis observed that for a huge number of people in Bangladesh the justice system has remained comparatively inaccessible. For accessing justice which is both inexpensive and timely, the people with vulnerability comprising the children and women, ethnic community, the poor and the people who are otherwise able face difficulties. Around 2.7 million cases having an effect of immense case backlog is gradually making the court administration overwhelmed and consequently the access to justice is being impaired. The on increase acknowledgement is that due to the above situation good governance and the rule of law are having barriers. (UNDP, 2013). For ensuring the access to justice for the poor and helpless people the government of Bangladesh has enacted the Legal Aid Act 2000. In pursuant to that from 2009 to June 2019, according to the Annual Report(2018-2019) of National Legal Aid Services Organization, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, total 4,30,773 people got legal aid services including legal Advice, financial support for litigations, alternative dispute resolutions and legal information by hot line. According to the statistical report dated 1st January 2019 to 31st March 2019 published by High Court Division, Supreme Court of Bangladesh, “the number of pending cases in the Judiciary of Bangladesh is 35, 82,347.” (High Court Division, 2019)

Albeit a handsome amount of people are being facilitated to access to justice by the state-sponsored legal aid interventions the factors of backlogs are ultimately hindering them to get the fruit of justice to their home. Given the context, this research is aimed at detecting what are the dominant factors that are generating criminal case-backlogs within the sub ordinate judiciary in Bangladesh. According to the report on the Bangladesh Law Commission’s workshop towards identifying the causes and resolution of the factors of case backlogs in the courts of Bangladesh identified few factors and actors which are *inter alia* shortage of judges, infrastructural scarcity, lack of logistic supports including dearth of manpower like stenographers, lack of training of the judges, poor investigation by police, a section of lawyers’ tendency to linger the judicial proceedings.(Report of Bangladesh Law

Commission, 2015). Besides, different factors and actors towards case backlogs as have been identified by different news sources media reports are shortage of judges, poor investigation by police, a section of lawyers' unwillingness to settle the case.(The Daily Star, 2019)

The government has taken several initiatives to reduce case backlogs in recent years and in doing so, regular recruitment of the judges is being taken place by Bangladesh Judicial Service Commission. Moreover, new infrastructures are being erected countrywide to facilitate increasing demand of justice. In spite of such measures and initiatives the number of pending case is not being decreased to a satisfactory extent. Therefore, there are certain factors or actors dominant yet not properly detected behind the trend of hyper-wave of the case backlogs for which people of Bangladesh is suffering in getting speedy justice. Hence, in broad sense, this research attempts to explore and identify the dominant factors or actors contributing the constant yet latent flow of criminal case-backlogs in Bangladesh. But for the purpose of brevity and specification, the concentration of this research shall be to inquire into the most influential factor that potentially affects the condition of growing case backlogs in Bangladesh.

1.2. Statement of the problem

Justice and equity are promoted by governance as Aminuzzaman & Sumaiya Khair in their Book, *"Governance And Integrity The National Integrity System In Bangladesh"* observed that "Governance is viewed as the sum of three major components: process, content and deliverables. The process of governance as a political and institutional point of view fundamentally emphasizes transparency, accountability and integrity and promotes values such as justice and equity." (Aminuzzaman & Sumaiya Khair, 2017). Consequently when due to backlog of cases the justice is denied the purpose of governance becomes frustrated. In a report of Daily star the information below was visible, "around 1883 cases remain pending with a judge on an average." If the growth of pending cases continue at this pace, the audit projected that by 2022, chief judicial magistrates' courts, Session Judges' courts and

the High Court Division would have 72.82 and 89 percent of their cases pending. (The Daily Star, 2019)

So, the number of criminal cases is increasing and keeping this situation in mind the recruitment of the judges in the subordinate judiciary has been made regular. Though the number of judicial magistrates and metropolitan magistrates are on increase, the number of cases is not decreasing. Some infrastructural problems were identified earlier and the government has built new buildings in each district for removing the accommodation crisis. Besides the above, the government took the initiative to make the whole Judiciary digitized and that is why each chamber of the magistrate has internet connection. Sessions Judges and In spite of all the initiatives taken above, the number of pending cases is still on increase. The case backlogs which are such a burden for the subordinate judiciary of Bangladesh need to be addressed searching the factors contributing to that.

Over-criminalization has been identified by legal reform experts as a policy-level anomaly in different jurisdictions to cause case backlog. We can relate some of the instances to this context.

Mohammad Mahbubur Rahman in his book titled *“Criminal Sentencing In Bangladesh From Colonial Legacies to Modernity”* observed that “criminal law inflation is a common trend in state-centric legal traditions of the contemporary world where Bangladesh is no exception.” (Muhammad Mahbubur Rahman, 2017).

Ronald L. Gainer in his article headed *“Remarks on the Introduction of Criminal Law Reform Initiatives,”* submitted that “given the efficiency norm, the costs arising from criminalization of many acts by a state (e.g., compliance costs; use of resources for enforcement, prosecution and punishment; external costs detailed below that fall on innocent third parties) exceed the benefits which were intended in doing so.” (Gainer, 2011) Ridwanul Hoque in his book chapter titled *“Courts and the adjudication system in Bangladesh: in quest of viable reforms”* investigated on the history, culture, internal and external dynamics of the judicial system of Bangladesh. He argued that underperformance of specialized courts in Bangladesh is also

attributable, to a certain extent to hastily legislated laws that established those courts without proper planning regarding their structure and administration. (Ridwanul Hoque, 2015)

Over-criminalization as a dominant factor involves multiple actors to operate and achieve the status of being able to potentially affect the justice sector by creating case backlogs.

1.3. Significance of the Research

It is said that the judiciary is particularly difficult to reform because it is one of the Bangladesh's most conservative institutions. There will always be people who do not want change that might compromise their vested interests. (Reform, The, & Development, 2005)

Digitization of judiciary of Bangladesh has been thought as a way out for reducing both civil and criminal case backlog and making accessible justice and in pursuant to that on 24th December 2016 the Judicial Portal was inaugurated by Hon'ble Chief Justice of Bangladesh at BICC Dhaka. With the technical support of a2i Supreme Court of Bangladesh, Law and Justice Division and a2i programme of Prime Minister's Office conjointly advanced this portal. The citizen of Bangladesh will catch all the required judicial information at any time. All the courts, tribunal and judicial institutions including the Supreme Court are covered within this framework of judicial portal. Information on how to file cases, information of the lawyers, information on legal aid, about court fees, update of the court cases, valuation of cases, information on judges' and courts are necessary information which are available in the portal. Despite these steps taken in order to digitizing the judiciary there is no visible decline in the backlogs of the criminal cases so far.

Overwhelming dependence and erroneous decision to resort to criminal courts to get civil remedies ultimately result in anomaly in the justice dispensation and harms the bloom of growing economy of a given country. So far as the use of criminal justice machinery is concerned, it is of paramount importance to resort to it as the

ultima ratio meaning as the last resort. For the monetary transactions to be remedied by the criminal justice mechanisms it is imperative to examine that a definitive culpability in relation to the alleged transaction was present conspicuously from its very commencement. The practice of getting legal remedies of civil disputes through the criminal courts not only affects the economy but also catastrophically jeopardize the overall climate of investment and development process of the country. Another very significant aspect is that the state imposes criminal sanction and punishments as the most rigorous institutional measure to ensure rule of law in a constitutional democracy. Therefore, it should be invoked as the last contrivance for regulating the citizens' conduct.(Mondaq Business Briefing, 2020)

Therefore, it is a very intriguing issue for researching on over-criminalization as a dominant yet dormant factor of the case-backlogs in the criminal justice administration of Bangladesh. The following paragraph can be aligned with the core focus of this researcher in doing so.

1.4. Research Question

The researcher has designed the following specific research question to be guided by and to pursue the research findings:

Is over-criminalization a significant contributing factor for criminal case-backlogs in the subordinate judiciary of Bangladesh?

1.5. Objectives of the Research

The cardinal objectives of this research are:

- To identify the most dominant factors and actors of growing case backlogs in the criminal justice system of sub-ordinate judiciary of Bangladesh.

-
- To assess the extent to which the phenomenon of over-criminalization is contributing as a dominant factor for criminal case-backlogging in the subordinate judiciary of Bangladesh.
 - To evaluate the role of the key actors associated with phenomenon of over-criminalization process in policy-level(law-making) and practice-level(implementation and judicial enforcement of law) in contributing for criminal case-backlogging in the subordinate judiciary of Bangladesh.

1.6. Scope of the Research

Ideally, in common law countries, the causes of case backlogs are manifold but there is one key factor, as this research aims to demonstrate is the trend of excessive criminalization (hereinafter used as 'over-criminalization' throughout this research) of certain 'actions and omissions' which is mainly a political response against the societal crises to regulate the activities and affairs of people and corporations in a democracy.

Among multiple factors affecting the case backlogs in Bangladesh, as argued in this research no other factor of case backlog functions to the maximum extent as over-criminalization, originating from the policy-level 'law-making process' developed to the practice level 'law enforcement and judicial process'. In that way over-criminalization potentially impacts the judicial governance. The 'over-criminalization' factor, being one of the major factors behind case backlog involves several actors to get accomplished throughout its journey resulting in case backlogs. It has the far-reaching effect throughout the life and mission of a criminal law. As a matter of fact, over-criminalization has multiple adverse effects on the justice system and on the governance in any democracy and the most detrimental one of which is the case backlog.

Scope of this research shall be limited to examination of the extent of effect of over-criminalization on criminal case backlogs. In doing so special focus shall be given to examine the effect of policy-level over-criminalization analyzing the laws of Bangladesh in relation to those the phenomenon of over-criminalization took place

and to examine the effect of over-criminalization in law enforcement level analyzing the cases relating to domestic violence and financial dispute from selected criminal courts potentially affected by over-criminalization.

In retrieving essential data and information the researcher shall purposively select and analyze a manageable size of number of case-records from criminal courts of Metropolitan Magistrates' Courts of Dhaka and Chittagong. Additional efforts shall be spared to interview the KIs ranging from the judicial actors associated with the criminal justice system of Bangladesh to the experts acquainted with the legislative and judicial reforms in Bangladesh.

1.7. Methodology

Research Methodology gives a detailed idea of the study the researcher conducts throughout the research. According to Creswell (2009), "Research methodology is a broad framework of research adopted by researchers to offer guidance about all detail of the study from assessing the general philosophical ideas behind the inquiry to the detailed data collection and analysis procedure".

To explore the dynamics of key factors and actors of Case Backlog in Criminal Justice System leading to the backlogs of criminal cases a study comprising both qualitative and quantitative approaches will be adopted. This researcher has chosen two metropolitan cities, Dhaka and Chittagong. These metropolitan cities include more police stations and wide variety of criminal cases. Therefore, these two metropolitan cities are selected for case studies for a comprehensive data source and result but due the outbreak of COVID-19 virus, a pandemic the researcher may chose Dhaka or Chittagong as the study area. Quantitative data will be collected through online survey containing both open and close-ended questions for the judges, magistrates, lawyers keeping their name in anonymity. The researcher for collecting qualitative data will conduct in depth interviews of retired justices, judges, renowned Jurists, experts on legal and judicial reform, metropolitan and judicial magistrates and

lawyers and due to the incumbent pandemic situation this interview might be conducted through phone and Skype calling.

Through content analyses extending to different books, journal articles, newspaper articles, reports, laws, circulars and online contents, secondary data can be collected. For retaining a holistic and real-world perspective this researcher will do some case studies analyzing case records. According to (Yin,2018), “Whatever your field of interest, the distinctive need for case studies arises out of the desire to understand complex social phenomena. Case studies allow you to focus in-depth on a “case” and to retain a holistic and real-world perspective—such as in studying individual life cycles, small group behavior, organizational and managerial processes, neighborhood change, school performance, international relations, and the maturation of industries.”(Yin, 2018)

Different case records of different stages of criminal procedure will be studied. In retrieving essential data and information the researcher shall randomly pick and analyze adequate number of case-records from criminal courts of Metropolitan Magistrates’ Courts of Dhaka and Chittagong as the nature of cases and challenges faced by the courts and court users are almost identical throughout Bangladesh.

Relevant case-laws on the use of criminal courts for the attainment of civil rights and remedies shall be studied from the recognized Law Reports.

1.8. Structure of the Study

The present thesis entails six chapters. The chronology and contents thereof are depicted hereunder.

Chapter 1 introduces the research in general ramification. This chapter includes the introductory discussion comprising background of the proposed research, statement of problem, the significance of the study, research objective, research question, scope and limitation of the study. A glimpse of the methodology of the study that this study shall adopt is also discussed in this chapter.

Chapter 2 envisages the Conceptual Framework of the research. This chapter envisages broadly two portions- the literature review and the analytical framework building jointly the conceptual framework of the present study. The first segment enumerates the literature review from national, regional and global spheres on case backlog in the criminal justice system and the phenomenon of over-criminalization impacting the case backlogs. It also contains consolidated core observations of the literature reviewed and theoretical framework developed therefrom. The second segment exhibits the geometrical manifestations of a theoretical framework derivative of the theories and empirical experience of the researcher. This chapter in its development demonstrates functional details of variables dependent, intervening and independent and their respective indicators.

Chapter 3 incorporates the Research Methodology. This chapter envisages the detailed description of the methodological process that this research engages.

Chapter 4 enumerates narratives on Case-Backlogging in the Criminal Justice system and over-criminalization. This chapter deals with the detailed discussion on cardinal issues of study the Criminal Case Backlogs and Over-criminalization focusing on normative and cross-boundary investigations on their internal dynamics and external subtleties.

Chapter 5 is dedicated for Data Analysis and Interpretation. This chapter accumulates the result of and process on which the analysis and interpretation of both qualitative and empirical data to rationalize the research question and analytical framework.

Chapter 6 is the Concluding Chapter. This chapter venture to incorporate the principal observations on the basis of immediate preceding chapter of data analysis. While advocating for a range of legal and judicial reform this epilogue shall address few implications of the future research on the dominion of case backlog management.

Chapter 2

Conceptual Framework

The present chapter envisages two distinct part theoretical and analytical frameworks conjointly forming conceptual framework for this study. The first segment of this chapter enunciates the ephemeral outline of various literatures on case backlog and over-criminalization from national, regional and international domains. Then, in course of the systematic analysis the review of relevant literature paves the way to adopt the theoretical framework for this study.

And in the later part of this chapter is constructed an analytical framework on the perceived interplay of three distinct but consequentially connected variables for this research- independent, intervening and dependent. Perceptive review of literature and empirical knowledge of the researcher on the aspects of criminal case backlog as well as the factors and actors associated thereto revealed the measuring indicators towards development of the argument of this study.

2.1. Literature Review

In advancing the arguments of the researcher with the aspects and dynamics of potential factors and actors contributing to the case backlogs of the criminal courts in the subordinate judiciary of Bangladesh the researcher has functionally summarized the available gamut of literature consulted from the international, regional and local sources. To substantiate the study questions and to reach to a rationalized finding as to the research objective the relevant literature are compartmentalized into two main chunks. These are as follows-

2.1.1. The dynamics of key factors and actors of Case Backlog in Criminal Justice System has been discussed at the first phase while subsequent phase of review contemplates:

2.1.2. The narratives and implications of the phenomenon of over-criminalization as a dominant factor of the causes leading to the backlogs of criminal cases.

2.1.1. The dynamics of factors and actors of Case Backlogs(CB) in Criminal Justice

The criminal case backlog is a hindrance to judicial reform and due to the conservative attitude of the stakeholders the justice seekers are not getting justice and justice is being denied. The government is that is why trying to get rid of the case (both civil and criminal) backlog for ensuring justice and equity for all. The judiciary of Bangladesh is suffering from case backlog disease and finding out ways. Keeping this situation in mind Honorable Law Minister of Bangladesh, Anisul Huq said “The government is trying in different ways to reduce the backlog of cases. Singapore had such a problem in the past. They (Singapore) have solved the problem very tactfully. We can use their expertise in reducing the backlog of cases.” (The Daily Star, 2019a)

Executives continuously influence subordinate courts in Bangladesh as Aminuzzaman and Sumaiya Khair in their Book, “*Governance And Integrity The National Integrity System In Bangladesh*” observed that “Despite formal separation of the Judiciary from the Executive, it has not met people’s expectation of a truly independent institution since the subordinate courts continue to be influenced by the Executive. Judicial independence is also believed to be often compromised by controversial appointments, promotions, removals and conduct of Judges.” (Aminuzzaman & Sumaiya Khair, 2017)

2.1.1.1. Maneuvering social problems by Criminal Justice System

The criminal justice system (and regulatory system) is a complex vertically (and horizontally) linked system of common pools. Changes at one level or function

change demands on other levels and for other functions.(Bruce L Benson and Iljoong Kim, 2012)

A number of role players exist within the criminal justice system and the courts, prosecutors, the police and the prison have been included within the system. For a smooth functioning of the system all the players need a unified effort. If there causes any delay in one part of the system, other parts suffer equally and thus there happens the overcrowding in prison and case backlogs. These all factors bring the denial of justice inevitably.(Associates, 2015)

Criminal justice system and the functioning of criminal justice effectively depend on the just application of rules and procedure besides of other significant factors comprising ‘logistic support’, ‘resource mobilization’, ‘adequate managerial capacity’, ‘scientific facilities’. Unfortunately the criminal justice system does not get the required budgetary allocation and other necessary resources proportionately. Likewise the coordination of work among all the actors of the system has scarcely been over-emphasized.(Dr. Abdullah Al Faruque, 2006)

2.1.1.2. Court Performance Measurement and Management

It was articulated by (Hall & Keilitz, 2018) that the proper use of performance measurement applicable in judiciary is not possible until the judiciary can bring changes in allocating responsibilities, inaugurating certain policies, crafting the structures of governance and initializing certain processes and procedures experiencing practices for getting ensured of an adoption, implementation and institutionalization of a PMM system.

“Court performance measurement and management (PMM) is the discipline and the process of monitoring, analyzing, and using organizational performance data on a regular (ideally in real or near-real time) and continuous basis for the purposes of improvements in organizational efficiency and effectiveness, in transparency and accountability, and in public trust and confidence in the courts and the justice system. “Eleven core performance measures have been identified in global

measures. Eleven performance measures align with the court values and court excellence. All eleven core measures give operational meaning to the value of transparency and accountability insofar as they keep judicial institutions responsible to the citizens, and keep people informed about how the courts are performing. Among eleven measures 'Backlog' is one. (Hall & Keilitz, 2018)

2.1.1.3. Growing trend of Case Backlog in Bangladesh

Report on the Bangladesh Law Commission's workshop towards identifying the causes and resolution of the factors of case backlogs in the courts of Bangladesh identified few factors and actors which are inter alia shortage of judges, infrastructural scarcity, lack of logistic supports including dearth of manpower like stenographers, lack of training of the judges, poor investigation by police, a section of lawyers' tendency to linger the judicial proceedings. (Report of Bangladesh Law Commission, 2015)

Besides, different factors and actors towards case backlogs as have been identified by different news sources, media reports are shortage of judges, poor investigation by police, a section of lawyers' unwillingness to settle the case.(The Daily Star, 2019b)

The government has taken wider initiatives to remove the case backlogs on 24th December 2016 the Judicial Portal was inaugurated to ensure the justice for all. In spite of different initiatives to remove case backlog, according to the statistical report dated 1st January 2019 to 31st March 2019 published by High Court Division, Supreme Court of Bangladesh the number of total pending cases is 35, 82,347 and within the total pending cases, the number of pending criminal cases is 17, 25,270.As per the statistical report of Bangladesh's case from January 1, 2019 to March 31, 2019, according to the Supreme Court of Bangladesh, High Court Division, the number of cases pending in Bangladesh courts is 35,82,347. The total number of cases filed in the new cases and revival cases from 2008 to 01 March 2019 is 1,05,95,611. During this period, the judicial system of Bangladesh has disposed of 1,38,63,250 cases. More than 1.2 million cases are being settled every year.

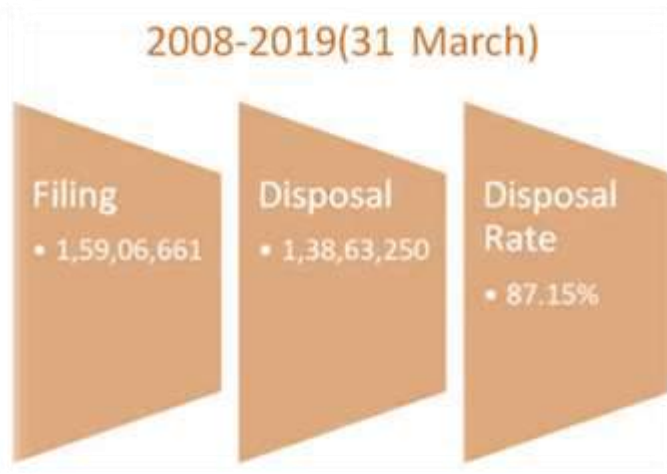
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The tables, diagrams and graphs underneath depict the rate of disposal of cases in Bangladesh Judiciary-

Table 1: Statistical overview of the growing trend of Case Backlog in Bangladesh(January 2018-March 2019) [Source- Bangladesh Supreme Court Reports, 2008-2019]

Year	Filing	Disposal
2008	11,41,596	9,40,445
2009	10,27,131	7,88,981
2010	12,17,927	11,64,484
2011	10,83,827	9,62,592
2012	13,59,589	10,45,713
2013	15,05,167	12,03,134
2014	16,07,255	13,46,863
2015	15,46,502	14,45,189
2016	14,05,002	13,57,297
2017	17,46,189	15,70,923
2018	17,94,814	15,79,564
2019(UPTO 31 st March)	4,70,667	4,58,065
Total	1,59,05,661	1,38,63,250

Figure 1: Disposal rate against the current Case Backlog in Bangladesh (January 2008- March 2019)

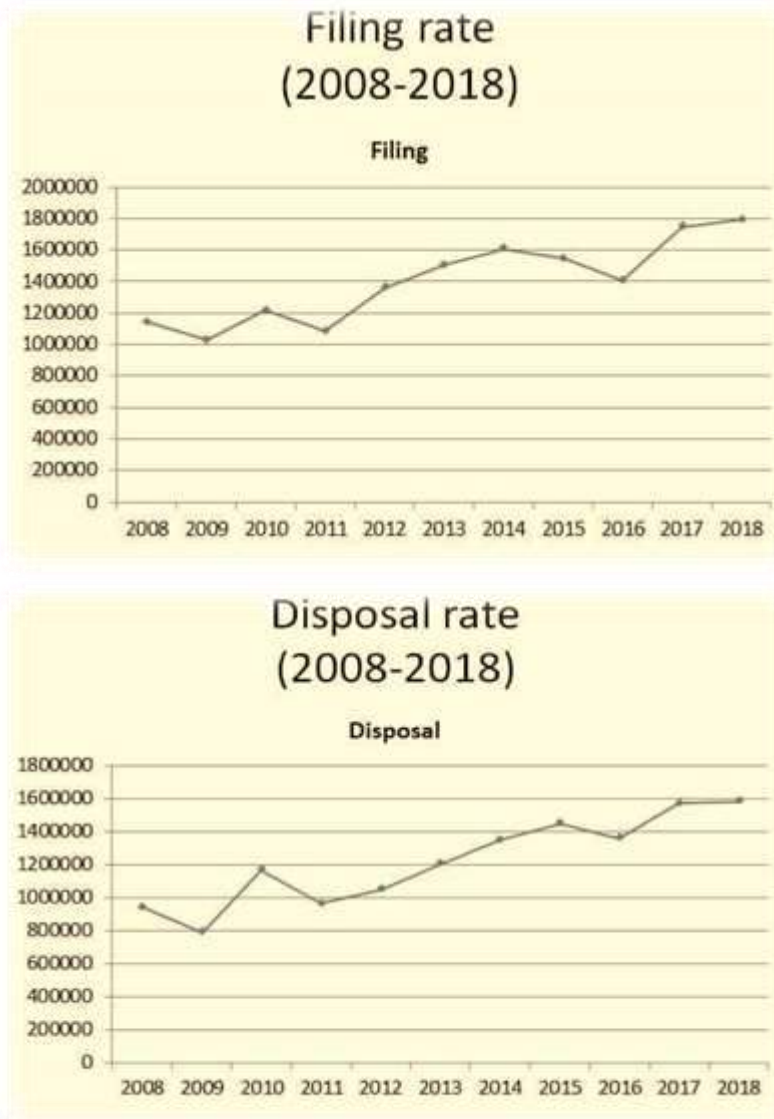


**Disposal Rate v. Filing Rate
in Criminal Cases**

Diagram showing Disposal rate against the current Case Backlog in Bangladesh (January 2008- March 2019)

[Source- Bangladesh Supreme Court Reports, 2008-2019]

Figure 2: Trend of Proliferation of Criminal Cases in Bangladesh (2008- 2018)



Trend of Proliferation of Criminal Cases

Graphs showing the overview of the disposal rate against the Case Backlog in Bangladesh (2008- 2018) where the increase of the filing rate which is more than that of disposal. So though the increase of the disposal rate is continuous, the decrease of the filing rate is not visible. In managing changes as to tackling case-backlogs in subordinate judiciary, this is the major obstacle which has to be addressed to be solved.

[Source- Bangladesh Supreme Court Reports, 2008-2018]

Table 2: National Data on Criminal Case Backlog for 2019 (64 Districts)

Backlog of Criminal Cases in the Subordinate Judiciary of Bangladesh(2019)				
Yesteryears' Cases (17,11,618) + New Filing (11,47,792) + Recieved cases (2,99,266)	Total Cases <hr/> 31,58,676	Disposal+Transfer <hr/> (7,84,034+5,68,277)	Total 'Disposed of' Cases <hr/> 13,52,311 (42.81%)	Total Pending Cases <hr/> 18,06,365 (57.18%) [Cases pending for more than 5 years 2,71,569]

[Source- Bangladesh Supreme Court Report, 2019]

District-specific Data on Criminal Case Backlog for 2017-2019 (Chattogram and Faridpur)

Table 3 - Criminal Case Backlogs in 2017-19 (Chattogram and Faridpur)

District	Year	Year-end cases	Trend of backlogs
Chattogram (CMM COURT)	2017	23365	Gradually Increasing Backlogs
	2018	29615	
	2019	34567	

[Source- Office of the Chief Metropolitan Magistrate, CMM Court, Chattogram]

Table 4 - Criminal Case Backlogs in 2017-19 (Faridpur)

District	Year	Year-end cases	Trend of backlogs
Faridpur (Domestic Violence Cases in Special Tribunal on Violence against Women and Children)	2017	1410	Gradually Increasing Backlogs
	2018	1523	
	2019	1743	

[Source- Office of the Tribunal on Violence against Women and Children, Faridpur]

2.1.1.4. Global Response to Criminal Case Backlogs

Delay characterizes the formal systems of dispute resolution and unjustifiable delay defeats justice. There remain two well established maxims and those are-“justice delayed is justice denied” and “justice hurried is justice buried” submit a tension between efficiency and justice. Justice should be conveyed and borne efficiently and judiciously. (Whalen-Bridge, 2017)

It was pointed out by Islam and Solaiman that one of the former Chief Justice told that people have less confidence on judiciary than that of earlier because a long pending cases are awaiting for more than a decade. Some causes which are unambiguous have been revealed for case backlogs inter alia shortage of judges, inadequate salaries, less appearance of the government witnesses. The argument was that the subordinate judiciary is overburdened with cases. Delay and injustice were connected producing a complete vice in the justice system and as the people have the right to get the prompt trial guaranteed in art 35(3) of the Bangladesh Constitution, this is definitely a violation of fundamental right.(M Rafiqul Islam and S M Solaiman, 2004)

It was expressed by Alam(2010) that the backlogs of cases is a matter of worry. It was also argued that justice and economic development were injured due to such delays. (Alam, 2000) It was also articulated that though common law legal system owns both merits and demerits the legal system of Bangladesh is carrying more demerits than that of merits having been demonstrated by case backlogs and delays. When there happens a delay, the party wins never becomes compensated and there remains no standard time for disposal of cases rather some cases take 10-15 years to be disposed of.(Alam, 2010)

In exterminating backlogs the experience of Singapore recommends about the entwined relationship between efficiency and justice producing a context specific understanding. Given the atypical nature of this relation the Singapore Model of backlog fighting is not comprehensively compatible for other jurisdictions.(Whalen-Bridge, 2017)

It was expressed in the article titled “Incentivizing Courts to Reduce Backlogs: Serbia’s Court Rewards Program” that Serbia’s judicial system was suffering from large backlogs and delays and accordingly the country’s highest instance court for encouraging individual courts introduced a rewards system which brought the improvements in reducing case backlogs.(World Bank, 2018)

A 6-points Judicial Reform Recommendation for Bangladesh was given by the then honorable Chief Justice of the Bangladesh Supreme Court, Dr. F.K.M.A. Munim in a 1985 paper to address the problems of court congestion and case backlogs. These are enunciated as under-

“ (1) an improvement in the quality of judges; (2) improved training of court managers and administrators; (3) the imposition of a rational staffing system for court management; (4) improved training in the art and technique of administrative management of the courts in order "to take advantage of the sophisticated technical transformation of the system"; (5) the "establishment of a Judicial Training Centre for training of the judicial officers"; (6) and an increase in the number of courts.”(Falt, 1985)

Lack of conclusive study in relation to delay in the criminal justice system rendered this field to be perpetually affected. As observed Pillai, “Daunting delay has been haunting the administration of criminal justice not only in India but also elsewhere in the world. The reasons for this unhappy state of affairs are the studies in this area always remained fascinating though have been inconclusive.”(K.N.C. Pillai, 2007)

It was observed by Tania Sourdin and Naomi Burstyner that justice can be defined as delayed justice when the delay is unnecessary, untimely and disproportionate. They articulated, “Justice delayed is justice denied”, this maxim brings the question that when justice is delayed, is justice denied? If the delay is unnecessary, untimely and not proportionate, justice is defined as delayed.(Tania & Burstyner, 2012)

Table 5: Summary of Core Observations of the literature review on Criminal Case Backlog

Author/Source and Year	Core Observations
Aminuzzaman & Sumaiya Khair (2017)	The process of governance as a political and institutional point of view fundamentally emphasizes transparency, accountability and integrity and promotes values such as justice and equity.
Whalen-Bridge (2017)	Justice should be conveyed and borne efficiently and judiciously.
Bruce L Benson and Iljoong Kim (2012)	Criminal Justice System is the combination of composite factors having influence on all levels thereof.
Abdullah Al Faruque (2006)	Coordination between various actors of the criminal justice system can hardly be over-emphasized to achieve its goals.
Hall & Keilitz (2018)	Backlog as one of the Court performance measures aligns with the court values and court excellence which give operational meaning to the value of transparency and accountability in so far as it keeps judicial institutions responsible to the citizens, and keep people informed about how the courts are performing.
Report of Bangladesh Law Commission (2015)	Shortage of judges, infrastructural scarcity, lack of logistic supports including dearth of manpower like stenographers, lack of training of the judges, poor investigation by police and a section of lawyers' tendency to linger the judicial proceedings are generally the identified factors of criminal case backlogs in Bangladesh.
RidwanulHaque(2015)	While a number of successes achieved followed by the establishment of special courts the inclusive objectives of creating them remain widely incomplete because of the

	reason that those courts could not always dispose of disputes or criminal cases by the stipulated time.
Alam (2010)	Justice and economic development were injured due to case backlogs and delays.
M Rafiqul Islam and M Solaiman(2004)	Delay and injustice were connected producing a complete vice in the justice system and as the people have the right to get the prompt trial guaranteed in art 35(3) of the Bangladesh Constitution, this is definitely a violation of fundamental right.
The Daily Star (2019b)	Different factors and actors towards case backlogs as have been identified by different news sources, media reports are shortage of judges, poor investigation by police, a section of lawyers' unwillingness to settle the case.

2.1.2. Implications of over-criminalization as a dominant factor of Criminal Case Backlogs

On the issue of Systemic discrimination in the criminal justice system and more particularly on national, whole-of-government action plan to address criminalization the Chief Commissioner, Ontario Human Rights Commission wrote to the Attorney General of Toronto in a 2017 official correspondence—

“For over a decade, the OHRC has documented and called for an end to systemic discrimination in the criminal justice system. Respecting the full range of internationally-protected human rights means proactively addressing long-standing and entrenched discrimination at its source, and searching for sustainable solutions that respect the dignity of all Canadians and allow them to meaningfully contribute to society. Relying on the criminal justice system should be the last resort to address social issues, not the default.” (OHRC, 2017)

Erik Luna in her article titled 'The Over-criminalization phenomenon' argued that numbers of activities have been criminalized in all levels of government by the hands of the policymakers. Consequently it is a matter of no surprise that courts are blocked with cases and also being crowded with prisoners. (Luna, 2005)

It is obvious that Luna made a very cogent point of policy-level excessive criminalization of numerous activities of the people which are significantly attributable to the problems of case backlogs at courts and overcrowding in the prisons within the criminal justice system. Heritage Foundation in their Policy Briefing Book, SOLUTIONS, has meticulously supported Luna's argument and characterized the activities of policymakers in criminalizing number of activities of the people as 'over-criminalization' with a further details on its effect on the criminal justice system. The said policy briefing incorporates a brief account of the issue of overuse and misuse of criminal law and associated criminalization phenomenon. It observed that "the overuse and abuse of criminal law to address every societal problem and punish every mistake—is an unfortunate trend. The criminal law should be used only to redress blameworthy conduct, actions that truly deserve the greatest punishment and moral sanction. More recent Congresses have enacted criminal laws not to protect important national interests of a modern nation, but to score political points with voters who are led to believe that outlawing more and more kinds of conduct, or increasing the penalty for conduct that is already a crime, somehow solves a crime problem." (Heritage Foundation, 2018)

Therefore, in course of the propagation of this study the terminological and contextual understanding of the phenomenon of over-criminalization warrant crystalized conceptual clarification.

2.1.2.1. Conceptualizing— ‘criminalization’ and ‘over-criminalization’

On Criminalization:

Bruce L Benson and Iljoong Kim in their research dissertation ‘Causes and Consequences of Over-Criminalization’ defined criminalization in the following words-

“Criminalization refers to the legislative act of establishing/mandating criminal punishment for criminal behavior. The decision to criminalize an action is political, and (1) legislators have strong incentives to “over-criminalize.”(Bruce L Benson and Iljoong Kim, 2012)

On Over-criminalization:

Gainer, Ronald L. (2011) in his article titled “Remarks on the Introduction of Criminal Law Reform Initiatives,” in the Journal of Law, Economics and Policy elucidate the phenomenon of over-criminalization in the following approach- “the ‘over’ in the word ‘over-criminalization’ ... refers to the extension of penal law to reach conduct that most persons would never consider anything other than innocuous, inadvertent, or inconsequential.”

Bruce L Benson and Iljoong Kim in their abovementioned article observed that “given the efficiency norm, this means that the costs arising from criminalization of many acts (e.g., compliance costs; use of resources for enforcement, prosecution and punishment; external costs detailed below that fall on innocent third parties) exceed the benefits”

Symbolizing over-criminalization as “a serious problem called overcriminalization, a side effect of making criminal law a one-size-fits-all solution for society’s problems” the Charles Koch Institute in its article named ‘The Criminalization of Everything’ as featured in their website contends that “Over-criminalization is the overuse or misuse of criminal law to address societal problems that could be remedied more effectively through the civil legal system or other institutions. It’s an issue that has mushroomed over time, as crime after crime is added to our criminal codes.”(Charles Koch Institute, 2020)

Juxtaposing to the preceding definitions The National Association of Criminal Defense Lawyers (NACDL, 2013) in the US suggests that over-criminalization can take many forms, but most frequently occurs through—

“a) Ambiguous criminalization of conduct without meaningful definition or limitation; b) Enacting criminal statutes lacking meaningful *mens rea* requirements; c) Imposing vicarious liability with insufficient evidence of personal awareness or neglect; d) Expanding criminal law into economic activity and regulatory and civil enforcement areas; e) Creating mandatory minimum sentences un-related to the wrongfulness or harm of the underlying crime; f) Federalizing crimes traditionally reserved for state jurisdiction; and d) Adopting duplicative and overlapping statutes.” (Bruce L Benson and Iljoong Kim, 2012)

Again Erik Luna has made substantive observations as to the role of key actors of criminal justice system including police and lawyers as investigating and prosecuting agencies in the process of law enforcement and prosecution of criminal lawsuits that are attributable to the deteriorating health condition of the criminal justice system. In this context, Luna submitted that “law enforcers are usually designed to “do justice,” but they are the integral part of the legal system. Police and prosecutors want reverence and promotion accompanied by success measured by counting the number of arrests and convictions for the former and latter respectively. Needless to say, it is becoming more difficult for the various political and ideological camps to ignore the ever-expanding reach of the criminal sanction and the ever-increasing authority of law enforcement”.(Luna, 2005)

S. F. Smith in his 2012 article “Overcoming Overcriminalization” convincingly invoked the role of the judiciary and judicial functionaries for materializing the legacy of the menace of over-criminalization through liberal interpretation of provisions of substantive criminal law. Therefore, in the advent of the business of criminal justice system, judges in their adjudicating role often do contribute to deteriorate the health condition of the criminal justice system after police and lawyers as investigating and prosecuting agencies in the process of law enforcement, prosecution and adjudication of criminal lawsuits within the criminal justice

dispensation mechanisms. He submitted that “the over-criminalization problem is not simply that legislatures have enacted too many criminal laws and cast those laws in terms that are too expansive in reach. Courts bear a large share of the blame for over-criminalization, given their penchant to construe ambiguous criminal statutes broadly in a misguided quest to ensure that morally blameworthy offenders will not escape conviction. Far from being innocent bystanders in over-criminalization, judges have been all too willing to construe ambiguous (and, at times, not-so-ambiguous) criminal statutes expansively.”(Smith, 2012)

2.1.2.2. Regional Literature and case-laws on insights of over-criminalization:

India has been the world’s largest state struggling with the issue of case backlog. Most of which are direct or indirectly impacted by the scourge of over-criminalization (Mondaq Business Briefing, 2020).

After studying the following case decisions significant insights on over-criminalization can be understood from Indian Jurisdiction:

In the democracies where rule of law prevails constitutionally, anyone having a legitimate cause of action or grievance can seek recourse to criminal law and criminal justice system. However, any justice seeking litigant person who prosecute any complaint knowingly against any other individual knowingly that the institution of the criminal case was either vexatious or frivolous or an equal efficacious remedy is available with the competent civil court s/he should be accountable for such malicious prosecution.

In the case of “*G. SagarSuri v. State of U.P*”, the Supreme Court observed as follows:

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before, issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to

exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

Indian courts have time and again condemned the false and malicious criminal prosecution where there are equal efficacious remedies available in the competent civil courts for the self-same legal disputes for which the criminal prosecutions are filed. The expeditious legal reliefs that are offered by a criminal proceeding contrasted with the civil proceedings incentivize the justice seekers to litigate with false and frivolous accusations. Furthermore, litigant people find criminal justice system as a device and criminal lawsuits as tools to bulldoze and coerce the opponents to reach to a symbiotic settlement.

In "*Indian Oil Corporation v. NEPC India Ltd. & Others*" The Indian Supreme Court opined that:

"While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

Civil Courts are designed to redress the disputes of civil nature which includes the breach of contract and disputes that are arisen out of monetary transactions. Therefore, no criminal prosecutions that are initiated bypassing the mandate and jurisdictions of civil courts for pressurizing their adversaries to settle out of courts any civil disputes existing between them.

In the case of *“Anand Kumar Mohatta&Anr.v. State (Govt. of NCT of Delhi)”* the Court held that

“the essence of the offence lay in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he had made regarding the discharge of such trust. The court held that the dispute had the contours of a dispute of a civil nature and did not constitute a criminal offence. Further, the Court observed that the complainant had not made any attempt for the recovery of money except by filing a criminal complaint. Their action thus appeared to be mala fide and unsustainable.”

Unscrupulous litigants often indulge in forum shopping to get favorable decisions. Therefore, cases which are predominantly of a civil nature are given the guise of a criminal offence, that too after availing civil remedies. Presence of mala fide intention to recover the amounts which a party is unable to recover by civil mode is an abuse of the process of law.(Mondaq Business Briefing, 2020).

It is evident from the case studies above that even India as a country suffering the scourge of the world's largest backlog of cases, litigants often view criminal proceedings as a tool to pressurize and threaten the other party to enter a favorable settlement. The same scenario is prevalent in Bangladeshi jurisdiction too.

2.1.2.3. Literature having insights on over-criminalization in Bangladesh Jurisdiction

Ridwanul Hoque in his book chapter titled “Courts and the adjudication system in Bangladesh: in quest of viable reforms” investigated on the history, culture, internal and external dynamics of the judicial system of Bangladesh. While urging for cutting-edge judicial reform for the more sustainable justice dispensation system he has exerted efforts to locate the key factors and actors associated with the doleful case backlogs hindering the access to justice of the common people in Bangladesh. The judicial system of Bangladesh has experienced the proliferation of special courts in the post-independence era. Such proliferation of criminal courts was stimulated by

the objective of law and order maintenance. Such maintenance of law and order was designed by founding new tribunals with 'stringent powers' and 'narrow timeframe' for trying certain offences. Apart from this objective the common objective was to reduce the existing colossal case backlog by expediting the disposal of the cases particularly in the subordinate judiciary. While a number of successes achieved followed by the establishment of special courts the inclusive objectives of creating them remain widely incomplete because of the reason that those courts could not always dispose of disputes or criminal cases by the stipulated time. They could not materialize the objectives of their establishment owing to certain other reasons which includes scarcity of adequate logistics or resources and lack in manpower. Besides, these courts were not manned by well-trained judges for the special courts on specific judicial matters. On a separate assessment, underperformance of such specialized courts is also attributable, to a certain extent to hastily legislated laws that established those courts without proper planning regarding their structure and administration. (Ridwanul Hoque, 2015)

On the other hand, another criminal law scholar Muhammad Mahbubur Rahman in his book "Criminal Sentencing in Bangladesh: From Colonial Legacy to Modernity" investigated on the sentencing policy in Bangladesh from a critical perspective. His commendable treatise reveals in technical details the nexus between over-criminalization and criminal case backlogs in Bangladesh, professing that "criminal law inflation is a common trend in state-centric legal traditions of the contemporary world. Bangladesh is no exception. Faced with the alarming rise of any particular crime, the state machinery in Bangladesh very rarely fails to enact new laws, as if a new law is the best answer to the problem. Arguably, this trend of penal populism is often driven more by a political desire to inform the voters that something is being done than a serious desire to address the problem. Arguably, this trend of penal populism is often driven more by a political desire to inform the voters that something is being done than a serious desire to address the problem. The results are the proliferation of penal laws, the criminalization of innocuous acts, coverage of purely civil wrongs that can better be prevented by non-penal measures and the

creation of ‘loosely defined crimes’. More importantly, many of these laws are special penal laws dealing with crimes already criminalized by the Penal Code.” (Muhammad Mahbubur Rahman, 2017)

Legal system of Bangladesh is experiencing many laws incorporating the alike issues and the legal actors i.e. judges and lawyers get perplexed about the decision making having the issue of filing cases under an appropriate law. The prosecution of criminal jurisdictions got transformed into a complex, prolonged system and the backlog of cases in the courts caused through the continual delays. A single case sometimes takes an elongated time due to the complexities occurred within the time of disposal creating backlogs and delays.(Majumder & Majumder, 2018)

Table 6: Core Observation Summary of the literature review on Over-criminalization

Author and Year	Core Observations
OHRC (2017)	People should rely on the criminal justice system as a resort of last order, not as a default forum to seek redress for social issues and disputes.
Ridwanul Hoque(2015)	On a separate assessment, underperformance of specialized courts in Bangladesh is also attributable, to a certain extent to hastily legislated laws that established those courts without proper planning regarding their structure and administration.
Heritage Foundation(2018)	To prosecute each societal issue and impose sentence on each mistake thereof by overusing and in certain space misusing the criminal law— is a disastrous trend.
Luna (2005)	As the integral part of the legal system the law enforcers, both Police and prosecutors want admiration and promotion supplemented by success measured by counting the number of arrests for the former and convictions for the latter respectively.
Luna (2005)	It is a matter of no surprise that courts are blocked with cases and also being crowded with prisoners as numbers of activities have been criminalized in all levels of government by the hands of the policymakers.
Smith (2012)	Courts bear a large share of the blame for over-criminalization, given their penchant to construe ambiguous criminal statutes broadly in a misguided quest to ensure that

	morally blameworthy offenders will not escape conviction.
(Mondaq Business Briefing, 2020).	Unscrupulous litigants often indulge in forum shopping to get favorable decisions. Therefore, cases which are predominantly of a civil nature are given the guise of a criminal offence, that too after availing civil remedies.
(Mondaq Business Briefing, 2020).	Presence of mala fide intention to recover the amounts which a party is unable to recover by civil mode is an abuse of the process of law.
Mohammad MahbuburRahman(2017)	Criminal law inflation is a common trend in state-centric legal traditions of the contemporary world where Bangladesh is no exception.
Gainer (2011)	Given the efficiency norm, the costs arising from criminalization of many acts by a state (e.g., compliance costs; use of resources for enforcement, prosecution and punishment; external costs detailed below that fall on innocent third parties) exceed the benefits which were intended in doing so.
Majumder & Majumder (2018)	Legal system of Bangladesh is experiencing many laws incorporating the alike issues and the legal actors i.e. judges and lawyers get perplexed about the decision making having the issue of filing cases under an appropriate law.

2.1.3. Literature Tree:

On the basis of the core observations on the study of Case Backlogs and Over-criminalization hereinbefore shown a Literature Tree Structure has been designed hereunder for a most precise understanding of the central issues of this study.



Figure 3 : Literature Tree Structure on Case Backlogs and Over-criminalization developed by the researcher from Literature Review

2.2. Conceptual outcome of the Literature Review:

Ideally, in common law countries, the causes of case backlogs are manifold but there is one very key factor, as this research aims to demonstrate is the trend of excessive criminalization (hereinafter used as ‘over-criminalization’ throughout this research) of certain ‘actions and omissions’ for the purposes mainly of political responses and

in addition of social emergence to regulate the activities and affairs of people and corporations in a democracy.

It is evident from the preceding literature review that there are already some studies that identified various factors contributing to backlog in the criminal justice system of Bangladesh and this researcher is trying to uncover a range of forms of over-criminalization impacting the worsening condition of existing backlogs about which research gap exists. Study of existing and available literature on criminal case backlogs as well as empirical experience of this researcher as a justice sector professional suggests that there is a prominent trend of over-criminalization, both in policy and practice, in Bangladesh. Proliferation of criminal law and converting civil-law liabilities into criminal liabilities are policy-level anomalies. Therefore, this tendency of over-criminalization of disputes or discords of civil, family and commercial nature in both policy and practice level play as a dominant factor for contributing to backlog in the criminal justice system of Bangladesh and this researcher is trying to uncover a range of forms of over-criminalization impacting the worsening condition of existing backlogs about which research gap exists in the context of Bangladesh. It is argued in this research that as an inclusive factor behind the ongoing crisis of case backlog in the criminal justice system of Bangladesh, over-criminalization functions from policy-level to practice level of (judicial) governance. Being one of the major factors behind case backlog over-criminalization involves several actors to get accomplished and to cause case backlogs. It is no denial that over-criminalization has multiple adverse effects on the justice system and on the governance in finality. And it is further argued that over-criminalization as a very dominant factor among multiple factors affecting the case backlogs in Bangladesh, involves multiple actors to operate and achieve the status of most dominant factor affecting the justice sector by creating insufferable criminal case backlogs.

2.2.1. Flowchart (Over-criminalization leading to case backlogs):

A flow-chart has been developed by the researcher to show how over-criminalization works towards growing case backlogs in Bangladesh.

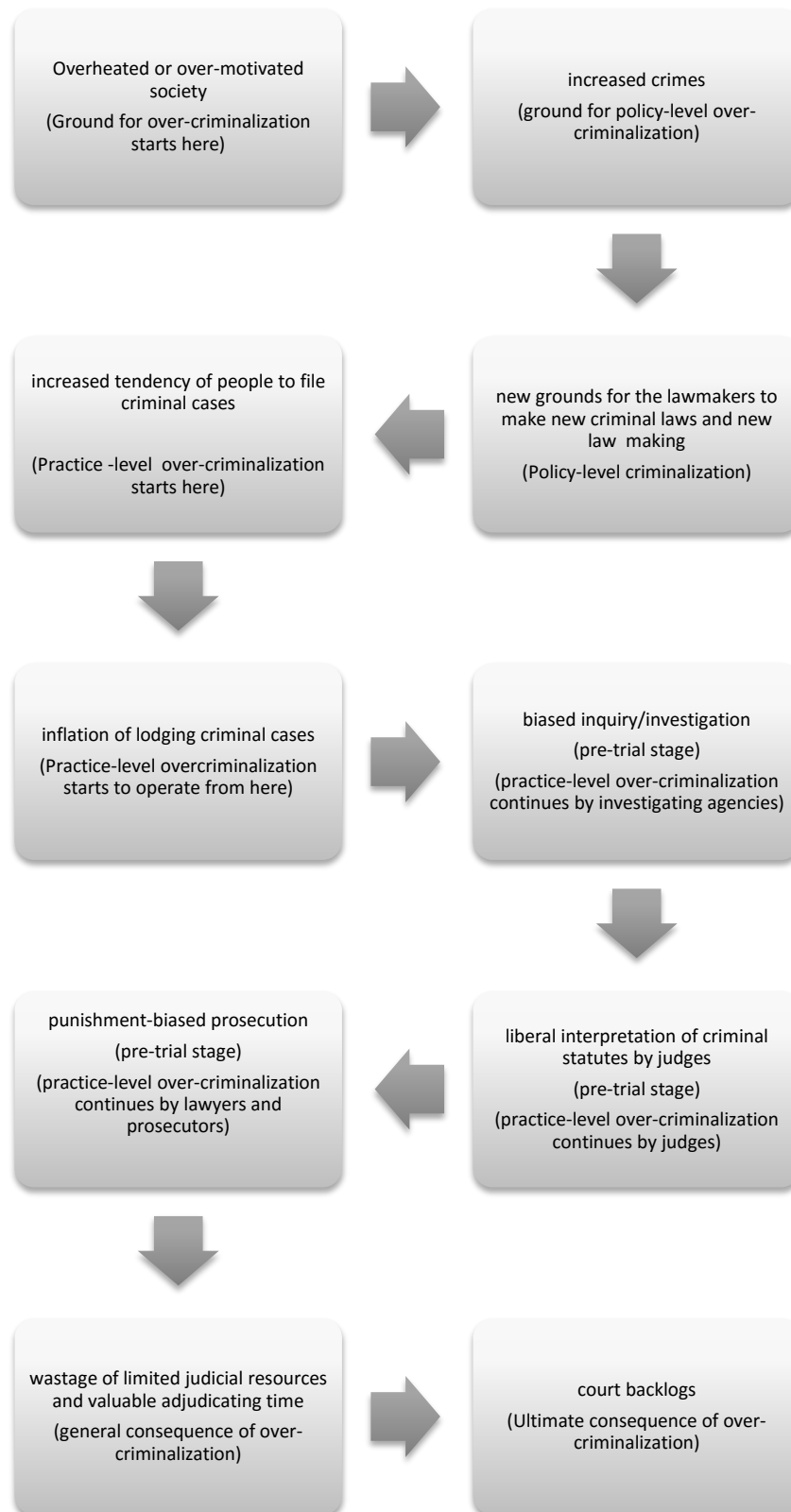


Chart 1: Flow chart showing how over-criminalization works towards growing case backlogs in Bangladesh(developed from the literature review and empirical experience)

The above review of literature enunciates different forms of ‘over-criminalization’. Predominantly, the following forms of ‘over-criminalization’ are more specifically aligned with the endeavor of this researcher to detect the dominant factors of criminal case-backlogs in Bangladesh—

- Enacting criminal statutes lacking meaningful *mensrea* (‘guilty mind’ or ‘intention’ to commit an offence) requirements;
- Expanding criminal law into civil enforcement areas;
- Adopting duplicative and overlapping statutes

This research argues that these are the prominent instances of over-criminalization causing case backlogs within the criminal justice system of Bangladesh.

Over-criminalization, as the literature shows, is taking place in both the policy-level and implementation-level of ‘over-criminalized’ criminal statutes by investigation, prosecution and adjudication process of criminal justice system which is contributing to the criminal case-backlogs in Bangladesh as one of the most dominant factors thereof.

Quintessentially inspired from political decisions the phenomenon of over-criminalization takes place in the making of criminal laws at the legislative stage. In judicial enforcement level of law the misunderstanding, misreading and erroneous interpretation of the law (in entirety or in part) is contributing to proliferation of criminal cases. Apart from these, the excessive filing of criminal cases against the current rate of disposal increases case backlogs in result.

2.3. Relevant Theory and approach

A theory includes the description of the working of a phenomenon. The theory and research are two scientific initiatives which in the process of theorizing and researching function as a perpetual organic relationship influencing and impacting each other mutually. Perhaps in the true sense a suitable theory is the most precious tool at the researcher’s disposal since it can offer guidance in perceiving the phenomenon that is under study. A theory paves a point that has ripened to a

starting point for subsequent research. (Gibson, Danna & Webb, Lynne, 2012). In their article “Grounded theory approaches to research on virtual work: A brief primer” observed that “the researcher selects an existing theory and uses a recognized scientific research protocol to test if the identified theory offers a reasonable explanation for the phenomenon under study. Typically, the scientific protocol involves the use of empirical research methods, such as a survey or experiment, yielding numerical data subjected to statistical analysis.”

The present study is predominantly focused on assessing the role of key actors and factors of the growing case backlogs of the criminal courts of the sub ordinate judiciary of Bangladesh. Criminal case Backlogs is a phenomenon affected by multiple actors and factors. It has been a crucial issue for many countries for many decades. No single country could manage it quite successfully. Consequently, it has taken a problematic character which can possibly and plausibly be construed in the lenses of the ‘wicked problem’ approach and ‘grounded theory’.

2.3.1. Wicked Problems

Wicked problems are viewed as the problems that are difficult to solve comprehensively. For the purpose of this research, this makes sense in the context of assessments of key actors and factors of criminal case backlog. This genre of problem was first introduced in the research arena by *Rittel and Webber* in 1975, to define problems in the social planning narratives. Their innovations as to this problem transpired and conceptualized that certain problems are not manageable in linear and traditional approaches. In the definitional context ‘wicked’ does not necessarily mean something ‘evil’ rather it stipulates the genre of problem that are very complicated to resolve. No one easily finds any “quick fix” against the challenges posed by these problems. As Brown, Harris, & Russel observed “wicked problems are multi-casual, unstable and unpredictable”. (Brown, Harris, & Russel, 2010). The disagreement between cause and solution has been the hallmarks of the wicked problems. Tame problems are opposite to wicked problems which though difficult to solve yet easier to define and deal. With the aid of a linear approach

based on analytical framework tame problems can pragmatically and systematically be treated. The issue of causes and solution to the climate change is necessarily an ideal form of wicked problem with its many constituting features. (Australian Government, 2007).

This researcher argues that the reason why the backlog of criminal case is a Wicked problem is because the way the present criminal justice system being regulated by the actors associated with it from the policy level to the practice level to manage and measure the issues concerning the aggravation of the problem, do not take into account the complexity associated with the problem. When faced with ambiguity and complexity, the approach and solutions have to be innovative and inventive. There is a very effective way to venture to solve the wicked problem which is to take recourse to “trans-disciplinary approaches, since the knowledge base we have in our society is so fragmented that it is not possible to see the whole picture” (Brown et al., 2010). Criminal Case Backlog is very fit as a wicked problem as because the actors associated with the criminal justice system often works with conflicting agendas. The following figure stipulates the features and properties of a wicked problem.

Figure 4: Features and properties of a wicked problem



Based upon Rittel and Webber (1973)

Therefore, infusion of the insights from the distinction between Tame and Wicked problem as expounded by Rittel and Webber's (1973) might be helpful for the rationalization of this study following the research of Devaney and Spratt (2009).

2.3.2. Grounded Theory

Theories that emerge from data are often described as organic because they are grounded in data. The researchers of grounded theory adopt inductive reasoning followed by deductive reasoning through complex data analysis so that an emergent theory may be discovered.

Distinct to its nomenclature, the grounded theory offers no specific theory of social science depicting or predicting the societal behavior of individual human actors. Rather as it terminologically and practically appears the term “grounded theory” portrays a special type of “social scientific theory” which has been derived from data. Grounded theory also denotes the methodology adopted for the development of such theory too. This theory was introduced in 1967 as a theory-building method which suits with its capability the qualitative method. (Glaser & Strauss, 1967; Rupsiene & Pranskuniene, 2010). Subsequently, Strauss and Corbin (1994) recognized the soul of the theory as “the capacity to produce conceptually dense data and integrated theory development”. The ways to define the theory has been changed time to time. Theory develops from the researcher’s data analysis as Gibson, Danna & Webb, Lynne. (2012) argued in their article “Grounded theory approaches to research on virtual work: A brief primer” that “theory emerges from researchers’ analysis of the interplay between informant’s descriptions of their first-hand experiences and the informants’ interpretations of the meaning of these experiences”. On a separate note, a legitimate tension exists in the research arena between seeing the grounded theory as a ‘mechanism of developing theory through analysis data’ versus ‘a means of analysis of data per se.’

Contributing further to this pendulum-swing as to the modus operandi of grounded theory related conceptualizations, Strauss and Corbin presented one more variation of the definition for the theory: “A grounded theory approach can be used for both theory and non-theory development.” (Strauss & Corbin, 1990, 1998).

2.4. Analytical Framework

The prime purpose of a conceptual framework in research is to enable the readers to promptly perceive the proposed relationship between variables and its use in the study. As per Bogdan and Biklen (2003) a conceptual framework represents a fundamental structure consisting definitive abstract blocks representing the observational, the experiential and the analytical aspects of a process or system being conceived. It is necessarily a brief description of the phenomena under study accompanied by a visual or graphical depiction of the cardinal variables regarding the study (Mugenda, 2008). Young(2009) observed that “conceptual framework is a diagrammatical representation that shows the relationship between the dependent variable and independent variables.”

Perceptive review of literature and empirical knowledge of the researcher on the aspects of criminal case backlog as well as the factors and actors associated with that revealed the interplay of three distinct but consequentially connected variables for this research- independent, intervening and dependent. The measuring indicators to these variables have been derived from the self-same literature review as well as from the empirical experiences of the researcher in order to critically assess the role of the key actors and factors impacting the growing case backlogging in the criminal justice system of Bangladesh.

Keeping the Case Backlog(CB) in Criminal Courts as the sole dependent variable of this research the explanatory variable to that, the independent variable has been chosen, among several factors, the most overarching factor that takes its course from the policy-level law making to the implementation of law, as argued in a varying degree by global, regional and local literatures reviewed. Therefore, over-criminalization as one of the dominant yet dormant factors contributing to the constant yet latent stream of backlogs of criminal cases has been taken as the sole independent variable. The ‘Performance of Legal and Judicial Actors’ has been mounted as the intervening variable as the independent variable gets matured to impact the dependent variable via the processes, perceptions and performances of the various legal and judicial actors who work in the multitasking system of criminal

justice.

The analytical framework thus stands in the following fashion to graphically portray the interplay of three distinct but consequentially connected variables for this research that aims to assess the role of key actors and factors impacting the growing case backlogging in the criminal justice system of Bangladesh.

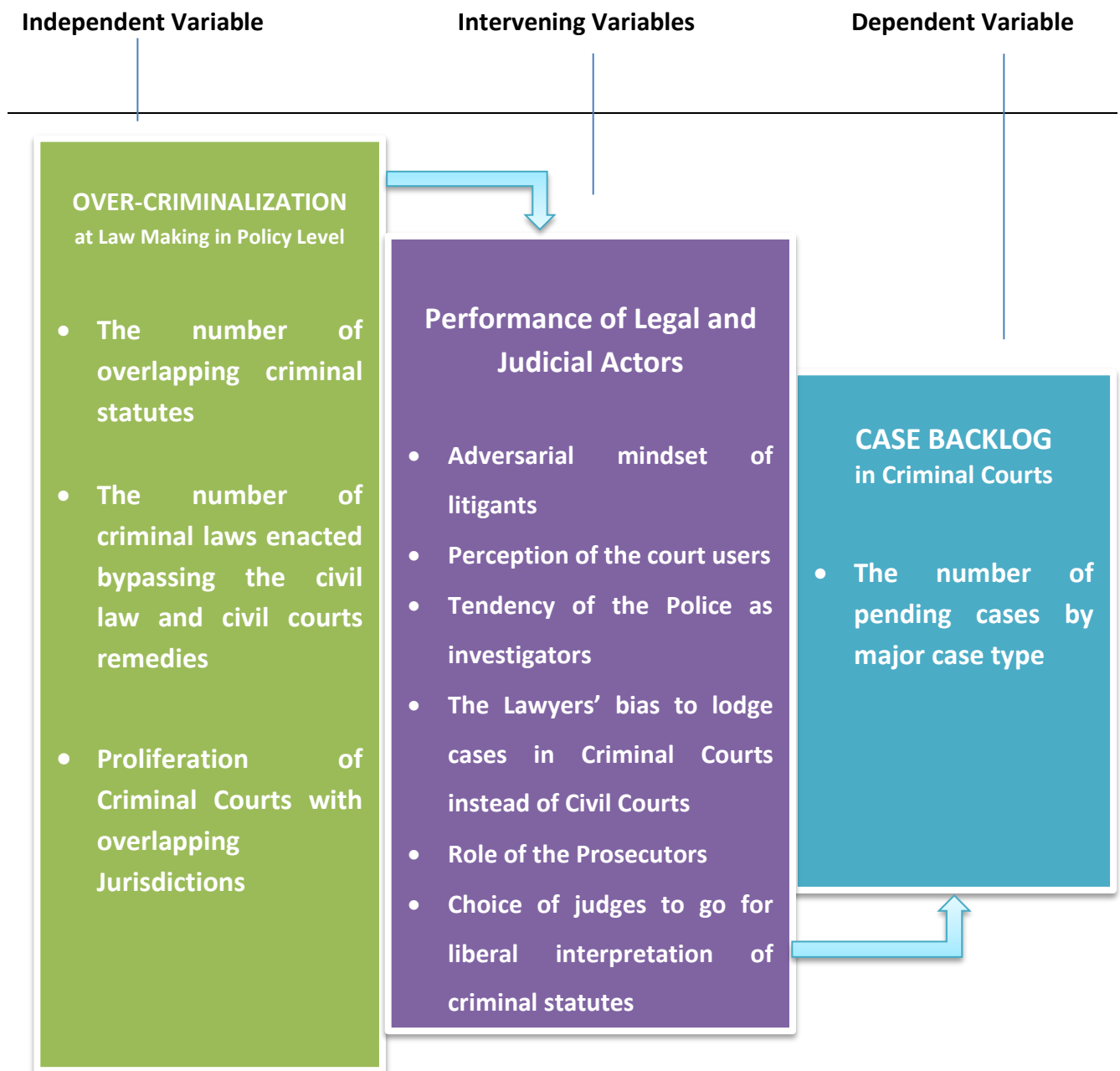


Figure 4: Analytical Framework
(developed by the researcher from empirical experiences)

2.4.1. Dependent Variable

Case Backlog of Criminal Courts

Criminal Courts are the courts of law designed to adjudicate and sentence the accused offenders if found guilty out of a judicial trial. The number of criminal cases in the sub ordinate judiciary in Bangladesh is increasing in an alarming rate. While several actors and factors are responsible in their respective capacities for the inflation of cases within the criminal justice system the proliferation of new criminal laws enacted in response of the numerous societal problems is affecting the system in multiple sphere and in many ways. Thus, over-criminalization is to study and research as the dominant of all the factors functioning prevalently in the policy and practice level of the journey of the criminal law towards addressing the increasing crimes in the society. Increasing legislation of criminal laws added to the existing regime of criminal law is predominantly imposing pressure on the criminal justice system in Bangladesh. As a result the system is experiencing somewhat like an eruption of litigations causing growing backlogs.

The endeavor to measure the dependent variable (the case backlog in the criminal courts in Bangladesh), so far as the present research is concerned, shall be narrowed down to measurement of backlogs of the litigations involving the charge against the OFFENCES regarding-

- Domestic Violence
- Financial Disputes

The indicator of the dependent variable is 'the number of pending cases by major case type'.

The following table depicts the dependent variable along with its operational definition, indicator, data collection method for measuring the indicator and the source of data.

Table 7: Operationalization of the dependent variable

Dependent Variable	Operational Definition	Indicator	Data Collection Method	Source of data
CASE BACKLOG in Criminal Courts	Case Backlog or court backlog is a condition which indicates a constant flow of pending cases in the regular flow of cases before a criminal court for a longer period than what is prescribed for completing the adjudication of those. The time-limits to disposal for criminal cases are prescribed in the procedural criminal laws.	<ul style="list-style-type: none"> The number of pending cases by major case type 	Content Analysis	Secondary Data

2.4.2 Intervening Variable

Performance of Legal and Judicial Actors

In this study the PERFORMANCE OF LEGAL AND JUDICIAL ACTORS has been mounted as the intervening variable as the independent variable gets matured to impact the dependent variable via the processes, perceptions and performances of the various legal and judicial actors who work in the multitasking system of criminal justice dispensation. The indicators of the intervening variable are ‘adversarial mindset of litigants’, ‘perception of the court users’, ‘tendency of the Police as investigators’, ‘the Lawyers’ bias to lodge cases in Criminal Courts instead of Civil Courts’, ‘role of the Prosecutors’ and ‘choice of judges to go for liberal interpretation of criminal statutes’. Over-criminalization originates from the policy-level ‘law-making process’ and develops through the practice level ‘law enforcement and judicial process’. In course of its operation, over-criminalization brings more number of criminal laws to

penalize identical nature of offences. Thus, it contributes to the proliferation of criminal laws and courts to try additional offences which ultimately allures and motivates the litigant people as well as lawyers to emphatically take resort to the avenues of criminal courts bypassing the civil courts resulting in inflation of criminal cases. Over-criminalization adversely impacts the investigation process and prosecution of cases resulting in anomaly in the pre-trial stage of the criminal cases. In some instances and due to the use of liberal interpretation to the criminal laws judges as well as magistrates take cognizance of more offences for trial. And in the trial stage punishment-bias of prosecution ignites a number of merit-less cases to go towards the full-fledged trial which ultimately wastes the valuable time and resources of the judicial system and ultimately causes the backlog of criminal cases. In that way over-criminalization potentially impacts the judicial governance of the country.

The indicators of intervening variable shall be measured in terms of the following specific type of criminal cases among various cases adjudicated by the criminal courts of sub ordinate judiciary of Bangladesh-

- a) Percentage of cases under section 138(for cheque dishonor) of The Negotiable Instrument Act, 1881
- b) Percentage of cases under sections 406 and 420(Criminal Breach of Trust and Cheating) of The Penal Code, 1860 for settling civil disputes
- c) Percentage of dowry cases filed for harassment/expediting mutual understanding/countering false cases

The following table depicts the intervening variable along with its operational definition, indicators, data collection method for measuring the indicators and the sources of data.

Table 8: Operationalization of the intervening variable

Intervening Variable	Operational Definition	Indicators	Data Collection Method	Source of data
Performance of Legal and Judicial Actors	The performance of legal and judicial actors of the various legal and judicial actors including the court using litigant people, police as investigators, lawyers as prosecutors, judges as adjudicators who work in the multi- level multi-tasking system of criminal justice dispensation.	<ul style="list-style-type: none">• Adversarial mindset of litigants• Perception of the court users• Tendency of the Police as investigators• The Lawyers' bias to lodge cases in Criminal Courts instead of Civil Courts• Role of the Prosecutors• Choice of judges to go for liberal interpretation of criminal statutes	Survey Interview Content Analysis	Primary and Secondary data

2.4.3. Independent Variables

Over-criminalization

In course of this study the researcher has used over-criminalization as the sole independent variable which affects the backlog of criminal cases in the subordinate judiciary of Bangladesh.

Quintessentially inspired from political decisions the phenomenon of over-criminalization takes place in the making of criminal laws at the legislative stage. In judicial enforcement level of law the misunderstanding, misreading and erroneous interpretation of the law(in entirety or in part) is contributing to proliferation of criminal cases. And the excessive filing of criminal cases against the current rate of disposal increases case backlogs in result.

The overwhelming criminalization i.e. over-criminalization of various human actions for which remedies are readily available in existing criminal and civil laws adversely affect the health of the criminal justice system. Over-criminalization originates from

the policy-level ‘law-making process’ and develops through the practice level ‘law enforcement and judicial process’. In course of its operation, over-criminalization brings more number of criminal laws to penalize identical nature of offences. Thus, it contributes to the proliferation of criminal laws and courts to try additional offences which ultimately allures and motivates the litigant people as well as lawyers to emphatically take resort to the avenues of criminal courts as court of first instance bypassing the civil courts resulting in inflation of criminal cases. Over-criminalization impacts the investigation process and prosecution of cases resulting in anomaly in the pre-trial stage of the criminal cases. In some instances and due to the use of liberal interpretation to the criminal laws judges as well as magistrates take cognizance of more offences for trial. And in the trial stage punishment-bias of prosecution ignites a number of merit-less cases to go towards the full-fledged trial which ultimately wastes the valuable time and resources of the judicial system and ultimately causes the backlog of criminal cases. In that way over-criminalization potentially impacts the judicial governance of Bangladesh.

The following table depicts the independent variable along with its operational definition, indicators, data collection method for measuring the indicators and the sources of data

Table 9: Operationalization of the independent variable

Independent Variable	Operational Definition	Indicators	Data Collection Method	Source of data
Over-criminalization in Law Making in Policy Level	Over-criminalization refers to the legislative act of establishing/mandating criminal punishment for prohibited behavior and it includes expanding criminal law into civil enforcement areas and adopting duplicative and overlapping statutes which is a direct policy outcome of a political response against the societal crises.	<ul style="list-style-type: none"> • The number of overlapping criminal statutes • The number of criminal laws enacted bypassing the civil law and civil courts remedies • Proliferation of Criminal Courts with overlapping Jurisdictions 	Survey Interview Content Analysis Law Review	Primary and Secondary data

2.5. Conclusion

In the process of exploring and consulting the relevant literature on the matters under the present research it is an undeniable fact that among the literatures reviewed only a few literature deals with the issue in the context and pretext of Bangladesh. Despite that the review of global and regional literature meticulously shows a causative relation of the phenomenon of over-criminalization and how the limited valuable tangible and intangible resources of a country's law enforcement process become infected and affected by it. The review also transpires how over-criminalization as an overarching policy move impacts the performance of the actors of criminal justice system and eventually contributes to the growing case backlogs. The review also significantly revealed that owing to the adverse effect of the excessive criminalization the judicial governance of the country can be proved slow and ineffective to dispense justice in due time to her citizenry.

So far as the theory is concerned, no specific theory was virtually found which may form the theoretical framework of this study. From the study directed to some relevant theoretical adoptions to substantiate this study the researcher found that the 'wicked problem approach' can be juxtaposed with other the research tools from where the present study can be theoretically rationalized. The analytical framework was developed from the review of the available literature and from the empirical experiences of the researcher as a justice sector professional. This study shall be guided and developed in line with this framework

Chapter 3

Research Methodology

This chapter envisages the detailed description of the methodological process that this research engages. The research has been conducted to assess the role of principal actors and factors contributing to the criminal case-backlogging in Bangladesh.

Research methodology can be termed as the action plan of any research that the research follow and incorporates in its progress. The approaches and the methods for conducting the current research has been discussed throughout this chapter covering detailed account of- the design of the research, method of the research, area of study, instruments for data collection, research tools, strategies for searching data, strategies and approaches to collate, analyze and interpret the data. The present study adopted a concurrent synthesis of KIs interviews, surveys-on-questionnaire, case studies and content analyses.

3.1. Methodological Overview

Research encompasses data collection and analysis by following different approaches. Even though a number of researchers have a tendency to use qualitative and quantitative approaches separately in their studies, Creswell has recognized the gap in the two methods and he proposed a third approach- the mixed method (Creswell, 2009). Quantitative research includes close-ended questions, numeric data, and predetermined approach. On the contrary, qualitative research employs open-ended questions, text or image data and emerging approach (Creswell, 2009). According to Creswell “Realizing that each of these approaches had limitations, researchers felt that biases inherent in any single method could neutralize or cancel the biases of other methods with the use of mixed methods approach. The mixed-methods approach is one in which the researcher tends to base knowledge claims on the pragmatic grounds. It is sequence oriented, problem-

centered and pluralistic and it integrates both qualitative and quantitative data approaches and methods” (Creswell 2009).

The present study has used a purposive sampling method to get the best information to achieve the objective of the research.

A combination of both qualitative and quantitative methods was expedient to explore the answer to the research question. To get the answer to my research questions and to meet the objectives of the research mixed method approach was adopted. Quantitative primary data have been collected through Questionnaires that contain both open and closed-ended questions. Multiple answers were possible in several questions. For gathering qualitative primary data, the researcher has conducted in-depth interviews with the selective officials, academics and experts on legal and judicial reform. Secondary data have been collected through content analyses using various books, government gazettes, law reports, journal articles, newspaper reports, and online contents. Various theoretical and descriptive contents have taken from authentic sources available on the internet with due acknowledgement. The data was collected from both primary and secondary resources.

3.2. Territorial Area of Study

A combination of qualitative and quantitative method was used for the purpose of this research for the attainment of comparatively more viable result vis-à-vis the research question.

For both qualitative and quantitative primary data, the study area were chosen espousing several district-level courts of Bangladesh which are situated in the districts of Barishal, Bogura, Chattogram, Cumilla, Dhaka, Faridpur, Khulna, Mymensingh, Rajbari, Rajshahi, Rangpur and Sylhet. The reason behind choosing these areas is due to the different geographical area and variation of cases in the

territorial jurisdictions of respective courts, it gives the better scenario about the impact of over-criminalization on the case backlogs in the criminal courts.

The study was conducted through the telephone survey from the Key Informants(KIs) who have cogent and mastery over the internal and external dynamics of criminal justice system as well as having significant insights on the legal and judicial reforms in Bangladesh. Questionnaire survey interviews were conducted among the justice sector professionals i.e. judges and judicial magistrates of different tiers of subordinate judiciary of Bangladesh taking 15 in total numbers from 12 districts. For the statistical data on case backlog the official records on the pending cases for last three consecutive year's documents were collected from Chief Metropolitan Magistrate's Court of Chattogram, and Tribunal for the Violence against Women and Children of Faridpur, two significant units of criminal justice system of Bangladesh.

3.3. Study population and Sampling

High official engaged in policy-level law making, the justice sector professionals i.e. judges and judicial magistrates, litigant persons, personnel of investigative agencies, public prosecutors, lawyers, and all types of legal actors associated with the criminal justice system are referred to as the study population.

3.4. Sample size

For the purpose of this study the total sample size was 38. The data of the study was collected from judges and litigant peoples from different districts of court users. Fifteen judges and fifteen litigant peoples were selected purposively for collecting data from them. This study tried to select varieties of persons in term of gender, occupation or position of job, year of experience, education and so on, for collecting data.

-
- 3.4.1. KIs Interview: 1 Retired Supreme Court Justice, 1 renowned academician and legal reform expert and member of the Supreme Court Bar Association, 1 Law and Justice Analyst and Journalist and 1 Senior District and Sessions Judge, 1 High Official of Ministry of Law and Justice, 1, 1 High Official of Bangladesh Police, 1 President/Secretary from District Bar Association and 1 Public Prosecutor were interviewed in-depth.
- 3.4.2. Case Studies: 5 case studies were done analyzing case records of litigations by contacting via email judges currently working in Chittagong, Faridpur, Mymensingh and Dhaka District Courts.
- 3.4.3. Questionnaire Survey for Judges: The study was conducted via email and telephone communication in Barishal, Bogura, Chattogram, Comilla, Dhaka, Faridpur, Khulna, Mymensingh, Rajbari, Rajshahi, Rangpur and Sylhet districts; for collecting data from judges from several position holders. Among them, there were 3 district judges, 4 additional district judges, 3 joint district judges, 1 joint metropolitan sessions judge, 2 senior assistant judge and 2 assistant judge.
- 3.4.4. Questionnaire Survey for Litigant People: The data of the study was collected from litigant peoples from Dhaka, Chattogram, Sylhet, Barishal and Mymensingh districts. Fifteen litigant people were selected purposively for collecting data from them. This study tried to select verities of litigant people in term of gender, occupation year of experience, education and so on, for collecting data.

3.5. Distribution of the respondents

The equal number of respondents was selected (litigant people and judges) for the questionnaire survey which is 15 in each group whereas the number of key

informants that were selected to retrieve information from were 8 in numbers. To get variation in the information provided, respondents from different districts were chosen by means of purposive random sampling technique. The distribution of the sample population is presented below.

Table 10: The distribution of the sample population

Types of Respondent	Data Collection Method	Number of Respondents
Litigants	Questionnaire Survey	15(from 12 districts)
Judges and Magistrates	Questionnaire Survey	15(from 5 districts)
Key Informants	In-depth interview via telephone and/or email.	8(from Dhaka, Chattogram and Faridpur)

3.6. Sources of Data

To explore the dynamics of key factors and actors of Case Backlog in Criminal Justice System leading to the backlogs of criminal cases a study comprising both qualitative and quantitative approaches has been adopted. This researcher has chosen twelve districts for case studies and quantitative interviews of the litigants and the judges. These districts include comparatively more police stations and wide variety of criminal cases in the criminal justice system of Bangladesh.

Quantitative data were collected through online survey containing both open and close-ended questions for the judges, magistrates and litigant people keeping their name in anonymity. For collecting qualitative data the researcher has conducted in depth interviews of a retired justice of the Apex Court of the land, judges of different tiers, renowned Jurists, experts on legal and judicial reform, metropolitan and judicial magistrates and lawyers and due to the incumbent pandemic situation this interviews were conducted through phone and Skype calling.

Through content analyses extending to different books, journal articles, newspaper articles, reports, laws, circulars and online contents, secondary data were collected. For retaining a holistic and real-world perspective this researcher has done some case studies analyzing case records. In retrieving essential data and information the researcher purposively chose and analyzed 5 case-records of cases involving domestic violence and financial disputes from criminal courts of Metropolitan Magistrates' Courts of Chattogram. Judicial records of criminal cases of different stages of criminal procedure have been studied getting help from the researcher's colleague judges in the CMM Court of Chattogram. According to (Yin,2018), "Whatever your field of interest, the distinctive need for case studies arises out of the desire to understand complex social phenomena. Case studies allow you to focus in-depth on a "case" and to retain a holistic and real-world perspective—such as in studying individual life cycles, small group behavior, organizational and managerial processes, neighborhood change, school performance, international relations, and the maturation of industries." (Yin, 2018)

Apart from that relevant case-laws meaning the precedence set out by the decisions of the Apex court of the land were studied from the recognized Law Reports to get insights on the use of criminal courts for the attainment of civil rights and remedies.

Secondary sources are very essential to examine the relationship amongst the dependent, intervening and independent variables. The source of secondary data comprised different contents like books and articles, internet sources, official circulars, the website of Ministry of Law, Justice and Parliamentary Affairs and the website of Bangladesh Supreme Court. These sources complemented the facts and figures collected through the primary data collected for this study.

Relevant laws, legislations, statutes and enactments were reviewed for the purpose of this study. These laws include-

The Penal Code, 1860, The Dowry Prohibition Act, 1980, The Repression of Women and Children Oppression Act, 2000, The Negotiable Instrument Act, 1888, The Code of Civil Procedure, 1908, The Specific Relief Act, 1878 and The

Contract Act, 1872. Moreover, the hierarchy of courts of the criminal justice system of Bangladesh relevant to the research problems was also developed from the relevant criminal laws.

3.7. Data analysis

For the purpose of this study, as stated above, data were collected using a mixed-method (both quantitative and qualitative) through a questionnaire, interview, and content analysis. This raw data was documented into numeric and non-numeric form in SPSS (Statistical Package for the Social Sciences) and then analyzed by using different analysis techniques. Some data were coded and tabulated to ease the data analysis process and the others are being transcribed into texts format to explain. The documented data were categorized into analytical units as earlier developed questionnaire like age, sex, education level, occupation of the litigants and judges. To analyze quantitative data, different mathematical tools like tables, charts, percentage, frequency, cross-tabulation, correlation were used. To explain two variables(dependent and independent) or to determine if there is a relation between them, cross-tabulation was used in the data analysis part. Simultaneously, to simplify qualitative analysis and interpretation of data, the narrative text was used.

3.8. Ethical Consideration

Being authorized and permitted by SIPG, NSU the data collection process was conducted among the respondents. It was also proclaimed formally before all the respondents that the questionnaire used for the qualitative and quantitative interviews will be used to conduct a research on the research topic as an integral part of the Master in Public Policy and Governance (MPPG) Program of North South University, Dhaka, Bangladesh. It was also communicated from the ethical point of view that data collected through the interviews would be used for the purpose of conducting the research only. On top of everything, it was a paramount duty on the researcher to let the valued respondents be informed that absolute confidentiality

and anonymity of the respondents shall be maintained while using the data and information acquired through this survey. And the commitments made were sincerely adhered to throughout this process of data collection, data processing and the presentation thereof.

3.9. The research limitations

The current Covid-19(Corona Virus) Pandemic induced constraints created few problematic issues to conduct surveys, content analysis and interviews so as to limit the sample size. Hence, the researcher had to rely predominantly on the email, skype and telephone based communication for the aforesaid data collection purpose. Nonetheless, the outcome of the case studies, questionnaire surveys and KI interviews conducted albeit in a limited scope have paved the comprehensive data source for this study.

3.10. Conclusion

As it is indicated in the title, this chapter includes the research methodology of the dissertation. In more details, in this part the researcher has tried to outline the research strategy, the research method, the research approach, the methods of data collection, the selection of the sample, the research process, the type of data analysis, the ethical considerations and the research limitations of the project. These will pave the way when the researcher will delve into explaining the result of the data analysis in the chapters ensuing.

Case-Backlogging in the Criminal Justice system and over-criminalization

4.1. Criminal Justice System in Bangladesh: general functions

A number of subordinate courts and tribunals have been created under the provisions of various statutes in Bangladesh. The respective statutes determine the powers, functions and jurisdictions of different courts and tribunals.

The criminal justice system functions within the parameters set by the criminal law of the land. The agglomeration of sanctions, procedures and powers of criminal law is represented by the criminal justice system as a tool of social control. In the system, police is invested with the responsibilities of investigating crimes, collecting the evidences, arrest suspected and accused persons and interrogate them for the purpose of aiding the dispensation of criminal justice.

The courts' function is to try the people charged and impose punishments if they are found guilty in the judicial proceedings. These coercive forces of the State machinery function in the light of the guidelines and procedure prescribed by the criminal law of any particular State. There are certain parameters and limitations that are to be adhered to by the police and the courts to uphold the rule of law in a democracy.

Research group for Criminal Law and Criminal Procedure at the University of Bergen, Norway, observed that-

“It is crucial, therefore to define clearly what acts, omissions or states of affairs amount to crimes as all the other powers, procedures and sanctions of the criminal justice system are dependent upon these definitions. The criminal law, accordingly, limits and controls the legitimate exercise by the State of its coercive power to investigate crime and prosecute, convict and punish criminals. Secondly, the criminal law operates as a guide to the citizen indicating the limits of legitimate activity -on his part and predicting the consequences of infraction of the criminal law. If the power of the State is to be effectively limited and if the

citizen is to be able confidently to make rational choices regarding his behavior, the criminal law must be clear, relatively stable and accessible, that is, knowable in advance.” (Source: <http://www.iu.uib.no/~alexey/crimlaw/>, last accessed on 23.09.2020)

4.1. 1. Organization of Criminal Courts in Bangladesh

Chapter II of the CODE OF CRIMINAL PROCEDURE(CrPC), 1898 deals with The CONSTITUTION OF CRIMINAL COURTS AND OFFICES. Classes of Criminal Courts are spelt out in section 6(1) of the CODE.

6(1) of the Code speaks that, “Besides the Supreme Court and the Courts constituted under any law for the time being in force, other than this Code, there shall be two classes of Criminal Courts in Bangladesh, namely:-

(a) Courts of Sessions; and

(b) Courts of Magistrates.

(2) There shall be two classes of Magistrate, namely: -

(a) Judicial Magistrate; and

(b) Executive Magistrate.

(3) There shall be four classes of judicial Magistrate, namely: -

(a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;

(b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate;

(c) Magistrate of the second class; and

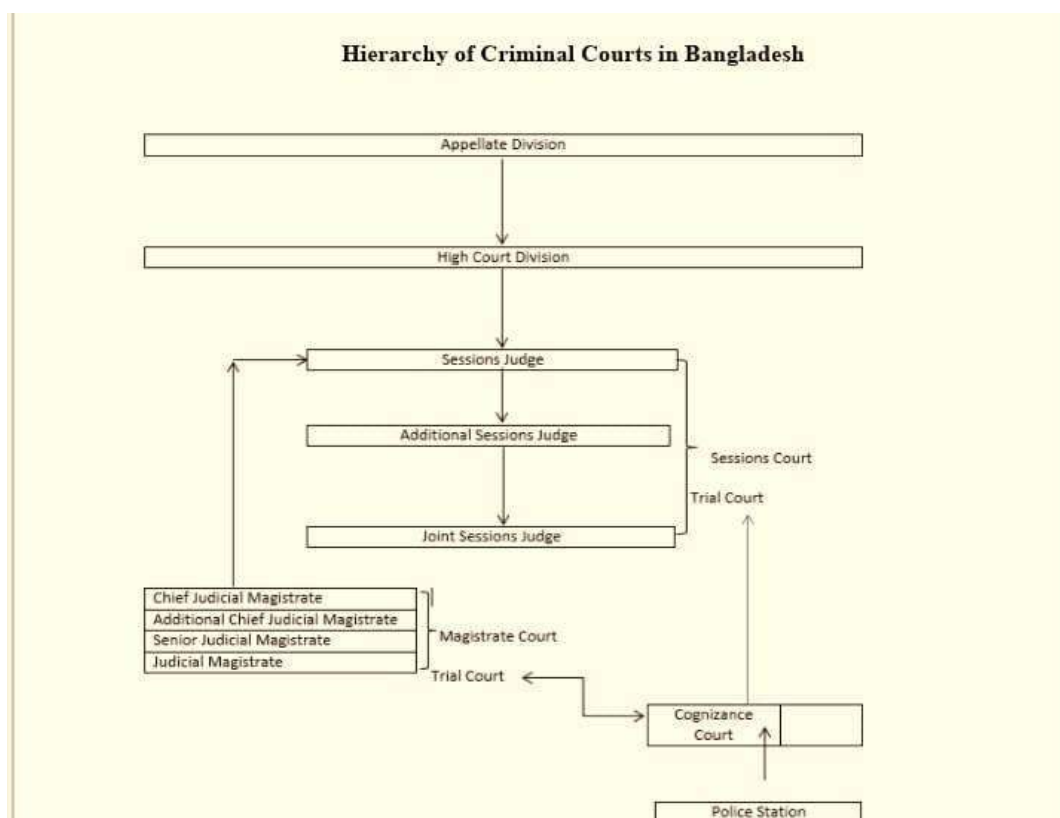
(d) Magistrate of the third class.”

Explanation given by the above provision is: “For the purpose of this subsection, the word "Chief Metropolitan Magistrate" and "Chief judicial Magistrate" shall include "Additional Chief Metropolitan Magistrate" and "Additional Chief judicial Magistrate" respectively.” (Source: <https://www.nyulawglobal.org/globalex/Bangladesh1.html>, last accessed on 20.09.2020)

4.1. 2. Hierarchy of Criminal Courts in Bangladesh

The hierarchy of criminal courts of Bangladesh is depicted hereunder for the purpose of better understanding the general functions of the criminal justice system in Bangladesh.

Figure 5: Hierarchy of Criminal Courts in Bangladesh



4.2. Criminal Case Backlogs and Over-criminalization

In general sense Over-criminalization is making more criminal laws or adding provisions to existing criminal laws by the policymakers and overuse and misuse of criminal laws by the court-users and other actors associated in the criminal justice system.

“Criminalization refers to the legislative act of establishing/mandating criminal punishment for criminal behavior. The decision to criminalize an action is political,

and legislators have strong incentives to “over-criminalize.” (Bruce L Benson and Iljoong Kim, 2012)

In 1967, Professor Sanford Kadish wrote of a “crisis of over-criminalization,” which he broadly defined as “the use of the criminal law to pursue public policy objectives for which it is poorly suited.” Number of criminal law scholars put their criticism about the extended scope of the criminal justice system as it infringed the boundary of traditional domain of the state law, created laws which criminalized such conduct which postures no harm for the society or drew such sentencing policies having the unjustified and the disproportionate punishments. Over-criminalization is one of those rare topics where both the political right and political left come together. (Sanford H. Kadish, 1967).

Michael Howard Saul observed that “Overcriminalization has roots going back to the 1970s. Perhaps the best way to describe the mind-set behind it is this: if asked to give the opposite of “good,” most of us would answer “bad.” During the last four decades, however, American society has increasingly acted on the premise that “[t/he opposite of ‘good’ is ‘crime.’” To encourage good behavior, American society has increasingly decided that the opposite behavior is not just “bad” or “unwise”; it is considered criminal or quasi-criminal and must be punished. One of the more infamous examples was when New York City made it illegal for restaurants and delicatessens to sell sugared soft drinks in a serving larger than 16 ounces.” (Michael Howard Saul, 2012)

Jonathan Simon has described “the mind-set that fosters such a law as ‘governing through crime.’”(JONATHAN SIMON, 2007) The late William Stuntz characterizes it as “the rule of too much law.” (WILLIAM J. STUNTZ, 2011) And, again, Douglas Husak simply calls it “overcriminalization.”(DOUGLAS HUSAK, 2008)

If in Bangladesh the system as to the administration of justice is looked at, a jammed, overcrowded and delayed justice system is seen and in this situation

Benjamin Franklin could easily be agreed as to ‘how for want of just a horseshoe nail, a battle could not be fought and a kingdom was lost.’ For last seventy years the unfortunate fact is that as an all-inclusive and unified entity any plan for the whole judiciary has not been framed having a minimum perspective of five years, including shorter plans for shorter periods, and executed constantly and persistently.

“The usual ‘nails’ that unhinge speedy dispensation of justice are well known—chronic vacancies in the judiciary, lack of infrastructure, massive and largely unchecked infusion of fresh litigation into the system every year, to name only a few.”(Abhishek Singhvi, 2020)

Appointment of judges amid a slow and delayed procedure could not act as one and only factor for creating barrier on the way of any proper service delivery system. For ensuring a prompt and effective justice delivery system the major problems for which the judiciary is suffering in the administration of justice and the solutions to that need to be figured out.

Michel Foucault commented: “The court is the bureaucracy of the law. If you bureaucratise popular justice, then you give it the form of a court.” (Michel Foucault, 1980).

It was expressed by Alam(2010) that the backlogs of cases is a matter of worry. It was also argued that justice and economic development were injured due to such delays. (Alam, 2000) It was also articulated that though common law legal system owns both merits and demerits the legal system of Bangladesh is carrying more demerits than that of merits having been demonstrated by case backlogs and delays. When there happens a delay, the party wins never becomes compensated and there remains no standard time for disposal of cases rather some cases take 10-15 years to be disposed of. (Alam, 2010)

4.3. Internal dynamics and external subtleties of over-criminalization

Theory of criminalization includes two sets of restrictions which are innocuous and can play vital role to retard the phenomenon of overcriminalization. These restraints are internally dynamic and externally subtle.

These constraints can potentially jeopardize many of the new kinds of offense that mess our criminal codes. In precise, applications of these constraints may decrease the number of overcriminalized offenses.

States need good cause to establish an institution for dispensing criminal justice. These causes are mainly provided by the external constraints of overcriminalization. Among the external constraints one constraint requires criminal laws to promote substantial state interests.

If question arises for a given state that whether its existing body of penal laws are justified then what would be the response that is crucial for the understanding of the theory of criminalization. Douglas Husak, very interestingly related the matter in his book 'Overcriminalization' submitting in this regard that "If citizens ask why given penal laws are justified, it is relevant to point out that important state interests are achieved by subjecting persons to criminal liability."

Internal Constraints on Criminalization

The general objective of the criminal law is to subject human persons to punishments and accordingly enforce the rights of the victims maintaining equal treatment to the rights of the accused persons. Criminalization is the act of criminalizing an action or omission of a legal person and making the same a crime by incorporating it in the body of criminal law as well as prescribing punishment for such criminal acts. The constraints of criminalization are developed from the understanding of what criminal law and its general objective are.

The general part of the criminal law is the sources of 'internal constraints' on the state's authority in enacting penal laws and enforcement thereof. These 4 internal constraints are, as Douglas Husak, in his book "Overcriminalization" observed-

- i. crimes must be designed to proscribe a harm or evil;
- ii. criminal conduct must be wrongful;
- iii. persons may only be punished according to their desert; and
- iv. the state must bear the burden of proof to justify a penal offense

Each of these constraints is a novel defense against the political attempts to justify many of the '*mala prohibita*' offences or 'over-criminalized' offences included in the criminal laws. 'Mala Prohibita' offences are generally those acts or conducts that is prohibited by laws, although not inherently evil.

External Constraints on Criminalization

Three external constraints supplement the internal constraints of overcriminalization. These constraints are predominantly derived from some political account of the conditions under which the state may violate the important rights implicated by punishment. These 3 external constraints are, as Douglas Husak, in his book "Overcriminalization" observed-

- i. a criminal offense is unjustified unless the government has a substantial interest in enacting it;
- ii. the statute must directly advance the government's purpose; and
- iii. the law must be no more extensive than necessary to achieve its objective.

Husak also observed that "to implement these constraints effectively, legal philosophers need an analysis of public wrongs, empirical data, and a theory of the objectives the state may legitimately pursue. The external constraints in a theory of criminalization differ from the internal constraints in some interesting respects. Both are involved in justifying the criminal law. By contrast, the external constraints

address not only the persons who are punished but also the citizens who are asked to create and maintain a system of punitive sanctions.”

4.4. Comparative perspective from regional and global experiences

“We need to understand why the blunt instrument of the criminal law is used against and affects real people, and why the criminal law ought not to apply in our four areas of concern. Where the criminal law is misused, that is a betrayal of the rule of law. The rule of law must be our guiding compass,” said Justice Cameron, Constitutional Court of South Africa.

“We need to understand why the blunt instrument of the criminal law is used against and affects real people, and why the criminal law ought not to apply in our four areas of concern. Where the criminal law is misused, that is a betrayal of the rule of law. The rule of law must be our guiding compass,” said Justice Cameron, Constitutional Court of South Africa.

“The principles we hope to develop must facilitate the availability of tools which can impact key populations where they are in conflict with the law. They are often at risk of blackmail, stigma and discrimination. It falls on courts to make the difficult decisions. Judges can then consider legality, legitimate purpose and questions of necessity and proportionality in light of a broader understanding of the human rights principles at stake and the relevant scientific evidence,” said Judge Mbaru, Industrial Court of Kenya.

“The law is required to guarantee rights but at same time it can impose arbitrary restrictions. Often those restrictions in the form of the criminal law purport to be necessary in order to ‘protect’ people. That purported purpose ought to be closely scrutinized,” said Justice Ortiz, Constitutional Court of Columbia.

Kate Gilmore, Deputy High Commissioner for Human Rights, submitted that the criminal law can readily become a tool of repression or oppression. She said: “Wrongful deployment of criminal law betrays universal human rights standards. By eroding rather than protecting physical and mental integrity specifically in the

contexts of sexuality, reproduction and gender identity, misuse of criminal law seeks a wrongful “regulation” of the body of women in particular, with devastating consequences for women’s and girls’ autonomy, health and well-being.”

[<https://www.icj.org/leading-jurists-address-misuse-and-abuse-of-the-criminal-law-and-its-detrimental-impact-on-health-equality-and-human-rights>]

4.5. ‘Wicked problem’-nature of case backlog and over-criminalization

Wicked problems are viewed as the problems that are difficult to solve comprehensively. For the purpose of this research, this makes sense in the context of assessments of key actors and factors of criminal case backlog. This genre of problem was first introduced in the research arena by *Rittel and Webber* in 1975, to define problems in the social planning narratives. Their innovations as to this problem transpired and conceptualized that certain problems are not manageable in linear and traditional approaches. In the definitional context ‘wicked’ does not necessarily mean something ‘evil’ rather it stipulates the genre of problem that are very complicated to resolve. No one easily finds any “quick fix” against the challenges posed by these problems. As Brown, Harris, & Russel observed “wicked problems are multi-casual, unstable and unpredictable”. (Brown, Harris, & Russel, 2010). The disagreement between cause and solution has been the hallmarks of the wicked problems.

According to Ellen S. Podgor, “There is a strong and rich history to the movement to stop over-criminalization. Perhaps what has been the most impressive aspect of this movement is that it has no political or ideological colors. Its voice comes from the left, the right, Democrats, Republicans, and provides the strongest coalitions that one could possibly expect. Despite these strong alliances, over-criminalization remains a problem.”(Ellen S. Podgor, 2012)

Tame problems are opposite to wicked problems which though difficult to solve yet easier to define and deal. With the aid of a linear approach based on analytical

framework tame problems can pragmatically and systematically be treated. The issue of causes and solution to the climate change is necessarily an ideal form of wicked problem with its many constituting features. (Australian Government, 2007).

This researcher argues that the reason why the backlog of criminal case is a Wicked problem is because the way the present criminal justice system being regulated by the actors associated with it from the policy level to the practice level to manage and measure the issues concerning the aggravation of the problem, do not take into account the complexity associated with the problem. When faced with ambiguity and complexity, the approach and solutions have to be innovative and inventive. There is a very effective way to venture to solve the wicked problem which is to take recourse to “trans-disciplinary approaches, since the knowledge base we have in our society is so fragmented that it is not possible to see the whole picture” (Brown et al., 2010). Therefore, infusion of the insights from the distinction between Tame and Wicked problem as expounded by Rittel and Webber’s (1973) might be helpful for the rationalization of this study following the research of Devaney and Spratt (2009).

In the last few decades in Bangladesh, numerous ideas and steps have been discussed in concerned committees, colloquia, seminars, annual conferences on judicial reform, and so on, to get these criminal case backlogs fixed. Somehow, it remains unfixed, with huge jagged edges, causing much obstruction and pain to all stakeholders especially the litigants.

Therefore, for the obvious reasons of recurrence and rebounding the phenomenon of over-criminalization and case-backlogs and their inter-play all can be placed in the domain of wicked problem to effectively address the complications they create on the health of criminal justice system in Bangladesh.

4.6. Conclusion

This chapter has presented a theoretical account of the phenomenon of over-criminalization as well as the impact of it on the criminal case backlogs in

Bangladesh. From the definitions to the forms, local to global perspectives in a comparative narrative, over-criminalization has been conceptualized and linked with the experience of the criminal case inflations within the criminal justice system of Bangladesh. Authority of over-criminalization from the study of global literature showed that the internal constraints of criminalization have the potential to retard the phenomenon of over-criminalization. It has been shown that the phenomenon of over-criminalization as one of the significantly dominant factors, involving multiple actors of justice system, adversely impacts the valuable time and resources of the criminal justice system resulting into the increasing case backlogs.

Data Analysis and Interpretation

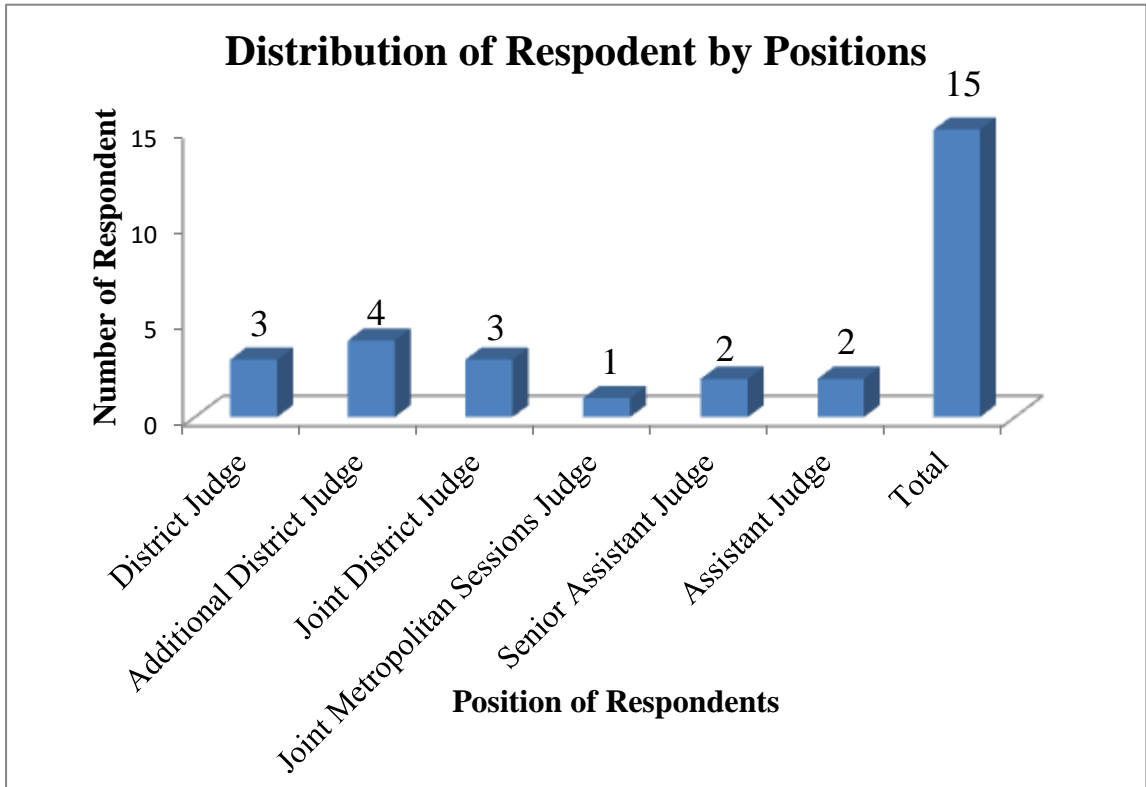
5.3. Background Information of Respondents

The data of the study were collected from judges and litigant people from different districts of court users. Fifteen judges and fifteen litigant people were selected purposively for collecting data from them. For collecting data this study tried to select varieties of persons in term of gender, occupation or position of job, year of experience, education and so on. They will be discussed in the background section for each individual category of respondents.

5.3.1. Job Position of Judges

The study was conducted in Barishal, Bogura, Chattogram, Comilla, Dhaka, Faridpur, Khulna, Mymensingh, Rajbari, Rajshahi, Rangpur and Sylhet districts for collecting data from judges. The Figure 1 shows that the study collected data from several position holders of judges. Among them, there were 3 district judges, 4 additional district judges, 3 joint district judges, 1 joint metropolitan sessions judge, 2 senior assistant judges and 2 assistant judges.

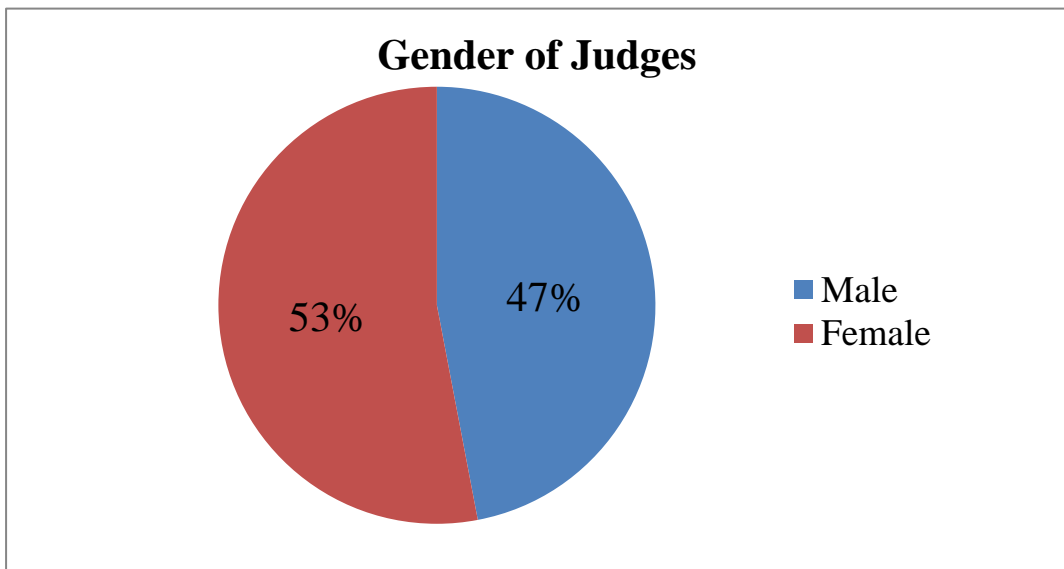
Chart 2: Distribution of Respondent by Position



5.1.2. Gender of Judges

Gender is one of the most important factors of respondents' background information. The Chart 3 shows that 53% of the respondents were female and 47% were male.

Chart 3: Distribution of Respondent by Gender



5.1.3. Tenure of Services of Judges

Tenure of services or working experiences of the respondents is one of the most important characteristics for court users especially in judges. It is evident from the Table 11 that the length of the experience of most of the respondents (60%) was between 11-20 years and the mean length of the experience of the respondents was 14.3 (± 7.4) years.

Table 11: Distribution of Respondent by Tenure of Services

Tenure of Service	Number of Respondent N=15	Percentages
≤ 10 year	3	20
11-20 year	9	60
20+ year	3	20
Mean \pm SD	14.3 \pm 7.4	

5.1.4. Type of Working Court

Table 12: Distribution of Respondent by Type of Working Court

Type of Court	Number of Respondent N=15	Percentages
Civil Court	3	20
Criminal Court	3	20
Sessions Court	7	47
Special Tribunal	2	13

The Table 12 illustrates that about half of the respondents (47%) are presently working in sessions courts. However, 20% of the respondents are presently working in civil courts, 20% in criminal courts and 13% also are working in special tribunal.

5.1.5. Type of Adjudicated Cases

The Table 13 shows that about half of the respondents (40%) adjudicated mostly multiple disputes in the capacity of a judge of the criminal court. The Table 3 also illustrates that one-third of the respondents (33%) adjudicated mostly 'offences related to domestic violence', 20% financial disputes and 7% land related disputes.

Table 13: Distribution of Respondent by Type of Adjudicated Cases

Type of Adjudicated Cases	Number of Respondent N=15	Percentages
Offences related to Domestic Violence	5	33
Financial disputes	3	20
Land related disputes	1	7
Multiple Disputes	6	40

5.2. Practical Experience of Judges on Litigants' Court Using and Legal Relief

Judges have practical experiences on litigants' court using and their legal reliefs. The judges provided their opinions on what type of courts the litigants use in their financial and family disputes. They also mentioned the reasons for using these types of courts.

5.2.1. Practical Experience of Judges on Litigants' Financial Disputes

The above Table 13 indicates that the judges adjudicated financial disputes. In this section, judges' opinions have been discussed on the type of courts the litigants use for their financial disputes and the reasons behind it.

5.2.1.1. Litigants' First Preferable Court for Financial Dispute

The judges have different opinions related to the court using of the litigants for financial disputes. The Table 14 shows that more than three-fourth (80%) of the respondents think that a litigant should prefer to go for the first instance for financial

dispute. However, 20% of the respondents think that the litigants should prefer for multiple cases in both of criminal court (magistrate’s court) and civil court.

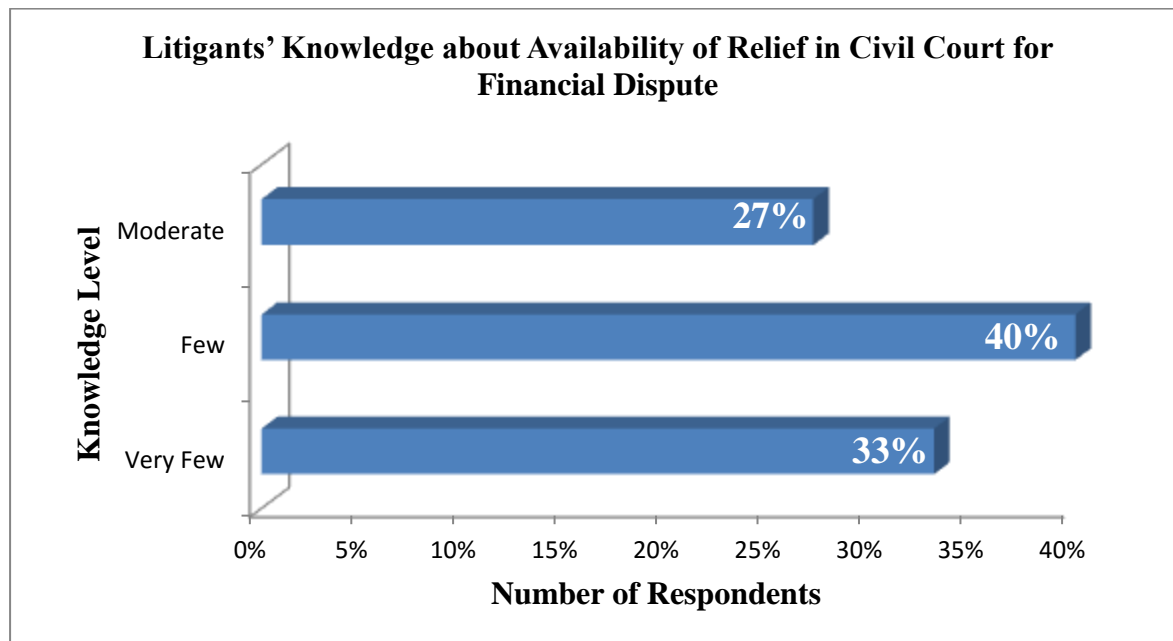
Table 14: Distribution of Respondents by their Opinions on Litigants’ first preferable court for financial dispute

Litigants’ first preferable court for financial dispute	Number of Respondents N=15	Percentages
Civil Court	12	80
Multiple cases in both the courts	3	20

5.2.1.2. Litigants’ Knowledge about Availability of Relief in Civil Court for Financial Dispute

The judges mentioned litigants’ knowledge about availability of relief in civil court for financial dispute. The below Chart 4 illustrates that about half of the respondents (40%) think that the litigants know few regarding the availability of relief in civil court for financial disputes. Chart 4 also shows that 33% of the respondents think that the litigants know very few regarding the availability of relief in civil court for financial disputes. However, 27% of the respondents think that the litigants know moderately regarding the availability of relief in civil court for financial disputes. It indicates that significant number of the litigants do not know regarding the availability of relief in civil court for financial disputes.

Chart 4: Distribution of Respondents by their Opinions on Litigants' Knowledge about Availability of Relief in Civil Court for Financial Dispute



5.2.1.3. Litigants' Tendency to Prefer Criminal Court as First Court in Lieu of Civil Court for Financial Dispute

The judges mentioned the reasons of choosing a criminal court at the first instance by the litigants for legal relief of a financial dispute. They mentioned several causes for preferring criminal court as first court in lieu of civil court for financial disputes. The Table 15 shows that about half of the respondents (40%) think that litigants' tendency to prefer criminal court as first court in lieu of civil court for financial dispute as civil courts do not generally inflict punishment as a legal remedy. The judges also stated other several causes on it. They are 'opponents can be given a better treatment through the criminal courts' stated by 20% of the respondents, 'for getting speedy justice' stated by 20% of the respondents, 'for getting expeditious relief' stated by 7% and 'for speedy trial of cases' stated by 7% of the respondents.

Table 15: Distribution of Respondents by their Opinions on Litigants’ Tendency to Prefer Criminal Court as First Court in Lieu of Civil Court for Financial Dispute

Litigants’ tendency to prefer criminal court as first court in lieu of civil court for financial dispute	Number of Respondents N=15	Percentages
Opponents can be given a better treatment through the Criminal Courts	3	20
Civil Courts does not generally inflict punishment as a legal remedy	6	40
For getting speedy justice	3	20
For getting expeditions relief	1	7
For speedy trial of cases	1	7

5.2.1.4. Impact of Litigants’ Ignorance on Their Decision to Court-choosing

The judges stated the impact of litigants’ ignorance on their decision to court-choosing. The Table 16 shows that most of the respondents mentioned the liability of litigants’ ignorance on their decision to court-choosing. About half of the respondents (40%) think that litigants’ ignorance on their decision to court-choosing is moderately responsible, 27% think it is largely, and even 20% think it is to a great extent. However, only 13% of the respondents think that litigants’ ignorance on their decision to court-choosing is insignificant.

Table 16: Distribution of Respondents by their Opinions on Impact of Litigants' Ignorance on Their Decision to Court-choosing

Impact of Litigants' Ignorance on Their Decision to Court-choosing	Number of Respondents N=15	Percentages
Insignificantly	2	13
Moderately	6	40
Largely	4	27
To a great extent	3	20

5.2.2. Practical Experience of Judges on Litigants' Family Disputes or Domestic Violence

The above Table 13 indicates that the judges adjudicated domestic violence. In this section, there have been discussed judges' opinions on what type of courts the litigants use for their family disputes or domestic violence and the reasons behind it.

5.2.2.1. Litigants' Choice of Multiple Courts during Seeking Justice for Domestic Violence

The judges stated regarding litigants' choice of multiple courts during seeking justice for domestic violence. The Table 17 shows that about half of the respondents (47%) think almost every one of the litigants chose multiple courts during seeking justice for domestic violence, and even also, 53% of the respondents state that a good number of litigants chose multiple courts during seeking justice for domestic violence. It indicates that most of the litigants chose multiple courts during seeking justice for domestic violence.

Table 17: Distribution of Respondents by their Opinions on Litigants' Choice of Multiple Courts during Seeking Justice for Domestic Violence

Litigants' Choice of Multiple Courts during Seeking Justice for Domestic Violence	Number of Respondents N=15	Percentages
A good number	8	53
Almost everyone	7	47

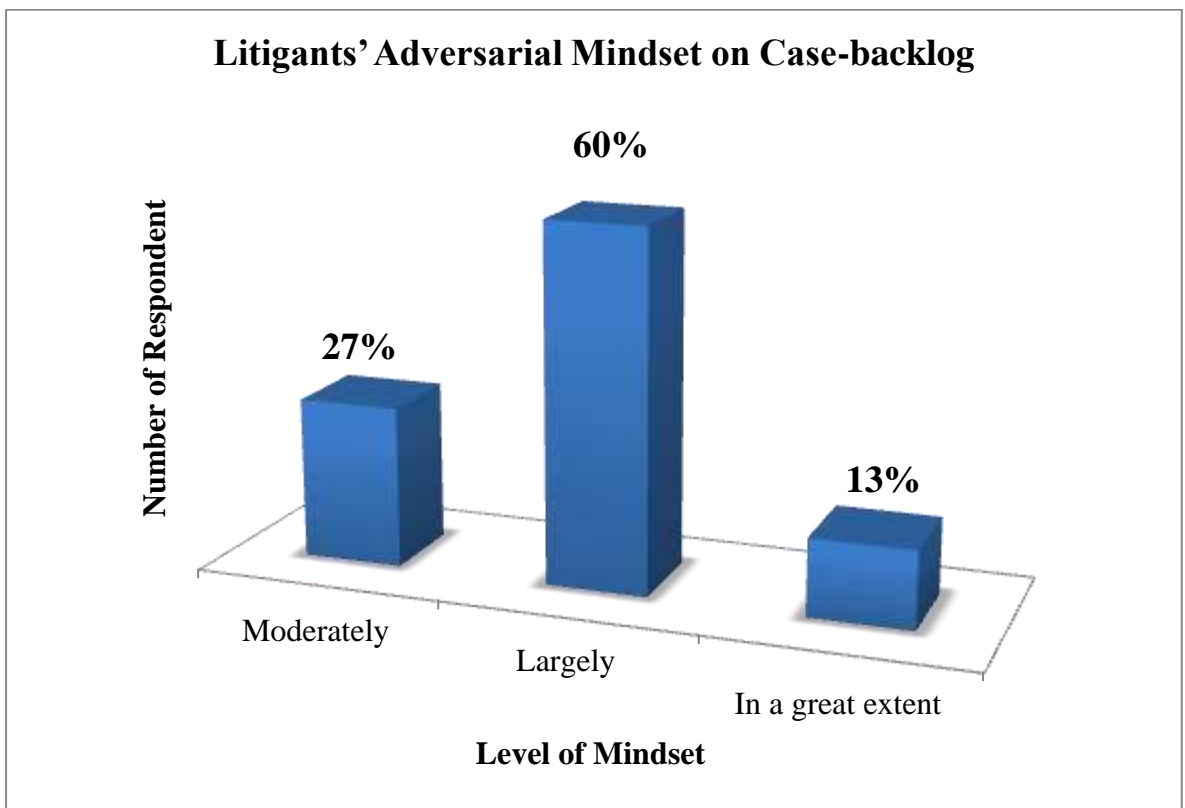
5.2.3. Case-backlogging and Attitudes of Litigant, Police and Lawyer

The judges mentioned the attitudes and tendencies of litigants, polices and lawyers as the cause of case-backlogging.

5.2.3.1. Impact of Litigants' Adversarial Mindset on Case-backlog

The judges think adversarial mindset of litigants causes criminal case-backlog. It is evident from the Figure 4 shows that 60% of the respondents think that adversarial mindset of litigants causes criminal case-backlogging as largely, 27% think that it is moderately and even 13% think it as 'to a great extent'.

Chart 5: Distribution of Respondents by their Opinions on Impact of Litigants' Adversarial Mindset on Case-backlog



5.2.3.2. Impact of Tendency of Investigators to Submit Charge-sheet on Case-backlog

The judges think that tendency of investigators to submit charge-sheet causes case-backlog. The Table 8 shows that more than half of the respondents (53%) think that the tendency of the police to submit charge-sheet instead of final report as investigators somewhat causing largely criminal case-backlog. The Table also shows that 40% of the respondents think that the tendency of the police to submit charge-sheet instead of final report as investigators somewhat causing moderately criminal case-backlog and even 7% think it as 'to a great extent'.

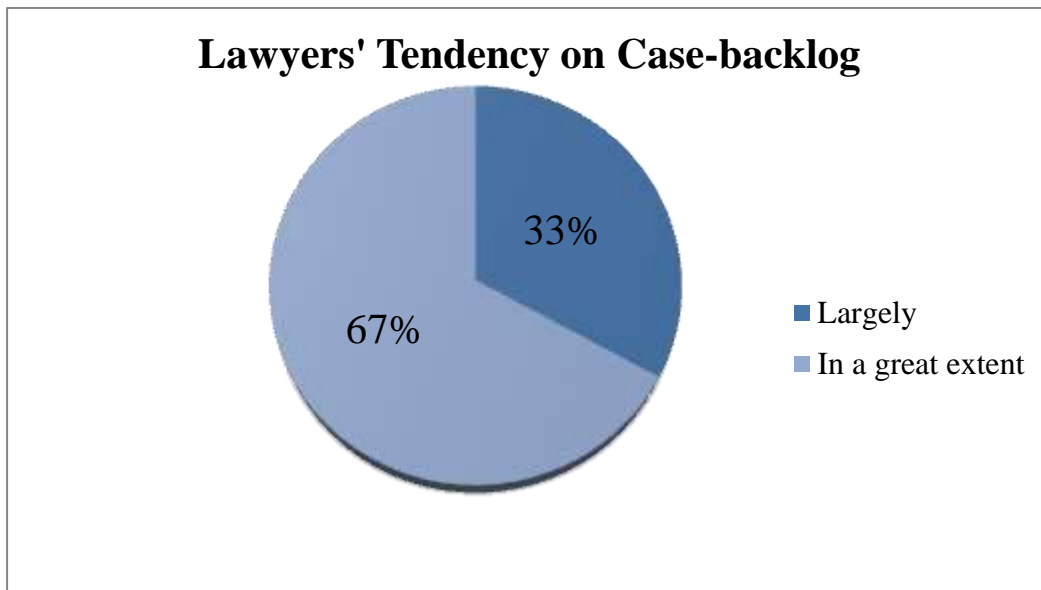
Table 18: Distribution of Respondents by their Opinions on Tendency of Investigators to Submit Charge-sheet on Case-backlog

Tendency of Investigators to Submit Charge-sheet on Case-backlog	Number of Respondents N=15	Percentages
Moderately	6	40
Largely	8	53
To a great extent	1	7

5.2.3.3. Impact of Lawyers' Tendency on Case-backlog

The judges mentioned that the liability of lawyers' tendency caused case-backlog. The Chart 6 shows the tendency of lawyers to file cases in criminal courts instead of civil courts. About two-third (67%) of the respondents states the tendency of lawyers to file cases in criminal courts instead of civil courts causing to a great extent of case backlogging. Even, 33% of the respondents also think that the tendency of lawyers to file cases in criminal courts instead of civil courts causing largely the case backlogging.

Chart 6: Distribution of Respondents by their Opinions on Impact of Lawyers' Tendency on Case-backlog



5. 2.3.4. Over-criminalization and Case-backlogging

The judges provided their opinions on over-criminalization and its impact on case-backlogging. The Table 19 shows that more than three-fourth (87%) of the respondents recognize over-criminalization as one of the most significant factors behind the criminal case backlog in Bangladesh. They also leveled the portion of over-criminalization as responsible behind the criminal case backlog in Bangladesh. The Table 19 also shows that significant number of the respondents think that over-criminalization is responsible behind the criminal case backlog. About half of the respondents (47%) think that it is largely liable for the criminal case backlog and 40% think it as to a great extent. However, only 13% of the respondents think that over-criminalization is insignificantly responsible behind the criminal case backlog.

Table 19: Distribution of Respondents by their Opinions on Over-criminalization and Case-backlogging

Characteristics		Number of Respondent N-15	Percentages
	Recognizing over-criminalization as one of the most significant factors behind the criminal case backlog in Bangladesh		
Yes		13	87
No		2	13
	Impact of over-criminalization on criminal case backlog		
Insignificantly		2	13
Largely		7	47
To a great extent		6	40

5.2.3.5. Narratives of Judges on Case-backlogging

The judges discussed openly and narratively regarding the key factors impacting the growing case backlogs in the criminal justice system of Bangladesh. They mentioned several actors including litigant, police, lawyer, judges, witnesses and so on. They also stated several issues including behavioral and attitudinal issues of the actors, political and administrative acts, and the knowledge of the actors and so on. Firstly, the adversarial attitude of the litigant people, they are always oppositional, they do not like to resolve the case without winning. An even, the litigants are not aware of court procedures and laws. As a result, it is delayed by the litigants. In this, lawyers' attitudes also are the same. The lawyers would like to continue the cases. The study participants think that it is the vested interest of the lawyers delaying the cases. In

addition, the dearth of legal knowledge of a significant portion of lawyers is liable for delaying the cases. Here, it is mentionable that over-criminalization of acts are liable for delaying the cases. To set politicization of the police, and error or flawed investigation by police makes the resolution of delaying the cases. Here, political unrest and social unrest have been included. The study participants also mentioned population growth as a key factor for case-backlogging. It is interrelated with increasing criminal cases, scarcity of land and increase of land disputes. As a result, there are lack of judges and magistrates in comparison to number of cases. In addition, there is lack of other logistic supports. Lacks of proper witnesses and erroneous prosecution have been identified by the participants also as causes for case-backlogging in the criminal justice system of Bangladesh.

5.2.3.6. Proliferation of Criminal Laws and Criminal Courts with overlapping jurisdictions

The judges stated about courts and laws and its consequences including proliferation, expenses and times of reliefs.

5.2.3.6.1. Court Related Issues

The Table 20 shows that more than half (53%) of the respondents think that Bangladesh has experienced proliferation of criminal courts with overlapping jurisdictions in recent years as the extent of moderately, and even 20% think that it is largely. However, 27% of the respondents think that it is insignificant regarding proliferation of criminal courts with overlapping jurisdictions in recent years in Bangladesh. The two-third (67%) of the respondents think that filing a case for a financial dispute in the civil court cost time and expense more than that of relief it has offered to the justice seekers after the trial. The Table 20 also shows that 87% of the respondents think filing a case for a family dispute or domestic violence in more than one criminal court/tribunal cost time and expense more than that of relief it has offered to the justice seekers after the trial.

Table 20: Distribution of Respondents by their Opinions on Court Related Issues

Characteristics	Number of Respondent N=15	Percentages
Proliferation of Criminal Courts with overlapping Jurisdictions in Bangladesh		
Insignificantly	4	27
Moderately	8	53
Largely	3	20
Cost of time and expense versus relief offered by civil courts		
Yes	10	67
The cost of time and expenses surpass the relief		
No	4	27
Other-It depends on the actors of the justice system.	1	6
Cost of time and expense versus relief offered by criminal courts when cases filed in multiple courts		
Yes	13	86
No	1	7
Other -It depends on the facts and circumstances.	1	7

5.2.3.6.2. Excessive burdens on criminal courts due to new criminal laws bypassing ‘civil law remedies’

The Table 21 shows that more than half (53%) of the respondents think that the choice of liberal interpretation of the criminal laws by the judges is contributing to the additional cases to be taken into cognizance for trial and leading to inflation of criminal cases. The Table 21 also shows that 60% of the respondents think that the criminal laws enacted bypassing the civil law and civil courts remedies are largely creating excessive burdens on criminal courts, and even 20% think it as ‘to a great extent’. However, 20% of the respondents also think that the criminal laws enacted bypassing the civil law and civil courts remedies are moderately creating excessive burdens on criminal courts.

Table 21: Distribution of Respondents by their Opinions on Law Related Issues

Characteristics	Number of Respondent N=15	Percentages
Impact of liberal interpretation of the criminal laws by the judges for inflation of criminal cases		
Yes	8	53
No	7	47
Impact of criminal enactments enacted bypassing the civil remedies on criminal courts		
Moderately	3	20
Largely	9	60
To a great extent	3	20

5.2.3.7. Narratives of Judges on Sufferings of Litigant People for Defending Multiple Litigations on a Single Accusation

The judges discussed openly and narratively regarding the sufferings of litigant people for defending multiple litigations for a single dispute or occurrence. They stated about some sufferings of the litigant people and provided suggestions to come out from or reduce the sufferings of the litigants. The judges stated about the sufferings of the litigants related to cost and expense of the legal reliefs of the disputes, as well as mental stress of the litigant people for not resolving the disputes or lengthening the disputes. The judges stated about the sufferings of litigant people defending multiple litigations for a single dispute resulting time-consuming and costly procedure to seek the relief from the filing disputes. Ultimately, it creates poverty and hardship. They also mention that it is harassment for litigant people to depend on multiple litigations for a single dispute. The judges think that the above phenomenon is creating expensive burden on judiciary. They think, that is why, it is creating case-backlogging, and also, social chaos. The judges think, these sufferings are the gross violation of rights and access to justice and human rights. The judges were suggested to take some strategies to reduce the sufferings of the litigant people. The strategies are, the judges should be more vigilant in talking false cases; an unified family court need to be ; need proper legal reform; mechanism should be developed by the judges to deter multiplicity of cases; by proper investigation and scrutiny by the judges.

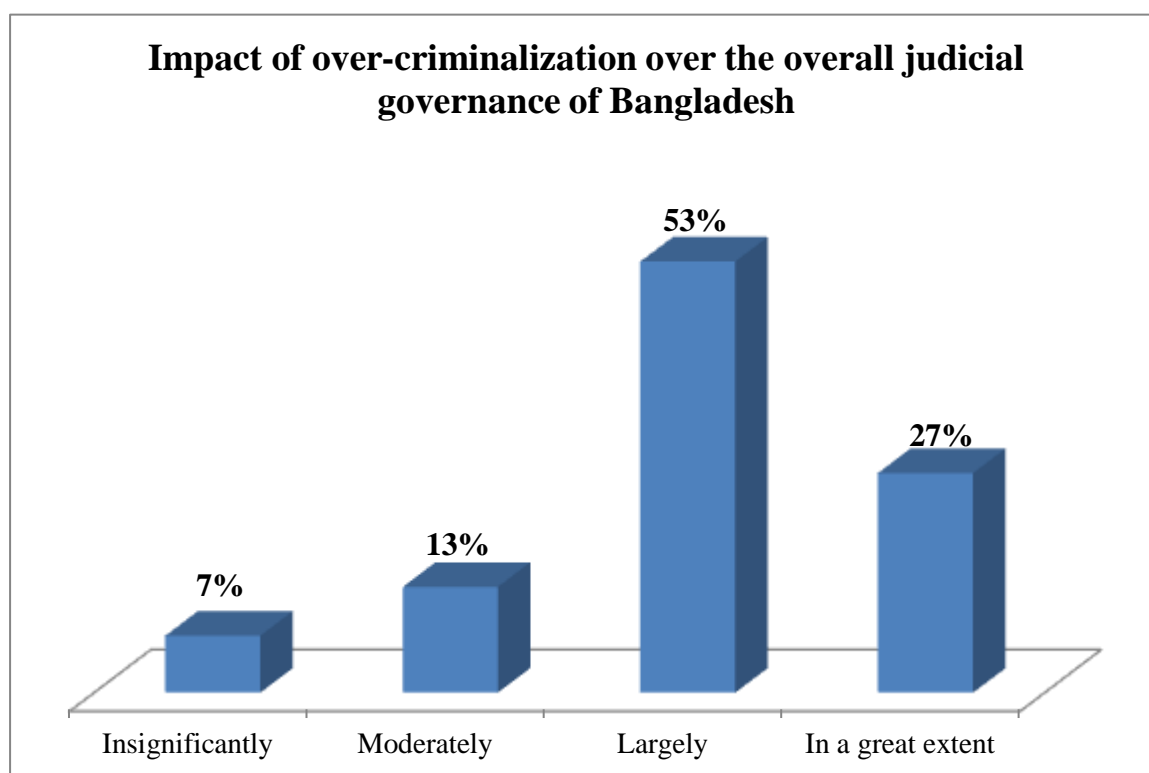
5.2.3.8. Over-criminalization in Bangladesh

The judges discussed on over-criminalization in Bangladesh. They discussed on the impact of over-criminalization and the overall judicial governance of Bangladesh in terms of the degree of the impacts. As well, they discussed narratively the possible strategies to adopt for managing over-criminalization in Bangladesh.

5.2.3.8.1. Impact of Over-criminalization over the Overall Judicial Governance of Bangladesh

The Chart 7 shows that more than half (53%) of the respondents recognize that over-criminalization intensely impacts the overall judicial governance of the country largely, and even, 27% think it as 'to a great extent'. However, only 7% of the respondents think that over-criminalization intensely impacts the overall judicial governance of the country insignificantly.

Chart 7: Distribution of Respondents by their Opinions on Impact of Over-criminalization and the Overall Judicial Governance of Bangladesh



5.2.3.8.2. Narratives of Judges on strategy to adopt for managing over criminalization in Bangladesh

The judges discussed narratively the possible strategies to adopt for managing over-criminalization in Bangladesh. They recommended taking some necessary strategies to reduce over-criminalization, and or to adopt for managing over-criminalization in Bangladesh. The study participants broadly recommend two issues: reform legal

issues and extensive researches to find out proper strategies to resolve over-criminalization, and with the appropriate reforming of legal issues. The judges recommend particularly reforming some legal and judicial issues. Such as, activating law commission's scrutiny to make criminal reasonable in size, decriminalization process of petty offences, reform of criminal law or legal reform in criminal justice system, judicial reform, adopting justice sector reform strategy in national level, and police reform related to case investigation.

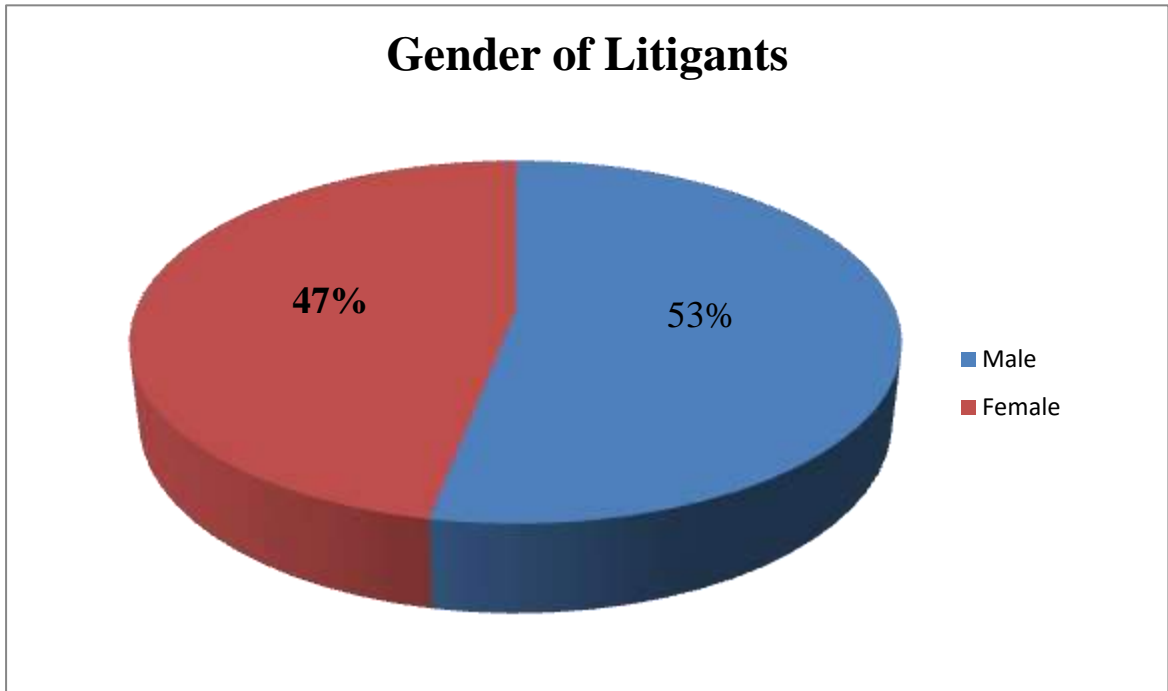
5.3. Background Information of Litigant People

The data of the study were collected from litigant people from Dhaka, Chattogram, Sylhet, Barishal and Mymensingh districts. Fifteen litigant people were selected purposively for collecting data from them. For collecting data this study tried to select varieties of litigant people in term of gender, occupation, year of experience, education and so on.

5.3.1. Gender of Litigants

Gender is one of the most important factors of respondents' background information. The Figure 7 shows that 53% of the respondents were male and 47% were female.

Chart 8: Distribution of Respondents (Litigants) by Gender



5.3.2. Age of Litigants

Age is also one of the most important factors of respondents' background information. It is evident from the Table 12 the age of most of the respondents (60%) was between 41 to 50 years and the mean age of the respondents was 41.5 (\pm 13.0) years.

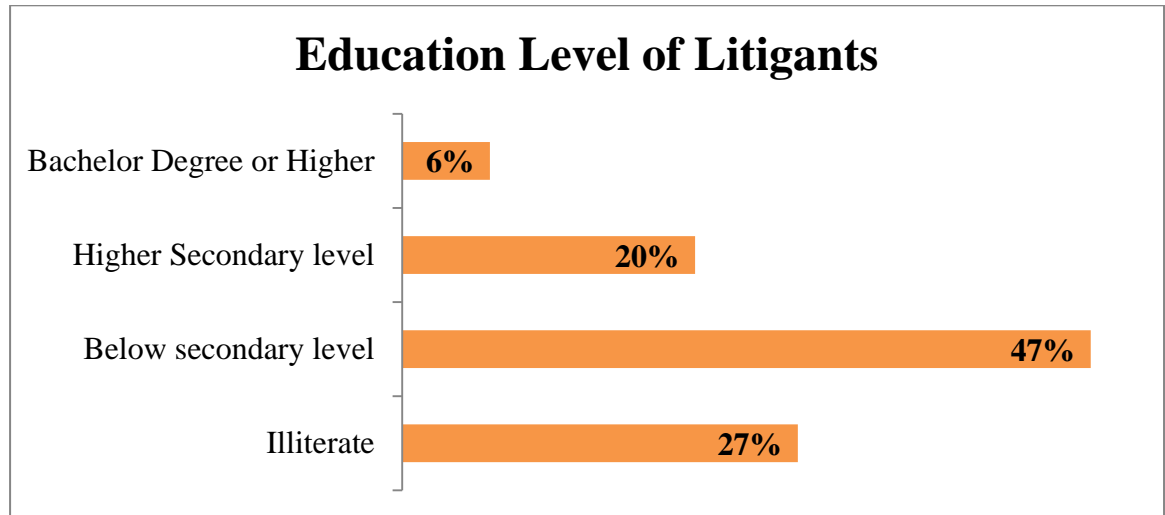
Table 22: Distribution of Respondents by Age

Age in Year	Number of Respondent N=15	Percentages
\leq 30 year	4	27
31-40 year	3	20
41-50 year	5	33
50+ year	3	20
Mean \pm SD	41.5 \pm 13.0	

5.3.3. Education Level of Litigants

The Chart 9 shows that about half (47%) of the litigants are in below secondary level, and even, 27% are illiterate. However, 20% of the respondents are in higher secondary level and 6% are bachelor degree holders or in higher level of education.

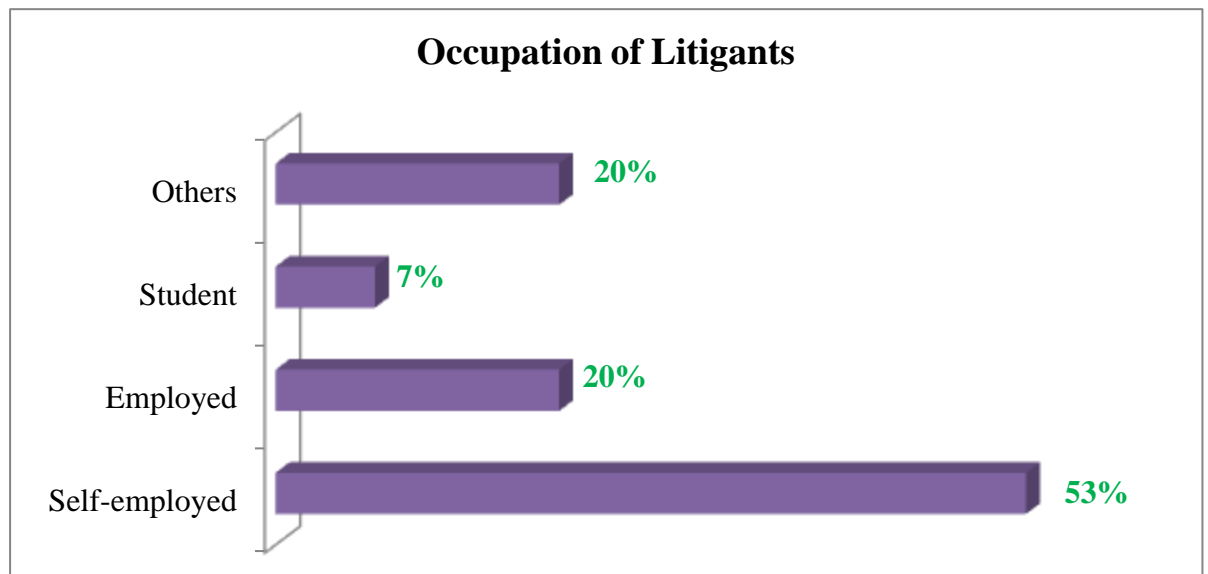
Chart 9: Distribution of Respondents (Litigants) by Education



5.3.4. Occupation of Litigants

The Chart 10 shows that more than half (53%) of the litigants are self-employed, 20% are employed in other organization, 7% are students and 20% are engaged in other occupations.

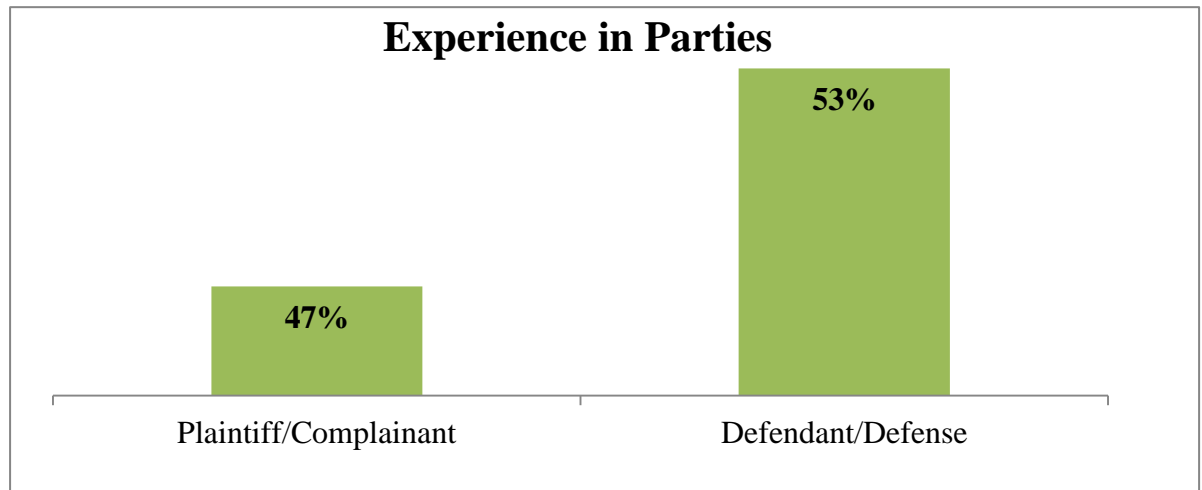
Chart 10: Distribution of Respondents (Litigants) by Occupation



5.3.5. Experience in Parties

The selected litigants have experiences in plaintiff or defendant. The Chart 11 shows that 53% of the respondents had experience as defendant and 47% had experience as plaintiff.

Chart 11: Distribution of Respondents (Litigants) by Experience in Parties



5.3.6. Length of Experience as Court User

Length of experience as court user is also one of the most important factors of respondents' background information. It is evident from the Table 12 that the length of experience of more than half of the respondents (53%) was between 4 to 6 years and the mean length of the experience of the respondents was 4.0 (± 1.6) years.

Table 23: Distribution of Respondents by Length of Experience as Court Users

Year of Experience	Number of Respondent N=15	Percentages
≤ 3 year	5	33
4-6 year	8	53
6+ year	2	13
Mean \pm SD	4.0 \pm 1.6	

5.4. Litigants' Type of Disputes in Court and Pending Cases, and Cause for filing the Case

The litigants reported the type of disputes that they experienced, their pending cases and also, mentioned the causes of pending cases.

5.4.1. Litigants' Financial Disputes and Pending Cases

The Table 24 shows that about half (47%) of the respondents have experienced as a party to any case regarding financial dispute in court. More than half (57%) of the respondents have at least one case pending in the court and even, 43% of the respondents have pending more than one cases in the court.

Table 24: **Distribution of Respondents having experience as a party to any case regarding financial dispute in court.**

Characteristics	Number of Respondent N=15	Percentages
Litigant are a party to any case regarding financial dispute in court		
Yes	7	47
No	8	53
Litigants have pending cases in court N=7		
One	4	57
More than one	3	43

5.4.2. Litigants' Family Disputes and Pending Cases

The Table 25 shows that two-third (67%) of the respondents have experienced as a party to any case regarding family dispute in court, and 90% of the respondents have pending more than one cases in the court.

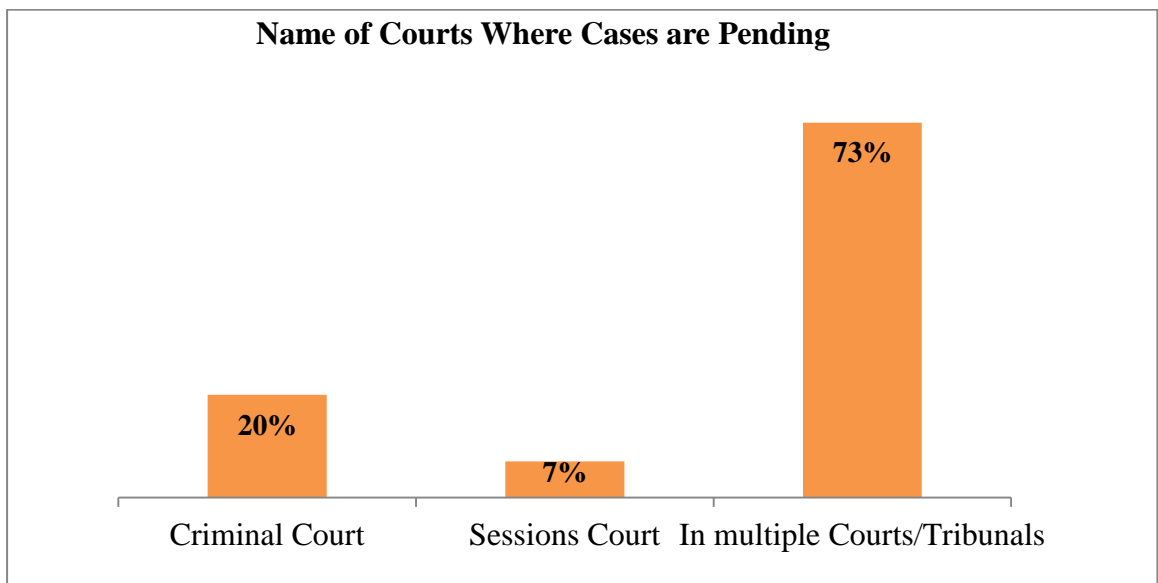
Table 25: **Distribution of Respondents having experience as a party to any case regarding family dispute in court**

Characteristics	Number of Respondent N=15	Percentages
Litigants are the parties to any case regarding family dispute in court		
Yes	10	67
No	5	33
Litigants have pending cases in court N=10		
One	1	10
More than one	9	90

5.4.3. The Courts Where Cases are Pending

The litigants have pending cases in several courts. The Figure 11 shows that about three-fourth(75%) of the respondents have pending cases in multiple courts/tribunals, 20% in criminal courts and 7% in sessions courts.

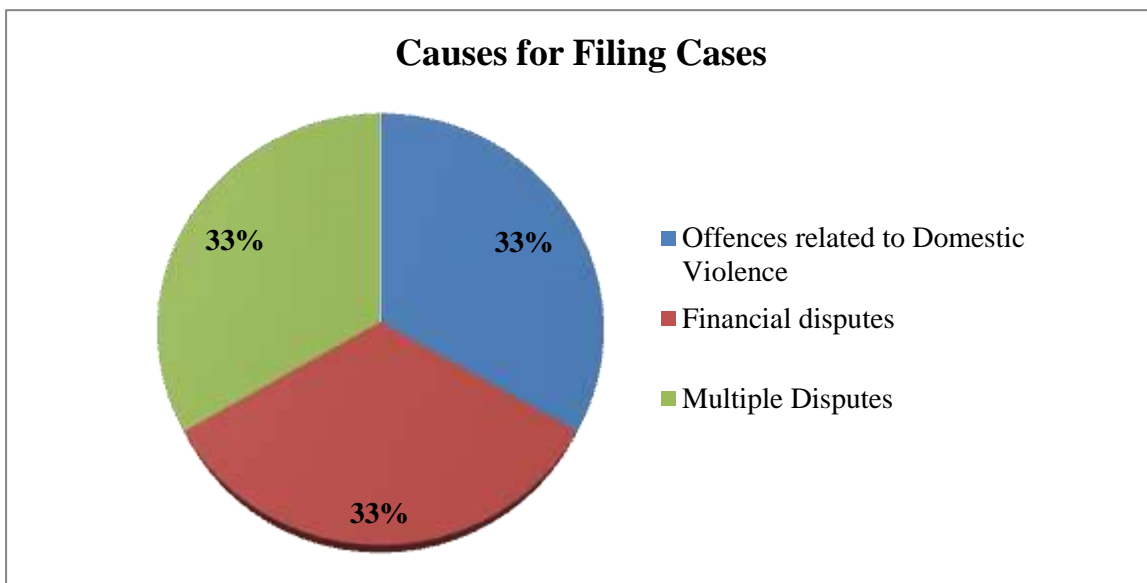
Chart 12: Distribution of Respondents (Litigants) by the Courts where their cases are pending



5.4.4. Causes for Filing Cases

The litigants file cases for several causes. The Figure 12 shows that one-third of the respondents filed cases for domestic violence, another one-third filed cases for financial disputes and the rest of the one-third filed cases for multiple disputes.

Chart 13: Distribution of Respondents (Litigants) by Causes of Filing Cases



5.5. Financial Dispute Settlement of Litigants

In this section preferences of litigants have been discussed about the place of filing cases at the first instance for settling financial disputes. The type of courts primarily for filing a case regarding financial disputes, knowledge of the litigants about the proper court for financial dispute, and causes of tendency bypassing civil court for financial dispute resolution have also been discussed here.

5.5.1. Preference of Litigants for First Instance Settling Financial Disputes

The Table 26 shows that 40% of the respondents prefer courts for first instance for settling financial disputes, 33% to a local police station and 27% tried to amicably settle with the opponents through own kith and kin. However, the litigants who go to the courts, among them, 75% primarily go for filing a case regarding financial disputes in criminal court (magistrate's court).

Table 26: Distribution of Respondents by Preference for First Instance Settling Financial Disputes and Type of Courts

Characteristics	Number of Respondents N=15	Percentages
Preference of Litigants for First Instance Settling Financial Disputes		
To the Court	6	40
To a local Police Station	5	33
Try to amicably settle with the opponents through very own kith and kins	4	27
The court where primarily go for filing a case regarding financial disputes N= 8		
Civil Court	1	13
Criminal Court(Magistrates Court)	6	75
I file multiple cases in both the courts	1	13

5.5.2. Knowledge of Litigants about the Proper Court for Financial Dispute Settlement

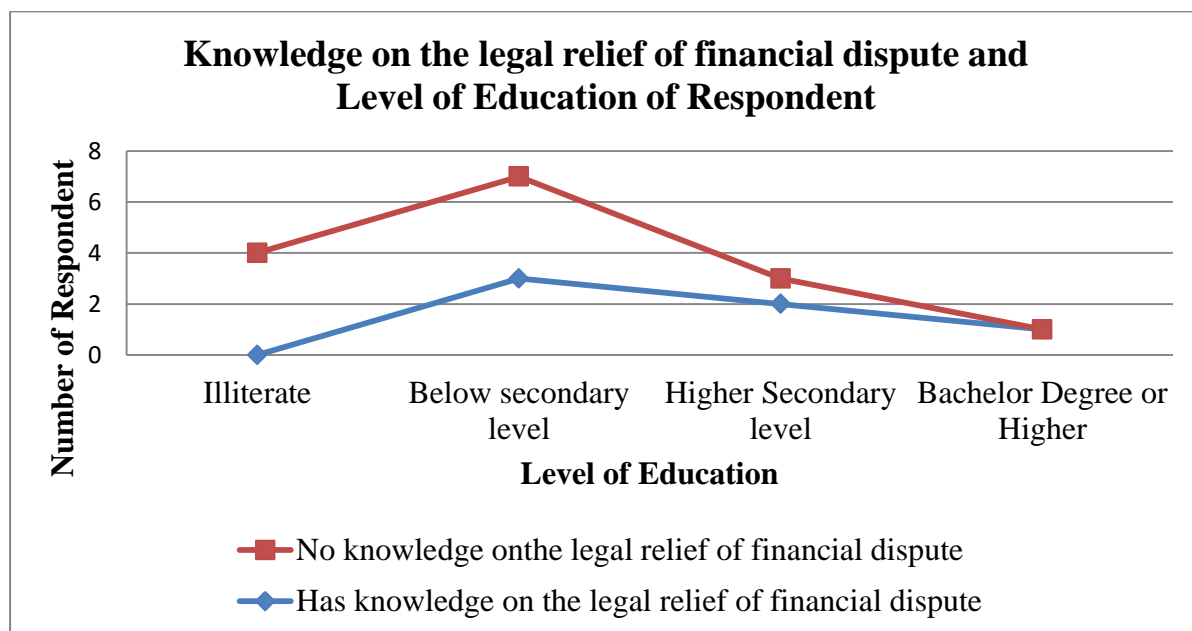
The Table 27 shows that about two-third (60%) of the respondents do not know that the legal relief of financial dispute is available in a competent civil court. They mentioned several causes for it. They are: opponents can be given a better treatment through the criminal courts; they said that they had no other choices as they were the accused; they stated that their lawyers know; they have no idea and few other reasons related to the issues Thus, their tendency was to bypass civil court for financial dispute resolution.

Table 27: Distribution of Respondents by Knowledge about the Proper Court for Financial Dispute Settlement

Knowledge of Litigants about the Proper Court for Financial Dispute Settlement	Number of Respondents N=15	Percentages
Yes	6	40
No	9	60

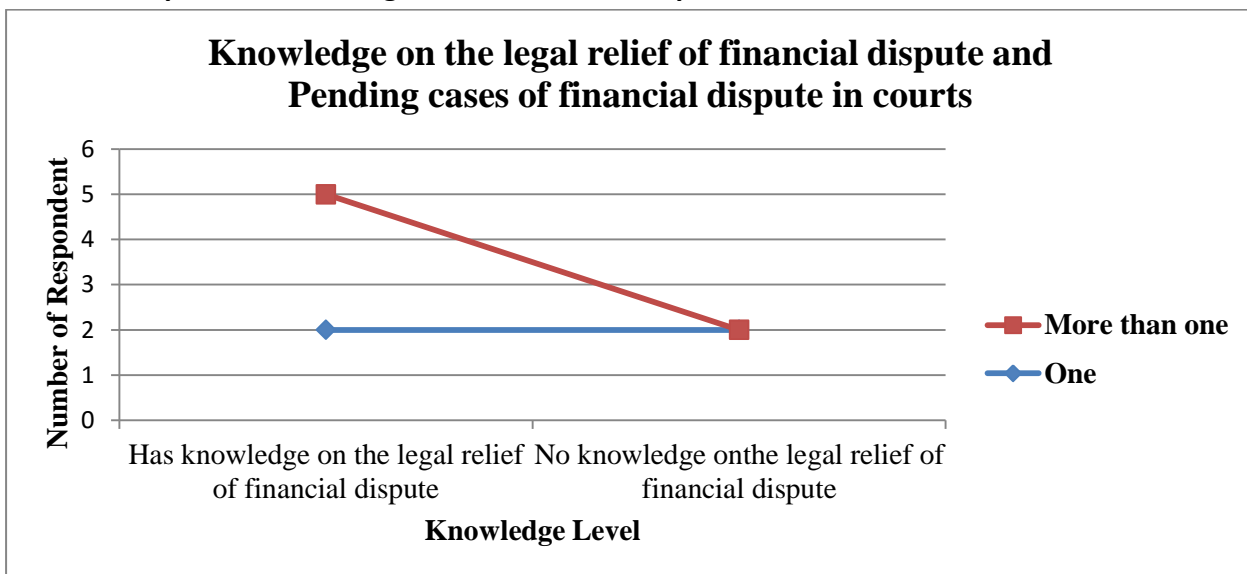
The Chart 14 also shows that the knowledge of the legal relief of financial dispute is available in a competent civil court and is correlated with the education level of the respondent. The respondents having low education level or illiterate have lower knowledge on the legal relief of financial dispute.

Chart 14: Distribution of Respondent by their Knowledge on the legal relief of financial dispute and Level of Education



The Chart 15 also shows that the knowledge of the respondents of the legal relief of financial disputes available in a competent civil court, is correlated with the pending cases of financial disputes in courts of the respondents. The respondents who have more pending cases have lower knowledge about the legal relief of financial disputes available in a competent civil court.

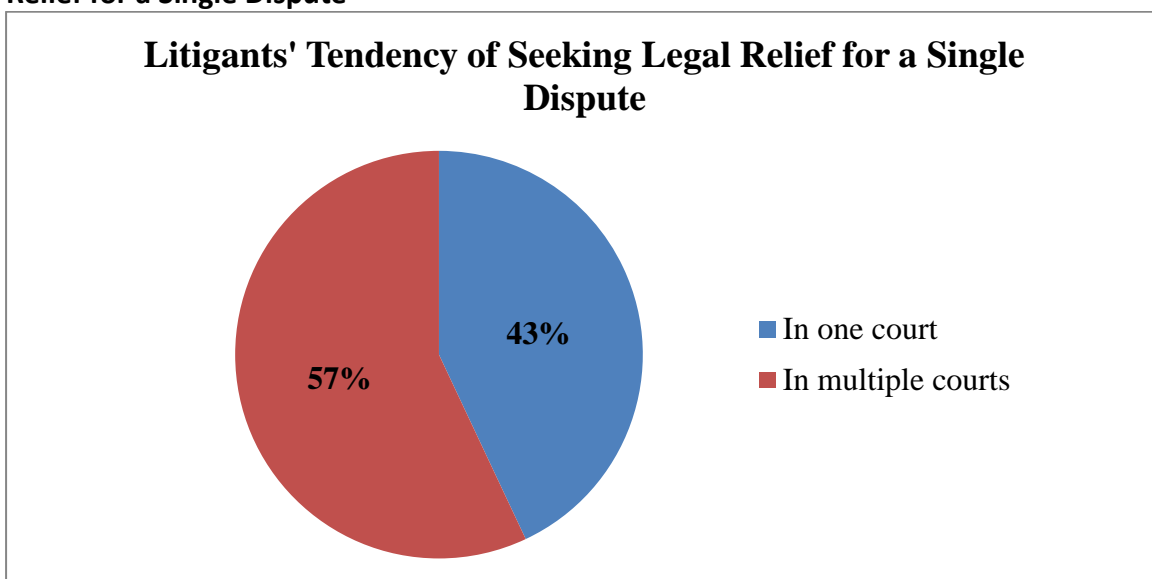
Chart 15: Distribution of Respondent by their Knowledge on the legal relief of financial dispute and Pending cases of financial disputes in courts



5.6. Litigants’ Tendency of Seeking Legal Relief for a Single Dispute

The Chart 16 shows that more than half (57%) of the respondents seek legal relief from multiple courts for a single dispute, though one court may give legal reliefs for a family dispute and/or in case of a domestic violence.

Chart 16: Distribution of Respondents (Litigants) by Tendency of Seeking Legal Relief for a Single Dispute



5.7. Perception of Litigants on Courts and Legal Reliefs of Disputes

There are discussions regarding perception of litigants in filing a case for a financial dispute in the civil court, and filing a case for a family dispute or domestic violence in multiple courts.

5.7.1. Perception of Litigants on the Efficacy of Civil Court in Resolving Financial Dispute

The Table 28 shows that about two-third (60%) of the respondents have no idea about filing a case for a financial dispute in the civil court and that the cost of time and expense is more than that of relief it has offered to them after the trial.

Table 28: Distribution of Respondents by their Perception on the Efficacy of Civil Court in Resolving Financial Dispute

Perception of Litigants	Number of Respondents N=15	Percentages
Yes	6	40
I have no idea	9	60

5.7.2. Perception of Litigants on the Efficacy of Criminal Court in Resolving Offences of Domestic Violence Dispute

The Table 29 illustrates that 80% of the respondents do not think that filing a case for a family dispute or domestic violence in more than one criminal court/tribunal result the cost of its time and expense more than that of relief it has offered to them after the trial.

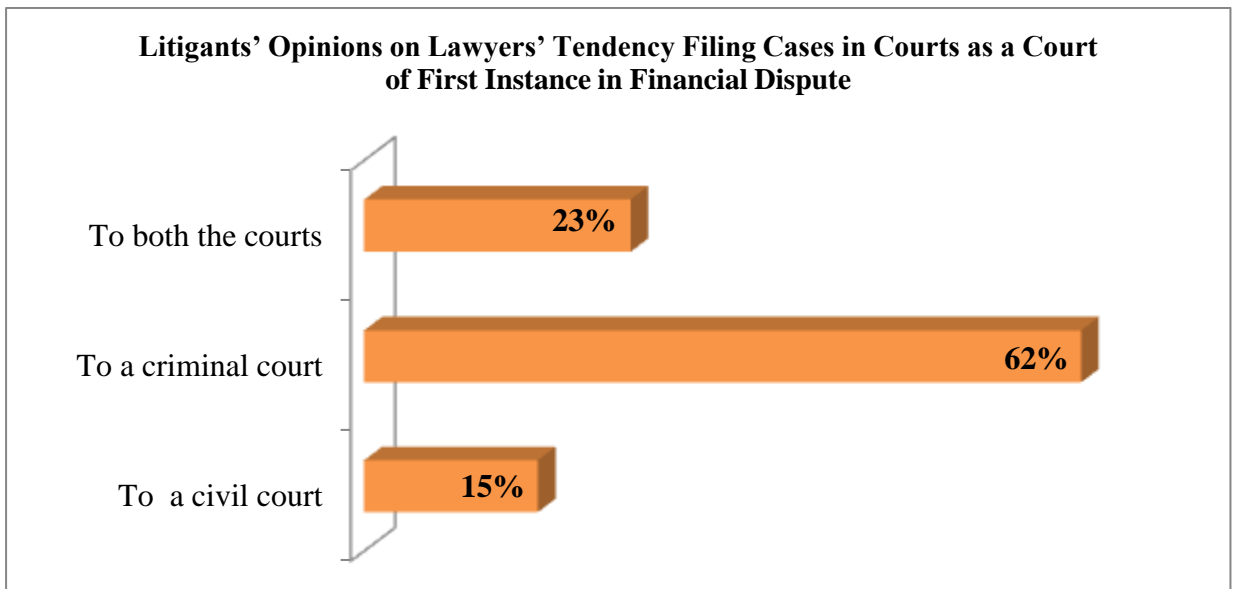
Table 29: **Distribution of Respondents by their Perception on the Efficacy of Criminal Court in Resolving Offences of Domestic Violence Dispute**

Perception of Litigants	Number of Respondents N=15	Percentages
Yes	12	80
I have no idea	3	20

5.8. Litigants’ Opinions on Lawyers’ Tendency Filing Cases in Courts as a Court of First Instance in Financial Dispute

The Chart 17 shows that about two-third (62%) of the respondents thinks that lawyers’ tendency of filing cases in courts as a court of first instance for financial dispute is a criminal court, only 15% think about a civil court and 23% think regarding the both of the courts.

Chart 17: **Distribution of Respondents (Litigants) by their Opinions on Lawyers’ Tendency of Filing Cases in Courts as a Court of First Instance for Financial Dispute**



5.9. Experience of Litigants in Defending Multiple Cases for a Single Issue of Domestic Violence

The Table illustrates that more than half (57%) of the respondents do not have experience in defending multiple cases for a single issue of domestic violence.

Table 30: **Distribution of Respondents by their Experience in Defending Multiple Cases for a Single Issue of Domestic Violence**

Experience of Litigants	Number of Respondent N=14	Percentages
Yes	6	43
No	8	57

5.10. Narratives of Litigants Defending Multiple Litigations for a Single Dispute

The litigants discussed openly and narratively regarding defending multiple litigations for a single dispute. The litigants suffer in defending multiple litigations for a single dispute or occurrence. They expressed about their sufferings in defending multiple litigations for a single dispute or occurrence. to cost and expense the legal reliefs, as well as mental stresses of them for not the disputes being resolved or lengthening the disputes to be resolved have been discussed. The litigants stated that defending multiple litigations for a single dispute is very painful as it is time-consuming and costly. It is also very stressful. They also mention that it is harassment for them; it also creates irritation and causes injustice. The litigants think that these types of acts are malicious and contemptuous.

Findings and Conclusion

This chapter summarizes the overall study and provides an overview of the results in light of the analytical framework. It also tried to provide answers to specific research question. Furthermore, based on the analysis and interpretation of data, the chapter concludes by focusing on some policy recommendations as well as raising some issues for further research.

To explore the dynamics of key factors and actors of Case Backlog in Criminal Justice System leading to the backlogs of criminal cases a study comprising both qualitative and quantitative approaches has been adopted. This researcher has chosen twelve districts for case studies and quantitative interviews of the litigants and the judges. These districts include comparatively more police stations and wide variety of criminal cases in the criminal justice system of Bangladesh.

Criminal case Backlogs is a phenomenon affected by multiple actors and factors. It has been a crucial issue for many countries for many decades. No single country could manage it quite successfully. Consequently, it has taken a problematic character which can possibly and plausibly be construed in the lenses of the 'wicked problem' approach and 'grounded theory'.

Wicked problems are viewed as the problems that are difficult to solve comprehensively. For the purpose of this research, this makes sense in the context of assessments of key actors and factors of criminal case backlog. This genre of problem was first introduced in the research arena by *Rittel and Webber* in 1975, to define problems in the social planning narratives. Theories that emerge from data are often described as organic because they are grounded in data. The researchers of grounded theory adopt inductive reasoning followed by deductive reasoning through complex data analysis so that an emergent theory may be discovered.

The analytical framework was developed from the review of the available literature and from the empirical experiences of the researcher as a justice sector professional. This study shall be guided and developed in line with this framework.

Keeping the **Case Backlog (CB)** in Criminal Courts as the sole **dependent variable** of this research the explanatory variable to that, the independent variable has been chosen, among several factors, the most overarching factor that takes its course from the policy-level law making to the implementation of law, as argued in a varying degree by global, regional and local literatures reviewed. Therefore, **Over-criminalization** as one of the dominant yet dormant factors contributing to the constant yet latent stream of backlogs of criminal cases has been taken **as the sole independent variable**. 'Performance of legal and judicial actors' has been mounted as the intervening variable.

Criminal case Backlogs is a phenomenon affected by multiple actors and factors. It has been a crucial issue for many countries for many decades. No single country could manage it quite successfully. Consequently, it has taken a problematic character which can possibly and plausibly be construed in the lenses of the 'wicked problem' approach and 'grounded theory'.

The data collected from the telephone survey was validated through interviews with key personnel. Furthermore, secondary data from different sources were reviewed. Quantitative data were collected through online survey containing both open and close-ended questions for the judges, magistrates and litigant people keeping their name in anonymity. For collecting qualitative data the researcher has conducted in depth interviews of a retired justice of the Apex Court of the land, judges of different tiers, renowned Jurists, experts on legal and judicial reform, metropolitan and judicial magistrates and lawyers and due to the incumbent pandemic situation this interviews were conducted through phone and Skype calling.

6.1 Summarizing the fundamental observations

The purpose of this study was to explore the dynamics of key factors and actors of Case Backlog in Criminal Justice System leading to the backlogs of criminal cases.

The judges provided their opinions on over-criminalization and its impact on case-backlogging. More than three-fourth (87%) of the respondents recognize over-criminalization as one of the most significant factors behind the criminal case backlog in Bangladesh. They also leveled the portion of over-criminalization as responsible behind the criminal case backlog in Bangladesh. Significant number of the respondents thinks that over-criminalization is responsible behind the criminal case backlog. About half of the respondents (47%) think that it is largely liable for the criminal case backlog and 40% think it as to a great extent. However, only 13% of the respondents think that over-criminalization is insignificantly responsible behind the criminal case backlog.

Table 31: Distribution of Respondents by their Opinions on Over-criminalization and Case-backlogging

Characteristics		Number of Respondent N-15	Percentages
	Recognizing over-criminalization as one of the most significant factors behind the criminal case backlog in Bangladesh		
Yes		13	87
No		2	13
	Impact of over-criminalization on criminal case backlog		
Insignificantly		2	13
Largely		7	47
To a great extent		6	40

The judges discussed narratively the possible strategies to adopt for managing over-criminalization in Bangladesh. They recommended taking some necessary strategies to reduce over-criminalization, and or to adopt for managing over-criminalization in Bangladesh. The study participants broadly recommend two issues: reform legal issues and extensive researches to find out proper strategies to resolve over-criminalization, and with the appropriate reforming of legal issues. The judges recommend particularly reforming some legal and judicial issues. Such as, activating law commission's scrutiny to make criminal law reasonable in size, decriminalization process of petty offences, reform of criminal law or legal reform in criminal justice system, judicial reform, adopting justice sector reform strategy in national level, and police reform related to case investigation.

The litigants discussed openly and narratively regarding defending multiple litigations for a single dispute. The litigants suffer in defending multiple litigations for a single dispute or occurrence. They expressed about their sufferings in defending multiple litigations for a single dispute or occurrence. to cost and expense the legal reliefs, as well as mental stresses of them for not the disputes being resolved or lengthening the disputes to be resolved have been discussed. The litigants stated that defending multiple litigations for a single dispute is very painful as it is time-consuming and costly. It is also very stressful. They also mention that it is harassment for them; it also creates irritation and causes injustice. The litigants think that these types of acts are malicious and contemptuous.

In the correlation analysis, it has been observed that the knowledge of the legal relief of financial dispute is available in a competent civil court and is correlated with the education level of the respondent. The respondents having low education level or illiterate have lower knowledge on the legal relief of financial dispute.

The knowledge of the respondents of the legal relief of financial disputes available in a competent civil court, is correlated with the pending cases of financial disputes in courts of the respondents. The respondents who have more pending cases have lower knowledge about the legal relief of financial disputes available in a competent civil court.

6.2 Revisiting the research question

To justify the objective of this study, one research question was raised.

Research Question:

Is over-criminalization a significant contributing factor for criminal case-backlogs in the subordinate judiciary of Bangladesh?

The findings, according to the particular research question are as follow:

- Over-criminalization more specifically purposive over-criminalization is attributable for criminal case backlog. Purposive over-criminalization is generally done not to safeguard the people rather to safeguard the government in power. Trifle matters which could be resolved in community level they are making penal offence. Act geared towards ensuring the ruling group not the society.
- Due to over-criminalization we are getting rough laws and then those laws are being abused and on the very reaction there happens the court-choosing. Over-criminalization is pushing us in court shopping.
- In today's criminal laws, crimes are generally defined broadly compared to any definition of crime in the Penal Code, 1860 that is leading to unnecessary criminal prosecution.
- An obvious effect of over-criminalization in Bangladesh is the proliferation of minor cases which generally would not come to trial in any other criminal justice system.
- The case studies showed that people are predominantly interested to take resort to criminal courts for financial and family disputes in lieu of civil courts which are creating overwhelming numbers of criminal cases in the subordinate judiciary of Bangladesh.

6.3 Theoretical Implication Revisited

A theory includes the description of the working of a phenomenon. The theory and research are two scientific initiatives which in the process of theorizing and researching function as a perpetual organic relationship influencing and impacting each other mutually. Perhaps in the true sense a suitable theory is the most precious tool at the researcher's disposal since it can offer guidance in perceiving the phenomenon that is under study. A theory paves a point that has ripened to a starting point for subsequent research. Gibson, Danna & Webb, Lynne. (2012). In their article "Grounded theory approaches to research on virtual work: A brief primer" observed that "the researcher selects an existing theory and uses a recognized scientific research protocol to test if the identified theory offers a reasonable explanation for the phenomenon under study. Typically, the scientific protocol involves the use of empirical research methods, such as a survey or experiment, yielding numerical data subjected to statistical analysis."

The present study is predominantly focused on assessing the role of key actors and factors of the growing case backlogs of the criminal courts of the sub ordinate judiciary of Bangladesh. Criminal case Backlogs is a phenomenon affected by multiple actors and factors. It has been a crucial issue for many countries for many decades. No single country could manage it quite successfully. Consequently, it has taken a problematic character which can possibly and plausibly be construed in the lenses of the 'wicked problem' approach and 'grounded theory'.

Wicked problems are viewed as the problems that are difficult to solve comprehensively. For the purpose of this research, this makes sense in the context of assessments of key actors and factors of criminal case backlog. This genre of problem was first introduced in the research arena by *Rittel and Webber* in 1975, to define problems in the social planning narratives. Their innovations as to this problem transpired and conceptualized that certain problems are not manageable in linear and traditional approaches. In the definitional context 'wicked' does not necessarily mean something 'evil' rather it stipulates the genre of problem that are

very complicated to resolve. No one easily finds any “quick fix” against the challenges posed by these problems. As Brown, Harris, & Russel observed “wicked problems are multi-casual, unstable and unpredictable”. (Brown, Harris, & Russel, 2010). The disagreement between cause and solution has been the hallmarks of the wicked problems. Tame problems are opposite to wicked problems which though difficult to solve yet easier to define and deal. With the aid of a linear approach based on analytical framework tame problems can pragmatically and systematically be treated. The issue of causes and solution to the climate change is necessarily an ideal form of wicked problem with its many constituting features. (Australian Government, 2007).

This researcher argues that the reason why the backlog of criminal case is a Wicked problem is because the way the present criminal justice system being regulated by the actors associated with it from the policy level to the practice level to manage and measure the issues concerning the aggravation of the problem, do not take into account the complexity associated with the problem. When faced with ambiguity and complexity, the approach and solutions have to be innovative and inventive. There is a very effective way to venture to solve the wicked problem which is to take recourse to “trans-disciplinary approaches, since the knowledge base we have in our society is so fragmented that it is not possible to see the whole picture” (Brown et al., 2010). Therefore, infusion of the insights from the distinction between Tame and Wicked problem as expounded by Rittel and Webber’s (1973) might be helpful for the rationalization of this study following the research of Devaney and Spratt (2009).

6.4 Policy Implication

The researcher asked the respondents, key informants along with the officials regarding their recommendations to improve the current situation of criminal case-backlogging in Bangladesh. As per their views and opinions accompanied by researcher’s experience with qualitative data the following recommendations are proposed which have some policy implications. These implications can help

the decision or policymakers to address the problem of over-criminalization to manage criminal case backlogging in Bangladesh.

A. On Judicial governance and tackling the issue of over-criminalization

To solve the problem of over-criminalization today, the policy focus should be on:

- Eliminating all crimes that are obsolete, unnecessary, redundant, or unconstitutional; resolve all inconsistencies; and, where appropriate, downgrade minor regulatory offenses from crimes to infractions.
- Ensuring that the definition of each crime is clear and complete and that it states explicitly what level of mensrea, if any, is required for conviction.
- Consolidating the entire body of revised criminal law into a single, well-organized, easily intelligible chapter of the General Statutes.

B. On Justice Sector Reform and Legal Reform

To ensure that over-criminalization doesn't recur in the future, the Government should be on:

- Imposing suitable limitations on the power that administrative boards, agencies, local governments, and other entities have to create crimes.
- Providing a default "criminal intent" standard for all crimes created subsequent to recodification, and require that strict liability crimes can be created only by explicit statutory enactment.
- Making "mistake of law" a defense for any crime created subsequent to recodification that is not clearly defined in the "criminal law" chapter of the General Statutes.

C. Police system has been working as a gateway for over-criminalization. The reform of the police never was used as a good one. Police reform was always thought separately from the criminal justice system.

-
- D. In our country we need an independent criminal prosecution like many commonwealth countries.**
 - E. Reestablishing social values might be a solution for over-criminalization.**
 - F. Proper case management and reducing the stages of criminal trial (disposal) can be a good strategy. Quick disposal, equal treatments before the court, introduction of prosecution service and fair appointment procedure of the judges and the court supporting staff.**

6.5 Implication for future research

The arenas which this study could not address might have some implications for future research.

This research predominantly and purposively looked at the phenomenon of over-criminalization as a significant contributing factor towards criminal case-backlogging in Bangladesh. But there are certain other concurrently dominating factors aggravating this backlogging problem within the legal system of Bangladesh. Therefore, on the dominion of case backlog management in Bangladesh further research and study can be conducted in future on the other factors concurrently contributing towards criminal case-backlogging in different degree and dimensions.

Moreover, as this research showed there are multiple actors who are associated with the phenomenon of 'over-criminalization'(solitary factor of case-backlogging researched by the current study), the contributory responsibility of each of the actors from policy-level law-making to law- implementation level can be the focus of future research too.

To be very specific, the present research has shown the impact of over-criminalization on the criminal case-backlogging in Bangladesh which is ultimately related to the impact judicial governance of the country. Future research can possibly show how the phenomenon of over-criminalization potentially impacts the overall governance of Bangladesh.

6.6 Conclusion

The present study suggests that in the legal and judicial history of Bangladesh the issue of case backlog reduction was agitated and researched in earlier legal and judicial reform studies. But in the prevailing discourses of legal and judicial reforms did not present any tangible narrative on the issue of over-criminalization and its potential impact on the case backlog in Bangladesh context.

This study has been able to show a correlation between the phenomenon of over-criminalization and the criminal case backlog. The findings of data and their corresponding analysis in connection with the objective and research question show that in Bangladesh over-criminalization is operating as a wide-ranging factor of backlogs which involves multiple actors(policy makers, litigants as court users, police as investigators, lawyers, prosecutors and justice sector professionals) to operate and achieve the status of a significant contributing factor to potentially affect the criminal justice system by creating case backlogs.

Thus, from all the findings and analysis, it is clear that this research has arduously paved a novel yet reliable base for the future research on the improvement of justice sector, rule of law, public policy and the good governance in Bangladesh.

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Annexures

Annexure 1

Survey questionnaire for the Litigant People/Court Users

Survey Questionnaire

Criminal Case-backlogging in Bangladesh: An Assessment of the role of the significant Actors and Factors

This questionnaire will be used to conduct a research on the aforesaid topic as an integral part of the Master in Public Policy and Governance (MPPG) Program of North South University, Dhaka, Bangladesh. Data collected through this interview will be used for the purpose of conducting the research only. It is to be informed for all concerned that absolute confidentiality and anonymity of the respondents shall be maintained while using the data and information acquired through this survey. You are requested to put a tick mark against preferred answer/write the answer very precisely.

Regards

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Part A: General Information

Question	Answer	Code
1. Name (optional):		
2. Place of Residence(optional):		
3. Gender:	Male	1
	Female	2
4. Age	_____ year	
5. Experience in Parties	Plaintiff/Complainant	1
	Defendant/Defense	2
	Both	3
6. Length of Experience as a Court User	_____ year	
7. Education	Illiterate	1
	Below secondary level	2
	Secondary level	3
	Higher Secondary level	4
	Bachelor Degree or Higher	5
8. Occupation:	Self-employed	1
	Employed	2
	Student	3
	Others _____	8
9. Are you a party to any case regarding financial dispute in this Court?	Yes	1
	No	2
10. If yes, how many cases are pending filed by or against you?	One	1
	More than One	2
11. Are you a party to any case regarding family dispute in this Court?	Yes	1
	No	2
12. If yes, how many cases are pending filed by or against you?	One	1
	More than One	2
13. In which Court your case is pending?	Civil Court	1
	Criminal Court	2
	Sessions Court	3
	Special Tribunal	4
	In multiple Courts/Tribunals	5

14. What is the cause of action for filing the case by or against you?	Offences related to Domestic Violence	1
	Financial disputes	2
	Land related disputes	3
	Multiple Disputes	4
	Other disputes	8

Part B: Focused Information

Question	Answer	Code
15. For settling a financial dispute where do you prefer to go for the first instance? (Court preferred for financial dispute settlement)	To the Court	1
	To a local Police Station	2
	To a local people's representative(UP member or Chairman)	3
	Try to amicably settle with the opponents through very own kith and kins	4
16. If the answer is "to the Court" - In which court do you primarily go for filing a case regarding financial disputes?	Civil Court	1
	Criminal Court(Magistrate's Court)	2
	I file multiple cases in both the courts	3
17. Do you know that the legal relief of financial dispute is available in a competent civil court? (Knowledge about the proper court for financial dispute)	Yes	1
	No	2
18. If Yes. Why did you choose a criminal court at the first instance despite knowing that a civil court can give you appropriate legal relief for a financial dispute? (Tendency of bypassing civil court for financial dispute resolution)	Opponents can be given a better treatment through the Criminal Courts	1
	Civil Courts does not generally inflict punishment as a legal remedy	2
	If for any other reasons, please specify-	8
19. For a family dispute and/or in case of a domestic violence, where more than one court are there to give legal reliefs for a same cause of action, how many courts do you generally resort to for getting appropriate legal relief?	In one court	1
	In multiple courts	2

(Tendency of seeking legal relief to multiple courts for a single dispute)		
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Part C: In-depth Information

Question	Answer	Code
20. Do you think filing a case for a financial dispute in the civil court cost your time and expense more than that of relief it has offer to you after the trial? (Perception of litigants on the efficacy of civil court in resolving financial dispute)	Yes	1
	No.	2
	I have no idea	3
21. Don't you think filing a case for a family dispute or domestic violence in more than one criminal court/tribunal cost your time and expense more than that of relief it has offer to you after the trial? (Perception of litigants on the efficacy of criminal court in resolving offences of domestic violence dispute)	Yes	1
	No	2
	I have no idea	3
22. If you are a plaintiff/complainant of a case/suit filed for a financial dispute, to what court did your lawyer advise you to file your case regarding that? (Lawyers' tendency to file cases in courts as a court of first instance in financial dispute)	To a civil court	1
	To a criminal court	2
	To both the courts	3
23. Were you an accused/ defendant of cases/suits filed in more than one courts for getting redress of domestic violence/ family dispute? (Experience in defending multiple cases for a single issue of domestic violence)	Yes	1
	No	2
24. If yes, how would you evaluate your experience for defending multiple litigations for a single dispute or occurrence?(answer in short)		

Annexure 2

Survey questionnaire for the Judges and Judicial Magistrates

Survey Questionnaire

Criminal Case-backlogging in Bangladesh: An Assessment of the role of the significant Actors and Factors

This questionnaire will be used to conduct a research on the aforesaid topic as an integral part of the Master in Public Policy and Governance (MPPG) Program of North South University, Dhaka, Bangladesh. Data collected through this interview will be used for the purpose of conducting the research only. It is to be informed for all concerned that absolute confidentiality and anonymity of the respondents shall be maintained while using the data and information acquired through this survey. You are requested to put a tick mark against preferred answer/write the answer very precisely.

Regards

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Part A: General Information

Question	Answer	Code
1. Name (optional):		
2. Gender:	Male	1
	Female	2
3. Professional Position:	District Judge	1
	Additional District Judge	2
	Joint District Judge	3
	Senior Assistant Judge	4
	Assistant Judge	5
4. Place of Posting(optional):		
5. Tenure of service(in years):	_____ Year	
6. In which Court you are presently working?	Civil Court	1
	Criminal Court	2
	Sessions Court	3
	Special Tribunal	4
7. What is the type of cases that is mostly adjudicated by you in the capacity of a judge of the criminal court? (Experience in specific type of cases as a Criminal Court Judge)	Offences related to Domestic Violence	1
	Financial disputes	2
	Land related disputes	3
	Multiple Disputes	4
	Other disputes_____	8

Part B: Focused information

Question	Answer	Code
8. As a Judge, from your very practical experience, which court do you think a litigant should prefer to go for the first instance for financial dispute? (Litigants' first preferable court for financial dispute)	Civil Court	1
	Criminal Court(Magistrate's Court)	2
	Multiple cases in both the courts	3
9. In your assessment what is the portion of litigants that know that the legal relief of financial dispute is available in a competent civil court? (Litigants' knowledge about availability of relief in civil court for financial dispute)	Very Few	1
	Few	2
	Moderate	3
	A good number	4
	Almost everyone	5
	None	9
10. Why do you think a litigant person chooses a criminal court at the first instance despite knowing that a civil court can give him/her appropriate legal relief for a financial dispute? (Litigants' tendency to prefer criminal court as first court in lieu of civil court for financial dispute)	Opponents can be given a better treatment through the Criminal Courts	1
	Civil Courts does not generally inflict punishment as a legal remedy	2
	If for any other reasons, please specify: _____	8
11. How far the ignorance of litigants about the availability of legal relief in the civil court is	Very insignificantly	1
	Insignificantly	2
	Moderately	3

affecting their decision in choosing between judicial fora (courts)? (Impact of litigants' ignorance on their decision to court-choosing)	Largely	4
	To a great extent	5
12. In your assessment what is the portion of litigants that generally resort to multiple courts for getting appropriate legal relief for a family dispute and/or in case of a domestic violence, where more than one courts are concurrently available to give legal reliefs for a same cause of action? (Portion of litigants choosing multiple courts at a time seeking justice for domestic violence)	Very Few.	1
	Few	2
	Moderate	3
	A good number	4
	Almost everyone	5
	None	9
13. In your opinion, to what extent adversarial mindset of litigants causes criminal case backlog? (Impact of litigants' adversarial mindset on case backlog)	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4
	To a great extent	5
14. Does the tendency of the Police to submit charge-sheet instead of final report as investigators somewhat causing criminal case backlog? (Impact of the tendency of investigators to submit charge-	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4
	To a great extent	5

sheet on case backlog)		
15. How far do the general biases of a section of lawyers to lodge cases in Criminal Courts instead of Civil Courts contribute to case backlogs? (Impact on case backlog of the tendency of lawyers to file cases in criminal courts instead of civil courts)	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4
	To a great extent	5

Part C: In-depth Information

Question	Answer	Code
16. What are key factors impacting the growing case backlogs in the criminal justice system of Bangladesh? (Please write up to 3 significant factors that you experienced) (Key factors impacting the growing case backlogs in the criminal justice system of Bangladesh)	1.	
	2.	
	3.	
17. Do you recognize overcriminalization as one of the most significant factors behind the criminal case backlog in Bangladesh? (Recognizing overcriminalization as one of the most significant	Yes	1
	No	2
	Other: Anything else to say _____	8

factors behind the criminal case backlog in Bangladesh)		
18. To what extent do you think overcriminalization is responsible behind the criminal case backlog in Bangladesh? (Impact of overcriminalization on criminal case backlog)	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4
	To a great extent	5
19. To what extent has Bangladesh experienced Proliferation of Criminal Courts with overlapping Jurisdictions in recent years? (Proliferation of Criminal Courts with overlapping Jurisdictions in Bangladesh)	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4
	To a great extent	5
20. Do you think filing a case for a financial dispute in the civil court cost time and expense more than that of relief it has offer to the justice seekers after the trial? (Cost of time and expense versus relief offered by civil courts)	Yes	1
	No	2
	Other: Anything else to say _____	8
21. Don't you think filing a case for a family dispute or domestic violence in more than one criminal court/tribunal cost time and expense more than that of relief it has offer to the justice seeker after the trial?	Yes	1
	No	2
	Other: Anything else to say _____	8

(Cost of time and expense versus relief offered by criminal courts when cases filed in multiple courts)		
22. Do you think the choice of liberal interpretation of the criminal laws by the judges is contributing to the additional cases to be taken into cognizance for trial and leading to inflation of criminal cases? (Impact of liberal interpretation of the criminal laws by the judges on criminal case backlog)	Yes	1
	No	2
23. How would you evaluate the sufferings of litigant people for defending multiple litigations for a single dispute or occurrence?(answer in short) (Sufferings of litigant people for defending multiple litigations on a single accusation)		
24. How far do you agree that the criminal laws enacted bypassing the civil law and civil courts remedies are creating	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4

excessive burdens on criminal courts? (Impact of criminal enactments enacted bypassing the civil remedies on criminal courts)	To a great extent	5
25. Do you acknowledge that over-criminalization intensely impacts the overall judicial governance of the country? (Impact of over-criminalization over the overall judicial governance of Bangladesh)	Very insignificantly	1
	Insignificantly	2
	Moderately	3
	Largely	4
	To a great extent	5
26. In your opinion what can be the best possible strategy to adopt for managing the problem of over-criminalization in the context of Bangladesh? (Best possible strategy to adopt for managing over-criminalization in Bangladesh)		

Annexure 3

The Dowry Prohibition Act, 1980

[26th December, 1980]

এই আইন যৌতুক নিরোধ আইন, ২০১৮ (২০১৮ সনের ৩৯ নং আইন) দ্বারা রহিত করা হইয়াছে।

যৌতুক নিরোধ আইন, ২০১৮

(২০১৮ সনের ৩৯ নং আইন)

[১ অক্টোবর, ২০১৮]

বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে যৌতুক গ্রহণ বা প্রদান নিরোধ সংক্রান্ত আইন [Dowry Prohibition Act, 1980](#) রহিতক্রমে উহার বিধানাবলী বিবেচনা করিয়া সময়ের চাহিদার প্রতিফলনে নূতনভাবে আইন প্রণয়নকল্পে প্রণীত আইন

যেহেতু বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে যৌতুক গ্রহণ বা প্রদান নিরোধ সংক্রান্ত আইন [Dowry Prohibition Act, 1980](#) (Act no. XXXV of 1980) রহিতঅমে উহার বিধানাবলী বিবেচনা করিয়া সময়ের চাহিদার প্রতিফলনে নূতনভাবে আইন প্রণয়ন করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল :-

সংক্ষিপ্ত শিরোনাম ও প্রবর্তন

১। (১) এই আইন [যৌতুক নিরোধ আইন, ২০১৮](#) নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

সংজ্ঞা

২। বিষয় বা প্রসঙ্গের পরিপন্থি কোনো কিছু না থাকিলে,-

(ক) “পক্ষ” অর্থ এই আইনের উদ্দেশ্য পূরণকল্পে, বিবাহের বর বা কনে অথবা বর বা কনের পিতা-মাতা অথবা বর বা কনের পিতা-মাতার অবর্তমানে বৈধ অভিভাবক অথবা প্রত্যক্ষভাবে বিবাহের সহিত জড়িত বর বা কনে পক্ষের অন্য কোনো ব্যক্তি; এবং

(খ) “যৌতুক” অর্থ বিবাহের এক পক্ষ কর্তৃক অন্য পক্ষের নিকট বৈবাহিক সম্পর্ক স্থাপনের পূর্বশর্ত হিসাবে বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে, বিবাহ অব্যাহত রাখিবার শর্তে, বিবাহের পণ বাবদ, প্রত্যক্ষ বা পরোক্ষভাবে, দাবিকৃত বা বিবাহের এক পক্ষ কর্তৃক অপর পক্ষকে প্রদত্ত বা প্রদানের জন্য সম্মত কোনো অর্থ-সামগ্রী বা অন্য কোনো সম্পদ, তবে মুসলিম ব্যক্তিগত আইন (শরিয়াহ) প্রযোজ্য হয় এমন ব্যক্তিগণের ক্ষেত্রে দেনমোহর বা মোহরানা অথবা বিবাহের সময় বিবাহের পক্ষগণের আত্মীয়-স্বজন, বন্ধু-বান্ধব বা শুভাকাঙ্ক্ষী কর্তৃক বিবাহের কোনো পক্ষকে প্রদত্ত উপহার-সামগ্রী ইহার অন্তর্ভুক্ত হইবে না।

যৌতুক দাবি করিবার দণ্ড

৩। যদি বিবাহের কোনো এক পক্ষ, প্রত্যক্ষ বা পরোক্ষভাবে, বিবাহের অন্য কোনো পক্ষের নিকট কোনো যৌতুক দাবি করেন, তাহা হইলে উহা হইবে এই আইনের অধীন একটি অপরাধ

এবং তজ্জন্য তিনি অনধিক ৫ (পাঁচ) বৎসর কিন্তু অনূন্য ১ (এক) বৎসর কারাদণ্ড বা অনধিক ৫০,০০০ (পঞ্চাশ হাজার) টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডনীয় হইবেন।

যৌতুক প্রদান বা গ্রহণ, ইত্যাদির দণ্ড

৪। যদি বিবাহের কোনো এক পক্ষ যৌতুক প্রদান বা গ্রহণ করেন অথবা যৌতুক প্রদান বা গ্রহণে সহায়তা করেন বা যৌতুক প্রদান বা গ্রহণের উদ্দেশ্যে চুক্তি করেন, তাহা হইলে তাহার এই কাজ হইবে একটি অপরাধ এবং তজ্জন্য তিনি অনধিক ৫ (পাঁচ) বৎসর কিন্তু অনূন্য ১ (এক) বৎসর কারাদণ্ড বা অনধিক ৫০,০০০ (পঞ্চাশ হাজার) টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডনীয় হইবেন।

যৌতুক সংক্রান্ত চুক্তি ফলবিহীন

৫। এই আইনের উদ্দেশ্য পূরণকল্পে, যৌতুক প্রদান বা গ্রহণ সংক্রান্ত কোনো চুক্তি ফলবিহীন (void) হইবে।

মিথ্যা মামলা দায়ের, ইত্যাদির দণ্ড

৬। যদি কোনো ব্যক্তি অন্য কোনো ব্যক্তির ক্ষতিসাধনের অভিপ্রায়ে উক্ত ব্যক্তির বিরুদ্ধে এই আইনের অধীনে মামলা বা অভিযোগ করিবার জন্য ন্যায্য বা আইনানুগ কারণ নাই জানিয়াও মামলা বা অভিযোগ দায়ের করেন বা করান, তাহা হইলে তিনি অনধিক ৫ (পাঁচ) বৎসর কারাদণ্ড বা অনধিক ৫০,০০০ (পঞ্চাশ হাজার) টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

অপরাধের আমলযোগ্যতা, জামিনঅযোগ্যতা, ইত্যাদি

৭। এই আইনের অধীন সংঘটিত অপরাধ আমলযোগ্য, জামিন অযোগ্য এবং আপসযোগ্য হইবে।

অপরাধের বিচার, ইত্যাদি

৮। এই আইনের অধীন সংঘটিত অপরাধের তদন্ত, বিচার, আপীল এবং সংশ্লিষ্ট অন্যান্য বিষয়ে [Code of Criminal Procedure, 1898](#) (Act No. V of 1898) এর বিধানাবলী প্রযোজ্য হইবে।

বিধি প্রণয়ন ক্ষমতা

৯। এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

রহিতকরণ ও হেফাজত

১০। (১) এই আইন কার্যকর হইবার সঙ্গে [Dowry Prohibition Act, 1980](#) (Act No. XXXV of 1980) অতঃপর উক্ত Act বলিয়া উল্লিখিত, এতদ্বারা রহিত করা হইল।

(২) উপ-ধারা (১) এর অধীন রহিতকরণ সত্ত্বেও, উক্ত Act এর অধীন দায়েরকৃত কোনো মামলা বিচারাধীন থাকিলে বা কোনো মামলা তদন্তাধীন বা চলমান থাকিলে উহা এমনভাবে অব্যাহত থাকিবে যেন উক্ত Act রহিত হয় নাই।

ইংরেজিতে অনূদিত পাঠ প্রকাশ

১১। (১) এই আইন প্রবর্তনের পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

(২) এই আইন ও ইংরেজি পাঠের মধ্যে কোনো বিরোধ দেখা দিলে এই আইন প্রাধান্য পাইবে।