Plea Bargaining in India: A Way to Justice or a Form of Coercion

Shaurya Jain (3rd Year, B.COM LLB, GLA University, Mathura)

Article History
Received: 21 April 2022
Accepted: 03 May 2022

Reviewed by Dr Vikas Bhandari and Ashish Mishra.

ISBN: 9798886848885

ABSTRACT

The article revolves around examining the source and concept of Plea Bargaining in India after the 2005 Criminal Law Amendment. Plea Bargaining is quite a new concept in India. This has undoubtedly changed the perspective of the criminal law justice system. In the modern criminal justice era, most criminal convictions are based on Plea Bargaining. This is the process by which the defendant and the prosecutor reaches a mutually acceptable decision in a case, as long as the court approves the decision. This paper critically analyses Chapter XXIA of the CrPC by raising certain issues of concern regarding the applicability and scope of certain incorporated provisions and their consequences on concerned parties to the case. The paper also examines the radical shift in the mindset of the judiciary concerning this concept. Further, it brings in propositions for a improved implementation of the Amendment. This article also focuses on the pros and cons of 'Plea Bargaining'.

Keywords-*Plea Bargain, Criminal Law, Indian Judiciary, Malimath Committee, Unfair Trials*

INTRODUCTION

The pendency of cases, which account for about three crores of cases, is one of the most appalling issues in the Indian judiciary. The pending lawsuits in India are a major source of concern and priority. In India, a lot of high-profile court trials have been postponed to the point that the term "justice delayed is justice denied" seems to be valid. To plough with the backlog of lawsuits, the legislature devised a ground-breaking tool: plea bargaining. Plea bargaining is a pre-trial arrangement between the plaintiff and the prosecutors in which the

parties to the case reach an agreement.[1] Plea bargaining is a deal between the accused and the plaintiff or the victim of an offense in which the accused agrees to admit to the commission of an offense in exchange for a reward such as a reduced sentence, acquittal by the settlement of a fine, or some other benefit. The concept of plea bargaining arose as a result of the dysfunctional judicial system and the inconsistencies of court trials. Plea bargaining not only brought a breath of satisfaction to the accused who had been languishing in prison for years due to a lack of justice, but it also proved to be a time and cost-effective way for the court system to easily resolve criminal trials. The principle of plea bargaining was largely accepted and found to be constitutionally legitimate by United States courts. Plea bargaining was already a successful concept. In the United States, an overwhelming rate of around 95% of criminal convictions is reached by using a plea bargain known as negotiated pleas. The system of pre-trial negotiations has been a successful method of avoiding protracted and complicated trials. Resultantly the conviction rates are significantly high in the US.[2] Plea bargaining is one of the most recent additions to criminal procedure, having only been implemented in 2006 under the Criminal Law Amendment Act of 2005. It has been about ten years since the definition was first incorporated into Indian criminal law.

OBJECTIVE OF THE STUDY

The objective of this paper is to:

Whether there is any system to dispose of the cases in a faster way.

Throw light on the concept and nature of the Plea Bargaining in India.

Analyze the provisions related to Plea Bargaining under CrPC.

Examine the Judicial Trends related to Plea Bargaining in India.

Scrutinize the future trends and provide suggestions relating to Plea Bargaining in India.

RESEARCH METHODOLOGY

The methodology adopted for conducting the proposed research paper is the Doctrinal Research Method. Doctrinal research in the law field indicates arranging, ordering, and analysis of the legal structure, legal framework, and case laws to search out new things through extensive surveying of legal literature but without any fieldwork.

The researcher has referred to secondary sources namely books, journals, research articles, e-sources to write this paper.

---

[1] Ashish Singh Taank, Plea Bargaining in Globalized World, Academia, https://www.academia.edu/12431098/Plea_Bargaing_in_Globalized_World (last accessed on 10th May, 2021)

[2] Shama Sinha, *Criminal Justice Reforms will Make Plea Bargaining Effective in Reducing Pendency of Cases,* The Leaflet, https://www.theleaflet.in/criminal-justice-reforms-will-make-plea-bargaining-effective-in-reducing-pendency-of-cases/ , (last accessed on 11th May 2021)

BACKGROUND OF PLEA BARGAINING

Plea bargaining, which began as an Anglo-American system of avoiding juries to minimize workload, emerged between 1830 and 1840 as part of a period of political consolidation and an attempt to establish legal institutions of self-rule, which were critical to attempts to re-establish the political authority of Boston's social and economic elite.[3] In India, however, Sections 206(1)[4] and 206(3)[5] of the Code of Criminal Procedure, as well as Section 208(1)[6] of the Motor Vehicles Act, 1988, can be referred to. These laws allow the victim to plead guilty to minor offenses and pay nominal fines in exchange for the charge being dismissed.

The criminal amendment act of 2005 introduced plea bargaining in India. A new chapter XXI A has been introduced, which contains provisions relating to the plea-bargaining process. Sections 265 A to 265 L[7] cover the fundamental provisions, ranging from the application for plea bargaining to the possible bargains for the prisoner. Before the Criminal Law (Amendment) Act of 2005. In India, the courts have not recognized plea bargaining as a legitimate procedure. The process of plea bargaining has been repeatedly found unconstitutional and unlawful in Indian jurisprudence by Indian courts. In India, courts have traditionally refused to accept plea bargaining because a crime is a wrong committed against the state rather than a person. If the victim and the State reach an agreement, the accused will not be convicted in certain cases. This would minimize societal deterrence and affect the broader justice administration structure.[8]

The number of pending cases in India in almost all courts has been steadily growing over the years. Because of the large number of pending lawsuits, the Indian judiciary has reached a point that each case that comes before it takes several years to resolve. As a result, the administration of justice became slower, and justice distribution became postponed.

Because of the adversarial system's complexity, obtaining a verdict in a court case was a difficult process, resulting in unjustified delays. The phenomenon of plea bargaining arose as a result of the dysfunctional legal system and the inconsistencies of court trials. Plea bargaining not only brought a breath of satisfaction to the accused who had been languishing

---

[3] Alschuler, Albert W. (1979*). Plea Bargaining and Its History*. Colum L. Rev 79 pp. 1- 43 JSTOR 1122051, https://www.jstor.org/stable/1122051

[4] 206. Special summons in cases of petty offence, Code of Criminal Procedure, 1973.

[5] 206. Special summons in cases of petty offence, Code of Criminal Procedure, 1973.

[6] 208. Summary disposal of cases, Motor Vehicles Act, 1988.

[7] The Code of Criminal Procedure, 1973.

[8] Dervan, Lucian E.; Edkins, Vanessa A. (2013). "*The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*" J. Crim. Law Criminol.103 (1): 1 [pp. 6–11], https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1000&context=jclc

in prison for years due to a lack of justice, but it also proved to be a time and cost-effective way for the court system to easily resolve criminal trials.[9]

Before the Criminal Law (Amendment) Act of 2005, which formally incorporated plea bargaining in India and thereby made the concept of plea bargaining legally legitimate, Indian courts consistently treated it as unconstitutional and poor in the eyes of the law.

TYPES OF PLEA BARGAINING

There are mainly five types of Plea Bargaining in India-

CHARGE BARGAINING- A popular and well-known form of plea is charge bargaining. It entails negotiating the particular charges or offences that will be brought against the convict at trial. A judge will usually dismiss the higher or other charges in exchange for a guilty plea to a lower charge (s). For example, a prosecutor can enter a guilty plea to homicide in exchange for dropping charges of first-degree murder.

SENTENCE BARGAINING- It entails agreeing to a guilty plea in exchange for a reduced sentence. It eliminates the need for the defence to go to trial to prove its point. It allows the convict to get a more lenient sentence.

EXPRESS BARGAINING- When an accused or his counsel negotiates openly with a prosecutor or a trial judge over the advantages that might accompany the entering of a guilty plea, this is known as express bargaining.

FACT BARGAINING- A prosecution's most common tactic is bargaining, in which the prosecutor promises not to disclose any aggravating facts to the judge when doing so would result in a mandatory minimum penalty or a more serious sentence under sentencing rules.

IMPLICIT BARGAINING- It takes place in the absence of face-to-face discussions. Implicit mediation occurs when trial judges, in particular, develop a habit of punishing convicted pleaders more leniently than those who exercise their right to trial, and the accused come to believe that entering guilty pleas would result in leniency.

FEATURES IN CRPC

1. Plea Bargaining is not available for crimes that have a term of more than seven years in prison. It is often not eligible where crimes are committed against women or children under the age of fourteen, or when the crime has a negative impact on the country's socioeconomic situation.[10]

[9] K.V.K. Santhy, *Plea Bargaining In Us And Indian Criminal Law Confessions For Concessions*, http://www.commonlii.org/in/journals/NALSARLawRw/2013/7.pdf

[10] Mohammad Ashraf, *Plea Bargaining in India – An appraisal*, 23 ALJ, 104,118 (2016). https://www.academia.edu/29990187/Plea_Bargaining_in_India_An_Appraisal

2. The court must conduct an in-camera examination of the accused in order to determine if the submission was submitted willingly. The court then allows the victim(s), defendant(s), public counsel, and investigator to reach an arrangement that is satisfactory to both parties.

3. The court is also responsible for ensuring that the accused was not forced into signing the deal. It guarantees that the matter is properly handled and that the victim is given the appropriate sentence.[11]

4. The decision is made in open court. Furthermore, it has a provision for the accused's defence, which guarantees that the accused's declaration cannot be used for any other reason.

PLEA BARGAINING IN INDIA AND CRPC

The biggest flaw in India's current justice system, according to *Nani Palkhivala*, is the time it takes for trials to be resolved.[12] Following the 2005 update to the Code of Criminal Procedure, a new definition of plea bargaining was adopted to speed up the resolution of criminal cases and lawsuits, as well as to relieve the pain of under-trial inmates. Before the Act was amended, the 142nd and 154th Law Commission Reports, as well as the Malimath Committee's recommendations, were considered.

Under the chairmanship of Justice (Dr) Malimath, it was reported that the United States' history demonstrated plea bargaining as a way of resolving pending cases and expediting the administration of criminal justice. The Malimath Committee proposed in its report that a plea-bargaining scheme be implemented into India's criminal justice system to speed up the settlement of criminal cases and reduce the pressure on the courts. [13]

This committee submitted a report to the Government of India which stated objects and explanations cites, among other things, that criminal prosecutions take a long time to resolve in Courts, and that in many cases, trials do not begin until three to five years after the convict has been remitted to judicial custody. Despite the fact that it is not recognised under criminal law, it is seen as a viable solution to dealing with the massive backlog of criminal litigation. The Bill drew a lot of attention from the media. It is not accepted by our criminal justice system, according to some, because it is against public policy. The Supreme Court has also slammed the concept of plea dealing, stating that it is not permitted in criminal trials.

---

[11] Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, Report V0l 1, 2003

[12] Hitesh Agarwal, Plea Bargaining: Present Status in India, available at: http://www.legalserviceindia.com/article/article/plea-bargaining-present-status-in-india-658-1.html (last accessed 15th May, 2021)

[13] http://www.hrdc.net/sahrdc/hrfeatures/HRF88.htm.

Plea Bargaining was included in the Code of Criminal Procedure Amendment Act of 2005; there aren't many lawsuits involving it, but the role of the Indian judiciary is straightforward.

Before it was inserted in the CRPC in 2005, there was a lot of controversy over it, and the Indian judiciary refused to consider it. Under the Code of Criminal Procedure[14], sections 265-A through 265-L provide for plea bargaining. It's a mechanism that guarantees victims achieve acceptable justice in a decent amount of time without risking a hostile witness, excessive delay, or unaffordable costs.[15]

CRITICAL ANALYSIS OF CHAPTER XXI-A

Chapter XXI-A contains the provisions regarding the concept of Plea Bargaining. The chapter is covered from Sections 265-A to 265-L.

Applicability- Section 265-A deals with the application of the chapter of plea bargaining. It states that the remedy is available only for those offences for which the prescribed punishment is less than seven years of imprisonment. It also states that the said chapter will not apply to those offences whose prescribed punishment is either death, or imprisonment for life, or imprisonment exceeding seven years and those offences who affects the socio-economic conditions of the country or has been committed against a woman, or a child below the age of fourteen years.[16]

This particular section falls from the very objective of the chapter for which it was introduced. One of the main objective for its introduction was to reduce the number of the pending cases in the judiciary to avoid delay of justice. The section excludes those offences which are against the woman and are anti-social offences. Most of the legislations are dealing with those offences which are affecting women and child and society. If these offences are not taken into account, then the very purpose of the Plea bargaining cannot be achieved i.e. to reduce the backlog of cases.

Also, sub-section (2) of this section, gives wide power to the Central Government to declare any offence as affecting the socio-economic conditions. There are no guidelines prescribed for the same. In the near future, there is a possibility that the Government may exercise arbitrary power and the same can be in violation of Article 14 of the Constitution.

There are certain socio-economic offences legislation which do not permit Plea bargaining.[17]

---

[14] Chapter XXIA, The Code of Criminal Procedure, 1973.

[15] Sudipto Sarkar & V R Manohar, Sarkar Code of Criminal Procedure (9th ed., 2007).

[16] Section 265-A(1), Code of Criminal Procedure, 1973/\.

[17] Provisions Of Fruit Products Order 1955 (Issued Under The Essential Commodities Act 1955) ,The Immoral Traffic (Prevention) Act 1956, Dowry Prohibition Act 1961, Provisions Of Meat Food Products Order 1973 (Issued Under The Essential Commodities Act 1955), The Commission Of Sati Prevention Act 1987, The Indecent Representation Of Women (Prohibition) Act 1986, Protection Of Women From Domestic Violence Act 2005, The Infant Milk Substitutes, Feeding Bottles And Infant Foods (Regulation Of Production Supply And Distribution) Act 1992, Offence With Respect To Animals That Find Place In Schedule I And Part II Of The Schedule II As Well As Offences Related To Altering Of Boundaries Of Protected Areas Under Wild Life

Procedure- Section 265-B deals with the procedure for filing the application of the plea bargaining in the court where the trial is pending. The application must be connected with the aid of using a testimony sworn with the aid of using the accused pointing out that he has voluntarily preferred, after know-how the character and volume of punishment furnished beneath neath the regulation for the offence, the plea bargaining in his case and that he has now no longer been formerly been convicted with the aid of using a court in a case wherein he has been charged with the identical offence. The court then issues notice to the public prosecutor or the complainant of the case and the accused will be tested in camera.. if the court is happy that the application is voluntary then it's going to offer to work out a mutual satisfactory disposition of the case. If the court feels otherwise, the case may be from the degree in which such application has been filed for plea bargaining will resume.

The court in maximum cases are left to decide whether or not or now no longer a application is voluntary on the basis of information and circumstances of every case. But there'll usually be a element of stress at the accused on account that he's being presented a lesser charge or decreased sentence. No person would need to go through an extended trial and may conform to such concession in a few cases.

Sub section (4) of this section states that the court shall offer time for the parties to come to a mutually satisfactory disposition. But, it does now no longer offer a particular time frame with recognize to mutually satisfactory disposition which is of grave subject because the motive of plea bargaining is for quick justice and disposal of cases.

Further, entrusting the obligation at the courts to determine the application whether or not it's been made voluntarily or now no longer will absorb time of the courts. Instead, this manner perhaps extra time eating because the courts will need to first decide whether or not the application is voluntary or now no longer and determine afterwards.

Section 265-C lays down the guidelines for mutually satisfactory disposition. The section calls for that the court shall issue notice to the concerned parties and additionally the responsibility is entrusted at the courts to make certain that the system of operating out a best disposition of the case is voluntary. the court isn't worried withinside the satisfactory disposition process however the section nonetheless requires that it must ensure that the process is voluntary. the section in reality would not lay down any guiding precept for the court to ensure that there's transparency and the accused isn't coerced at any level of the process.

Section 265-D The court has to put together a report if a mutually satisfactory disposition of the case has been laboured out and such report shall be signed with the aid of using the

---

(Protection) Act 1972, The SC And ST (Prevention Of Atrocities) Act 1989, Offences Mentioned In The Protection Of Civil Rights Act 1955, Offences Listed In Section 23 To 28 Of The Juvenile Justice (Care And Protection Of Children) Act 2000, The Army Act, 1950, The Air Force Act, 1950, The Navy Act 1957, Offence Specified In Section 59 To 81 And 83 Of The Delhi Metro Railway (Operation And Maintenance) Act, 2002, The Explosive Act 1884, Offence Specified In Section 11 To 18 Of The Cable Television Networks (Regulation) Act, 1955, Cinematograph Act 1952, list issued by Central Government by S.O. 1042(E), dated 11th July, 2006.

presiding officer of the court and the parties in the joint meeting. If no satisfactory disposition is made out, the court has to continue with the case, with the aid of using dropping the proceedings in plea bargaining, and begin the proceedings from the stage, in which the application is entertained. an accused, whilst disposal of his application under plea bargaining is entitled to set off the duration of detention from the sentence of imprisonment imposed under Section **265-E.**

As soon as the court provides the judgment under **Section 265-F** then the following **Section 265-G** states that it is final and no appeal will lie in opposition to such judgment. but such judgments are subject to the challenge under Article 226 and 227 of the Constitution before the High Court with the aid of using filing writ petition and Article 136 of the Constitution before the Supreme court with the aid of using filing a Special Leave Petition.

Under **Section 265-H**, the court shall have for the motive of discharging its features under this chapter, all of the powers vested in recognize of bail, trial of offences and different topics referring to the disposal of case.

Section 265-I entitles the accused to set off the duration of detention, he had already gone through withinside the same case, in the course of the investigation, inquiry or trial, however before the date of conviction, in compliance of the provisions of section 428 only.

Section 265-J contains the non obstante clause.

Section 265-K states that the statements or facts stated with the aid of using the accused in an application for plea bargaining shall now no longer be used for every other purpose besides for the purpose of the chapter and ultimately **Section 265-L** makes the chapter now no longer relevant in case of any juvenile or child as described in section 2(k) of Juvenile Justice Act, 2000.

JUDICIAL APPROACH TOWARDS PLEA BARGAINING

The former view was that the offences should be tried and be punished if the accused is found to be guilty. Plea Bargaining was not approved by the court earlier.

Madanlal Ramchandra Daga vs. State of Maharashtra[18] is a authoritative example of the customary thinking of the court in which Justice M. Hidayatullah held that the case should be decided according to the guilt of the convicted.

It was also though, held to be unconstitutional and illegal[19]. The court in the case of ***Murlidhar Meghraj Loya v. State of Maharashtra***[20], the hon'ble Supreme court had held that the concept of Plea Bargaining is illegal and it is against the and encroached upon the interest of the society.

[18] Madanlal Ramchandra Daga vs. State of Maharashtra A.I.R 1968 SC 1267.

[19] Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat (1980) 3 SCC 120.

[20] Murlidhar Meghraj Loya v. State of Maharashtra AIR 1976 SC 1929.

In the case of ***Kasambhai vs State of Gujarat***[21] & ***Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr***[22]**,** the court held that the concept of Plea bargaining is against the public policy.

In ***Thippaswamy v. State of Karnataka***[23], J. Bhagwati observed "It would be clearly violative of Article 21, of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly".

The Supreme Court has also condemned the introduction of plea bargaining in ***State of Uttar Pradesh v. Chandrika***[24], The Apex Court held that, "*It is well-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.[25]

However, a huge number of people have been in favour of the advent of the scheme and maximum have been in favour of introducing the idea only to specified offences.[26] The 142nd and 154th Law Commission Report opined in favour of introducing Plea bargaining and this view turned into endorsed through The Committee on Criminal Justice Reforms beneath neath the Chairmanship of Dr. Justice V. S. Malimath, previously Chief Justice of the Kerala High Court, as well as, through the review committee on Constitutional Reforms.[27] Giving a concrete form to those observations, a new Chapter XXIA on Plea bargaining has been added in Code of Criminal Procedure, 1973 (hereinafter called the Code), which includes 12 sections i.e. 265A- 265L. This new provision has been brought through the Criminal Law (Amendment) Act, 2005. In this regard, it's far worthwhile to note that the concept, as added in India isn't always an entire adoption of the Law Commission guidelines however a centre course preserving in thoughts the apprehension of misuse connected to this concept.

---

[21] Kasambhai vs State of Gujarat (1980) 3 SCC 120.

[22] Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr (1980) 3 SCC 120.

[23] Thippaswamy v. State of Karnataka (1983) 1 SCC 194, "*Enhancement or imposition of sentence in revision or appeal after the accused had plea bargained for a lighter sentence or mere fine in the trial court, held, would not be reasonable, just or fair and thereby offend Article 21".*

[24] State of Uttar Pradesh v. Chandrika 1999 Supp(4) SCR 239.

[25] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684.

[26] Rewari Sulabh, Aggarwal Tanya, 'Wanna Make a deal? The Introduction of Plea bargaining in India', (2006) 2 SCC (Cri) (Jour.) 1.

[27] Durga Das Basu, Criminal Procedure Code, 1973 (4th edn, vol .2) p.1392.

While commenting on the concept of plea bargaining, the Gujarat High Court observed in the ***State of Gujarat v. Natwar Harchanji Thakor***[28], that the very object of the law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay 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 of redressal and it shall add a new dimension in the realm of judicial reforms.

In ***Pardeep Gupta v. State***[29], Honourable Judge observed that "*The trial court's rejection of the plea bargain shows that the learned trial court had not bothered to look into the provisions of chapter XXI A of Code of Criminal Procedure meant for the purpose of plea bargaining and rejected the application on the ground that since the applicant is involved in an offence under section 120-B Indian Penal Code and the role of applicant was not lesser than the other co-accused. But none of the offences in which the petitioner has been booked attracted more than seven years punishment. The request of plea bargaining is ought to be considered taking into account the role of the accused, and the nature of the offence, etc. The High Court directed the trial court to reconsider the application of plea bargaining made by the accused in the light of provisions made in the Code of Criminal Procedure and not in a casual manner*.

ADVANTAGES OF PLEA BARGAINING

Sentence is less formal Since the judge seeks a lesser penalty for a felony, several convicted defendants sign a plea bargain deal. If the suspect is guilty of the offense following a complete trial, this may result in substantially less time behind bars.

In return for taking the plea bargain, a convicted suspect can obtain a reduced charge. For certain cases, the suspect will be able to plead guilty to a crime rather than a conviction. In certain cases, the suspect can plead guilty to a certain class or degree of crime. This reduced fee may have a variety of effects.

India is well-known for its long-standing situation. Many lawsuits drag on for 8-10 years, causing the sides to suffer. There have been cases where an accused has served more years in prison than the maximum penalty on the crime for which he was charged. Such incidents demonstrate a serious violation of their civil rights. Plea bargaining requires a defendant to enter a guilty plea without having to hire an attorney. However, if they waited until the case went to trial, they would have to find and recruit a prosecutor, as well as spend time meeting with the lawyer to plan for trial and pay the lawyer.

It keeps the accuse out of the spotlight: Plea Bargaining is also a convenient way to get the accuse out of the spotlight and the more the prosecution goes on, the more attention the

[28] 2005 CriLJ 2957, (2005) 1 GLR 709.

[29] Delhi High Court Bail Application No. 1298/2007 – Judgment on 3rd September 2007 reported in Reference No. 26.

accuse receives. As a result, plea bargaining prevents such exposure by settling the lawsuit quickly. Both popular and common people who depend on their community's integrity for a living, as well as those who want to avoid undue stigmatization. Despite the fact that the news of the plea is public, it only lasts a brief period as opposed to news of a verdict.

Many people who are facing trial are kept in municipal prisons. City or county authorities often administer these prisons, which have nothing in the form of detox, schooling, or counselling. These are detention centres with just a bed, food, and a few other necessities[30]. Plea bargains expedite the criminal justice system, making it possible to provide people with the tools they need to achieve positive improvements in their life.

DISADVANTAGES OF PLEA BARGAINING

Plea Bargaining is difficult for a variety of reasons. First, the prosecutor has the ability to put the victim under undue duress. Despite the fact that the treatment is defined as optional, there is a good risk of being literally forced. The prosecutor prefers a guilty plea because there is a good chance of acquittal at trial.[31]

Plea bargaining undermines the standard of evidence without a reasonable doubt, as it is much more likely than a verdict to result in the arrest of an accused person. Plea Bargaining ends in a sentence that is unfair. Plea bargaining, according to some analysts, results in unjustified leniency for criminals and encourages a negative view of the justice system.[32] Professional enhancement may be desired, either inside the prosecutor's office or after leaving it.

The police's intervention in plea bargaining has since been criticized. India is well-known for police brutality in detention. Plea Bargaining is more probable to cause the problem in such condition.

While most prosecutors are unlikely to risk the public interest for personal advantage, a conflict of interests may affect the negotiating process, and prosecutors may rationalize actions that represent only their own interests.[33]

When a convicted suspect hears the words "not guilty," he or she might feel vindicated. When a convicted suspect sign a plea bargaining , he or she is usually agreeing to plead guilty to a felony. In some cases, the person takes this choice because he or she was already convicted of the crime, and in others, the person makes the decision because he or she is afraid of being found guilty and the possible repercussions of the arrest. Since pleading guilty, an individual cannot later claim innocence or convince bosses or anyone that he or she did not commit the offense unless the sentence proves otherwise.

[30] Maguire, M. (2013). The indian prison. In The State of the Prisons-200 Years On (pp. 40-65). Routledge.
[31] Plea Bargaining - An Indian Approach, available at http://legalservices.co.in/blogs/entry/Plea-Bargaining-An-Indian-Approach (last visited on 14th May, 2021)
[32] Ankush Bhadoriya, Plea Bargaining: A Unique Remedy To Reduce Backlog In Indian Courts available at Manupatra
[33] Ayushi Kiran, Plea Bargaining: It's Constitutional Legitimacy available at Manupatra (last visited on 10th May, 2021)

SUGGESTIONS

Plea bargaining has a significant role to play in the administration of justice, especially to the victim and the perpetrator, thanks to creative forensic techniques and the application of technologies in pinning down criminal involvement. There are many advantages of it. Nonetheless, we need a series of straightforward and unambiguous rules that address the questions about plea bargaining. It needs to be a win-win situation for everyone. The way we handle things will undoubtedly demonstrate to the rest of the world our adherence to ideals of freedom and justice.

To improve the effectiveness of plea bargaining, as well as to minimize delays in the criminal justice system and the growing backlog in criminal prosecutions, we must first understand the reasons why plea bargaining has failed in the past. To empower an accused to make a rational plea-bargaining decision, the criminal justice system must be more effective, consistent, and predictable with better conviction rates.

The courts and the legal profession should support the legislation relating to plea bargaining; otherwise, a specific law would not become a standard solution. Plea bargaining law should be given serious consideration and exercised on a daily basis. To remedy the terrible state of the judiciary in terms of litigation pending, plea bargaining seems to be the only near-term option that can effectively address the issue if it is given serious consideration.

CONCLUSION

Backlog elimination has two dimensions in theory: taking steps on cases that are now in the backlog and reducing the number of cases that are being added to the backlog or may be added in the future. There are three possible choices within which concrete measures to reduce the backlog can be taken. Reduced demand for court capacity, increased court resources to satisfy demand, and the introduction of a more cost-effective approach to deliver court procedures are among the alternatives.[34] Plea bargaining, as practiced in India, falls into the last cost-effective band.

However, since the issue is as deep-rooted, technical and procedural improvements are needed to reduce the current backlog. For example, there are issues with pre-trial trials, warrant service, delays in providing copies to the accused, exempting the accused from personal visits, delays in drafting charges, frequent adjournments, witness non-availability, and compounding, not to mention a shortage of public attorneys and issues with the police. As a result, while plea bargaining could be a one-of-a-kind solution, it is unlikely to have a major effect on the massive backlog.[35]

Finally, this transformation is neither good nor evil in and of itself. Rather, the issue is if, with a variety of options for minimizing the massive backlog of prosecutions, incorporating plea

[34] Carl Baar, Robert G. Hann, The Reduction of Case Backlog in the Courts: A Framework and Strategy, Arnab Kumar Hazra and Bibek Debroy (ed.), JUDICIAL REFORMS IN INDIA: ISSUES AND ASPECTS, (2007)
[35]Objects and Reasons. Criminal Law (Amendment) Act, 2005.

bargaining would enable decisions to be taken in a way that efficiently promotes the criminal justice system's underlying priorities. Despite objections and resistance, plea bargaining was enshrined in the Code of Criminal Procedure as a possible remedy to overcrowding in prisons, overburdened courts that trigger abnormal delays in providing justice, and to breathe new energy into our criminal justice system's reformative phase, which has been mostly dormant for years. To summarize, plea bargaining is unquestionably a contentious concept. Some people have embraced it, although some have turned their backs on it. Plea bargaining does help to expedite dispute resolution, but it does so in an unconstitutional way. But it's possible that we won't have a choice but to use this method. The criminal courts are overburdened and unable to hear each and every case. Only time will say if this new concept's implementation was justified.