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A Consecration in CrPC: Plea Bargaining

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ABSTRACT

In demand to avoid the condemnation, there has been an interchange to use relatively more impartial expressions such as 'plea discussions', 'plea negotiation', 'plea agreements' and 'mutually satisfactory disposition', a term used in Chapter XXI-A of the Code. To call it by whatsoever name, it cannot be deprived of that the scheme encompasses a process whereby prosecution, victim and an informed accused amenably deliberate a criminal case of its mutually agreeable disposition, which may result in reasonable advancement of the administration of justice. There is a need for encouragement in the concept of plea bargaining that the accused should be aware of the remedy of plea bargaining for settlement of plea bargaining. The contribution of the judiciary and the bar is very important to achieve the goal of plea bargaining. The member of the bar should encourage the accused in a positive manner that they can use this concept in the right way. Day by day, all the countries find some alternative dispute resolution that results in a complex and lengthy process, but plea bargaining is the best alternative for the speedy trial and speedy disposal of cases. This concept gives the accused to plead guilty, and the guilty plea of the accused represent that the state will not go against him that will destroy his many constitutional rights. Before a long time ago, the idea of plea bargaining was introduced in India, but people were not so aware of this after the settlement of system awareness came into existence. The Indian criminal justice aims to provide security to the citizen on a large scale. And carry out with crime and criminals in a very less time because civilised society expects speedy trial Indian judiciary is failed to give speedy justice as day by day there in incensement in-laws and the court was full of the burden from different corner hence it resulted in delayed justice so much period taken by the trial court to provide justice. The fact was cases is getting disoriented due to delayed justice. In so many cases accused spend so many periods in jail before the announcement of trial even they are not found guilty of any offences.

I. INTRODUCTION

In the running of justice, a criminal practice must be in the form of reformative as well as a deterrent effect. A tooth for a tooth, an eye for an eye, a life for a life was the prevailing concept

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of felonious justice. The final intend of criminal law is the defense of the right to own liberty against attack by others, fortification of pathetic against the strong, law-abiding in contradiction of the violent. The régime of the Republic of India had created a commission regulated by **Justice V S. Malimath**, former Chief Justice of Karnataka High Court, for a complete and inclusive evaluation of the whole illegal impartiality System so that essential and effective reforms can be made to develop the fitness of the structure. To reform the criminal justice mechanism in the country, the assembly modified the Code of Criminal Procedure, 1973, integrating the most important commendations advised by the **Malimath Commission**. One of the important amendments was the introduction of plea bargaining or mutually satisfactory disposition (MSD) in wrong cases other than those which are capital with expiry or custody for life or detention for a tenure exceeding seven centuries. The idea is to save the courts from accompanying unnecessary hearings for each lawbreaking that is devoted. Therefore, the requirements of plea bargaining were combined through the Criminal Law (Amendment) Act 2005 in the form of Chapter XXI A of the Code of Criminal Procedure 1973, which was enforced on 5th July 06.

II. CONCEPT OF PLEA BARGAINING

Plea bargaining is a very difficult concept that can be understood by years of work and experience, so it is a very difficult task to define negotiating applications in definitions. This term can be used to describe many different situations and relationships. Not the concept of mono litchi.

Black's Law Dictionary defines - "The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval, it usually involves the accused pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that position for the grave charge."

Oxford Dictionary defines plea bargaining as - "an arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop their charges."

III. ADVANCEMENT OF PLEA BARGAINING

In the previous time, there was no proper solution to crime people was unaware of maintaining it. In that time, so many jurisdictions evolved to control crime. When theirs came to some growth in civilisation, gradually, human beings became moral sensible. For the long term, the

application regarding any offence remain at parties only, but when things change, all function goes into the hand of the state. So it became mandatory for the state to maintain law and order, and by virtue of law, the state came under obligation to punish the culprit and save the innocent. In the ongoing period of justice, the state has to bring the defendant as well as the plaintiff, and the state came under obligation to prove the accused on the ground. Plea bargaining refers to a person who has been charged with a criminal offence negotiating with prosecutors for a lesser punishment than is required by law for admitting a minor offence. It is common in the United States and has been an effective way to avoid long-term and complex trials. The Sixth Amendment of the USA constitution did not certify the perception of Plea bargaining. It got sanctioned by the case of **Santebello v. New York**[3] . And by this recognition, the USA uses this tool in almost all cases coming forward to the court of justice. It can be concluded that Plea Bargaining is a conditional plea in a substantial sense. This is an implicit kind of guilt as disparate to plead guilty within the open court.

In the case **Lott v. the USA**[4] , the Hon'ble court held that accepting the plea bargaining does not itself inaugurate the very guilt of the accused, and it is not as commensurate in establishing and proving the same.

The scriptures and Smritis regard plea bargaining as one and the same, and whether to reduce or remove the effects of immoral action (sin) is a method of restoration. That king used to do justice by taking measures from laws, scriptures and memories, which the king was commissioned to do. If a person seeks pardon of penitence after committing a crime, then this petition is similar to the principle of bargaining, which has been inherent in our culture, tradition, religion and civilisation for ages. The punishment for sin has been determined by the king, by scriptures and memories, can he be freed from sin even by repentance.

One of the biggest reasons for the rise of a criminal cases in India is also that people are becoming aware of themselves and their obligation and duty. Whenever any disputes arise, people refer to the court that "see you in court". I will because those people have started reposing faith in the judiciary, even today about 3.2 million people all over India whose cases have not been decided, some of the credit for these pending cases also goes to the subordinate courts because they have a smaller number of judges and vacancies in the seats that are there are not filled quickly.

[3] 404 U.S. 257 (1971).
[4] 367 U.S. 421.

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IV. CONSTITUTIONAL MANDATE FOR SPEEDY JUSTICE

In the **Hussainara Khatoon vs State of Bihar**[5] case, the court said that all the states could not evade their obligations to conduct a speedy test, and they have an obligation to answer the questions of the public and solve their problems, which they are not performing well. First of all, people will have to be made aware for testing under the states, this can be made possible only by filling the vacant posts of judges and establishing new courts, and one of the biggest reasons for this is the poor and illiterate people of our country. Those who do not know anything about law and the system get defeated in this thing. One of many such pillars is the disposal of criminal cases and detention of poor accused pending trial. There are many such cases that are pending in the subordinate court of India.

Originally our constitution did not have a speedy test, but at present, it is enshrined in Article 21[6], which has been generated through a case by the Hon'ble Supreme court, which is now a part of article 21. Article 21 (and its many interpretations) is a flawless example of the metamorphic character of the Constitution of India. The Indian judiciary has accredited broader connotation and meaning to Article 21, extending beyond the Constitution makers' imagination. This meaning is a derivative from the 'right to life' present unique complexities. It is impossible to understand the spacious jurisprudence on Article 21 within the length of this piece.

V. KINDS OF PLEA BARGAINING

Plea bargaining has three categories depending upon the type of prosecutorial confessions, but this agreement does not bind any parties until the judge approves it.

- Charge bargaining: - In this concept, the defendant has the option to plead guilty and lesser the amount of charge framed against him, and this option is given by the prosecution to the defendant.
- Sentence bargaining: - In this accused already know that if he pleads guilty, what amount of charge will be reduced in the most serious charge prosecutor is allowed to obtain convection.
- Fact bargaining: - In this bargaining agreement involves a confession to certain facts in making an agreement not to introduce certain other facts. If the judge accepts the crime of the defendant, that judge cannot overturn the plea agreement. The judge can reject

[5] A.I.R 1979 S.C. 1369 (India).
[6] Right to life, Indian constitution, 1950.

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the plea and resent the defendant if the defendant is not convinced with the condition.

VI. PLEA BARGAINING IN INDIA

The Indian legal system is very well known for its fairness, independence, and commitment to justice. The Constitution of India has recognised several rights amongst which 'Justice' is placed at the Centre of it. The preamble of the Constitution of India is "secure to all its citizen's Justice- social, economic and political"[7] The fundamental of criminal justice is a speedy trial, and the essence of time is to restore public confidence in the administration of justice. Around the world, different legal systems, by applying new techniques and instruments, have tried to reduce the burden of courts. Plea bargaining is invoked when the accused acknowledges guilt to one or more charges in exchange for a lesser sentence.[8] In the case **Nilabati Behera v. the State of Orissa[9],** The Supreme Court has opined that if a person in detention is deprived of his life, then the perpetrator is liable, and the state is responsible for the same.

Plea bargaining benefits can be sought in two situations.

1) If at the completion of the inquiry, the official in charge of the police station submits a report to the magistrate under Section 173, stating that an accused has committed an offence not punishable by death, life imprisonment, or more than seven years imprisonment.[10]

2) If the magistrate has taken cognisance of an offence on the basis of a complaint under Section 190 (1) of the Code, accompanied by an examination of a complainant and witness under Section 200, and issuance of process under Section 204, that is, after the initiation of proceedings in a complaint case.[11] Section 265A (2) of the Code gives the central government the authority to examine which criminal offences impair the country's socio-economic status and to notify them for the purpose of extending the concept of plea bargaining.[12]

In **Kirpal v. State of Haryana**[13], the trial court punished the petitioner to the period formerly served on the basis of plea bargaining, but the High Court increased the ruling to the least prescribed by law, which is severe imprisonment for 7 years. The Apex Court stated that neither the Magistrate court nor the High Court has the authority to disregard the law's minimum

[7] Ahmad, S. Waseem, and M. Ashraf Ali. "Social Justice and the Constitution of India." The Indian Journal of Political Science, vol. 67, no. 4, Indian Political Science Association, 2006, p. 767.
[8] Douglas D. Guidorizzi, "Should we Really Ban Plea Bargaining?: The Core Concern of Plea Bargaining Critics", 47 Emory Law Journal, (1998), p.753.
[9] (1993 (2) S.C.C. 746 (India).
[10] Code of Criminal Procedure 1973. Section. 265-A cl. (1) (a).
[11] Code of Criminal Procedure 1973. Section.
[12] Code of Criminal Procedure 1973. Section. Section 265A
[13] 1999 Cri.L.J. 5031 (SC).

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sentence restriction even if the accused entered into a plea bargaining arrangement.

After the process is issued and the accused appears in court, the procedure of plea bargaining is initiated under Section 265-B. The judicial officer may ask the accused to file an application after determining whether or not he is willing to exercise his right to plea bargain.[14] The Court determine the intention of the application on the hearing day as there should be no coercion from anyone. The court then notifies (via notice) the public prosecutor or complainant[15] of the matter, and the accused examination shall be in-camera.[16] If the opposite party to the case is not present to satisfy itself that the application is intended, it will negotiate a mutually agreeable resolution of the case. Because the accused is being offered a lesser charge or a plea bargain, there will be some pressure on him. Although the accused may consent to such reductions, the court will have a difficult time determining the accused's voluntariness. Only the facts and circumstances of each case may help the court to determine it. The Court thereafter give the public prosecutor/ complainant and the accused time to work out a mutually acceptable case resolution. It includes the accused's payment of compensation to the victims as well as additional costs incurred over the course of the case. Subsequently, the victim becomes entitled to compensation and any other cost incurred throughout the case.[17] The procedures for a mutually satisfactory resolution of a lawsuit are laid out in Section 265C of the Code. Firstly, in a case initiated on the basis of a police report, the Court will send notice to the Public Prosecutor, the investigating officer, the accused, and the victim, inviting them to attend a meeting to discuss a satisfactory resolution.[18] It shall be the Court's responsibility to accomplish that the matter is concluded freely while working out a satisfactory resolution. Plea negotiating is a strategic approach rather than a mere adjudication or sentencing.

In the case **State of Gujarat v. Natwar Harchadi Thakur[19]** In this case, the Gujarat High Court stated that the very object of law is to deliver easy, cost-effective, and speedy justice through the steadfastness of disputes, including the trial of criminal cases, and that, given the current realistic characteristics of the pendency and delay in removal in the supervision of law and justice, fundamental reforms are unavoidable. In the sphere of judicial changes, it will bring a new dimension.

[14] Code of Criminal Procedure 1973. Section. 265B. cl. (1).
[15] Code of Criminal Procedure 1973. Section. 265B. cl. (3).
[16] Code of Criminal Procedure 1973. Section. 265B. cl. (4).
[17] Code of Criminal Procedure 1973. Section. 265B. cl. (4) (a).
[18] Code of Criminal Procedure 1973. Section. 265C. cl. (a).
[19] 2005 Cri.L.J. 2957.

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VII. A FRAMEWORK OF PLEA BARGAINING AT THE INTERNATIONAL TRIBUNALS

Given the broad purposes of international criminal justice, the peaceful resolution of grave international crimes such as genocide, war crimes, and crimes against humanity has sparked heated debate. Procedures regarding plea bargaining were not incorporated in the Statutes or the Rules of Procedure and Evidence (RPE) of the Courts. Also, the judges of the tribunals originally rejected the bargained outcomes[20]. Over the years, with the upsurge in the number of cases, plea bargaining has been considered a significant tool to expedite the process of adjudication. The circumstances and nature of the cases heard by the Tribunals are vastly different from those heard by the International Criminal Court (ICC). ICC, as a permanent institution, has no defined mission or execution plan of action to exercise jurisdiction over people accused of the most heinous crimes internationally.[21] The prosecutor will also deal with a variety of global conflicts, but he will only identify a small number of exceptional instances, for which he will be less inclined to reach out. Plea bargains should only be utilised in cases when a trial would be unjustifiable. It should only be permitted in the following situations when:

i) It encourages the accused to provide new evidence or helps to reconcile the parties.

ii) High safety standards can be imposed.

Many countries have tried and adopted the very concept of plea bargaining. The reason behind its over popular enforcement is it reduces the backlog of cases and lessen the burden of courts. Similar USA, UK, India, many countries like Germany, Italy and France have adopted the concept of plea bargaining in their country. Plea bargaining is the concept of the adversarial nature of the trial. All the countries provide discretionary power to court if it feels by witnessing the facts, circumstances and evidence of the case that it is insufficient to grant plea bargain, it may dissent to it. Plea bargaining has made itself fit in the current system by also proving its constitutionality worldwide. Germany has introduced the concept of plea bargaining in the 1980s, where they commonly condense the trial but not substitute the trial. Plea bargaining is still working and developing in the United Kingdom. The reason that left the UK behind is that the factors which are a stimulus to come into the concept of plea bargaining are not contemporaneous in the UK. Additionally, the English court has dissented to the option of plea bargaining in disposing of the cases. The reason behind the dissent is the aggregate of discretion of trial judges preserve over sentencing. The condemning policy of the UK is more flexible

[20] Yugoslavian Tribunal Web page, Key figures of Yugoslavian Tribunal Cases.
[21] International Criminal Court Statute, Article 1.

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than the USA. Cockburn was the first one to find the earliest evidence of the concept of plea bargaining in England courts.

VIII. CRITICISM, CONCLUSION AND SUGGESTION

Plea bargaining is a method to accomplish the overburdened court, and it is followed in additional than 120 countries in diverse forms in which the prosecution enquires the accused to plead guilty voluntarily. The prosecution assures the accused of receiving the greatness of the sentence condensed. The Malimath Committee report[22] suggested the means of plea-bargaining to decrease the pendency of cases and for immediate removal, which caused the alteration of the Criminal Procedure Code in the year 2005 to contain the new chapter of Plea-Bargaining in it. The Apex Court of United States has upheld the Constitutional legitimacy and also permitted that plea that bargaining holds an important role in the removal of criminal cases. The United States trial shows that plea-bargaining aids the disposal of the accumulated cases and accelerates delivery of Criminal Justice and the Law Commission of India in its 154th, and 142nd reports attended to the same.

Additional criticism of plea bargaining is that it permits the accused to discharge maximum punishment, which can be a reward to him at the end of the trial, by provided that him with a more compassionate sentence. This may be looked at by other offenders as justice can be operated and that they can easily depart the justice. It may also affect the preventive effect of punishment. The compassionate sentences were given to those accused persons who plea bargain, and the punitive sentences to comparable accused persons who are sentenced at trial, lead to large condemning discrepancies among those condemned for similar offences, which may affect the outcome in incapacitating the complete manifestation or functioning of our criminal system.

Plea bargaining is a blessing in disguise which has been enforced across several countries, which has not only helped the courts to clear the backlogs of cases and burdens of court but has also helped the justice system to work feasibly. But if certain suggestions if prepended, then it will be a cakewalk for Justice Enforcement. Researcher(s) has drafted certain suggestions regarding plea bargaining on the basis of study;

- A provision must be added, constructing it binding to the courts to inform about the concept of plea bargaining to the accused before the initiation of the trial.
- A provision must be introduced to set up a committee that can consider the cases which

[22] Sanjeev Sirohi, The Report of Malimath Committee on Reforms of Criminal Justice System, 2021.

are referred by the court to the process of plea bargaining so that testimony made by the accused is more voluntary.

- A provision must be inserted, making it mandatory for the court to enquire about the financial status of the victim and accused before coming over to settlement.
- The term 'socio-economic offence' is somehow very vague to determine what class of offences should be categorised under this term. If we trace the meaning of the above-mentioned term, then it somehow relates to Article 39 of the Indian Constitution, which deals with the directive principle of state policy. Hence, the gist of the list should be provided to remove the vagueness. Hence it needs to be modified, which can reflect its lucidity regarding the list of offences that falls under the criteria of socio-economic offences.
- An additional provision must be added regarding the concept of revision of MSD by the parties so that if, at the earlier instance, the MSD was not perfectly stipulated, then that MSD should be subject to revision.

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