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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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EVALUATING THE STATUS AND IMPACT OF PLEA BARGAINING IN INDIA

AUTHORED BY - MOKSHITA SINGH

Advocate, High Court of Delhi

ABSTRACT

The concept of Plea Bargaining originated in the United States with the aim of reducing caseload. It has become a significant feature of the American Criminal Justice system over the years and majority of criminal cases in the US are now being settled by plea bargain. The success of Plea Bargaining in the US had attracted Indian scholars and legislators to introduce this concept in India too. While Law Commission of India was continuously recommending introduction of plea bargaining, the Supreme Court of India was not in favour of this practice in the circumstances prevailing in India.

Plea Bargaining was finally incorporated into the Code of Criminal Procedure, 1973 (hereinafter, CrPC) as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005 after much debate on the issue. These provisions have been retained in The Bharatiya Nagarik Suraksha Sanhita, 2023.

The article will discuss the introduction and scope of the concept of Plea Bargaining and its consequences on affected parties in India. It will also look into the difference between this concept in India and the US. Until plea bargaining was codified, the Courts were exercising their own discretion in this matter. The article will thus explore the attitude of the Indian judiciary, through various case laws, towards plea-bargaining post 2005 amendment to CrPC. It aims to know whether the functioning of plea bargaining in India is in conformity with its desired objective of bringing down the pendency of cases or not.

INTRODUCTION

Plea Bargaining, as defined in the Black's Law Dictionary, is "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor"¹. It implies, plea bargaining involves an active negotiation process whereby an offender is allowed to confess his guilt in court, if he so desires, in exchange for a lighter punishment than would have been given to him for committing the offence. In many cases, the prosecution will also expect the accused to do something else in exchange for such concessions, such as testifying as a witness in another criminal trial.²

The concept of Plea Bargaining originated in the United States with the aim of reducing caseload. The adversarial system which is complex in character made the conviction in the criminal cases an uphill task, thus resulting in unwarranted delays. The phenomena known as plea bargaining arose as a result of an inadequate judicial system and lengthy criminal proceedings. Plea bargaining not only provided relief to the accused who had been imprisoned for years due to trial delays, but it also proven to be a time and cost effective solution for the court system to expedite the resolution of criminal cases. It has become a significant feature of the American Criminal Justice system over the years and majority of criminal cases in the US are now being settled by plea bargain. Almost all of the criminal Courts, especially in India, are over burdened and hence unable to dispose of the cases on merits without undue delay. Criminal trials usually take years to come to an end while plea bargaining significantly reduces the period of trial and leads to quick disposal of cases. The success of Plea Bargaining in the US had attracted Indian scholars and legislators to introduce this concept in India too. By amending the Code of Criminal Procedure, 1973 and introducing Sections 265A to 265L to the code, through the Criminal Law (Amendment) Act, 2005, the concept of plea bargaining was finally incorporated into the Indian legal system with an objective of addressing the problem of huge backlog of pending criminal cases in the Indian courts and to reduce the sufferings of under-trial prisoners.³

¹ Garner, BA, *Black's Law Dictionary*, (Thomas West, USA, 8th ed., 2004).

² <https://thelawdictionary.org/article/three-reasons-plea-bargains-controversial/> as accessed on 8th March, 2024.

³ Joseph, Rosie, Athulya, *Plea Bargaining: A Means to an End*, available at <http://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf> as accessed on 25th November, 2024.

This paper will discuss the introduction and scope of the concept of Plea Bargaining and its consequences on affected parties in India. It will also look into the difference between this concept in India and the US. The paper will explore how often plea bargaining is used in the Indian legal system and what has been the outlook of Courts towards plea-bargaining post 2005 amendment to the CrPC. It aims to know whether the law of Plea Bargaining can have any adverse effects in the Indian legal set up and whether the functioning of plea bargaining in India is in conformity with its desired objective of bringing down the pendency of cases or not.

HISTORICAL BACKGROUND OF PLEA BARGAINING

The United States is a pioneer in the implementation of plea bargaining into its judicial system, and it covers a wide range of crimes.⁴ This results in resolving over 90% of the cases through this effective and efficient legal tool.⁵ It has emerged as one of the most popular procedures in the criminal justice system of U.S.A. The criminal trial in the United States is a complex exercise that includes extended voir dire and peremptory challenges during jury selection, numerous evidentiary objections, complex jury instructions, motions for exclusion, and so on. Despite providing the defendant with every opportunity to contest the charges against him, it has become the most expensive and time-consuming in the world. Plea bargaining became the most popular method for avoiding this difficult process. Interestingly, in individual states or at the federal level, nearly anything goes when it comes to plea bargaining. In the United States, plea bargaining is not limited to certain kind of offences, thus allowing it in case of smallest of offences to offences of the most serious nature, including those cases in which death penalty can be awarded as a punishment.

The rise of plea bargaining is generally said to begin in the 19th century but it actually dates back hundreds of years to the advent of confession law and has probably existed for more than eight centuries.⁶ The initial surge of plea bargaining cases at the appellate level in the United States happened immediately after the Civil War. Relying on past confession precedent prohibiting the offering of incentives in return for admissions of guilt, various courts summarily

⁴ Messitte J. Peter, Judge, Plea Bargaining In Various Criminal Justice Systems, available at https://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf Montevideo, Uruguay, May, 2010 as accessed on 7th April, 2018.

⁵ U.S. Sentencing Commission Guidelines available at <https://www.ussc.gov/>, as accessed on 23rd April, 2024.

⁶ Langbein, H., John, 'Understanding the Short History of Plea Bargaining, Faculty Scholarship Series, 1979, available at http://digitalcommons.law.yale.edu/fss_papers/54 as accessed on 28th July, 2024.

rejected these bargains and permitted the defendants to withdraw their statements.⁷ These early American appellate decisions, however, could not prevent plea bargaining from reaching the American courts. Plea bargaining was kept alive during the late 19th and early 20th centuries by corruption, over-criminalization necessitated emergence of plea bargaining into mainstream criminal procedure and its rise to dominance.⁸ Between 1908 and 1916, the number of federal convictions in the US resulting from pleas of guilty rose from 50% to 72%.⁹ Though plea-bargaining rates rose significantly in the early 20th century, appellate courts were still reluctant to allow such deals when appealed.¹⁰ In *Brady v. United States*¹¹, the first American case in this regard, the American Supreme Court accepted the constitutionality of plea bargaining. The US Supreme Court held that merely because the agreement was entered into out of fear that the trial may result in a death sentence, would not illegitimise a bargained plea of guilty.¹² The Court has approved practices such as plea bargaining when properly conducted and controlled. One year later, in *Santobello v. New York*¹³, the United States Supreme Court publicly recognized that plea bargaining was necessary for the administration of justice and, when properly administered, should be encouraged.

Federal Sentencing Guidelines create various levels of reduction in offences in case the defendant agrees to accept the responsibility of his actions thereby easing the burden of proving the case on the prosecution.¹⁴ Rule 11 of the Federal Rules of Criminal Procedure establishes the legislative foundation for the administration of plea bargaining in America. We come across various academic writings which appreciate its utility and also its wide use.

⁷ Ashraf, Mohammed & Absar, Aftab, 'Plea Bargaining in India: An Appraisal', available at https://www.academia.edu/29990187/Plea_Bargaining_in_India_An_Appraisal as accessed on 25th October, 2024.

⁸ Rewari, Sulabh & Aggarwal, Tanya, *Wanna Make A Deal? The Introduction Of Plea-Bargaining In India*, [(2006) 2 SCC (Cri) J-12] available at http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=977 as accessed on 27th October, 2024.

⁹ U.S. Sentencing Commission (2014): Sourcebook of Federal Sentencing Statistics, available at http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/FigureC.pdf

¹⁰ Alschuler, Albert, 'Plea Bargaining and Its History', *Columbia Law Review*, 1979. 12 397 U.S. 742 (1970)

¹¹ 397 U.S. 742 (1970)

¹² 397 U.S. 742 (1970)

¹³ 404 U.S. 257, 260 (1971)

¹⁴ Rule 11, Federal Rules of Criminal Procedure, available at http://www.law.cornell.edu/rules/frcrmp/rule_11, as accessed on 28th October, 2024.

CHARACTERISTICS OF PLEA BARGAINING IN THE US

In a criminal trial in the US, the accused has three options for pleas: guilty, not guilty, and nolo contendere.¹⁵ In U.S., in some jurisdictions the plea of “Nolo Contendere” or ‘no contest’ is not an ‘admission of guilt’, but rather a ‘willingness to accept declaration of guilt’, rather than to go trial.¹⁶ It is treated as a guilty plea for one purpose only, as opposed to a guilty plea in a subsequent civil suit originating from the same event. The guilty plea is admissible as evidence against the defendant, but the nolo contendere plea is not. A judgment of conviction entered on a plea of Nolo Contendere may be used by the accused as the basis for a plea of double jeopardy because conviction and punishment after the nolo plea are as complete as a formal conviction or acquittal following a guilty or not guilty plea.

In general, a guilty plea must be voluntarily made and should be intelligent.¹⁷ This means a defendant should understand what he is doing in agreeing to a plea bargain and that he is giving up his right to a trial. Also, he has to agree to accept the plea deal. Acceptance should not be based on physical coercion or prosecutors making a settlement and then modifying the terms after the defendant consented and pleaded guilty.¹⁸ For all practical purposes, there are no rules governing how pleas are negotiated. Prosecutors and defence attorneys are required to follow an ethical code of conduct but these codes tend to be broadly worded and do not address plea bargaining directly. As a result, US prosecutors have broad discretion and power in the plea bargaining process, and can agree to dismiss a case completely, dismiss charges, allow an alternative penalty, such as a fine or community service, or negotiate a settlement that includes a significant amount of prison time¹⁹.

TYPES OF PLEA BARGAINING

Plea bargaining, as practiced in different criminal justice systems, is of four types²⁰ as mentioned below:

- *Charge bargaining* is common and widely known form of plea bargaining. The charges or offenses that the defendants will be charged with at trial are negotiated. Usually, in return for a plea of ‘guilty’ to a lesser charge, a prosecutor will dismiss the higher or

¹⁵ *Supra* note 8.

¹⁶ *Ibid.*

¹⁷ *Supra* note 4.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Santhy, K. V. K., ‘Plea Bargaining in US and Indian Criminal Law Confessions for Concessions, 2013, available at <http://www.commonlii.org/in/journals/NALSARLawRw/2013/7.pdf> as accessed on 27th October, 2024.

other charges counts. For example, a defendant charged with burglary may be offered the opportunity to plead guilty to attempt burglary. As a result, it is essentially a reciprocal exchange of concessions.

- *Sentence Bargaining* involves the agreement to a plea of guilty for the stated charge rather than a reduced charge in return for a lighter sentence. It emphasizes to the prosecution the importance of going through trial and proving its case. It gives the defendant the possibility to receive a lesser punishment. It is the process which is introduced in India where the accused with the consent of the prosecutor and complainant or victim would bargain for a lesser sentence than prescribed for the offence.
- *Facts Bargaining* is the least utilized type of bargaining in which certain facts are admitted, eliminating the need for the prosecutor to prove them, in exchange for an agreement not to put certain other facts into evidence.
- *Counts Bargaining*, on the other hand, requires the defendant to plead guilty to a subset of multiple original charges.

REASONS FOR INTRODUCTION OF PLEA BARGAINING IN INDIA

The fact that court's resources would have to be significantly increased to provide a trial for every charge against the accused has been cited as both justification and reason for the huge popularity of plea-bargaining in the US.²¹ Proponents of plea-bargaining argued that it would remove the risks and uncertainties involved in a trial, thus introducing flexibility into a rigid, often erratic system of justice and would enable the court to avoid dealing with cases that involve no real dispute and try only those where there is a real basis for dispute.²² This would save the court's time.²³

The Law Commission of India advocated the introduction of 'Plea Bargaining' in its 142nd, 154th and 177th reports. The Law Commission in its 142nd Report looked into this concept in detail and its successful practice in the US. It came out with the view that the basic reason for introducing this concept in India is to reduce the caseload of Indian courts as they are burdened with a huge backlog of cases which have been pending for many years. As the criminal trials

²¹ Ashraf, Mohammed & Absar, Aftab, 'Plea Bargaining in India: An Appraisal', available at https://www.academia.edu/29990187/Plea_Bargaining_in_India_An_Appraisal as accessed on 27th October, 2024.

²² *Ibid.*

²³ *Ibid.*

do not commence for as long a period as three to four years after the accused is sent to judicial custody. In the meantime, the accused languish in jails. The report stated that the conditions prevailing in the jails are appalling and the accused are obliged to live in sub-human conditions mixed up with hard-core criminals. In certain circumstances, the accused's time in jail prior to the start of trials exceeds the maximum punishment that can be imposed on them even if they are proven guilty of the charges against them. Thus, magnitude of the problem of delays in criminal cases was the major issue which was looked upon by the Commission. The Commission found that at that time the Supreme Court was dealing with Criminal Appeals relating to the year 1979. This enormous delay was the matter of cognizance taken by the Commission. Infact, the Apex Court in *Hussainara Khatoon v. State of Bihar*²⁴ dealt with this matter and noticed that an alarmingly large number of men, women are behind prison bars or years awaiting trails in courts of law. It was observed by the Supreme Court that-

"The offences with which some of them are charged are trivial, which, even proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimen of humanity are in jail deprived of their freedom for periods ranging from three to ten years without even as much as their trial having commenced".

The Commission took notice of it and recommended introduction of Plea Bargaining.²⁵ The 142nd Report of the Law Commission of India, 1991, aimed at making the Indian criminal justice system just, efficient, speedy and cost efficient. In order to deal with the long delays in the disposal of criminal cases, it suggested that a version of the concept of plea bargaining, suitable to the Indian legal scenario, should be considered with seriousness and with a sense of urgency.

The 154th Report of the Law Commission, 1996, referred to the 142nd Report of the Law Commission and also recommended 'plea bargaining' as an alternative method to deal with the huge backlog of criminal cases. It recommended the incorporation of chapter XXIA in the Criminal Procedure Code which was later done through the Criminal Law (Amendment) Act, 2005. The Report recommended that the said concept be made applicable as an experimental measure in case of offences which are punishable with imprisonment of less than seven years and/or fine including the offences covered by section 320 of the Code. It was also recommended that plea-bargaining should be used on case-to-case basis keeping in view the

²⁴ AIR 1979 SC 1369.

²⁵ 142nd, Law Commission Report, 1991, available at <http://lawcommissionofindia.nic.in/101-169/Report142.pdf>, pg. 3, para 2.7 as accessed on 27th October, 2024.

nature and gravity of the offences and the quantum of punishment. It was observed that the said facility should not be available to habitual offenders and to those who are accused of socio-economic offences of a grave nature and those accused of offences against women and children.

The recommendations of the 154th Law Commission Report were supported and reiterated by the Law Commission in its 177th Report. Further, the Report of the Committee on the reform of criminal justice system, 2000 under the Chairmanship of Justice (Dr) Malimath, supported the recommendations of the Law Commission and stated that the experience of United States was an evidence of plea bargaining being a means for the disposal of accumulated cases and expediting the delivery of criminal justice.²⁶ Based on the recommendations of the Law Commission on this issue, the new chapter on plea bargaining was finally incorporated into the Code of Criminal Procedure, 1973 as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005 and it came into effect on 5th July, 2006.

The process of Plea bargaining comes with various advantages such as reducing the delay in disposal of cases, backlogs of cases and saving the courts time.²⁷ It also puts an end to the uncertainty of a criminal case from the point of view of giving relief to victims and witnesses of crime and saving a lot of time, cost of litigation and energy of the accused and the state. It can help in reducing the congestion in prisons. It can help in raising the number of convictions from its present low to a fair level to create some sort of credibility to the system. The victims of crimes might be benefited as they could get the compensation upon agreement with the accused and will be relieved of extended trial, i.e, appeals consuming unending time.

STATUS AND SCOPE OF PLEA BARGAINING IN INDIA

INDIAN JUDICIARY'S STANCE ON PLEA BARGAINING BEFORE 2005 AMENDMENT TO THE CRPC

While Law Commission of India was continuously recommending introduction of plea bargaining, the Supreme Court of India was not in favour of this practice and were reluctant to adopt this method in criminal cases in the circumstances prevailing in India. *Madanlal Ramchandra Daga vs. State of Maharashtra*²⁸ is a classic example of the conventional thinking

²⁶ Aarora, Neeraj, Plea Bargaining- A New Development in The Criminal Justice System, available at <http://www.neerajaarora.com/plea-bargaining-a-new-development-in-the-criminal-justice-system/> as accessed on 27th October, 2024.

²⁷ *Supra* note 20.

²⁸ A.I.R 1968 SC 1267

of the court in which Justice M. Hidayatullah held that the case should be decided according to the guilt of the convicted. In this case, the accused were being tried for selling adulterated food under Prevention of food adulteration act, 1954. The Court had the impression that the accused pleaded guilty before the Magistrate Court in line with an informal tripartite arrangement similar to the plea bargaining process utilized in the United States. Justice Krishna Iyer showed his concern about the subject of agreement and simply stated that the system of plea bargaining is not permitted under Indian criminal law.

In *Kasambhai Abdulrehmanbhai Sheikh etc. v. State of Gujarat*²⁹, the Supreme Court observed that conviction based on the plea of guilty entered by the appellant as a result of plea bargaining cannot be sustained. In this case, the accused was convicted under S 16(1)(a)(i) read with section 7 of the Prevention of Food adulteration Act, 1954 by the Magistrate on the basis of plea bargaining which took place between the prosecution, the defence and the learned Magistrate and the accused was let-off with a nominal sentence of imprisonment and a small fine. The Supreme Court stated that it is against public policy to record a conviction against an accused by encouraging him to confess to a plea of guilty with the promise that if he enters a plea of guilty, he will be let off lightly. Such a procedure would be clearly unreasonable, unfair and unjust amounting to violation of Article 21 as interpreted in *Maneka Gandhi's case*.³⁰ The Court stated that it would pollute the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial adulteration statute.³¹ Thus the conviction of an accused based on a plea of guilty entered by him as a result of plea bargaining with the prosecution and the Magistrate was held to be unconstitutional and illegal.

The Supreme Court, in the case of *Kachhia Patel Shantilal Koderlal v. State of Gujarat*³², also held 'plea bargaining' to be unconstitutional and illegal, with the potential to encourage corruption, collusion, and poison the pure fount of justice. In *Thippaswamy V. State of Karnataka*³³, the Supreme Court observed that it would be violative of Art. 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he

²⁹ 1980 AIR 854

³⁰ Bawaniwal, Rajat, *Plea Bargaining in the Indian Criminal Justice System: An Analysis* (The World Journal on Juristic Polity, March, 2017)

³¹ *Ibid.*

³² 1980 Cr.L.J 553

³³ AIR 1983 SC 747

would be let off lightly and then in appeal or revision, to enhance the sentence. It stated that in such cases, the Court of appeal or revision should set aside the conviction and sentence of the accused and send back the case to the trial court so that the accused can, if he wishes, defend himself against the charges and if found guilty, proper sentence should be passed against him.

The stance of Supreme Court in *State of Uttar Pradesh vs. Chandrika*³⁴ is the culmination of its views on this issue. In *State of Uttar Pradesh v. Chandrika*³⁵, the court discussed the constitutionality of Plea Bargaining in light of Article 21 of the Constitution of India and observed that the concept of plea bargaining is not recognized and is against public policy under our criminal justice system. It further stated that Section 320 of the CrPC provides for compounding of certain offences with the permission of the Court and certain others even without permission of the Court. Except as stated above, the concept of negotiated settlement in criminal cases is not permitted, and this way of short-circuiting the hearing should not be encouraged. The Supreme Court held that it is settled law that on the basis of plea bargaining court cannot dispose of the criminal cases and that the court has to decide it on merits. Neither the State nor the public prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting a lower sentence by pleading guilty. If the accused confesses its guilt, appropriate sentence is required to be implemented. The court further held that mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Similar observations were made by the Apex Court in *State of U.P. v. Nasruddin*³⁶, where plea bargaining in a case under section 304 I.P.C., for a reduced sentence, was held to not be permissible under the law.

PROCESS OF PLEA BARGAINING UNDER THE CODE OF CRIMINAL PROCEDURE

Section 4 of the Criminal Law (Amendment) Act, 2005, introduced Chapter XXIA containing Section 265A to 265L to the Code of Criminal Procedure which came into effect on 5th July, 2006. A review of Chapter XXI-A, which deals with plea bargaining, reveals that certain procedures outlined in Sections 265-A to 265-L of the CrPC must be followed in order for it to be legal.

Section 265 A makes the provisions of Chapter XXIA applicable only to those offences for

³⁴A.I.R 2000 SC 164

³⁵ 2000 Cr.L.J 384 (386)

³⁶ 2000 Cri LJ 4996.

which the punishment of imprisonment does not exceed seven years.³⁷ Furthermore, it does not apply in circumstances where the offence is socioeconomic in nature or is perpetrated against a woman or a child under the age of fourteen.³⁸ Subsection 2 enables the Central Government to determine the violations under the legislation that are currently in force, which will be those that have an impact on the country's socioeconomic position.

The application of plea bargaining is to be voluntarily filed by accused in the court in which such offence is pending for trial.³⁹ The application has to contain a brief description of the case relating to which the application is filed including the offence to which the case relates and is to be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence. The judge is not a passive observer; rather, he or she plays an important role in the proceedings. The court is responsible for ensuring the entire process is carried out with the accused's complete and voluntary participation. It is mandatory on the part of the judge to examine the accused alone in camera and to satisfy itself that the accused has filed the application voluntarily.⁴⁰

Thereafter, the Court issues notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case. The accused and prosecutor are given time so that they can work out a mutual disposition of the case which may involve providing compensation to the victim and other legal expenses.⁴¹ After this procedure, if there is a satisfactory disposition of case, court shall dispose the case by sentencing accused to one fourth of the punishment provided for that particular offence.⁴² The law also requires that the verdict be pronounced in open court. In case the court is not satisfied that the application is voluntary or the accused has previously been convicted by a court for the same offence, it shall proceed further from the stage when such application for plea bargaining was filed. The most important point reflected in statute here is that statements or facts stated by

³⁷ <http://lawgupshup.com/2017/05/plea-bargaining-an-analysis-in-respect-of-the-indian-legal-system/> as accessed on 27th October, 2024.

³⁸ Section 265A of the Code of Criminal Procedure, 1973.

³⁹ *Supra* note 12.

⁴⁰ *Supra* note 6.

⁴¹ *Ibid.*

⁴² Section 265E of the Code of Criminal Procedure, 1973.

accused in an application for plea bargaining shall not be used for any other purpose.⁴³

It is the duty of the court to ensure, throughout the process, that it is completed voluntarily by the parties participating in the meeting. The court has the authority to give compensation to the victim in accordance with the mutually decision reached by the parties. The court is also empowered to release the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958.⁴⁴ S.265I provides for the application of S. 428 for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under Chapter XXI-A in the same manner as they apply in respect of the imprisonment under other provisions of the Code. The judgment delivered by the court in accordance with the provisions of Chapter XXIA of the Cr.P.C. is final and no appeal lies against such judgment. However, such verdicts can be challenged before the High Court under Articles 226 and 227 of the Constitution through a Writ Petition, and before the Supreme Court under Article 136 by a Special Leave Petition.⁴⁵

These provisions have been retained in The Bharatiya Nagarik Suraksha Sanhita, 2023. Additionally, Section 290 of the Act includes a stipulation that the accused must submit a plea bargain application within 30 days of the charge being framed. This deadline could further hinder the effectiveness of plea bargaining by restricting the time available to pursue a reduced sentence.

COMPARISON OF PLEA BARGAINING MODELS OF INDIA AND US

Conceptually, the Indian model is very different from that of USA. Plea bargaining is not widely acknowledged as a fundamental component of the Indian judicial system, and its application is quite limited in India. The American Model has existed for last 100 years or so but has particularly become deeply entrenched in the country's legal system since 1970. A comparison between the American and Indian models is given below:

1. In India, plea bargaining is available for the offences with provision of up to 7 years imprisonment. The American model allows pleas for any crime, even homicide, and does not limit them to particular offenses.

⁴³ Section 265K of the Code of Criminal Procedure, 1973.

⁴⁴ Section 265H of the Code of Criminal Procedure, 1973.

⁴⁵ Section 265G of the Code of Criminal Procedure, 1973.

2. Generally the plea in India is available for the offences for which the term of imprisonment does not exceed seven years, but in case where the victim is a woman or a child below the age of 14 years the plea is not available. Plea bargaining is not hampered by such riders under the American approach.
3. The additional restrictions included in the Indian model are that minor criminals, repeat offenders, and those who have committed socioeconomic offences are not eligible for the plea. The American model considers every scenario without including any of the riders found in the Indian model.
4. In the procedural comparison between the two models, the Indian model directs the accused to apply for the plea unlike in the American model where the prosecutor and the accused make the application after the negotiations between them are over.⁴⁶ The office of Prosecution commands immense relevance in America so it is directly allowed to negotiate an agreement with the accused. After the agreement has been negotiated, the court's permission is requested. On the other hand, the judicial officer is in charge of managing plea negotiations in India. Further it is a business-like approach which guides negotiations in America thereby mandating the prosecutor to share all relevant information concerning the case with the accused.⁴⁷ This is significant because it makes equal negotiating easier. Additionally, the American prosecutor requests that the accused enter a guilty plea to any or all of the accusations that have been brought against him. In light of this, he would advise the judge to drop the charges or impose a light or brief sentence. However, such charge negotiating is prohibited in India. The accused cannot negotiate a reduction in charges, even if he enters a guilty plea. Regardless of his plea, the judge must impose the sentence in accordance with the laws established by the legislation.
5. In contrast to the American model, where victims have little control over the terms of the plea agreements, the Indian model of plea bargaining implies from its rules that the victim has the authority to veto the agreement made. When the two models are compared, it becomes clear that the American model of plea bargaining is comprehensive, whereas the Indian model is more limited and only applies to particular situations.⁴⁸

⁴⁶Vishnoi, Apoorva & Narayanan, Neha, 'Plea Bargaining In India and Abroad', available at https://www.academia.edu/22548673/Plea_Bargaining_in_India_and_Abroad as accessed on 27th October, 2024.

⁴⁷ *Ibid.*

⁴⁸ Ross, J. E., 'The entrenched position of Plea Bargaining in United States legal practice', *The American Journal of Comparative Law*, 2006 available at <http://eujournal.org/index.php/esj/article/viewFile/4670/4465>

When the two models are compared, it becomes clear that the American model of plea bargaining is comprehensive, whereas the Indian model is more limited and only applies to particular situations.

While there were many supports of this concept in India, it had its share criticism too. This process of plea bargaining was feared to make the system too soft for the accused and allow them unfair means of escape in a dishonesty ridden society in India. This can give the accused a feeling that they can escape by making the right offer. Also, it is unfair to treat two convicts who have committed the same crimes differently, one more harshly because he stands on his constitutional right.⁴⁹

This process might result in increase in number of innocent convicts in prison. Innocent accused may be paid by the actual perpetrators of crime in return to their guilty plea with assured reduction in penalty. Thus illegal plea bargaining between real culprits and apparent accused might get legalized with rich criminals corrupting police officials ending up in mockery of justice system.⁵⁰ Element of coercion also cannot be ruled out as many of those who are accused in criminal cases are people belonging to lower sections of the society with not enough awareness and knowledge of their rights. Once the plea comes forward and is recorded on the file, further trial will be come to a halt. The court will not adhere to the requirement of proof of beyond reasonable doubt and this will lead to conviction of the innocent person.

ATTITUDE OF JUDICIARY TOWARDS PLEA BARGAINING POST 2005 AMENDMENT

There aren't many reliable studies that examine how the program is implemented in different criminal courts across the nation. We lack studies studying the experience of different stakeholders in dealing with this procedure. We get data only regarding the pendency of plea bargaining applications in case it gets listed in the websites of some district courts.

Even though plea bargaining petitions are frequently submitted and scheduled for hearing, much more has to be done to increase the procedure's popularity. There is no question that it can significantly lessen the issue of pendency in Indian criminal courts if it is utilized more frequently. In 2007 The Times of India had reported one of the first cases of plea bargaining in

⁴⁹ *Supra* note 20.

⁵⁰ *Ibid.*

India. A Reserve Bank of India clerk, charged with corruption charges, had applied for plea bargaining to reduce his sentence. As it was a corruption charge the court refused to entertain its application.⁵¹

In the case of *Jeetu @ Jitendera v. State of Chhattisgarh*⁵², an appeal by special leave was made towards to the Apex Court against the order of the High Court of Chattisgarh which had reduced the sentence of a person convicted under Sections 147 and 327 of the Indian Penal Code from three years rigorous imprisonment on the second score to one year and maintained the sentence of rigorous imprisonment for three months in respect of the offence on the first score i.e. Section 147. Aggrieved by the aforesaid decision of conviction and order of sentence, the accused-Appellant filed a special leave petition before the Supreme Court. Before the High Court, the Counsel for the Appellants did not argue as far as the conviction aspect is concerned and confined the submissions as regards the imposition of sentence highlighting certain mitigating circumstances. The Supreme Court in this case referred to the case of *Thippaswamy v. State of Karnataka*⁵³ in which it was decided that the court could not decide criminal cases based on plea bargaining. The Court must make a merit-based decision. An appropriate sentence must be administered if the accused admits his guilt. Furthermore, the court's strategy in appeals or revisions should be to determine the accused's guilt based on the facts presented, and if he is found guilty, a suitable penalty must be imposed or upheld.

Before issuing the final ruling that the aforementioned concession is supported by the evidence on file, the court's conscience must also be satisfied if the appellant or his attorney argues that he is not contesting the conviction order because there is enough evidence linking the accused to the crime. A sentence reduction should not be based only on an admission or acceptance of guilt. Additionally, the accused cannot negotiate a lesser sentence with the court by entering a guilty plea. Referring to the aforementioned ruling, the Court determined that it must decide the appeal on its merits rather than accept the concession and proceed with the punishment since doing so would undermine the core goal of the justice delivery system. Further, it was stated that in many cases the High Courts, after recording the non-challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence. This is impermissible in law and should not be taken resort to.

⁵¹ Plea Bargaining in India, Criminal Justice Administration, MHRD, available at epgp.inflibnet.ac.in/ as accessed on 27th October, 2024.

⁵² 2013 (11) SCC 489

⁵³ AIR 1983 SC 747

While commenting on the concept of plea bargaining, the Gujarat High Court observed in the *State of Gujarat v. Natwar Harchanji Thakor*⁵⁴, that the very object of the law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and given the current realistic profile of the pendency and delay in the administration of law and justice, substantial reforms are unavoidable. It can thus be said that plea bargaining is really a measure of redressal and it shall add a new dimension in the realm of judicial reforms.

In *Pardeep Gupta v. State*⁵⁵, the trial court rejected the application of plea bargain on the ground that since the applicant is involved in an offence under section 120-B Indian Penal Code and the role of applicant was not lesser than the other co-accused. However, none of the charges against the petitioner resulted in a sentence of more than seven years. On appeal it was held that the request of plea bargaining is ought to be considered taking into account the role of the accused, and the nature of the offence, etc. The trial court's stance indicates that it did not even read the provisions of chapter XXI-A before considering the application. The High Court thus directed the trial court to reconsider the application of plea bargaining made by the accused in the light of provisions made in the Code of Criminal Procedure and not in a casual manner.

In *Vijay Moses Das v. Central Bureau of Investigation*⁵⁶, the court set aside the order of the trial court whereby the court has rejected the application of plea-bargaining by the accused. The offences alleged to have been committed by the accused are punishable under Section 420, 468 and 471 read with Section 468 of IPC. All the three offences are punishable with maximum imprisonment for a period of seven years. The Magistrate rejected the application on two grounds, namely (i) the petitioner has not filed affidavit that he is not a previous convict and, (ii) that compensation has not been fixed. It is pertinent to mention here that these objections were not raised by the prosecution. The Uttarakhand High Court observed that the trial court has erred in law in rejecting the application of the petitioners for 'plea bargaining'. It looked at Section 265B of Cr.P.C. which provides that an application for 'plea bargaining' can be moved either by the accused or by the prosecutor. It was further held that the Magistrate should have disposed of the case after accepting the 'plea bargaining', and that no useful purpose would be served by sending the accused, who is a sixty years old heart patient, to jail by rejecting the application for plea bargaining. Therefore, the trial court was directed to dispose of the case by

⁵⁴ (2005) Cr.L.J. 2957

⁵⁵ 2007(99) DRJ 198

⁵⁶ 2010(2) Cri.CC 857

accepting the plea bargaining sought by the accused.

A magistrate's court, in Mumbai, on 25th may, 2011, accepted a plea bargain application and convicted four foreign nationals who were accused of stealing diamonds worth Rs 6.6 crore at an international jewellery show 2010, to 21 months rigorous imprisonment. The maximum punishment in such cases is usually seven years. The foreigners, three Mexicans and one Venezuelan, were convicted by the 37th Esplanade court after pleading guilty to their crimes and seeking a plea deal under the Criminal Procedure Code.

After looking at the above mentioned cases it can be seen that, over the years, courts have started accepting plea bargaining as an effective way of speedy disposal of cases. The judicial thinking underwent a great change after the concept of plea bargaining was introduced in criminal law by Criminal Laws Amendment Act, 2005.⁵⁷ The courts are willing to accept application of plea bargaining provided that it fulfills all the requirements mentioned under Chapter XXI-A of CrPC.

WHETHER PLEA BARGAINING HAS BEEN A SUCCESS IN INDIA OR NOT?

Until 2015, no data was being collected on how the process was being used or the number of cases being resolved through plea-bargaining.⁵⁸ The National Crime Records Bureau began collecting data from 2015 onwards. In its report for Crimes in India in 2014 it was shown that plea bargaining had been used for 34,931 cases under the Penal Code.⁵⁹ A lot of these cases were ones for which plea bargaining was prohibited as it was used to dispose of 3,584 cases of crimes against women even though plea bargaining is not applicable for offences committed against women and children. These included about 2,200 cases of cruelty by husband and his relatives, as well as 1,045 cases of assault with the purpose to outrage women's modesty. According to the NCRB, courts disposed of 27 cases of murder, 55 of attempt to murder, 40 of rape and 27 of robbery after plea bargaining pacts between parties in violation of law passed

⁵⁷ Gupta, Neeta, 'Plea Bargaining In India: An Overview', International Journal of Applied Research, 2015; 1(11): 372-375 available at <http://www.allresearchjournal.com/archives/2015/vol1issue11/PartF/1-11-11.pdf> as accessed on 22nd November, 2024.

⁵⁸ Sekhri, Abhinav, 'Plea Bargaining's Resounding Defeat? The Indian Experiment With Plea Bargaining', available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3085659 as accessed on 27th October, 2024.

⁵⁹ National Crime Records Bureau, CRIME IN INDIA – 2014, available at <http://ncrb.nic.in/StatPublications/CII/CII2014/Table%204.5.pdf> as accessed on 29th October, 2024.

by Parliament in 2005 and shows widespread abuse of the law.⁶⁰ Data released in 2015 excluded the cases for which plea bargaining was prohibited and thus presented a steep decline. Out of 10,502,256 cases under IPC disposed by the courts in 2015, plea bargaining took place in only 4,816 cases, i.e., a mere 0.045%.⁶¹ Data for 2016 shows further decline to 0.043% (an absolute increase to 4,887 cases but a relative decrease due to further increase in the number of total cases).⁶² In this time, case pendency has continued to proceed on an upward curve, though not as rapidly as the time between 1970s-1990s.⁶³ According to the recent National Crime Records Bureau (NCRB) data for 2022, just 19,135 of the 1,70,52,367 cases tried in Indian courts were resolved by plea bargaining. This represents only 0.11% of all cases. Thus, it is clear that, even though there has been slight improvement, plea bargaining has failed to fulfill the main policy objective it was intended to achieve in India, i.e., reduction in burden of cases pending before the Courts.

REASONS FOR FAILURE OF PLEA BARGAINING IN THE INDIAN CRIMINAL JUSTICE SYSTEM

One of the major reasons for failure of the process of plea bargaining in achieving its desired objectives is seen to be the scope of Chapter XXI-A of the CrPC. The addition of this Chapter containing provisions regarding plea bargaining was a step in the right direction by the legislature in tackling the problem of backlogging of cases and ensuring speedier disposal of cases. Chapter XXI-A contains various provisions which are in tune with objective of introducing the concept of plea bargaining. However the scope of its application has been brought down to a large extent. This goes against the very purpose of the introduction of the concept of plea bargaining.

The provisions of chapter XXI-A of CrPC are not applicable to offences punishable with death or imprisonment for life or of imprisonment for a term exceeding seven years. Further offences against women and children below fourteen years and offences affecting the social economic

⁶⁰ Tikku, Alope, *Crime Records Show Widespread Abuse of Plea Bargain Law*, Hindustan Times, November 24, 2015, available at <http://www.hindustantimes.com/india/crime-records-show-widespread-abuse-of-plea-bargain-law/story-rcq9UCrMeD13fbnJjGZffN.html> as accessed on 27th October, 2024.

⁶¹ National Crime Records Bureau, Crime In India— 2015, available at <http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Table%204.5.pdf> as accessed on 20th October, 2024.

⁶² National Crime Records Bureau, Crime In India— 2016, available at <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf> as accessed on 27th October, 2024.

⁶³ *Supra* note 29.

condition of the nation are kept out of the ambit of Chapter XXI-A. This provision further does not allow application of the provisions of Chapter XXI-A to socio-economic offences and Section 265A (2) confers arbitrary power to the government to decide those offences which constitute socio economic offences.⁶⁴ As a result, this concept of plea bargaining is not applicable to a large number of legislations such as Prevention of Food Adulteration Act, Narcotic Drugs Psychotropic Substances Act, 1985, Prevention of Corruption Act, etc. Thus it goes against the very purpose of reducing the burden of cases.

Under the provisions of Chapter XXI-A, it is mandatory for the courts to satisfy itself that the application filed by the accused is voluntary. In a country like India, a person may voluntarily agree to apply for Plea Bargaining in order to avoid expensive and long drawn litigation despite being innocent. The innocent can plead guilty due to the feeling of hopelessness at attempting to rebut the evidence of the police, the severity of the sentence anticipated, the weariness of the case dragging on and the attractiveness of the existent scheme.⁶⁵ The Act is silent on whether such application should be accepted or not and whether such cases would amount to voluntarily or involuntarily filing of application. Furthermore, if the court believes the application was made involuntarily, it must proceed from the point where it was filed. Fulfilling the duty entrusted upon the Courts to decide on whether a case is fit for plea bargaining or not also will take up time of the courts. Instead, this process may be more time consuming since the courts will have to first determine whether the application is voluntary or not and accordingly decide after that.⁶⁶

Section 265C provides guidelines for mutually satisfactory disposition. Under this section, the Court shall issue notice to the concerned parties and ensure that the process of working out a satisfactory disposition of the case is voluntary. However, it does not provide any timeline for such disposition. The next step after the mutually satisfactory disposition is the preparation of report by the court and the court has to record such observations and proceed further in accordance with the provisions of Cr.P.C, even here there is no time prescribed for the preparation of the report and recording observations which is a major drawback and essentially goes against the purpose of introducing plea bargaining. It also does not provide any guiding principle to the Court to ensure transparency and that the accused is not coerced at any stage.⁶⁷

⁶⁴ *Supra* note 3.

⁶⁵ *Supra* note 8.

⁶⁶ *Supra* note 30.

⁶⁷ *Supra* note 33.

After the passing of the Bharatiya Nagarik Suraksha Sanhita ("BNSS"), the plea-bargaining process is outlined in Chapter XXIII of the BNSS, with sections spanning from 289 to 300.

During the parliamentary debates on this procedure, the legislators were not fully aware of the proposals being tabled and their relation to the Law Commission Reports discussed before.⁶⁸ The legislature as a whole seems to have been blind to how modifications such as plea bargaining would function within the Indian context that was fleshed out in the previous part.⁶⁹ It was demonstrated how plea bargaining is a good 'fit' for the U.S. system as it offers incentives to prosecutors to induce defendants to waive trials. In India, defendants have several procedural rights / structural advantages that allow them to challenge proceedings and stall their progress.⁷⁰ Since there are greater restrictions on inducing pleas in India than the United States, there is little opportunity for either prosecutors or judges to exercise leverage against defendants to force them to plead. This means for plea bargaining to succeed, it had to be a more attractive option than the several alternatives available within the system for the defendants to choose. The highly regulated plea bargaining that was introduced clearly fails in this regard. If we look at cases where the defendant wishes to settle with a victim or prosecutor to end the matter, is plea bargaining the optimal route to follow in those cases? It contests with already existing procedures that are more favorable to defendants as they do not end in a conviction.

In India, the conviction rates are as it is quite low. The trend is significant as since independence conviction rate in cognisable crime have been consistently falling. The oldest record in this respect is that of 1953, the year when NCRB began collating crime data. In that year, the percentage rate of conviction to total cases tried was almost 64%. In the next decade it improved to 65%.⁷¹ However, 70s onwards it has been consistently declining, dropping to less than 40% in 2012.⁷² As per the NCRB report, Crimes in India, 2016⁷³, at the national level only 47% convictions happen in Indian Penal Code (IPC) crimes.⁷⁴ Thus, there are high chances that the

⁶⁸ *Supra* note 30.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Available at http://indpaedia.com/ind/index.php/Conviction_rate:_India as accessed on 26th October, 2024.

⁷² *Ibid.*

⁷³ NCRB report, Crimes in India, 2016, available at <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf> as accessed on 27th October, 2024.

⁷⁴ Available at <https://www.gktoday.in/academy/article/crime-in-india-2016-report-of-ncrb/> as accessed on 27th October, 2024.

accused will be acquitted, not by the trial court, then on appeal. So, there is not much incentive to go for plea bargaining. Also, when plea bargaining is certainly not resulting in acquittal or limited to penalties or payment of damages, accused may not find it as useful and plea bargaining may not operate as incentive at all.

For the cases where defendants might voluntarily agree to move for plea bargaining, the design of the model renders it difficult for any agreement to materialize. Contrary to the efficient two-party negotiation model of the U.S. federal system, the Indian model allows for tri-partite bargaining under the watchful eye of the judge.⁷⁵ Judges are usually wary of engaging in the plea process due to the possibility of coercion over defendants. Also, by giving victims a veto right while making negotiations has made the process tenuous as victims of most criminal offences do seek retributive justice as it is difficult to translate physical pain into monetary terms.⁷⁶ This can result in a stalemate.

Another reason for its failure is that in the US, if a first time offender opts for plea bargaining, his name is not included in the criminal records and is not treated as a convict, thereby being eligible for jobs. His name is kept on Watch List akin to Probationer, depending upon his crime but his name does not get reflected in Criminal Records Office. After a specific time, if his conduct remains unblemished, his name is struck off the records and the same is not available to private parties to access and the person can live and start his life afresh.⁷⁷ On the other hand, in India a defendant entering into plea bargaining is considered as a convict and his name will appear in Crime Record Office records for life, thereby making him ineligible for many jobs. Despite the fact that he had undergone punishment or was convicted, he will carry the stigma of being a convict for life. In such a scenario, given a choice, the defendant would rather prefer to go for a very lengthy trial where invariably he is likely to be acquitted going by the state of our criminal justice system, rather than entering into plea bargaining. What he loses at the most is the number of years in terms of trial but he remains at the most an under-trial, which is in any case better than being a convict as being an under-trial does not carry that sense of stigma which a convict does in our society. Even, if he is an under-trial, it does not disqualify him

⁷⁵ Sekhri, Abhinav, Plea Bargaining's Resounding Defeat? The Indian Experiment with Plea Bargaining, 2018 available at <http://ssrn.com> as accessed on 27th October, 2024.

⁷⁶ *Ibid.*

⁷⁷ Plea Bargaining In India: Need for Relook, April 19, 2017, available at <http://jimsgnblog.blogspot.in/2017/04/plea-bargaining-in-india-need-for-relook.html> as accessed on 27th October, 2024.

from seeking a job.⁷⁸

In USA, the defendant entering into plea bargaining is educated to the extent that he himself understands the meaning of plea bargaining, consequences and implications of entering into plea bargaining. It is not something that he is forced to enter into but he does with considerable due diligence but he does it by choice after due diligence which is not the same being in practice in the Indian scenario. In India, most of the defendants are simply unaware of the existence of this process. These defendants are often without representation or have state-appointed counsel who might not be aware of the process themselves.⁷⁹ Since judges' hands are tied, it is difficult for them to actively encourage defendants to use the process.⁸⁰ Also, the accused often does not realise the consequences of his voluntary admission of crime and might later try to retrace on understanding the consequences.⁸¹ Not all cases falling under plea bargaining can be said to be made freely and voluntarily but as result of coercion.

There would certainly be other factors affecting the decisions of individual defendants to not plead for bargain but the above mentioned reasons are the most significant ones in the Indian scenario.

CONCLUSION AND SUGGESTIONS

The judicial backlog is a key challenge that India is confronting today. There are various reasons for backlogging of cases and there is a dire need to take every positive step that can be thought of for reducing the caseload of the Indian courts. Introduction of the concept of Plea Bargaining is one such step aimed at bringing down the number of pending cases and ensuring speedier disposal of cases. Despite being in the statute for more than a decade, the usage of plea bargaining is still very low. The ambit of plea bargaining was restricted to very limited number of offences, as opposed to the model of plea bargaining in the US, as the concept was introduced on an experimental basis.⁸² There is an urgent need to thoroughly look into and study its working and impact, so that appropriate changes can be made. There is a need to amend the law contained under Chapter XXI-A of the Code of Criminal Procedure in order to make it an effective tool in transforming our criminal justice system and to achieve its desired

⁷⁸ *Ibid.*

⁷⁹ *Supra* note 3.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Supra* note 30.

objectives.

After studying the concept of plea-bargaining in India, the following suggestions can be made, on the law of plea bargaining,

- Public prosecutors can co-ordinate with investigating agencies, so that the entire class of officers working in various departments of Government can be educated. Every prosecutor in the country must master the provisions of Chapter XXIA of the Code relating to plea bargaining. Intensive training at the instance of the State Legal Services Authorities for prosecutors is highly essential. Services of eminent judges and jurists can be utilized. Along with the prosecutors, investigating officers and officers working in correctional agencies also should be sensitized on the importance of these provisions.
- For its successful implementation, awareness of this provision needs to be spread people accused and among the police, prosecutors and judges so that they are capable of making the accused understand this concept fully. Each prosecutor can develop a strategy to effectuate the plea bargaining process with the help of the State Legal Services Authorities. Trainings/Seminars can be conducted to disseminate knowledge on this aspect. The awareness programme should be held in jail among trial prisoners who can come within the purview of Chapter XXI-A of the Code. If this is done, this will help decongest the overpopulated jails all over the country.
- Training of judicial officers at State Judicial Academy level and also at the level of National Judicial Academy, Bhopal on this subject is essential. This would certainly improve their dexterity and capability to achieve the desired results. Moreover, positive change of attitude and concern will be the result of intensive training to the judicial officers.
- Chapter XXIA of the Code is a self-contained provision so far as our country is concerned. Judicial offices must have clear understanding of their role under the various provisions contained in Chapter XXIA. Unless they master the statutory provisions and understand the object behind it, they may not be able to implement plea bargaining effectively.
- Legal Services Authorities have to perform a major role in the propagation of this concept. They must conduct seminars creating awareness among the lawyers about the problems of backlog and the relevance of plea bargaining as an alternative.
- Lawyers have a vital role to play in view of their participation in the negotiation process. For this, the Legal Services Authorities with the help of various Bar Associations may

conduct classes for lawyers and legal Aid Counsel. Services of judges and jurists can be sought for creating awareness.

- A provision may be made in Chapter XXIA of the Code making it mandatory for the Court to inform the accused who appears in connection with trial of an offence, to which Chapter XXIA applies, that it is open to the accused to take the advantage of plea bargaining. Somewhat similar provision has been made, in a different context, in Order XXXIIA, Rule 3 of the Civil Procedure Code.
- Once an application for plea bargaining is filed by an accused, he has no chance of withdrawing the same. If it fails, the matter reverts back to regular trial and the accused does not suffer any prejudice for whatever he has stated in his application. Therefore, a Judge must have a changed mind set to see that such application does not fail. He should also develop negotiating skills.
- The scope of this clause must be broadened, and the classification for giving the advantage of plea bargaining should be based on the gravity of the offense rather than the number of years specified as punishment.
- Adequate safeguards must be put in place to protect the innocent and punish the guilty, as pervasive bargaining without transparency and specific guidelines will perpetuate the image that justice is for sale and will inevitably lead to public cynicism.
- The judge overseeing the implementation of the scheme must be impartial and in no way involved in the bargaining. The judge must be convinced that the defendant is pleading guilty knowingly and voluntarily. He must retain a broad discretion as to whether to accept or reject the plea bargain.
- Any court order rejecting a plea negotiating application must be kept confidential to avoid prejudice to the accused.

In order to ensure that due process is followed, the plea bargaining scheme must be carefully regulated. If all the above measures are complied with and the government agencies work fairly and justly, it would not be wrong to say that the concept of plea bargaining will not only work in India but will also bring tremendous changes in the criminal justice system of our country.