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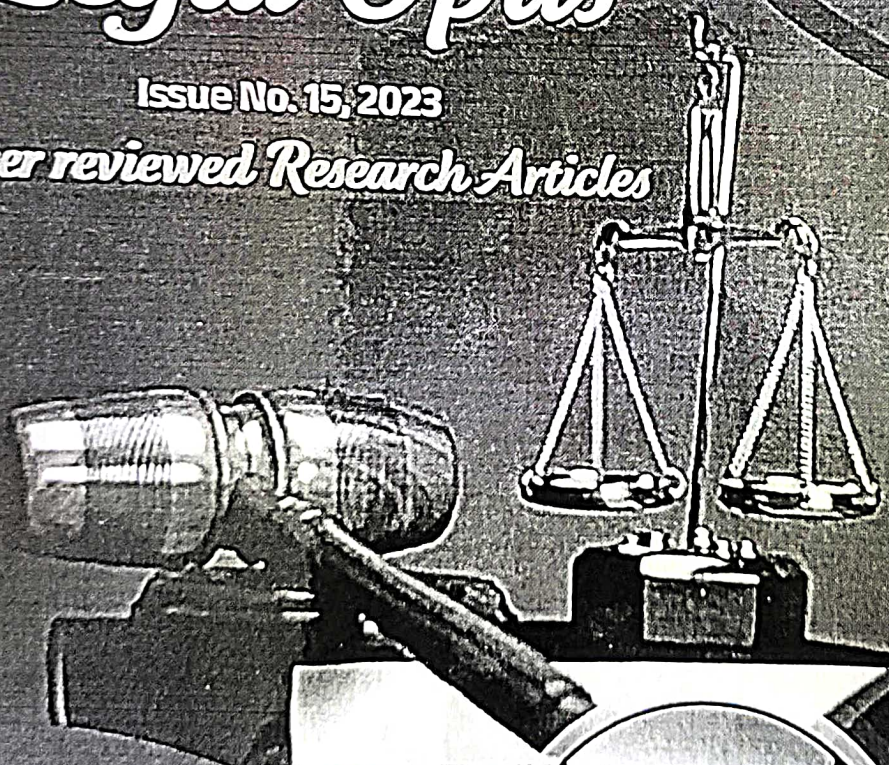
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# *Legal Opus*

**Issue No. 15, 2023**

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# Legal Opus

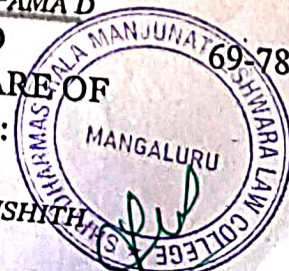
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# PLEA BARGAINING IN CRIMINAL JUSTICE SYSTEM- CONSTRAINTS AND CHALLENGES

Dr. Ashwini P\*  
Nirupama D\*\*

## Abstract

Cognizant of the intention of the criminal justice system, mechanisms for the prevention of crime are instated. Taking into consideration the hitches of the criminal justice system, the dominant drawback being overburdening of the courts, plea bargaining swooped in to be plausible solution to meet the inadequacy of the criminal justice system in India. It has been regarded as a weighty mechanism to bring about a balance between offence committed and the entailing punishment for the offence. Regardless of the incorporation of the said redress, the sway of the doctrine within the working reality of the system was not very welcoming. In light of the same, the juxtaposition of the stance of plea bargaining is of predominant value which aids in reflecting the pathway towards its development in the criminal justice system.

**Key Words:** Criminal Justice System, Plea Bargaining, Speedy Redressal, Overburdening, Efficiency

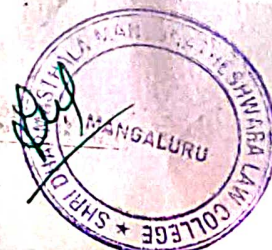
## Introduction

'Justice delayed is justice denied' is a benchmark principle in the realm of law. Criminal justice system is built on the bedrock principles of natural justice, rule of law, democracy, protection of human rights and the development of the same in different spheres is to meet the end goals of criminal justice i.e., to prevent and regulate crime, to maintain public order and peace, to safeguard the rights of victims and those in dispute with the law, to punish and rehabilitate those found guilty of crimes, and to generally protect life and property from crime and criminality.<sup>1</sup> The path to victory of an efficient criminal justice system lies in the harmonious working of the institutions within the system.

\*BA, LLB, LLM, PhD, UGC-NET, K-SET, Assistant Professor of Law, SDM Law College, Centre for Post-Graduation Studies and Research in Law, Mangaluru

\*\* BBA.LLB (Hons), FIII, LLM, visiting Faculty at JSS Law College (Autonomous), Mysuru

<sup>1</sup>Naman Jain, 'Critical Analysis of the Criminal Justice System in India' (2022) 5(3) International Journal of Law Management & Humanities file:///C:/Users/Nirupama%20Dinakar/Downloads/Critical-Analysis-of-the-Criminal-Justice-System-in-India.pdf accessed on 18 March 2023



and other functionalities. Criminal justice system is also faced with numerous glitches in its efficiency, where its focal shortcoming being the speedy disposal of cases. The concept of plea bargaining is advocated to be a solution to the discrepancies in the criminal justice system. Plea bargaining can be described to be the process by which the State grants sentencing and other concessions in exchange for guilty pleas in criminal cases which is one of the paramount concerns for crime control and justice.<sup>2</sup>

In India, the nature of the adversarial justice system is complex which in turn made the conviction in the criminal cases arduous, consequently resulting in superfluous delays. Yet again, plea bargain came about as an answer and a cost-effective remedy to the inefficient justice system. The plea bargaining was seen as a beam of hope to the accused who were subjected to years behind bars owing to the delay in trial and provided them a timely remedy thus injecting the criminal judicial system to dispose of criminal cases expeditiously.<sup>3</sup>

#### A Denotation of Plea Bargaining

According to the Black's Law Dictionary defines the term 'Plea Bargaining' as the process whereby the accused and the prosecutor in criminal case work out a mutually satisfactory disposition of the case subject to the Court approval. It usually involves the accused pleading guilty to a lesser offence or to only one or some of the courts of a multi-count indictment in return for a lighter than that possible for the graver charge.<sup>4</sup> Additionally, Oxford Learner's Dictionary<sup>5</sup> iterates 'plea bargaining' as the process of making an arrangement in court by which a person admits to being guilty of a smaller crime in the hope of receiving less severe punishment for a more serious crime.

Furthermore, the wellspring of the concept lies in the Doctrine of *Nolo Contendere*. In *Fox v Schedit*<sup>6</sup> and in *State ex rel Donald Edward Clark v Adams*<sup>7</sup>, the plea of 'Nolo

<sup>2</sup>William M Rhodes, 'Plea Bargaining: Its Effect on Sentencing and Convictions in the District of Columbia' (1979) 70(3) <http://scholarlycommons.law.northwestern.edu> accessed on 18 March 2023

<sup>3</sup>Muhammad Ashraf and Absar Araf Absar, 'Plea Bargaining in India - An Appraisal', (2020) [https://www.researchgate.net/publication/342783286\\_Plea\\_Bargaining\\_in\\_India\\_-\\_An\\_Appraisal](https://www.researchgate.net/publication/342783286_Plea_Bargaining_in_India_-_An_Appraisal) accessed on 18 March 2023

<sup>4</sup>Plea Bargaining, Black's Law Dictionary, (8<sup>th</sup> edition, 2004)

<sup>5</sup>Oxford Learner's Dictionary <https://www.oxfordlearnersdictionaries.com/definition/english/plea-bargaining> accessed on 18 March 2023

<sup>6</sup>*Fox v Schedit* 84 S.E.2d 259 (1954)

<sup>7</sup>*State ex rel Donald Edward Clark v Adams* 111 S.E.2d 336 (1959)

*Contendere* also called 'Plea of Nolvut' or 'Nolle Contendere' means, "I do not wish to contend." This doctrine, is also, expressed as an implied confession, a quasi-confession of guilt, a plea of guilty, more like a supernumerary for pleading guilty. It is a formal declaration that the accused will not contend, a query directed to the Court to decide on a plea of guilt; a promise between the Government and the accused, and a Government agreement on the part of the accused that the charge of the accused must be considered as true for the purpose of a particular case only. It is noteworthy that raising of plea of 'Nolo Contendere' is not *ipso facto*, a matter of right of the accused but within the discretion of the Court concerned to accept or reject such a plea.<sup>8</sup>

Along these lines, a plea bargain is a contractual agreement between the prosecution and the accused pertaining to the disposition of a criminal charge. However, unlike most contractual agreements, it is not enforceable until a judge approves it<sup>9</sup>, i.e., discretion of the judge is given due importance keeping in mind the various facets of a particular case.

#### Basis of Plea Bargaining in India

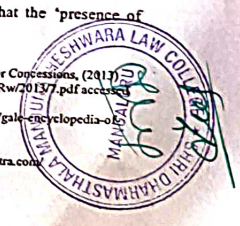
The concept of plea bargaining owes its basis to the American Criminal Justice system and has significantly evolved in the United States. According to this model, plea bargaining is the pre-trial negotiation between the defendant and prosecution during which accused pleads guilty in exchange for certain concession by the prosecutor.<sup>10</sup> The idea behind this model is originally to reduce either the sentence or the seriousness of the charge. In the US, more than half of the criminal cases end before the Bench results in guilty pleas. In most cases, this is done solely with the intention for a reduction in the length of their sentence.<sup>11</sup> The constitutional validity of plea bargaining was recognised by the US courts in the pioneering decision, *Brady v United States*<sup>12</sup> wherein the question as to "unconstitutional coercion" was raised, which had the potential to curtail the use of plea bargains. But the Supreme Court unanimously affirmed that the 'presence of

<sup>8</sup>K. V. K. Santhy, Plea Bargaining in U S and Indian Criminal Law Confessions for Confessions, (2011) 7(1) NALSAR Law Review <http://www.commonlii.org/ln/journals/NALSARLawRw/20137.pdf> accessed on 18 March 2023

<sup>9</sup>Gale Encyclopaedia of US history <https://www.gale.com/ebooks/9781414311178/gale-encyclopedia-of-u.s.-history-war> accessed on 18 March 2023

<sup>10</sup>Rasie Athulya Joseph, 'Plea Bargaining: a means to an end' <https://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf> accessed on 18 March 2023

<sup>11</sup>*Brady v United States* (1970) 397 U.S. 742



counsel' itself provides adequate protection against coercion, ensuring that the Fifth Amendment rights are upheld to facilitate their decision of a plea that is voluntary.<sup>13</sup> It further held that merely because the agreement was entered into and that the trial may result in a death sentence, would not outlaw a bargained plea.

Subsequently, in the case of *Bordenkircher v Hayes*<sup>14</sup>, the US Supreme Court upheld the constitutionality of Plea Bargaining and noted that there is no problem of coercion or duress if the accused person is free to either accept or reject the offer of the prosecutor during the negotiation process for Plea Bargaining. These precedents supported the possibility of ruling out that plea bargains were unconstitutional under Fifth, Sixth, and Fourteenth Amendment rights guaranteed under the American Constitution.<sup>15</sup>

The accused has three options with respect to pleas: guilty, not guilty or *nolo contendere*. In plea of *nolo contendere* the defendant answers the charges made in indictment by declining to dispute or admit the fact of his or her guilt. The defendant pleads *nolo contendere* submits for a judgment fixing a fine or sentences the same as if he or she had pleaded guilty.<sup>16</sup> The difference is that a plea of *nolo contendere* cannot later be used to prove wrongdoing in a civil suit for monetary damages, but a plea of guilty can.

**Plea Bargaining: Outlook in India**

The Law Reform Commission of Canada defined 'plea bargaining' as an agreement by the accused to plead guilty in return for the promise of some benefit. Similar to the origin of the concept of plea bargaining, India's take on the subject owes its inspiration to the Doctrine of *Nolo Contendere*<sup>19</sup>. Plea Bargaining provides for pre-trial negotiations between the defence and the prosecution during which an accused might plead guilty in exchange for certain concessions by the prosecution.<sup>20</sup> Plea bargaining has been

<sup>13</sup>Mariah Johnson, 'Consequences of Plea Bargaining: In Consideration of the Rights of the Accused', (2023) Columbia Undergraduate Law Review <https://www.culawreview.org/journal/consequences-of-plea-bargaining-in-consideration-of-the-rights-of-the-accused> accessed on 18 March 2023

<sup>14</sup>*Bordenkircher v Hayes*, 434 U.S. 357 (1978).

<sup>15</sup>*Supra* n 8

<sup>16</sup>*Supra* n 9, 11

<sup>17</sup>Gale Group, West's Encyclopedia of American Law, (2<sup>nd</sup> edition, 2004)

<sup>18</sup>Law Reform Commission of Canada, *Criminal Procedure: Control of the Process* (Working Paper No. 15), Ottawa, Information Canada, 1975, page 45.

<sup>19</sup>The Defense Attorney's Role in Plea Bargaining' Yale Law Journal 84 (1975): 1179-1314

<sup>20</sup>Id.

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incorporated in India, after a series of recommendations by law commission recommendations. This doctrine has been given due consideration in the legislation and implemented in a manner taking into account the socio-economic conditions prevailing in our country.<sup>21</sup>

The Law Commission of India has successfully advocated the introduction of 'Plea Bargaining' in the 142<sup>nd</sup>, 154<sup>th</sup> and 177<sup>th</sup> Reports. The 142<sup>nd</sup> Report<sup>22</sup> set out the rationale of plea bargaining and the way it should be given a statutory shape in India. This Report recommended that this idea be made applicable as an experimental measure to offences which are punishable with imprisonment of less than seven years and/or fine. It was also recommended that plea bargaining can also be in respect of nature and gravity of the offences and the quantum of punishment. It was observed that the said facility should not be available to habitual offenders and to those who are accused of socio-economic offences of a grave nature and those accused of offences against women and children.<sup>23</sup>

It outlined a scheme for plea bargaining in India and pointed out that in several cases the time spent by the accused in jail before commencement of trial exceeds the maximum punishment which can be awarded to them if found guilty<sup>24</sup> thus resulting in a denial of justice. The 154<sup>th</sup> report recommended dealing with huge arrears of criminal cases.<sup>25</sup> It reiterated the need for remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners.<sup>26</sup> The recommendation of the 154<sup>th</sup> Law Commission Report<sup>27</sup> was buoyed by the Law Commission in its 177<sup>th</sup> Report<sup>28</sup>.

<sup>21</sup>Sowmya Suman, 'Plea Bargaining - A Practical Solution' <http://www.goforthelaw.com/articles-from-lawstu/article73.htm> accessed on 18 March 2023

<sup>22</sup>Law Commission of India Report No. 142, 'Concessional Treatment for Offenders who of their Own Initiative Choose to Plead Guilty without any Bargaining' <http://www.bareactslive.com/LCR/LC142.HTM> accessed on 18 March 2023

<sup>23</sup>*Supra* n 8

<sup>24</sup>Rudul Shah v State of Bihar, AIR 1981 SC 928.

<sup>25</sup>*Supra* n 11

<sup>26</sup>Id.

<sup>27</sup>Law Commission of India Report No. 154 'The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)' [https://lawcommissionofindia.nic.in/report\\_fourteenth/](https://lawcommissionofindia.nic.in/report_fourteenth/) accessed on 18 March 2023

<sup>28</sup>Law Commission Report No. 177 'Law Relating to Arrest, 2001'



The Report of the Committee on the reform of criminal justice system, 2003, the Chairmanship of Justice (Dr) Malimath<sup>29</sup> stated that the experience of USA was an evidence of plea bargaining being a means for the disposal of accumulated and expediting the delivery of criminal justice. In its report, the Committee recommended that a system of plea-bargaining be introduced into the criminal justice system to facilitate the disposal of accumulated criminal cases and expediting criminal justice to reducing the burden on the courts.<sup>30</sup>

The process of plea bargaining was brought in as a result of criminal law reform introduced in 2005<sup>31</sup>. The Amendment Act introduced Chapter XXIA to the Code of Criminal Procedure, 1973 and now has Sections 265 A to 265 L which allow plea bargaining to be used in criminal cases. According to this Chapter, plea bargaining is claimed only for offences that are penalized by imprisonment below seven years and if accused has been previously convicted of a similar offence by any court, then he/she is not to be entitled to plea bargaining.<sup>32</sup> The judgement delivered by the Court under this chapter shall be final and no appeal except under Article 136, Article 226, and Article 32 under the Constitution of India.<sup>33</sup>

The Government Order issued in 2006 explains emphatically that plea bargaining cannot be availed for offences affecting the socio-economic conditions of the country or offences under the enactments such as, Dowry Prohibition Act, 1961, the Commission of Sati Prevention Act, 1987, the Immoral Traffic (Prevention) Act, 1956, the SC and ST (Prevention of Atrocities) Act, 1989, etc. In addition, plea-bargaining cannot be an option for an accused in cases of grave crimes such as murder, rape etc. and does not apply in cases in which the punishment awarded will be death or life imprisonment or a term exceeding seven years or offences committed against a woman or a child below the age of 14 years.<sup>34</sup>

<sup>29</sup>Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs (2003) [https://www.mha.gov.in/sites/default/files/criminal\\_justice\\_system.pdf](https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf) accessed on 18 March 2023

<sup>30</sup>Supra 29

<sup>31</sup>The Code of Criminal Procedure (Amendment) Act, 2005 <https://www.mha.gov.in/sites/default/files/2005/09/TheCCP%28Amendment%29Act%2C2005%5B1%5D.pdf> accessed on 18 March 2023.

<sup>32</sup>Chapter XXIA to the Code of Criminal Procedure, 1973.

<sup>33</sup>Supinder Kaur, Ratanlal & Dhirajlal Criminal Procedure Code (LexisNexis)

<sup>34</sup>Supra n 8

Plea bargaining can be classified into three kinds. Firstly, charge bargaining which refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea.<sup>35</sup> Further, sentence bargaining is a scenario where a promise by the prosecutor is made to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea.<sup>36</sup> Both of these are commonly used but is not restricted. Besides these forms, fact bargaining is also an option where defendant admits certain facts in exchange for an agreement not to introduce any other facts as evidence.<sup>37</sup> Alongside these, express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty and on the other hand, implicit bargaining occurs without face-to face negotiations.<sup>38</sup>

#### Judicial Stance of Plea Bargaining

The preliminary case that witnessed the concept of plea bargaining was in *Murlidhar Meghraj Loya v State of Maharashtra*<sup>39</sup> where the Supreme Court held that the concept of plea bargaining is immoral and it is wrong on the part of the State to enter into an agreement with the accused. It must enforce the law. This procedure as observed here, was unfair, unreasonable and unjust and was found violative of Article 21 of the Constitution<sup>40</sup>. The same was further acknowledged in the case, *Kachhia Patel Shantilal Koderlal v State of Gujarat*<sup>41</sup> and another and the concept of plea bargaining was held unconstitutional. Additionally, the Court also held that the concept of 'plea bargaining' is polluting the pure fount of justice and is also against the public policy of India.

In *Thippaswamy v State of Karnataka*<sup>42</sup>, the Hon'ble Supreme Court observed that a conviction of an accused rested on plea bargaining is contrary to public policy and violative of Article 21 of Indian Constitution. In *Kirpal Singh v State of Haryana*<sup>43</sup>, the

<sup>35</sup>Fred C. Zacharias, Justice in Plea Bargaining, 39(1998) Wm. & Mary L. Rev. 1121, 1138.

<sup>36</sup>S. Nicholas, Plea Bargaining and Its History, 79(1979) Columbia Law Review 1-43.

<sup>37</sup>Supra 36

<sup>38</sup>Priyanshi Dewan and Sparsh Jain, 'Plea Bargaining: Indian Law Overview', (2020) 3(3) International Journal of Law Management & Humanities <https://www.ijlmh.com/wp-content/uploads/Plea-Bargaining-Indian-Law-Overview.pdf> accessed on 18 March 2023

<sup>39</sup>*Murlidhar Meghraj Loya v State of Maharashtra* (1976) 3 SCC 684

<sup>40</sup>*Kasam Bhai Abdul Rehman Bhai Sheikh v State of Gujarat* (1980) 3 SCC 120

<sup>41</sup>*Kachhia Patel Shantilal Koderlal v State of Gujarat and another* (1980) Cr.L. J 553

<sup>42</sup>*Thippaswamy v State of Karnataka* 1976 Cr.L. J 1527

<sup>43</sup>*Kirpal Singh v State of Haryana* (1999) 5 SCC 649



Hon'ble Supreme Court held that neither the Trial Court nor the High Court has jurisdiction to bypass on the basis of a plea bargain, the minimum sentence prescribed by law. *State of Uttar Pradesh v Chandrika*<sup>44</sup>, the Apex Court held that Court cannot circumvent the criminal cases by means of plea bargaining and must decide it on merits. Supreme Court pointed out that allowing plea bargaining in India would amount to subverting the mandate of law.<sup>45</sup>

However, taking into account the views of a larger section of people in India, the High Court appreciated the same and noted in the case of *State of Gujarat v Harchanji Thakor*<sup>46</sup> that, "The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static in the law. Thus be said that plea bargaining is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms."<sup>47</sup>

#### Dichotomy of Plea Bargaining in India

Plea bargaining in a positive light can be seen as an option for the accused to provide for certainty by trading in the risk factor of obtaining a greater sentence if he goes in for trial. Reduction in Charges and lighter sentencing can deem helpful to the accused for minor offences. Even a slight reduction in the number of years of imprisonment is crucial. Avoidance of jail time is a huge incentive to the defendant or accused by opting to sign a plea agreement.<sup>48</sup> Plea bargaining is a defensible option as it helps resolve the issue or dispute quickly thereby expediting the process of trial which ultimately helps reduce the burden on the Courts of law. Circuitously, it also aids in avoiding severe social stigma attached to sentencing and avoids unwarranted publicity to protect the dignity of the defendants if they want the matter to be wrapped up quietly. The multitude of hassles

<sup>44</sup>State of Uttar Pradesh v Chandrika 2000 Cr.L.J. 384(386)

<sup>45</sup>Murlidhar Meghraj Loya v State of Maharashtra (1976) 3 SCC 684

<sup>46</sup>State of Gujarat v Natwar Harchanji Thakor (2005) Cr.L.J. 2957

<sup>47</sup>Supra n 38

<sup>48</sup>The Lawyers & Jurists, 'Advantages and Disadvantages of Plea Bargaining'

<https://www.lawyersnjurists.com/article/advantages-and-disadvantages-of-plea-bargaining/> accessed on 18 March 2023

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that come with going to trial, time, expense and exposure can be exceptionally draining on a defendant, and thereby seek a plea bargain just to avoid the same.<sup>49</sup> One of the merits of this system is that it helps the court to manage its work capacity, and hence resulting in a reduction of the backlog of cases and additionally relieves the magistrate of the burden to prepare a detailed judgment.<sup>50</sup> This relieves the burden on the Public Prosecutors as well.<sup>51</sup>

The downside of plea bargaining is that it may lead to poor investigatory procedures<sup>52</sup> wherein the enforcement agencies become lax with respect to the investigation practices because they have a gateway to a plea. Mere acceptance of a plea bargain does not make the criminal record of an innocent go away. There exists a backlash that it provides an easy way out to the offenders and thus, unfair on the part of the victims. Plea bargaining indirectly shows the incompetence of the traditional procedural laws and the inadequacies of the Government.<sup>53</sup> The procedure entails consultation with the police on matters of evidence and other factors and this makes ground for the creeping in of corruption, coercion, and threats etc. to the accused or the victim<sup>54</sup>. To this, anti-social elements, muscle, and money power can both gain control of the negotiations.<sup>55</sup> The innocent accused would capitulate to wrong compromises and wrong convictions in order to escape from the ordeal of a prolonged and expensive trial, resulting in the innocent to lose faith in the criminal justice system.<sup>56</sup> Plea bargaining can also be construed as violative of the principles enshrined in Article 21 of the Constitution that no person shall be deprived of his liberty except according to the procedure established by law.<sup>57</sup> The discretion is vested with the judges to accept a plea deal and can reject it if found the plea bargain is being offered in bad faith.<sup>58</sup> Plea bargains also eliminate the chance of an appeal.<sup>59</sup>

<sup>49</sup>*Id.*

<sup>50</sup>J.R. Singla 'Plea Bargaining- A Speedy Justice for under-trials'

<sup>51</sup>*Id.*

<sup>52</sup>Supra n 38

<sup>53</sup>Stephen J. Schulhofer, 'Is Plea Bargaining Inevitable?', 97(1984) Harv. L. Rev. 1037, 1107

<sup>54</sup>Jeff Palmer, 'Abolishing Plea Bargaining: An End to the Same Old Song and Dance', (1999) 26 Am. J. Crim. L. 505.

<sup>55</sup>Milton Humann, 'Plea Bargaining: The Experiences of Prosecutors, Judges and Defence Attorneys' (Boston G.K. Hall 1977)

<sup>56</sup>Herbert M. Kritzer, 'The Justice Broker: Lawyers and Ordinary Litigation', (New York: Oxford University Press, 1990) 16.

<sup>57</sup>Supra n 38

<sup>58</sup>Supra n 48

<sup>59</sup>*Id.*



### Plea Bargaining as a Progressive Step

Mindful of all the virtues of having a plea bargain, the same cannot be offered to benefit habitual offenders, or established criminals. This route being voluntary and a tool, should not further demean the due process of the law or the procedure established by the law so as to bring down the value of criminal justice. According to the National Crime Records Bureau (NCRB), the Court disposal of economic offences in the year 2021 by means of plea bargaining is at 223 out of cases disposed of by Courts being 23660 whereas the ones pending stand at 678930 (pendency percentage at 96.6%).<sup>60</sup>

Ergo, in light of the statistics and the standpoint of the notion of plea bargaining, it can be perceived that despite the existence of express provisions under the Criminal Procedure Code, the implementation or the very alternative of the remedy of plea bargaining is negated in many cases owing to its unconventional approach towards deterrence. Recently, in the case of *Air Customs v Begaim Akynova*<sup>61</sup>, the High Court of Delhi upheld the plea bargain reached between the Smuggler Respondent, Consul at the Kazakh Embassy, Air Customs Officer, and Senior SPP for the Customs Department vide Mutually Satisfactory Declaration (MSD) with respect to the illegal smuggling of gold by two Kazakh nationals. It also held that, it cannot be said that the legislature was unaware of the Customs Act, 1962, while devising the chapter on plea bargaining and therefore, the presence of Section 137(3) of the Customs Act, 1862, will not take away the applicability of Chapter XXIA of the Criminal Procedure Code.

Along these lines, an inference can be drawn in synchronization with the purview of the Supreme Court in the case of *Vipul v The State of Uttar Pradesh*<sup>62</sup>. The Apex Court viewed that the concept of plea bargaining has a laudable objective. It is meant to facilitate all the stakeholders, assigning a specified role for the victim to move towards a resolution. It is a voluntary act leading to a satisfactory disposition of a criminal case. The consensus part is restricted to the sentencing part alone as the conviction stays on the acceptance of the guilt by the accused. Additionally, it reduces the burden of the court, the State, the victim, and the accused facing agonizing litigation, while serving the cause of justice.

<sup>60</sup>Crime in India 2021, National Crime Records Bureau, Ministry of Home Affairs [https://ncrb.gov.in/sites/default/files/CII-2021/CII\\_2021Volume%202.pdf](https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%202.pdf) accessed on 18 March 2023

<sup>61</sup>*Air Customs v Begaim Akynova* 2022 LiveLaw (Del) 86.

<sup>62</sup>*Vipul v The State of Uttar Pradesh* Criminal Appeal No.1161/2022.

In plea bargaining conviction is rendered on admission and therefore a case involving weak and defective investigation resulting in possible acquittal on the failure to prove beyond reasonable doubt would have the desired result.<sup>63</sup> The concept of plea bargaining has taken off very well, particularly in countries like the United States of America. About 90-95% of the criminal cases end with plea bargaining. However, the situation in India is unfortunately different. Hardly 1% of the cases are taken up for plea bargaining, presumably because the accused are either illiterate or reluctant to use this better option which would bring the case to a close at an earlier date than expected.<sup>64</sup> The clogging of the Courts by the criminal matters on all hues of various vintages is an important aspect as well as to plea bargaining being a viable option.

Consequently, though plea bargaining has been introduced in the provisions of the Criminal Procedure Code, it has not seemed to have worked because the social stigma of conviction may be preventing the accused from accepting the bail and accepting a plea bargaining position. In fact, the Bench noted that the number of cases where the availability of the plea bargain as a remedy was put before the accused is still unclear and advised the Trial Courts to make use of this provision usefully.<sup>65</sup>

### Conclusion

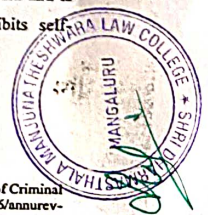
Plea bargaining can be conceptualized as a trial avoiding conviction mechanisms can be understood as a global process which provides for the administrative character of criminal convictions where decisions attached to defendants' rights are made in these proceedings not inclusive of a trial.<sup>66</sup> Taking into consideration the provisions incorporated in the Code of Criminal Procedure, 1973 and the nation's need for speedy redressal in the ambit of criminal justice system, embargo as to plea bargaining is not a feasible choice. This stems from the idea of justice. Plea bargaining is not entirely new in India and is considered violative of Article 20(3) of Indian Constitution which prohibits self-

<sup>63</sup>*Id.*

<sup>64</sup>*Id.*

<sup>65</sup>*Supra* 64

<sup>66</sup>Maximo Langer, Plea Bargaining, Conviction without Trial, and the Global Administratisation of Criminal Convictions, (2021) 4 Annual Review of Criminology <https://www.annualreviews.org/doi/10.1146/annurev-criminol-032317-092255> accessed on 18 March 2023



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incrimination<sup>67</sup> despite the efforts of the Law Commission to incorporate  
terrain of criminal law.

Bearing in mind the intrinsic worth of the concept of plea bargaining in  
system as discussed, it is indubitably a sustainable option. Keeping a note of  
with reference to the concept where a certain populace accepts it with open  
others do not, it is well affirmed that it helps in accelerating the disposition of cases  
not just limiting its scope to criminal cases. The enigma on the same lines as any  
issue, lies on parameters of awareness and implementation. Thus, the reforming  
criminal justice system to accept the design plan of plea bargaining has proved  
pivotal move which if carried out efficiently, holds an optimistic future.

<sup>67</sup>Supra n 38

