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A Confession for Concession of Conviction without Trial 'Plea Bargaining': A Legal Analysis

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ABSTRACT

Excessive delay in justice will affect the creditability and reliability of the judiciary. Under the traditional form of criminal adjudication, an impartial adjudicator, after a formal adversarial trial, determines guilt and imposes a penalty appropriate for the offender from the range prescribed by legislation. Plea Bargaining is such an alternative 'deal' available which settle a criminal dispute without putting up the accused for a formal trial. This research aims to explore the origin and concept of 'plea bargaining' a divergence from traditional model, available under the Indian legal system and the present status of the remedy in India, post the criminal Law Amendment Act 2005. It will explore its application in United States and England. Further it discusses some ethical and legal issues for a better implementation of the provisions in question. No doubt efficiency and speedy disposal of cases are important and desirable goals. The question that is considered in this note is whether they are worth the perceived costs of plea bargaining. To this end, an attempt is made to examine whether there is any inherent impropriety in the system of plea negotiation. The research concludes that the provisions in chapter XXIA has been implemented in an extremely cautious manner.

Keywords-- Speedy Disposel, Plea Bargaining, Confession

I. INTRODUCTION

In a Democratic Country like India, judiciary plays a vital role in establishing a state of justice. As delayed justice is denied justice, so it is a matter of concern that people get timely justice. There are large numbers of cases which are pending before different courts. Thus, it is very necessary that some sort of system is adhered to so as to speed up the trial process and relieve the courts from heavy backlog of cases. With such a large population it is quite obvious that at least thousands of crimes are committed almost every day throughout the country resulting increasing criminal cases filing in courts. Apart from that there are several appeals which are preferred from the trials which furthermore increase the case numbers in the courts. In such a scenario it becomes a matter of concern as to how to control this problem. Therefore, plea bargaining has been introduced as a prescription to the problem of tremendous overcrowded jails, high rates of acquittal, torture undergone by prisoners awaiting trial, overburdened courts and abnormal delays in the trial process. The most common justification for plea bargaining is its utility in disposing of large number of cases in a prompt, efficient and simple manner.

However, Crime records show widespread abuse of plea bargain law. Over 4,000 cases of murder, robbery and crimes against women were disposed of by courts last years after plea bargaining pacts between parties in violation of law passed by Parliament a decade ago.[i]

II. CONCEPTION

Plea-bargaining is a pre-trial procedure, a process whereby a bargain or confession for concession of conviction without trial is struck between the accused of an offence (through counsel) and the prosecution with the active participation of the trial judge. Plea bargaining, alternatively known as 'trial relinquishing', refers to a legal process under which accused agree to confess and/or cooperate with the investigative authority in exchange for some benefit most commonly in the form of reduced charges and/or lower sentences as a concession by the state.

In its most conventional sense, plea bargaining refers to "Pre-Trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions promised by the prosecutor: usually to drop or reduce some charges,' or to

recommend a specific sentence or to refrain from making any sentence recommendation in conviction." [ii]

'A plea bargain is an agreement in criminal law proceedings, whereby the prosecutor provides a concession to the defendant in exchange for a plea of guilt or '**Nolo Contendere'** [iii]. The Latin term, better known as "no contest," is one possible plea to a criminal charge. It means "I do not wish to contend." Instead of pleading guilty or not guilty, a criminal defendant can plead nolo contendere, which means the defendant neither dispute nor admits to the criminal charges. Such plea cannot be used as evidence of the defendant's guilt in a civil trial related to the criminal trial. The defendant who enters a nolo contendere plea does not actually admit that he is guilty of the charges against him. He will, however, agree to be convicted and punished for the crime to avoid being responsible for damages in a related civil case.

Plea bargaining basically meant to reduce the time frame of criminal trials and may allow criminal defendants to avoid the risk of conviction at trial on a more serious charge. For example, a criminal defendant charged with a theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a theft charge, which may not carry jail term. It is not available for all types of crime e.g. a person cannot claim plea bargaining after committing heinous crimes or for the crimes which are punishable with death or life imprisonment.

2.1. Categories of 'Plea Bargaining'

Depending upon the type of concession granted to the defendant, plea bargaining could fall into two main categories. One is '**CHARGE OR 'COUNT BARGAINING'**, wherein the prosecutor promises to reduce or dismiss some of the charges brought against the defendant, in exchange for a guilty plea. It involves a negotiation of the specific charges or crimes that the defendant will face at trial. Usually, in return for a plea of guilty to a lesser charge, a prosecutor will dismiss the higher or other charge(s). (e.g., aggravated assault rather than attempted murder) Second is, **'Sentence Bargaining'**, which involves assurances of lighter or alternative sentences in return for a defendant's pleading guilty. It saves the prosecution the necessity of going through trial and proving its case. Sentence bargains also occur in less-serious cases, such as pleading guilty to a charge in exchange for a sentence of "time served," which generally means that the defendant will be immediately released. Both ultimately reduce the defendant's sentence. However, the third **'Fact Bargaining'** is the least used in a prosecution in which the prosecutor agrees not to reveal any aggravating factual circumstances to the court because that would lead to a mandatory minimum sentence or to a more severe sentence under sentencing guidelines.

Plea Bargaining fostered by the Indian Legislature is actually the child of the West. The practice of plea bargaining is well developed in the United States of America and is invoked in all the 50 States in America in Criminal cases invariably. England, Wales, Australia and Victoria also recognize 'Plea Bargaining'. In England the practice of guilty plea' which is similar to plea-bargaining is not well developed. It operates in limited cases. In Turner Case[iv] the accused was persuaded by the defense counsel, after return from a chamber conference with the trial judge, to plead guilty that would entitled him to receive a sentence not involving imprisonment. On Appeal it was held that the inducement by the council gave an impression to the accused that the counsel conveyed to him the views of the trial judge and hence the accused was not having a free choice in changing his plea. The conviction was accordingly held null and void.

In Cain[v], The Court of Criminal Appeal held that the plea of guilty obtained through fascination of a lesser sentence is nullify on the ground of interference with the accused freedom of choice. The accused was charged with eight offences of violence against young boys. It was alleged that the trial judge told the defense counsel that since Cain had no defense; he would get a very severe punishment unless the accused pleads guilty. This would make a considerable difference to sentence.

In **USA**[vi]**,** the accused can suggest one of the three pleas i.e. Guilty, Not Guilty, and Nolo Contendere. Under the doctrine of **Nolo Contendere**, the plea is treated as an implied confession of guilt or that the Court will decide on the point of his guilt. However, it is the discretionary power of the Court to either accept or reject such plea, considering the facts and circumstances of each case presented to it. The Court is supposed to ensure that the plea should be put forward voluntarily by the accused and absence of duress and coercion. The accused must receive the protection of secrecy. Plea-bargaining gained momentum due to the overcrowding in prisons of USA.

In **Clark v. Adams**[vii] case, the Court explained the doctrine of 'Nolo Contendere'. The Court held that the plea of '**Nolo Contendere'** also known as '**Plea of Nolvut' or 'nolle contendere'** means a formal declaration that the accused does not wish to contend. The plea being tantamount to an admission of guilt is not conviction but merely a determination of guilt.[viii] In Bradley v. US[ix] the Supreme Court ruled that if the process of plea-bargaining has been properly conducted and controlled, it is legitimate to reward with reduced penalties those defendants who plead guilty. If trial will result into death penalty will not make the process of plea bargaining illegitimate. And that defendant may plead guilty without admitting culpability, meaning that they can plea bargain even when they feel they are factually innocent.[x] In another plea bargaining case, in 1971, the Supreme Court ruled that defendants are entitled to legal remedy if prosecutors break conditions specified in plea bargains.[xi] In 1978 the US Supreme Court[xii] upheld the constitutionality of plea bargaining while awarding life imprisonment to the accused person who rejected to plead guilty for imprisonment for a term of

five years and observed a slight possibility that the accused person may be coerced to choose among the lesser of the two punishments. The Supreme Court further observed that there is no probability of coercion or duress if the accused person is free to either accept or reject the offer made by the prosecutor during the negotiation process for plea bargaining. The Court observed[xiii] that in a criminal action in which an application for plea bargaining has been made, the adjudication by the Court in relation to the plea of guilty is not necessary. However, the Court may impose sentence on the accused person immediately.

These cases illustrate the Court's view that plea bargains are acceptable and deserve recognition as valid agreements in US. The design of plea bargaining in the American system offers sufficient incentives to all actors involved to fruitfully waive the traditional trial procedures. In the criminal justice systems of the 50 U.S. states, over 95 per cent of all criminal cases are disposed of through the entry of a guilty plea.

III. LEGISLATIVE APPROACH

The success of this process in the U.S. pushed Indian lawmakers to incorporate plea bargaining in the Indian criminal justice system but the practice is not identical. B**y** virtue of Section 4 of the Criminal Law (Amendment) Act, 2005, [xiv] plea bargaining has been introduced in India based on the recommendations of the Law Commission via its 142nd, 154th, and 177th reports[xv]for certain offences.

The introduction of plea bargaining in the Indian criminal justice system is largely a response to the awful status quo, reflected in the delay in disposal of criminal cases and appeals, the huge arrears of cases and the appalling plight of under trial prisoners in **jails.**[xvi] Some of the reasons in its support include saving public money by reducing the number of trials, saving time and costs of the parties involved, reducing uncertainty from the legal process, creating a more effective justice delivery system, etc.

As per the CrPC, the initiative to move the machinery for negotiated pleas is left to the accused. This is where the Indian scheme differs crucially from the American scheme, often considered the example. According to **the Indian model,** plea bargaining is to be used in criminal cases where offences carry a **maximum sentence of up to seven years**, except those affecting the national socio-economic condition, or when **victims are women or a child below fourteen years of age**.[xvii]

In USA, there is no provision as to the prohibition on plea bargaining in certain offences. An accused person charged with any offence may take the course of plea bargaining.

The **procedure to file an application** for plea bargaining[xviii]only is initiated by the defendant after the case reaches the judicial stage. The judge **is** not envisaged to be a silent spectator, but has a significant role to play in the process. The Magistrate needs to be satisfied that the defendant is opting for plea bargaining voluntarily. Following this, the public prosecutor, investigating officer, and victim are called to court, and in case of there being no police investigation, only the victim gets called. If in case, the accused fails to satisfy the Court that he has filed the application voluntarily or that he has been convicted with the same offence previously, the Court may proceed from the stage the application has been filed before it. However, in USA, the victim does not have an active role to play in the proceedings of plea bargaining.

All parties have to reach a **mutually satisfactory disposition** together. [xix] The Court shall issue notice to the public prosecutor, if the case instituted on a police report, the accused, and the victim to participate in a meeting to reach at a satisfactory disposition of the case. Here, the court has to ensure that the entire process takes place voluntarily. There are no negotiations on the sentence of the defendant, but only the compensation for the victim is fixed by the parties. Once a disposition is reached, the court hears the parties for finalizing the sentence. [xx] The court retains some discretion to release a defendant on probation or admonition as per law. Finally, the sentencing takes place in the following manner- where offences have a mandatory minimum sentence, the court awards half of that sentence. But in cases where there is no such minimum fixed, the court may reduce the sentence to 1/4th if the **accused pleads guilty**[xxi] and deliver judgment.[xxii] This is similar to the practice in other common law jurisdictions such as the United Kingdom and Australia, where plea bargaining is permitted to the limited extent that the prosecutors and the defense can agree that the defendant will plead guilty to some charges and the prosecutor will drop the rest, while the courts have reserved their power to decide always what the appropriate penalty is to be.

In USA, an application for plea bargaining is filed only after the negotiation process between the accused person and the prosecutor is complete. **There shall be no appeal in** the case where judgment has been pronounced by the court on the basis of plea bargaining[xxiii] and period of detention already undergone by the accused be set off against the sentence of imprisonment.[xxiv]

Quite apparently, the scheme recommended was, thus, only a formalization of the practice of showing some leniency in punishment to those who plead guilty, rather than plea bargaining in its conventional sense.[xxv]

In USA, the judge does not exercise **discretionary power** while accepting an application for Plea Bargaining. However, in Indian legal system, the judge has discretionary powers to either reject or accept an application for Plea Bargaining filed by the accused person.

Under the Indian legal system, if the Court thinks the punishment awarded in any case of plea bargaining is

insufficient or is guarded by unfair circumstances, it may be set aside either by an SLP under Article 136 or a writ petition under Articles 226 and 227 of the Indian Constitution. However, in USA, it reaches its finality.

Though the conviction rate in India(10%) is way too low as compared to the conviction rate in USA (90%), it is effective in ensuring that the application of plea bargaining has been filed voluntarily. Justice may be delayed but must not be denied. In India, an accused person does not take the course of plea-bargaining to choose the lesser among the punishments but is a voluntary action. Hence, it is high probability that an innocent person will not be awarded punishment in India by way of plea-bargaining.

This is **where the second major** divergence from the American system comes in: it is implicit **from the provision that the** victim has the power to veto the bargain reached, unlike in the United States where the inability of victims to mount private prosecutions or to compel public prosecution reinforces the bargaining power of prosecutors and the limited ability of victims to influence the terms of plea agreements.[xxvi]

A clause has been added in favour of the accused stipulating that the statement or facts stated **by** an accused in an application for plea bargaining shall not be used for any other purpose.

IV. JUDICIAL APPROACH

On one hand, the Law Commission of India was persistently recommending the introduction of plea bargaining, and on the other, the Supreme Court of India was dealing with the moral questions surrounding and apprehending its consequences because of dishonest circumstances prevailing around. The court viewed that 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/she is pleading guilty his sentence should be reduced. Despite strict opposition by the Supreme Court, the government found it comfortable to introduce this concept.

The case of Murlidhar Meghraj Loya **v.** State of Maharashtra [xxvii] is illustrative. In this case, the appellants were being tried for selling adulterated food within the meaning of the Prevention of Food Adulteration Act, 1954. The Supreme Court got the impression that the defendants pleaded guilty before the trial magistrate pursuant to an informal, tripartite consensual arrangement reminiscent of "plea- bargaining procedures in the United States of America", **Justice Krishna Iyer,** expressed its anguish in the following words:

"The businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, 'trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society…"

'….It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrude on society's interests **by** opposing society's decision expressed through predetermined legislative fixation of minimum sentences and **by** subtly subverting the mandate of the law.'

In this case, the accused were charged with an offence punishable with a minimum term of imprisonment of six months, and the trial court had brazenly flouted this legislative mandate **by** sentencing the accused to a fine only.

Moreover, plea bargaining does not always involve "no jail" as was observed **by** the Supreme Court; observations like this seem to be based on misapprehensions. The above is ratio decidendi for subsequent rulings too.

In Kachhia Patel Shantilal Koderlal State of Gujarat and Anr. [xxviii] case as well, the Supreme Court criticized the concept of plea bargaining. The Court held that plea bargaining is an unconstitutional process as it encourages corruption and pollutes the concept of justice.

Even in the **1999** judgment of State of Uttar Pradesh v. Chandrika, [xxix] where the Supreme Court set aside the order passed **by** the High Court allowing the plea bargain, the Court supported its stance on the rationale that the concept of plea bargaining was not recognised under our criminal justice system. It was further observed that it is the constitutional duty of the Court to consider the merits of the case and award appropriate sentence despite the confession of the guilt by the accused person. Mere confession of the guilt by the accused person cannot be a reason for awarding lesser punishment.

The legal position now in **2007** is obviously different with plea bargaining acquiring a place in the statute book. This counters the next objection of the Supreme Court- articulated **by** the court in Thippaswamy v. State of Karnataka[xxx] that the procedure violates Article 21 of the Constitution. This is obvious as at the time the practice was adopted in the absence of any "procedure established **by** law" to sanction plea bargaining. In the instant case, the Supreme Court held that inducing an accused person to plead guilty under any assurance or promise is unconstitutional for being violative of Article 21 of the Indian Constitution. It further observed that in such cases, the Court must set aside the conviction and direct the case to the Trial Court to give accused person the right to defend himself and if found guilty, the Trial Court may award appropriate punishment to him.

Thus, the disapproval of plea bargaining **by** the Supreme Court in earlier cases should be understood in the context in which the observations were made that of something reminiscent of the American practice being

adopted in India as it is, without any authority of law- and restricted to the peculiar facts and circumstances of the cases before the court.

However, there has been a shift in the judicial thinking with the passage of time. In State of Gujarat v. Natwar Harchandji Thakor case, [xxxi] the Gujarat High Court favoured the process of plea bargaining and held that the object is to provide easy, cheap, and expeditious resolution of disputes including the trial in criminal cases and that it prevents the pendency and delay in disposal of the administration of justice.

In Vijay Moses Das CBI case,[xxxii] a person was accused of supplying of sub-standardized material to ONGC at a wrong port and thereby, causing ONGC to suffer huge losses. CBI completed the investigation and started prosecution against the accused person under Section 420, 468, and 471 of the Indian Penal Code, 1860. The accused person took the course of plea bargaining. But the Trial Court rejected the application on the ground that it was not accompanied by an affidavit as stipulated under Section 265B and no compensation was fixed. However, the Uttarakhand High Court directed the Trial Court to accept the application of Plea-bargaining.

In Bhim Ch. Hembram v. State of West Bengal case,[xxxiii] it was held that the taking of plea of an accused is obviously the most crucial part of the proceeding of the trial. The court has to proceed with extreme caution and utmost circumspection before he accepts the plea of guilty of the accused sentence, then it would be a question of plea bargaining. Here the court has no other alternative but to convict the accused according to law and proceed to sentence him a harsh term. However in Kashi Mandal and Ors. V. State and Anr.case[xxxiv] it opined that the offence committed by the petitioner was not minor offence of trivial nature involving some loss of money.. The offence was for forgery, theft and cheating. The option of plea bargaining was available to the petitioner.

V. LEGAL, MORAL AND ETHICAL ISSUES AND PERSPECTIVE

The idea of incorporating plea-bargaining in India faced public dissatisfaction at first. It was thought **of as an immoral compromise in criminal cases**. Those opposing plea bargaining's feel that it is too lenient a method to deal with the defendants/ accused. They also claim that the **process will be unfair** to the victims if defendants are given such concessions. 'Concerns towards trial wavers included that **India's social conditions** do not justify its introduction, that the pressures from prosecuting agencies could result in **convictions of the innocent**, that the counsel representing the accused would be now willing to advise confession invoking scheme, that plea bargaining may **increase the incidence of crime and criminals could slip through the net with impunity**'[xxxv] Besides this, as was argued **by** the Law Commission, treating an accused who feels remorse and wants to reform, or is honest enough to plead guilty in the hope that the state will show some benevolence, at par with an accused being tried at the cost of time and money of the society, may also not **be** just and fair.[xxxvi]

To consider these arguments the first focuses on **procedural fairness** for individual defendants: that any system of plea bargaining is improper because it places a price on the exercise of important constitutional rights like the forfeiture of the concessions available after a guilty plea. **How far it is ethical** to give concessional punishment to accused on plea-bargain if guilty? The severest of the critics attack the supposed coerciveness of the process. Plea bargaining is characterised as a series of threats and promises by legal officials that induce defendants to forfeit many of their constitutional rights and plead guilty. On similar lines, it is also criticised as being antagonistic to due process and making a mockery of the criminal process. It is argued that the **dual sentencing** structure penalizes defendants for exercising constitutionally guaranteed legal rights, and renders due process concerns subordinate to procedural convenience.

The second is that **societal interest in** rational and appropriately stringent criminal sentences is compromised **on the sole ground of administrative expediency.** The opponents allege that plea bargaining seriously impairs the public interest in effective punishment of crime and accurate separation of the guilty from the innocent. **It** weakens the deterrent and incapacitative effect of law **by** allowing some accused to escape just deserter. The **resulting sentences cannot be justified by** any rationale for penal sanction, be it deterrence, societal protection, rehabilitation or even retribution.

The third concern is **unfair or distorted results** that the plea negotiation system, **by** its very nature, is likely to produce. As regards the risk of factually guilty offender avoiding the just results, here arise two questions. First, what is the likelihood of the accused getting convicted if no bargain had been made? Secondly, is not the assumption that the accused is factually guilty contradictory to the basic **principle of presumption of innocence**? The disposition of cases would be influenced **by** factors extraneous to the correctional needs of the accused or requirements of law enforcement (such as court workload) so that either of the following two consequences might occur: Offender **of a serious crime escapes with undeserved leniency, or an innocent person is punished.**

In addition, it is argued **that** the variation in sentence between accused who plead guilty and those who **are** found guilty after trial signifies that one category is not receiving the appropriate **quantum of punishment.** An adequate response to this arguement is that punishment is generally never believed to be precise; the discount might be acceptable if it remains within the limits of punishments customarily imposed for the particular type of crime.

Moreover, the Indian scheme provides that the sentence discount cannot exceed one-fourth of the maximum punishment prescribed. Also, by exempting socio-economic offences and offences which carry punishment of more than seven years imprisonment, it ensures that the nature of the plea does not outweigh the seriousness of the crime.

The counter-argument in **support of plea bargaining** runs that **by** obtaining guilty pleas, prosecutors can pursue more cases and dispose of cases at a greater rate, potentially resulting in greater aggregate deterrent effects with a finite amount of resources.

Furthermore, while certain accused might appear to reduce their expected probability of punishment, the safeguard built in the Cr.P.C. is that the accused in serious cases and offenders with previous criminal histories cannot avail of concessional treatment **by** pleading guilty.

5.1. Is It An Alternate To Arbitration?

Plea bargaining is sometimes seen as being parallel to compounding **of** offences under section **320** of the CrPC as both involve methods of Alternative Dispute Resolution (ADR). [xxxvii] But there are some important differences between the two. Compounding of an offence has the effect of an acquittal. There is no admission of guilt which is the starting point for both punitive and rehabilitative rationales for punishment**. It cannot be a substitute for Arbitration as a** "crime" is essentially perceived as a wrong against society at large and the state, thereby, acquiring an interest in criminal punishment, a compromise between the accused and the victim is generally not allowed. This also explains why an expansion of the list of compoundable offences under section **320** of the CrPC could not have been an answer to the problem of overcrowded jails for which plea bargaining was purportedly introduced in India. Secondly, only offences that are essentially of a private nature have been recognised **by** the CrPC as compoundable, while some others are compoundable with the permission of the court.

In a plea bargain, no side is an absolute loser or winner. The practice can accommodate the interests of both sides. It is beneficial to the accused insofar as it helps him/her to avoid the cost, time, mental anxiety and other practical burdens that a trial entails. Even if one is factually guilty and there is sufficient evidence, the element **of risk and uncertainty in a trial** cannot be completely eliminated. In many lesser offences, trial may actually be too costly and embarrassing. The state, on the other hand, can save on judicial and prosecution resources, and perhaps be effective in achieving **the object of punishment by the promptness in punishment**. Prosecutors also benefit from plea bargaining as it enables them to secure high conviction rates while avoiding the expense, uncertainty and opportunity costs of trials.

VI. RECOMMENDATION AND CONCLUSION

An appraisal of arguments from both sides suggests that plea bargaining is a neutral process in the dispensation of criminal cases which should not erode the deterrent effect of law **and punishment, or** beget due process concerns, or lead to other unjust results. In fact, the plea bargaining system is one of mutual advantage.

Perhaps the primary advantage in the Indian context would be that it would help clear the huge backlog of cases and **in** future allow prosecutors to pursue more cases than would be otherwise possible. It would also help avoid much of the bitter impact of a long period of detention has on under trial prisoners. **A** manifest consequence could perhaps also be that legal sanctions are applied to a larger base of offenders, thus heightening the certainty of punishment, and adding to the general deterrent effectiveness of legal sanctions. For the accused it means an end to uncertainty, saving of trial-costs and avoiding the anxiety and other practical burdens of a trial.

It has been shown that the argument that plea bargaining allegedly operates to encourage, **if** not coerce the accused to waive their right to trial and the argument that societal interest in rational and appropriates criminal sentences are misplaced because of the inherent uncertainty in a trial and the mutuality of benefit that is associated with any plea negotiation system. It is concluded that any plea bargaining system in which both sides have equal access to the same resources and which the plea is voluntarily and intelligently made is constitutionally valid and does not violate the basic tenets of criminal law.

The data collected by the government [xxxviii] starting 2015 clearly showed the lack of usage of the plea bargaining process in India. In 2015, only 4,816 cases out of a total number of 10,502,256 cases pending for trial under the general penal law went for plea bargaining, i.e. a mere 0.045%. In 2016, it was about 4,887 cases out of 11,107,472, bringing it down to 0.043%. It is unfortunate to note that this statistic hasn't even crossed a mere 1% in last10 years. In the same way, data on the number of under trial prisoners also shows an increase from 2006. Thus, plea bargaining is not fully compatiable to fulfill either of the two objectives it was envisaged to achieve in India.

The scope and area of plea bargaining is need to be enhanced, So that the victim or aggrieved party will get speedy justice. From the angle of victim, plea bargaining is a better substitute for ultimate relief, as he/she can avoid a lengthy court process to see the accused, be convicted. The system also gives a greater relief to a large number of under trials lodged in various jails of the country and helps reduce the long pendency in the court.

If offender is given chance to opt for plea bargain, he may get chance to repent and that may reform him that ultimately will help in maintain peace in family and

society which is inevitable for all round development of our country.[xxxix]

For a fair and just decision or justice it is suggested that the sole arbiter of an application for pleading guilty in return of a concession was an independent, specially designated judicial authority instead of the trial judge. This provision should have been incorporated into the CrPC, so as to prevent any perceived or actual violence to the accused' right to a fair trial.

The need of the hour is to study the American Model of plea bargaining, the differences that exist between the concept of plea bargaining as practiced in USA and India. Due to limited applicability and little awareness of the provisions among the general masses, the Indian system with about three crore pending cases has not benefitted much from the provisions.

It is not that the American system of plea bargaining should be adopted in toto but the system can be adopted by making necessary amendments that suit the needs of Indian people and can be used to protect the fundamental rights of both victim and accused.

The law relating to plea bargaining should be encouraged by the judiciary and the other stakeholders without which this law cannot become a common and efficacious remedy. It should be practiced regularly to address the problems of overburdened courts regarding the pendency of cases.

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[i] By Aloke Tikku, Hindustan Times | on Nov 24, 2015 New Delhi
[ii] Garner, Bryan A., ed. (2000). Black's law dictionary (7th ed.).
[iii] Practical law *THOMSON REUTERS. COM*
[iv] *Regina v. Turner* , CACD (1970) 2 QB 321, (1970) 2 ALL ER 281
[v] *Regina v. Cain & Ors. 2006 EWCA Crim 3233*
[vi] Federal Rule of Criminal Procedure: 11(c)(1)(B) and (C); see also form CR-101 Plea Form with explanations and waiver of Rights, Judicial Council for California
[vii] *State ex Rel. Donald Edward Clark v. D.E. Adams* 111 S E. 2 d 336(1959)
[viii] *Lott v. United States 367 US 421 (1961)*
[ix] *Bradley v. United States* 397 US742(1970)
[x] *North Carolina v. Henry C. Alford* 400 U.S.25(1970)
[xi] *Santobello v. New York* 404 U.S. 257 (1971)
[xii] *Bordenkircher v. Hayes* 434 US 357(1978)
[xiii] *United States Risfield* 340 US 914
[xiv] come into effect from **July 5,** 2006, inserted Ss. 265A to 265L (Chapter XXI A) of the Criminal Procedure Code, 1973 (hereinafter "CrPC")
[xv] Law Commission of India, 142nd Report on 'Concessional Treatment for Offenders Who on their Own Initiative Choose to Plead Guilty without Any Bargaining', 20-21 (1991): The Law Commission in its 142nd and 154th report also in 177th Report on 'Law Relating to Arrest' (Dec.2001)highlighted the problems faced by the criminal justice system of the country. After studying numerous foreign criminal justice systems, they made out a case for introducing plea bargaining in India.
[xvi] Statements of Objects and Reasons, Criminal Law (Amendment) Act, **2005:** "*It is expected that this provision will be utilized sincerely and honestly so as to achieve the desired result of reduction in arrears and expeditious disposal of the criminal cases. Not only will it expedite the disposal of the cases, it may also result in adequate compensation for the victim of the crime, since he along with prosecutor will be in a position to bargain with the accused."* Justice Sobhag Mal Jain Memorial Lecture on Delayed Justice, delivered **by** Hon'ble Chief Justice of India, Y.K. Sabharwal, July **25,** 2006, *available* at *http://supremecourtofindia.nic.in/new links/Delayed%2oJustice.pdf* **The** heavy work load is clear from the staggering figures. Each High Court judge has at least 5,600 cases pending before him., **A.** Dwivedi et al., *Plea Bargaining in India: Changing Dimensions*, Caum. L. **J. 13, 15** (2005), Justice A.K. Sikri, Reforming *Criminal Justice System: Can Plea Bargaining be the Answer?* 10(1) **NYAYA DEEP 39, 40 (2007);**
[xvii] Section 265-A CrPC Application of the Chapter
[xviii] Section 265-B CrPC Application for plea bargaining
[xix] Section 265-C CrPC Guideline for mutually satisfactory disposition
[xx] Section 265 -D CrPC Report of the mutually satisfactory disposition to be submitted before the court
[xxi] Section 265-E CrPC Disposel of the case
[xxii] 265-F CrPC Judgment of the Court
[xxiii] 265-H CrPC Power of the Court in plea bargaining
[xxiv] Section 265-I CrPC Period of detention undergone by the accused be set off against the sentence of imprisonment
[xxv] T. Agarwal et al.,Wanna Make a Deal? The Introduction of Plea-Bargaining in India(2006) 2 SCC (Cri) (J) 12, 19
[xxvi] J.E. Ross, *The Entrenched Position of Plea Bargaining in United States Legal Practice*, 54Am. J. Coup. L.717 (2006)

[xxvii] *Murlidhar Meghraj Loya v. State of Maharashtra*, AJ.R. 1976 S.C. 1929
[xxviii] In *Kachhia Patel Shantilal Koderlal State of Gujarat and Anr.*1980 Cr LJ 553
[xxix] *State of Uttar Pradesh v. Chandrika*, AI.R. **2000 S.C.** 164. 2000 Cr LJ 384
[xxx] *Thippaswamy v. State of Karnataka*, A.I.R. 1983 S.C. 747
[xxxi] *State of Gujarat v. Natwar Harchandji Thakor* (2005) Cr LJ 2957
[xxxii] Cri. (Misc.) Application No. 1037/2006
[xxxiii]Bhim Ch. Hembram v. State of West Bengal, 2008 (1) AIC L.R. 173l Calcutta High Court
[xxxiv]Delhi High Court in case of Kashi Mandal and Ors. V. State and Anr IV (2010) BC 209.
[xxxv] Law Commission of India, 142nd Report Supra note 15
[xxxvi] Report of the Commitee On Reforms Of Criminal Justice System , Government of India , Minister Of Home Affairs, 179 (New Delhi, 2003).
[xxxvii] Supra note 29 *State of Uttar Pradesh v. Chandrika*, the Supreme Court spoke of the concept of compounding of certain offences under Section 320, Cr. P.C. as one of "negotiated settlement in criminal cases". Therefore, it is important to clearly distinguish it from that of plea bargaining., R V. Kelker, Lectures on Criminal Procedure 209
[xxxviii] Crime In India 2016, Statistics, National Crime Record Bureau, Ministry of Home Affairs, Govt. of India.
[xxxix] Prajwal Khatiwada,Plea Bargaining and our Criminal Justice System, 2 Cri L. J. 139-140 at 140 (2010)