PLEA BARGAINING AND COMPARATIVE ANALYSIS

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INTRODUCTION

William Ewart Gladstone once said, "Justice delayed is justice denied."Over time, justice has been seen as a balance between right and wrong. It has always been assumed that no matter what, there will always be an authority to ensure justice in any conflict, whether criminal or civil in nature. In ancient times, neither the nobility nor the royalty delivered judgments and decisions over conflict, and thus there was no machinery to question the competency of the judge or such authority. There was no authority to inquire about the reasons for delays in justice or misapplication of justice.

In modern times, however, it is the state-appointed judges who deliver judgments or, in other words, justice. There is a well-established mechanism in place to keep such a judiciary and its powers in check. The expression by William Ewart Gladstone, "justice delayed is justice denied," is accurate in its meaning. It primarily establishes that the failure of justice is manifested not only in the delivery of incorrect judgments but also in their delay. A delay in justice would result in various consequences for the affected person, and this would be considered a failure of justice.[1] Plea bargains aren't always easy to spot. Explicit plea bargains are negotiations that result in formal agreements. However, some people are pleading

According to Black's dictionary, it is "[t]he process by which the accused and prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval." It typically entails the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in exchange for a lighter sentence than that which could be imposed for the more serious charge."[2] In practice, plea bargaining mostly represents "mutual acknowledgment" of the strength and weaknesses of both the charges and the defenses,

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[1] *Role of plea bargaining for ensuring access to justice- A critical analysis*. Legal Service India - Law, Lawyers and Legal Resources. (n.d.). Retrieved October 17, 2022, from https://www.legalserviceindia.com/legal/article-1250-role-of-plea-bargaining-for-ensuring-access-to-justice-a-critical-analysis.html

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against the backdrop of crowded criminal courts and court case dockets. Plea bargaining is typically done prior to trial, but in some jurisdictions, it can happen at any time before a verdict is reached.

Three Areas Of Negotiation To Get Plea Bargaining

Charge Bargaining: This is a popular and well-known type of plea. It entails negotiating the specific charges (counts) or crimes that will be brought against the defendant at trial. A prosecutor will usually dismiss the higher or other charges (s) or counts in exchange for a "guilty" plea to a lesser charge. A prosecutor, for example, A defendant charged with lurking housebreaking at night, may be offered a plea bargain to just housebreaking.

Sentence Bargaining: Sentence bargaining entails agreeing to a guilty plea (for the stated charge rather than a lesser charge) in exchange for a lighter sentence. It saves the prosecution from having to go to trial and prove its case. It gives the defendant the opportunity for a reduced sentence.

Fact Bargaining: The least common type of negotiation involves admitting certain facts ("stipulating" to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to prove them) in exchange for an agreement not to introduce certain other facts into evidence.

A plea bargain's legality is dependent on three critical factors:

- a knowing waiver of rights.
- a voluntary waiver.
- a factual basis to support the charges to which the defendant is pleading guilty.

Plea bargaining is usually done over the phone or in the prosecutor's office in the courtroom. Except in extremely rare cases, judges are not involved. Plea bargains that the judge accepts are then placed "on the record" in open court. The defendant must appear. One critical point to remember is that a prosecuting attorney has no authority to compel a court to accept a plea agreement reached by the parties. Prosecutors can only "recommend" to the court that a plea agreement be accepted. The court will usually take proof to ensure that the above three components are met before accepting the prosecution's recommendation.

Furthermore, plea bargaining is not as simple as it appears. In order to effectively negotiate a criminal plea agreement, the attorney must have technical knowledge of every "element" of a crime or charge, an understanding of the actual or potential evidence that exists or could be developed, a technical understanding of "lesser included offenses" versus separate counts or crimes and a reasonable understanding of sentencing guidelines.

PLEA BARGAINING IN INDIA

For a long time, the Supreme Court of India was opposed to the idea of plea bargaining. It was always viewed as a tool for denying affected people fair justice. In the case of Uttar Pradesh vs. Chandrika, the Supreme Court ruled that the court cannot decide criminal cases on the basis of plea bargaining; instead, it must decide the case on the merits, and even if the accused confesses to guilt, the sentence must be delivered appropriately. Despite the Supreme Court's strong opposition, Parliament added a new chapter, XXIA, on 'plea bargaining,' to the Code of Criminal Procedure through the Criminal Law (Amendment) Act, 2005, inserting sections 265-A to 265-L in the Code of Criminal Procedure providing for plea bargaining in certain specified types of criminal cases.

The chapter defines various offenses for which plea bargaining may be considered a method of conflict resolution, as well as the plea bargaining process. Plea Bargaining is only available in cases where the offense is punishable by up to 7 years in prison. It does not apply if the offense has a socio-economic impact on the country, is committed against women, or is committed against a child under the age of 14. The accused must file an application for plea bargaining with free consent before the court hears the case. The court then gives the complainant and the accused a set amount of time to work out a satisfactory resolution to the case. If the accused pleads guilty, the court may reduce the sentence by up to 14 percent of the applicable sentence. The court should conduct the plea bargaining proceedings in camera, according to section 265-B(4) of the Code of Criminal Procedure, 1973.

Section 265-G of the Cr.P.C. states that there shall be no appeal in cases where the court has rendered a decision based on plea bargaining. However, a Special Leave petition or Writ under Articles 136 or 226, 227 of the Indian Constitution may be filed in response to such a judgment. Vijay Moses Das v CBI was the first successful case of plea bargaining reported in India. Justice Prafulla Pant of the Uttarakhand High Court, hearing the application, directed the trial court to accept the plea bargaining application. Plea bargaining has played an important role in

the resolution of cases in India. Even today, however, plea bargaining is not used in the majority of cases because the parties see it as an abuse of justice or unjust to the victim of the crime. Plea Bargaining is a practice in India that courts do not consider to be an effective method of delivering criminal justice. The Supreme Court was opposed to the implementation of plea bargaining in India. However, the parliament deemed it appropriate to include provisions for plea bargaining in Indian law in order to expedite and effectively resolve criminal justice. Although plea bargaining has been an effective tool in many cases under Indian law, it has not been particularly effective in reducing the number of cases pending in Indian courts.

Plea bargaining occurred in only 34931 of the 9930625 cases under IPC disposed of by the courts in 2014, and in only 4,816 of the 10,502,256 cases under IPC disposed of by the courts in 2015. As a result of the above statistics, it is clear that, while plea bargaining in its entirety focuses on a higher rate of case disposition, it has not been accepted in India as an effective method of case disposition. In India, not only the parties to a conflict but also the courts, have been hesitant to adopt the practice of plea bargaining. However, it may become more common in criminal trials under Indian Law in the future.

PLEA BARGAINING IN THE USA

Plea bargaining is very common in the United States; the vast majority of criminal cases in the United States are settled through a plea bargain rather than a jury trial. They have also become more common, rising from 84% of federal cases in 1984 to 94% in 2001. Plea bargains are subject to court approval, and the rules differ between states and jurisdictions. In the United States, the accused may enter one of three pleas: Guilty, Not Guilty, or Nolo Contendere. The plea is treated as an implied confession of guilt or that the Court will decide on the point of his guilt under the Nolo Contendere doctrine. However, the Court is not required to accept the accused's plea. The Court has the discretionary power to accept or reject such a plea based on the facts and circumstances of each case presented to it. The Court is supposed to ensure that the accused enters the plea voluntarily and without duress or coercion. The accused must be shielded from public scrutiny. Plea Bargaining gained popularity as a result of prison overcrowding in the United States.

Brady v. United States is the first case cited by the US Supreme Court in this regard. In this case, the United States Supreme Court ruled: In this case, the Supreme Court ruled that the consensus reached out of fear that the trial would result in the death penalty does not render

the Plea Bargaining process illegitimate. It is legal if the Plea Bargaining process is properly conducted and controlled.

State vs Adams: The Court explained the doctrine of 'Nolo Contendere' in this case. The Court ruled that the plea of 'Nolo Contendere,' also known as the 'Plea of Nolvut,' indicates that the accused

Haynes vs. Bordenkircher: In this case, the US Supreme Court upheld the constitutionality of plea bargaining while awarding life imprisonment to the accused who refused to plead guilty in exchange for five years in prison. The Supreme Court noted a remote possibility that the accused might be coerced into choosing the lesser of two punishments

The Supreme Court also stated that there is no risk of coercion or duress if the accused person is free to accept or reject the prosecutor's offer during the Plea Bargaining negotiation process. does not wish to contest the charge. When conducted and controlled properly, the United States Supreme Court has approved practices such as plea bargaining. Although plea bargaining is used in the majority of criminal cases in the United States, free consent and judicial scrutiny are two important considerations. The courts play a critical role in this. It must ensure that plea bargaining is voluntary, that the accused is protected by confidentiality, that all parties participate freely, and that no one is subjected to the coercion or duress of another.

PLEA BARGAINING IN CANADA

Plea bargaining is a common practice in Canada. Although it is not widely accepted in its neighboring country, the United States, it plays an important role. The most distinguishing feature of plea bargaining in Canada is that it is permitted even after the sentence has been imposed by the court. This is due to the Crown's broad right to appeal acquittals in Canada, as well as the right to appeal for harsher sentences, except in cases where the sentence imposed, was the maximum allowed. As a result, in Canada, following sentencing, the defense may have the incentive to persuade the Crown not to appeal a case in exchange for the defense also declining to appeal. While this is not technically plea bargaining, it is done for many of the same reasons.

However, unlike in India or the United States, the final decision to accept or reject a common settlement relating to plea bargaining between the parties rests with the judge in Canada. As it is not a party to the negotiations, he may accept or reject the settlement. There are no express

provisions in Canadian law that regulate the practice of plea bargaining or require the parties to disclose before the court any pre-trial settlement reached between the two, and there is still no formal procedure that requires Canadian courts to scrutinize the contents of a plea bargain and to ensure that there is adequacy. The lack of a formal procedure requiring counsel to disclose a plea bargain means that there is currently no independent judicial review of whether they entered into such an agreement voluntarily and with full knowledge of the potential ramifications.

PLEA BARGAINING IN PAKISTAN

The National Accountability Ordinance 1999, an anti-corruption law, established plea bargaining as a formal legal provision in Pakistan. The accused applies for the plea bargain, admitting guilt and offering to return the proceeds of corruption as determined by investigators/prosecutors. Following approval by the Chairman of the National Accountability Bureau, the request is presented to the court, which decides whether or not it should be accepted. If the court accepts the plea bargain request, the accused is convicted but not sentenced (if in the trial) or subjected to any previous sentence imposed by a lower court (if on appeal). The accused is barred from voting, holding public office, or obtaining a loan from any bank; if a government official, the accused is also dismissed from service.

In other cases, formal plea bargains are limited in Pakistan, but the prosecutor has the authority to drop a case or a charge in a case and, in practice, frequently does so in exchange for a defendant pleading guilty to a lesser charge. There is no bargaining over the penalty, which is the sole prerogative of the court.

PLEA BARGAINING IN DIFFERENT COUNTRIES

Many other common law countries, including the United Kingdom, allow for plea bargaining as a method of resolving criminal law cases. Every country accepts the concept, with some modifications to reflect the nature of the legal system in place. However, no other country in the world has a provision or application of plea bargaining as broad as the United States. The practice of plea bargaining is so common in the United States that it is said that without it, the country's judicial system would collapse, and this is regarded as a significant reason why the pendency in criminal courts has decreased by a significant percentage in the United States.

Countries with civil law, such as China, Georgia, Italy, Denmark, France, Germany, and Japan, have a difficult time incorporating the concept of plea bargaining into their legal structures. Because there is no concept of plea in civil law, the acceptance of guilt by the accused is treated as a confession and is taken as evidence against the accused; however, the prosecution must still present its' full case before the court. As a result, in civil law countries, the main goal of plea bargaining, which is to shorten the length of proceedings and provide for a timely disposition of criminal trials, is not met. However, many civil law countries, including China, France, Georgia, and Germany, have begun to incorporate plea bargaining into their systems through modifications to their legal structures.

PLEA BARGAINING AND JUDICIAL INTERPRETATIONS

State of uttarpradesh vs chandrika

The Court condemned the concept of plea bargaining and declared it unconstitutional. The Court believed that the concept of plea bargaining could not be used to resolve criminal cases. Such cases should be decided solely on their merits. It also stated that the sentence given to the accused should be in accordance with the specific statute or law. In India, the Supreme Court of India has criticized the concept of plea bargaining in a number of decisions.

Patel, Kachhia Shantilal Koderlal v. Gujarat State and Others

The Supreme Court ruled that plea bargaining is unconstitutional, and illegal, and may foster corruption and collusion.

Thippaswamy v.the State of Karnataka

According to the Court, inducing and leading the accused to plead guilty under an assurance or promise violates Article 21 of the Indian Constitution. The Court acknowledged the importance of plea bargaining in State of Gujarat vs Natwar Harchandji Thakor (2005) 1 GLR 709, saying that every "plea of guilty" that is construed to be a part of the statutory process in a criminal trial should not be interpreted as a "plea bargaining" ipso facto. It is a matter of fact that must be decided on a case-by-case basis. Given the dynamic nature of law and society, the court stated that the purpose of the law is to provide simple, inexpensive, and expeditious justice by resolving disputes.

Madanlal Ramachander Daga v. the State of Maharashtra," stated:

"In our opinion, it is extremely wrong for a court to enter into a bargain of this nature. Offenses should be tried and punished in accordance with the accused's guilt." If the Court believes that leniency can be demonstrated based on the facts of the case, it may impose a lesser sentence."

In "Muralidhar Megh Raj v. the State of Maharashtra," the Supreme Court reiterated its disapproval of the concept of plea bargaining when the appellants pleaded guilty to the charge and the trial Magistrate sentenced them to a piffling fine. The Court stated: "*To begin with, we are free to admit to a hunch that the appellants hastened with their guilty pleas in the hope of receiving a light sentence in lieu of a nolo contendere stance*."

The Supreme Court observed in Ganeshmal Jasraj v. Government of Gujarat and another" that the effect of plea bargaining on evidence and order of conviction was considered when it observed:

"There is no doubt that when the accused admits guilt, whether through plea bargaining or otherwise, the Court's evaluation of the evidence 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 in support of the admission of guilt."When the accused admits guilt, the Court's entire approach to evaluating the evidence is likely to change... In the instant case, it is true that the learned magistrate did not base his order of conviction solely on the appellant's admission of guilt, but it is clear from his judgment that his conclusion was not unaffected by the appellant's admission of guilt, and in the circumstances, it would not be right to sustain the appellant's conviction."[3]

ADVANTAGE OOF PLEA BARGAINING

1. It removes uncertainty from the legal process: Defendants who accept a plea bargain avoid the uncertainty that a trial might bring. It is also a method of avoiding the maximum sentence that could be imposed if they were found guilty by a judge or jury. Nearly 500,000 people in the United States are being held in prison on charges but are awaiting trial, which means they do not have a conviction. Plea bargaining expedites the process.

2. It creates certainty for a conviction: When a defendant is brought to trial, prosecutors are also gambling. There is always the possibility that the defendant will be found not guilty by

[3] *Plea bargaining: A means to an end - manupatra*. (n.d.). Retrieved October 17, 2022, from https://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf

the jury. Accepting a plea bargain ensures that you will be convicted. It either removes that person from the street or imposes a penalty that can still bring some measure of justice. Because prosecutors have more time, they can pursue other cases.

3. It can be an effective negotiating tool: Offering a plea bargain that includes testifying against another person is one way to secure witnesses for a large case. This procedure allows prosecutors to imprison everyone involved in a serious case and to seek the maximum sentence against the person or people they believe are most responsible for a crime when it occurs.

4. It increases the community's resources: If a case goes to trial, every police officer involved in the investigation that led to the charges may be called to testify. Other agencies' law enforcement officers may be called upon. Psychologists may be called upon to assess a person's competency. According to the NCJRS, the cost of prosecuting and defending a drug offender in the criminal justice system in the United States can exceed $70,000 per incident. More than $700,000 in taxpayer funds will be spent if only ten cases like this occur. A plea bargain could bring the cost down to $4,200 per case.

5. It reduces the population of local jails: Many people who are awaiting trial are housed in local jails. These prisons are typically run by city or county officials and offer little in terms of rehabilitation, education, or therapy. They are holding centers with only a bed and meals. With a plea bargain expediting cases through the criminal justice system, it becomes easier to provide people with the resources they require to make positive changes in their lives.

DISADVANTAGES OF PLEA BARGAINING

1. It removes the right to have a trial by jury: Every person in the United States has a constitutional right to a jury trial. To offer a plea bargain in order to avoid this trial may appear to be a coercive attempt to waive those rights. Pressuring a defendant to accept a plea bargain could be considered illegal. For a plea bargain to be effective, the defendant must always have the right to go to trial.

2. It may result in ineffective investigative procedures: Because 90% of cases in many jurisdictions are resolved through a plea bargain rather than a trial, some argue that this concept leads to poor investigation practices. Attorneys and law enforcement officers may not spend time preparing a case if they believe it will be pleaded out. Instead of seeking justice, the goal is to reach an agreement, and it could be argued that expecting a deal is not justice.

3. It still results in the creation of a criminal record for the innocent: To reduce their losses, an innocent person may agree to a plea bargain. Because of that agreement, they will have a criminal record. They could be sentenced to prison. Fines or restitution may be imposed. Even if a plea bargain is not accepted, legal expenses may be incurred that are greater than the cost of the bargain, leading to the acceptance of a deal.

4. Judges are not bound by a plea bargain agreement: A plea bargain can be reached between the prosecutor and the defendant, but it can be revoked by a judge. A judge is not usually bound by a plea bargain. They can impose harsher sentences or decide not to impose any at all. A judge may also order a trial if they believe a plea bargain is being offered in bad faith.

5. Plea bargains preclude the possibility of an appeal: If a case goes to trial and the defendant loses, there are several grounds for an appeal. Because a plea bargain requires a defendant to plead guilty to the charges, even if they are reduced, it precludes almost any possibility of filing an appeal.[4]

RECOMMENDATIONS

Despite the fact that the amendment attempted to address the issue of under-trial prisoners by requiring the court to grant the accused the benefit of the Probation of Offenders Act wherever possible. Then, Section 12 of the said Act states that the offender shall not be stigmatized. Sections 265 and 428 apply to the sentence imposed as a result of plea bargaining. However, there is a lack of awareness among undertrial detainees. Provisions should be included in the chapter requiring probation officers and jail superintendents to conduct sessions in prisons informing under-trial prisoners of the benefit to which they are entitled.

If a trial has not yet begun, the under-trial prisoner should be released within a certain time frame. Police, prosecution, and the judiciary, not the under-trial prisoners, should be held accountable for delays in their respective spheres. This alternative remedy should be available to the accused in cases that were at the appeal stage prior to the 2005 Amendment. There should be more clarity on the offenses classified as socioeconomic offenses. The government should be given guidelines as to how an offense should be classified as a socioeconomic offense. This can serve as a deterrent to using this power arbitrarily. The section's applicability should be

[4] *Advantages and disadvantages of plea bargaining*. The Lawyers & Jurists. (2019, August 4). Retrieved October 17, 2022, from https://www.lawyersnjurists.com/article/advantages-and-disadvantages-of-plea-bargaining/

expanded, and the classification for plea bargaining should take into account more than just the number of years of punishment for a specific offense.

A parallel system should be established to consider cases involving plea bargaining. If the forum believes that a satisfactory disposition cannot be reached, the case should be returned to the court, which should proceed from the stage where such application for plea bargaining was filed. A time frame should be established for reaching a mutually satisfactory conclusion.

CONCLUSION

Our legislators approached the inclusion of Chapter XXI-A of the Code with caution. They have severely limited the applicability as well as the scope of plea bargaining. It should be understood that when a concept is implemented into a legal system, it should be done in a way that anticipates the difficulties that may arise during the experimental stage. The provisions themselves show no indication of a reduction in caseload. If citizens are to be encouraged to use the alternative remedy of plea bargaining, the provisions must be made more clear and predictable.

To be an effective and efficient alternative remedy, it is agreed that there should be a balance between the widespread use of this remedy and the possibilities that plea bargaining provides. However, due to the extremely cautious approach taken in limiting its scope, we are unable to appreciate plea bargaining to the extent that it deserves to be appreciated. The Amendment is undeniably a sincere attempt to address the issues raised, but it can only be appreciated if the reins are loosened a little more.