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Plea Bargaining: Indian Law Overview

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ABSTRACT

This article tries to explore the genesis and notion of plea bargaining and present state of remedy in India post the Criminal Law Amendment Act, 2005. Further it brings in suggestions for a better implementation of the Amendment. The article also throws light on how the Indian Judiciary has implemented the concept of plea bargaining. The article concludes that the amendment has been implemented in an extremely conscious manner and it is time to explore the wide impossibilities that plea bargaining has to offer.

Plea Bargaining is introduced with the objective of lighten the courts of the burden of pendency of cases and speedier disposal of cases. As we all know, our judicial system is very powerful system around the world but having serious problem of judicial backlog and pendency of cases. Conviction rate is also very low. This paper analyse the process of Legislature to incorporate this concept on recommendations of Law Commission of India. Author tries to analyse the views of Supreme Court on plea bargaining with the help of cases. He also tries to trace the history of the concept of plea bargaining. Efforts have been made to lay down the procedure of plea bargaining in our criminal justice system. Further this paper talks about the defendant's as well as prosecutor's or Judge's incentives for accepting Plea Bargaining and also find out the drawbacks of this concept. Finally author concludes by saying that there is need of strong mechanism or safeguards to make this concept more effective or to overcome the criticisms and to fulfill its desired objectives.

I. INTRODUCTION

The primary function of law is to maintain law order,ensurethat justice prevails and protect the right of every citizen. In a democratic country like India, judiciary places a vital role in establishing the state of Justice. Indian Criminal Justice System has been seen to be ineffective in providing speedy and economical justice because Courts are flooded with excessive arrears, the trial life span is exceedingly long and the expenditure is also very high. We all know that Justice delayed is Justice denied, so it's a matter of concern as how actually how many people do not get Justice in due time. It is rightly said *"If there is one sector which*

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has kept away from the reforms process it is the administration of justice".[3] The problem of backlog of cases has been haunting the Indian Courts for a long time.

The Indian concept of Plea Bargaining is said to be inspired from the *"Doctrine of Nolo Contendere"*[4] . Plea Bargaining provides for pre - trail negotiations between the defense and the prosecution during which an accused might plead guilty in exchange for certain concessions by the prosecution[5] . The judge would decide if the plea bargaining was resorted to with malafide or bonafide intention. There are certain exceptions laid down to plea bargaining. It has been proposed that there will be no plea bargaining in three cases namely, offences against women, children below the age of 14 years and socio-economic offences *(like offences under Food Adulteration Act etc.).* There can be plea bargaining for offences where punishment prescribed is 7 years or less. The benefit of plea bargaining would, however, not be admissible to habitual offenders.

II. Practice Of Plea Bargaining: Definition and Scope of Plea Bargaining

According to by National Crime Record Bureau[6] released a statistics relating to crime in 2016 , cases in which Trials has been completed were 12.74 lakhs in which only 5.96 lakh cases ended in conviction while 6.78 lakhs cases ended in discharge or acquittal. Conviction rate is even below 50%. There are more than 3.4 crore cases pending in India's courts and according to the Ministry, the Apex court had 62,537 pending cases at the end of 2016 while in High court, pending cases went up to 40.15 lakhs at the end of 2016 which was less than the pendency in 2014 but the situation in subordinate courts, which is considered as the backbone of the country's justice system, has become worst as the pending cases went up to 2.74 crore at the end of 2016[7]. This problem of backlog of cases has been recognized by legislature and it introduced the concept of "Plea Bargaining" by way of Criminal Law (Amendment) Act, 2005 to solve the problem of backlogging of case and lower rate of convictions in Indian Court.

As the term suggests, plea bargaining means an agreement between defendant and plaintiff to

[3]ArunJaitley, the then Union Law Minister, India's Judicial Reforms, R.N. Malhotra Memorial Lecture, India International Centre, 14 February 2001.

[4] "The Defense Attorney's Role in Plea Bargaining." Yale Law Journal 84 (1975): 1179–1314

[5] ibid.

[6] National Crime Records Bureau, Crime in India 2016, Ministry of Home Affairs available at http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf, last seen on March 18, 2018

[7] PTI, "Pending cases go down in Supreme Court, High Courts; but see upward swing in lower courts", The Indian Express, October 1, 2017 available at http://indianexpress.com/article/india/pending-cases-go-down-in-supreme-court-high-courts-but-see-upward-swingin-lower-courts-4869471/, last seen on March 18, 2018

reach to a resolution about a case without ever taking to trial. It means an offender confesses his guilt in exchange of lighter punishment that would have been given to him for such offence.

Black's Law Dictionary[8] define the term "Plea Bargaining" as: *"The process whereby the accused and the prosecutor in criminal case work out a mutually satisfactory disposition of the case subject to the Court approval. It usually involves the accused pleading guilty to a lesser offence or to only one or some of the courts of a multi-count indictment in return for a lighter than that possible for the graver charge."*

III. HISTORY OF PLEA BARGAINING

Plea bargaining emerged and has gained acceptance in the legal community only in recent decades. The dominance of plea bargaining was not actually realized until the 1920s, when a number of states and cities conducted surveys of their criminal justice system. Following the 1920s, the issue of plea bargaining did not re-emerge until the 1960s. The reemergence of plea bargaining was due to the '*crime wave'* of the 1960s produced by the World War II and the increase in drug usage (especially marijuana) and other cases of victimless crime[9].

Till the midst of 20th Century, most of the courts and scholars, all over the World, tended to ignore the significance of plea bargaining, and when discussions of the practice occurred, it usually was critical[10]. Plea bargaining is common in England, Canada, and most of the other nations of the British Commonwealth including America. In some common law jurisdictions, such as England and Wales, and Australia, plea bargaining is permitted only to the extent that the prosecutors and the defense can agree that the accused will plead guilty to some charges and the prosecutor will drop the remaining charges. Thus, no bargaining occurs on the penalty and the courts take a decision independently.

The concept of plea bargaining is evolved in United States and has become a prominent feature of American criminal justice system throughout the years.

In the US criminal justice system, the accused has three options in regards of plea:

a) to hold guilty

b) to hold himself not guilty

c) nolo contendere, i.e. I do not wish to contend.

[8] Plea Bargaining, Black's Law Dictionary, 8th edition, 1190 (2004)
[9] Fred C. Zacharias, 'Justice in Plea Bargaining', 39(1998) Wm. & Mary L. Rev. 1121, 1138.
[10] S. Nicholas, 'Plea Bargaining and Its History', 79 (1979) Columbia Law Review 1–43.

In *Brady v. United States*[11] , the constitutional validity of plea bargaining was challenged and the Supreme Court upheld its constitutionality by saying that a plea of guilty is not invalid merely because entered to avoid the possibility of a death penalty. The Supreme Court also hold that award of lesser punishment in pursuant to plea bargain is not invalid.

After a year in *Santo Bello v. New York*[12] , the US Supreme Court held that plea-bargaining was necessary for the operation of justice and was to be encouraged when properly managed.

IV. LAW COMMISSION REPORT ON PLEA BARGAINING

The Law Commission of India supported the concept of plea bargaining in the 142nd, 154th and 177th reports. The 142nd report of the Law Commission of India proposed the introduction of the concept of *"concessional treatment for those who choose to plead guilty without any bargaining"*[13] under the authority of law with the objective of some remedial legislative measures to reduce delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trial prisoners in jails awaiting the commencement of trial were called for. This report dealt with various issues regarding the concept of plea bargaining. It also examined the concept of plea bargaining exercised in the US and Canada. The report also took into consideration the objections to the introduction of the concept of plea bargaining in Indian Legal System to all offences[14]. "Five reasons are advanced to support this concept:

- Most people are arrested, they say they are guilty any way so why bother with a trial?
- Why should we waste public money?
- "Plea Bargaining" is a compromise, both sides give a little and gain a little.
- Trial consumes time and cost.
- It is best for both sides to avail it since on the one hand there is always a chance that even if the defendant is guilty and the evidence is adequate there is a chance to slip up. On the other hand, the defendant saves time and money and earn a concession in the form of a less serious offence or sentence." [15]

Basically two questions arise for consideration in this report. The first question is whether the concept of plea bargaining deserves to be introduced in the Indian Criminal Jurisprudence?

[11] Brady v. United States, 397 U.S. 742 (1970)
[12] Santobello v. New York, 404 U.S. 257 (1971)
[13] 142nd Law Commission of India Report, "Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining", 1991, available at http://lawcommissionofindia.nic.in/101-169/Report142.pdf, last seen on March 21, 2018.
[14] Ibid, at Chapter VII.
[15] Ibid at Chapter III.

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The second question, if the answer to the first question is in positive, is whether the scheme should be applied to all categories of offence without any discrimination or only to specified offence?[16] Majority of judicial officers expressed their views in favor of introduction of plea bargaining and out of which majority of judicial officers were against the introduction of this concept to all categories of offence but it can be applied to less serious offence.

"Some objections raised to the introduction of the concept of plea bargaining in Indian criminal jurisprudence in the report are:

- The country's social conditions do not justify the introduction of the concept.
- Pressures from prosecuting agencies may result in convictions of the innocents.
- Plea Bargaining may increase the incidence of crime.
- Criminals may slip through impunity.
- The poor will be the ultimate victims of the concept.
- Counsel representing the accused would be unwilling to advise confession invoking scheme because due to such advice the defendant loses faith in the counsel representing him and will engage another counsel."[17]

The report proposed a "scheme to overcome the objections and apprehensions and it is basically different from the plea bargaining schemes prevailing elsewhere in five important areas, namely:

- There will be no contact between the public prosecutor and the accused for the purpose of invoking the scheme. The initiative will be solely with the accused who alone can make the application.
- The decision to accord concessional treatment will rest solely with a judicial officer functioning as a PleaJudge.
- There will be no bargaining with the judicial officers and an application once made will not be allowed to be withdrawn and the accused will not know what the judicial officers will do. He will only make a representation and plead for such concessional treatment as, according to him would be appropriate.
- The sole arbiter will be the judicial officer and, therefore, there will be no risk of underhand dealings or for coercion or improper inducement by the prosecution.
- The aggrieved party and the public prosecutor will have a right to be heard and place their points of view." [18]

[16] Ibid, at Chapter IV.
[17] Ibid at Chapter VII.

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The Law Commission recommended that the scheme may be made applicable to offences liable to be punished with imprisonment of 7 years and more after properly evaluating and accessing the results of the application of the scheme to offences liable to be punished with the imprisonment for less than 7 years. The scheme may be mad inapplicable to socio-economic offence and to offence against women and children.

The Law Commission of India in its 154th report also recommended the concept of plea bargaining in the Indian criminal justice system. The report also said that the justification of the introduction of the concept of Plea Bargaining cannot be expressed any better than 142nd report of the Law Commission of India. It is of the view that the court, after hearing the public prosecutor and the accused, may accept the application of plea bargaining and pass an order of sentence to the tune of one-half of minimum sentence provided.[19]

It also recommended that a separate chapter XXIA on Plea Bargaining be incorporated in the Code of Criminal Procedure.[20] Subsequently the Law Commission of India in its 177th report suggested that the recommendations of the 14th Law Commission contained in their 154th report on Criminal Procedure Code, Chapter 13, relating to concept of plea bargaining should be implemented at an early date. The report suggested to include any provisions of plea bargaining as per recommendations of 142nd and 154th report and other judicial decisions of the Supreme Court.

V. CATEGORIES OF PLEA BARGAINING

The categories of Plea Bargaining are as follows:

- **Charge Bargaining:** It means an agreement to plead guilty to one of several charge or less serious charge by defendant in exchange of dismissal of other or higher charge "charge bargaining" which refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea. For example, a man is charged for murder and grievous hurt, a prosecutor may accept a 'guilty' plea for grievous hurt with court's approval in return to dismiss a charge for murder.
- **Sentence Bargaining:** It means an agreement to plead guilty by defendant to a stated charge in return for lesser punishment. *"Sentence bargaining"* which refers to a promise by the prosecutor to recommend a specific sentence or to refrain from

[18] Ibid at Chapter X
[19] 154th Law Commission of India Report, "The Code of Criminal Procedure", 1973, 9.8 available at http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf, last seen on March 21, 2018.
[20] Ibid, at 9.10.

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making any sentence recommendation in exchange for a guilty plea[21]. Although charge bargaining and sentence bargaining are the most common forms of plea bargaining, they are not the only ones.

- **Fact Bargaining:** In this type of bargaining, defendant admits certain facts in exchange for an agreement not to introduce any other facts as evidence. fact bargaining, a prosecutor agrees not to contest an accused's version of the facts or agrees not to reveal aggravating factual circumstances to the court. This form of bargaining is likely to occur when proof of an aggravating circumstance would lead to a mandatory minimum sentence or to a more severe sentence under sentencing guidelines[22].
- **Express bargaining:** This bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty. Implicit bargaining, on the other hand, occurs without face-to face negotiations.
- **Implicit bargaining:** the trial judges especially, establish a pattern of treating accused who plead guilty more leniently than those who exercise the right to trial, and the accused therefore come to expect that the entry of guilty pleas will be rewarded[23].

VI. INDIAN LAW ON PLEA BARGAINING

The concept of plea bargaining was examined by the Hon'ble Supreme Court for the first time in *Murlidhar Meghraj Loya v. State of Maharashtra*[24] .In this case the Court held that the idea of plea bargaining is immoral or at best a necessary evil. The State can never compromise with the accused. It must enforce the law. Therefore, open methods of compromise are impossible. So it should not be introduced in the Indian criminal justice system. A conviction based on the plea of guilty entered by the accused as a result of plea-bargaining cannot be sustained. Such a procedure would be clearly unfair, unreasonable and unjust and would be violative of Article 21 of the Constitution[25].

In *Kachhia Patel Shantilal Koderlal v. State of Gujarat and another*[26], the Hon'ble Supreme Court again disapproved the concept of plea bargaining and held it unconstitutional.

[21] ibid.
[22] ibid.
[23] ibid.
[24] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684
[25] Kasam Bhai Abdul Rehman Bhai Sheikh v. State of Gujarat, (1980) 3 SCC 120
[26] Kachhia Patel Shantilal Koderlal v. State of Gujarat and another, (1980) Cr.L. J 553

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In *Thippaswamy v. State of Karnataka*[27], the Hon'ble Supreme Court held that to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly is violation of Article 21 of Indian Constitution. A conviction of an accused on the basis of plea bargaining is contrary to public policy and it is not permissible to dispose of the case on the basis of plea bargaining. It is further observed that by plea bargaining, court cannot dispose of criminal cases and the court has to decide it on merits. Mere admission or acceptance of the guilt must not be a ground for reduction of sentence[28].

In *Kirpal Singh v. State of Haryana,* the Hon'ble Supreme Court held that neither the Trial Court nor the High Court has the jurisdiction to bypass on the basis of a plea-bargain the minimum sentence prescribed by law[29].

But in *State of Gujarat v. Natwar Harchanji Thakor*[30], the Hon'ble Gujarat High Court recognised the concept of plea bargaining and held that the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It can thus be said that it is really a measure and redressal and it shall provide a new shape in the judicial system.

The Indian Apex Court has always maintained that this practice is unconstitutional, illegal and would tend to encourage corruption and collusion between the parties[31]

The Supreme Court has also condemned the introduction of plea bargaining in *State of Uttar Pradesh v. Chandrika*[32], The Apex Court held that, *"It is settled law that on the basis of plea bargaining court cannot dispose of the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented... 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 as he is pleading guilty the sentence be reduced."* The Supreme Court has observed that this practice intrudes society's interests by opposing pre-determined legislative fixation of minimum sentences. It has been pointed out that allowing plea bargaining in India would amount to subtly subverting the mandate of law.[33]

[27] 1976 Cr.L. J 1527
[28] State of UP v. Chandrika, (1999) 8 SCC 638
[29] Kirpal Singh v. State of Haryana (1999) 5 SCC 649.
[30] State of Gujarat v. Natwar Harchanji Thakor, (2005) Cr.L.J. 2957
[31] Madan Lal Ram Chandra Daga v. State of Maharashtra, (1968) 3 SCR 34; Harbhajan Singh v. State of Uttar Pradesh, (2002) 9 SCC 407.
[32] 2000 Cr.L.J. 384(386); AIR 2000 SC 164
[33] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684

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In *Kachhia Patel Shantilal Koderlal v. State of Gujarat*[34], the Apex Court has observed that the concept of 'plea bargaining' is polluting the pure fount of justice and is also against the public policy of India. Reliance must be placed on the court's concern of businessmen offenders being able to trade out of the situation, the bargain being a plea of guilty, coupled with the promise of no jail. However, a large number of people were in favor of the introduction of the scheme and most were in favor of introducing the concept only to specified offences.

The Gujarat High Court appreciated this procedure and observed in *State of Gujarat v Natwar Harchanji Thakor*[35] that, *"The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It can thus be said that plea bargaining is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms."*

VII. Relevant Provisions Relating to Plea Bargaining

As Per *Section 265-A*, the plea bargaining shall be available to the accused who is charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years. *Section 265 A (2) of the Code* gives power to notify the offences to the Central Government. The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offences affecting the socioeconomic condition of the country.

Section 265-B contemplates an application for plea bargaining to be filed by the accused which shall contain a brief details about the case relating to which such application is filed, including the offences to which the case relates and shall be accompanies by an affidavit sworn by the accused stating therein that he has voluntarily preferred the application, the plea bargaining the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence. The court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with

[34] AIR 1980 SC 854
[35] (2005) Cr.L.J. 2957

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the motive to satisfy itself that the accused has filed the application voluntarily.

Section 265-C prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a case instituted on a police report, the court shall issue notice to the public prosecutor concerned, investigating officer of the case, and the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue notice to the accused and the victim of the case.

Section 265-D deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same. If in a meeting under *Section 265-C*, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding office of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under *sub-section (1) of section 265-B* has been filed in such case.

Section 265-E prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under *S. 265 D*, by preparing a report signed by the presiding officer of the Court and parities in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of *S. 360 of the Code* or under the *Probation of Offenders Act, 1958* or under any other legal provisions in force, or punish the accused, passing the sentence. While punishing the accused, the Court, as its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. *Section 265-F* deals with the pronouncement of judgment in terms of mutually satisfactory disposition.

Section 265-G says that no appeal shall be against such judgment.

Section 265-H deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under *Chapter XXI-A*, shall have all the powers vested in respect of trial of offences and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.

Section 265-I specifies that *Section 428* is applicable to the sentence awarded on plea

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bargaining.

Section 265-J talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of *chapter XXI-A.*

Section 265-K specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter. *Section 265-L* makes chapter not applicable in case of any juvenile or child as defined in *Section 2(k)* of *Juvenile Justice (Care and Protection of Children) Act, 2000.*

For a valid disposal on plea bargaining it is important to follow the aforesaid procedure contemplated in *Chapter XXI-A.* Even though 'plea bargaining' is available after the introduction of the said amendment is available, in cases of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years, the chapter contemplates a mutually satisfactory disposal of the case which may also include the giving of compensation to victim and other expenses and same cannot be done without including the victim in the process of arriving at such settlement.

VIII. ADVANTAGES/PROS/JUSTIFICATION OF PLEA BARGAINING

There are many justifications to this procedure as compared to the usual system of trial. The said scheme is available only in limited cases and not in all kinds of criminal cases as already discussed earlier[36]. One of the merits of the new system is that it helps the court to manage its load of work, and hence it would result in a reduction of the backlog of cases; another is that it relieves the magistrate of the burden to prepare a detailed judgment[37]. Secondly, this system offers advantage to the Public Prosecutors by relieving them of the burden of examining fragile and feeble witnesses like children and women of the household[38]. Thirdly, there are more chances that the guilty plea will be accepted by the court, the court wouldn't be skeptic to reject the plea on menial issues and that is far more profitable for the accused. Fourthly, it is also a factor in reforming the offender by accepting the responsibility for their actions and by submitting them voluntarily before the law, without having an expensive and

[36] That "plea bargaining" may be applicable only in limited cases, it does not apply to cases where the offence committed is a socio-economic offence or where the offence is committed is committed against a woman or a child below the age of 14 years. Simply speaking it is applicable in respect of those offences for which punishment is up to a period of seven years.

[37] J.R. Singla 'Plea Bargaining- A Speedy Justice for under- trials' See accessed 10 September 2011

[38] ibid

time consuming trial[39]. Plea bargaining shall not benefit the habitual offenders, or established criminals.

(A) BENEFITS IN RESPECT OF DEFENDANT

- It gives relief to thousands of under trials who are languishing in various jails across the country.
- If minimum punishment has been provided for the offence committed by the accused, he may get half of such minimum punishment.
- If the offence is not covered under such punishment, an accused gets one-fourth of the punishment for such offence.
- Statements stated by an accused shall not be used for any other purpose except for plea bargaining.
- In plea bargaining, trial is speedy and less expensive and matter resolves quickly.
- If an accused opts for plea bargaining, then less serious or less socially stigmatizing offences appears in his records which will be very beneficial for him in future.
- An accused may be released on probation of good conduct.
- No appeal shall lie against the judgement in plea bargaining, this will save him from extended trial. Benefit in respect of Prosecutor/Judges
- Plea Bargaining help prosecutors to improve their convictions rate and also help them to testify against other accused.
- Victim gets compensation and saved from long process of judicial system.
- Victims do not have to go through long and complex judicial procedure and got saved from any kind of trauma.
- It is time and money consuming.
- It also improves the record of judges by ruling out the risk of overturn their judgements on appeal.
- Helps in reduction of the burden on Indian Judicial system.
- Plea Bargaining assures conviction even if it is for lesser charge.
- Plea Bargaining gives both prosecution and defendant some control over the result.

IX. DRAWBACKS/CONS OF PLEA BARGAINING

While we look into the merits of plea bargaining we must be neutral to accept the demerits it is vested with. Plea bargaining is nothing but a cover up of the inadequacies of the

[39] 37 ibid

Government in dealing with each and every case that comes before it[40]. It indirectly shows the incompetence of the traditional procedural laws[41]. The bargaining (or negotiation) procedure makes it vital for the prosecutor to consult the police for matters of evidence and other factors (just like the court depends upon the charge sheet filed by the police), and in a country like India, the very term police would bring with itself a lot of corruption, coercion, threats etc. to the accused or the victim[42]. And through the medium of police, all the politicians, anti-social elements, rich dominating class can gain control of the negotiations[43]. The scope of plea bargaining isn't secured in privacy, it needs to be checked and the interference of the police has to be eliminated to a reasonable extent. It is also understood that this system has wide amplitude to benefit the rich for they will be able to influence the prosecutors and the victims and the police during the bargaining procedure, and will dominate the poor who have no cognizance in our society[44]. There are other certain flaws of this concept as well. Conceptually, the plea bargaining process reduces the administration of criminal justice to a barter system, where the haggling is between legal punishment and gains to the wrongdoer[45]. Secondly, even the innocent accused would capitulate to wrong compromises and wrong convictions in order to escape from the ordeal of a prolonged and expensive trial. Thirdly, cases in which the accused might finally secure acquittal would be converted into cases of unmerited conviction[46]. Such accused can develop a scornful attitude to the justice dispensing system. Finally, plea-bargaining can be construed as violating the principles enshrined in *Article 21* of the Constitution that no person shall be deprived of his liberty except according to the procedure established by law. The main criticism in the U.S. has emanated from human rights activists on the ground that plea-bargaining impairs the human rights of the accused. Moreover, by inviting the police investigators in plea-bargaining process it would invite coercion and corruption. If the plea guilty application of the accused is rejected, then the accused will face great hardship to prove himself innocent before the same trial Court.

[40] Stephen J. Schulhofer, 'Is Plea Bargaining Inevitable?' 97(1984) Harv. L. Rev. 1037, 1107.
[41] ibid.
[42] Jeff Palmer, 'Abolishing Plea Bargaining: An End to the Same Old Song and Dance', (1999) 26 Am. J. Crim. L. 505.
[43] 42 Milton Humann, Plea Bargaining: The Experiences of Prosecutors, Judges and Defence Attorneys (Boston G.K. Hall 1977)
[44] ibid
[45] Stephanos Bibas, 'Bringing Moral Values into a flawed Plea-Bargaining System', 88 (2003) Cornell L. Rev. 1425.
[46] Herbert M. Kritzer, The Justice Broker: Lawyers and Ordinary Litigation (New York: Oxford University Press, 1990) 16

- It is unfair to the judicial system as it gives escape route to an accused from proper justice.
- Sometimes it results in conviction of apparent accused who pleads guilty in behalf of real culprit for money or any other reasons. Section 265K, Code of Criminal Procedure, 1973.
- It involves coercion by force, hard coercion (prosecution offers some incentives to defendants that they cannot refuse to sign plea bargaining application) and soft coercion (inducement on the defendant to make the choice which seems rational).
- It is unconstitutional short-cut as it may amount to waiver of the right to fair trial by the accused.
- Sometimes an accused is released on probation in serious offence.
- It may result into corruption as an accused may bribe the prosecution to get reduced term.
- Pressures to maintain good conviction rate may result into conviction of the innocents.
- Victim can be bribed to agree to settle for a lesser charge.
- Plea bargaining would encourage criminals, increase crimes and breed corruption as it condones criminal activities on payment of fine or compensation or both.
- In India where literacy is low, scheme of plea bargaining may be misused.
- Plea of guilty is a very diluted and partial admission of only some of the charges.

X. CONCLUSION

Considering the procedure overall, one can rightly contend that it is a justified system since it has a synchronized balance between the principles of justice and the law. The concept of plea bargaining is not entirely new in India. Indian has already recognized it when it got its Constitution in 1950. *Article 20(3)* of Indian constitution prohibits self-incrimination. People accuse plea bargaining of violatory of the said article on other side the Law Commission of India advocated it and recommended to add it in the *Code of Criminal Procedure*. But with the passage of time the considering the encumbrance on the courts, the Indian court has felt the need of Plea bargaining in Indian legal system. Plea Bargaining is undoubtedly; a disputed concept few people have welcomed it while others have abandoned it. It is true that Plea Bargaining speeds up caseload disposition, but it does that in an unconstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal courts are too overburdened to allow each and every case to go on trial. At this stage it can be safely

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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.There must be some safeguards to apply the concept of plea bargaining after taking considerations of all the facts such as nature and gravity of offence, previous records of an accused etc. To reduce this system being misused, the role of police and even the affluent will be considerably reduced. Even after presence of plea bargaining in the stature book for more than 10 years, its use is very low and the court is still overburdened with pendency of cases and judicial backlogs. Its main purpose is to speeding up the disposition of case but it is not being used in a proper way. There is need of spreading awareness among litigants, prosecution agencies, police and general people to make this system more effective and there should be thorough study of its working and its impact on conviction and crime rate and how should this system work in a proper way. To make this more useful and to fulfil its desired objectives, there is need to amend the provisions to cope with drawbacks or criticisms and to move with the present needs.

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