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THE ROLE OF NEGOTIATION IN CRIMINAL JUSTICE SYSTEM; A CRITICAL STUDY OF "PLEA BARGAINING IN INDIA"

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ABSTRACT

That traditional adversarial criminal Justice system, rooted in a full trials and approved beyond a reasonable doubt, faces immense strain from a severe judicial backlogs, overcrowded prisons, and expensive litigation to address these structural failure, criminal jurisprudence has increasingly shifted towards consensual dispute resolution, positioning negotiation specifically through the doctrine of plea bargaining as a crucial tool for judicial efficiency and speedy disposal of the cases. This provides a critical analysis of the evolution, legal framework, efficacy of plea bargaining in India, tracing its transformation from early judicial hostility to statutory recoganization under the criminal law amendment act 2005 and its current position with the chapter XXIII of the Bharatya Nagrik Suraksha Sangita (BNSS) 2023 adopting a doctrinal and competitive methodology. The paper contrast, Indian, unique victim, centric, compensation, oriented model against the established prosecutorial Driven system of the United States and structured sentence discount framework of the United Kingdom and the research evaluate how the Indian system attempt to balance the administrative efficiency with the constitutional safeguard, particularly the right to affair and speedy trial under article 21 and protection against self incrimination under the article20(3) .ultimately, they study revised that while plea bargaining offers a vital pathway to de-congesting prisons and securing victim, prostitution, its practical success is heavily restricted by systemic challenges these hurdle includes a deep Society stigma attached to admitting guild, serve a lack of awareness, strict procedural windows, and the absence of the charge bargaining. the paper conclude with the

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actionable reforms such as a introducing Court, annexed pre-trial negotiation mechanism and establishing informal pre-application session to ensure negotiation service as a genuine instrument of restorative justice rather than a mere procedural shortcut.

Introduction

The traditional model of criminal justice is founded upon in the principle of "Nullum crimen, nulla poena lege" which reflects no crime, no punishment without law. The system is primarily based on adversarial trail procedures, where the state must prove guilt beyond a reasonable doubt. However, the reality of contemporary criminal legal system characterized by the excessive judicial backlog, over crowd prison, prolonged trails and the high cost of litigation has necessitated to a shift toward consensual disputes resolution. In the negotiation has emerged with pivotal, albeit controversial mechanism within criminal jurisprudence this primarily manifest the doctrine of plea bargaining with a need of judicial efficiency and expeditious disposal of criminal cases.

It refers to a process through which the party negotiates with an objective of reaching a consensus within criminal law this concept operates in a structured manner primarily through mechanisms such as a play compounding offence and informal settlement with a legally permissible unlike civil disputes, criminal matter involves the state as a party and representing the social interest, therefore, the application of a negotiation in Criminal justice rise important questions regarding the fairness voluntariness and the protection of a victim right. However, negotiation in a criminal law represents a departure from them. All nothing approach of a full trial. It involves a procedure where the accused and the prosecution reads mutually satisfactory disposition of a case subject to judicial approval. This negotiation usually focuses on to primary dimensions such as charge bargaining, sentence bargaining and fact bargaining.

Origin of Plea Bargaining

Plea bargaining is a concept that originated can be traced from the United States and it was developed over the time and become a prestigious feature of the American criminal Justice system becoming as a practical mechanism to reduce the burden caused by the increasing number of criminal cases on the courts. Plea bargaining is the pre-trial negotiation and discussion held between the defendant and the prosecution before the framing of charge during which accused pleads guilty in exchange of certain concession by the prosecutors. This usually

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involves negotiation to reduce either the sentence or the seriousness of a charge imposed on accused. In the US more than 80% of the criminal cases end in guilty pleas, almost arising out from the plea bargaining.[1]

In the federal courts, if the defendants who plead guilty qualify for a some percentage of reduction in a duration of their sentence depending upon case to case and the constitutional validity of pre-bargaining was considered by the US court in a landmark decisions in Brady v. United States[2] where the court of held the constitutional validity of plea bargaining and continued to uphold the validity of bargaining in various subsequent cases.

Review literature

The literature on plea bargaining in India reflects a gradual shift from the traditional trial-based criminal justice system toward a more efficient and negotiated model of dispute resolution. Earlier judicial opinions in India were strongly against plea bargaining. The Law Commission of India particularly in its 142nd and 154th Reports, recommended the introduction of plea bargaining to ensure speedy justice and reduce the burden on courts[3]. These recommendations resulted in the Criminal Law (Amendment) Act, 2005, which inserted Chapter XXI-A in the Code of Criminal Procedure, 1973 now Bharatiya Nagarik Suraksha Sanhita, 2023, has continued these provisions with procedural modifications In Murlidhar Meghraj Loya v. State of Maharashtra and Kasambhai v. State of Gujarat the courts viewed it as contrary to public policy and fairness. However, increasing judicial backlog, delay in trials, and overcrowded prisons led to reconsideration of this approach and State of Uttar Pradesh v. Chandrika, supreme court have examined to understand the judicial attitude towards the plea bargaining[4]. Comparative literature shows that the United States widely uses plea bargaining, while the United Kingdom follows a sentence-discount model for early plead guilty[5]. Indian scholars emphasize a victim-centric and compensation-oriented system with stronger judicial supervision. Existing studies also highlight challenges such as lack of awareness, social stigma, limited scope, procedural complexity, and concerns regarding voluntariness. Therefore, the literature suggests that while plea bargaining is a useful reform and its true success depends on balancing efficiency with fairness and constitutional safeguards.

[1] Gale Encyclopedia of US History
[2] Brady v. United States 1970, US,397 742
[3] Law commission report 142nd report(1991)and 154th report(1996)
[4] State of Uttar Pradesh v.Chandrika,AIR 2000 SC 164
[5] S.Thaman,Plea Bargaining, Negotiation Justice and Judicial Efficiency, Law Review Article

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Research Objectives

1. To examine the current role of negotiation within the Indian criminal justice system.
2. To determine the effectiveness of negotiation in a plea bargaining after (criminal law) amendment act 2005.
3. To identify the limitation and challenges in bargaining process within the criminal system.
4. To provide the reforms or improvement to the negotiation and bargaining process in a criminal justice.

Research questions

1. What is the role of negotiation in a Plea bargaining in India legal system?
2. How effective is the scope of plea bargaining in achieving fair outcome in criminal system after Criminal law amendment act 2005?
3. How the Indian courts have interpreted and implemented the Plea bargaining?
4. What are the challenges and issues of plea bargaining?

Hypothesis

Plea bargaining as a negotiation mechanism has played a significant role in the Indian criminal justice system by promoting speedy disposal of cases, reducing judicial backlog, and encouraging mutually satisfactory settlements between the accused and victim. Introduced through the criminal law (Amendment) Act, 2005, it has improved efficiency in minor offences. However, it effectiveness remains restricted due to lack of awareness, social stigma, procedural complexities, limited scope and concerns regarding voluntariness and fairness.

Research Methodology

The research methodology use study of doctrinal, it emphasis of which is placed on systematic study and analyze of legal provisions statute provision laws research based on doctrinal inquiry which is also known as the black letter law research focus mostly on analyzing existing legal framework and understanding of how these apply in a greater legal context they presented study employs this approach to critically examine the efficacy of the roll of negotiation in criminal justice system plea bargaining this paper aims at the comparing and contrast the Indian legal principle as well as foreign countries negotiation in a plea bargaining this research mainly using a secondary source such as statutory measures, court cases, expert

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publications.

The research involves a comprehensive analyses of statutory provision relating to the plea bargaining procedure,1973 as well as the corresponding provision, under the bharatiya nagarik suraksha, sanhita 2023[6], particular emphasis is placed on understanding the legislative intent behind the introduction plea bargaining through the criminal law (amendment) act 2005 and evaluating the charge brought by a new legal framework. The methodology adopt research design to provide a comprehensive critical structured analysis of plea bargaining and negotiation in criminal justice by combining doctrinal study, comparative analysis and critical evolution. The research seeks to contribute meaningfully to the understanding and development of this evolving area of law.

The concept of plea bargaining

Kadish[7], explain plea bargaining, as the exchange of an actual or apparent concession for a plea of guilt. The plea may be express or implied. Express bargaining means when a defendant or his representative negotiates directly with a prosecutor and a judge etc, impliciting by contract, occur without face to face negotiation. The plea bargaining is a negotiation agreement between the prosecution and the defendant sometime, Judges can also participate in a process of a negotiation unless law debar him it is a process where the defendant agrees to plead guilty to a specific charge in returns of concession from the prosecutor. Plea bargaining functions as a vital and safety valve allowing the criminal justice system to manage the overwhelming case loads, while provide a degree of certainty for both the state and the accused, it represents a shift, the purely adversarial battle of the trial to a more pragmatic consensual based model of dispute resolution.

The pillars of the plea bargaining.

1. Charge bargaining; this is the most common form it involves the defendant guilty to a less serious charge than one originally filed e.g. leading guilty to a manslaughter instead of murder this reduce the potential, long term stigma, and maximum possible sentence.
2. Sentence bargaining; here the defendants guilty to the original charge but in exchange of a specific, lighter sentence this provide the defendant with a guaranteed outcome

[6] Bharatiya Nagarik Suraksha Sanhita,2023,sections 290 to299
[7] S.H.Kadish, Encyclopaedia of Crime and Justic,vol.2(Free Press,New York1933)at p.829

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and removing the unpredictability of a judge's sentencing direction.

3. Fact bargaining; the least common form where the party agrees to still to a certain factor that the court will consider during the sentencing. This is often used to prevent the application agreeing factors that would legally mandate a harder penalty.

The Constitution of India reflects the foundational principle governing the administration of justice. Along this article 21[8], which guarantees no person shall be deprived of his life or personal liberty accepts according to procedure established by law. The right to life and personal liberty has been judicially interpreted to include the right to a fair trial just and reasonable procedure, therefore be examined within the framework of article 21 ensure that it does not result in coercion or voluntary admission of guilt, the supreme court has consistently held that any procedure, which deprived a person of liberty must meet the standard of fairness and reasonableness and constitutionally valid only when it is entered into a voluntary with full knowledge of its consequences and under judicial supervision and another important constitutional provision reflect to the plea bargaining is in article 20(3) which protects an accused from self incrimination. The essence of plea bargaining involves an admission of a guilt, which rises concern regarding the weather. Such admission may violate the protection against compelled self incrimination. However, the legal position clarifies that if the plea is made voluntarily and without any form of coercion, it does not infringe 20(3) the safeguard lies in ensuring that the accused is not focused, forced induced or mislead into entering a bargaining process.

Legal framework of plea bargaining in India

In India the legal framework governing plea bargaining reflects a careful attempt to balance efficiency in criminal proceeding. With the need of preserve fairness, voluntariness and the rule of law, the statutory recognition of plea bargaining in India came with the enactment of criminal law(Amendment)act 2005, which introduced chapter XXI-A into the code of criminal procedure, 1973.

Pre amendment position before the 2005 amendment, plea bargaining was not recognized in Indian criminal law the judiciary was consistently hostile to the concept viewing it as a compromised on the "majesty of the law".

[8] Constitution of India, P.28

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In the case of murali dhar meghraj loya v. state of Maharashtra (1976) and kasam bhai v. state of Gujarat (1980), the supreme court held that plea bargaining was against public policy and could lead to the corruption and collusion and court also emphasized that justice should not be subject to negotiation and the guilt or innocence of an accused must be determined a full fledged trial. However, the realities of Indian criminal justice system, particularly the massive backlog of the cases and delays in trial proceeding necessitated a reconsideration of this rigid approach. Law commissions of India and malimath committee on criminal justice reforms strongly recommend the introduction of plea bargaining as a mechanism to ensure speedy disposal of cases and to reduce the burden on courts. Acting on these recommendations the legislature incorporated a structure system of plea bargaining into criminal procedure code, thereby marking a paradigm shift in the administration of criminal justice.

Post- amendment position(crpc 1973) under the chapter XXI-A of the crpc[9] comprising section265A to 265L, plea bargaining is permitted in a limited category of cases. It applies only to those offences which are punishment imprisonment of up to 7 years and exclude offences punishment with death life imprisonment, or those offences which affect the socio economic condition of the country. Additionally offenses against women and children are specifically excluded reflecting the legislature intent to prevent misuse in sensitive cases. The process is initiated by the accused through an application file before the court accompanied by an affidavit, stating that the request is voluntarily and not the result of coercion and undue influence. The court conduct in-camera examination to ensure voluntariness.

The new law BNSS 2023(chapter XXIII) the bharatiya nagarik suraksha sanhita, which replaces the crpc has retained plea bargaining (Section 289 to 300)[10] but introduce critical updates to increase.

Comparison between India vs. U.S vs. U.K

In US, the process of trial begins at the stage when the accused is required to enter a plea. It's an arrangement held in open court room and generally initiate with a formal reading of a indictment or a charge and the accused is advise to his constitutional guaranteed right against self-incrimination and the right of the council and protection, the accused may guilty of the crime or the lesser offence, the plea of guilty to a lesser offence of a result form plea bargaining

[9] Code of Criminal Procedure, 1973,p.122
[10] Bhartya Nagarik surakshaSinhta, 2023, p.136.

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on advice of his defense council where the council for the accused feels that the charge against him are so strong which is unlikely that he will be found innocent by going through a trial he may bargain or negotiate plea with the prosecutor to accept guilt-plea for a large end the save the time and the expense of the prolonged trial. The prosecutors generally accept the plea for reduced charged. It may be stated that more than 80% cases are disposed in U.S in this manner. Once the plea bargaining agreement has been reached the prosecutor and to the defense council and they accused will appear before the court and request him to accept plea of the guilty to the lesser charges.

It may further be pointed out that in U.S. the plea of "NOLO CONTENDERE" is also available which means 'no contest' it is not an animation of guilt but rather unwillingness to accept declaration of guilt instead of going to trial under this plea the accused makes formal declaration that he is not going to contest with prosecuting agency the charge against him and this is why David Gordon, has stated the Latin word NOLO which means "I do not wish to contend" it is treated as an expression of implied confession or a quasi confession of a guilt. The plea is used by an accused person to avoid trial and expenses and it is the discretionary part of the court to grant or reject the plea.

In the United Kingdom, follows a more structured and restrained approach while it does not formally recognize plea bargaining. In the same manner as the United States, it provides for a system of sentence reduction in cases where the accused pleads guilty at an early stage. This "guilty plea discount" mechanism incentivizes early admission of guilt while maintaining judicial control over sentencing. In the U K model, strike a balance between efficiency and the fairness, avoiding the extensive prosecutorial discretion seen in the US system. Unlike the U.S. they judge remains this central authority in sentencing bargaining on the charge itself is more strictly regulated. UK, focus on the "credit for a guilty plea" where the sentencing council provides a strict guideline. An early guilty p l e a typically result in a one-third reduction in sentence.

Whereas India follows the compensatory victim centric procedure unlike U.S. and U.K. the victim in India has a statutory right to participate in mutually satisfactory disposition process and must agree to the compensation. The scope is very limited to the minor offense seven years in U.S, even capital cases.

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Challenges to Negotiation in plea bargaining

1. Apprehension of conviction, In India is significant challenges with plea Bargaining is a societal stigma attached to it when an accused opt for plea bargaining, it's often perceived as a conviction in the eyes of society its almost treated as conviction Judgment of conviction unlike in a U.S. where the process is more discreet. This fear of being labeled a criminal can pressure the accused hesitant and avoid bargaining. Instead of he face a prolong trial and try to look for another option appeal, revision, special leave petition etc.
2. The structural procedural effect while the law provides a framework with the machinery is often grind to helt during execution. The thirty days time in BNSS the new bharatiya nagarik suraksha sanhita mandates filing for a plea bargain within thirty days of charge framing. While intended to speed up trial this is a very tight window for the defence to review, evidence, and consult with the accused and negotiate with the prosecutor.
3. The MSD (Mutually Satisfactory This Position), the law requires the victim, accused and the prosecutor to agree on a disposition. In practice, the victims often use this as a leverage point to demand high compensation that the accused cannot afford, leading to breakdown of negotiation.
4. Victim's card, India's model is unique because it is a victim centric. While ethically sounds, it presents practical hurdle Vengeance v. Justice if a victim is driven by a desire for a retribution rather than compensation, they can effectively block a bargaining. This victim power can we keep a case in a system for a decade even when the accused is willing to admit guilt. The notification gab where the prosecutor often struggles to ensure the presence of victim's during process especially in case involving migrates worker or transition population, leading to repeated adjournment.
5. Lack of awareness, a large number of individual involved in criminal proceeding in India are not fully aware of their legal right. Or the implication of a bargaining, they may not understand the long term consequence of admitting guilt including the impact on their criminal record, employment prospects and social standing even when legal aid is provided the quality of assistance may vary and accused not receive guidance to make an informed decision. This lack of informed consent determine the legitimacy of apply bargaining process.
6. The absence of charge bargaining in India is another limitation the Indian system primarily permits only sentence bargaining which reduce the flexibility of negotiation. This restrict the ability of the party is to arrive at creative and mutually beneficial

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solution. While this limitation is intended to prevent misuse and maintain the integrity of criminal justice system it also reduces the attractiveness and utility of learning as dispute resolution mechanism.

Suggestions

1. The "Pre-Application" Negotiation (the informal (MSD don't let first mutually satisfactory disposition. Be the first time the party should take for the two-three sessions and party engaged with public prosecutor and the victim council before filing the formal application under section 290 of the bnss because if the victim is hostile or demand for more compensation in open court the judge is likely to reject the plea. If the party have an informal principle agreement on the compensation amount, the formal court process become a smooth validation rather than it argument.
2. Compensation is the golden key in Indian, judges are often more concern about the victim being made whole then the accused being punished in a practical sense. The structured the plea around section 357 of this crpc (section395of bnss) principles if they accused can offer immediate up front compensation to the victim in the court is significantly more likely to grant one-fourth or one-sixth sentence reduction in the present court the compensation heeling touch rather than imposing fine.
3. Social stigma attached to acceptance of guilt, as it address treated almost like a conviction to address this, the court and law maker should develop a distinction between negotiated settlement and a full trial conviction. Although Indian law does not yet clearly recognize this distinction, the concern for fairness and dignity of accused has been emphasized by supreme court in Maneka Gandhi versus Union of India[11] where it was held that any procedure affecting the personal liberty must be just fair and reasonable applying this principle, bargaining outcomes should be structured in a way that minimize unnecessary reputational harm.
4. Voluntariness of plea bargaining, The court must adopt stricter more than structured method to verify that they accused is not under pressure. The importance of voluntariness has to be highlighted in state of Uttar Pradesh versus Chandrika[12] in this case the Supreme Court clearly observed that the bargaining should not be encouraged. If it appears to be result of inducement therefore, introducing a standard judicial

[11] Maneka Gandhi versus Union of India, AIR1978, SC, SCC248, P.56-60
[12] State of Uttar Pradesh versus ChandrikaAIR2000SC, 164, P.167-168

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question. During camera proceeding can ensure the accused fully understand the consequence of the plea

5. Constitutional recognisation of plea bargaining, is significant reform in the Indian criminal justice system. Would be constitutional recognisation of plea bargaining throw a specific provision or article. At present plea bargaining exist only as a statutory mechanism. Under the procedural law, which limits its authority and consistent application guaranteeing, it constitutional status would strengthen its legitimacy such recognition would enhance its credibility, encouraging wider and more uniform use and reduce judicial backlog. Additionally it would contribute to decongestion of prisons by enabling faster case disposal. A constitutionally guided framework would also ensure fairness voluntariness and protection against misuse, thereby balancing efficiency with justice.
6. Judicial refer to a pre trial negotiation and plea bargaining, a practical reform in the criminal justice process would be to empower court to proactively refer appropriate case to structure pre trial negotiation stage including plea bargaining add the initial phase of proceeding at present plea bargaining is largely accused driven. However, a court initiated screen mechanism similar to refer to mediation in a civil matter can enhance its effective usesuch a system would serve multiple objects. First, it would promote the right to speedy trial under article 21 by reducing unnecessary prolonged proceeding or trail.

Second, it would help in reducing case backlogs and judicial burden as a significant number of minor and less serious offense could be resolved at an early stage.

Third, it would increase victim participation and compensation oriented outcomes, thereby strengthening the restorative dimension of criminal justice.

Conclusion

This study of negotiation and plea bargaining in Indian criminal justice system reveals a careful yet incomplete transition from a rigid adversarial model to a more flexible efficiency oriented framework from the crpc to bnss represents a vital movement in Indian legal history signaling an admission that traditional trial system can no longer sustain the weight of its own delay. However, the true success of plea bargaining in India cannot be measured by legislative text alone. While the U.S. and U.K. model offer blueprint for efficiency. The Indian context is uniquely burden by socio economic disparities, where the choice to lead guilty is often less about remorse this more about the exhaustion of resources.

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Plea bargaining offers multiple advantages it has the potential to ensure speedy justice, reduce litigation cost promote victim compensation and contribute to the decongestion of prison. It also introduced an element of negotiation into criminal proceeding, which can make the system more responsive and practical. From a constitution perspective it aligns with the broader interpretation of the right to life and personal liberty under article 21 particularly they write to a speedy trail. At the same time, its success depends a heavily on maintaining the delicate balance between the efficiency and fairness. The contemporary Indian legal system faces an inconsistence to the speed of western models. While attempting to preserve a restorative approach through victim participation for plea bargaining to function as a more than just a backlog clearer there must be a fundamental shift in the legal culture without widespread, judicial training and bust defence bar capable of ensuring voluntariness, the new provision of bnss risk becoming dead letters or worse tools for justice. Ultimately, the bargaining must evolve from a procedural shortcut into a genuine instrument of justice that balance. The states need for finality with the individual's right to fair trial. The real test not in the enactment of the law, people say that is that is truly satisfactory to accused.