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A critical analysis of plea-bargaining in India

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Abstract
Plea-bargaining is an essential component of the administration of criminal justice, properly administered, it also encourages and leads to prompt largely final disposition of most criminal cases. The provision of plea-bargaining is still not very much successful in India despite that the provision of plea bargaining was inserted in the Criminal procedure code in 2005. There is a various reason for the failure of plea-bargaining in India. This paper aims to analyse, whether plea-bargaining could be able to achieve the true spirit in the Indian criminal justice delivery system and also know that whether plea-bargaining provides justice to the party or coerce him/her to accept the charge. This paper address the concept of plea-bargaining in the jurisdiction of India. It also provides some suggestions to the legislative body to solve the problem. For the purpose of this research paper, the researcher has adopted the doctrinal method of research.

Keywords: Plea-bargaining, criminal justice, and *Nolo contendere*

1. Introduction
The basic goal of a criminal justice system is to promote social peace and order while also providing a mechanism for a citizen to seek restitution when their rights are violated. As a result, the system criminalizes a variety of behaviours that violates or infringe on an individuals' rights in a civilized society. However, because of the imbalance of power between the accused and the state, a procedure that is fair to the accused and respects his rights at every stage. This effort to make the method fair enough to inspire confidence in the accused has resulted in a procedure that is sluggish. Difficult, and expensive as a result of society's grant of so many rights to the accused. All of this results in a high number of the case pending in India's criminal courts, as well as a big number of under trials in Indian prisons. Searching for alternative dispute resolution process to resolve a criminal case in the solution. Plea-bargaining is one of the numerous options for resolving a criminal issue without subjecting the defendant to a formal trial.
Plea-bargaining has a long history in human history. It is a novel concept in India in India and is still in its infancy, although it is implemented in other nations. Plea-bargaining is more strict than the criminal procedure codes' provision and lea stringent than the court's requirement to compound the case. When a lawsuit is filed against an accused in a court of law, the accused has the option of going to court and admitting his guilt. This has additional ramifications in many events and scenarios. The court may allow him to plead guilty and have his sentence reduced, or may charge him with a lesser offense than the committed, or may let him leave after paying a fine. It all relies on the facts and circumstances of each case, as well as the accused's background [1].

Definition of Plea- bargaining
According to the Encyclopaedia Britannica that the "Plea bargaining, in law, is the practice of negotiating an agreement between the prosecution and the defence whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for a more lenient sentencing, recommendations, a specific sentence, or a dismissal of other charges. Supporters of plea bargaining claim that it speeds court proceedings and guarantees a conviction, whereas opponents believe that it prevents justice from being served." The great majority of criminal cases in the United States involve some form of plea bargaining [2].
Plea bargains are not always easy to recognize. Negotiations that result in formal agreements are termed "explicit plea bargains." However, some plea bargains are called "implicit plea bargains" because they involve no guarantee of leniency. Explicit bargains are the more important of the two.

According to Black's law Dictionary
Plea-bargaining - Plea bargaining has been defined as "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or one of the multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the negotiated charges [3]."
According to Oxford Dictionary, the word "Plea means to appeal, prayer, request, or formal statement by or on behalf of the defendant, and the word 'Bargain' means negotiation, settlement, deal, covenant, barter, or pact. Hence, the word meaning of plea bargaining may be an appeal or formal statement by the defendant for a negotiated settlement with the prosecution for the offense charged against him [4]."
According to Warren Burger, Chief Justice of the U.S.A, in Santobello v. New York [5].
"Plea bargaining is an essential component of the administration of justice, properly administered, it is to be encouraged…..it leads to prompt and largely final disposition of most criminal cases."
Robert E. Scott and William J. Stuntz define "Plea-bargaining as a contractual agreement between the prosecutor and the defendant concerning the disposition of a criminal charge. However, unlike most contractual agreements; it is not enforceable until a judge approves it" [6].

Plea-bargaining in the United States of America
Plea-bargaining has become one of the most popular techniques for resolving criminal cases without a formal trial in the U.S.A [7] criminal justice system. 90% of all criminal conventions in the U.S.A are due to it [8]. In Brady v. United States [9], the American Supreme Court upheld the legitimacy of plea-bargaining and advocated its use in another well-known case [10]. Furthermore, the Federal sentencing guidelines provide for varying levels of reduction in penalties if the offender agrees to accept responsibility for his acts, lessening the prosecution's burden of proof. The Federal Rules of Criminal Procedure, Rule 11, establishes the legal basis for plea-bargaining in the U.S.A. We have come across a number of academic papers that praise its utility and widespread application by practitioners. At the same time, it is being outlawed in several states around the U.S.A [11].

Concept of plea- bargaining in India
The idea of *Nolo contendere* inspired the Indian concept of plea-bargaining. The legislature adopted it in response to multiple law commission recommendations. This provision has been bought thought about the executed in light of the social and economic conditions that exist in our country. Plea-bargaining can be divided into three categories: 1) charge bargaining 2) sentence bargaining 3) sentence bargaining. Charge bargaining is the process of negotiation for the dismissal of one or more charges in exchange for a less serious charge in the case of numerous offenses. Sentence bargaining occurs when the accused has the option of admitting guilt in exchange for a lower sentence. Finally, fact bargaining is a negotiation in which certain facts are admitted in exchange for a promise not to introduce certain facts.

Needs for Plea Bargaining in India
The law commission of India in its 142nd Report recommended the introduction of the concept "concessional treatment for those who choose to plead guilty without any bargaining" under the authority of law informed with adequate safeguards. The *suo motu* exercise to make such recommendation was prompted, quote the commission.
"*By problem arising on account of abnormal delay in the disposal of criminal trials and appeals, and by the explosion of the number of under-trial prisoner languishing in jail for very much years*"

Reason for introducing this concept
The researcher has tried to find out the reason from the statistical data. The nation's Crime Record Bureau, the Government of India is the repository of criminal records in the country. It published data in its annual report titled "Crimes in India". From the published data pertaining to cases under the Indian Penal Code for the period 1981 to 2009; it emerges that [12]

1. The annual number of cases for trial increased from 21,11,791 in 1981 to 81,30,053 in 2009. out of these, a trial could be completed only in 5,04,718 cases in 1981 and in 11,72,081 cases in 2009
2. Number of case pending trial increased from 14,84,483 in 1981 to 69,57,972 in 2009. Thus in the last 28 years the pendency of cases has grown by over 5 times
3. while the trial in 23.9% of the case was completed in 1981, the figure came down to 13.632% in 2009; similarly, the percentage of the case pending trial increased from 70.3% in 1981 to 85.58% in 2009
4. Out of the trial completed, the case ending in acquittal or discharge was 8.9% in 1990, rose to 10.0% in 1997, settled at 8.3% in 2006, and then came down to 7.34% in 2009. on the other hand, 8.5% of the case put to trial ended in convection in 1990 but the figure gradually came down to 5.26% in 2009

These are shown graphically

1. Increasing in the number of case

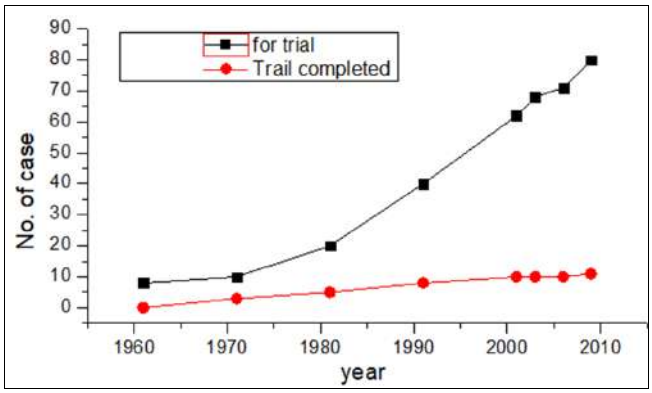

Fig 1: IPC Cases for Trail and Disposal thereof by Courts

2. Delay in completion of the trail
Establishes that pendency of cases awaiting trial is increasing every year. It shows the trend of completion and pendency of trial in percentage. It is seen that that gap is increasing year after year, albeit slowly, but consistently.
It is necessary to assess the delay in commencement of a trial and the time taken in its completion through appeal in the high court and Supreme Court.

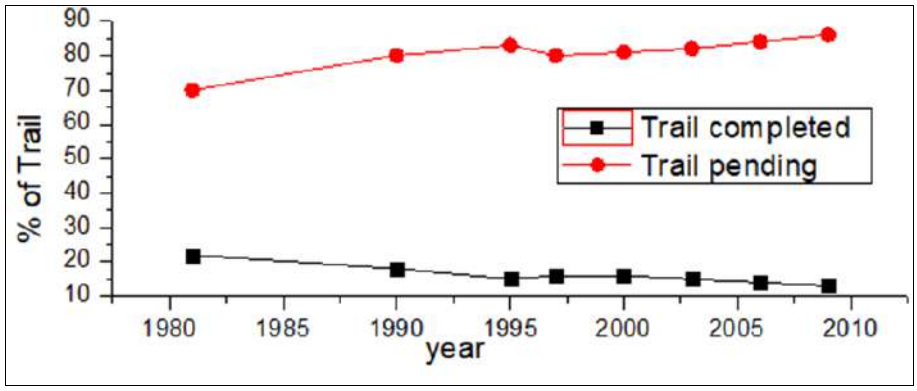

Fig 2: Percentage of Trail completed and Pending

3. Pendency of Trail

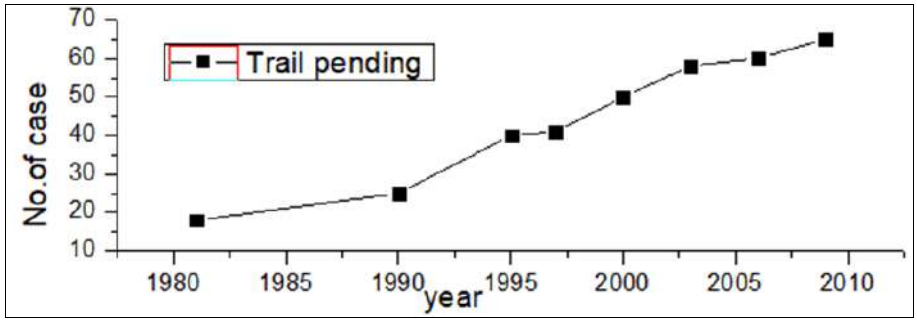

Fig 3: Number of cases pending Trail

4. Overcrowding in jails

The prison statistics from 2004 to 2008 some interesting information as to occupancy in the country rates in prison in the country

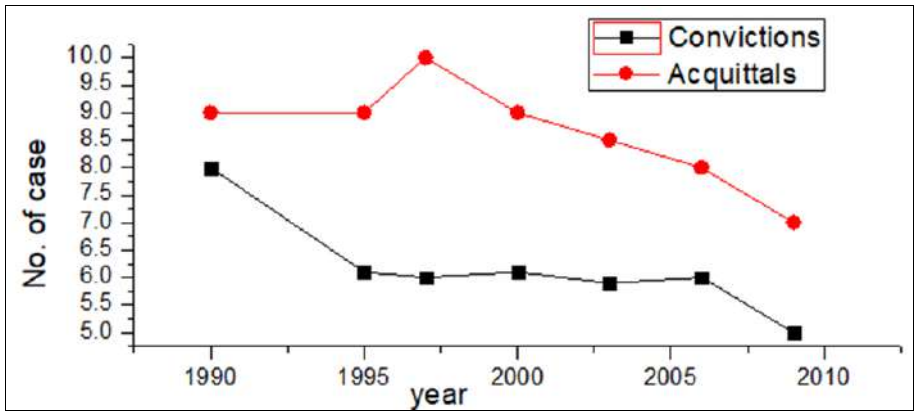

Fig 4: Acquittals and convictions in completed trail

Indian judiciary approach towards plea-bargaining

Even after multiple recommendations from the Law Commission of India, the Indian judiciary has been hesitant to implement this prior to the 2005 modification and has rejected the concept of plea-bargaining on several occasions. This was clear because, notwithstanding such suggestions, the courts continued the rule against plea-bargaining. The earliest cases in which the concept of plea bargaining was considered by the Hon'ble Court was *Madanlal Ramachander Daga* v. *State of Maharashtra* [13] in which it observed:

"Hon'ble court is of opinion that, it is very 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 that leniency can be shown on the facts of the case it may impose a lighter sentence"

In *Muralidhar Megh Raj* v. *State of Maharashtra* [14] when the appellants plead guilty to the charge, the trial Magistrate sentenced them each to a petty fine, the Apex Court continued to disapprove of the concept of plea-bargaining. Court observed:

"*To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully, induced by an informal, tripartite understanding of light sentence in lieu of nolo contendere stance*."

For a long time, the Supreme Court was hesitant to implement the concept of plea-bargaining in India since it entails the accused bargaining his constitutionally given right to fair trial leniency in punishment [15]. But The Gujarat High Court appreciated this procedure and observed in *State of Gujarat* v. *Natwar Harchandji Thakor* [16] 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. It can 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."

In its 142nd and 154th reports, the Law Commission noted the country's criminal justice system's flaws. They built a case for implementing plea-bargaining in India after analysing a variety of other criminal justice systems they intended the plan to be used on an experimental basis for a limited number of offenders because it is an alternative to the constitutionally given right to a fair trial. It was supposed to be made inapplicable to serious action, especially against women.

Comparing the administration of Plea Bargaining in India and the U.S.A

Because the office of the prosecutor has such clout in America, it is permitted to personally deal with the accused. After the agreement has been negotiated, judicial approvals are sought. In India, on the other hand, the judicial officer plays a crucial role in the administration of plea bargaining. Furthermore, in America, the discussion is guided by a business-like approach, which requires the prosecution to communicate all essential information about the case with the accused. This is significant since it allows for equal bargaining in addition, the American prosecutor requests that the accused plead guilty to some or all of the allegations levelled against him. In light of this, he would recommend to the judge a charge reduction or a short or moderate sentence. In India, however, such charge bargaining is not permitted. Even if the accused pleads guilty, he will not be able to negotiate a charge reduction. Regardless of his plea, the judicial officer is required to follow the rules set forth by the law when it comes to punishment.

The American system. O the other hand, allows the plea deals to specify the length of the sentence in exchange for a guilty plea. Furthermore, with the exception of a few infractions, the American system allows plea-bargaining for all charges, making its application broad. Only a restricted number of offenses are eligible for plea-bargaining in India. Though there are considerable changes in the way plea-bargaining is handled in India compared to the U.S.A, there are some parallels. Both jurisdictions place a premium on the accused's willingness to participate in the procedure when it comes to resolving a criminal case. Both also allow the accused to withdraw his guilty pleas up to a certain point if he wishes to exercise his right to a fair trial. Furthermore, in all jurisdictions, any statement made by the accused during plea-bargaining cannot be used in any later proceeding.

Reason for failure of plea-bargaining in India

The practices of plea bargaining have become has become firmly entrenched in both state and federal court in the United States of America. At least 90% of the criminal case in the United States are decided based on guilty pleas, most of which outcome of the plea are bargaining. "Plea bargaining in the United States of America is governed and regulated by Rule 11[(a) to (h)] of the federal rule criminal procedure. The court has a duty to disclose the consequences of a guilty plea with the accused in open court and ensure that the accused has entered a guilty plea voluntarily and with a full understanding of the consequences of such agreement [17]."

On the other hand in India plea bargaining is inserted in the criminal procedure code in 2005, but still, this concept is not very much successful. The researcher has found various reasons for the failure of plea bargaining. The researcher has gone through the various data, case law, and a comparative study of plea barraging between the U.S.A and India. By analysing the report the researcher has a fond reason which is as below:

1. Weight of pendency

The present system of administration of justice, which is clubbing under the weight of the pending case. It is estimated that the number of the case pending all over the country in all categories of court, is a staggering 2.5 crore. Out of this 36 lakh, cases are pending in high court alone, virtually clogging the justice system. The former chief justice of India. Adarsh Sen Anand, has observed, that there are just 13,000 judicial officers, who cannot cope up with the current load of cases choking the whole system.

It is pertinent to note that posts of judges of the various high court are very often, these constitute 20% of the total number of high courts judges in the country. If these posts are not filled in immediately more cases will be undecided.

2. State fighting the citizen

Surprisingly, the government is the country's largest litigator. Approximately 70% of all cases are either agitated or appealed by the state, according to a rough estimate. At the expense of citizen, the state fights a lawsuit against them.

3. Adjournment

Unnecessarily adjournment also extends the life of the litigation. The process of adjournment, on the faveolus ground, is one of the major reasons increase in delay. While there is a very good understanding between the court and advocate, the same does not exist between the client and the courts. In the process, the interest of litigants suffers, judiciary fails to render justice to the aggrieved. There is a need to develop a set of criteria for granting the adjournment as well as a framework for resolving disagreements.

4. Other reason

Jurist has suggested a reduction in the number of the holiday of courts and increases in the working day of the courts. At present the court working for 210 to 230 days every year, with a fully long summer vacation. If courts work for long hours and days, litigation can bought and control

Conclusion and suggestion

In a criminal justice system that is collapsing under its own weight, experimenting is the only way to restore the public faith in the system. Plea-bargaining should be considered as one such experiment aimed at reducing the number of cases awaiting trial. The experiment's outcomes would be determined by the criminal justice system's honesty in applying for the program.

The researcher has gone through the various data, graphs, case law, and a comparative study of plea bargaining between Indian and the U.S.A certain reason are found for the failure of plea bargaining in India the reasons are as follows:

- society is not completely civilized
- lack of truthiness
- the rate convections very low
- lack of awareness in the society

There are various reasons for the failure of plea bargaining or we can say that the concept of plea bargaining is not followed up to the expectation but among lots of other reasons which is responsible for the failure of the concept of plea bargaining.

The offender knows that the final decision of the case will take time and it will come after a long journey of proceeding so, the offender never wants to accept his guilt and never want to face the door of the jail.

The researcher has thinks that the state is also responsible for failing plea bargaining in India. During the whole discussion, some questions arise such as is it possible to increases the outlet of the case by increasing efficiency?

By improving the quality of judges and judiciary efficiency can be increased that helps in the disposal of more and more cases. Chief Justice Lahoti said:

"*Now it is clear that the inlet (of water store) cannot be stopped. Can we at least increase either speed of the outlet or increase the number of outlets? Yes, we can increase the outlet*"

According to the study, all system officials, including the magistrate, defence counsel, public prosecutor, and police should now work together to popularise this method among the accused and victims. In order to examine its relevance for a wide variety of offenses, it needs to be executed with greater success in its current form.

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