

INTRODUCTION OF PLEA BARGAINING Part 1

Backlog of Cases

Noted jurist Nani Palkiwala rightly said, “The law may or may not be an ass, but in India, it is certainly a snail”. Indian Judiciary has failed comprehensively to dispose off the huge number of cases. Best efforts have been made now and then to curb this crisis but all in vain. The judicial system is unable to provide timely justice as there is a massive backlog of cases which tends to rise day by day. On an estimate 14,76,000 cases are listed everyday in the subordinate judiciary, leading to 29 crore hearings in a year.¹ It is an estimate that pendency of cases can never be cleared as more cases are being filed than disposed off every month. In such circumstances how can India strive to become a developed nation? It presents a question mark on our existence of being a developing nation as well.

The causes for this pendency and backlog have not been contributed by a single factor, nor can they be attributed to any external factor but the practice that takes place in the court premises itself, which has led to this disorder. The reasons are not contemporary but have been in existence since a very long time. Whereas a number of Committees and Commissions have dealt with the problem and given their report, but the issue still persists. 2,74,25,805 as a whole, are pending in the courts of our nation and surprisingly, they are to be decided by merely 18,828 judges, on an average 1,483 cases being decided by each judge.

It is certainly high time and a measure is indispensable to curb this high pendency which may perhaps be done by bringing the measure of Plea Bargaining in the Indian Criminal Justice system as done by the Indian Government.

Introduction of Plea Bargaining : United States

¹ Daksh India. Access to justice survey 2015-16 <http://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf> (accessed August 6,2017).

Plea Bargaining was introduced in the United States in the 19th century. Though, it is said to be formally as well as officially declared constitutional by the US Supreme Court in 1970 while deciding *Brady v. United States*². In the instant case, the petitioner had been indicted in the year 1959 for kidnapping and on charges of not liberalising the victim unharmed and thus the trial court imposed a maximum penalty of death if the jury's verdict would have so recommended. As and when he got the information regarding the co-defendant, that he had confessed, and he shall be pleading guilty and testifying against him, the accused altered his stance from not guilty to guilty. He later claimed that he shall not be punished as his sentence imposed was upon involuntary confession made by him. The Apex Court held that,

‘Petitioner's plea of guilty met the standard of voluntariness, as it was made "by one fully aware of the direct consequences" of that plea.’³

Later in another case, the US Supreme Court came up with another decision where it held that plea agreement had been violated as the prosecution promised that he would pray for the lowest charges but he rather pleaded for imposition of the maximum punishment post confession by the accused.⁴ It was as well held by the Court that for plea bargaining to succeed both the parties must honour the terms of the agreement and it is a mandate, not following which plea bargaining would not succeed and is vitiated.

Presently, plea bargaining has reached such a situation that more or less 97 percent of the criminal cases are solved by plea bargains.⁵ Undoubtedly, this is highly essential to reduce the pendency of cases and give time to the courts for more important business. Though, it shall not be the case that plea bargaining is made possible in every circumstance, there must be strict guidelines with respect to the same and shall be followed.

Introduction in India

Plea-bargaining is a measure which has been created and established for the purpose and with the aim of reducing caseload from the Judiciary, and has been highly successful in the United States of America, so much so that it has now become the standard and a rule rather than an

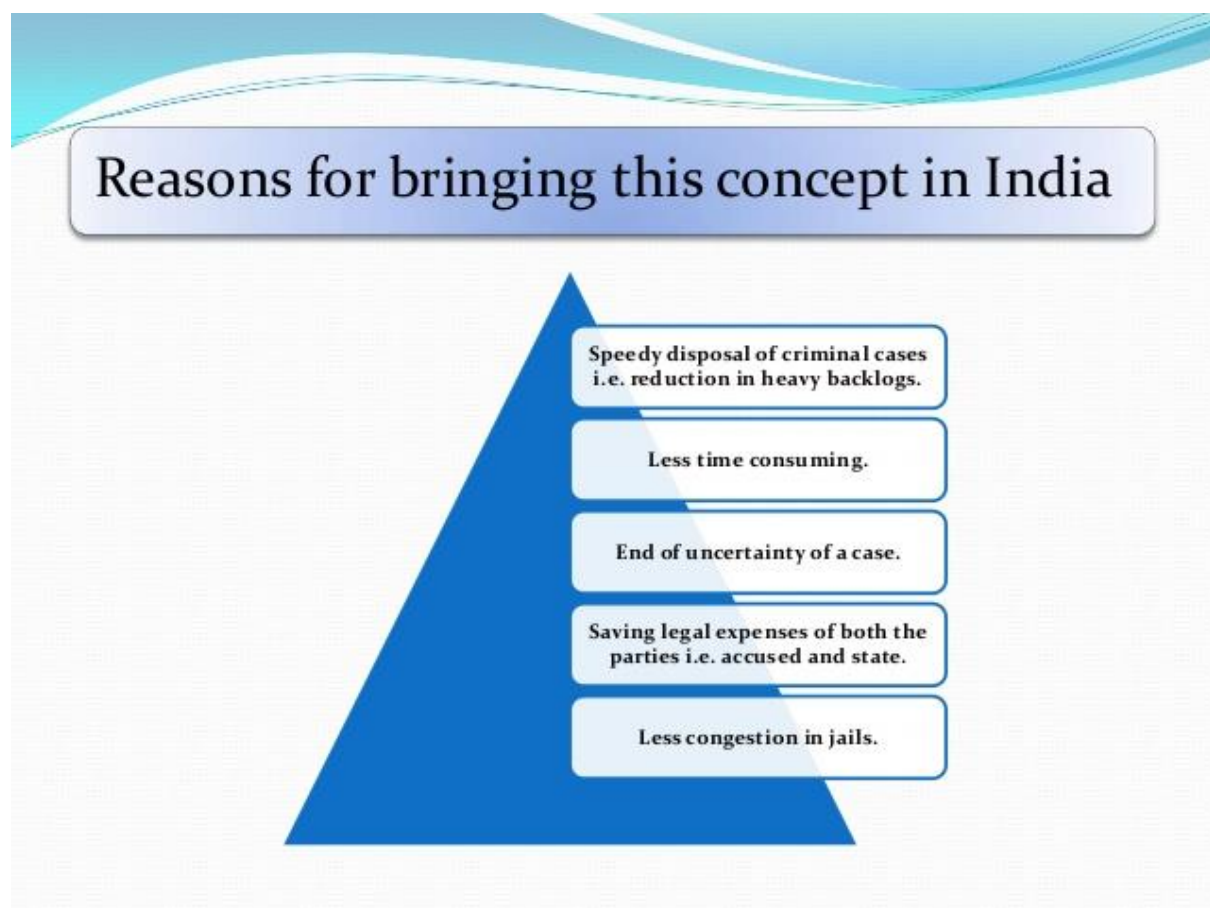
² 397 US 742 [1970]

³ Id.

⁴ *Santobello v. New York* 404 U.S. 257 [1971].

⁵ Viano, E. (2018). Plea Bargaining in the United States: a Perversion Of Justice. [online] Cairn.info. Available at: <https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm> [Accessed 13 Mar. 2018].

exception. Motivated by the accomplishment of plea-bargaining in the United States of America, our nation made several attempts to bring in and set up a similar formula. The Law Commission of India in its 142nd⁶ and 154th⁷ report recommended the introduction of provisions relating to plea bargaining. The recommendations of Law Commission were further endorsed by Malimath Committee. Nevertheless, recommendations for the introduction of plea-bargaining in India have been made time and again by the Law Commission of India and in 2005, plea-bargaining was incorporated into the Code of Criminal Procedure, 1973 through an amendment.⁸



⁶ 142nd Law Commission Report, Law Commission of India. Available at : <http://lawcommissionofindia.nic.in/100-150/report142.pdf>

⁷ 142nd Law Commission Report, Law Commission of India. Available at : <http://lawcommissionofindia.nic.in/reports/report154.pdf>

⁸ Wanna Make A Deal? The Introduction Of Plea-Bargaining In India, Sulesh Rewari. Available at : http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=977

The proposal for incorporation of plea-bargaining in the Indian criminal justice system was put forth in the year 2003 through the Criminal Law (Amendment) Bill, 2003. However, the provisions failed to come through and transform into a successful act due to some flaws and had to be reintroduced with few slender ramifications through the Criminal Law (Amendment) Bill, 2005, which was passed by the Rajya Sabha on 13-12-2005 and by the Lok Sabha on 22.12.2005.⁹ The provisions were thus finally incorporated into the Code of Criminal Procedure, 1973 as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005 and notified in the Official Gazette of India as Act 2 of 2006.

The act does not recognize any existing practice akin to plea bargaining but plea bargaining.

⁹ Criminal Law Amendment Act 2005, Criminal Procedure Code. Available at : <http://nagapol.gov.in/PDF/The%20Criminal%20Law%20Amendmend%20Act%202005.pdf>

