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PLEA BARGAINING: EXECUTION PROBLEMS IN INDIA

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Abstract

Plea bargaining, a legal process where the accused agrees to plead guilty in exchange for a lesser punishment, was introduced in India to address the backlog of criminal cases and reduce strain on the judiciary. However, its implementation has faced significant challenges, including concerns over coercion, the risk of inaccurate outcomes, insufficient procedural protections, and its impact on the fairness of trials. While plea bargaining has been successful in countries like the United States, its acceptance in India has been met with skepticism due to concerns about its potential misuse and lack of awareness. Despite these challenges, the Indian judiciary has increasingly recognized the importance of plea bargaining as a tool to streamline the legal process. This paper explores the issues, benefits, and implementation challenges associated with plea bargaining in India, considering its potential to improve the criminal justice system and alleviate court congestion.

Keywords: Plea bargaining, criminal justice, India, judicial system, coercion, trial fairness, conviction, backlog

1. Introduction

The Indian Courts were reluctant to introduction of plea bargaining in Indian Criminal Justice System because they thought the concept of plea bargaining will be misused in Indian Scenario. The Courts also opined that it is most likely that an innocent person may also fall for pleading guilty as it will save money, time and harassment of prolonged course of judicial system. [1] These concerns were also discussed by the Law Commissions in their 142nd and 154th Reports and Malimath Committee also considered these shortcomings of the concept of plea bargaining. But yet they advised to introduce the concept of plea bargaining in India with the thinking that plea bargaining does not solves the entire problem but reduces its severity of penalty. The introduction of plea bargaining is a shortcut aimed at quickly reducing the number of under-trial prisoners and increasing the number of convictions, with or without justice. It is undoubtedly a disputed concept since few have welcomed it while others have abandoned it.

The consequences will be felt most obviously by the countless number of poor languishing in the country's prisons while awaiting trial. Taking in to account the advantages of plea-bargaining, the recommendations of the Law Commission Plea bargaining was clearly recognized as the need of the hour and by no stretch of imagination can the taint of legalizing a crime will attach to it. At this stage it can be safely held that 'Law is not a Panacea. It cannot solve all problems, but it can reduce the severity'. Plea bargaining in India endeavors to address the same, which despite its shortcomings can go a long way in speeding the caseload disposition and attributing efficiency and credibility to Indian Criminal Justice.

2. Legal Systems Prevalent

There are two main legal systems in the world; the Adversarial system (Common law or accusatorial system) and the Inquisitorial system (Civil Law or Continental system).

2.1 The Accusatory System and the Inquisitorial System of Trial

[1] By adding Chapter XXI-A in the Criminal Procedure Code, 1973 through the Criminal Law (Amendment) Act, 2005 with effect from 05th July, 2006.

There is a common consensus among academics that there are two main legal systems in the world; the Adversarial system (Common law or Accusatorial system) and the Inquisitorial system (Civil Law or Continental system). The adversarial system of trial is where two equal parties – the prosecution and the defence - present their cases orally in court. The adversarial system places the courts in a position where it is neutral as to the guilt of the accused, therefore, the state does not disperse justice, but rather provides a platform for justice to be carried out.[2]

Caenegem, states that in the inquisitorial trial system the priority is centered on 'outcomes', where the emphasis in the adversarial trial system is on the actual 'process'. Caenegem suggests the inquisitorial viewpoint is that the search for truth is its ultimate goal. Therefore, the inquisitorial system's perspective is that an independent officer of the state, whether they are a judge or a prosecutor, who remains impartial, is the best person to seek and find the truth.[3]

The adversarial system places the courts in a position where it is neutral; therefore, the state does not disperse justice, but rather provides a platform for justice to be carried out. In this system both legal representatives are an essential and indispensable part of the trial process. An adversarial approach to justice goes on the assumption that the truth will best be served if both parties are allowed to put their cases forward in front of a jury. The Judge in an adversarial system looks at the evidence to determine whether it has been gathered in accordance with the law, and a Judge decides that proper criminal procedure has not been followed and that evidence has been obtained illegally, through deception, then they have the power to exclude it from the trial proceedings.[4]

In the inquisitorial system, the accused has the right to silence; however, rarely are they allowed to exercise this right, as the main aim of the inquisitorial system is to find the truth through intensive investigation from all components of the criminal justice system including the accused. Therefore, the accused is expected to cooperate fully with the investigation in order for the truth to be uncovered. Unlike the adversarial system, where the judge is neutral, the judge in the inquisitorial system is the main player, who is expected to conduct the investigation alongside the prosecutor and the police and give his verdict based on all the evidence that has been collected and subsequently presented to him in a dossier at a private pre-trial. Whereas an inquisitorial judge will be fully aware of the case before the accused is brought before them, the Adversarial judge would never be allowed access to, or any previous knowledge of, the accused as it could be seen to induce bias.[5]

2.2 Role of the judge in the trial.

Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings and trials unfold in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. We have what is known as an adversarial system of justice - legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts. Many criminal cases are heard by a judge.[6]

The judge is deciding whether the evidence is credible and which witnesses are telling the truth. Then the judge applies the law to these facts to determine whether an allegation in criminal cases, has been established on a balance of probabilities or whether there is proof beyond a reasonable doubt, that the suspect is guilty. If the defendant is convicted of a crime, the judge passes sentence, imposing a penalty that can range from a

[2] H.R. Dammer & J.S. Albanese, *Comparative Criminal Justice Systems,*127 (5th ed., 2014).
[3] Ibid at 128.
[4] E. Fairchild, *Comparative Criminal Justice Systems,* 120 (1st ed., 1993).
[5] Ratanlal & Dhirajlal, *The Code of Criminal Procedure, 19 (16th ed., 2003).*
[6]Justice M. Gleeson, *The Role of a Judge in a Criminal Trial,* available at http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleesoncj/cj_6jun07.pdf, last seen on 17/03/2016.

fine to a prison term depending on the severity of the offence.[7]

2.3 The Role of the Prosecutor

The role of the Prosecutor is not to single-mindedly seek a conviction regardless of the evidence but his/her fundamental duty is to ensure that justice is delivered. The responsibilities and duties of prosecution as follows: The ideal Public Prosecutor is not concerned with securing convictions, or with satisfying departments of the State Governments with which she/he has been in contact. He must consider herself/himself as an agent of justice. The Allahabad High Court had ruled that it is the duty of the Public Prosecutor to see that justice is vindicated and that he should not obtain an unrighteous conviction. The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party, but the State.[8]

The prosecution of the accused persons has to be conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be "a seemly eagerness for, or grasping at a conviction". A Public Prosecutor should not by statement aggravate the case against the accused, or keep back a witness because her/his evidence may weaken the case for prosecution. The only aim of a Public Prosecutor should be to aid the court in discovering truth.[9]

A Public Prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side. A Public Prosecutor should place before the Court whatever evidence is in her/his possession. The duty of a public Prosecutor is not merely to secure the conviction of the accused at all costs but to place before the court whatever evidence is in the possession of the prosecution, whether it be in favour of or against the accused and to leave the court to decide upon all such evidence, whether the accused had or had not committed the offence with which he stood charged.[9]

It is as much the duty of the Prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. The duty of the Public Prosecutor is to represent the State and not the police. A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure, 1973. She/he is not a part of the investigating agency. She/he is an independent statutory authority. She/he is neither the post office of the investigating agency, nor it's forwarding agency; but is charged with a statutory duty.[10]

The purpose of a criminal trial is not to support at all cost a theory, but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the Public Prosecutor is to represent not the police, but the State and her/his duty should be discharged by her/him fairly and fearlessly and with a full sense of responsibility that attaches to her/his position. There can be no manner of doubt that Parliament intended that Public Prosecutors should be free from the control of the police department. A Public Prosecutor should discharge her/his duties fairly and fearlessly and with full sense of responsibility that attaches to her/his position.[11]

An early decision of a Full Bench of the Allahabad High Court in QueenEmpress v. Durga[12] has pinpointed the role of a Public Prosecutor as follows:

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[7] Supra 4 at 128.
[8] Batuklal, *The Code of Criminal Procedure,* 40 (2nd ed., 2008). [9] F.J. Pakes, *Comparative Criminal Justice,* 156 (1st ed., 2004).
[9] W.H. Simon, *The Organization of Prosecutorial Discretion,* 175, 180 in *Prosecutors and Democracy,* (M. Langer & D.A. Sklansky, 1st ed., 2017).
[10] Report of Council of Europe on *The Role of Public Prosecutor outside Criminal Justice System,* published in October, 2013.
[11] B.A. Grosman, *The Prosecutor: An Inquiry into the Exercise of Discretion,* 34 (1st ed., 1978).
[12] ILR 1894 Allahabad.

"It is the duty of a Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated: and, in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion, a Public Prosecutor should not refuse to call or put into the witness-box for cross- examination a truthful witness returned in the calendar as a witness for the Crown, merely because the evidence of such witness might in some respects be favorable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness-box, he is not bound, in our opinion, to call that witness or to tender him for cross- examination."

The Supreme Court of India in Shiv Kumar v. Hukam Chand and Anr[13] stated that in the backdrop of the above provisions we have to understand the purport of Section 301 of the Code. [14] Unlike its succeeding provision in the Code[15], the application of which is confined to magistrate courts, this particular section is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words any court in Section 301. In view of the provision made in the succeeding section as for magistrate courts the insistence contained in Section 301 (2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case.

The second sub-section, which is sought to be invoked by the appellant, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution under the direction of the Public Prosecutor. The only other liberty which he can possibly implement is to submit written arguments after the closure of evidence in the trail, but that too can be done only if the court permits him to do so.

The Andhra Pradesh High Court [16] had ruled that prosecution should not mean persecution and the Prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases. It further stated that the courts should be zealous to see that the prosecution of an offender should not be given to a private party. The Court also said that if there is no one to control the situation when there was a possibility of things going wrong, it would amount to a legalised manner of causing vengeance. A Public Prosecutor cannot appear on behalf of the accused .It is inconsistent with the ethics of legal profession and fair play in the administration of justice for the Public Prosecutor to appear on behalf of the accused. No fair trial when the Prosecutor acts in a manner as if he was defending the accused, it is the Public Prosecutors duty to present the truth before the court.

A fair trial means a trail before an fair Judge, a impartial prosecutor and atmosphere of judicial claim. The Prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system. The statutory responsibility for deciding upon withdrawal squarely vests unwavering with the Public Prosecutor and should be guided by the Criminal Procedure Code. The statutory responsibility for deciding upon withdrawal squarely vests on the Public Prosecutor and is entirely within the discretion of the Public Prosecutor. It is non- negotiable and cannot be bartered away in favour of those who may be above her/him on the administrative side.[17]

The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide herself/himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with her/him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. The sole consideration for the Public Prosecutor when she/he decides a withdrawal from a prosecution is the larger factor of administration of justice, not political favours nor party pressures nor like

[13] Decided by Supreme Court of India on 30th August, 1999, available at http://www.sci.gov.in/jonew/judis/16705.pdf, last seen on 14/08/2016.
[14] The Criminal Procedure Code, 1973.
[15] Ibid.
[16] V. Ramchandra v. M.C. Jagadhodhara Gupta, 1986, Cr.L.J. 1820.
[17] *R.V. Kelkar's Lectures on Criminal Procedure,* 11 (K.N. Chandrasekharan Pillai, 4th ed., 2007). [19] S.P. Tyagi, *Session Trial Practice and Procedure,* 136 (1st ed., 1989).

concerns.[19]

2.4 Role of the Defense Attorney in the Trial

In a democratic society even the rights of the accused are sacrosanct, though accused of an offence, he does not become a non- person. Rights of the accused include the rights of the accused at the time of arrest, at the time of search and seizure, during the process of trial and the like. The Malimath Committee on the right of the accused was of the opinion that "the right of the accused include the obligation on the part of the state to follow the due processes of law, a quick and fair trail, restraint from torture and forced testimony, access to legal aid etc".[18]

Whereas, Right to be defended as per Section 303 of Cr. P.C. and Article 22(1) of the constitution of India provides a right to all the accused persons, to be defended by a pleader of his choice. Though it is not a right available to all the accused but to certain category of accused Legal aid at State expense in certain cases is provided. So where, in a trial before the Court of Session, the accused is not represented by a pleader, and the court believes that he does not have sufficient means to engage a pleader, it shall assign a pleader for his defence at the expense of the State, under section 304 of Cr. P. C.[19]

The element of Natural Justice i.e. both sides shall be heard, or *audi alteram partem* and the right of the accused to cross-examine the witnesses and his right to legal representation are comparable. Another significant right would be the 'Rule against bias', a person cannot be a judge in his own cause. This is an elementary Natural Justice principle which is also the right of the accused in the present day's criminal justice system. Therefore it is the duty of the defence attorney to defend his client without any prejudice. It is his moral as well as legal duty.[20]

3. Incorporation of Concept of Plea Bargaining

The concept of plea bargaining was introduced in Criminal justice System to reduce the backlog cases and excess load on the Indian Courts. The fast trial is fundamental right[21] as declared by the Supreme Court of India but this right is violated by the judiciary itself as the statistics shows that there is huge number of backlog cases and many under-trials have spent more time in jails than the maximum amount of punishment which could have inflicted to them on proving the guilt. Thus the concept of plea bargaining was introduce to solve this problem.

The concept of plea bargaining in United States of America is huge success as the 90% cases are solved by way of plea bargaining. This concept also gives the high rate of conviction which is essential for the criminal justice system and which is also very low in India. In United States of America, there was concern about the dispose of the cases by way of plea bargaining but the Supreme Court of the United States of America has upheld the constitutionality of Plea Bargaining in various cases[22].

The main concerns which were troubling introduction of the concept of plea bargaining:

(1) **The Risk of Coercion**

It has been written a lot of about the concern that excessive pleas may coerce defendants to plead guilty and

[18] N. Ravi, *Restorative Justice in the Indian Context: Some Views and Thoughts on the Framework and Process,* 89, 90 in *Restorative Justice in India: Traditional Practice and Contemporary Applications* (R. Thilagaraj & L. Jianhong, 1st ed.).
[19] A.C. Ganguly & M.R. Mallick, *Ganguly's Criminal Court: Practice & Procedure,* 122 (1st ed., 2008).
[20] Supra 8 at 56.
[21] Hussainara Khatoon & Ors v. Home Secretary, State of Bihar, 1979 AIR 1369.
[22] See, Alabama v. Smith, 490 U.S. 794 (1989); United States v. Goodwin, 457 U.S. 368 (1982); Santobello v. New York, 404 U.S. 257 (1971); Brady v. United States, 397 U.S. 742 (1970).

it may unduly penalize those who choose against the plea of guilty. This becomes risk particularly serious when exorbitant discounts are combined with harsh sentences provided in the Law. Together, these two characteristics may induce even defendants, who may be innocent and may be acquitted at end of the trial, to accept a plea bargain. The Empirical studies suggest that innocent defendants are most likely to take the guilty plea in the following four situations:

(i) when there is a significant difference between the negotiated sentence and the sentence provided in the Statue on conviction;

(ii) when on the plea of guilty probation is offered and in normal trial the expected sentence may entail imprisonment;

(iii) when as the result of plea of guilty, the punishment is impris onmentnwhile after the trial on conviction, the punishment m ay be capital; and

(iv) when the accused is detained for a period which may result in release on plea of guilty as the term of punishment is equivalent or more to the time served by the accused.

(2) The Risk of Inaccuracy

Other than coercive plea benefits, there are numerous other plea- bargaining features which increase the risk of wrong and unjust outcomes:

(i) For defense of the accused, there is only limited time and resources to collect evidences for their defense;

(ii) The prosecution and defense face principal-agent troubles on every front; and

(iii) The scope of judicial review is not present as compared to the established judicial process.

The above mentioned flaws enhance the chances of accepting the plea of guilty which may result in grave injustice as it may be possible the accused who is accepting the plea is innocent and still face the punishment. It is going to challenge the entire Adversial Criminal Justice System and its motive to protect every innocent person.

As compared to usual process of a trial, plea bargains often fail to fully reflect the facts of the case. As a result of negotiation between the prosecutor and defense, charges which are going to be imposed on the accused may be less serious, or may be quite different from the actual act of the defendant. The information about the plea of bargaining is very less in general people. This lack of publicity and lack of judicial checks may result in injustice to accused. For example, the relationship, age, gender, race, wealth etc. may affect the quantum of punishment for the accused, it may be harsher or lesser than the deserved punishment. Then again, an accused may get a sentence that is undeservedly gentle if the prosecutor has relation with the accused or has an interest due to race caste etc. or is in pressure to dispose off the case. In the absence of review by the Court, it is possible that an accused may get away with a mild punishment or a harsher punishment if the accused is unaware of the process of the plea bargaining.

(3) Insufficient Procedural Protections

In addition to above shortcomings of plea bargaining is its opaqueness. The negotiation between the parties are disposed off in private i.e. there is no participation of a neutral party or even the victim of the offence is also not consulted or no inputs are taken from them as the negotiation is basically between the prosecution and defense. The proceedings of or how the parties came to finalize the plea bargains mostly are not written or recorded in any fashion. Thus, there is no proper record of proceedings which effects the transparency of

the proceedings and also there will be no accountability for any defects in the process or the outcome of the plea bargaining. This also defiles the process of plea bargaining in eyes of the victim and general public. The rate of disapproval of plea bargaining in general public is very high when it comes to the secrecy of the process. The empirical research, in which analysis is based on data, is not possible into plea bargaining as there is no clear record available.

4. Plea Bargaining: Challenges for Implementation

Now-a-days people are unhappy with the judiciary due to delay in justice; low rate of conviction; overcrowded jails and huge pendency are the main reasons of it. To solve this huge problem a tested concept of United States of America was adopted by the Indian Legislation; the concept of plea bargaining. There were huge debates on this point before it was inserted in the Code[23] till 2005, it was not accepted by the Indian Judiciary.

Every time it was opposed by court of law by saying that it is not recognized as it came recently and because there are cases, in which it was not applied properly. The initiation of plea bargaining has to be by accused which is different from US law. Our law provides for number of negotiations between the accused and the prosecutor or with the court itself which is a major difference from US. Unlike in US, where plea bargaining is for all sort of offences but in India, it is not for socio economic offences or the offences but in India, it is not for socio economic offences or the offences against women and children.

The court has to take great care at the time of application of plea bargaining. Since the incorporation of the concept of plea bargaining slight benefits have been seen in this context but it is not frequently used as it is used in the United States of America.

The salient features of plea bargaining are:

- Plea Bargaining is applicable only for those offences in which maximum punishment is upto 7 years.
- Where the nature of offence is such that it affects the socio- economic condition of the nation or the offence have been committed against a woman or a child below the age of 14 years.
- The application should be filed by the accused voluntarily.
- An accused must file an application for plea bargaining in the court in which such offence is pending for trial.
- Both the prosecution and accused are given time to negotiate a mutual satisfactory disposition of the case which may include compensation to the victim, expenses made by the victim and other legal expenses incurred during pendency of the case to be paid by the accused.
- After the negotiation when both the parties decide a disposition then the Court shall dispose off the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offence.
- The admissions or confessions made by an accused in an application for obtaining plea bargaining shall not be used for any other purposes.
- In the case of plea bargaining, the judgment delivered by the Court shall be final and no appeal shall lie in any court against such judgment.
- Three essentials work at the time of filing an application of plea bargaining:
    - Accused's voluntariness to plead guilty.
    - The statements or facts stated by an accused in the application for plea bargaining should not be used for any other purpose except plea bargaining.
    - It is a agreement between the prosecution and the defendant regarding the disposition of criminal charge However, it is not enforceable until a judge approves it.

There are so many challenges which the concept of plea bargaining has to face in Indian scenario. First challenge is illiteracy rate of Indian population which makes difficult to make aware of them about the concept

[23] The Criminal Procedure Code, 1973.

of plea bargaining. From last ten years, very few cases are disposed off through plea bargaining. If anybody talking about plea bargaining either people quizzically asking that 'what is plea bargaining?' or either stare in wonder. If any advocate suggests accuse to follow the provision of plea bargaining, he directly refuses because at any cost he wants acquittal. The major criticisms made of the concept of plea bargaining are that there is a threat to unfair trail, it is against sentencing policy, if the guilty plea application is rejected then accused would face great hardship to prove himself innocent.

In India, even after almost 13 years of implementation, the system of plea bargaining is, it seems and is, still in its experiment and developmental stage. Being hailed as a milestone/panacea for the over burdened criminal justice system in India, it failed to take off and deliver the desired results. The reason why plea bargaining is not successful in India is the stigma attached to plea bargaining. In US, the first time offender opting for plea bargaining, his name is not included in the criminal records and s treated not as convict, thereby being eligible for a job, either in government or otherwise. 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.

Whereas in India, an accused 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 any kind of job, be it governmental or nongovernmental. Despite the fact that he had undergone punishment, he will carry the stigma of being a convict for life and in today's scenario, where every company goes for a background check before employing a person.

In such a scenario, given a choice, the accused 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 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, that does not disqualify him from seeking a government job as he is "presumed innocent till proven guilty.[24]

In USA, considered to be most successful model for plea bargaining, 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 at least in India scenario.

The most vital challenge of plea bargaining is that plea bargaining can pressurize the innocent defendants into pleading guilty. The prosecutor has limitless discretion to pick and choose which charges have to be framed against the accused and ability to create significant sentencing differentials between similar accused can lead to the practice of overcharging and the use of threats to seek the harshest sentence to keep the accused from going to trial. The accused who are innocent may not be willing to risk going to trial to receive an exceedingly severe sentence, and instead, will choose to plead guilty to ensure a more lenient or lesser sentence.

Some of the Critics also argue that plea bargaining "undermines the integrity of the criminal justice system." They contend that plea bargaining permits the government to steer clear of the "rigorous requirements of due system and proof imposed for the duration of trials." instead of establishing a defendant's guilt and sentence although an impartial technique with a complete investigation and an opportunity for the defense to offer its case, prosecutors take on the role of judge and jury, making all determinations primarily based on the possibility of whether or not they will win or lose at trial. The quit result is a selection that has little to do with the primary targets of the criminal justice device.

[24] 2003 VAD Delhi 380.

Another criticism of plea bargaining is that it allows defendants to escape full punishment by providing them with more lenient sentences. This sends a message to other offenders that justice can be bought and sold and that they can easily "beat the system," leading critics to believe that plea bargaining can weaken the deterrent effect of punishment.

Critics further contend that the lenient sentences given to those defendants who plea bargain, and the harsh sentences doled out to similar defendants who refuse and are convicted at trial, lead to large sentencing disparities among those convicted for similar offenses, which "undermine the entire criminal system.

In India, the procedure to accept the application of plea bargaining is different from the USA in the aspect that in India judge is actively involved in the procedure of plea bargaining. As the accused's voluntariness is essential requirement to accept the application of plea bargaining. Unless the court is satisfied that the application of the plea of guilty is made voluntarily the court will not accept the plea bargaining of the accused. In the case of S.K. Malhotra, S/O Shri S.L. Malhotra v. Engineering Projects (India)[26], the Delhi High Court pronounced that:

".....Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver. We think that the same standard must be applied to determining whether a guilty plea is voluntarily made. For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality. The question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards."

With the change of the time the Indian Judiciary has also changed its opinion regarding the concept of plea bargaining. They are favoring the concept of plea bargaining and in favor of it they say that the plea bargaining is the need of the hour for solving the problem of overburdened Courts. Hon'ble Mr. Justice A.K. Patnaik[25] explaining the importance of the concept of plea bargaining said[26]:

"The truth is that most of the petty offences are in fact committed by the accused on account of socio-economic and emotional factors, but the accused does not plead guilty and chooses to be tried. Our criminal justice system is unnecessarily put to lot of strain. If an accused has really committed the offence and voluntarily admits the commission of the offence and prays that he should be let off with a lesser punishment, the court should readily dispose of the matter following the provisions of Plea-Bargaining in the Cr.P.C. This is the only way we can make our criminal justice system more humane and truthful.

Plea-Bargaining has succeeded in America where 75% of the criminal cases are disposed of on the basis of Plea-Bargaining. I do not see any reason as to why it cannot succeed in India. I think we have not given the provisions relating to Plea-Bargaining in the Criminal Procedure Code a chance. It is time that Judicial Academies in different States emphasise on the need to implement the provisions of Plea- Bargaining in the Criminal Procedure Code through our Judicial Officers of various subordinate courts."

Thus, we could say that inspite the flaws in the concept of plea bargaining the Indian Judicial System wants to adopt the concept in its entirety. The Legislators have taken precautions in incorporation of concept of plea bargaining as they have changed the concept of USA according to the needs of the Indian society. Due to this reason the judiciary is also very conscious about the enforcement of the provisions of the Chapter XXI-A of the Code[27]. If the courts and defense lawyers are willful then the concept of plea bargaining can succeed.

5. Conclusion

[25] Judge, Supreme Court of India.
[26] A statement made in National Conference in Odisha Judicial Academy.
[27] The Criminal Procedure Code, 1973.

The introduction of plea bargaining in India presents both potential benefits and significant challenges. While it offers a promising solution to the overburdened judicial system and can expedite case resolution, concerns regarding coercion, the risk of wrongful convictions, and the fairness of the process remain. In the Indian context, the stigma attached to plea bargaining, lack of public awareness, and the absence of robust procedural safeguards may hinder its widespread adoption. However, with careful implementation, judicial oversight, and greater public education, plea bargaining has the potential to alleviate court congestion and enhance the efficiency of the criminal justice system, benefiting both the accused and the legal framework.

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