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AN ANALYTICAL STUDY ON THE CONCEPT OF PLEA BARGAINING IN INDIA

AUTHORED BY - ADYA GUPTA

ABSTRACT

Plea bargaining has become a popular legal method in criminal judicial systems across the globe, including India. The goal of this research is to present a thorough examination of the idea of plea bargaining concerning Indian law. The study explores the legislative underpinnings, historical development, and use of plea bargaining in the Indian legal system. Using a multifaceted approach, the study looks at the social, ethical, and legal ramifications of plea bargaining in the Indian setting. It examines the reasons for the practice's introduction and assesses how well plea-bargaining works to speed up criminal trials, cut down on case backlogs, and improve overall efficiency in the criminal justice system.

In addition, the study investigates the constitutionality of plea bargaining and the protections it provides for the accused to guarantee that their rights are sufficiently upheld. This review looks closely at the laws, court rulings, and developing body of knowledge in India on plea bargaining. Another important component of this research is the socioeconomic effects of plea bargaining on many stakeholders, such as victims, accused parties, and society in general. It evaluates the possible advantages and disadvantages of plea bargaining, looking at how it can help the criminal justice system achieve its larger objectives while still upholding public trust and accomplishing justice.

The study also considers the difficulties and objections related to the use of plea bargaining in India. To shed light on the areas needing reform and attention, it examines topics including coercion, unequal bargaining power, and abuse potential. To sum up, this analytical study adds to the body of knowledge already available on plea bargaining in India by providing a fair assessment of its effectiveness and implications for the legal system. To promote a fuller knowledge of the complexity of plea bargaining and its ramifications for the Indian criminal justice system, the

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research findings are intended to be informative to policymakers, legal practitioners, and researchers.

INTRODUCTION

One of the basic tasks of the state has always been to preserve law and order and to guarantee that justice is served. This was a role that stayed constant even as the state transitioned from a police state to a welfare state. The primary goal of having a criminal justice framework is to maintain peace and demand among the public and to accommodate a review mechanism when a resident's rights are violated. As a result, the framework criminalizes many behaviors that violate or infringe on the rights guaranteed to a person in a civilized society. Nonetheless, the inconsistent force condition between the accused and the State mandates a procedure that is reasonable for the accused and safeguards his rights at each stage.[1]

Every year, residents pay taxes to the state and authorities to ensure the proper operation of the state's three organs. Extended pre-trial proceedings and case backlogs that cause unreasonable delays in justice will undermine the confidence and dependability of the judiciary, which is the foundation of a legal system. With the addition of sections 265A-265L to the Code of Criminal Procedure, (1973) by the Criminal Law (Amendment) Act of 2005, the legislature officially introduced plea bargaining into the Indian legal system to address the problem of case backlogs in Indian courts and to alleviate the suffering of under trial prisoners. The introduction of plea bargaining will help to fix our criminal justice system.

The solution is to look for elective debate objective components for settling a criminal case. Plea Bargaining is one of several options for resolving a criminal dispute without subjecting the accused to a traditional preliminary hearing.

[1] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, OHCHR, https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx

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MEANING OF PLEA BARGAINING

The Black's Law Dictionary defines plea bargaining as "a negotiated agreement between a prosecutor and a criminal defendant in which the defendant pleads guilty to a lesser offence or one of the multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or dismissal of the negotiated charges"[2]

Furthermore, plea bargaining can also be defined as "an agreement in a criminal case in which the prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or no contest in exchange for some agreement from the prosecutor as the punishment. A plea bargain can also include the prosecutor agreeing to charge a lesser crime, and dismissing some of the charges against the defendant."

Essentially, these definitions indicate that plea bargaining is a pre-trial agreement between the prosecution and the accused that is permitted by law. Because he is prepared to cooperate with the prosecution, confess his guilt, and even offer to recompense the victim in some situations, this mechanism facilitates the reduction or dilution of his punishment.[3]

There is an infamous Latin phrase that has evolved as a principal on the concept of plea bargaining called "nolo contendere" which translates to "I do not wish to contest" along with a plea of guilt.[4]

Plea bargains also known as trial wavers refer to an agreement between the state and the defendant to forgo full trial rights in exchange for a concession from the prosecution. It is a legal procedure in which criminal defendants agree to recognize their guilt and/or collaborate with the investigating authorities in return for some sort of governmental reward. These advantages are typically in the form of reduced charges and/or shorter sentences.[5]

HISTORICAL BACKGROUND

- ORIGIN

The idea of plea bargaining originated in the United States and developed over time to become a well-known aspect of the country's criminal justice system." Plea bargaining is the pre-trial

[2] Bryan Garner, Black's Law Dictionary (8th edn, Thomson &West 2004) 1190
[3] Khoday Distilleries Ltd. V. Sri Mahadeshwara Sahakara (2019) SCC Appeal (Civil), 2432 of 2019.
[4] Varsha Gulaya, Tracing the Development of Bargaining in India [Part I], CCLSNLUJ, (Mar. 13, 2019). , https://criminallawstudiesnluj.wordpress.com/2019/03/13/tracing-the-development-of-plea-bargaining-in-indiapart
[5] Anshika Chadha, Plea Bargaining In India: A Ship With Holes, LEGAL SERVICE INDIA, www.legalserviceindia.com/legal/article-1784-plea-bargaining-in-india-a-ship-with-holes.html.

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negotiations in which the accused enters a guilty plea in exchange for a specific concession made by the prosecution. Usually, this entails negotiations to lessen the severity of the charge or the sentence. In the United States, plea bargaining accounts for nearly all the guilty pleas that arise from over 75% of criminal cases.

Almost all offenders in federal courts who enter a guilty plea are eligible for a 20 percent sentence reduction. The US courts examined whether plea bargaining is constitutional in the landmark *Brady v. United States*[6] the ruling, which affirmed the legitimacy of plea bargaining. Subsequently, the court upheld the constitutionality of plea bargaining in several subsequent rulings."

The Criminal Law (Amendment) Act, of 2005 added Chapter XXI A to the Code of Criminal Procedure, 1973, and so introduced the notion of plea bargaining to India. The Act came into effect on July 5, 2006. It was initially recommended as a substitute course of action to address significant backlogs and gaps in the criminal cases pending in the courts in the 142d Report of the Law Commission of India. To address the growing number of criminal cases piling up, a committee led by Justice V.S. Malimath, a former Chief Justice of the Hon'ble High Court of Kerala and Karnataka, was formed during the NDA administration.

The plea-bargaining system was also suggested by the Malimath Committee in its 2003 Report as a cooperative way to expedite the resolution of criminal cases. Plea bargains were not necessary in the past since there was no legal representation in the jury system. The need wasn't realized until after the introduction of legal representation in the 1960s. In the past, courts would use plea bargaining to induce admissions. Plea bargaining is now utilized to reduce court workloads and speed the resolution of criminal cases due to the criminal justice system's modernization.

- INTRODUCTION OF PLEA BARGAINING IN INDIA

In its 142nd report, the Law Commission proposed a plan for plea bargaining in India. In its report, the commission noted that "statistical data regarding under-trial prisoners, etc., is unavailable, resulting in a denial of justice," and that "in several cases, the accused's time in jail before the start of trial exceeds the maximum punishment which can be awarded to them if found guilty." The report emphasized how urgent it is to put the scheme's enhanced version into effect. The introduction of plea bargaining in India was met with some opposition due to concerns about illiteracy, pressure from the prosecution to convict innocent people, an increase in crime, and the

[6] Brady v. United States 397 U.S. 742 (1970)

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possibility that offenders would avoid punishment; the commission recommended that the benefits and drawbacks be considered before implementing the policy. In its 154th Report, the Law Commission reaffirmed the necessity of corrective legislative actions to lessen the agony of inmates awaiting trial and to expedite the resolution of criminal cases and appeals.

The Law Commission's 177th Report of 2001 also attempted to include the idea of plea bargaining, which was recommended in the 154th report. Plea bargaining should be used to expedite the criminal justice system and dispose of stockpiled cases, according to the Report of the Committee on Reforms of the Criminal Justice System, 2003'*. Thus, in its 142nd, 154th, and 177th Reports, the Committee reiterated the Law Commission of India's recommendations.

- THE CONSTITUTIONAL VALIDITY OF PLEA BARGAINING BEFORE THE ENACTMENT OF THE CRIMINAL LAW AMENDMENT ACT, 2005

Before the Criminal Law Amendment Act of 2005, India did not have a system of plea bargaining. The Indian courts initially stated that plea bargaining is an unconstitutional system because a crime is done against a state and not only an individual. If a bargain is struck between the accused and the state then the accused may not be punished. That would reduce deterrence in society and would impact the entire system of administrative justice in India.

The case of *Madanlal Ramchander Daga v. State of Maharashtra (1968)*[7] was the first case to address the validity of plea bargaining in front of the Supreme Court of India. In this case, the court observed the practice of plea bargaining to be wrong in the eyes of the law. It further noted that the court may give a lesser sentence to the accused than the maximum prescribed sentence if it feels so. However, any kind of bargain with the accused is not valid under the eyes of the laws.

As per the ruling in *Thippaswamy v. State of Karnataka (1982)*[8], the Court ruled that it would be unconstitutional and a clear violation of Article 21, to coerce or persuade an accused person to enter a guilty plea with the expectation of a lenient penalty, only to increase the sentence in an appeal or revision.

Furthermore, the Judge may be influenced by plea bargaining, let go of a criminal, and might punish an innocent person. It can be easily concluded that the Courts of Law of India were not ready to accept the concept of plea bargaining in Indian criminal jurisprudence. Even when the

[7] Madanlal Ramachander Daga v. State of Maharashtra, AIR 1968 1267
[8] Thippaswamy v. State of Karnataka AIR1983SC747

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courts in India were taking many years to solve every case there was a continuous increase in the backlog of cases especially in the category of criminal cases.

The Courts in India continuously addressed plea bargaining as unconstitutional until the enactment of the Criminal Law Amendment Act. 2005 which introduced plea bargaining and that's when the concept was held legally valid in India.

The concept of plea bargaining is contained in chapter XXIA of the CrPC under sections 265A to 265L. This part was added by the Criminal Law Amendment Act, 2005

COMPARATIVE JURISPRUDENCE BETWEEN USA AND INDIA

In both India and the USA, the concept of plea bargaining is practiced but not in an identical way.

- PLEA BARGAINING IN THE USA

In the United States, the defendant has the option to enter one of three pleas: Not Guilty, Guilty, or Nolo Contendere (no contest). The plea is interpreted as an implicit admission of guilt or as the court's determination of the defendant's guilt under the Nolo Contendere concept.[9]

The Court is not required to accept the accused's plea, nevertheless. The Court has the discretion to accept or reject such a plea based on the particular facts and circumstances of each case that is brought before it. The court's job is to make sure the accused enters a plea voluntarily and free from coercion or undue pressure. The right to confidentiality must be granted to the accused. Please The congestion in American prisons gave bargaining momentum.

Although the Sixth Amendment to the US Constitution did not recognize plea bargaining, the needful was done by the US judiciary. Plea bargaining was given recognition in the USA by the case of *Santebello v. New York (1971)*[10].

It has been observed that plea bargaining resolves about 90% of criminal cases in the United States of America. Every minute, a case in the United States of America is resolved by using the Nolo Contendere plea.[11]

The case of *Lott v. United States (1961)*[12] marked a turning point in this jurisprudence. In this instance, the court decided that while admitting the plea of nolo contendere is a crucial step towards proving the accused's guilt, it does not prove the case on its own.

[9] West's Encyclopedia of American Law
[10] Santobello v. New York, 404 U.S. 257 (1971)
[11] Albert Alschuler W, The Prosecutor's Role in Plea Bargaining. 36 U. Chi. L. Rev 1968; 50:50.
[12] Lott v. United States, 367 U.S. 421 (1961)

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In the United States of America, plea bargaining is accepted in many situations, while there are certain exceptions. Several judges and jurists have observed that this "agreement" significantly lessens the workload of the judiciary. However, it has been seen that coercion and making the accused pick between two unfavorable options can taint this process. Additionally, it was mentioned in the *Brady v. United States (1970)* case that an agreement cannot be deemed unlawful only because there is a possibility that it would be lessened by coercion.

The American judiciary did not accept the practice of plea bargaining during the colonial era, but it is now said that if this system were to be taken away from its leaders, it would quickly come to an end. As a result, this method has gone from being used quite rarely in some areas to being used in most criminal cases in the United States of America.[13]

- PLEA BARGAINING IN INDIA

Plea bargaining in India is not an inherent feature of the constitution of India, but it has developed in response to the plethora of cases pending before the Indian judiciary.

Section 265A to 265L (Chapter XXI A) of the Criminal Procedure Code, 1973 contains provisions concerning 'Plea Bargaining'.

Section 265A of CrPC provides who is eligible to take benefit of plea bargaining. According to section 265A of CrPC under the following circumstances, a person is allowed to take the benefit:[14]

1. When the maximum punishment for the crime committed is 7 years.
2. The crime committed should not be against any child below 14 years of age or a woman.
3. Where the offence committed in no way affects India's socio-economic condition.

Section 265B provides for the procedure to apply plea bargaining. An affidavit and other case details must be included in the application. After that, the accused may be questioned by the court to confirm that they freely submitted this application. If the accused convinces the court that the case is voluntary, the court allows a certain amount of time for a mutually agreeable resolution. The Court may proceed from the stage at which the application was filed before it if the accused is unable to persuade the Court that he filed the application voluntarily or that he has previously been found guilty of the same offence.

[13] "Michael P O, Seeking Consistency in Judicial Review of Securities Arbitration: An Analysis of the Manifest Disregard of the Law Standard, (May 28, 2011), http://ir.lawnet.fordham.edu/flr/vol64/iss3/18.

[14] Diganth Raj Sehgal, Plea Bargaining Laws: India And United States of America - iPleaders, IPleaders (May 30, 2020), https://blog.ipleaders.in/plea-bargaining-laws-india-united-states-america/.

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Plea bargaining in India has a tripartite division. This division is elucidated as under:

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

Plea Bargaining is a comparatively novel phenomenon in India. Its jurisprudence has evolved with the coming of cases from different areas.

In the case of *Ranbir Singh v. State (2011)*[15], the Hon'ble Supreme Court upheld the sentence of imprisonment for six months without the benefit of plea bargaining. While awarding the sentence up to 1/4th of the punishment prescribed also in a case of plea bargaining the learned Trial Court was duty-bound to consider the mitigating factors.

- PLEA BARGAINING IN INDIA VS. IN USA[16]

Although the concept of plea bargaining in India has been borrowed from the USA, it is still distinguishable from the operation in the USA. The major differences between the two countries are as follows:

1. Nature of Offence

No law in the USA forbids plea bargaining for certain charges. Plea bargaining is an option available to anyone accused of any crime. Section 265A in India does, however, list some exceptions. In India, the following accused individuals are not eligible to participate in plea bargaining:

a) An accused person charged with an offence punishable by death
b) Accused person charged with an offence punishable with life imprisonment
c) Accused person charged with an offence punishable with imprisonment of more than seven years
d) Accused person charged with an offence against women
e) Accused person charged with an offence against a child below fourteen years of age
f) Accused person charged with an offence that affects socioeconomic conditions of the country

[15] Ranbir Singh v. State, SCC Online 3737 (SC 2011).
[16] Plea Bargaining in India and USA -A Comparative Study, Enhelion Blogs (Feb. 18, 2021), https://enhelion.com/blogs/2021/02/18/plea-bargaining-in-india-and-usa-a-comparative-study/.

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2. Role of Victim in Proceedings

The victim plays a significant part in the plea-bargaining process under Indian law. If an amicable resolution cannot be reached, the victim has the authority to veto or reject. In contrast, the victim in the United States is not a party to the plea-bargaining process.

3. Mechanism available for enforceability

In the United States, plea bargaining applications are only submitted following the conclusion of the prosecutor-accused parties' negotiation process. To guarantee that the application for plea bargaining is submitted willingly by the accused, the negotiating procedure with the accused individual does not even begin in India before the application's filing. As a result, the likelihood of the accused being forced or engaging in covert activities to submit a plea bargain application is reduced.

4. Discretion of the Judge

In the United States, a judge does not have discretion while considering a plea bargain application. Nonetheless, in the Indian legal system, a judge's discretionary powers allow them to accept or reject an accused person's plea bargain application.

5. Finality

In the Indian legal system, a sentence awarded in a plea-bargaining case may be overturned by the court through a writ petition under Articles 226 and 227 of the Indian Constitution or an SLP under Article 136 if the court finds the punishment to be insufficient or protected by unfair circumstances. But in the USA, it comes to an end.

In the United States, plea bargaining results in convictions in about 90% of cases, but in India, it hardly accounts for 10% of criminal cases. This discrepancy results from the ways that the concepts of plea bargaining are applied in India and the United States.

Even though India's conviction rate is far lower than that of the United States, it nevertheless works to guarantee that the plea bargain application was submitted willingly. Justice must not be denied, even if it is postponed. In India, choosing the less severe punishment is a voluntary decision made by the accused rather than through plea bargaining. Therefore, there's a good chance that plea bargaining in India won't result in the sentencing of an innocent individual. On the other hand, cases must be resolved quickly. Therefore, to lower the number of inmates awaiting trial, the legislature must pursue reforms and give the courts the necessary resources.

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CRITICAL ANALYSIS OF THE CONCEPT OF PLEA-BARGAINING IN INDIA

The nation's Crime Record Bureau, the Government of India is the repository of criminal records in the country. It published data in its annual report titled “Crimes in India”. From the published data about cases under the Indian Penal Code for the period 1981 to 2009; it emerges that[17]:

1. The annual number of cases for trial increased from 21,11,791 in 1981 to 81,30,053 in 2009. out of these, a trial could be completed only in 5,04,718 cases in 1981 and 11,72,081 cases in 2009
2. The number of cases pending trial increased from 14,84,483 in 1981 to 69,57,972 in 2009. Thus, in the last 28 years, the pendency of cases has grown by over 5 times
3. while the trial in 23.9% of the cases was completed in 1981, the figure came down to 13.632% in 2009; similarly, the percentage of cases pending trial increased from 70.3% in 1981 to 85.58% in 2009
4. Out of the trial completed, the case ending in acquittal or discharge was 8.9% in 1990, rose to 10.0% in 1997, settled at 8.3% in 2006, and then came down to 7.34% in 2009. on the other hand, 8.5% of the cases put to trial ended in convection in 1990 but the figure gradually came down to 5.26% in 2009

The government's statistics, which were gathered beginning in 2015, unequivocally demonstrated how seldom India used the plea-bargaining procedure. Plea bargaining was used in just 4,816 instances in 2015, or 0.045%, of the 10,502,256 cases under general penal law that were undergoing trial.

It was around 4,887 cases out of 11,107,472 in 2016, which is a decrease of 0.043%. In 2017, there was a small increase to 0.27%, with 31,857 cases out of 11,524,490 resulting in plea agreements. This was not a persistent pattern, either, as in 2018 there was a total drop in the number of cases, with only 20,062 out of 12,106,309, and a meagre 0.16% of cases resolved by plea agreements[18]. Regretfully, in fifteen years, this statistic hasn't even surpassed 1%. The number of cases pending increased throughout this period, albeit not as quickly as it had previously. Similarly, information on the number of inmates awaiting trial indicates a rise since 2006. As a result, plea bargaining in

[17] Verma JK. Plea bargaining concept and potential 225 (All India reporter, Nagpur 1st edn., 2011).
[18] Putra G, A critical analysis of plea-bargaining in India, (July 14, 2023), https://www.criminallawjournal.org/article/4/1-1-4-416.pdf.

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India fell short of achieving both of its two intended goals.

As a result, the primary goal of speedy preliminary has not been completely and successfully realized. Plea bargaining gained traction in the United States because it effectively granted examiners influence, which they could use against respondents to get them to plead guilty and postpone preliminary hearings. Yet, the system designed in India does not have any such influence on public investigators or appointed authorities. Examiners, for example, have minimal room to participate in the negotiation round or force a plea, and courts cannot dismiss a chosen settlement. No provision in the existing plea-bargaining law permits courts to reject a settlement reached by the meetings. Nonetheless, the adjudicator should maintain a high level of vigilance to avoid prosecution intimidation and any possibility of contamination. Another result is a difference in the negotiating power of the arraignment and the safeguard. An overwhelming indicting side can undoubtedly persuade an innocent respondent to plead guilty in exchange for a reduced punishment. Illicit plea bargaining may also occur between actual offenders and honest accused, with the former exploiting corrupt authorities to avoid the criminal justice system.

- JUDICIAL APPROACH IN INDIA

The Indian judiciary has been reluctant to adopt this previous to the 2005 revision and has repeatedly rejected the idea of plea-bargaining, even after repeated recommendations from the Law Commission of India. This was evident since the courts upheld the ban on plea bargaining despite these recommendations. In *Madanlal Ramachander Daga v. State of Maharashtra*, the Hon'ble Court made the following observation in one of the first cases where it examined the idea of plea bargaining: "The Hon'ble Court thinks that it is very wrong for a court to enter into a bargain of this character. Offences should be tried and punished according to the guilt of the accused." The Court may issue a reduced sentence if it determines that leniency is warranted given the circumstances of the case.

The Apex Court maintained its disapproval of the idea of plea bargaining in *Muralidhar Megh Raj v. State of Maharashtra*[19], where the trial magistrate fined each of the appellants a small fine after they entered a guilty plea to the charge. The court noted:

"To start, we are free to acknowledge our suspicion that the appellants hurriedly entered guilty pleas—possibly as a result of a loose, tripartite agreement on a light sentence rather than a nolo

[19] Muralidhar Megh Raj v. State of Maharashtra, AIR 1976 SC 1929

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contendere stance."

The idea of plea bargaining has long been resisted by the Indian Supreme Court because it requires the accused to give up his constitutionally guaranteed right to a fair trial in exchange for a lighter sentence. However, the Gujarat High Court The basic purpose of law is to offer quick, inexpensive, and easy justice through the settlement of disputes, including the criminal trial process. As a result, fundamental modifications in the legal system are unavoidable. There ought not to be anything unchanging. Thus, plea bargaining might be considered a measure and redressal that will introduce a new dimension within the field of legal changes."[20]

The Law Commission identified shortcomings in the nation's criminal justice system in its 142nd and 154th reports. noted in *State of Gujarat v. Natwar Harchandji Thakor*[21] that they valued this process. After examining several different criminal justice systems, they developed a case for the introduction of plea bargaining in India. They stated that the plan would be applied experimentally to a small number of criminals as an alternative to the right to a fair trial guaranteed by the Constitution. It was intended to be rendered irrelevant in cases of grave misconduct, particularly involving women.

REASONS FOR FAILURE OF PLEA BARGAINING

The data available in the Indian context shows a very unsettling rate of plea-bargaining efficacy in India. According to government research that is available from the National Crime Records Bureau, in 2015, just 4815 instances—or 0.045%—of the 10502256 cases that were awaiting trial under the penal statutes chose to enter into a plea agreement. In 2016, the percentage dropped to 0.043%, with 4887 out of 11107472 cases involving plea deals. In 2017, the percentage of cases that went through plea negotiation increased to 0.27%, with 31587 out of 11,524,490 cases. This was not a recurring pattern, either, as in 2018 there was a complete drop in the number of cases, with just 20,062 out of 12,106,309, and 0.16% of cases resolved by plea agreements.[22]

The fact that the percentage of cases choosing plea negotiation compared to all cases hasn't even surpassed 1% in the last eighteen years is remarkable and unsettling. Therefore, plea bargaining in

[20] . Murlidhar Meghraj Loya vs State Of Maharashtra 1976 AIR 1929; Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr 1980CriLJ553; Kasambhai v. State of Gujarat, AIR 1980 SC 854; State of Uttar Pradesh v. Chandrika, AIR 1999 SC 164.

[21] State of Gujrat v. Natwar Harchandji Thakor, . 2005 CriLJ 2957

[22] https://thelawbrigade.com/wp-content/uploads/2023/08/Ajay-Nidhi-SALRJ.pdf

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India was unable to achieve either of the two goals it was intended to accomplish—reducing the backlog of cases or stopping the rise in the number of convicts awaiting trial.[23]

The practical challenges associated with implementing plea bargaining are the reason it did not catch on in India. According to the Economic Survey of 2019 released by the Union Finance Ministry, the average time taken to resolve disputes in India is 30 months at the very least, compared to 6 months in the EU and likewise in the USA. In India, the trial, first appeal, second appeal, and ultimate appeal can all continue for life if the accused is fortunate enough. At that point, the accused is more likely to faint without being found guilty.

Furthermore, there is a police slang phrase that states that the longer the case is tried, the greater the likelihood that the accused will be found not guilty. This is because, over time, either the victim loses interest in the case or becomes frustrated with the excessive length of the trial, or the witnesses begin to lose their memory, becoming hostile or contradicting their accounts during the investigation.

India has a glaringly insufficient number of judicial officers. There are generally 20% of open positions that remain empty, and this percentage increases for higher-level judiciary positions. The difference between the rate of disposal of current cases and the new caseload can be reduced by addressing this issue. Moreover, because they must manage many cases with limited resources, public prosecutors in India just do not have the time to concentrate on resolving every case on their docket by going above and beyond. Despite their innate desire to wrap up cases as soon as possible, judges must actively participate in the process to dispel any suspicions that the defendants were coerced. Even the wealthiest individuals may go bankrupt if they choose to pursue litigation in court due to the exorbitant costs of litigation in the United States.

Even the wealthiest individuals may go bankrupt if they choose to pursue litigation in court due to the exorbitant costs of litigation in the USA. The low cost of litigation in India has turned what should have been a blessing in disguise into a nightmare, as accused parties choose to fight it out in court rather than accept a plea deal.

There's a good chance that genuine offenders and innocent defendants will engage in illicit plea negotiations, with the former using dishonest officials to get out of the judicial system. A similar incident occurred recently in NCR Delhi when a person claimed to be the driver of a Mercedes car

[23] https://www.npr.org/2023/02/22/1158356619/plea-bargains-criminal-cases-justice#:~:text=In%20any%20given%20year%2C%2098,from%20the%20American%20Bar%20Association

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in a hit-and-run case before authorities determined that he was attempting to preserve the real culprit, of course, money under the influence.

In the plea-bargaining version used in India. The victim has all responsibility. It has been observed in numerous instances that the victim is demanding a hefty sum from the accused, which prevents a settlement from happening. There is no mediation authority, such as the district legal services authority, to help with the settlement process in criminal cases, unlike in civil proceedings.

The accused people's fear of being found guilty is another one of these reasons. Charge bargaining is not allowed, unlike in the USA. Whether a person is found guilty or not, they are still in the criminal justice system and will be subject to all penalties and disqualifications associated with their conviction. A person who chooses to engage in plea negotiations must deal with the social and moral fallout from their conviction. A well-off man would rather go to trial than enter a guilty plea and suffer the penalties. With the Indian criminal court system's high acquittal rate and the years of excessive wait, he can afford to pursue his case until he is ultimately exonerated.

HOW DOES BNSS AFFECT THE SYSTEM OF PLEA ARGAINING IN INDIA

RECOMMENDATIONS & CONCLUSION

Although the amendment aimed to address the issue of under-preliminary detainees by directing the court to grant the accused the benefit of the Probation of Offenders Act whenever it is applicable. At that moment, Section 12 of the aforementioned Act states that the perpetrator will not be disgraced. Sections 265 and 428 are also applicable to the plea negotiating sentence. Nonetheless, there is a lack of attentiveness among preliminary inmates. Provisions should be made in the section to make post-trial agents and prison directors feel obliged by a feeling of honour to conduct meetings in detention facilities informing the under-preliminary inmates about such an advantage that may be obtained.

To provide the most extreme assurance of the accused's privileges and the successful execution of plea negotiating measures, it is necessary to trace the totality of the interactions between the investigator and the accused. This is a record that ensures that the terms of the agreement are not deviated from without the express agreement of both parties. These preliminary communications must be available and a copy provided to the court so that the adjudicator may also determine if the two parties have actively participated in the arrangement. This need for the report of plea

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bargains may be feasible if there are no procedural irregularities that erect barriers to its acceptance. This will necessitate reforms in the legal culture of plea bargaining.

The concept of plea bargaining, which was introduced in India 10 years ago, has been slow to catch on, owing to a lack of awareness among under-preliminary inmates and court employees. The concept is more of a system of convenience and mutual benefit than a problem of ethical excellence, legitimacy, or lawfulness. There is an unavoidable need for radical transformation in the criminal justice system. They have limited the materiality in general, as well as the scope of plea bargaining. When a concept is carried out into an overall collection of regulations, it should be done in a way that anticipates the obstacles that may be considered in the exploratory stage. If residents are to be encouraged to adopt the alternative treatment of plea bargaining, there is an urgent need for clarity and consistency in the procedures.

To summarize, in India, plea bargaining is not new. When India acquired its constitution in 1950, it already accepted it. Self-incrimination is prohibited under Article 20(3) of the Indian constitution. Many accuse plea bargaining of violating the article. Yet, with the passage of time and the burden on the courts, the Indian court has realized the necessity for plea bargaining in the Indian legal system. It is difficult to embrace change at first, but society and our legal system both need to progress. Everything has pros and downsides that must be considered to make a sound judgment. In any case, rejecting anything only based on its drawbacks would be unjustified. In India, the notion of plea bargaining is still emerging, and it is unrealistic to expect it to be perfect. Only debate, conversations, and discourses may help to change it.

The plea-bargaining component has evolved into a fair and sustainable instrument of justice, and there is now a fundamental need to consider the pitfalls of the existing plea-bargaining arrangement to strengthen it and make it more proficient. If the limitations of the existing plea-bargaining instrument are identified and resolved effectively, such a shift would be substantial and would stimulate the growth of India's criminal justice system.

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