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An Analysis on the efficiency of Alternative Dispute Resolution in Criminal Justice System with Emphasis on Plea Bargaining

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Abstract

Courts have long been severely overburdened with cases. It has been established that there are gaps in our current processes, and it is necessary to provide new ADR mechanisms so that conflicts can be resolved without the involvement of the court directly. ADR in criminal cases has failed to pick up speed, even though it is steadily becoming the norm for resolving civil issues. Plea bargaining is one of the ADR techniques used in the criminal judicial system. In the USA, plea bargaining is highly popular and accounts for over 90% of case resolutions. Plea bargaining has a solid track record in the United States of America for ensuring swift justice and access for all socioeconomic classes. Despite the fact that the idea of plea bargaining was first introduced to our criminal justice system back in 2005, India has not had much success with it. The many ADR techniques used in the criminal justice system are listed in this essay, along with an evaluation of their efficacy. It also compares plea bargaining practices across several nations, including Germany, the United Kingdom, France, India, and the United States, and examines whether India's current plea-bargaining system is effective enough to address the issue of the backlog of cases in our courts. The paper also makes recommendations to the legislative body to improve the effectiveness and efficiency of plea negotiations.

1. Introduction

"In many courts, plea bargaining serves the convenience of the judge and lawyers, not the ends of justice, because the courts simply lack the time to give everyone a fair trial".

- **Jimmy Carter, Former President of America.**

Today, the number of pending cases in India are 4.26 crores out of which 3.18 crore cases are criminal cases[1]. The delay in judicial proceeding because of the tedious procedures are increasingly being normalized by people. However, it is important to remember that "Justice delayed is justice denied"[2]. In order to provide speedy remedy, the concept of Plea Bargaining was introduced in our criminal justice. Plea Bargaining is a method of Alternate Dispute Resolution in Criminal Justice System. Alternative Dispute Resolution means a process of settling the dispute by measures other than other than litigation[3]. In Plea Bargaining, an agreement is reached between the prosecutor and the accused. Thus, Plea

[1] According to National Judicial Data Grid, as on 14.04.2023.
[2] William E. Glads.
[3] Black's Law Dictionary.

Bargaining not only provides speedy remedy but also helps in fixing relationship between the victim and offender.

2. Alternative Dispute Resolution in Criminal Justice System:

Alternative dispute resolution, or simply ADR, is the process of resolving disputes between two or more disputing parties, usually outside of court and without following to traditional litigation procedures, through mediation, arbitration, or negotiation. In order to reduce the burden on the courts, make litigation more accessible to those who cannot afford more time and money, and make it less restrictive, the system of ADR was formed.

The notion of restorative justice, which ADR in the criminal justice system is built on, states that in addition to the accused receiving punishment for the offence they are accused of committing, the victim should also receive compensation. There are several forms of ADR that are commonly approved and practiced, even though the word "out of court settlement" or "ADR" is frequently avoided in criminal law. Plea bargaining, victim offender mediation, community service, and victim support programs are only a few of them. These ADR methods are not regarded as being a part of the traditional criminal justice system.

3. Types of ADR Programs in Criminal Justice System:

1. **Plea Bargaining:** A pre-trial agreement between the prosecution and the accused in which the accused enters a guilty plea in exchange for the prosecution making some concessions is known as plea bargaining, and it is utilized effectively in many countries across the world. Our criminal justice system has included this procedure under Chapter XXIA of the Criminal Procedure Code.
2. **Victim – Offender Mediation:** In this type of ADR Program, the victim and the offender are made meet each other and mediate among themselves provided the victim is willing to meet the offender. With the assistance of mediator, the offender is made to understand the impact the crime has created on the victim. It also makes the offender liable for the monetary loss suffered by the victim. However, this type of ADR Program is not practiced in India.
3. **Community Dispute Resolution Centre Program:** Community Dispute Resolution Centre are basically non- profit Organisation, which tends to solve minor neighborhood conflicts. They have volunteers who mediate between conflicting parties. These centers are mainly prevalent in some parts of America.
4. **Victim Offender Panel Program:** This kind of ADR program was initially developed to mediate in the cases of drunk and driving. It tries to prevent the repetition of the offence.
5. **Victim Assistance Program:** Under this program the victims are compensated for both their material and non-material damages. A court may, at its discretion, impose a fine or a penalty (including a death sentence) that includes a fine under Section 357. Also, Section 357(3) gives the court the authority to grant compensation for a person's loss or injury, even when a fine is not a component of the punishment. According to Section 357A, each State Government must develop a plan in collaboration with the Central Government for allocating funds to compensate victims or their dependents who have experienced loss or injury and need rehabilitation.
6. **Community Crime Prevention Program:** The Community Crime Prevention mainly tries to prevent delinquent behaviour among the institution that influence crime rate.
7. **Private Complaint Mediation Centre:** They mediate disputes between private individuals.

These are some of the ways in which Alternative Dispute Resolution happens in a Criminal Justice System.

Some of these ADR Programs like Victim Offender Mediation Program have been successfully practices in US and Canada for more than 20 years. However, one of the major concerns that has been raised against ADR settlement in Criminal Justice System is that by settling the issue which is of criminal nature among the parties themselves tends to privatize the public harm.

4. Analysis of efficiency of ADR in Criminal Justice System:

One of the most widely accepted pros of ADR is the fast disposal of the cases. Normally, a case takes a long period of time because of various procedures involved in the case. Given the huge number of cases that are pending before different courts ADR seems to be the only solution to solve the backlog of cases. Moreover, when parties settle their disputes among themselves there is win-win situation that arises between the parties. Also, ADR helps the parties to reach on to a settlement without much of publicity, in turn helps an accused from being stigmatized. In other words, it prevents media trials. Moreover, ADR in Criminal Justice System is hassle-free. For a plea ADR, there is no need for a lawyer's presence. Thus, ADR helps in fast disposal of cases and thus is very helpful.

Practically speaking, in India, the chances involvement of police in ADR mechanism in criminal cases is very much high. Given the number of custodial deaths that takes place in India every year, there is a possibility of ADR mechanism to be misused by the police officials. Added to this list is the corruption and ADR can help accused to do away with the law by means of corruption. Moreover, it is widely argued that ADR cannot be a substitute for the trial in a criminal case and the government instead substituting ADR with the trials should find ways to make speedy trial possible. Hence, in this way it cannot be said that ADR is fully efficient in disposing cases and there is a need to ensure that the victims are not exploited.

5. Plea Bargaining – Meaning:

Plea Bargaining is a pre-trial negotiation between the state (i.e.) the prosecutor and the accused. It is a kind of an agreement where the accused will plead guilty in consideration of concessions given by the prosecutor. It is "a legal process that permits a defendant to concede their guilt of a less serious crime in order to prevent a trial[4]". In other words, Plea bargaining is a process of alternative dispute resolution where the dispute is settled outside the conventional court system between the prosecutor and the accused. However, Plea bargaining is not available for heinous crime and socio-economic offences.

6. History of Plea Bargaining:

1. History of Plea Bargaining in USA:

In United States of America, the Plea Bargaining started in the later part of 19th century in some states of America. It later became a norm rather than an exception. They have been occurring more frequently; from 84% of federal cases in 1984 to 94% in 2001[5]. **Brady v. United States[6]**, which was decided in 1970, established the constitutionality of plea negotiations. In **Santobello v. New York[7]**, it was observed by US Supreme Court that, Plea bargaining is a crucial component of the criminal justice system in the United States. Without it, the States and the Federal Government would need to double the number of judges and

[4] Cambridge law dictionary.
[5] Fisher, George (2003). Plea Bargaining's Triumph: A History of Plea Bargaining in America. Stanford University Press. ISBN 978-0804744591.
[6] 397 U.S. 742.
[7] 404 U.S. 257 (1971).

court offices, which is not feasible. As a result, the process takes longer and costs more money.

2. History of Plea Bargaining in India:

The concept of plea bargaining primarily originated in USA. In American Criminal Justice System, Plea Bargaining is more a norm than an exception. Today, majority of the criminal cases in USA are settled by Plea Bargaining.

In India, the concept of Plea Bargaining was not accepted till the criminal law amendment in 2005. Supreme Court was very much hesitant to apply plea bargaining as an alternative means to settle dispute and this can be observed in various cases namely, in **Kachhia Patel Shanthilal Koderlal v. State of Gujarat and others[8],** where Supreme Court ruled that the practice of Plea Bargaining is unlawful citing corruption as the main reason for the same and in **State of Gujarat vs. Bhai Ardul Rehman Bhai Shaikh[9],** where the court observed that Plea Bargaining induces the accused to plead guilty for which he would be awarded with lighter sentence and hence in no way benefits public interest. In **State of U.P. v. Nasruddin[10],** in a matter involving fine the application of plea bargaining as a means of alternative dispute resolution was deemed illegal. In **Muralidhar Meghraj Loya v. State of Maharashtra[11],** the dispute was on selling of poisoned food and the accused was charged under Prevention of Food Adulteration Act, 1954. In this case the accused pleaded guilty and the Magistrate sentenced the accused with lighter imprisonment. Justice Krishna Iyengar observed that the concept of plea bargaining was not accepted in India and held that the reduction of sentence by Magistrate since he has pleaded guilty is also illegal. However, Justice Krishna Iyengar supported the idea of plea bargaining and observed that reduction of sentence is better than the nolo contendere attitude. In **Madanlal Ramachandra Daga v. State of Maharashtra[12]** the Supreme Court discouraged the process of plea bargaining stating that a sentence should not be decided on the basis of agreement between the parties but by the nature of the crime the offender has committed. Thus, it may be concluded that courts in general did not accept the notion of plea bargaining as an alternative dispute resolution in criminal justice system till the Criminal Law Amendment of 2005.

In reports like the 142nd and 154th, the Law Commission of India supported passing legislation regulating plea bargaining. The Malimath Committee campaigned for the creation of a mechanism that would let offenders' bargain for lower charges. The committee said that by doing this, criminal matters would be resolved more quickly while the workload on the court would decrease. The Malimath Committee also discussed the benefits of plea bargaining in the United States to highlight how essential it is. In response, the draft Criminal legislation (Amendment) Bill, 2003 was presented to the parliament. On July 5, 2006, it ultimately became an effective Indian legislation. It sought to amend the Indian Penal Code of 1860 (IPC), the Code of Criminal Procedure of 1973 (CrPC), and the Indian Evidence Act of 1892 in order to improve the country's current criminal justice system, which is burdened with a large number of criminal cases, excessive delays in their resolution, and a very low conviction rate in cases involving serious crimes.

7. Plea Bargaining in Criminal Procedure Code:

Plea Bargaining is covered under Sections 265A through 265L of Chapter XXIA of the Criminal

[8] [1980] 3 SCC 120, reiterated also in **Kasambhai vs State of Gujarat** (1980 AIR 854).
[9] AIR 1980 SC 854.
[10] (2000) Cri.L.J 4996.
[11] AIR 1976 SC 1929.
[12] AIR 1968 SC 1267.

Procedure Code. The Criminal Law (Amendment) Act of 2005 included it. It permits plea bargaining in situations

1. where the maximum penalty is a seven-year jail sentence,
2. the offences have no impact on the nation's socioeconomic standing,
3. the offences have not been committed against women or children under the age of 14,
4. Where the accused is not a repeated offender, and
5. Where the accused is not a juvenile.

The Plea Bargaining happens when the accused makes a voluntary application regarding his willingness to settle the case by using Plea Bargaining as an alternative dispute resolution method. The settlement between the parties is final and thereafter no appeal lies from the settlement. The first successful plea-bargaining case reported in India was Vijay Moses Das v. CBI.

8. Types of Plea Bargaining:

There are generally three types of plea bargaining namely,

1. **Sentence Bargaining:** In this type of plea bargaining, the accused pleads guilty in consideration for lesser sentence. E.g., If theft is punishable for 3 years imprisonment, then when an accused opts for sentence bargaining the punishment would be for 2 years.
2. **Charge Bargaining:** In charge bargaining, the accused is charged for less severe offence. This is one of the most widely used type of plea bargaining around the world. E.g., If an accused has committed murder and agrees to plead guilty, then under charge bargaining the charges for murder will be dropped and the accused will be held guilty for culpable homicide not amounting to murder.
3. **Fact Bargaining:** Here, the facts are bargained. In this type of ADR settlement, the prosecutor and the accused come together and discuss on the facts that should be disclosed in the court. This type of plea bargaining, however, is not widely practiced.

9. Analysis of efficiency of Plea Bargaining:

One of the major pros when it comes to plea bargaining is that the inclusion of all parties in the process of justice. Normally a crime is said to be committed against the state and hence the parties of the case are the accused and the prosecutor who represents the state. When it comes to plea bargaining or ADR as a whole, they include victim as a party to the dispute. In this way, Plea Bargaining focuses on the victims and puts into effect restorative theory of justice. In plea bargaining all the parties including the victim come to mutually agreeable agreement and compensation is provided to the victim to repair the harm caused by the crime. Moreover, like every other ADR mechanism Plea Bargaining also helps in solving the dispute quickly as the regular court procedure need not be met with. As a result, there is quick disposal of cases and thus the problem of over-crowding of cases in courts of law can be reduced.

Plea Bargaining assures conviction of the accused. While conviction rate of accused in India is close to 67%, in US it is 90% and one of the main reasons for the higher conviction rate in US is Plea Bargaining. In criminal cases, the accused should be proved guilty beyond reasonable doubt and hence it is always difficult for the prosecutor to ensure conviction of the accused. Plea Bargaining, on the other hand, assures conviction though the accused may get a little lower sentence. Moreover, the cost of conducting a criminal trial is always high. In a criminal trial, there are testimonies given by people as evidence which includes government officials and various enforcement agencies. The cost of prosecuting and defending an accused is very much high and this can be effectively reduced by opting for Plea Bargaining at least for minor

offences. Also, many accused remain as under-trial prisoners for a very long time until the completion of the trial in local prisons. By opting for plea bargaining the strain put in the local prisons can be reduced.
However, opting for plea bargaining may be inconsistent with our Fundamental Rights. Indian Constitution provides for several rights to the accused with regard to their trial like right against self-incrimination which are enumerated in Art 14, 19, 20 and 21 of the Constitution. By opting for plea bargaining the accused losses these rights. However, an accused person will not be able to give up or waive his constitutional rights[13]. Also, Plea Bargaining eliminates the possibility of accused to go for an appeal. And in plea bargaining there is always reduced sentence. While some believe that convicting the accused is important, leniency in the sentence to plea guilty is considered injustice by others.

10. Comparative Analysis of Plea Bargaining in various countries like Germany, UK, France, USA and India:

In Germany, during 1970s Germany started to implement plea bargaining in their criminal justice system without formally changing the criminal procedure. German legal actors were strongly encouraged to change their attitudes towards plea bargains and agreements with defendants by external societal processes that increased the amount and complexity of criminal proceedings. German criminal procedure has undergone substantial modifications over the past 20 years, as seen by the rising use of usually informal plea deals by those involved in the proceedings, including the public prosecutor and defense attorneys, but especially the courts. Plea agreements, according to estimates, are used to settle almost half of all criminal cases before German courts. Plea agreements are becoming widespread, especially in cases of drug offences with an international component and sophisticated evidence, as well as in the context of economic crimes, where thorough evidence gathering has become rare.
In the UK, plea bargaining is conducted in a different way. It calls for the court to suggest sentence reduction on particular situations after consulting with the solicitors for both sides. The accused chooses to enter a guilty plea in exchange for a less sentence without having to engage in formal talks with the opposing counsel. With one exception, the judge should never state what punishment he will assign. With this exception, a judge should be able to rule that the sentence will or won't take a particular form regardless of what happens, whether the accused pleads guilty or not. With the exception of information about which the accused should remain ignorant, such as cancer, which he is unaware of, the defense attorney should inform the accused when such a dialogue regarding punishment has occurred. Thus, in England and Wales, a plea agreement is only permitted if both the prosecution and defense agree that the defendant will admit guilt to some charges while the prosecution will drop the others.
When the French Criminal Procedure Code was revised in 1999, plea negotiations were first made legal in France. The prosecution may provide the defendant with the option of forgoing a traditional criminal trial in exchange for an admission of guilt and the accomplishment of a condition like paying a fine, handing over any items used in the crime (or obtained during the crime), or giving up his driving or hunting privileges for a period of time. This option may be presented to the defendant before formal proceedings begin. The prosecution will ask the court to confirm the plea agreement if the defendant accepts it. The composition can only be used to prosecute certain offences that are specifically listed in the French Code, such as simple assault, threats, simple robbery, criminal damages, criminal libel and slander, animal

[13] Behram v. State of Mumbai, AIR (1955) SC 146 26.

cruelty, possession of specific weapons, or driving under the influence. In other words, for minor offence only plea bargaining can be used in France.

In the USA, the accused has the option of pleading guilty, not guilty, or Nolo Contendere. If the accused pleads Nolo Contendere, the Court will decide on the issue of his guilt. In case of Nolo Contendere the court simply treats the plea as an implied admission of guilt. "Nolo Contendere" literally means "I do not wish to contend". Nevertheless, the Court is not required to accept the accused's plea. In **State ex Rel Vs Clark**[14], the Adams J explained the 'Nolo Contendere' theory. According to the Court, the plea of "Nolo Contendere," often referred to as "Plea of Nolvut," indicates that the accused does not desire to contest. The Court has the discretion to accept or reject such a plea depending on the facts and circumstances of each case that is brought before it. The Court is obligated to make sure that the accused entered his or her plea voluntarily and without being under coercion. The accused must be given confidentiality protection. The overpopulation in American prisons gave Plea bargaining more traction. In **Brady Vs. United States**[15]**,** according to the US Supreme Court, the agreement reached out of concern that the trial will result in the death penalty does not render the plea-bargaining procedure invalid. Plea Bargaining is legitimate if it has been properly managed and carried out. Even though the Indian legal system acquired the "Plea Bargaining" concept from the US, it nevertheless stands apart from how "Plea Bargaining" is practiced in the US. Some of the differences are In USA, Plea Bargaining can be exercised on all offences irrespective of the nature of the offence. Anyone accused of committing a crime has the option to pursue plea bargaining. However, in India, Section 265A of Crpc restricts the operation of plea bargaining and enumerates several exceptions like cases where the accused person is charged with offences punishable with more than 7 years, socio-economic offences, offences against women and children below 14 years of age cannot opt for plea bargaining.

The victim plays a significant role in the plea-bargaining process under Indian law. In the event that a mutually agreeable resolution cannot be reached, the victim has the right to reject or veto. The victim, however, does not actively participate in the Plea-Bargaining process in the USA.

In the USA, a plea-bargaining application is only submitted following the conclusion of negotiations between the prosecution and the accused. To ensure that the application for plea bargaining is made willingly by the accused, the negotiating procedure with the accused does not even begin in India before the application is submitted. As a result, there is a lower likelihood that the accused will be forced into making a plea bargain application or that there will be covert negotiations.

In the USA, a judge cannot use discretion while approving a plea-bargaining application. However, in the Indian judicial system, the judge has the authority to accept or reject a plea bargain proposal submitted by the accused.

In accordance with Indian law, the punishment imposed in any Plea-Bargaining case may be overturned by filing an SLP under Article 136 or a writ petition under Articles 226 and 227 of the Indian Constitution if the court believes it to be insufficient or justified by unfair circumstances. However, in USA, once an agreement is reached between parties, the case reaches its finality and there is no appeal even in the form of Writ.

11. Plea Bargaining and conviction rate in India:

Data gathered by the National Crime since 2015 have made it very evident that India hardly ever uses the

[14] 363 US 807.
[15] 397 US 742 (1970).

plea-bargaining process. Only 4,816 out of a total of 10,502,256 cases that were pending trial in 2015 under the general penal code were resolved through plea bargains, or 0.045%[16]. In 2016, there were roughly 4,887 cases out of 11,107,472 total cases, making it lower at 0.043%[17]. In 2017, there was a little improvement to 0.27%, with 31,857 cases out of 11,524,490 resulting in a plea agreement[18]. However, this was not a persistent trend, as only 20,062 cases out of 12,106,309 were resolved through plea negotiations in 2018, representing a negligible 0.16% of all cases[19]. The fact that this statistic hasn't even surpassed 1% in 15 years is regrettable.

Also, the conviction rate is low in India. Police were investigating into 51,540 murders in 2021, of which 26,382 had charges filed against them. Similarly, they were investigating into 46,127 rapes, of which 26,164 had charges filed against them. 2,48,731 murder cases were on trial in 2021; 4,304 of these cases resulted in conviction. Similarly, 1,85,836 rape cases were on trial; 3,368 of these cases resulted in conviction. In 2021, there were 42.4% murder convictions and 28.6% rape convictions. In the same way, the conviction rate of Kidnapping and Abduction, Rioting and Hurt (including acid attack) were 29.3%, 21.9% and 37.1% respectively[20].

In Haryana, just 5 cases were compounded or compromised in 2018, with no cases being resolved through plea negotiations. In Punjab, only two cases were compounded or compromised in 2018, as 246 cases were concluded through plea negotiations. Madhya Pradesh leads the way with 12344 cases settled through plea negotiations, followed by Rajasthan with 3343 cases and Uttar Pradesh with 1890 cases[21].

Additionally, "plea bargaining" was used to resolve 1113 severe injury cases, 8622 cases of minor property damage, and 9735 cases of injury. 2018 saw the resolution of 123 cases of sexual harassment and 364 cases of assault on women intended to insult her modesty through plea bargaining. If plea bargaining were to be used in solving a dispute in criminal justice system, we would ensure more conviction rate.

12. Findings and Recommendation:

Even though the amendment sought to address the issue of convicts awaiting trial by giving them a chance to accept their guilt and bargain their sentence the amendment suffers from several disabilities. Firstly, detainees who are awaiting trial are not informed about the concept of plea bargaining. The legislature should bring laws so as to contain provisions mandating probation officers and jail administrators to conduct sessions in prisons informing convicts who are awaiting trial of the various benefits to which they are entitled.

Secondly, guidelines on how to categorize a crime as a socioeconomic offence should be provided to the authorities. This may discourage the arbitrary use of this ability. The scope of the section's application should be increased, and plea bargains ought to be described in a way that considers factors more than merely the length of a possible sentence.

It is necessary to create a separate system to take plea bargaining instances into account. If the forum determines that a suitable resolution is not possible, the case should be sent back to the court, which should

[16] National Crime Records Bureau Report 2015.
[17] National Crime Records Bureau Report 2016.
[18] National Crime Records Bureau Report 2017.
[19] National Crime Records Bureau Report 2018.
[20] Crime in India 2021: Volume 1" (PDF). ncrb.gov.in. Retrieved 5 November 2022.
[21] NCRB Report Available at http://ncrb.gov.in/StatPublications/CII/CII2018/pdfs/Crime%20in%20India%202018%20-%20Volume%203.pdf (last visited on 25th feb. 2020).

continue from the point where the plea-bargaining application was filed. A deadline for coming to a mutually agreeable agreement should be set.

Conclusion

Chapter XXI-A of the Code was introduced by our legislators with prudence. Both the extent and the applicability of plea bargaining have been severely constrained. It is important to realize that when a notion is introduced into the legal system, it should be done in a way that considers potential challenges during the experimental phase. There is no sign of a caseload drop in the provisions themselves. The rules need to be clarified and made more foreseeable if people are to be encouraged to seek plea bargaining as an alternative option. It is acknowledged that there should be a balance between the broad use of this remedy and the opportunities that plea bargaining offers for it to be a successful and efficient alternative remedy. We are unable to enjoy plea bargaining to the amount that it merits due to the highly cautious approach taken in restricting its scope, though. Unquestionably, the Amendment represents a real effort to deal with the difficulties presented, but it can only be appreciated if the restrictions are eased a little.