COMPARATIVE ANALYSIS OF PLEA BARGAINING PROCEDURE IN INDIAN & AMERICAN JURISDICTIONS

BY

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ABSTRACT

The plea bargaining process is quickly gaining popularity in the resolution of legal issues across the world. In common law and civil law nations, the applicability, scope, and operation of plea bargaining are clearly dissimilar. A comparative study of India, the United States of America, and Italy has been done in this research to critically analyse these disparities in regard to various jurisdictions. The extent to which plea bargaining is more favourable than harmful is debatable. This is because the practice of plea bargaining is said to call into question the basic premise of a trial, which is to find the truth and administer justice. The reality that an immediate justice administration system is required in India is unarguable. The researcher seeks to determine whether plea bargaining in India, in its current form and structure, is sufficient to achieve that goal by contrasting its benefits and drawbacks in the context of the Indian judicial system, and later, proposing reforms in the realm of this modern dispute resolution mechanism.

KEYWORDS: PLEA BARGAINING, RESOLUTION, INDIA, U.S.A

INTRODUCTION

Criminal law is made up of unique processes that are meant to achieve a certain goal. These range from expedited processes to aid police in making arrests to the actual process used by courts to decide convictions and trials. These processes evolve throughout time, allowing for the regular materialisation of fresh operations. One such approach is the plea bargaining process, which is a relatively new form of Court conviction.

Plea negotiating is the process by which the prosecution and defence counsel make an amicable agreement and the prisoner pleads guilty in exchange for a reduced sentence. According to Black's Law Dictionary, a plea bargain is an agreement established between the plaintiff and the defendant with the intention of resolving the issue without ever having to go to trial.[1]

Plea bargaining incorporates wide ranging dissimilarities in different countries, however the conventional notion of plea bargaining is mainly comprised of three types,

1. Where the defendant pleads guilty to a lesser charge in return for dropping of a greater charge;
2. One of the several charges in return for dropping of the remaining charges;
3. Original charges for a merciful Court conviction.

This process facilitates expeditious trials and enables the convicts to dodge sentences of more stringent magnitude.

Plea bargaining differs greatly from nation to country in terms of method, application, scope, and functioning. This article, on the other hand, will confine itself to the jurisdiction of two nations in particular, India and the United States, doing a comparative examination of the history, contemporary form, and goals of plea bargaining, as well as their contrasting judicial postures. Later, the researcher digs into a comparative examination of the legislation that prevails in the countries in question, before evaluating the benefits and drawbacks of the overall system while anchoring the research in the framework of both nations. Finally, the researcher closes the study

[1] Henry Campbell Black, Black’s Law Dictionary, 7th Edition.

by providing recommendations and improvements that the Indian criminal justice system should consider in order to reach the best possible degree of justice administration.

COUNTRY BASED ANALYSIS

1. INDIA

1.1 HISTORICAL BACKGROUND

The idea of plea bargaining is a relatively new addition to the Code of Criminal Procedure 1973.[2], which came into effect in 2006 after the Criminal Law (Amendment) Act, 2005[3] was passed. Chapter XXIA was inserted into the Cr.P.C by virtue of this amendment and the concept of plea bargaining was instituted.[4]

However, the history of plea bargaining is far more extensive. It was discussed for the first time in the 142nd Report of the Law Commission of India, presided over by Justice MP Thakkar.[5] This research recognised India's difficulty with the disposition of cases and appeals, which frequently allowed accused and under-trial convicts to rot in jails for unusually long periods of time. As a remedy to this dilemma, it was recommended under a model influenced by the already existent American system that the accused be allowed pleas without negotiating in order to give them a concession and allow for the reduction of their convictionsThe Report also highlighted the expense of keeping such criminals in jail for inhumanely lengthy periods of time. There was a debate about two types of negotiation: sentence bargaining and charge bargaining. The former involves the prosecution recommending a particular penalty of conviction in return for the defendant pleading guilty, whereas the latter involves the defendant agreeing to plead guilty to some counts in exchange for the others being waived off.

[2] Hereinafter, Code of Criminal Procedure, 1973 will be referred as Cr.P.C.
[3] Plea Bargaining, Chapter XXIA, Criminal Law (Amendment) Act, 2005.
[4] Refer to S.265A-L of the Cr.P.C.
[5] "142nd Report on Concessional Treatment for Offenders who on their own Initiative Choose to Plead Guilty Without
Bargaining (1991)", Law Commission of India.

The 154th Report narrowed the scope of this debate[6] the panel, led by Justice K Jayachandra Reddy, outlined how the plea bargaining mechanism would work in the Indian system. The Report confirmed the case made in the 142nd Report for the plea bargaining mechanism, stating that it should be applied to offences punishable by seven years in prison or less, which is the current model. Furthermore, it stipulated that this would be inapplicable to habitual/repeat offenders, those who committed socioeconomic crimes, or those who violated the legislation against women and children.

The ultimate consideration on the topic was performed in the 2003 Malimath Committee Report prior to the implementation of the 2005 Amendment.[7] It was underlined that anytime someone accused feels repentant and seeks to make up for his wrongdoings, he should be treated differently and given many concessions. This study strongly advocated for implementing the processes established in the 142nd and 154th Law Commission Reports in order to swiftly and smoothly resolve a large number of Court matters. It aided in supporting the belief that plea bargaining was necessary, which resulted in the construction of the 2005 Amendment and the current form of legislation.

1.2 Present Form & Purpose

Plea bargaining is now enshrined in Sections 265A-L of the Cr.P.C. It is only applicable to offences punishable by imprisonment for seven years or less, and it does not apply to cases that have an influence on the nation's socioeconomic situation, as well as crimes of law against women or children under the age of fourteen.[8] Furthermore, if the accused files the application voluntarily or if he has already been convicted for the same offence by a Court of law, he will be disqualified to use the plea bargaining provision.[9] An application must be accompanied by a brief description of the case as well as an affidavit from the accused stating that he has voluntarily suggested a plea negotiating deal. The Court would recognise this and undertake an in-camera examination of the accused in the absence of the opposing party, after which it would work out a conviction sentence that was more lenient than the initial charges that should have

[6] "154th Report on the Code of Criminal Procedure, 1973 (1996)", Law Commission of India.
[7] "Report of the Committee on Reforms of Criminal Justice System (2003)", Union Ministry of Home Affairs, p.178.
[8] Chapter XXIA, Section 265A, Code of Criminal Procedure.
[9] Chapter XXIA, Section 265B, Code of Criminal Procedure.

been relevant.[10] The victim would be compensated, whilst the Court might decrease the accused's sentence by up to one-fourth of the minimum punishment prescribed for the offence committed.[11]

As a result, plea bargaining provides a quick legal remedy that requires no debate other than the presentation of evidence and the Prosecution's suggested conviction sentence. The victim is not even need to attend the Court proceedings and is entitled to compensation following the trial. The accused must be present during his sentence without exception. As stated in the 142nd and 154th Law Commission Reports, the primary goal of plea bargaining is to expedite Court cases and standardise the Court system, allowing inmates to be released. Those who are sorry for their acts receive sentence reductions for their good intentions. While the Reports expected that this system will befit and apply to all violations of the law in the future, there appears to be no plan of expanding the scope or breadth of plea bargaining at this time. The true objective of the Legislature in implementing the Amendment Act of 2005 could not be fully understood, but the stated grounds are jail overcrowding, high acquittal rates, and ill-treatment of convicts.[12]

1.3 STANCE OF THE JUDICIARY

Initially, the Indian court, particularly the Supreme Court, was vehemently opposed to the notion of plea bargaining and any method linked with it. Such hostility stemmed primarily from the immoral character of these agreements and their implications for the idea of natural justice.[13] Before the admission of plea bargaining into the Cr.P.C, a landmark case was decided on the topic in 1976, *Murlidhar Meghraj Loya v State of Maharashtra.*[14] The accused in this case was discovered retailing contaminated food and, in order to seek a light punishment from the local court, pled guilty in a manner similar to the plea bargaining system. According to Justice Krishna Iyer, our system allowed the 'business perpetrator' to dodge justice by substituting his misery in jail for the semblance of sorrow, fooling everyone but the victim himself and society. This

[10] *Id*
[11] Chapter XXIA, Section 265E, Code of Criminal Procedure.
[12] "Wanna Make a Deal? The Introduction of Plea Bargaining in India", T. Aggarwal and S. Rewari, (2006) 2 S.C.C. (Cri) (J).
[13] "Madan Lal Ramchandra Daga v State of Maharashtra", AIR 1968 SC 1267; "State of Uttar Pradesh v Chandrika", AIR 2000 SC 164.
[14] "Murlidhar Meghraj Loya v State of Maharashtra", AIR 1976 SC 1929.

condemnation was upheld in *State of Uttar Pradesh v Chandrika*[15] wherein the Apex Court set aside a High Court order which gave assent to plea bargaining. The Court went on to state that the concept of plea bargaining was against the precincts of Article 21[16] as it was not an established procedure of law.[17] However, this damnation was not ubiquitous; in *State of Gujarat v Natwar Harchandji Thakor*[18], the Gujarat High Court held it to be a prompt and inexpensive method of disposing of cases.

However, it is relevant to not that all these cases precede the time when plea bargaining was inducted into the Cr.P.C. The case of *Vijay Moses Das v CBI*[19], was the first to allow plea bargaining. Following that, it is widely accepted and recognized within the Indian judicial system.[20]

2. UNITED STATES OF AMERICA

2.1 HISTORICAL BACKGROUND

Many Americans have long believed that plea bargaining is an inherent and inherent component of their legal system, to the point that Justice Charles Clark famously stated, *"Plea bargains have followed the whole history of this nation's criminal justice system."*.[21] This idea, however, is not entirely grounded in empirical truth. In reality, the American judiciary has been violently opposed to the concept of plea bargaining for generations. It wasn't until the late 1800s that they began to adopt the mechanism with open arms. The dominance and authority of politicians, the media, and the population grew in the twentieth century, requiring the need for an immediate judicial system and encouraging the flourishing of plea bargaining in courts of law. This

[15] "State of Uttar Pradesh v Chandrika", AIR 2000 SC 164.
[16] *Article 21,* The Constitution of India.
[17] "Thippaswamy v State of Karnataka", AIR 1983 SC 747.
[18] "State of Gujarat v Natwar Harchandji Thakor", (2005) Cr.L.J. 2957.
[19] "Vijay Moses Das v CBI", Crim.Misc. Appln 1037/2006.
[20] "Ranbir Singh v State", 2012 (1) RCR(Criminal) 928; "State of Delhi v Amar Singh", 2016 Cr.L.J. 583.
[21] "Bryan v United States", 492 F.2d 775, 780 (5th Cir. 1974).

evolution was also aided by substantive advances in criminal jurisprudence and the country's liquor bans.[22]

After the 1920s, plea bargaining received widespread praise and support, to the point where it began to lead the way in the processing of criminal cases. Despite the fact that the Sixth Amendment to the United States Constitution makes no mention of plea bargaining, the courts have upheld its legality. As a result, the scope of its operation was broadened, culminating in the current framework of plea bargaining in the United States, where plea bargaining is now permitted for reduction of conviction sentence in any and all types of criminal offences committed. The United States continues to be one of the primary reasons for the comprehensive evaluation and popularity of the plea bargaining process in criminal law.

2.2 PRESENT FORM & PURPOSE

When a defendant is arrested in America, he initially appears in court to be apprised of his rights as well as the offences allegedly committed by him. Following that, the prosecuting attorney files charges against the suspect, and he is summoned to appear before the Court again, this time with the right to enter a plea. If the accused enters a nolo contendere plea, he is indicating that he is reluctant to contest his conviction. In the event of any crime, regardless of its magnitude, the accused might negotiate a plea deal, and it is even possible to do so at a later stage of the case. He also has the right to withdraw his appeal for legitimate grounds.[23] However, the accused is not constitutionally entitled to be offered with a plea bargain, and it is up to the prosecution to accept or reject any proposals.[24] Even the judge has the option of accepting or rejecting the plea of bargain, since he is under no duty to accept a plea even if the parties have reached an agreement.[25] The judge is primarily responsible for determining whether the accused willingly entered into a plea and was fully informed of the consequences of doing so. Furthermore, the Federal Procedure Code requires courts to ask a set of questions in order to ensure justice and equity.[26] However, in terms of process, it is quite simple, with just a declaration of the desired

[22] "Plea Bargaining and its History", Albert Alschuler, University of Chicago Law School, 79 Colombia Law Review 1, 1979.
[23] Crim. Proc. S.21.3(f) (3d ed. 2007).
[24] "Weatherford v Bursey", 429 U.S. 545 (1977).
[25] Crim. Proc. S.21.3(e) (3d ed. 2007).
[26] Fed. R. Crim. P. 11(b)(1).

agreement having to be filed on the Court's record for a suitable use of the provision of plea bargaining.

Plea bargaining is considerably more prevalent and has a far broader reach in the United States of America than in most other nations. Plea bargaining is used to resolve 97 percent of federal cases and 94 percent of civil cases.[27] While the primary goal of plea deals is to get lenient punishments, they are also used to encourage defendants to leak information about cases and elicit evidence against others. Plea bargaining has become important under the United States' current legal structure.

2.3 STANCE OF THE JUDICIARY

Plea bargaining is used to resolve a large number of cases in the United States. *Brady v United States*[28] is a significant case that addresses the topic of plea bargaining and its constitutionality. The judges in this case found plea bargaining to be a legitimate and constitutional mechanism, but expressed concerns about the potential for abuse of this provision by citing a scenario in which even innocent defendants plead guilty with the intent of receiving reductions in the form of plea bargains. It was held in *Santobello v New York*[29] that there are a variety of additional options accessible to persons if their attempts at plea bargaining are thwarted.

In effect, almost every case in American criminal law is settled through the plea bargaining procedure. Plea bargaining is widely regarded as a crucial and necessary component of the criminal justice system in the United States.

[27] "Stronger Hand for Judges in the 'Bazaar' of Plea Deals", Erica Goode, NY TIMES, 22-03-12, last accessed at http://www.nytimes.com/2012/03/23/us/stronger-hand-for-judges-after-rulings-on-plea-deals.html (on September 17th, 2017).
[28] Brady v United States, 397 U.S. 742 (1970).
[29] Santobello v New York, 404 U.S. 257.

COMPARATIVE ANALYSIS

SUBSTANTIVE DIFFERENCES

Plea bargaining differs significantly in both substance and technique between India and the United States.

The United States is at the opposite extreme of the spectrum. Plea bargaining is available in the United States for each felony that can be committed. Accused is allowed to engage in both charge and sentence negotiating with the intention of obtaining sentence concessions, which he usually does. There are few cases in the United States that are not resolved by plea bargaining, with most defendants willing to plead guilty from the start. The bad attention a criminal receives for accepting plea bargaining is much overshadowed by the inordinate amount of time he would have to spend in jail if the case were to be lost. As a result, most defendants are enticed by the potential of accepting plea deals. In terms of process, all that is required is for the prosecuting attorney to advise the Court of the planned settlement arrangement. The entire procedure is devoid of the annoyances of making submissions or filing documents in Court.

In terms of India, it follows a moderate road, reaffirming the reality that India is an amalgamation of several nations' laws. Plea bargaining is legal in India, but it comes with a slew of conditions and restrictions. Furthermore, in India, compared to America, the offer of plea bargaining resolves considerably fewer cases. The procedure in India is far more difficult than in the United States, requiring the applicant to follow all of the precise provisions outlined in Sections 265A-L of the Cr.P.C.

Choosing the best of the two systems might be a difficult task. However, it may be properly addressed after taking into account all of the benefits and drawbacks of plea bargaining in these nations.

ADVANTAGES

The primary goal of plea bargaining is to make the judicial administrative system more efficient. Those who push for plea negotiating desire a quick resolution of the cases over a lengthy trial.

Parties make an agreement outside the Court's precincts by using plea bargaining. In that case, the judge just reads the evidence on its face and avoids judicial judgement in its proper sense. The opportunity for the parties to further their arguments also does not emerge. Another significant benefit of this legal rule is that the judgment rendered in plea bargaining situations cannot be challenged by either of the parties to the case.[30]

The primary goal of plea bargaining is to make it easier to staff the court administration system. Those who push for plea negotiating desire a quick resolution of the cases rather than a lengthy trial. Parties achieve an agreement outside of the Court's precincts by using plea bargaining. In that case, the judge just peruses the evidence on its face and avoids judicial review in its proper sense. The occasion for the parties to further their arguments also does not emerge. Another significant benefit of this legal rule is that the judgement rendered in circumstances of plea bargaining cannot be challenged by any of the parties to the case.

Fundamentally, the whole justice system may benefit the most from this law provision if the plea bargain is only available to criminals who honestly regret their misdeeds. Only individuals who wish to improve themselves are eligible for relief under this rule. Hardcore offenders who have no intention to change their ways and merely want to take advantage of this provision should not be granted access to it.

The judicial administration systems in the United States and India are diametrically opposed. While the United States believes in forgiving and going on with life, allowing offenders to change themselves into a more desired and responsible citizen, in India, this provision of plea bargain has only a limited application to specific types of offences. Offenders charged with major offences are not permitted to invoke this clause. Aside from the aforementioned, in the United States, the option of plea bargaining is also utilised to seek conviction of criminals accused of significant crimes while providing lighter penalty to their accomplices accused of smaller offences. For example, in order to apprehend rioters, robbers are permitted to receive less severe sentence if they testify against mobsters/rioters.[31]

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[30] The Law Commission Reports and the Manimath Committee Report talk about this at length, in addition to various judgments which try to safeguard the constitutionality of the American system.

[31] "Plea Bargaining in Various Criminal Systems", Judge Peter Messite, University of Florida, May 2010, last accessed at

DISADVANTAGES

The most significant victim of the plea bargaining method is justice. At times, the truly guilty escape the heavier sentence that they deserve, while at other times, individuals who are victims of false implication in a criminal case receive the worst jail terms that might have been avoided had they patiently waited until the final judgement in their case was delivered. When there is plea bargaining, the judicial analysis of the facts and the appreciation of the arguments loses its lustre and is not given the importance it deserves. The practise of plea bargaining calls into question the basic premise of a trial, which is to find truth and administer justice.[32] In the instance of plea bargaining, the sentence is issued based on just a preliminary estimation/evaluation of the material on record. Furthermore, the likelihood of naive individuals receiving substantially severe punishment increases, and the potential of the genuine perpetrator receiving just a token of punishment cannot be ruled out.[33]

Whether it is society or a victim of crime, neither receives the actual justice for which they come to the courts. Because the punishment is not issued in its absolute and rigorous sense, the victim and society have a highly negative view of the court administrative system. In the United States, plea bargaining is freely used; but, in India, it is used with certain restrictions.

The second disadvantage of plea bargaining is that it does not entail the degree of spontaneity that the law requires. According to the law, the suspect/defendant shall choose plea bargaining on his or her own initiative, rather than at the behest of the prosecution or the judge. On the ground, though, the situation is much different. The accused is coerced into entering into a plea negotiating agreement in order to assure victory for all parties involved, i.e. the accused and the prosecution. The prosecution would nearly scare the accused, forcing him or her to accept a plea bargaining. Those who become entangled in the web of the police and the prosecution, in particular, choose for plea negotiating, thinking that a final judgement by the court may do them

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https://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf (on September 17th, 2017).

[32] "*A Comparative Analysis of Plea Bargaining and the Subsequent Tensions with an Effective and Fair Legal Defence.*", Samantha Joy Cheesman, Faculty of Law and Political Science, University of Szeged, last accessed at http://doktori.bibl.u-szeged.hu/2488/1/Samantha_Joy_Cheesman_ertekezes.pdf (on September 17th, 2017).

[33] "*The Bargain has been Struck: A Case For Plea Bargaining in India"*, Sonam Kathuria, National Law School of India, Bangalore, last accessed at http://www.manupatra.co.in/newsline/articles/Upload/3BEB7B04-1EE3-48EB-8716-279FA2B9AF8A.pdf (on September 17th, 2017).

greater harm. The burdensome legal processes are also what compel the accused to enter into plea bargains rather than having the case adjudicated on its merits.

At the end of the day, plea bargaining benefits those who are guilty while inadvertently harming the cause of justice. Despite the fact that numerous nations have embraced plea bargaining in accordance with American standards, India is still far from it.[34] In India, the offer of plea bargaining is only provided in cases of non-serious and non-heinous offences. The most serious downside of plea bargaining is that a co-accused is sometimes persuaded to testify against the other accused in exchange for a significantly lighter sentence than his accomplice. In the process, individuals in charge of the justice system frequently lose sight of the actual perpetrator in front of them. As a result, a cunning perpetrator obtains a lighter sentence, and does it without remorse, at the expense of the other. Because of this situation, most countries, including India, are hesitant to allow unfettered use of plea bargaining in significant and heinous crimes.

Recommended Reforms

Taking into account the different benefits and drawbacks of the plea bargaining procedure, it is clear that multiple improvements may be implemented in India. The first might be in terms of the judges' authority and control. Even while it is within the discretion of judges to accept or reject the suggested penalties, the legislation tacitly encourages them to do so. The scope of judicial power must be broadened in terms of trial and punishment. Furthermore, in order to prevent becoming complacent, the working of the judges must be checked It takes little effort for the judge to accept whatever punishment is offered; nonetheless, such a practise is not in the spirit of justice and may frequently result in the conviction of individuals who are innocent while the guilty are made to walk with unduly low terms.

Furthermore, far more emphasis must be placed on adjudicating the matter itself. If a judge is unable to preside over the case, the prosecution and defence might select an impartial mediator to mediate the determination of a reasonable punishment based on the facts and evidence in hand. It does require making the trials a little more difficult, but it is still a faster way of judging cases that does not lay the same magnitude of stress on the Court. As things currently stand, the defendant frequently has little choice but to accept the prosecution's impositions. To avoid this,

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[34] *Id*

each case must be assessed at a higher level. Given the scope of his rights and authority in the Court of law, the defence counsel cannot conduct this work on his own.

These ideas may be useful to a limited amount; nonetheless, the extent to which plea bargaining is favourable rather than detrimental is debatable. There is no question that India demands an immediate justice administration framework, and there is no doubt that plea bargaining in its current shape and structure is insufficient to accomplish that goal.

CONCLUSION

Plea bargaining differs substantially between nations, especially when common law and civil law countries are contrasted. However, the underlying concept that underpins all of this remains unaffected. Criminals who plead guilty and feel regretful, or who are willing to assist in other jobs for the administration of justice, must be granted some kind of concession in the form of sentence commuting. Furthermore, nations throughout the world have inefficient and time-consuming criminal justice systems, a situation that must be rectified for effective justice administration.

When reviewing the different negatives, some of which are more destructive than others when compared, it is possible to discover that they are not small in nature and hence cannot be neglected. Each issue raises a fundamental question regarding the validity of plea bargaining, which must be resolved in order to embrace and incorporate the notion of plea bargaining into the criminal justice system.

The current state of plea bargaining in India is not at the aspirational level it aspires to be, with several barriers impeding its efficacy. There should be significant changes in the way plea bargaining applications are treated. There is an urgent need to investigate the standard of judgements and orders issued on the subject. However, as it now exists, plea bargaining has been crucial in combating the exorbitant processing rate of applications to the Court, a problem that India has endured significantly more than any other country.