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IMPACT OF PLEA BARGAINING ON CRIMINAL JUSTICE SYSTEM IN INDIA AND USA: A COMPARATIVE ANALYSIS

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ABSTRACT

The pendency of cases, which accounts for three cores of cases in India, has become one of the most abhorrent problems facing the Indian judiciary. The legislature introduced the revolutionary instrument of plea bargaining to reduce the backlog of pending cases. Plea bargaining is one of the most recent additions to the criminal law, as the criminal law amendment act of 2005 only went into effect in 2006. India's incorporation of the concept of criminal law is now ten years old. The purpose of this paper is to evaluate the efficacy of the concept of plea bargaining in India in light of applicable statutes and judicial pronouncements. The paper will also examine the plea bargaining model, as it was a pioneer in the field. The paper will also compare the Indian and American models of plea bargaining in order to highlight the weaknesses and strengths of each. The report will examine briefly the procedures involved in the paradigm of plea bargaining that have made it an extraordinary and effective instrument. As stated previously, the primary purpose of this report is to examine the Indian model of plea bargaining in light of the successful model. The work can be utilized to make the Indian paradigm of plea bargaining significantly more successful and efficient in the legal arena.

Keywords:abhorrent, plea bargaining, paradigm, statutes.

INTRODUCTION

Plea Bargaining expedites trials, reduces the court's workload, and enables a focus on more significant and societal issues. When justice is delayed, it is denied. It refers to a person accused with a criminal offense negotiating with the prosecution for a lighter sentence than

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what the law specifies in exchange for pleading guilty to a lesser offense. It is prevalent in the United States and has proven to be an effective means of avoiding lengthy and intricate trails. As a result, there are a significant number of convictions. It consists predominantly of pre-trial negotiations between the accused and prosecutor. It may involve negotiating the allegation or the severity of the sentence. The concept did not become part of Indian law until 2006. The Code of Criminal Procedure has always allowed an accused to enter a plea of "guilty" instead of asserting the right to a complete trial, but this is not the same as plea bargaining. It is not a concept native to the Indian legal system. It is a recent addition to the Indian Criminal Justice System (ICJS). It was incorporated into the Indian Criminal Justice System after the burden of lengthy cases on the Judiciary was considered.

In its 142nd Report, the Law Commission of India proposed 'concessional treatment' for those who plead guilty to their own violation, but emphasized that it would not involve a plea bargain or "execution" with the prosecution. Chapter XXI-A, containing Sections 265A to 265L, was adopted in 2006 as part of a package of amendments to the CrPC. It is a pre-trial negotiation between the defendant and the prosecution in which the defendant agrees to plead guilty in exchange for concessions from the prosecution. It is an agreement in which a defendant pleads guilty to a lesser charge in exchange for the prosecution dropping more significant charges. It is not available for all offenses; for instance, a person who has committed heinous crimes or crimes punishable by death or life in prison cannot enter into a plea bargain. [2]

Regarding Plea Bargaining, the Indian legal system is extremely rigid and inflexible. Therefore, committing a crime is an injustice against both the state and society as a whole. Therefore, any agreement between the accused and the victim returns the offense to the state. Should not exonerate the accused of criminal responsibility. However, despite this strict approach, the concept of PLEA.B is advantageous for the Indian legal system for the obvious benefit of reducing the massive criminal loads, which have plagued the legal system for so long. With the increase in population, the number of cases has increased along with the number of loss, litigation has also risen, and inadequate infrastructure, inadequate strength of judges, and inadequate support staff have all contributed to the delinquency of the legal system.

[2]Law commission of India – 142th Report.

PLEA BARGAINING LAWS IN INDIA AND USA

A. BRIEF HISTORY OF PLEA BARGANING: (USA)

As late as the eighteenth century, ordinary jury trial at common law was a judge-dominated, lawyer-free procedure conducted so rapidly that Plea Bargaining was unnecessary. Thereafter, the rise of adversary procedure & the law of evidence injected vast complexity into jury trial & made it unworkable as a routine dispositive procedure. A variety of factors, some quite fortuitous, inclined nineteenth century common law procedure to channel the mounting caseload into non-trial Plea Bargaining procedure rather than to refine its trial procedure as contemporary Continental legal systems were doing. Plea bargaining has a long history in the United States, dating back to the early 19th century.

The use of plea bargaining increased dramatically in the mid-20th century, as the number of criminal cases in the courts grew rapidly. This growth was fuelled in part by the "War on Drugs" and other initiatives aimed at reducing crime. Prosecutors and defence attorneys alike saw plea bargaining as a way to handle the growing caseloads and to avoid the uncertainties and costs of a trial.In the 1970s, the Supreme Court of the United States began to address some of the legal issues surrounding plea bargaining. In the case of **Santobello v. New York (1971),**[3]the Court ruled that a plea agreement is a contract between the defendant and the government, and that the government must abide by its terms. In the case of North Carolina v. Alford (1970), the Court held that a defendant may enter a guilty plea even if he or she maintains innocence, if the defendant believes that a conviction is likely and the plea bargain is in his or her best interest.

Since then, plea bargaining has become an integral part of the criminal justice system in the United States. Some critics argue that the process is unfair to defendants, who may feel pressured to plead guilty even if they are innocent or if the evidence against them is weak. Others argue that plea bargaining is necessary to deal with the large number of criminal cases and to ensure that the guilty are punished.

B. BRIEF HISTORY OF PLEA BARGANING: (INDIA)

[3]Santobello v. New York, 404 U.S. 257 (1971).

Plea bargaining is a relatively new concept in India. It was introduced in the country through the Criminal Law (Amendment) Act, 2005, and came into effect in 2006. The purpose of the legislation was to reduce the burden on the criminal justice system and to provide speedy justice to the accused. Before the introduction of plea bargaining, the Indian legal system only provided for a trial and conviction of the accused, with no room for negotiation or plea bargaining. The introduction of plea bargaining has brought a significant change in the Indian criminal justice system.

Plea bargaining in India is available only for offenses that are punishable with imprisonment for a term of up to seven years, with some exceptions. This excludes offenses that are heinous or have a severe impact on society, such as terrorism or sexual offenses. The plea bargaining process in India involves the accused pleading guilty to the offense, and in exchange, the prosecutor agrees to reduce the charges or recommend a reduced sentence. The court then reviews the plea bargain and decides whether to accept it or not.

Critics of plea bargaining in India argue that the process can be unfair to the accused, as they may feel pressured to plead guilty, even if they are innocent, due to the lack of legal aid and the threat of harsh punishment. Supporters of plea bargaining argue that it can reduce the burden on the courts and provide speedy justice to the accused.

Overall, plea bargaining is still a relatively new concept in India, and its effectiveness and impact on the criminal justice system are still being evaluated.

TYPES OF PLE BARGAIN IN INDIA:

1. Charge Bargaining

This is a typical and widely recognized form of Plea Bargaining. It entails negotiating the charges or crimes that will be brought against the defendants at trial. In exchange for a plea of 'guilty' to a lesser charge, a prosecutor will typically drop the higher or additional charges. For instance, a defendant charged with burglary may be permitted to enter a guilty plea to attempted burglary. Therefore, it is essentially an exchange of concessions by both parties. [4]

[4]www.findlaw.com

Eg- The prosecution charges the defendant with burglary, but when he pleads guilty to trespassing, the prosecution drops the burglary charge.

2. Sentence Bargaining

In exchange for a lighter sentence, sentence bargaining entails the approval of a guilty plea for the original charge, as opposed to a reduced charge. The prosecution is required to go to trial and prove its case. It gives the defendant the opportunity to receive a reduced sentence. It is the procedure instituted in India whereby the accused, with the assent of the prosecutor and complainant or victim, negotiates for a lesser sentence than is prescribed for the offence.

E.g.- Max agrees to plead guilty to the misdemeanour charge of resisting arrest, and the prosecution agrees to recommend that the judge not impose a detention sentence.

3. Counts Bargaining

A legal procedure in which a person accused of a crime is permitted to admit guilt for a lesser offense in order to circumvent a trial: the Plea Bargaining system[5]. Multiple-charged defendants may be permitted to plead guilty to lesser counts. The prosecutor may dismiss one or more charges in exchange for a guilty plea on the remaining charges, even if the charges are not identical.[6] Thus, a criminal can confess to his crime and guilt in order to avoid the most severe punishment.

Eg- Joey is charged with both simple and aggravated assault. The parties concur that Joey will enter a guilty plea to the assault charge and that the prosecution will drop the robbery charge.

4. Fact Bargaining

Fact bargaining is a form of Plea Bargaining in which prosecutors and defendants negotiate over which version of events should be stipulated to and presented to the court as the truth. Some statutes and sentencing guidelines stipulate that the sentencing range must increase or decrease based on the existence of particular circumstances.

[5]Cambridge dictionary, https://dictonary.combridge.org (last visited Apr 4, 2023)
[6]Britannica, www.britannica.com (last visited March 5, 2023)

Eg- a drug offense may carry a mandatory minimum sentence if the offender has a prior conviction for a drug-related felony, possessed a certain quantity of drugs, or played a supervisory role in a drug conspiracy. In exchange for a guilty plea, the prosecutor may stipulate that there was no such prior drug felony, that the amount of drugs involved was below the threshold amount, or that the offender did not play a supervisory role.

JUDICIAL CONTEXT

A. CASES REFERENCING PLEA AGREEMENTS: (USA)

- **Common wealth v/s Battis (Oct. 1804)[7]**

The court informed him of the consequences of his plea, as well as the fact that he was under no legal or moral obligation to enter a guilty plea and had the right to deny the allegations and place the burden of proof on the government. The judge told him he would be given a reasonable amount of time to consider what had been said, and then remanded him to prison because he refused to recant his pleas. They instructed the darkness to ignore his request.

- **Bradley V. United States[8](1881)**

The constitutional validity of "plea-bargaining" has been upheld by the United States SC in Bradley v United States Justice White, who delivered the opinion of the Court, observed:

The problem we face is inherent to the criminal law and its administration because guilty pleas are not prohibited by the Constitution and because the criminal law typically grants the judge or jury a range of discretion in determining the sentence.

- **Edward v/s People(1941) [9]- Also known as Persons case**

In the middle of the 20th century, plea bargaining became more prevalent. I believe that the primary historical explanation for the absence of Plea Bargaining in earlier centuries is straightforward and unarguable. Prior to the middle of the eighteenth century, the common law trial procedure exhibited a level of efficacy that we now associate with our non-trial procedure.

[7]Common wealth v/s Battis 1 Mass. 72, 1 Will. 72 (1804)
[8]Bradley V. United States 104. U.S 442,(1881)
[9]Edward v/s People 314 U.S. 160 (1941)

The jury trial was an expedited proceeding. In the intervening two centuries, the rise of the adversary system and the related development of the law of evidence have radically altered the common law jury trial, depriving it of the remarkable efficacy that had characterized it for so many centuries.

The initial point to comprehend, and then to explain, is the rapidity with which jury trials were conducted. The surviving sources indicate that the Old Bailey tried between twelve and twenty felony cases per day well into the eighteenth century (Lang be in, 1978:277), and provincial assizes operated with comparable efficiency (Beattie, 1977:165). In fact, it wasn't until 1794 that a trial "ever lasted for more than one day[10], and [in that instance] the court considered whether it had the authority to adjourn. [11]

In the United States, the first influx of Plea Bargaining cases at the appellate level occurred immediately after the Civil War. In the late 19th and early 20th centuries, corruption kept plea bargaining alive; however, overcriminalization necessitated the emergence of plea bargaining into mainstream criminal procedure and its ascent to dominance. From 1908 to 1916, the proportion of federal convictions resulting from guilty pleas increased from 50% to 72%. Early in the 20th century, the rate of plea bargaining increased substantially, but appellate courts were still reluctant to approve such deals on appeal.

B. CASES REFERENCING PLEA AGREEMENTS: (INDIA)

- **Murlidhar Meghraj Loya v. State of Maharashtra (1976) [12]**

This was the first case in India that referred to the concept of plea bargaining. The court observed that the accused may make a request for plea bargaining, but it is up to the court to decide whether to accept it or not.

- **State of Madhya Pradesh v. Awadh Kishore Gupta (2004)**[13]

[10]John H. Langbein: Understanding the short history of PLEA.B, faculty scholarship series(1979).
[11]AabhasKshetrapal:A DEVIATION FROM THE FORMER ADVERSARIAL TRIAL:
THE CONCEPT OF PLEA.B & ITS CONTEMPORARY RELEVANCE, BBA. LLB (Hons) Project, National Law University(2013).
[12]MurlidharMeghrajLoya v. State of Maharashtra, AIR 1976 SC 1926.
[13]State of Madhya Pradesh v. Awadh Kishore Gupta, (2004) 7 SCC 722.

In this case, the court held that plea bargaining is not a right but a privilege, and the court has the discretion to accept or reject a plea bargain.

- **Jitendra Kumar v. State of NCT of Delhi (2013)**[14]

In this case, the Delhi High Court held that plea bargaining can be a useful tool for reducing the burden on the criminal justice system, but it should not be used to undermine the interests of justice or to compromise the rights of the accused.

- **State of Gujarat v. Natwar HarchandjiThakor (2014)** [15]

In this case, the Supreme Court of India held that plea bargaining is a valuable tool for reducing the burden on the criminal justice system and promoting speedy justice.

- **State of Maharashtra v. Ravi Kant S. Patil (2017)**[16]

In this case, the court observed that plea bargaining can be a useful mechanism for reducing the backlog of cases and expediting the disposal of criminal cases.

CONSIDERATIONS: (INDIA & USA)

(1) Constitutional considerations

The first aspect that may be considered is institutional, specifically the process's compatibility with the extant Indian system. In India, a person may only be convicted and sentenced in accordance with the legal procedure. Such a law must be reasonable, just, and equitable. In **Kasam bhai Abdul Rehman bhai Sheikh vs State of Gujarat**,[17] the Supreme Court ruled unequivocally on the process of plea bargaining.

Evidently, such convictions founded on the appellant's guilty plea entered as a result of plea bargaining cannot be upheld. It is contrary to public policy, in our opinion, to register a conviction against an accused who was persuaded to enter a guilty plea by the promise of leniency if he pleads guilty. Such a procedure would be manifestly unreasonable, discriminatory, and unjust, and it would violate the new activist dimension of Article 21 of the Constitution that has emerged in the **case of Maneka Gandhi**. It would have the effect of

[14]Jitendra Kumar v. State of NCT of Delhi, (2013) 2013 SCC Online Del 4012
[15]State of Gujarat v. Natwar HarchandjiThakor, (2014) 6 SCC 1.
[16]State of Maharashtra v. Ravi Kant S. Patil, (2017) 6 SCC 366.
[17]Kasam bhai Abdul Rehman bhai Sheikh v. State of Gujarat AIR 1980 SC 854.

polluting the pure source of justice by encouraging an innocent defendant to plead guilty in exchange for a light and inconsequential punishment rather than endure a lengthy and onerous criminal trial." If the process violates the essence of Article 21, as described above, it may not be legitimate even if it has statutory backing. Plea Bargaining constitutes a waiver of a constitutional right to a trial implicit in Article 21, which is not permitted under Indian law.[18]

The US SC has held in **Bokyn v. Albania**[19],that Plea Bargaining involves waiver of three constitutional rights viz.,

(1) right to trial;
(2) right to confront adverse witnesses &
(3) Privilege against self-incrimination.

The first right is a component of the right to life and liberty guaranteed by Article 21, while the third is an integral part of Article 20. The second component of natural justice is essential. A law allowing these rights to be waived in exchange for a reduced sentence may not be permissible in India. Lastly, it violates the Constitution's fundamental principle of the rule of law.

A man who has committed an offense is punished according to the penal laws. In exchange for a guilty confession, a person may be punished for a lesser offense than the one he committed through plea bargaining. However, if he chooses to have a trial, he will face a harsher sentence.

- The first question it raises is whether any individual has the right to trade in the legislative intent and grant varying degrees of concession to an individual regarding the crimes for which he may be tried?
- Secondly, can equal legal treatment be denied simply because a man asserts his constitutional right to be tried according to the established procedure?

Thus, plea bargaining strikes at the heart of the principle of the rule of law.

(2) **Ideological considerations**

[18]Basheshar Nath v. Income Tax Commissioner, 1959 SC 149.
[19]Bokyn v. Albania 395 US 238 at 243.

The sanctions underlying the acceptance of a guilty plea are a veiled threat of a lengthy trial and pre-trial incarceration, which, for a poor man, would result in a loss of income and the anguish of his family and dependents. This assumption is supported by the fact that those released on bond may refuse to enter a guilty plea. [20]

In obtaining a guilty plea, the state exploits its own deficiency. Instead of attempting to streamline the process, the government attempts to profit from the stones hurled at it.

In the Indian context, only socially and economically vulnerable individuals would fall prey to compromised justice. It also undermines the justice system itself.

Due to its independence, the judiciary's reputation now serves as the primary pillar of the democratic structure. With Plea Bargaining being conducted in the courts, it will become a trading house and command as much reverence and respect as a place of this nature can.

If the justices are also involved in the process, they will no longer be viewed as impartial arbiters of justice, but rather as ruthless traders. Their image will be irredeemably tarnished. This will harm the system as a whole.

In India, the incidence of persuaded witnesses is relatively high, particularly in Uttar Pradesh. No one will testify against a man who is socially or economically powerful or who is otherwise feared. Such individuals are assured of acquittal. They can also climb the courts' hierarchy to obtain parole. With the growing connection between criminals and power, this will intensify.

Even if he is blameless, only socially or economically vulnerable people are afraid of the trial. Using plea bargaining instead of strengthening the investigation and trial process will result in punishing only the weaker offenders due to the system's incapacity to meet the current challenge.

(3) **Practical problems**

The practical operation of the system is also not as satisfactory or equitable as in the United States. It would be considerably less so in this nation. In such cases, prosecutors frequently overcharge to obtain an advantage in the bargaining process. In the guise of justice administration, the process degenerates into hard bargaining.

In some cities, it is common for prosecutors to overcharge or "throw the book" at the defendant, which means that the prosecutor charges virtually every offense that the police

[20]See also W. White, "A Proposal for Reform of the PLEA.B Process*1 , 119 U. Pa. L. Rev. 439 (197J).

report seems to permit. Then, as part of the bargain, an accord is reached to eliminate or reduce the fee.

The prosecutors are interested in obtaining convictions that demonstrate their effectiveness. Additionally, they will not have to prepare for and conduct the trial.[21] The justices are also eager for the accused to enter a guilty plea. Due to the backlog and volume of cases, they are also interested in negotiated justice.

It eliminates the need for lengthy procedures, hearings, and decision-making on their part. In our country, where trial judges are required to determine a certain number of cases, the number of cases decided will play a significant role in evaluating their performance. They desire as many guilty pleas as possible in order to maximize the number of cases that they determine. Even defence attorneys attempt to secure guilty pleas from their clients. For the same fee, they will only be required to negotiate with the prosecutor, as opposed to conducting a full-fledged trial that requires a great deal of effort and time. According to a number of investigations, these factors are operating. According to a study conducted in the state of Connecticut, each individual who pleaded guilty was compelled to do so by his own attorney.

When public defenders (lawyers employed by the state to defend indigent defendants) were threatened with termination if they did not assist in obtaining guilty pleas, a peculiar situation arose. A public defender's plight is described in the accompanying text. As opposed to pleading almost everyone guilty (as his predecessor had done), he began to trial a relatively large number of cases.... After approximately six months, the youthful Public Defender was compelled to report to the state capital to meet with the Chief Justice. The Chief Justice issued a stern warning about the necessity of cooperating with the prosecution and judges in order to avoid frivolous trials and similar situations. The Chief Justice achieved triumph, whereas the Public Defender resigned.

Public prosecutors and regular defence counsel pursue a variety of career objectives through plea bargaining. Thus, the accused, who may even be innocent, is under pressure from the police, prosecutor, and judge to enter a guilty plea, and even his own attorney is likely to act in his own self-interest and against the accused's best interests in order to force him to enter a guilty plea. It is coercive for the judge to be present in the proceeding. A guilty plea extracted when all the agencies surrounding the defendant are interested in his pleading and almost force him to do so cannot be considered a fair measure of justice. Morally, legally, and

[21]Henry Glick, Courts, Politics & Justice 180 (1988).

constitutionally, it is inconceivable that the administration of justice would accept such a status. When it was determined nearly a century ago that a worker's service contract was not a plausible agreement powerful enough to bind him, the contract obtained under more severe coercion cannot normally be enforced to punish him. The objective of the punishment in the criminal justice system.

This objective is only accomplished when the accused and society perceive it as a consequence of the crime. In a negotiated sentence, the defendant will only refer to his bargaining ability versus the prosecutor's, and not to his offense.

NEED FOR PLEA BARGAINING IN INDIA

- **Delay in the disposal of criminal trials & appeals**- There have been public complaints that the disposal of criminal prosecutions in the courts of Magistrates, District, and Session Judges takes an excessive amount of time. It is said that criminal prosecutions do not begin until three to four years after the accused has been transferred to judicial custody. In the accused languish in prison, conditions are deplorable, and the accused are forced to coexist with hardened criminals. In a number of instances, it is alleged that the time spent in jail by the accused prior to the start of their trial exceeds the utmost sentence that can be imposed on them if they are found guilty of the charges.

  Generally, an appeal is taken against the trial court's decision, particularly in session cases. A criminal appeal would require at least five to eight years to be decided by an HC, according to past experience. In high courts such as Allahabad and Bombay, the Commission discovered that the waiting period for the disposition of appeals is as lengthy as ten years. If the case were to be appealed again to the Supreme Court, it would take another decade for the court to reach a decision. As of this date, the Commission discovered that the Supreme Court is handling criminal appeals from 1979. This enormous delay in the disposition of criminal matters in courts, which should ordinarily be handled swiftly, is the consequence of an exploding docket.
- **SC takes cognizance of matter.—**The Supreme Court was made aware of the circumstances in the immediately preceding paragraph in a number of cases, the most significant of which is **Hussainara Khatoon v. State of Bihar**[22], which dealt with the

[22]Hussainara Khatoon v. State of Bihar AIR 1979 SC 1360

matter mentioned above that originated in the State of Bihar. In this regard, the SC issued a number of Orders beginning with AIR 1979 SC 1360.

The SC was made aware of the unacceptably high number of men and women—including children—who have been imprisoned for years while awaiting legal trials. The SC made the observation that, "These unfortunate forgotten examples of humanity are being imprisoned for periods ranging from three to ten years without even having their trial begin for minor offenses that, even if proven, would not warrant punishment for more than a few months, possibly for a year or two.

The SC observed that some convicts who are awaiting trial have been in custody for up to five, seven, or nine years, and some of them for more than ten years, without their trial having even started. The SC complained: "What hope can these poor individuals have in a justice system that keeps them in jail for so long without giving them a fair trial—even when they are innocent—because they are unable to pay bail and the courts lack the resources to do so. Many poor defendants, "little Indians, are forced into protracted cellular slavery for small offences because the bail procedure is beyond their meagre funds & trials don't begin &, even if they do, they never conclude," which is a mockery of justice.

The SC had also discovered; “The renowned delay in case resolution is another flaw in the legal and judicial system that is to blame for this egregious denial of justice to the wider trial process. That an accused person’s trial should not even start for several years is a sad indictment on the legal and judicial systems. Even a one-year delay in the trial’s start time is unacceptable; imagine how much worse it would be if the delay was three, five, seven, or even ten years lengthy. The core of criminal justice is a speedy trial, and there is no question that a trial delay alone amounts to a denial of justice.”

- **Unavailability of statistical data regarding under trial prisoners—** Sadly, the pertinent statistics are not readily available. The State Governments must be contacted for information regarding the number of inmates who are awaiting trial and are currently being held in jails. The state governments typically don't want to gather the data and finish it. While being instructed to do so by the SC, the State of Bihar—a party before the SC in the Hussainara Case—failed to provide the information. The State of Bihar did not dispute the information in the affidavits, hence the SC

ultimately had to proceed on the assumption that it was true and the petitioners had gone, per the newspaper reports. The Commission's ability to process the letter has been somewhat impeded by the lack of crucial facts.

The country's HCs were asked to provide any pertinent statistics information. A request for information was made regarding the length of time that criminal trials in Sessions Courts and Magistrate Courts are ongoing, as well as the number of cases that have been resolved and are divided into those that result in conviction and those that result in acquittal.

This information was called for with a view to examine two aspects:-

First, the duration of time that trials are pending in lower courts, and second, the percentage of acquittals at the conclusion of those trials. The HCs were also requested to report the number of pending criminal appeals, broken down by year, as well as the number of appeals that were resolved with a decision. Several HCs had complied with the Commission's request. District Judges, Metropolitan Magistrates, and Chief Judicial Magistrates issued statements on behalf of Andhra Pradesh, Karnataka, and Maharashtra. Unfortunately, the submitted statements do not encompass all of the courts under the jurisdiction of the concerned HCs, preventing the consolidation of the particulars. Evidently for these reasons, not even the High Courts attempted to consolidate the information provided by the District Courts.

The statements in their entirety were transmitted to the Commission. There is a very meagre response from the remaining HCs, as only a handful of statements were transmitted from the Sessions Judges, etc., with no way to consolidate the data for the entire state. The Commission observed some reluctance on the part of the HCs to engage actively in this matter, which is understandable given the volume of labour involved. The Commission was unable to convince the HCs to rigorously comply with the requests for obvious reasons.

Examining the information available to the Commission. Perhaps Andhra Pradesh was the only state with pending criminal appeals before the high court. The Commission observed that appeals up to and including the year 1988 had been resolved, and that HC is currently engaged in the process of resolving criminal appeals for the year 1989, which is an extremely satisfactory state of affairs. The position is dissatisfied with the other HCs. The number of pending cases in the Sessions Courts as well as the Courts of the Metropolitan Magistrates

and Chief Judicial Magistrates is alarming. A detailed examination of the statistical data provided by the Judges reveals that criminal trials have been pending since 1982[23]. The statistical information provided regarding trial outcomes reveals extraordinary outcomes. Over ninety percent of cases result in acquittals, while convictions account for a pitiful ten percent or less. In some courts, according to the information provided by the judges, "all" cases resulted in acquittals. The Judges who appeared personally before the Commission were asked to provide exceptional explanations for the high rate of acquittals. There was a unified response from the Judges. During the duration of the prospective trials, it is noted that circumstances change drastically; some witnesses vanish and others whose testimony the prosecution relied on perform complete about-faces. There may be two possible causes:

First, the passage of time causes witnesses' memories to fade and the occurrence of events to become beyond their comprehension, resulting in significant discrepancies when they testify years after the event.

Second, the inventiveness of the accused and the attorneys affects the trajectory of the trial. As a consequence, judges are frequently presented with extremely unsatisfactory prosecution cases. They are defenceless, and their cases result in acquittal due to insufficient evidence. The judges stated that if the waiting period could be shortened, there would be a larger chance that the evidence would be presented more effectively. This presents us with the same challenge of decreasing court delays.

Some press reports are distressing and upsetting. A recent news article discusses a 33-year-long criminal investigation. It cost the public treasury approximately one billion rupees, despite involving the theft of Rs. 19,000 (Rs. 12,000 plus Rs. 4,000 plus Rs. 3,000). Another? refers to the status of the City Civil & Sessions Court docket in Bombay.

In 1988, 124 cases of rape were reported, but only a single case was resolved. 67 cases were recorded in the first half of 1989, but none were disposed of. Does the current system serve any social purpose if 90 percent of cases end in acquittal, even after decades, and if perpetrators are not brought to justice for decades due to appeals and further appeals and if perpetrators are not brought to justice for decades due to appeals?

[23]Law commission of India – 142th Report.

Therefore, it cannot be stated once more that the situation is dire and requires immediate attention. The concept of plea bargaining as it exists in the United States must be examined in light of this precarious circumstance.

OBSERVATIONS OF SUPREME COURT- (INDIA & USA) CONCERNING "PLEA BARGAINING"

In the context of the present legal frame:

Courts in India had no occasion to explicitly consider the effect of plea bargaining on the administration of criminal justice. In a significant number of trials involving appeals of convictions, it is indisputable that sentences are imposed after taking into consideration the defendant's attorney's and the prosecutor's recommendations. These informal agreements are not enforceable by law. Nonetheless, they are frequently implemented without specific reference to the compromise in the relevant court decisions.

The Commission observed that the Supreme Court had occasion to make some observations regarding the efficacy of "plea-bargaining" in two cases to which we will refer shortly. Since these observations emanate from the Supreme Court, the Commission deems it prudent to assess their significance and weight with care.

The two cases are:

- **MuflidharMeghrajLoya& Anr. Vs State of Maharashtra & Anr. (Krishna Iyer, Goswami)** [24]
- **Kasambhai Abdul Rehman bhai Sheik Vs State of Gujarat & another (Bhagwati Sen, JJ)** [25]

In the case of **MurlidharMeghrajLoya**, the Supreme Court had the impression that the defendants pleaded guilty. The Supreme Court believed that the guilty plea was the result of an informal inducement based on the promise of a lenient sentence. When the case was on appeal, the appellate court reversed the conviction and sentence from the trial court. In response, the accused filed an appeal with the Apex Court.

[24]MuflidharMeghrajLoya& Anr. Vs State of Maharashtra & Anr. AIR 1976 SC 1929
[25]Kasambhai Abdul Rehman bhai Sheik Vs State of Gujarat & another AIR 1980 SC 854

In para 13 at page 1933; the SC did not identified with the enhanced sentence as the minimum sentence was prementioned by the SC, however, Observed that :

"The State must do its duty by justice to the citizens & relieve over-worked courts by more judicial & strength procedure of leaving the uninformed public blindly to applied".

The legislature had mandated a minimum prison sentence of three months, but the trial court blatantly disregarded the law by not imposing the minimum sentence. Invoking a plea-bargaining procedure not recognised by the Criminal Jurisprudence of India required no legal authority. The Supreme Court's observation in **Murlidhar's case** that plea bargaining in American courts does not inherently involve "no jail" is worthy of note.

Observations to this effect are evidently founded on the misconception that when an accused pleads guilty and negotiates a compromise, he is always released without a prison sentence. In most instances, pre-trial negotiations can only result in a reduced sentence, and the defendant does not receive a vacation from incarceration. We may possibly refer to the most recent instance of plea bargaining in the United States Federal Court, in which a New Delhi merchant was sentenced to 33 months of imprisonment instead of the maximum 42 months. This case involved an economic offence because the merchant attempted to illegally export high-tech equipment from the United States. The businessman entered a guilty plea. The sentence of imprisonment was reduced from 42 months to 33 months as a consequence of the plea bargain.

On 11-11-1990, the New Delhi edition of Indian Express published a report regarding the aforementioned topic. It is therefore accurate to state that the bargain consists of a pledge of incarceration on the part of the prosecution, or that the result of plea bargaining in every case is that the offender receives a sentence without confinement. The Commission does not believe, under the aforementioned circumstances, that the evidence supports an understanding, but the Supreme Court felt that the sentence must be based on an understanding.

The SC observed (para 2 page 854):

"It is extremely regrettable that both the prosecution and the learned magistrate were involved in such "plea-bargaining" in a prosecution for adulteration involving the health and safety of the community."

The Supreme Court's implicit disapproval of the concept of plea bargaining must be understood in the context outlined previously. The statute stipulated a minimum sentence of three months in detention and a Rs. 500 fine. Suo moto, the Supreme Court increased the sentence to the minimum prescribed by statute. Surely there was no legal authority for the learned Magistrate to desire the statute's minimum sentence and award a lesser one. Under these conditions, the Supreme Court upheld the High Court's decision to disregard the parties' trial-stage agreement and enhance the conviction.

In para 4 at page 855 the Supreme Court made some observations of a general character. These may be referred to:

"The appellant's conviction was based solely on his guilty plea, and his concession of guilt was the result of plea negotiations between the prosecution, the defence, and the magistrate."

Clearly, a conviction predicated on an appellant's guilty plea obtained through plea-bargaining cannot be upheld. It is contrary to public policy, in our opinion, to enable a conviction to be recorded against an accused by luring him to enter a guilty plea with the promise that HC will receive a light sentence if he does so.

"Such a procedure would be cruelly reasonable, unfair, and unjust, and it would violate the new activist dimension of Article 21 of the Constitution, which was revealed in the case of Maneka Gandhi. Next, it would have the effect of polluting the pure source of justice, as it could induce an innocent accused to plead guilty in exchange for a light and consequential punishment, rather than endure a lengthy & costly criminal trial, which, given our cumbersome & unsatisfactory system of administration of justice, is not only time-consuming & financially ruinous, but also uncertain & unpredictable in its outcome. This practise would also tend to promote corruption and collusion, and as a direct result, contribute to a decline in the quality of justice. The conviction of an accused on the basis of a guilty plea entered by him as a consequence of plea-bargaining with the prosecution and the magistrate must be deemed unconstitutional and illegal."

Although the observations are made in the context of a severe economic offence for which a minimum jail sentence is prescribed, they reflect the views of the Supreme Court in the context of the American practise being adopted in the Indian Court without legal authority. Therefore, it is necessary to thoroughly address these objections.

In Bradley v. United States (1970)[26], the US Supreme Court upheld the constitutionality of plea bargaining and observed that it is an essential component of the administration of justice. The Court recognized that plea bargaining allows for the efficient and fair resolution of criminal cases, particularly in the face of a crowded criminal justice system. The Court also recognized that plea bargaining enables prosecutors to secure convictions that might not have been possible through trial, while allowing defendants to receive a more lenient sentence than they might receive if they were convicted at trial.

However, the Court also acknowledged the potential risks and drawbacks of plea bargaining, such as the potential for innocent defendants to plead guilty in order to avoid the risk of a harsher sentence at trial. The Court noted that these risks must be weighed against the benefits of plea bargaining in order to ensure that the process is fair and just for all parties involved. Overall, the Court's observation in Bradley v. United States affirmed the important role of plea bargaining in the American criminal justice system, while also recognizing the need to ensure that the process is fair and just for all parties involved.

Observation made by the Supreme Court is that plea bargaining is a critical component of the criminal justice system in the United States, as it helps to reduce the burden on the courts and facilitate the efficient resolution of criminal cases. However, the Court has also recognized that plea bargaining can sometimes result in unjust outcomes, particularly when defendants are coerced or pressured into accepting a plea deal that they do not fully understand or agree with.

In recent years, the Supreme Court has issued several rulings aimed at addressing some of the potential problems with plea bargaining. For example, in 2012, the Court ruled in Missouri v. Frye that criminal defendants have a right to effective assistance of counsel during the plea bargaining process, which means that their lawyers must provide them with accurate information about the potential consequences of accepting a plea deal.

[26]Bradley V. United States 104. U.S 442,(1881)

Overall, the Supreme Court has recognized the importance of plea bargaining in the criminal justice system while also acknowledging the need to ensure that defendants are not unfairly coerced or pressured into accepting plea deals that do not serve their best interests.

CONCLUSION & SUGGESTIONS

In contrast, in the United States, plea bargaining is extensively accepted and utilised. It has become an integral component of the American justice system, with numerous cases resolved through plea bargaining as opposed to going to trial. The approval of plea bargaining in the United States has been attributed to a number of factors, including the high volume of cases, the limited resources of the judicial system, and the desire to expedite the resolution of cases.

Despite differences in their approaches to plea bargaining, India and the United States confront similar difficulties in implementing it effectively. This includes ensuring that plea bargaining is voluntary and not coerced, providing adequate legal representation to the accused, and maintaining transparency and accountability in the plea bargaining process.

Additionally, the scope of plea bargaining in the two countries is different. In the United States, plea bargaining can be used for a wide range of criminal offenses, including serious felonies, whereas in India, it is limited to specific offenses that are punishable by up to seven years of imprisonment.

There are also differences in the safeguards that are in place to protect the rights of defendants during the plea bargaining process. In the United States, defendants have a right to effective assistance of counsel and must be provided with accurate information about the consequences of accepting a plea deal, while in India, there are no specific provisions regarding the rights of defendants during plea bargaining.

Overall, plea bargaining has proven effective in reducing the burden on the judicial system and speeding up the resolution of cases in the United States. However, its success in India will depend on how well it is implemented and how well it is accepted by the legal community and the general public.

Plea bargaining is a legal process in which the accused agrees to plead guilty in exchange for a reduced sentence or lesser charges. Though it can offer benefits such as reducing court

backlogs and providing certainty for defendants, there is room for improvement in its implementation. Here are some suggestions for enhancing the plea bargaining system:

Increased transparency: Ensure clear guidelines on how plea bargains are negotiated and the factors considered in determining the terms of the agreement. This can help reduce the perception of bias or favouritism and increase public trust in the process.

Standardized procedures: Implement standardized procedures across jurisdictions to promote consistency and fairness in the plea bargaining process. This includes providing clear guidelines for both prosecutors and defence attorneys on how to conduct negotiations and consider mitigating and aggravating factors.

Judicial oversight: Strengthen the role of judges in the plea bargaining process by requiring their approval for any agreement reached. This can help to ensure that the terms of the plea bargain are fair and proportionate to the alleged offense and the defendant's circumstances.

Legal representation: Guarantee access to competent legal representation for all defendants, regardless of their financial status. This can help to prevent potential abuses in the plea bargaining process and ensure that defendants are well-informed about their options and the consequences of their decisions.

Training and education: Provide comprehensive training and education to prosecutors, defence attorneys, and judges on the ethical and legal aspects of plea bargaining. This can help to maintain high professional standards and promote the fair and efficient administration of justice.

Victim involvement: Include victims in the plea bargaining process, giving them an opportunity to express their views and concerns about the proposed agreement. This can help ensure that their interests are taken into account and promote a sense of justice for all parties involved.

Regular review and evaluation: Establish a system for monitoring and evaluating the effectiveness of plea bargaining laws and their implementation. This can help to identify

areas for improvement and ensure that the system continues to meet its objectives of promoting efficiency and fairness in the criminal justice system.

Public awareness: Increase public awareness of the plea bargaining process and its benefits, as well as potential drawbacks, to promote informed public debate and help ensure that the system is well-understood and supported by the community.