

COMPARATIVE ANALYSIS OF PLEA BARGAINING PROCEDURE IN INDIAN, AMERICAN & ITALIAN JURISDICTIONS

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Abstract

Over the world, plea bargaining mechanism has been rapidly gaining traction in resolution of legal disputes. The applicability, scope, and operation of plea bargaining is manifestly distinct in common law and civil law countries. To critically examine these distinctions in reference to different jurisdictions, a comparative evaluation of India, United States of America, and Italy has been undertaken in this research. The extent to which plea bargaining is more beneficial than disadvantageous is contentious. This is because the practice of plea bargaining is argued to challenge the very premise of a trial; which is to unearth truth and dispense justice. The fact of requirement of an instantaneous justice administration framework in India is beyond contestation. This researcher endeavors to ascertain whether plea bargaining in India in its present form and structure is sufficient to achieve that object, by contrasting its advantages and disadvantages in the context of the Indian judicial system, and later, proposing reforms in the sphere of this modern dispute resolution mechanism.

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Journal of Legal Studies and Research

Volume 3 Issue 5

ISSN: 2455 2437 (India)

Published by 'The Law Brigade Publishers', A Libertatem Media Group Company

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Introduction

World over, criminal law comprises of certain special procedures which are designed to fulfil a certain specific objective. These range from express procedures to assist police in making arrests to the very process adopted by the courts while deciding convictions and trials. These mechanisms develop over a period of time facilitating materialization of novel procedures on a regular basis. One such procedure is the process of plea bargaining, a comparatively modern system of court conviction.

The concept of plea bargaining is where a harmonious accord is reached between the prosecutor and the defense attorney, and the defendant pleads guilty in exchange for sentence diminution. As Black's Law Dictionary defines it, plea bargain is an agreement reached between the plaintiff and the defendant intending to arrive at a resolution of the case without ever requiring to go to trial.¹

Plea bargaining incorporates wide ranging dissimilarities in different countries, however, the conventional notion of plea bargaining is mainly comprised of three types, where the defendant pleads guilty to (1) a lesser charge in return for dropping of a greater charge; (2) one of the several charges in return for dropping of the remaining charges; (3) original charges for a merciful court conviction. This process facilitates expeditious trials and enables the convicts to dodge sentences of more stringent magnitude.

Plea bargaining varies profoundly from one country to the other with respect to its procedure, applicability, scope, and operation. This paper will however, limit itself to the jurisdiction of

¹ Henry Campbell Black, *Black's Law Dictionary*, 7th Edition.

three countries in particular- India, USA and Italy- making a comparative analysis of the history, current form and purposes of plea bargaining and their respective judicial stances. Later, the researcher delves into a comparative study of law that prevails in the countries under question, before exploring the advantages and disadvantages of the system in its entirety while rooting the research in the framework of the three nations. Lastly, the researcher concludes the paper by proposing recommendations and reforms which must be taken into account by the Indian criminal justice system if the optimum level of administration of justice is to be achieved.

Country Based Analysis

India

1.1 *Historical Background*

The concept of plea bargaining is a relatively recent introduction to the Code of Criminal Procedure, 1973², which came into effect in 2006 after the Criminal Law (Amendment) Act, 2005³ was passed. Chapter XXIA was inserted into the Cr.P.C by virtue of this amendment and the concept of plea bargaining was instituted.⁴

However, the history of plea bargaining runs much deeper. It was deliberated for the first time in the Law Commission of India's 142nd Report, presided over by Justice MP Thakkar.⁵ This Report identified the problem being faced by India with respect to disposal of trials and appeals, which often left the accused and under-trial prisoners to rot in jails for an abnormal duration. As a resolution to this problem, it was proposed in a model inspired by the already existing

² Hereinafter, Code of Criminal Procedure, 1973 will be referred as Cr.P.C.

³ Plea Bargaining, Chapter XXIA, Criminal Law (Amendment) Act, 2005.

⁴ Refer to S.265A-L, Cr.P.C.

⁵ "142nd Report on Concessional Treatment for Offenders who on their own Initiative Choose to Plead Guilty Without Bargaining (1991)", Law Commission of India.

American system that pleas be granted to the accused without bargaining in order to give them a concession and permit diminution of their convictions. The Report also discussed the level of costs incurred to hold such criminals in jail for abysmally long periods. There was a discussion on two categories-sentence bargaining and charge bargaining. The former is where a specific sentence of conviction is recommended by the prosecution in exchange for the defendant pleading guilty, while the latter is where the defendant agrees to plead guilty of some charges if the others are promised to be waived off.

The range of this discussion was dilated by the 154th Report⁶ of the commission, chaired by Justice K. Jayachandra Reddy, which clarified how exactly the provision of plea bargaining would operate in the Indian system. The Report validated the argument stated in the 142nd Report for plea bargaining mechanism, establishing that it should be applicable to crimes which follow a punishment of seven year's imprisonment or lesser, this being the existing model today. Further, it laid down a stipulation that this would be inapplicable for habitual/repeat offenders, for those who perpetrated socio-economic crimes, or for those who were guilty of infractions of law against women and children.

Before the enactment of the 2005 Amendment, the final deliberation over the issue was undertaken in the 2003 Malimath Committee Report.⁷ It reiterated that whenever an accused feels penitent and wishes to make amends for his wrongdoings, he should be meted out differential treatment and granted several concessions. This Report strongly vouched for instituting the procedures recommended in the 142nd and the 154th Law Commission Reports in order to expeditiously and smoothly decide a considerable number of court cases. It helped in reinforcing the opinion that plea bargaining was indispensable, which led to the architecture of the 2005 Amendment and the existing form of law.

1.2 Present Form & Purpose

⁶ "154th Report on the Code of Criminal Procedure, 1973 (1996)", Law Commission of India.

⁷ "Report of the Committee on Reforms of Criminal Justice System (2003)", Union Ministry of Home Affairs, p.178.

In its present form, plea bargaining is embodied in Sections 265A-L of the Cr.P.C. It is applicable only to offences for which imprisonment of seven years or less is a punishment and does not apply to cases which have an impact on the socio-economic conditions of the nation, in addition to violations of law against women or children under fourteen years of age.⁸ In addition, in a case where the application is filed involuntarily by the accused or he has previously been convicted for the same offence by a court of law, he would be ineligible to take the recourse of the provision of plea bargaining.⁹ An application must be affixed with a short narration of the case and an affidavit of the accused declaring that he has voluntarily proposed a plea bargaining agreement. The court would acknowledge the same and conduct an *in-camera* examination of the accused in the absence of the other party and then work out a conviction sentence more merciful than the original charges that should have been applicable.¹⁰ The victim would be subject to a compensation, whereas the sentence of the accused may be reduced by the court by up to one-fourth of the minimum punishment laid down for the offence committed.¹¹

Therefore, plea bargaining provides a prompt legal solution which entails no argumentation, except presentation of facts and the conviction sentence recommended by the prosecution. The victim is not even mandated to attend the court proceedings, and is subject to compensation after the trial. The accused must compulsorily be present at the time of his sentencing. As is enumerated in the 142nd as well as the 154th Law Commission Reports, the predominant motive of plea bargaining is to expedite court trials and systematize the court system, thereby enabling the prisoners to be liberated. Those who are contrite of their actions deserve to get sentence diminutions for their righteous intentions. While the Reports anticipated that this framework would befit and apply to all transgressions of law in future, presently there does not seem any intention to expand the scope or extent of plea bargaining. The veridical purpose of the

⁸ Chapter XXIA, Section 265A, Cr.P.C.

⁹ Chapter XXIA, Section 265B, Cr.P.C.

¹⁰ *Id*

¹¹ Chapter XXIA, Section 265E, Cr.P.C.

Legislature in enacting the Amendment Act of 2005 could not be entirely perceived, however, the referred grounds are overloading of jails, high acquittal rates, and ill-treatment of prisoners.¹²

1.3 Stance of the Judiciary

In the beginning, viewpoint of the Indian judiciary, the apex court in particular, was fiercely disposed against the concept of plea bargaining and any mechanism associated with it. Such opposition predominantly emanated from the immoral nature of these agreements and their associated ramifications for the principle of natural justice.¹³ Before the admission of plea bargaining into the Cr.P.C, a landmark case was decided on the topic in 1976, *Murlidhar Meghraj Loya v State of Maharashtra*.¹⁴ The accused in this case was found retailing adulterated food who informally reached the local magistrate and with the intention to obtain a lenient sentence from him, pleaded guilty in a manner analogous to the system of plea bargaining. Justice Krishna Iyer asserted that our system enabled the ‘business culprit’ to evade justice by exchanging his misery in prison for the pretense of regret, convincing everyone but the victim himself and the society. This condemnation was upheld in *State of Uttar Pradesh v Chandrika*¹⁵ wherein the apex court set aside a High Court order which gave assent to plea bargaining. The court went on to state that the concept of plea bargaining was against the precincts of Article 21¹⁶ as it was not an established procedure of law.¹⁷ However, this damnation was not ubiquitous; in *State of Gujarat v Natwar Harchandji Thakor*¹⁸, the Gujarat High Court held it to be a prompt and inexpensive method of disposing of cases.

However, it is relevant to note that all these cases precede the time when plea bargaining was inducted into the Cr.P.C. The case of *Vijay Moses Das v CBI*¹⁹, was the first to allow plea

¹² T. Aggarwal and S. Rewari, “Wanna Make a Deal? The Introduction of Plea Bargaining in India”, (2006) 2 S.C.C. (Cri) (J).

¹³ “Madan Lal Ramchandra Daga v State of Maharashtra”, AIR 1968 SC 1267; “State of Uttar Pradesh v Chandrika”, AIR 2000 SC 164.

¹⁴ “Murlidhar Meghraj Loya v State of Maharashtra”, AIR 1976 SC 1929.

¹⁵ “State of Uttar Pradesh v Chandrika”, AIR 2000 SC 164.

¹⁶ Article 21, The Constitution of India.

¹⁷ “Thippaswamy v State of Karnataka”, AIR 1983 SC 747.

¹⁸ “State of Gujarat v Natwar Harchandji Thakor”, (2005) Cr.L.J. 2957.

¹⁹ “Vijay Moses Das v CBI”, Crim.Misc. Appln 1037/2006.

bargaining. Following that, it is widely accepted and recognized within the Indian judicial system.²⁰

United States of America

2.1 Historical Background

Many Americans have always been of the opinion that plea bargaining has been an innate and intrinsic component of their judicial system, to the extent that Justice Charles Clark once asserted- "*Plea bargains have accompanied the whole history of this nation's criminal justice system*".²¹ However, this belief is not completely founded in factual reality. In truth, the American judiciary has vehemently disapproved the system of plea bargaining for many centuries. It was only in the late 19th century that they started accepting the mechanism with open arms. The control and authority of the politicians, media and also the populace augmented by the 20th century, thereby necessitating the requirement of an instantaneous judicial system and facilitating the thriving of plea bargaining in the courts of law. This development was also promoted by the substantive expansions in criminal jurisprudence and liquor prohibitions in the country.²²

After 1920s, plea bargaining secured massive praise and support, to the level that it began to spearhead the processing of criminal cases. Although there is no mention of plea bargaining in the Sixth Amendment in the United States Constitution, the judicial fora have reinstated its validity. Thus, the ambit of its functioning was expanded resulting in the present framework of plea bargaining in the USA where plea bargain is now authorized to be made for diminution of conviction sentence in any and every kind of criminal offence committed. The United States remains one of the main reasons for the extensive appraisal and popularity of plea bargaining mechanism in Criminal jurisprudence.

²⁰ "Ranbir Singh v State", 2012 (1) RCR(Criminal) 928; "State of Delhi v Amar Singh", 2016 Cr.L.J. 583.

²¹ "Bryan v United States", 492 F.2d 775, 780 (5th Cir. 1974).

²² Albert Alschuler, "*Plea Bargaining and its History*", University of Chicago Law School, 79 Columbia Law Review 1, 1979.

2.2 Present Form & Purpose

When a defendant is arrested in America, he first appears before the court where he is apprised of the rights which he possesses as well as the crimes allegedly committed by him. Thereafter, the prosecuting attorney files charges against the suspect and he is again made to appear before the court with the entitlement to make a plea. If the accused pleads *nolo contendere*, it implies that he is unwilling to contend his conviction. The accused can make a plea agreement in case of any crime, notwithstanding its gravity, and is even permitted to reach it at a later stage of the case. He is also entitled to withdraw his appeal for bona fide reasons.²³ The accused is not however constitutionally entitled to be presented a plea offer and it is the volition of the prosecution to accept or reject any offers.²⁴ Even the judge can choose whether to accept the plea of bargain, not being under any obligation to accept a plea even if the parties have reached a consensus.²⁵ It is mainly the judge who decides whether the accused voluntarily entered into a plea and was fully aware of the corollaries of the same. Moreover, the Federal Procedure Code mandates the judges to ask a series of questions in order to warrant justice and equitability.²⁶ In terms of procedure, however, it is reasonably straightforward, with merely a statement of the agreement wished for required to be placed on record of the court for a satisfactory application of the provision of plea bargaining.

In the United States of America, plea bargaining is noticeably more popular and has much extensive scope than in most of the countries. Plea bargaining concludes 97% of the federal cases and 94% of the civil cases.²⁷ While the main motive of plea bargains is to achieve clement sentences, it is also employed to persuade defendants to spill information related to cases and extract testimony against others. In the existing legal framework of the United States, plea bargaining has reached an indispensable stature.

²³ Crim. Proc. S.21.3(f) (3d ed. 2007).

²⁴ “Weatherford v Bursey”, 429 U.S. 545 (1977).

²⁵ Crim. Proc. S.21.3(e) (3d ed. 2007).

²⁶ Fed. R. Crim. P. 11(b)(1).

²⁷ Erica Goode, “Stronger Hand for Judges in the ‘Bazaar’ of Plea Deals”, NY TIMES, 22-03-12, last accessed at <http://www.nytimes.com/2012/03/23/us/stronger-hand-for-judges-after-rulings-on-plea-deals.html> (on September 30, 2017).

2.3 *Stance of the Judiciary*

A vast number of cases in America are decided by plea bargaining. *Brady v United States*²⁸ is a landmark case which discusses the issue and the constitutionality of plea bargaining. The judges in this case held plea bargaining to be a legitimate and constitutional mechanism, however, advanced a few apprehensions about the potentiality of misuse of this provision by pointing to the scenario where even innocent defendants plead guilty with the intention of receiving diminutions in the form of plea bargains. It was held in *Santobello v New York*²⁹ that there are various other recourses available to the people in cases where the attempts made at plea bargaining are impeded.

In essence, virtually every case in American criminal jurisprudence is decided by virtue of plea bargaining mechanism. It is a veritable notion that plea bargaining is an essential and an imperative element of the United States criminal system.

Italy

3.1 *Historical Background*

Since the civil law system functions in Italy, their criminal law framework varies significantly from that of India and the United States. Most of its laws are compiled into codes which can be effortlessly consulted or referred, with far less value fastened to precedents. Italy originally embodied the inquisitorial system of justice where the main objective of the court and its agents was to extract information and intelligence from the accused, thereby allowing the judge to reach a decision at his own discretion. However, this system did not offer as many options as the adversarial system provides for, including plea bargaining.³⁰

After 1988, the Code of Criminal Procedure in Italy was revised and it began following the adversarial system of Justice, where two sides present their case and rebut each other's

²⁸ “*Brady v United States*”, 397 U.S. 742 (1970).

²⁹ “*Santobello v New York*”, 404 U.S. 257.

³⁰ Federica Iovene, “*Plea Bargaining and Abbreviated Trial in Italy*”, Warwick School of Law Research Paper No. 2013/11.

arguments; while also incorporating plea bargaining and abbreviated trials along with it. Besides this, the Italian legislature also legalized consensual justice, which is the bedrock of plea bargaining.³¹

3.2 Present Form & Purpose

Plea bargaining, or what is more commonly known as *patteggiamento* in Italy, is substantially different from what is in effect in the other two countries. In Italian judicial system, the accused pleads guilty on the sentence passed against him, and not on the charges framed. A successful plea bargain may reduce his sentence by one-third besides waiver of all legal fees. The accused, thereby concedes all charges framed against him. However, the provision of plea bargaining is only available in cases where the punishment for the offence attracts imprisonment for five years or lesser, or a fine. Further, the appeals to court decisions are permitted only against any fault in the procedural execution, and not on the basis of the merits of the case.³²

The prosecutor and the defense concur upon a specific proposition, which is then taken to the judge for his approval. On the basis of the facts and evidence in possession, the judge makes a decision as to whether the defendant is innocent; guilty and worthy of a severe conviction, or; guilty and worthy of a merciful conviction. This essentially aims to expedite trials as the sentence is hitherto decided and submitted to the judge.³³

3.3 Stance of the Judiciary

Since Italy follows civil law and not common law, the judicial precedents are of very less significance there. However, they do possess a touch of corroboratory value and thus cannot be completely ignored.

³¹ *Id*

³² William T. Pizzi and Luca Marafioti, “*The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*”, Yale Journal of International Law, Issue 1, Article 2, Vol. 17, Pg. 1-40.

³³ *Id*

The case which first concerned itself with plea bargaining in Italy unambiguously stated that even though plea bargaining was sanctioned, the Italian legal system would not transmute into a complete adversarial model, it being contradictory to the civil law principles.³⁴ Ever since, the mechanism of plea bargaining has been unequivocally sanctioned and has been in operation without much criticism or condemnation.

Given the induction of plea bargaining into the Italian law and its general favorability in their justice system, the criminal jurisprudence now attempts to plea bargain in every case possible with an aim to foster swift dispensation of justice.

Comparative Analysis

Substantive Differences

Plea bargaining is remarkably distinct in both substance as well as procedure in India, the United States and Italy. Italy forms one end of the spectrum. The extent of application and scope of plea bargaining in Italy is very limited, and confined to only cases of minor crimes which attract five years of imprisonment or less. Moreover, Italian judicial system entails pleading guilty to all charges, which is significantly different from the other two nations. Italy may presently follow an adversarial system; however, this is the by-product of having a civil law system.

On the other hand, the United States forms the other end of the spectrum. plea bargaining in USA is applicable to each and every possible crime committed. Accused is free to take up both charge bargaining and sentence bargaining with the expectations of earning sentence concessions, which in most cases he does. There is a scarcity of cases in USA which are not decided from plea bargaining, with most defendants ready to plead guilty right at the onset of a case. The negative flak drawn by a convict who accepts plea bargaining is massively outweighed by the outrageous period of time he would have to spend in jail in the event of losing the case.

³⁴ Constitutional Court, decision no. 313 of 1990, <http://www.cortecostituzionale.it/default.do>

Thereby, most accused are allured by the prospect of accepting plea bargains. As far as the procedure is concerned, all that is needed is for the prosecuting attorney to apprise the court of the settlement agreement desired. The entire process is free from the hassles of making any submissions or filing any documents in the court.

As far as India is concerned, it takes sort of a middle ground, which is a reinstatement of the fact that India is an amalgamation of the laws of various nations. India does permit plea bargaining, however, it comes along with a lot of stipulations and restrictions, though, not as acute as Italy. In addition, far fewer number of cases are resolved by the provision of plea bargaining in India, compared to America. Procedure in India is way more complicated than in USA, requiring the applicant to comply with all the specific provisions laid down in S. 265A-L of the Cr.P.C.

Let us now look at all the advantages and disadvantages of plea bargaining that exist in these countries.

Advantages

The prime objective of plea bargaining is the expediency in manning the judicial administrative system. Those who advocate in support of plea bargaining prefer expeditious disposal of the cases rather than a protracted trial. By resorting to plea bargaining, parties reach a settlement outside the precincts of the court. The judge in that eventuality merely peruses the evidence on the face of it and avoids its judicial evaluation in its true sense. The occasion of advancing the arguments by the parties also does not arise. Other big advantage of this legal provision is that the judgement delivered in the cases of plea bargaining cannot be assailed by either of the parties to the case.³⁵

Plea bargaining helps the courts and the judges in getting their pendency reduced which in turn helps others avail a chance to get justice. In India, pendency of cases is a big road block in the way of getting justice from the courts of law. Access to justice is not so easily availed in India.

³⁵ The Law Commission Reports and the Manimath Committee Report talk about this at length, in addition to various judgments which try to safeguard the constitutionality of the American system.

However, in American judicial system the things are other way round, as the justice in America is easily attainable in comparison to that in India.

Fundamentally speaking, the whole judicial system could draw maximum advantage out of this legal provision if plea bargain is afforded only to those perpetrators of crime who sincerely regret their misdemeanors. Only those who want to reform themselves are the ones who actually deserve leniency under this provision. The hardcore criminals, who have no desire to mend their ways and only want to misuse this provision to their advantage, should not be given the benefit of plea bargaining.

The judicial administration system in U.S and the one in India are poles apart. While in U.S they believe in forgiving and in moving on with life, letting the offenders reform themselves into becoming a more desirable and responsible citizen; in India, this provision of plea bargain finds just a limited application to the offences of certain nature only. The offenders accused of serious nature are not allowed to take advantage of this provision. Besides above, in U.S, the provision of plea bargaining is also put to use to seek conviction of the offenders accused of serious crimes by affording a lenient punishment to their accomplices accused of the crimes lesser in gravity. For instance, to nail down rioters, the thieves are allowed to go with lesser punishment if the latter depose against mobsters/rioters.³⁶

In Italy too, excepting a few procedural and substantive differences, the legal provision of plea bargaining is almost just the same as what is there in India.

Disadvantages

Justice is the biggest casualty of plea bargaining mechanism. At times, the actual guilty escape the harsher punishment which they actually deserve and sometimes those who are victims of false implication in a criminal case get severest jail terms which otherwise could have been

³⁶ Judge Peter Messite, "Plea Bargaining in Various Criminal Systems", University of Florida, May 2010, last accessed at https://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf (on September 30, 2017).

avoided had they patiently waited till the delivery of final judgement in their case. In the event of plea bargaining, the judicial scrutiny of the evidence and the appreciation of the arguments loses its sheen and is not given its due prominence. The practice of plea bargaining poses a challenge to the very premise of a trial; which is unearthing truth and dispensing justice.³⁷ The punishment, in the cases of plea bargaining, is awarded based on just a rough estimation/evaluation of the material on record. Also, the chances of innocent people getting comparatively harsher punishment does increase and the possibility of the actual culprit getting just a token of punishment also cannot be ruled out.³⁸

Be it society or a victim of the crime, either of them don't get justice in its true sense for which one knocks the door of the courts. The penalty is not awarded in its absolute and strict meaning, and therefore, the victim and the society tend to draw a very poor impression of the judicial administrative system. Plea bargaining is freely applied in U.S, however in India it is applied with some riders.

Second drawback of plea bargaining is that it does not involve the degree of spontaneity which, according to law, it ought to involve. As per the law, the suspect/defendant should opt for plea bargaining on his/her own and not on the prodding of the prosecution or the judge himself. On the ground level, however, the scenario is different. The accused is lured into a plea bargaining just to ensure a triumph of all those concerned, i.e. the accused and the prosecution. The prosecution would almost frighten the accused, compelling him/her to go for a plea bargain. Those who find themselves trapped in the web of the police and the prosecution particularly opt for plea bargaining fearing graver harm to them by means of final judgement by the court. The cumbersome legal processes are also what compel the accused to go for plea bargaining instead of getting the matter decided on its merits.

³⁷ Samantha Joy Cheesman, "A Comparative Analysis of Plea Bargaining and the Subsequent Tensions with an Effective and Fair Legal Defence.", Faculty of Law and Political Science, University of Szeged, last accessed at http://doktori.bibl.u-szeged.hu/2488/1/Samantha_Joy_Cheesman_ertekezes.pdf (on September 3, 2017).

³⁸ Sonam Kathuria, "The Bargain has been Struck: A Case For Plea Bargaining in India", National Law School of India, Bangalore, last accessed at <http://www.manupatra.co.in/newslines/articles/Upload/3BEB7B04-1EE3-48EB-8716-279FA2B9AF8A.pdf> (on September 30, 2017).

Plea bargaining, at the end of the day, ends up enabling those who are guilty, inadvertently harming the cause of justice. Despite the fact that several countries have adopted plea bargaining in line with American laws, India is still not anywhere near it.³⁹ In India, the offer of plea bargaining is extended only in the crimes of non-serious and non-heinous nature. The biggest disadvantage of plea bargaining is that a co-accused is most of the times lured to testify against the other accused on the temptation of him getting much lesser punishment than his accomplice. In the process, those who manage the Justice system often lose sight of the actual culprit before them. Resultantly, a tactful offender succeeds in getting lesser punishment, and that too without compunction, at the cost of the other. Most of the countries including India are reluctant to allow free application of plea bargaining in serious and heinous crimes only because of this predicament.

Recommended Reforms

Taking into consideration various advantages and disadvantages of plea bargaining mechanism, it is lucid that several reforms can be brought about in India. The first can be with respect to the authority and control of the judges. Even though according to law, it is at the discretion of judges to allow or reject the offered sentence, the law implicitly wants them to allow the proposed sentences. The ambit of the power of judges requires to be expanded with respect to trial and sentencing. In addition, to avoid the possibility of growing complacent, there must also be a check on the functioning of the judges. It does not take any effort for the judge to accept whatever sentence is put on offer; however, such a practice is not in the spirit of justice and may often lead to the conviction of those innocent while the red-handed are made to walk with unfairly lenient sentences.

Furthermore, a lot more prominence must be given on adjudicating the case itself. If a judge cannot preside over the case, the prosecution and the defense can appoint an unbiased mediator to adjudicate the determination of a suitable sentence on the basis of the facts and evidence in

³⁹ *Id*

possession. It does involve making the trials somewhat cumbersome, however, it is still a quicker mode of deciding cases which does not place the same magnitude of burden on the court. As it stands today, oftentimes the defendant has no other option but to accept the impositions of the prosecution. To circumvent this, every case must be reviewed at a greater level. The defense attorney cannot solely undertake this task given the measure of his powers and authority in the court of law.

These recommendations may be helpful to a limited extent, however, the extent to which plea bargaining is more advantageous than inimical is controversial. There exists no doubt that India requires an instantaneous justice administration framework, and in all certitude, plea bargaining in its present form and structure is not sufficient to achieve that object.

Conclusion

Plea bargaining is manifestly distinct in different countries, this becomes more palpable when the common law and civil law countries are contrasted. Those criminals, who plead guilty and feel remorseful or are prepared to assist in other occupations for administering justice, must be given some concession in the form of sentence commutation. In addition, nations across the world possess inefficient and time-consuming criminal justice systems, a predicament which should be overcome for an efficacious administration of justice.

Upon perusal of the various drawbacks, some more detrimental than the others when studying them comparatively, it may be noticed that they are not minor in nature and thus cannot be overlooked. Each issue presents a consequential question about the legitimacy of plea bargaining, which must thereby be worked out in order to embrace the concept of plea bargaining and integrate it into the criminal justice system.

The existing condition of plea bargaining in India is not at the ambitious level it aims to be at, with considerable impediments deterring its efficacy. There should be remarkable modifications in the way plea bargaining petitions are processed. There is a grave requirement to look into the

standard of judgments and orders passed on the same. However, as it stands today, plea bargaining has been instrumental in confronting the outrageous processing rate of application to the court, an issue India has suffered far more than any other country.

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3. Report of the Committee on Reforms of Criminal Justice System (2003), Union Ministry of Home Affairs.