

**|LAW AUDIENCE JOURNAL|**  
**|VOLUME 1|ISSUE 4|JUNE 2019|ISSN (0): 2581-6705|**  
**|INDEXED JOURNAL|IPI VALUE (2018): 2.06|**

**|LAW AUDIENCE JOURNAL®|**

**|VOLUME 1 & ISSUE 4|**

**|JUNE 2019|**

**|ISSN (0): 2581-6705|**

**EDITED BY:**

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**[LAW AUDIENCE JOURNAL]**  
**[VOLUME 1|ISSUE 4|JUNE 2019|ISSN (O): 2581-6705]**  
**[INDEXED JOURNAL|IPI VALUE (2018): 2.06]**

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**"AN ANALYSIS OF THE PLEA BARGAINING MECHANISM IN INDIA: THE PAST,  
PRESENT AND THE FUTURE."**

***Authored By: Mr. Abhishek Wadhawan,  
Gujarat National Law University.***

***Email Id: abhwad1704@gmail.com.***

***Published At: <https://www.lawaudience.com/volume-1-issue-4/>.***

#### **I. ABSTRACT:**

*"The objective of the paper is to analyse the working of the scheme of plea bargaining in the Indian criminal justice system before and after the **Criminal Law (Amendment) Act, 2005** which legalised the concept of plea bargaining in India. The paper also aims at identifying a few loopholes in the present procedure of plea bargaining in India along with the recommendations. Part I analyses the view of the judiciary with regards to plea bargaining when there were no provisions regulating the plea bargaining mechanism in India.*

*Part II discusses the view of the Law Commission Reports with regards to the concept of plea bargaining which is followed by the discussion of the introduction of plea bargaining mechanism in India through the **Criminal Law (Amendment) Act, 2005** in Part III. Part IV discusses the procedure of plea bargaining in India which is followed by Part V which focuses on the change in the judiciary's view of plea bargaining after the amendment was made to the Code of Criminal Procedure and the application of the provisions dealing with*

*plea bargaining. Part VI deals with a few limitations of the present procedure of plea bargaining in India and it also suggests a few changes in that may be incorporated to overcome for the limitations.”*

## **II. THE CONCEPT OF PLEA BARGAINING: AN INTRODUCTION:**

Plea bargaining refers to a pre-trial bargain between the accused and the prosecution whereby a negotiation is reached between the parties to the suit. Plea bargaining is a negotiation between the accused and the prosecutor or the victim of an offence where the accused accepts to confess to commission of an offence in return for a benefit which may be a lesser punishment, an acquittal by payment of debt etc. The concept of plea bargaining was mainly adopted and held to be legally valid by the courts of the United States. There are generally three types of plea bargaining that are accepted by the courts:

### **a) CHARGE BARGAINING:**

In this type of plea bargaining, the accused agrees to accept the charges of a few offences which were lesser serious in nature than the other offences. In return, the other charges against the accused are dismissed. This is the most common type of plea bargaining.

### **b) SENTENCE BARGAINING:**

It is a type of plea bargaining whereby the accused agrees to an offence in return for a lesser sentence than what he might have been subjected to in case, the Court would have found his guilt of the commission of the offence through the procedure of law.

### **c) FACT BARGAINING:**

In this type of a plea bargaining, the two parties to the suit agree to introduce a set of facts of the matter before the Court and they mutually do not bring any other fact to the notice of the Court. This type of plea bargaining is generally not accepted by the courts to be valid in the

eyes of law. The reason for not allowing fact bargaining lies in the fact that it creates an impediment in the process of administration of justice. Through fact bargaining, the parties may hide very vital facts from the Court which may result in an incorrect decision on the part of the Court. Fact bargaining creates a problem for the Court to identify the true facts and ensure that the innocent person does not get punished.

### **III. THE CONSTITUTIONAL VALIDITY OF PLEA BARGAINING BEFORE THE ENACTMENT OF THE CRIMINAL LAW AMENDMENT ACT, 2005:**

Before the *Criminal Law (Amendment) Act of 2005*, plea bargaining did not exist in India. Plea bargaining was not recognised as a legal practice by the Courts in India. The Courts of Law in India continuously declared the practice of plea bargaining to be unconstitutional and unacceptable in the Indian jurisprudence. The Courts generally did not allow plea bargaining in India on the grounds that a crime is a wrong against the state and not an individual. If a bargain is struck between the accused and the State then the accused in many cases may not be punished. This would reduce the deterrence in the society and would impact the entire system of administration of justice.

The Courts strictly held the view that plea bargaining was not a recognised concept in the Criminal Jurisprudence of India. One of the oldest cases in which the question of the validity of plea bargaining came in front of the Supreme Court of India was in the case of *Madanlal Ramachander Daga v. State of Maharashtra*<sup>1</sup>. In this case, the Supreme Court observed the practice of plea bargaining to be wrong in the eyes of law. It further noted that the Court must conduct a trial of the accused and decide the case on the basis of its merits and the evidences so produced on record. The Court is free to give a lesser sentence than the maximum

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<sup>1</sup> (1968) 3 S.C.R. 34 (India).

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prescribed sentence to the accused if it feels it to be in the interest of justice. But, the Court should not enter into any kind of a bargain with the accused as plea bargaining is not valid in the eyes of law.

In *Kasambhai v. State of Gujarat*<sup>2</sup>, the Supreme Court held the practice of plea bargaining to be against public policy.

In *Kachhia Patel Shantilal Koderlal v. State of Gujarat & Anr.*<sup>3</sup>, the Supreme Court called plea bargaining to be a highly reprehensible practice which can never be allowed in the Indian legal system. The Court further observed in that case that the practice of plea bargaining would lead to more corruption and may also encourage collusions. If plea bargaining will be allowed in India then the system of administration of justice may get polluted.

In *Uttar Pradesh v. Chandrika*<sup>4</sup>, the Supreme Court called plea bargaining to be unconstitutional. It reiterated that if the Court deems it fit to give a lesser sentence to the accused than the maximum prescribed sentence on the basis of the facts and the merits of the case, the Court can do so. But entering into plea bargaining, especially to dispose off criminal cases is not valid in the eyes of law.

In *Thippaswamy v. State of Karnataka*<sup>5</sup>, the Court observed that the practice of plea bargaining whereby the accused would be asked to confess the commission of a particular

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<sup>2</sup> 1980 A.I.R. 854 (India).

<sup>3</sup> 1980 CrLJ. 553 (S.C.) (India).

<sup>4</sup> A.I.R. 2000 S.C. 164 (India).

<sup>5</sup> 1983 1 S.C.C. 194 (India).

offence would violate his fundamental right of Right to life<sup>6</sup> that has been enshrined upon him by the virtue of the Constitution of India.

In *Kasambhai Abdul Rahmanbhai Sheikh v. State of Gujarat*<sup>7</sup>, the Supreme Court observed the concept of plea bargaining to be unconstitutional as it violates the fundamental right of the Right to life. The Court further observed that if plea bargaining will be allowed then the innocent people may think pleading guilty to be a more feasible option than undergoing the trial for years. This might lead to punishing the innocent which is against the principles of natural justice.

Further, the judge may also be diverted from his duty of carrying out the trial to see if the accused has committed the crime or not. The judge may be influenced by the plea bargain and punish an innocent and may let go off a criminal.

In the view of catena of judgments, it can be easily concluded that the Courts of Law in India were not ready to accept the concept of plea bargaining in Indian criminal jurisprudence. Even when the Courts in India were taking many years to solve each and every case, they were not ready to introduce plea bargaining in India even when it was a step to reduce the backlog of cases in India that was increasing continuously, especially in the category of criminal cases.

The Courts in India continuously regarded plea bargaining as unconstitutional and bad in the eyes of law before the *Criminal Law (Amendment) Act of 2005* which officially introduced plea bargaining in India and hence the concept of plea bargaining became legally valid.

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<sup>6</sup> INDIAN CONST. art 21.

<sup>7</sup> (1980) 3 S.C.C. 120 (India).



**IV. PLEA BARGAINING WITH SPECIAL REFERENCE TO REPORTS OF LAW COMMISSION OF INDIA:**

While the Courts in India continuously criticised the practice of plea bargaining, the Law Commission reports favoured the idea of introducing plea bargaining in India. As years were passing, the number of pending cases in India in almost all the courts was continuously increasing. This huge number of pending cases brought the Indian judiciary to a stage where the court required a few many years to decide every matter that comes before it. Subsequently, the process of administration of justice got slower and the delivery of justice became delayed. Accordingly, the Law Commission reports were making detailed research into ways through which the backlog of cases in the Indian Courts could be reduced. One of the efficient ways that was found by the Law Commission to reduce the backlog of cases in criminal matters was the idea of introducing plea bargaining in India. Plea bargaining was discussed as a tool to reduce the backlog of cases in the 142<sup>nd</sup>,<sup>8</sup> 154<sup>th</sup><sup>9</sup> and 177<sup>th</sup><sup>10</sup> reports of the Law Commission of India.

Plea bargaining was firstly discussed in the 142<sup>nd</sup> report of the Law Commission of India that was published in the year 1991. The report was titled “*Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining*”. The report was also aimed towards reducing the delays in deciding the criminal cases in a manner. To discuss plea bargaining in detail, the report takes into consideration the criticism of plea bargaining as raised by the members of the legal fraternity and at the same time, the report also tried to answer the issues so raised. Various drawbacks of introducing plea bargaining

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<sup>8</sup> Law Commission of India, 142<sup>nd</sup> Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining (1991), <http://lawcommissionofindia.nic.in/101-169/Report142.pdf>.

<sup>9</sup> Law Commission of India, 154<sup>th</sup> Report on Code of Criminal Procedure Act no. 2 of 1974 (1996), <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>.

<sup>10</sup> Law Commission of India, 177<sup>nd</sup> Report on Law relating to arrest (2001), <http://lawcommissionofindia.nic.in/reports/177rpt1.pdf>.

have been discussed in the report like the possibility of an increase in the rate of crime, the social-economic conditions of India do not favour plea bargaining, the possibility of plea bargaining to be used as a tool by the criminals to save themselves from being punished under the law, possibility of increase in corruption, the already available legal measures to protect the accused persons under the legal aid systems etc.<sup>11</sup> The Law Commission took into consideration all these limitations of plea bargaining and proposed a system of plea bargaining in India that suits the socio-economic conditions of the country.<sup>12</sup> The report proposed a system of plea bargaining in India wherein there will be no need for any contact between the accused and the public prosecutor so that there is no possibility of coercion or encouragement to the evil practice of corruption. The accused will have the liberty to make an application to the court for the purpose of starting the process of plea bargaining. The judicial officer will decide whether to accept the application for plea bargaining of the accused or not. It would be the court with whom the accused will bargain rather than with the public prosecutor.

Further, to ensure that the principle of natural justice is not violated, once the application for plea bargaining of the accused is accepted by the Court, both the parties, the accused and the public prosecutor will be given an equal chance of hearing before the Court.

As far as the limitations of socio-economic conditions of the country were concerned, the report proposed to introduce plea bargaining in India as a trial in the Indian jurisprudence. The report proposed to introduce plea bargaining initially only for the offences where the maximum punishment was seven years or less. The report proposed that if the scheme for

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<sup>11</sup> Law Commission of India, 142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining (1991), Chapter II.

<sup>12</sup> Law Commission of India, 142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining (1991), Chapter X.

plea bargaining proves to be viable and successful for the offences having a punishment of seven years or lesser, then the scope of the scheme can be widened to include crimes that have a punishment of more than seven years.

The 154<sup>th</sup> Law Commission Report reiterated the need to introduce plea bargaining in India. The 154<sup>th</sup> report supported the 142<sup>nd</sup> Law Commission Report to justify its claim to introduce plea bargaining in India. The report recommended an amendment to be brought in the Code of Criminal Procedure for the purpose of introducing *Chapter XXIA* on plea bargaining. The 177<sup>th</sup> Law Commission Report, however, was reluctant to introduce a provision related to plea bargaining in the Criminal procedure Code. The report in a manner supported the judgments of the courts of India which held that the concept of plea bargaining is illegal and unconstitutional. The 177<sup>th</sup> report left it to the government to make a decision regarding the introduction of the scheme of plea bargaining in India.

The *Committee on Reforms of Criminal Justice System* was constituted under the chairmanship of *Justice Malimath*. The Report of the Committee stated that the success of the scheme of plea bargaining in the United States is a proof that plea bargaining is an efficient and a viable scheme.

Accordingly, the Report of the Committee was published in the year 2003 which supported the introduction of the scheme of plea bargaining in the Indian criminal justice system. The Committee supported the scheme of plea bargaining as an efficient scheme through which the backlog of cases could be reduced which shall ensure speedy justice in criminal cases.<sup>13</sup> In view of the recommendations of the Law Commissions of India and the Report of the

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<sup>13</sup> Ministry of Home Affairs, Report of the Committee on Reforms of Criminal Justice System (2004), Recommendation no. 106.

Committee on Reforms of Criminal Justice System, the legislature of India through the Criminal Law (Amendment) Act of 2005 introduced Chapter XXIA which consisted of Sections 265A to 265L to the Code of Criminal Procedure which dealt with the scheme of plea bargaining.

## **V. THE PROCEDURE OF PLEA BARGAINING IN INDIA AFTER THE ENACTMENT OF THE CRIMINAL LAW AMENDMENT ACT, 2005:**

*Chapter XXI-A* consists of *Section 265A to 265L* of the Criminal Code of Procedure was introduced through the *Criminal Law (Amendment) Act, 2005* which was passed in the winter session of the Indian Parliament. These sections related to the scheme of plea bargaining in India. It outlines the entire procedure of the scheme of plea bargaining in India. Plea bargaining is available to the accused who is charged for an offence where the maximum period of imprisonment is seven years. Plea bargaining is not available for the accused who is charged under any socio-economic offence, an offence against a woman or an offence against a child below the age of 14 years.<sup>14</sup> The socio-economic offences for the purpose of plea bargaining were not decided by the legislature and it gave the government the power to decide the offences that would fall under the category of socio-economic offences for the time being.<sup>15</sup>

Accordingly, the Central Government published a list of socio-economic offences through *Notification No. SO1042 (II)*<sup>16</sup> on July 11, 2006, for which the scheme of plea bargaining is not allowed. As per the notification, the scheme of plea bargaining cannot be used by the accused who are charged for offences under the *Dowry Prohibition Act, 1961; Protection of*

<sup>14</sup> The Criminal Law (Amendment), 2006, Sec 265-A, No.2, Acts of Parliament, 2006 (India).

<sup>15</sup> The Criminal Law (Amendment), 2006, Sec 265-A Cl 2, No.2, Acts of Parliament, 2006 (India).

<sup>16</sup> Notification of Ministry of Law and Justice, No. SO1042 (II) , issued on July 11, 2006.

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*Woman from Domestic Violence Act, 2005*; the *Scheduled Castes and Scheduled Tribes (Prevention from Atrocities) Act, 1991*; the *Infant Milk Substitutes, Feeding Bottles and Infants Foods (Regulation of Production, supply and distribution) Act, 1992* etc. The Chapter related to the scheme of plea bargaining is made not applicable in case of any juvenile or child as defined in *Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000*.<sup>17</sup>

The accused has to file an application for plea bargaining in the court where the case is pending.<sup>18</sup> The accused has to mention brief details of the offence for which he has been charged and also has to submit an affidavit with the application whereby he swears that he has made the application on his free will and not out of any coercion or influence. After the receipt of the application, the Court is duty bound to inform the prosecutor about the same and has to ensure during the proceedings that the accused has voluntarily made the application. The procedure for achieving a bargain between the accused and the prosecutor is laid down in Section 265-C.<sup>19</sup> Subsequently, the Court has to prepare a report regarding the meeting between the prosecutor and the accused to reach a successful bargain whether it was successful or not.<sup>20</sup>

After a successful disposition between the accused and the prosecutor after the meeting and completing all the formalities of Section 265-D, the Court has to hear both the parties to justify the amount of punishment that the accused has to undergo.<sup>21</sup> The Court can release the accused on account of good conduct under Section 360 of the Code of Criminal Procedure or under the *Probation of Offenders Act, 1958* or under any other law in force at that time.

<sup>17</sup> The Criminal Law (Amendment), 2006, Sec 265-L, No.2, Acts of Parliament, 2006 (India).

<sup>18</sup> The Criminal Law (Amendment), 2006, Sec 265-B, No.2, Acts of Parliament, 2006 (India).

<sup>19</sup> The Criminal Law (Amendment), 2006, Sec 265-C, No.2, Acts of Parliament, 2006 (India).

<sup>20</sup> The Criminal Law (Amendment), 2006, Sec 265-D, No.2, Acts of Parliament, 2006 (India).

<sup>21</sup> The Criminal Law (Amendment), 2006, Sec 265-E, No.2, Acts of Parliament, 2006 (India).

Since a mutual outcome has been decided between the accused and the public prosecutor, the Court can either pass the minimum punishment as mentioned for the offence. In case, the minimum punishment for an offence is not mentioned then the Court has the right to give the accused one-fourth punishment of the prescribed punishment for the offence. However, the period of detention undergone by the accused cannot be set off against the sentence of imprisonment.<sup>22</sup>

The decision of the first court is final in cases where the scheme of plea bargaining has been used. No further appeal is allowed against the judgment.<sup>23</sup> However, an appeal may be made before the concerned High Court under Article 226 of the Constitution of India or to the Supreme Court under Article 32 of the Constitution of India. In cases related to plea bargaining, the Court has all the powers which it exercises in the trial of all other criminal offences as vested upon it by the Code of Criminal Procedure.<sup>24</sup>

The scheme of plea bargaining has to be fulfilled as prescribed under *Chapter XXI-A* of the Code of Criminal Procedure in *Section 265-A to Section 265-L*. No Court is allowed to deviate from the procedure as put down in the aforementioned sections. If the accused does not follow the procedure, the said application may out rightly be rejected by the Court before which the application for plea bargaining is made.

The procedure for plea bargaining requires the consent of the accused as well as the victim before a mutually acceptable solution for the disposition of the case is reached out. Both the parties, the accused and the victim or the prosecutor, can mutually decide whether the accused has to give any form of compensation to the victim or not. The accused has to make

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<sup>22</sup> The Criminal Law (Amendment), 2006, Sec 265-I, No.2, Acts of Parliament, 2006 (India).

<sup>23</sup> The Criminal Law (Amendment), 2006, Sec 265-G, No.2, Acts of Parliament, 2006 (India).

<sup>24</sup> The Criminal Law (Amendment), 2006, Sec 265-A, No.2, Acts of Parliament, 2006 (India).

the application with his free will in absence of any external force. Similarly, the prosecutor or the victim should also enter into the process of plea bargaining as per his free will and not due to any external force. The victim should agree to the solution reached out by the accused and the prosecutor. In a situation where the prosecutor and the accused cannot agree upon a mutually acceptable solution to the case, the Court has to make a report regarding the failure of the process under Section 265-D of the Code of Criminal Procedure between the accused and the prosecutor and the Court has to continue the trial of the accused in a normal manner in consonance with the procedure of law.

## VI. INDIAN COURT'S APPROACH TOWARDS PLEA BARGAINING AFTER THE ENACTMENT OF THE CRIMINAL LAW AMENDMENT ACT, 2005:

As the Law Commission Reports were continuously emphasising on the need to introduce the concept of plea bargaining in India in order to ensure speedy criminal justice mechanism in India, the High Court of Gujarat showed its solidarity with the thought of the Law Commission after the report of *The Committee on Reforms of Criminal Justice System* under the leadership of *Justice Malimuth* was passed.

The High Court of Gujarat in the case of *State of Gujarat v. Natwar Harchanji Thakor*<sup>25</sup> observed that one of the main objects of law is to provide easy, cheap and expeditious justice to the people. It further observed that there is a need for fundamental reform in the criminal justice system so as to ensure speedy delivery of justice in criminal cases which have become difficult due to the increasing backlog of cases in the Courts of Law in India. Plea bargaining was termed to a proper method of redressal of disputes that would result in a new realm of judicial reforms in the Indian criminal justice system.

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<sup>25</sup> (2005) CrLJ. 2957 (S.C.) (India).

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In ***Ranbir Singh v. State***<sup>26</sup>, the accused had pleaded guilty before the Trial Court and had entered into plea bargaining with the prosecutor and the victim. The accused was charged for causing death by negligent driving.<sup>27</sup> However, even after entering into a mutually acceptable decision between the accused and the prosecutor along with the victim, the Trial Court awarded the maximum punishment to the accused. On a further appeal to the High Court of Delhi, the High Court observed that the accused was a poor man yet he had agreed to pay a suitable amount of compensation to the victim's family which was mutually accepted by the accused and the victim. Accordingly, the Court reduced the punishment of the accused to 1/4<sup>th</sup> of the maximum punishment of Section 304A of the Indian Penal Code as per Section 265-E of the Code of Criminal Procedure.

In ***Guerrero Lugo Elvia Grissel v. The State Of Maharashtra***<sup>28</sup>, the High Court of Bombay was considering a pure of the question of law with regards to the interpretation of Section 265-E of the Code of Criminal Procedure. While interpreting the said section, the Court held that the Court had no discretion in cases where the punishment has to be given to an accused who takes the aid of the scheme of plea bargaining. The Court has no option but to reduce the punishment of the accused to 1/4<sup>th</sup> of the actual punishment prescribed for a particular offence. Such decision, however, has to be taken after taking into consideration the entire procedure of plea bargaining. The Court generally cannot give more or less than 1/4<sup>th</sup> of the punishment in such circumstances where the scheme of plea bargaining is used by the accused. In ***Joseph P.J. v. State of Kerala***<sup>29</sup> it was held that the procedure for plea bargaining as prescribed under **Sections 265-A to 265-L** of the Code of Criminal Procedure are mandatory in nature and must be followed by all the Courts while dealing with an application

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<sup>26</sup> 2011 S.C.C. OnLine Delhi 3737 (India).

<sup>27</sup> Indian Penal Code, 1860, Sec 304-A, No.21, Acts of Parliament, 1860 (India).

<sup>28</sup> CWP No. 2109 of 2011 (High Court of Bombay).

<sup>29</sup> 2015 5 KHC 586 (India).



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for plea bargaining. The Court further in this case held that in any circumstances if the Court does not examine the accused in front of the camera in the absence of the complainant as mandated in Section 265-B clause 4, then such an act or omission on the part of the Court shall result into grave illegality and such an order or judgment passed by the Court must be quashed.

In the case of *Shri Vinod Kumar Agarwal v. Central Bureau of Investigation*<sup>30</sup>, the High Court of Allahabad made a few important observations regarding the scheme of plea bargaining. Firstly, it observed that an application for plea bargaining cannot be entertained by any Court before the police file a report under Section 173 of the Criminal Procedure Code suggesting that an applicant is accused of certain offences. Secondly, the addition of charges is a part of a trial and hence the Court has to take into consideration an application of plea bargaining in the light of the original and additional charges. Further, a Court has a right to reject an application of plea bargaining when a charge for an offence is added during the trial, the maximum punishment for which is a death penalty or life imprisonment.

In *P.J. Joseph v. State of Kerala*<sup>31</sup>, the High Court of Kerala opined that the scheme of plea bargaining should not be allowed for offences punishable under Section 138 of the Negotiable Instruments Act, 1881. The Court opined that if the parties are willing to enter into a negotiation then the Court can direct the case to a mediation centre or any other forum or Adalat which are made for the resolution of disputes through alternative dispute resolution mechanism. The Court further laid emphasis on its decision to not allow plea bargaining for the persons accused under Section 138 of the Negotiable Instruments Act, 1881. In *M/S/ Meters and Instruments Private Limited & Anr. v. Kanchan Mehta*<sup>32</sup>, the Honourable

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<sup>30</sup> 2015 153 A.I.C. 548 (India).

<sup>31</sup> 2018 Cri LJ 1765 (S.C.) (India).

<sup>32</sup> 2017 S.C.C. OnLine S.C. 1197 (India).

Supreme Court of India while deciding a case related to Section 138 of the Negotiable Instruments Act, ruled that it is open for the Court to always ask specific questions to the accused at any stage of the trial. At the same time, if there is any possibility of a settlement between the accused and the victim at any stage of the trial, the Court must take into consideration the provisions of plea bargaining and if possible, plea bargaining should be allowed by the Court.

Indeed, it can be observed from the catena of judgments that after the introduction of the scheme of plea bargaining in *Chapter XXI-A* of the Code of Criminal Procedure through the *Criminal Law (Amendment) Act, 2005* in India, the scheme is being used extensively by the accused and the prosecutor or the victim to ensure speedy delivery of justice. The scheme aimed at reducing the backlog of cases related to criminal law in India to ensure speedy disposal of criminal cases that seems to be successful to a great extent. Today, in situations where an accused generally has no chance to prove the case in his favour is generally advised by his counsel to take the aid of the scheme of plea bargaining through which he may be given a lesser sentence by the Court. This scheme has indeed helped in easy identification of culprits for the Courts which saves the financial resources along with the essential time of the Courts of Law.

## VII. THE WAY AHEAD:

### THE NEED FOR AN IMPROVEMENT IN THE PLEA BARGAINING MECHANISM IN INDIA:

There are varied views with regards to the plea bargaining mechanism of India. One school of thought believes plea bargaining to be beneficial for the Indian criminal justice system as it ensures speedy trial of criminal cases and would thus reduce the backlog of criminal cases in the Indian Courts. The other school of thought criticises the scheme of plea bargaining by

stating that this scheme would have a great impact on the poor who are illegally detained by the police and charged under false offences. These innocent people shall later be encouraged to use the scheme of plea bargaining to reduce their sentence and get rid of the long years of court litigation.

Further, the scheme of plea bargaining may be seen as a tool that legitimises a few crimes. Criminals may use the concept to evade their criminal liabilities by entering into such negotiation with the prosecution that he is set free after serving a minimal period of imprisonment and giving nominal compensation to the victim (if required). There is no bar on the number of times plea bargaining can be used by an accused. Thus, habitual offenders may use the scheme of plea bargaining to legalise their continuous illegal acts. Hence, there is a need to determine the number of times an accused can take the aid of plea bargaining. The Court has to ensure that plea bargaining is not used by habitual offenders as such an act would frustrate the entire purpose of law in itself.

The major aim of the scheme of plea bargaining is to reduce the backlog of criminal cases in India to ensure a speedy criminal justice system in India. However, one of the major limitations of the procedure of plea bargaining is that an accused is charged for any offence, the punishment for which exceeds the period of seven years cannot take the aid of plea bargaining. Further, plea bargaining is not available for offences committed against woman and children aged below the age of fourteen years nor is it available for the socio-economic offences. Due to the exclusion of these offences, the aid of plea bargaining is not available for the people who are charged under a large number of offences. In such a scenario, it is imperative to take into consideration the recommendation of the 142<sup>nd</sup> Law Commission Report wherein it was mentioned that the scheme of plea bargaining may be introduced initially only for those offences in which the maximum punishment is of seven years of

imprisonment and once the viability and the success of the scheme is seen, the purview of the scheme of plea bargaining could be widened to include other crimes as well. Since the success of the scheme of plea bargaining has already been observed till now, it is imperative for the legislature to take consideration to widen the scope of plea bargaining to offences having a punishment of more than seven years so as to achieve the real aim of the introduction of the scheme in the Indian jurisprudence.

Another impediment to the object of the introduction of the scheme of plea bargaining is that no time limit is prescribed in the entire procedure. No time limit has been set under which the accused and the prosecutor has to make a mutually acceptable decision after the application for plea bargaining is made by the accused. Moreover, there is again no set time period within which the Court is supposed to make the report regarding the success or the failure of the meeting between the accused and the prosecutor or the victim to come to a mutually acceptable decision for speedy disposal of the case. In such circumstances, the Court has the discretion to take its own time for the preparation of the report which may actually lead to a delay in the criminal justice system which indeed makes the aim of a speedy criminal justice system to be futile.

In a country like India where a case goes on in a Court for years altogether, an innocent person may think it to be more beneficial to confess to having committed the crime through plea bargaining that he has not committed. This may be done by an innocent person to avoid long years of facing the trial which would cost him time and financial resources. So in a manner, the principle of law that states that no innocent should ever be punished may be violated by the way of plea bargaining. One of the major drawbacks of plea bargaining had been discussed in the 142<sup>nd</sup> Law Commission Report wherein it was stated that plea bargaining would encourage corrupt practices. Prima facie, the procedure of plea bargaining

in India claims to be made in a manner that no corruption is possible. But, it goes unnoticed that what is being discussed between the accused and the prosecutor or the victim in the meeting that they have after the application for plea bargaining has been made by the accused in the Court. The accused may have made the application for plea bargaining voluntarily but the other party may enter into a financial negotiation with the accused in order to drag the case for a longer period. On the other hand, the accused may also bribe the public prosecutor to enter into a negotiation with the accused that is favourable to him rather than to the victim or the State. A practical solution for this limitation of plea bargaining is that the meeting between the accused and the prosecutor or the victim should be held in the presence of the judge himself. However, it then becomes necessary to ensure that the judge does not be prejudiced to any of the parties during the hearing of the case or acceptance of the negotiation so decided by the accused and the prosecutor.

The list of socio-economic offences for which the scheme of plea bargaining is not available was issued by the Central Government in the year 2006. These socio-economic offences include, *Dowry Prohibition Act, 1961; Protection of Woman from Domestic Violence Act, 2005; The Scheduled Castes and Scheduled Tribes (Prevention from Atrocities) Act, 1991; The Infant Milk Substitutes, Feeding Bottles and Infants Foods (Regulation of Production, supply and distribution) Act, 1992* etc. It must be noted that all the cases being registered under these Acts are not of the same nature. Some of the offences might be so grave that they would have an impact on the entire society while some of the offences would be so trivial that it would have not even affected the victim to a great extent. Instead of making the scheme of plea bargaining not available for the offences under the said Acts, it is more practical to decide such cases after giving due consideration to the facts and the impact of the said offence. If the offence is trivial in nature, even if it categorised as a socio-economic offence, the scheme of plea bargaining should be allowed to such an accused person also.

**VII. CONCLUSION:**

The scheme of plea bargaining was introduced in India in order to reduce the backlog of criminal cases. It aimed at improving the criminal justice mechanism in India. Earlier, the Courts ridiculed the idea of legalising plea bargaining in India and called it to be a repressible practice. However, the Law Commission Reports supported the introduction of plea bargaining in India to reduce the number of pending cases due to which criminal justice mechanism was very slow. Since, the introduction of the scheme of plea bargaining in India in *Chapter XXI-A, Sections 265-A to 265-L* through the *Criminal Law (Amendment) Act, 2005*, the view of the Courts regarding plea bargaining has completely changed. Plea bargaining is being used extensively by criminals to enter into negotiations with the prosecutor and victim due to which the criminal justice system of India has comparatively become faster than before. However, the present plea bargaining procedure in India suffers through a few limitations like it can encourage a lot of corruption in the justice system, the scheme of plea bargaining cannot be used by the accused who is charged under any offence where the period of maximum punishment is more than seven years or for socio-economic offences.

There is also no time duration within the entire process of plea bargaining should be completed by the parties to the suit and the Court so as to ensure the achievement of the objective of the plea bargaining system, that is, to increase the speed of delivery of justice in criminal cases. Plea bargaining mechanism has proved to be viable and a sustainable instrument of justice and now there is a dire need to take into consideration the pitfalls of the present system of plea bargaining in order to make it better and efficient. If the limitations of the present plea bargaining mechanism are identified and solved in an efficient manner, such a reform would be noteworthy and would lead to the betterment of the criminal justice system of India.