ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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www.ijlra.com
Volume 2 Issue 7 | May 2023
ISSN: 2582-6433

PLEA BARGAINING– A CATALYST OR CATASTROPHE IN THE CRIMINAL JUSTICE SYSTEM?

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Abstract

Plea bargaining refers to the practice of the prosecutor and accused in a criminal case coming to mutually agreeable settlement wherein the accused pleads guilty and accepts the charges levied against him in exchange for some concession by the prosecutor such as reducing the intensity of the punishment and / or arranging terms for the compensation to the victim. This is the criminal law equivalent to an out of court settlement in civil litigation. Much like the filing of consent terms in a civil settlement, the terms of the agreement reached between the prosecutor and the accused have to be laid before the court for its approval and consent to the arrangement. This practice was conceptualised through judicial pronouncements in the United States and hence, the precedents set created this revolution in the criminal justice system globally. This paper shall explore the statutory provisions in relation to plea bargaining as included in the Code of Criminal Procedure, 1973 through the Criminal Law (Amendment) Act, 2005; as well as the procedure and application of this practice in the United States' Criminal Justice System wherein a majority of criminal cases are concluded through plea bargaining. The paper aims to evaluate the implementation of justice through such practices, in light of landmark judgements in India and the United States; in order to ascertain whether plea bargaining acts as a catalyst or catastrophe in the justice system.

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1. Introduction

Plea bargaining refers to the agreement between the prosecution and the accused in a criminal case, whereby the accused pleads guilty to the offence in exchange for the prosecutor reducing the intensity of the punishment. This effectively eliminates the trial process and allows for the speedier disposal of cases, as the commission of the offence does not need to be proved beyond reasonable doubt due to the fact that the accused accepts the charges against him. While ideally entered into before or at the start of trial, it can be entered into at any point before the final judgement / decree of the court. The fundamental idea behind plea bargaining is to conserve the time and resources of the prosecution and the courts, by reducing the investment required in a particular case by way of disposing it off before hand, outside the construct of the judiciary. That being said, such agreement is subject to the approval of the court, and only if the judge adjudicating the matter approves such agreement, can it be executed. Plea bargaining also includes the aspect of charge bargaining, wherein the prosecutor agrees to a charge of lesser intensity in exchange for the accused pleading guilty. For example, an offence of attempt to murder could be reduced to grievous hurt. Another form of plea bargaining is count – bargaining, wherein the accused is alleged to have committed multiple offences and the prosecutor lets go of some of the offences thereby reducing the punishment liability of the accused, in exchange for their pleading guilty.[2]

2. Status of Criminal Justice in India

The justice system in India is undoubtedly overburdened beyond compare, owing largely to the fact that India has the largest population in the world which is growing exponentially. Furthermore, we have an extreme inadequacy of judicial infrastructure and judicial personnel to adjudicate the disputes arising in the country. These disputes too, are rising exponentially and are becoming increasingly complex. The following statistics illustrate just how grave the problem is and emphasise the need for a thorough jolt to mitigate the issues. These statistics are as of 31 December 2020, which have undoubtedly worsened over the last two years owing to the Covid19 pandemic and the general upward trend of these figures.

[2] "Jon'a F. Meyer "plea bargaining", (*Encyclopaedia Britannica*, 5 June 2022), https://www.britannica.com/topic/plea-bargaining, accessed 18 April 2023."

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About 32.4 Million / 3.24 Crore criminal cases were pending before the courts of India, of which 29 Million / 2.9 Crore cases were cases in Original Jurisdiction and 22.5 Million / 2.25 Crore cases were more than a year old. These pending cases are mostly aged under 10 years but do extend to beyond 30 years[3], which is alarming especially as for the maximum imprisonment awardable, which is life imprisonment, the general rule of calculation is 20 years[4], and life imprisonment is only awarded in serious offences which would likely be a minority of the pending case load. Which means that under trial prisoners are being imprisoned for terms longer than the maximum punishment for the offence of which they are accused. Another severely distressing statistic is the fact that 63.11% of pending criminal cases are pending due to a failure in securing the presence of the accused and / or witnesses etc. Furthermore, 17.70% are pending due to an injunction being ordered; 9.12% or 8.70 lakh cases are pending as they are unattended and 7.62% are pending as the court is awaiting the submission of records of the investigation while 2.2 lakh cases are pending simply due to frequent applications by the parties, abusing the system to create procedural delays. These statistics show that a vast majority of criminal cases pending before the various courts in our judicial system, are pending due to procedural delays and nothing else. Only 0.11% of the total pending criminal caseload is pending due to the case being complex / bulky, while the rest are tied up due to procedural delays by the system and / or the parties.[5]

These shocking figures are sufficient evidence that the criminal justice system needs an overhaul. As a contribution to this aim of reducing the pendency as justice delayed in justice denied; the concept of plea bargaining was introduced in India. Other measures taken to alleviate the stress on our limited judicial resources, include the creation of several quasi-judicial bodies / tribunals to deal with specialised matters in their specific jurisdictions in a quick and effective manner.

[3] "National Judicial Data Grid – Pending Dashboard – Criminal, https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard, accessed 19 April 2023"
[4] The Indian Penal Code, 1860, § 57
[5] "National Judicial Data Grid – Pending Dashboard – Criminal, https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard, accessed 19 April 2023"

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3. Historical Development

There are various historical instances allegedly resembling plea bargaining, however the authenticity of such stories cannot be confirmed and the circumstances of such alleged occurrences were far from the modern-day concept of courts of justice and trials.[6] The formal and verifiable concept of plea bargaining originates from the United States' justice system, through various judicial pronouncements. Amongst the most noteworthy of which was "*Brady v. United States"* in 1970. The accused was charged with kidnapping and causing the death of the victim, which is punishable with the death penalty in the United States.[7] Upon learning that his co – accused had confessed and agreed to testify against him, the main accused changed his plea from not guilty to guilty, in order to avoid the death penalty, and was accordingly awarded a sentence of 50 years imprisonment. This sentence was then appealed by the accused, claiming his plea to have been coerced by fear of the death penalty, however, the United States Supreme Court held that fear of the death penalty does not constitute coercion and therefore awarding a lesser sentence in exchange for guilty plea is constitutionally valid.[8] Through the United States Supreme Court judgement in "*Santo Bello v. New York"*, it reaffirmed and solidified the validity of plea bargaining in the American justice system. In this case, the accused was charged with offences relating to gambling, and had changed his plea from not guilty to guilty for a reduced number of charges and of lesser intensity. Furthermore, the prosecution had agreed to not make any recommendation as to the tenure of the imprisonment, however during the sentencing hearing, a different prosecutor appeared for the State and recommended the maximum sentence for the offences. The accused then contended that the prosecution was violating its promise of not recommending any sentence, which was finally upheld. The United States Supreme Court affirmed the right of the accused to demand specific performance of the plea-bargaining agreement, and upon failure thereof, to seek appropriate relief, such as withdrawing the guilty plea.[9] This judgement made the construct of plea bargaining more formal and enforceable while ensuring equal protection of both parties to the agreement, which paved the way for the majority of the criminal cases in the United States' since.

[6] Id
[7] "18 U.S. Code § 1201(a)"
[8] "Brady v. United States, 397 U.§ 742 (1970)"
[9] "Santo Bello v. New York, 404 U.§ 257 (1971)"

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One of the most famous instances of plea bargaining was in the case of James Earl Ray, the man convicted of assassinating Martin Luther King Jr. James Earl Ray pled guilty to the charge of murder in exchange for not being awarded capital punishment, which resulted in him being awarded a sentence of imprisonment of 99 years.[10]

4. Development in the Indian Legal System

Plea bargaining was widely criticised by the Indian courts and members of the Indian legal fraternity ever since its formal adoption by the United States in 1970. Through various judicial pronouncements, the Indian courts rejected the viability of the concept of plea bargaining and dismissed it as unconstitutional.

In the case of "*Murlidhar Meghraj Loya v. State of Maharashtra"*, the appellant was accused of mixing edible oils and selling such adulterated oil. The prosecution and the accused came to an arrangement wherein the accused pled guilty in exchange for the prosecution not pushing for strict punishment, which was supported by the Magistrate who awarded a punishment of Rs.250/- as fine. Upon appeal the Supreme Court dismissed such compromise arrangement and remarked that plea bargaining is immoral and hence the State can never compromise and must enforce the law, especially as in the given case, the plea bargain was beneficial to the accused, the prosecution and the courts but completely ignored the actual victims who purchased and consumed such adulterated oil.[11]

In another case of a similar offence, "*Kasam Bhai Abdul Rehman Bhai Sheikh v. State of Gujarat"*, the Supreme Court repudiated the plea bargain entered into by the accused, the prosecution and the Magistrate by calling the concept of plea bargaining unreasonable, unfair and unjust and a violation of Article 21 of the Indian Constitution. The Supreme Court went further to refer to plea bargaining as an illegal and unconstitutional pollutant of the pure fount of justice as it shall lead to a guilty person walking away with minimal punishment or worse, it may cause an innocent person to be convicted as a result of corruption and collusion.[12]

[10] "Britannica, The Editors of Encyclopaedia. "James Earl Ray". (*Encyclopaedia Britannica*, 6 March 2023), https://www.britannica.com/biography/James-Earl-Ray, accessed 18 April 2023."
[11] "Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684"
[12] "Kasam Bhai Abdul Rehman Bhai Sheikh v. State of Gujarat, (1980) 3 SCC 120"

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In the case of "*State of Uttar Pradesh v. Chandrika"*, the Supreme Court restated the earlier opinions, and held that an accused does not deserve to be rewarded for simply accepting their commission of an offence as there is sufficient evidence against them. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence, nor can the accused bargain with the Court that their sentence be reduced as they are pleading guilty.[13]

The 142nd Law Commission Report by the Twelfth Law Commission in 1991, first presented the concept of plea bargaining in the Indian Legal System. The report suggested for provisions for the concessional treatment of the accused who voluntarily pleads guilty of the offence he is accused of committing. The reasoning was that final acquittal in the pettiest criminal case can take upto 33 years and cost the State about Rs. 1 Crore as of 1991, and there was no corresponding benefit to the society for this time resource investment. The report contended that the accused willing to make amends for their wrongs and pay their debt to society, should not be treated at par with an accused demanding an expensive and lengthy trial. Furthermore, in the interest of preventing uncertainty, expenditure, anxiety etc. it is best to allow the accused to plead guilty, serve his sentence and be freed. The benefit to the State of such provisions, in addition to saving precious time and resources, would be the preventing of overcrowding in jails on account of under trial prisoners. To support their contention, the Law Commission cited the example of the United States wherein about 75% of all criminal cases were disposed through plea bargaining at the time.[14]

The 154th Law Commission Report by the Fourteenth Law Commission in 1996 reiterated a similar opinion and called for the inclusion of plea-bargaining provisions in The Code of Criminal Procedure, 1973, once again taking support of the United States' criminal justice system of which plea bargaining is a fundamental aspect.[15]

In 2000, the central government formed a special committee to address the rising burden of criminal cases in India, headed by former Chief Justice of the Karnataka High Court and of the Kerala High Court, Justice V.§ Malimath. This committee, called the Committee on Reforms of the Criminal

[13] "State of Uttar Pradesh v. Chandrika (AIR 2000 SC 164)"
[14] "142nd Law Commission Report, 1991, Chapter XI, https://lawcommissionofindia.nic.in/report_twelfth/, accessed 18 April 2023"
[15] "154th Law Commission Report, 1996, Chapter XIII, https://lawcommissionofindia.nic.in/report_fourteenth/, accessed 18 April 2023"

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Justice System, also known as the Malimath Committee, submitted its report in 2003 which *inter alia* suggested the inclusion of plea-bargaining provisions in the Code of Criminal Procedure, 1973, as a tool for tackling the volume of pending criminal cases.[16]

However, the view of the Supreme Court changed over time, most notable expressed in *State of Gujarat v Natwar Harchanji Thakor*, wherein the apex court acknowledged the immense caseload and delays in justice and stated that the purpose of law is to offer quick, easy and cheap redressal of disputes. As this purpose was not being achieved in the current construct, change was inevitable and the people and the system needed to have an open mind insofar as plea bargaining was not recognised in the Indian Criminal Jurisprudence but it needed consideration as an alternative route to justice.[17] This judgement was delivered shortly before the Criminal Laws (Amendment) Act, 2005 was brought into force.

On the basis of the Malimath Committee Report, along with the 142nd and 154th Law Commission Report, the Criminal Law (Amendment) Act, 2005 was enacted which inserted Chapter XXIA titled 'Plea Bargaining', in The Code of Criminal Procedure, 1973.[18] Thus finally creating the statutory framework to support the concept of plea bargaining in the Indian context.

5. Statutory Framework

5.1.Applicability

The provisions of plea bargaining are made available only in cases wherein the offence committed attracts a punishment lesser than 7 years imprisonment. If the offence in question carries a punishment of 7 years imprisonment or more, or life imprisonment or death penalty, the case cannot be disposed off through plea bargaining. Furthermore, if the offence has been committed against a woman or a child below 14 years of age, or if the offence is detrimental to the socio – economic condition of the country, plea bargaining is not an option available in such cases.[19] Additionally, plea bargaining is not available for cases of repeat offenders, and is limited to first time offenders only.[20] Furthermore,

[16] "Committee on Reforms of the Criminal Justice System Report, 2003 (Malimath Committee Report)"
[17] "State of Gujarat v Natwar Harchanji Thakor (2005) Cr.L.J. 2957"
[18] "The Criminal Law (Amendment) Act, 2005, § 4"
[19] "The Code of Criminal Procedure, 1973, § 265A(1)"
[20] "The Code of Criminal Procedure, 1973, § 265B(2)"

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the provisions of plea bargaining are not available to juvenile offenders governed by the Juvenile Justice (Care and Protection of Children) Act, 2000[21]. Which means, that accused persons under the age of 18 years as on the date of commission of the offence[22], cannot be subjected to plea bargaining. The rationale behind this may be to protect the juvenile from coercion or undue influence by the prosecution, given their vulnerability owing to their age. However, on the flip side, it can be argued that juvenile accused should be given the option of plea bargaining as it may help prevent them losing years of their life at a crucial stage, awaiting trial / verdict. Furthermore, as a juvenile, the chances of the offence being a momentary lapse in judgement are high, and therefore, juvenile offenders are more likely to want to make amends, right their wrongs and move forward in life. Hence, it is suggested that juveniles should be presented with the right to plea bargaining.

The applicability restrictions on the provisions of plea bargaining are fairly strict and therefore limit the scope of the cases which can be dealt with through plea bargaining. However, the rationale behind the most of the restrictions is just, as offences of a more severe nature and offences by repeat offenders who are not learning from their past and are not living in compliance with the rule of law, should be dealt with by the full force of the law and the punishments contained therein. That being said, the efficacy of plea bargaining in lessening the burden on the judiciary, the prosecution, the accused, the penitentiaries etc., is greatly restricted under this statutory framework.

5.2.Initiation

The procedure for plea bargaining commences with the accused making an application to the court, seeking to enter into a plea bargain.[23] This application can only be made at the point where the case is pending trial and only before the court which is to conduct such trial.[24] The application must contain the details and description of the case at hand, along with an affidavit of the accused, affirming that he is making such application voluntarily and after understanding the legal implications of his pleading guilty as well as the punishment provided in law for the offence of which he is accused.[25]

[21] "The Code of Criminal Procedure, 1973, § 265L"
[22] "The Juvenile Justice (Care and Protection of Children) Act, 2000, § 2(k)"
[23] Id
[24] "The Code of Criminal Procedure, 1973, § 265B(1)"
[25] "The Code of Criminal Procedure, 1973, § 265B(2)"

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Upon receipt of such application, the court shall intimate the public prosecutor and / or complainant and set a date for both sides to appear before the court.[26] When both sides appear on the given date, the accused shall be examined in order for the court to satisfy itself that the accused is applying for a plea bargain voluntarily. Such examination must be videographed and be conducted in absence of the other side[27], in order to ensure there is no coercion / undue influence / threat etc.

Only if the court is satisfied that the application is made entirely voluntarily, and the application itself is valid in terms of eligibility of the offender and the offence, shall it give a time frame for the prosecution and accused to arrive at a mutually satisfactory disposition of the case and set a hearing date for the parties to present the proposal they agree upon.[28] If the court is not satisfied about the voluntariness and eligibility of the offender and offence, it shall dismiss the application and proceed with the trial as per the provisions of The Code of Criminal Procedure, 1973.[29]

While the conventional system of plea bargaining, as seen in the United States, allows for the accused and prosecution to arrive at a settlement *inter se*, in the Indian context, even if the parties wish to enter into a plea bargain, they have to route the procedure through the court, which fails to alleviate the burden on the courts and again by requiring the parties to await a date of hearing, it is failing to speed up the process.

Furthermore, there is no provision with regard to the prosecution initiating the process for a plea bargain, nor is there an express provision allowing the prosecution to refuse to attempt to arrive at a mutually satisfactory disposition. The statutory provision leaves all the power with the accused, which is unfair on both grounds; the prosecution cannot initiate a plea bargain nor can they refuse to entertain such an application. That being said, it can be inferred from context that by summoning the prosecution / complainant to appear before the court on the date of hearing of the plea-bargaining application, the prosecution / complainant will be given the opportunity to accept or refuse to entertain the application, as would be required to give effect to the principles of natural justice.

[26] "The Code of Criminal Procedure, 1973, § 265B(3)"
[27] "The Code of Criminal Procedure, 1973, § 265B(4)"
[28] "The Code of Criminal Procedure, 1973, § 265B(4)(a)"
[29] "The Code of Criminal Procedure, 1973, § 265B(4)(b)"

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5.3.Mutually Satisfactory Disposition

The agreement or plea bargain, must be acceptable to both parties voluntarily and is hence referred to as a mutually satisfactory disposition. These terms must be arrived at through the voluntary participation of all parties, that is, the accused, the victim, the prosecution and the police officer who investigated the offence.[30] Additionally, the accused and victim can involve their respective attorneys if they wish[31], which is ofcourse recommended and is likely to always be the case. The court is required to ensure that the conversation and negotiations are entirely voluntary by all parties involved.[32]

The prosecution / victim is given the opportunity here to refuse to entertain the plea bargain, and by not consenting to the negotiations, are effectively refusing the application made by the accused and therefore closing the process of plea bargaining, deflecting the case back to the ordinary procedure of The Code of Criminal Procedure, 1973.

It is noteworthy that while the court is mandated to ensure voluntariness is maintained throughout the negotiations, in reality, that may not be pragmatic and by virtue of the fact that all the parties will be party to the negotiations, there is a very high likelihood of undue influence or coercion operating either from the side of the police or from the side of the accused, forcing the victim to consent to the terms proposed by the accused. The court cannot realistically ensure the sanctity of the negotiations and the voluntariness of the parties. There are forces that operate outside the confines of the law which would impact someone's actions within the confines of the law, out of fear.

If the parties do successfully come to a mutually satisfactory disposition, the same must be signed by all the persons who participated in the negotiations, and submitted to the court for the judge adjudicating the matter to sign and approve. If the parties fail to arrive at a mutually satisfactory disposition within the time frame allotted, the court shall revert back to the ordinary procedure of the Code of Criminal Procedure, 1973.[33]

[30] "The Code of Criminal Procedure, 1973, § 265C(a)"
[31] "The Code of Criminal Procedure, 1973, § 265C(b)"
[32] Id
[33] "The Code of Criminal Procedure, 1973, § 265D"

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5.4.Judicial Intervention and Enforcement

The court will conduct a hearing on the enforcement / effecting of the mutually satisfactory disposition agreed upon. If there is compensation to be paid to the victim, the court will award such compensation and direct the accused to pay the amount.[34] The court will then hear both sides regarding the quantum of punishment to be awarded which includes imprisonment and / or the aspect of releasing the accused on probation of good conduct against his bond to maintain good behaviour and appear before the court whenever summoned[35]. The provisions of the Probation of Offenders Act, 1958 would be made applicable in the circumstances of release on probation.[36]

When the mutually satisfactory disposition includes imprisonment, the court has the power to modify such term agreed upon. If the imprisonment agreed upon is the minimum term of imprisonment provided for in the statutory framework regarding the offence committed, the court may if it deems fit, reduce that sentence to half the minimum term.[37] If the offence is not included in the Probation of Public Offenders Act, 1958 or the offence does not have a minimum punishment and only has a set tenure of imprisonment, the court may award a punishment of imprisonment of a term equivalent to one quarter of the term provided for in the statute.[38] For example, if the offence is punishable with imprisonment upto four years, the court can award punishment of one year.

The rationale behind this power, is as was discussed in the 142nd Law Commission Report and the subsequent Reports, that an accused willing to plead guilty and make amends, should be rewarded for this and not treated at par with other accused undergoing the full extent of trial.[39] While idealistically sound, this power once again favours the accused over the victim, especially as the term of imprisonment agreed upon in the mutually satisfactory disposition, can be reduced by the court. This puts the victim in a lose – lose situation as if they await the verdict of a full trial, it could take a few decades, and if they consent to plea bargaining, they agree to a lesser sentence which can further be reduced to half or even quarter by the court, to reward the offender for accepting his wrongs. It fails to provide justice and retribution for the victim, except for by the limited scope of the way of

[34] "The Code of Criminal Procedure, 1973, § 265E(a)"
[35] "The Code of Criminal Procedure, 1973, § 360(1)"
[36] "The Code of Criminal Procedure, 1973, § 265E(b)"
[37] "The Code of Criminal Procedure, 1973, § 265E(c)"
[38] "The Code of Criminal Procedure, 1973, § 265E(d)"
[39] "142nd Law Commission Report, 1991, Chapter XI, https://lawcommissionofindia.nic.in/report_twelfth/, accessed 18 April 2023"

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compensation.

The final ruling of the court, in cases where a mutually satisfactory disposition has been arrived upon and approved by the court, cannot be appealed except under writ jurisdiction before the concerned High Court having territorial jurisdiction[40], and under a special leave petition before the Supreme Court of India[41].[42]

The power of the court remains unchanged even when conducting proceedings on plea bargaining, it retains the power to summon persons, mandate the discovery and production of documents, examine witnesses under oath etc.[43] Furthermore, the court is directed to set off the time of under trial imprisonment from the final imprisonment decided upon in the mutually satisfactory disposition or the term of imprisonment decided by the court[44], as discussed hereinabove; as is the mandate for any other criminal trial.[45]

5.5.Protection of Accused

The most pressing concern with regard to plea bargaining is that the statements made by the accused in the interest of plea bargaining, during the process of negotiations etc. may be used against them at trial, should the plea-bargaining fail. The statutory framework expressly prohibits such actions, in the interest of promoting open, fair and just negotiations for the successful operation of plea bargaining. By exempting any statements made by the accused during the process of plea bargaining, from being used against them at trial or in any other manner outside the scope of plea bargaining[46], the system is enabling the accused to enter into plea bargaining with complete honesty and without fear or apprehension, which is mandatory for the plea bargaining to be successful.

[40] "The Constitution of India, Article 226"
[41] "The Constitution of India, Article 132"
[42] "The Code of Criminal Procedure, 1973, § 265G"
[43] "The Code of Criminal Procedure, 1973, § 265H"
[44] "The Code of Criminal Procedure, 1973, § 265-I"
[45] "The Code of Criminal Procedure, 1973, § 428"
[46] "The Code of Criminal Procedure, 1973, § 265K"

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6. Analysis and Conclusion

Plea bargaining falls within the greyest of grey areas in the law. While it does help expedite proceedings, it does not necessarily entail delivery of justice. As was discussed in the case of "Kasam Bhai Abdul Rehman Bhai Sheikh v. State of Gujarat"[47], mentioned hereinabove, amongst several other cases, plea bargaining does lead to a guilty person walking away with minimal punishment if at all, and presents the chances of an innocent person being wrongfully convicted and punished. It enables abuse of power, undue influence, collusion and corruption to violate the sanctity of the justice system. Furthermore, with the kind of wealth disparity existing in the country, plea bargaining enables the rich to get away with anything using the power of their immense financial resources, to the abhorrent disadvantage of the economically weaker sections of society.

It is irrefutable that the caseload pending before the courts is unfathomable, but plea bargaining appears to be a method for the system to ignore the fact that procedural laws are lacking and justice infrastructure is inadequate, by enabling the existence of a dangerous practice. Many argue that plea bargaining has been very successful and has become the norm in western countries, especially the United States where over 98% of criminal cases are concluded through plea bargaining and only about 3% of all criminal cases go to trial[48]. However, it is conveniently overlooked that there are no statistics available on the number of wrongful convictions caused by plea bargaining. Countless cases have been overturned in the United States wherein upon the discovery of new evidence, or discovery of wrongful practices or through their 'Innocence Project' endeavours, wrongful convictions have been identified[49].

The fact remains that there is always a weaker party in any transaction. More often than not, it is the victim who is the weaker party, and therefore, the accused can use threats and fear or corruption and collusion to force the victim to accept a plea bargain which fails to provide them justice. If the accused

[47] Supra Note 12
[48] "Carrie Johnson, 'The vast majority of criminal cases end in plea bargains, a new report finds', (*National Public Radio (NPR)*, 22 February 2023), 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., accessed 19 April 2023"
[49] "Murat C. Mungan and Jonathan Klick, 'Reducing False Guilty Pleas and Wrongful Convictions through Exoneree Compensation', (*University of Chicago – Journal of Law & Economics, Volume 59 Issue 1, February 2016)* accessed 19 April 2023"

ISSN: 2582-6433

is the weaker party, the prosecution can use undue influence and threats to compel the accused to plead guilty even if they are innocent. The statutory framework in this regard in India, fails to acknowledge the sensitivity of the matter and the high possibility of undue influence being exercised. Simply putting in the clause that the court has to ensure all parties are voluntarily participating in the plea bargaining, does not alleviate the risks as the construct of plea bargaining is such that these risks cannot be alleviated. There are forces that operate outside the realm of the courts and therefore even if undue influence is being exercised by either party, it is unlikely to be brought to the notice of the court due to the very fact that there is undue influence being exercised.

Furthermore, as stated in the case of "State of Uttar Pradesh v. Chandrika", mere acceptance of guilt does not warrant leniency or a lesser sentence[50]. Just because an accused accepts they committed a crime, it does not legally justify a lesser sentence. Arguments have been made that accused who don't contest the accusation should be treated differently from those who do, most notably in the 142nd Law Commission Report[51]; but an opposing view is the fact that the accused are likely to plead guilty when there is sufficient evidence proving their guilt, and therefore, it is not a moral compass that is guiding a guilty plea, but is simply self-preservation – which does not warrant judicial leniency. The accused entering a plea bargain due to sufficient convictable evidence, simply means they are choosing the easier way out with a lesser punishment as they are going to receive punishment through the process of trial anyway.

Additionally, on the same principles and reasoning, the statutory provisions providing for judges to slash imprisonment terms to half or quarter of the minimum / prescribed punishment, is entirely unjust. Not only does this unfairly benefit the guilty accused, who see this as an easier way out, but it is also prejudicial to the innocent accused, who would rather take the lesser punishment than undergo trial for an offence they did not actually commit. This completely derails and defaces the entire concept of justice.

Therefore, in conclusion, plea bargaining seems very noble and revolutionary on paper and does present an answer to the problems in the country's criminal justice administration system, but it does not appear to be the correct answer. There are too many flaws and loopholes in the system, which is

[50] Supra Note 13
[51] Supra Note 14

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probably why it is has failed to gain traction in the 16 years since its introduction in the Indian legal system. The judiciary rightfully still maintains an adverse opinion on plea bargaining. While attempts are being made to implement the provisions of plea bargaining, through guidelines issued in a suo moto writ petition before the Supreme Court in this regard[52]; actual implementation remains a question mark. A better suited approach to tackle the impending doom of pendency in the Indian criminal justice system, would be reworking procedural laws to reduce the scope of procedural delays, especially those caused by parties taking undue advantage of the provisions of the law; and building a larger and more robust criminal justice infrastructure, with a larger capacity through more trial courts, more judges / magistrates and more public prosecutors. It is simply illogical and unsustainable to expect a judicial system aged a few decades if not more than a century, to handle the burden of the cases from India, as the world's largest population, which has grown between 5 – 10 times (if not more) since the conception of the judicial system. Deflecting the problem to out of court settlement may work in civil cases, but cannot be the norm in criminal cases, as is seen in the United States. Through the discussions of this paper, it is glaringly obvious that plea bargaining is a catastrophe in the criminal justice system under the guide and in the cloak of a catalyst.

[52] "SCC Online, 'Triple method of plea bargaining, compounding of offences and the Probation of Offenders Act, 1958: Supreme Courts' suggestions on disposal of criminal cases', (*SCC Online,* 31 October 2022), https://www.scconline.com/blog/post/2022/10/31/supreme-court-under-trial-prisoners-suggestions-plea-bargaining-probation-of-offenders-act-compoundable-offences-bail-dlsa-under-trial-review-committees-legal-resea/, accessed 19 April 2023."