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Towards an Efficient Criminal Justice System through Plea Bargaining Mechanism: Myths and Realities

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The concept of plea bargaining has been introduced in India seeing its success in the western countries. This article tries to explore into the world of plea bargaining and its impact upon the criminal justice delivery system.

I. The Canvas:

A plea bargain[2] is an agreement in a criminal case whereby the prosecutor offers the defendant the opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a lighter than the maximum sentence. A plea bargain allows criminal defendants to avoid the risk of conviction at trial on the original more serious charge.[3] In cases such as an automobile collision when there is a potential for civil liability against the defendant, the defendant may agree to plead no contest or "guilty with a civil reservation", which essentially is a guilty plea without admitting civil liability. Plea bargaining can present a dilemma to defence attorneys, in that they must choose between vigorously seeking a good deal for their present client, or maintaining a good relationship with the prosecutor, for the sake of helping a future client.[4]

Black's law dictionary provides a general definition that serves as a useful starting point to describe the characteristics of the practice of plea bargaining. Black defines plea bargaining as: "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges".[5]

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2 also plea agreement, plea deal or copping a plea.

3 For example, a criminal defendant charged with a felony theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanour theft charge, which may not carry jail time.

4 www.en.wikipedia.org/wiki/pleabargaining visited on 15th August 2012

5 Blacks Law Dictionary, (West Group, USA 7th Edition, 1999) p. 1173. The process in a criminal case whereby the accused and the prosecutor, works out a mutually

Another noteworthy explanation of the concept of plea bargaining is "a practice whereby a defendant in criminal proceedings agrees to plead guilty to a charge in exchange for the prosecutor's co-operation in securing a more lenient sentence or some other mitigation."[6]

Plea-bargaining, though new to India, is already being practiced in other countries across the globe. In fact it is a norm in the United States of America, where 75% of the criminal cases get decided on plea-bargaining.[7]

The types of plea-bargaining as existing in other countries are as follows:[8]

1. CHARGE BARGAIN:

The accused has the option of pleading guilty to a lesser charge or to only some of the charges filed against him. For example where a defendant is charged with both drunk driving and driving with license suspended, he may given an opportunity to plead guilty to only drunk driving.

2. SENTENCE BARGAIN:

The accused has an option of admitting guilt and settling for a lesser punishment. For this, he must be informed in advance of the sentence that is likely to be imposed upon him. For example, he is facing serious charges and is afraid of being hit with the maximum sentence, he may plead guilty and be punished with an acceptable sentence.

3. FACT BARGAIN:

The accused pleads guilty in return for a less incriminating presentation of facts.

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satisfactory disposition of the case, subject to the approval of the court. It usually involves the defendant's 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 possible for the graver charge

6 Oxford English Dictionary, (Oxford University Press, Oxford 2nd Edition, 1989) Volume XI, p. 1026

7 The constitutional validity of plea bargaining was upheld in *Brady* v. *United States* 397 US 742 (1970). Principle formally accepted in *Santobello* v. *New York* 404 US 257 (1971). Supported in *Corbitt* v. *New Jersey* 439 U.S. 212 and *Bordenkircher* v. *Haynes* 434 U.S. 357. www.wikipedia.com/plea bargaining in USA visited on 15th August 2012

8 www.en.wikipedia.org/wiki/pleabargaining visited on 15th August 2012. Discussed in the Government of India, Report of the Twelfth Law Commission (1988-1991) of Concessional Treatment for Offenders who on their Own Initiative Choose to Plead Guilty without any Bargaining, 1991, p. 5

II. Emerging Judicial Trends before the Introduction of Plea Bargaining in India:

The approach of the Indian judiciary to the concept of plea bargaining is not a very enthusiastic one. The study of the cases will reflect the attitude of the Indian judiciary towards the concept of plea bargaining before the introduction of plea bargaining in India. The earliest case of reference of plea bargaining is found in *Madanlal Ramchandra Daga* v. *State of Maharashtra*[9] wherein the Supreme Court has said:

> "In our opinion, it is wrong for a court to enter into a bargain of this character Offences should be tried and punished according to the guilt of the accused. If the court thinks leniency can be shown on the facts of the case it may impose a lighter sentence. But the court should never be a party to a bargain by which money is recovered for the complainant through their agency."[10]

In *Murlidhar Meghraj Loya* v. *State of Maharashtra*,[11] the appellants were being tried for selling adulterated food under The Prevention of Food Adulteration Act, 1954 the Supreme Court observed:

> "To begin with, we are free to confess to a hunch that the appellants had hastened their pleas of guilty hopefully, induced by an informal, tripartite understanding of light sentence in lieu of *nolo contendere* stance. Many economic offenders resort to practices the American call 'plea bargaining', 'plea negotiation', 'trading out' and 'compromise in criminal cases' and the trial magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The business-man culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society. The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one caseless and the accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice-system he is free early in the day to pursue his old professions. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this

9 AIR 1968 SC 1267

10 *Ibid* at 1270

11 AIR 1976 SC 1929; (1976) 3 SCC 684

> practice intrudes on society's interests by opposing society's decision expressed through pre-determined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased pleas of guilt and partly justify it philosophically as a sentence concession to a defendant who has, by his plea 'aided in ensuring the prompt and certain application of correctional measures to him',"[12]

The Court further said:

> In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial. However, if the dispute ... finds itself in the field of criminal law, "Law Enforcement" repudiates the idea of compromise as immoral, or at best a necessary evil. The "State" can never compromise. It must enforce the law." Therefore open methods of compromise are impossible."

We have no sanction, except surreptitious practice in some courts, for 'trading out' of punitive severity although this aspect of the criminal system deserves Indian jurists' consideration. The sole relevance of this digression in this judgment is to highlight the fact that the appellants perhaps acted on an expectation which came to pass at thetrial level but was reversed at the appellate level and this touch of 'immorality' in the harsh morality of the punishment is a factor counsel wants us to take note of. But we can do nothing about it when the minimum is set by the justice to the citizen and relieve over-worked courts by more judicial agencies and streamlined procedures instead of leaving the uninformed public blindly to censure delayed disposals.[13]

In *Kisan Trimbak Kothula* v. *State of Maharashtra,*[14] Justice Krishna Iyer expressed strong resentment against plea bargaining and said:

> Equally true, that a few guileless souls in the dock, scared by the sometimes exaggerated legal finality given to public analysts' certificates and the inevitable incarceration awaiting them, may enter into that dubious love affair with the prosecution called 'plea bargaining' and get convicted out of their own mouth, with a light sentence to begin with, running the risk of severe enhancement if the High Court's revisional vigilance falls on this 'trading out' adventure.[15]

12 *Ibid* at 1933-1934

13 *Ibid* at 1934

14 AIR 1977 SC 435; (1977) 1 SCC 300. AIR 1976 SC 1929; *Murlidhar Meghraj Loya* v. *State of Maharashtra* (1976) 3 SCC 684 referred

15 *Ibid* at 437

In *Ganeshmal Jashraj* v. *Govt of Gujarat*,[16] a case under The Prevention of Food Adulteration Act, 1954 the court observed:

There can be no doubt that when there is an admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. The entire approach of the Court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused.[17]

In *Kasambhai Abdulrehmanbhai Sheikh* v. *State of Gujarat*,[18] a case under the Prevention of Food Adulteration Act, 1954 the court noted:

> The conviction of the appellant based solely on the plea of guilty entered by him and this confession of guilt was the result of plea of bargaining between the prosecution, the defence and the learned Magistrate. It is obvious that such conviction based on the plea of guilty entered by the appellant as a result of plea bargaining cannot be sustained. It is to our mind contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurement being held out to him that if he enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Art. 21 of the Constitution unfolded in *Maneka Gandhi's* case. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and ardous criminal trial which, having regard to our combers and unsatisfactory system of administration of justice, is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the judge also might be likely to be defected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to

16 AIR 1980 SC 264; (1980) 1 SCC 363

17 *Ibid* at 265

18 AIR 1980 SC 854; (1980) 3 SCC 120. Reiterated in *Thippaswamy* v. *State of Karnataka* AIR 1983 SC 747, (1983) 1 SCC 194

> the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea-bargaining with the prosecution and the Magistrate must be held to be unconstitutional and illegal.[19]

In *State of Uttar Pradesh* v. *Chandrika*,[20] the Supreme Court observed:

> It is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Further, the approach of the Court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscious must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced.[21]

The Supreme Court has categorically stated that in matters involving economic crime, food offences and other cases, plea bargaining should not be applied.[22]

The above resentment attitude of the Supreme Court towards plea bargaining was noticed before the provisions of plea bargaining came into force. Although some of the judges of the Supreme Court and High Courts have supported the concept of plea bargaining as a means of speedy disposal of cases and reduction of heavy workload of the courts.[23]

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19 *Ibid* at 855

20 AIR 2000 SC 164; (1999) 8 SCC 638. Discussed in *Balram Kumawat* v. *Union of India* AIR 2003 SC 3268; (2003) 7 SCC 628

21 *Ibid* at 167. While imposing sentences certain types of offences are kept out of the purview of plea bargaining which should be kept in mind by the court. Reiterated in *State of Punjab* v. *Prem Sagar*, 2008(8) SCR 574. Followed in *State of M.P*. v. *Bablu Natt*, 2008 (16) Scale 329.

22 *Balram Kumawat* v. *Union of India* AIR 2003 SC 3268; (2003) 7 SCC 628.

23 Justice S. B. Sinha, *Judicial Reform in Justice-Delivery System*, (2004) 4 SCC (Jour) 35; Justice B. N. Agrawal, *Pendency of Cases and Speedy Justice*, (2007) 6 SCC (Jour) 1; Justice K.G. Balakrishnan, *Courts as Agents of Social Change: Judicial Infrastructure and Access to Justice, Quality of Justice Delivery and Judicial*

The concept was introduced as a law in India by means of Criminal Law (Amendment) Act, 2005. By this amendment, a new chapter, that is, Chapter XXI A has been introduced in the Code of Criminal Procedure, 1973. The Criminal Law (Amendment) Act, 2005 on 11th January, 2006 has recognized the idea of plea bargaining in the Indian Criminal Justice System.[24] After the incorporation of the chapter on plea bargaining in the Code of Criminal Procedure, 1973, we have to wait and watch as to how the Indian judiciary will digest these provisions.

THE EMERGED ROUTE MAP

1. Plea-bargaining can be claimed only for offences that are penalized by imprisonment below seven years.[25]
2. If the accused has been previously convicted of a similar offence by any court, then he/she will not to be entitled to plea-bargaining.[26]
3. Plea-bargaining is not available for offences which might affect the socio-economic conditions of the country.[27]
4. Also, plea-bargaining is not available for an offence committed against a woman or a child below fourteen years of age.[28]
5. A charge-sheet must be filed with respect to the offence in question, or a magistrate must take cognizance on a complaint before plea-bargaining proceedings.[29]
6. A case which does not suffer from aforesaid disqualifications, and is pending before the court, is entitled for plea-bargaining.
7. An affidavit sworn by the accused must be attached to the application, stating that the accused has voluntarily chosen to bargain plea, and he understands the nature and extent of the punishment.[30]
8. The chapter on plea bargaining as contained in the Code of Criminal Procedure will not apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children)

Accountability, (2009) 3 SCC (Jour) 1; Justice K. G. Balakrishnan, *Criminal Justice System-Growing Responsibility in Light of Contemporary Challenges*, (2010) 7 SCC (Jour) 3

24 Sec 2 of Act 2 of 2006, w.e.f. 5th July 2006 vide notification No. S.O.990 (E) dt. 3rd July 2006

25 Section 265A (1) of the Code of Criminal Procedure, 1973

26 Section 265B (2) of the Code of Criminal Procedure, 1973

27 Section 265A (1) of the Code of Criminal Procedure, 1973

28 Section 265A (1) of the Code of Criminal Procedure, 1973

29 Section 265A (1) of the Code of Criminal Procedure, 1973

30 Section 265B (2) of the Code of Criminal Procedure, 1973

Act, 2000.[31]

ESSENTIALS OF PLEA BARGAINING

1. Voluntariness of the accused to plead guilty in exchange for a concession is an essential pre-requisite for admitting an application for plea bargaining.
2. The statement or facts stated by an accused in the application for plea bargaining should not be used for any other purpose except plea bargaining.[32]
3. A plea-bargain is a contractual agreement between the prosecution and the defendant regarding the disposition of criminal charge. However, such an agreement is not enforceable until a judge approves it.

III. Cases of Plea Bargaining in India:

For the first time in Mumbai, an application for plea bargaining was made before a Sessions Court when a former Reserve Bank of India clerk—accused in a cheating case—sought a lesser punishment in return for confessing to his crime.[33] In the present case, Sakha-ram Bandekar, a grade I employee, was accused of siphoning off Rs 1.48 crores from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. He was arrested by the CBI on October 24, 1997, and released on bail in November the same year. The case came up before special CBI judge A R Joshi and charges were framed. The accused then moved an application before the court on August 18 stating that he was 58 years old and would seek plea bargaining. The court directed the prosecution to file its reply. The CBI, while opposing the application, said, "The accused is facing serious charges and plea bargaining should not be allowed in such cases.'' It continued, "Corruption is a serious disease like cancer. It is so severe that it maligns the quality of the country, leading to disastrous consequences. Plea bargaining may please everyone except the distant victims and the silent society.'' Based on these submissions, the court rejected Bandekar's application.

Another reported case of India's biggest plea bargaining case where the victim has been paid an amount of Rs 12 lakhs is relating to the Indian Music Industry.[34] During a raid carried out at the Siddartha Optical Disc (CD plant),

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31 Section 265I of the Code of Criminal Procedure, 1973

32 Section 265K of the Code of Criminal Procedure, 1973

33 The first case of Plea Bargaining reported in Times of India dated 15th October, 2007 cited in articles.timesofindia.indiatimes.com visited on 15th August, 2012

34 Business Standard dated 29th October, 2009 www.business-standard.com/article/companies visited on 15th August, 2012

22,000 CDs including large numbers of mp3 CDs, porno CDs (10,600), 2 CD recording machines, printers, computers, etc. were seized, of which mp3 CDs / master stampers belonged to music companies which were members of IMI. Cases u/s 63, 65, 68A CR Act and 292 IPC were registered against Surendra Wadhwa, owner and managing director of Siddartha Optical Disc as well as against the company, following which IMI claimed Rs 100 per CD seized as compensation. When the applications were presented at the specialised intellectual property court in Delhi for hearing, the matter was negotiated with the company's owner and it was settled at Rs 12 lakhs (Two lakh on behalf of the company - Siddartha Optical and 10 lakhs on the owner's behalf). Besides, the court ordered the company to pay Rs 2 lakhs to the state for violating the copyright act.

In other significant case of the Uttarkhand High allowed the concept of plea bargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, accused supplied substandard material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, who got the investigation done through CBI by lodging a criminal case against the accused. Despite the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the plea bargaining application, the trial court rejected the application on the ground that the affidavit under section 265-B was not filed by the accused and also that the compensation was not fixed. The Hon'ble High Court allowed the Misc. Application by directing the trial court to accept the plea bargaining application.[35]

IV. Myths and Realities:

(i) THE MYTH

A significant feature of the method of plea-bargaining is that it helps in the reduction of the case loads.[36] It reduces the work load of the prosecutors enabling them to prepare for gravest case by leaving the effortless and petty offences to settle through plea bargaining. It is also a factor in reforming the offender by accepting the responsibility for their actions and by submitting them voluntarily before the law, without having an expensive and time consuming trial. In cases

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35 *Vijay Moses Das* v. *CBI*, Criminal Misc Application 1037/2006 (Judgment dated March 2010 of the Uttarkhand High Court) citied in Suneet Kr. Tyagi, *Law of Plea Bargaining in India* in www.singhania.in visited on 15th August 2012.

36 Finds support in Justice S.B. Sinha, *Judicial Reform in Justice-Delivery System*, (2004) 4 SCC (Jour) 35; Justice B.N. Agrawal, *Pendency of Cases and Speedy Justice*, (2007) 6 SCC (Jour) 1; Justice K.G. Balakrishnan, *Courts as Agents of Social Change: Judicial Infrastructure and Access to Justice, Quality of Justice Delivery and Judicial Accountability*, (2009) 3 SCC (Jour) 1; Justice K.G. Balakrishnan, *Criminal Justice System-Growing Responsibility in Light of Contemporary Challenges*, (2010) 7 SCC (Jour) 3

where the prosecution is weak, if trial is concluded, for want of proper witnesses or evidences and the ultimate result may be an acquittal, the prosecution will have a chance to find the accused as guilty, by cooperating with the accused for a plea bargaining.

An intelligent prosecutor may agree for a plea bargaining of an insignificant accused to collect evidence against other graver accused. Normally, in cases wherein aged or women witnesses have the vital role to prove a charge against the accused, their death or non co-operation, may be a real cause for adverse conclusion of the case. Here the prosecution avoids a chance of acquittal and the accused avoids a chance of conviction for more serious charges with higher punishment. From the angle of victim also, plea bargaining is a better substitute for his ultimate relief, as he can avoid a lengthy court process to see the accused, be convicted. The system gives a greater relief to a large number of under trials lodged in various jails of the country and helps reduce the long pendency in the courts.

Some jurists maintain that it is appropriate as a matter of sentencing policy to reward defendants who acknowledge their guilt. They advance several arguments in support of this position, notably, that a bargained guilty plea may manifest an acceptance of responsibility or a willingness to enter the correctional system in a frame of mind that may afford hope for rehabilitation over a shorter period of time than otherwise would be necessary.

Another view treats plea bargaining, not primarily as a sentencing device, but as a form of dispute resolution.[37] Some plea bargaining advocates maintain that it is desirable to afford the accused and the state the option of compromising factual and legal disputes. They observe that if a plea agreement did not improve the positions of both the accused and the state, one party or the other would insist upon a trial.

Finally, some observers supports plea bargaining on grounds of economy or necessity. Viewing plea negotiation less as a sentencing device or a form of dispute resolution than as an administrative practice, they argue that society cannot afford to provide trials to all the accused who would demand them if guilty pleas were unrewarded. It is viewed as a device which reduces the expenses incurred in delivery of justice with all fairness.[38]

At least, there are more appropriate uses for the additional resources that an effective plea bargaining could save.

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37 Justice M. Yousuf Eqbal, *Bench Bar Relationship*, (2010) 3 LW (Jour) 9

38 Justice M. Yousuf Eqbal, *How to Bring Back the Old Glory of the Indian Judiciary*, (2010) 1 SCC (Jour) 1

(ii) REALITY

The introduction and use of Plea bargaining is problematic for at least some reasons.

First, the prosecution has the power to present accused with unconscionable pressures. Though, in procedure pleas as voluntary, there are every chances of being practically coerced. The prosecution has the incentive to maximize the benefit of pleading guilty in the weakest cases. The more likely an acquittal at trial, the more attractive a guilty plea is to the prosecution. But in a borderline case that does go forward, the prosecution may very well threaten the most serious consequences to those accused who may very well be innocent. The defence lawyers who represent accused do not have the resources to independently investigate every case.

Plea bargaining undercuts the requirement of proof beyond reasonable doubt and that plea negotiation is substantially more likely than trial to result in the conviction of innocent. Plea bargaining results in unjust sentencing. This practice turns the accused's fate on a single tactical decision, which, they say, is irrelevant to desert, deterrence, or any other proper objective of criminal proceedings. Some critics maintain that plea bargaining results in unwarranted leniency for offenders and that it promotes a cynical view of the legal process.[39]

Critics of plea bargaining, from their foreign experiences, object to the shift of power to prosecutors that plea bargaining has effected, noting that sentencing judges often do little more than ratify prosecutorial plea bargaining decisions.[40] They maintain that, even more clearly, plea bargaining makes figureheads of the probation officers who prepare reports after the effective determination of sentence through prosecutorial negotiations. Plea negotiation, they say, very frequently results in the imposition of sentences on the basis of incomplete information.

In the light of the conflict of interests prosecutors, defense lawyers, and trial judges, the critics sometimes contend that plea negotiation subordinates both the public's interest and the accused's to the interests of criminal justice administrators. In their view, the practice also warps both the initial formulation of criminal charges and, as accused plead guilty of crimes less serious than those that they apparently committed, the final judicial labelling of offenses. Critics

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39 Considered sometimes to be against public policy. Opinion expressed in *Guerrero Lugo Elvia Grissel* v. *State of Maharashtra*, Criminal Writ Petition No. 2109 of 2011 of the High Court of Judicature at Bombay while dealing with a case of Plea Bargaining cited in www.bombayhighcourt.nic.in visited on 15th August 2012

40 The extent of involvement of the judge in plea bargaining process is debatable because excessive intervention could compromise his position as a neutral arbiter while no intervention could lead to an unjust result.

suggest that plea bargaining deprecates human liberty and the purposes of the criminal sanction by "commodifying" these things, that is, treating them as instrumental economic goods.

As per the foreign thinkers, plea negotiation raises substantial legal and constitutional issues.[41] For one thing, common law courts traditionally treated a confession as involuntary when it had been induced by a promise of leniency from a person in authority. Moreover, a guilty plea waives the constitutional right to trial and subordinates trial rights. Under the "doctrine of unconstitutional conditions," waivers of constitutional rights are invalid when they have been required as a condition for receiving favourable governmental treatment. Despite these negative dimensions, plea bargaining is the central feature of the adjudicatory process.

Prosecutors plainly are influenced by the equities of individual cases, the seriousness of the accused's alleged crime, their prior criminal record, and so on. Defence Lawyer, Trial Judge and Prosecutor are the fundamental elements in the working of plea bargaining. At times, prosecutors are influenced as well by their personal views of the law without a roving enquiry. In western experiences, although the victim of the crime has been called the "forgotten person" in plea bargaining, many prosecutors give substantial weight to the desires of victims.

Through plea bargaining, a prosecutor can avoid much of the hard work of preparing cases for trial and of trying them. In addition, prosecutors can use plea bargaining to create seemingly impressive conviction rates. The personal bias with the defence lawyers also may influence plea bargaining practices. So there may be desires for professional advancement either within a prosecutor's office or after leaving it. Although most prosecutors probably do not deliberately sacrifice the public interest to their personal goals, the bargaining process may be influenced by conflict of interests, and prosecutors may rationalize decisions that serve primarily their own interests.

Private defence lawyers commonly are paid in advance, and their fees do not vary with the pleas their clients enter. Once a lawyer has pocketed the fee, his personal interest may lie in disposing of a client's case as rapidly as possible, that is, by entering a plea of guilty.

"Cop-out lawyers" who plead virtually all of their clients guilty sometimes represent large number of accused for relatively low fees. Some of these lawyers have been known to deceive their clients in the effort to induce them to plead

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41 *The Defense Attorney's Role in Plea Bargaining*, Yale Law Journal 84 (1975): 1179–1314; *Plea Bargaining and Its History*, Columbia Law Review 79 (1979): 1–43; *Is Plea Bargaining Inevitable*?, Harvard Law Review 97 (1984): 1037–1107 cited in Dr. Pradeep, K.P., *Plea Bargaining-New Horizon in Criminal Jurisprudence* www.lawyersclubindia.com/articles visited on 15th August 2012

guilty. Engaged State briefs lawyers may suffer a similar conflict of interest. The relatively small amount of remuneration that he is likely to receive for representing an indigent accused may seem inadequate compensation for a trial, but this amount may seem adequate as a fee for negotiating a plea of guilty. In theory, the decision to enter a plea of guilty is of the accused rather than the Lawyer. Nevertheless, many defence lawyers speak of "client control" as an important part of the plea negotiation process. When clients are reluctant to follow their advice, these lawyers may use various forms of persuasion, including threats to discontinue their representation, in an effort to lead the clients to what the lawyers regard as the appropriate course of conduct.

Although prosecutors and defence lawyers are the principal actors in the plea bargaining process, judicial participation in this process is far from rare. This participation may take various forms. In some courts, trial judges conduct in-chambers conferences and offer to impose specified sentences when accused plead guilty. In others, judges offer suggestions to prosecutors and defence lawyers, describe how they have treated certain cases in the past, or indicate a probable range of sentences.

Judges who do not participate in any form of explicit bargaining may engage in implicit bargaining by treating an accused's guilty plea as a reason for substantially reducing the penalty imposed. Primarily on the theory that judicial plea bargaining is more coercive than prosecutorial bargaining, some authorities are in an argument that judges should be prohibited from engaging in this practice. Personal presence of Judges in the consultation process may amount to a prejudicial attitude, in the later course of trial, if no compromise is arrived between the prosecution and defence.

V. Winding Up:

India is a country with lots of illiterate citizens who are unaware of their rights. There are people who don't even know that they have a right to legal assistance when they stand before the court as an accused. The poor and illiterate citizens can be easily overpowered by the police and asked to plead guilty.[42] This may convert the whole process of trial into a drama.

The uneducated won't even know that they have a far better chance of winning their case and be acquitted. Moreover, the officers in charge of the investigation may be tempted to enter into deals with the accused for monetary gains. If the plea bargaining application of the accused is rejected then the accused would find it very difficult to prove himself innocent.

Plea bargaining can present a dilemma to defence attorneys, in that they

42 Opinion finds support in Justice S. B. Sinha, *Judicial Reform in Justice-Delivery System*, (2004) 4 SCC (Jour) 35

must choose between vigorously seeking a good deal for their present client, or maintaining a good relationship with the prosecutor, for the sake of helping future client.

The concept of plea bargaining has been introduced in India by seeing its success in America.[43] The law makers in India have failed to take account of the fact that in America, Plea Bargaining was a practice even before it was introduced in the law. In India, the concept has been directly introduced as law. The law makers even failed to notice the wide gap between the socio-economic conditions of USA and India. The Government has also failed to update the people regarding this new amendment in the Criminal Law.[44]

In this respect, the scheme proposed by the 142nd Report of the Law Commission of India is prudent, as it does not seek to carelessly replicate the American model of plea-bargaining. It cannot be denied that the scheme ignores the fact that many lack the resources for proper legal representation and is more a formalization of the unwritten rule of showing leniency to those who plead guilty rather than plea-bargaining. Nonetheless, given that reformation of the present system is unlikely to occur in the near future, the proposal outlined by the 142nd Report of the Law Commission of India should not have been overlooked and may have proved to be a far more practicable solution to the problem.[45]

Nevertheless, if a system like plea-bargaining has to be made successful in India, then the deciding authority must be independent from the trial court and instead of the Public Prosecutor retaining most of the power, the deciding authority must be given a greater role in the process. If the deciding authority is the sole arbiter, the risk of coercion into pleading guilty and of underhand dealings can be eliminated substantially. Therefore not only will the victims needs be addressed but also the susceptibility of the system of being misused by the Public Prosecutor, the police and even the affluent will be considerably reduced.[46]

Plea bargaining is undoubtedly, a disputed concept. Few people have welcomed it while others have abandoned it. It is true that plea bargaining speeds up caseload disposition, but it does that in an unconstitutional manner. Plea bargaining may be considered a unique remedy, it cannot be considered as one

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43 Discussed in Report of the Twelfth Law Commission (1988-1991) of Concessional Treatment for Offenders who on their Own Initiative Choose to Plead Guilty without any Bargaining, Government of India, 1991

44 Evident from the few cases which have been reported

45 Report of the Twelfth Law Commission (1988-1991) of Concessional Treatment for Offenders who on their Own Initiative Choose to Plead Guilty without any Bargaining, Government of India, 1991. Ill iteracy, proverty and prosecution pressures being the dangers in India for the failure of plea bargaining.

46 Sulabh Rewari and Tanya Aggarwal, *Wanna Make a Deal? The Introduction of Plea-Bargaining in India*, (2006) 2 SCC (Cri) (Jour) 12

which can have a significant impact on the huge backlog. But perhaps we have no other choice but to adopt this technique. The criminal courts are too over burdened to allow each and every case to go on trial. Only time will tell if the introduction of this new concept is justified or not.

There is no single formula for dealing with a past marked by massive and systematic abuse. Each society should—indeed must—choose its own path.

As David Hume said, justice is strong enough to shape our judgments about right and wrong, but too weak, on its own, to control our passions. To achieve anything even vaguely resembling justice, justice-seekers must make alliances with groups who have only partly overlapping aims and who, on many issues, embrace values that are deplorable from the standpoint of justice itself.