



# Darker side of plea bargaining: The worldwide scenario with future perspectives

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## ABSTRACT

*Plea bargaining or plea agreement in criminal jurisprudence is an agreement or bargaining between prosecution and defendant. The defendant gives off his right to free trial and pleads guilty. It leaves both the parties better off. In simple term in a criminal case, plea bargaining is an agreement between prosecution and defendant on the basis of concession from prosecution. The plea bargaining mainly is of two types i.e. sentence bargaining and charge bargaining. In sentence bargaining, the defendant pleads guilty to a lesser sentence than prescribed. But in charge bargaining defendant pleads guilty to a lesser charge framed on him. Two other types of bargaining are there in use i.e. fact bargaining and count bargaining. In former, the bargaining is about the facts of the case. Defendant pleads guilty on condition that some facts which incriminate him are to be deleted in the trial. But in later, the bargaining is about the head or count of charge. It is beneficial that it helps to reduce the burden on trial courts, save exchequers money, fasten judicial system and provide arid from the lengthy judicial processes. The major flaw which is involved & inherent in plea bargaining is that it is used against poor and innocents. The current review provides a detailed information about the pros and cons of plea bargaining and the steps which have to be included in the current justice system to make the improvement.*

**Keywords:** Malimath committee, Unfair trials, National accountability ordinance, VOCA, Coercive bargain, Aaron swartz

## 1. INTRODUCTION

According to Merriam Webster dictionary plea bargaining is the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge or sentence<sup>1</sup>. The defendant or accused will plead guilty for a lesser offense or to any one of several charges in return of dismissal of other charges or less severe punishment.<sup>2</sup> To avoid a lengthy criminal trial the persons/ parties involved in dispute settle their matter out of the court under the strict supervision of judicial authorities. It is a common practice in US and approximately 90% of the cases are settled by plea bargaining<sup>3</sup>. Due to lack of justice system in the old era, the concept of plea bargaining was well practiced in resolving the disputes. The benefit of plea bargaining is beyond the barriers of pending cases and high expenditure of trial. The other benefits include, saving of exchequers money, defendant can look forward to his future, maximum conviction rate, guilty are less likely to be acquitted, constant of uncertainty is low, the win for prosecution is guaranteed, relief to moribund state of trial courts due to pending cases and lastly the justice system breaths. Other benefits are getting the matter over quickly, the defendant has less serious and less socially stigmatizing offence in his record and it also avoids unnecessary hassles.

### 1.1. Early history

The most of the history of plea bargaining was not quite common to the common law System<sup>4</sup>. But Law in action may have been different from Law in Books. The various record bureaus who keep raw data about criminal courts is only recent developments and we can draw a sketch only from the history of plea bargaining<sup>4</sup>. It is evident from the history that money was paid to the victims to get rid of trial by accused<sup>5</sup>. In the United States, plea bargaining started to come in the picture at the end of 19<sup>th</sup> century and beginning of 20<sup>th</sup> century when reporters, jailers, politicians started to influence the criminal justice system even after protest from various quarters<sup>6</sup>. The process was aided by the expansion of Criminal law like Liquor Prohibition Statutes in America as courts were burdened suddenly with cases related to liquor Prohibition<sup>7</sup>.

In ancient legal systems, convictions were secured by confession and laws were present to shield such criminal confessions, although by the 18<sup>th</sup> century forceful confession had been forbidden in English Law to prevent the miscarriage of justice. Accordingly, early US plea bargain history led to courts permitting withdrawal of pleas and rejection of plea bargains, although such arrangements continued to happen behind the scene. Plea bargaining was not present in colonial America. Codification, statutes, law journals and books, lawyers, and prosecutors were very few. Most judges were untrained with no or little knowledge of the law. Victims used to make their own cases. Trials were brief, and people were known of each other. By the 19<sup>th</sup> century, however, the advanced criminal justice system came into existence. More lawyers, jurist, legal experts emerged and defendant started to hire the more competent

legal professionals for their cases. Courts also became advanced and more formal rules of procedures and evidence started to appear. Trials stretched from days to months and then years. Pendency and arrears of trial cases started to come up, which gave judges an incentive to start accepting pleas<sup>8</sup>. In the early 20<sup>th</sup> century, due to overwhelming of the cases and the improvement of criminal law system plea bargaining gained momentum.<sup>9</sup> Due to Prohibition Act which terminated in 1930, number of federal prosecution cases had become nearly eight times as many as the total number of all pending federal prosecutions in 1914. In a number of urban districts, the enforcement agencies maintain that the only practicable way of meeting this situation with the existing machinery of the federal courts is for the United States Attorneys to make bargains with defendants or their counsel whereby defendants plead guilty to minor offenses and escape with light penalties.<sup>10</sup> However, even though over 90% of convictions were based upon plea bargaining by 1930, courts remained reluctant for some time to endorse these when appealed.

The right to a trial by jury was considered a central part of the justice system in the early days of the United States. The Seventh Amendment of the Bill of Rights codified it as an essential part of Americans civil liberties. When criminals were caught and charged, the government went through a trial and verdict. But in the 1800s, a trend towards plea bargaining began. In Alameda County, from 1880 to 1910, nearly 10 percent of all defendants changed their "not guilty" pleas to "guilty of lesser charges" or pled guilty to reduced charges<sup>11</sup>. Plea Bargaining in India was introduced much later in 21st Century after the 154<sup>th</sup> Report of the Law Commission which recommended the introduction of 'plea bargaining' as an alternative method to deal with huge arrears of criminal cases<sup>12</sup>. The major recommendations of law commission were as such:-

1. The concept of plea bargaining be made applicable on an experimental basis for those crimes in which punishment is less than 7 years.
2. It should not be for habitual offenders and socioeconomic offences.
3. The process of plea bargaining should be started only after issuing of the process by the court.
4. It should be also applicable in offence having the minimum punishment (where minimum punishment is mandatory). By bargaining, the punishment can be settled to half of the mandatory minimum punishment prescribed in the provision of law.

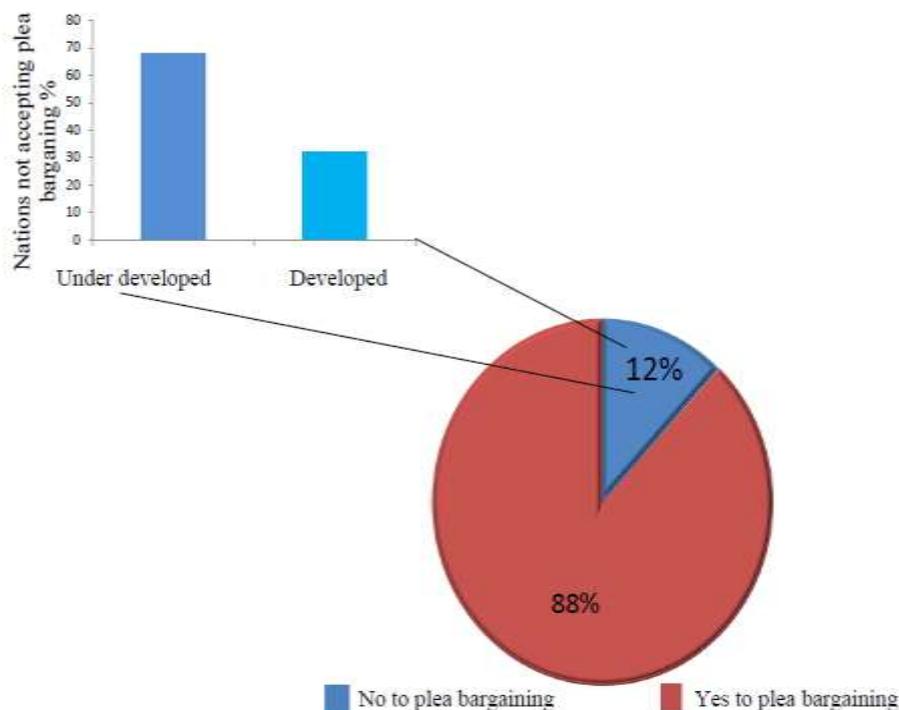
These recommendations of the Law Committee finally found a support in Malimath Committee Report<sup>13</sup>. The Indian government had formed a committee, headed by the former Chief Justice of the Karnataka and Kerala (India) High Courts, Justice V.S. Malimath to come up with some suggestions to tackle the ever-growing number of criminal cases. In its report, the Malimath Committee recommended that a system of plea bargaining be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts. To strengthen its case, the Malimath Committee also pointed out the success of plea bargaining system in USA. Accordingly, the Draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament<sup>14</sup>. By this amendment, a new chapter 21A was added having section from 265A to 265L to compile the concept of plea bargaining in Indian Criminal Justice System<sup>15</sup>.

### **1.2. Major Flaws in Plea Bargaining:**

Innocents may plead guilty due to fear of long process and conviction by forged evidence against him. There is a high probability of coercion, threat or undue influence which pressurize the defendant. Due to plea bargaining there remains a lenient approach towards accused, so there are high chances of anger in victims and the general public. Moreover when the end result is known of a case due to bargaining, it encourages poor investigation and defense. Rich will buy justice at their doorstep and will take undue advantage. It is forced conviction and is against the free trial concept of criminal jurisprudence. Defense lawyers are always hesitant to bargain vigorously with the prosecutor as he needs the help of later in future cases. The bargaining is not binding to court; it can reject the mutually settled bargain between parties to dispute. It is far from the concept of "Not Guilty" as the conviction is indispensable.

Now the developing countries including thickly populated nations like China, India, Indonesia, Pakistan, Bangladesh where the judicial infrastructure is not as developed as in USA or UK, it is difficult to compare the criminal justice system of these nations to the developed one. Outside of USA and specifically in poor countries plea bargaining is criticized due to involvement of coercion, threat, rewards or any other kind of undue influence which deteriorate the outcome of justice system.<sup>16</sup> Due to poor judicial infrastructure, over illiterate population, ignorance of law and delayed trial, the prosecution takes benefit of it against the poor defendant. Martin Yant explained that when charges are graver, the prosecution can easily bluff the defendant for pleading guilty to a lesser offence. Because of this accused who could have been acquitted due to lack of evidence or in fact who were innocent also plead guilty out of fear<sup>17</sup>. The prosecution seems to apply every charge possible to bargain in a better manner at a later stage. Now, this is the responsibility of defense attorney to protect their client from improper charges.<sup>18</sup> expecting qualified attorney to every defendant in such countries where legal education is restricted to a particular section and that too is sacrificed to commercialization, will be a futile exercise. So the accused who are innocent until proved guilty in criminal jurisprudence become a fodder for prosecution in the name of plea bargaining due to no availability of competent lawyer. John H. Langbein compares the modern and most advanced plea bargaining system of America to medieval European system of torture. As per Professor Langbein, there is a difference between having your limbs crushed if you do not confess, or putting you for some extra years behind the bar, but the difference is of degree not kind. European medieval system has taken the form of a procedural system that engages in condemnation without adjudication and we call it now plea bargaining.<sup>19</sup> When American system which is most regulated can be compared to medieval torture then we can easily assume the situation in third world countries.

The inherent weakness exists in this system and it cost more to innocent and poor. Due of this, still it is forbidden in many countries. As per 'The Disappearing Trial' some 24 nations who have considerable recognized and civilized judicial system, has refused to introduce not only plea bargaining but also another form of alternative dispute redressal system reason being a fair trial is hampered. Angola, Mongolia, Morocco, Mozambique Myanmar, Namibia, Portugal, Qatar, Bahrain, Belgium, Japan, Liechtenstein, Madagascar, Sweden, Thailand, UAE, Vietnam, Ethiopia, Ghana, Saudi Arab, Greece, Congo and certainly a few more have forbidden this concept in their justice system<sup>20</sup>.



**Figure 1: Most of nations who have not accepted plea bargaining are poor/underdeveloped**

From the Figure 1 it is clear that about 88% of nations have accepted plea bargaining or any other form of alternative dispute redressal system. It is important that in remaining 12% nations 68% are poor and underdeveloped. So it can be concluded easily that in underdeveloped nations some sort of fear still exists about its regulation.

## 2. THE SCOPE OF IMPLICATION OF INNOCENTS AND INDIGENTS

We start with a research done by Professor Andrew Chongseh Kim, working over 200,000 federal cases. It showed that those defendants who faced trial received sentences which were 64% longer than who pleaded guilty. Kim research indicated that 97% of federal defendants receive these "discounts" for pleading guilty. Dean Strang, argues that this has become a scheme to punish those who dare to go for trial rather than pleading guilty.<sup>21</sup> In the case study of Professor Kim, it is very clear that those who decide to face trial are discouraged in the form of a lengthy term of imprisonment. Now ultimate effect will be that those who are either innocent or poor will rather opt for pleading guilty to avoid the lengthy imprisonment. The fear is, of course, two-fold in the form of long trial and long sentence after trial. This force even innocent to plead guilty. These are the cases of the most developed nation. In countries like India and China where the cases are pending in large numbers, the trial takes a long time (sometimes more than the quantum of sentence prescribed in law), then the accused can be more inclined to plead guilty even when he is innocent. Similarly in the UK also where the variation of penalty between a defendants who pleaded guilty and who did not is so high that it encourages innocent and poor also to go for plea bargaining, which is bad in law. It will be better to look at a report of Independent, a daily of UK<sup>22</sup>. In United Kingdom, legislation has made that the criminal will pay to upkeep the courts. Important thing is that the charge levied is not as per the seriousness of crime rather it is fixed on the basis that whether the defendant pleaded guilty or not. In the magistrate court, it is fixed at 150 pounds for those who plead guilty but shockingly 1000 pounds for those who do not plead guilty. It is sufficient to presume that how much pressure remains of pleading guilty on those defendants who do not plead guilty. The matter of concern is that now most countries where judicial infrastructure and other socioeconomic conditions are different from the US altogether are adopting US styled plea bargaining. The study of 90 countries by the human rights organization 'Fair Trials' reveals that use of such procedures has increased by 300% since 1990, boosting, it is alleged, the risk of miscarriages of justice. As per Fair Trials report<sup>23</sup> there can be some merit in plea bargaining such as waiting times, pre-trial detention, costs are reduced and vulnerable victims are protected from their ordeals – but it argues there should be more safeguards such as mandatory access to lawyers. Even juvenile are forced to plea bargaining who have little understanding of it. The plea bargaining in the juvenile justice system has always been controversial.<sup>24</sup> Furthermore, the innocent also gets trapped to prosecution attorney as they put hefty charges on defendant.<sup>25</sup> Those accused who plead guilty are charged less than those who do not because in former there is no trial so not much toil and efforts required by attorneys. The late Harvard Law School professor William Stuntz explained in his landmark book, *The Collapse of American Criminal Justice*<sup>26</sup>, the sheer number of laws on the books makes it possible for prosecutors to charge people with so many crimes that the risk of going to trial and being convicted of all of them—as opposed to copping to just one or two—carries an unfathomable penalty. When a defendant has little chance of acquittal then his pleading to guilt is also a kind of planned bargaining. Moreover, the interest of defence lawyer is intertwined with prosecution attorney and the former hesitate to bargain with the later as defence lawyer needs the help of prosecution lawyer in subsequent cases also.<sup>27</sup> So this kind of coalition hampers the interest of the defendant. Plea bargaining helps in a quick decision but it is not all good news. Facing a trial, getting a sentence and hiring a lawyer for plea bargaining put a higher cost on poor than on rich. Poor and uneducated are more likely to be threatened by prosecutor.<sup>28</sup> The defendant has to give off many of his rights like the right of fair trial, right not to plead guilty, the privilege against self-incrimination, right to testify favorable witness. He lost the right to challenge the conviction or appeal against conviction. Plea bargaining favour everyone but the poor defendant.<sup>29</sup>

A study by Dervan and Edkins (2013) did research on real-life situation. Subjects were of two types, one who was really guilty and others who were innocent (who privately knew it). Results as from court statics were shocking as 90% of those who were actually guilty opted for plea bargaining but 56% those who were innocent they too pleaded guilty.<sup>30</sup> And this is the real concern for proponents of this concept. Supreme Court (USA) Justice Anthony Kennedy acknowledged this reality in 2012, writing for the majority in *Missouri v. Frye*<sup>31</sup>, a case that helped establish the right to competent counsel for defendants who are offered a plea bargain. Quoting a law-review article, Kennedy wrote, "Horse trading (between prosecutor and defense counsel) determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system."

### 3. SCOPE OF COERCIVE AND INVOLUNTARY CONSENT

Plea bargaining is inherently coercive in nature. And this coercion can be further divided as hard and soft coercion; Soft coercion mean convincing of the defendant in such a way that he will plead guilty which in normal circumstances he will not accept such offer. The convincing is done by keeping the all surrounding circumstances to the defendant. Examples of soft coercion are like his socioeconomic condition, future life, his sole responsibility of bread earning for family etc. In hard coercion the huge concession given to the defendant in punishment or sentence compel him to plead guilty. A long and difficult judicial process force the defendant to plead guilty<sup>32</sup>. The situation become more aggravate in developing nations where a load of pending cases is more and the final outcome of cases take decades. In presence of lengthy pre-trial delays and tiresome trials, plea-bargains may be entered upon the promise of its swift acceptance. This creates an undue level of pressure to plead guilty.<sup>33</sup> The police may use with the accused persons in the custody and pressurize them to apply for plea bargaining.

An example of hard coercion was recorded in the case of *North Carolina v. Alford*<sup>34</sup> where the accused was charged with murder the death penalty, famously said: "I am not guilty, yet I plead guilty". Here the fear of death penalty forces Alford to plead guilty. Justice William Brennan, in dissenting judgment said that the threat of capital punishment to induce Alford for pleading guilty was unconstitutional. He further added the plea should have been vacated and Alford should have been retired, writing: "the facts set out in the majority opinion demonstrate that Alford was so gripped by fear of the death penalty that his decision to plead guilty was not voluntary but was the product of duress as much so as choice reflecting physical constraint".<sup>35</sup> Figure 2 best illustrates how a defendant is reluctant to accept his guilt but circumstances forces him to do so.



**Figure 2: Fear of death penalty forces the defendant to plead guilty**

The prosecution use threats and other coercive ways to influence the defendant particularly when pieces of evidence in his hands are feeble.<sup>36</sup>

Similarly in a very famous case of *USA vs Aaron Swartz*, 1:11 Cr 10260 defense lawyer of Swartz explained that prosecution threatened for a sentence between 30-50 years if he opted for trial but it can be converted in to a sentence of mere 6 months if he went for plea bargaining.<sup>37</sup> This is a mechanism which forces the defendant to accept his guilt even if he feels that in trial he can prove his innocence. The above incident can be compared with the medieval European system of torture<sup>38</sup>. In that era, many people were convicted for crime which they did not commit. To resolve this menace the contemporary judicial system made it mandatory that anyone can be convicted only either in presence of two witness or confession. Though it was difficult to get an extra witness, the system started to torture the defendant to plead guilty. The Church decided to torture defendants until they confessed.

This form of coerciveness still exist in different ways and the reason is lack of judicial involvement in plea bargaining. In the federal system of America, most of the cases are decided out of court but they end as pleading guilty.<sup>39</sup> As these are decided out of court so the involvement of court is not equivalent to those cases which are gone to trial. This was confirmed in recent cases of *Lafler Vs Cooper*<sup>40</sup> and *Missouri Vs Fyre*<sup>41</sup> in 2012 where court emphasized that the role of courts should be enhanced practically.

The defendant does not have any choice left with him other than to plead guilty either this or that way<sup>42</sup>. This is best shown in Figure No 3.

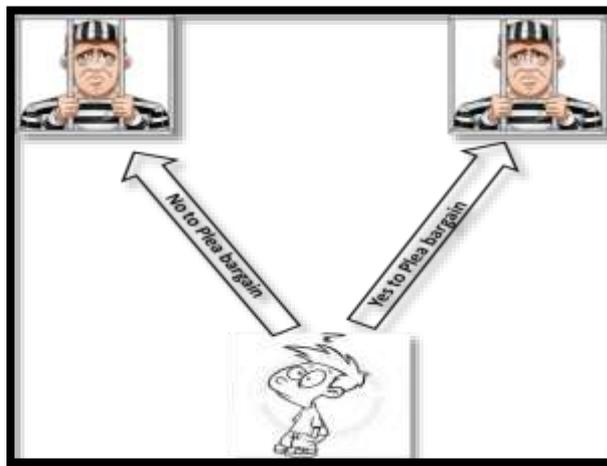


Figure 3: Defendant does not have any choice. Punishment is predetermined condition of plea bargaining

#### 4. THE PRESSURE OF PENDING CASES ON JUDGES FOR PLEA BARGAINING DIGRESSES FROM ITS CORE OBJECTIVE

In developing nations where there is a huge backlog of cases in courts the long time spent in the court itself is a kind of coercion. Take an example of India, the world largest democratic setup where people have more faith in the judiciary than any other branch. Table -1 talks about the load of pending cases on Indian courts.<sup>43</sup>

**Table-1: The ratio between numbers of judges to the pending cases is wide considerably**

S No	Item Name	Supreme Court	High Courts	Lower Courts
1	Backlog of Cases	60,000	38,91,076	2,30,79,723
2	Sanctioned post of judges	31	1079	21017
3	Currently posted	26	615	16,851
4	Deficiency of judges	5	464	4,166

(Source: 2010 Comparative litigation rate by J Mark Ramseyer & Eric B Rasmusen of Harvard Law School.)

The burden is as much on Indian court that TS Thakur J, Chief justice of Indian Apex court expressed his frustration that the entire US Supreme Court nine judges sitting together decides 81 cases in a year but an Indian judge, a Munsif or a Supreme Court judge – decides 2,600 cases a year. This number shoots up despite the efforts taken by criminal courts to wipe out the pendency, under guidance and strict directions of the High Court from time to time, K Hema J pointed out.<sup>44</sup>

Now objective of 2005 amendment in criminal procedure of code by introducing plea bargaining under a new chapter of 21A (Sec 265A-L) was to reduce a load of pending cases.<sup>45</sup> Now this put an implied pressure on judges to achieve the objective of this new law. They encourage more plea bargaining and lose the stricter supervision about nature of the crime, the process to be followed and free consent from the defendant. An example of this pressure can be perceived merely by National Crime Record Bureau 2014 report<sup>46</sup> and a report supporting it in an Indian daily.<sup>47</sup> (See Table-2)

**Table-2: Heinous offences also have been decided by plea bargaining even when these are prohibited expressly in legislation**

Total Cases decided by plea bargaining:		35,000
Crime against women		3584
Murder		27
Rape		40
Attempt to murder		55
Robbery		27

Table 2 shows that the crimes against women and heinous crime like murder, attempt to murder, robbery, and rape which are expressly prohibited to be decided by plea bargaining in Indian law<sup>48</sup>, have been decided by plea bargaining. As a result of over flooded cases pressure is mounted on judges and heinous cases are decided by plea bargaining. This not only Indian story, in South Africa most prisons are overcrowded, some are having three times more prisoner than the authenticated strength and it pressurizes the courts to act swiftly which eventually hamper the free legal proceedings.<sup>49</sup>

#### 5. RAMPANT CORRUPTION FAILS PLEA BARGAINING

It is a well-known fact that honesty makes any system to run smoothly. But when the society at large including the Government or Non-Government officials are corrupt, it is difficult to run any system in any part of the world. Before discussing the effect of corruption on plea bargaining let see the corruption level in some of the populous nations. A report on corruption under head of Corruption Perception Index(CPI) by Transparency International<sup>50</sup> enlist China, India and Brazil at 79<sup>th</sup> composite rank out of 176 countries followed by Indonesia at 90, Pakistan at 116, Russia at 131 and Bangladesh at 145.<sup>51</sup> In India as per this report the government officials followed by police are highest bribe requester.

Prosecutors and police each have their own independent powers and yet they are also dependent on one another. Police and prosecution also have their different interests in a case. Police officer if has done bad arrest then it can be converted to bad conviction.<sup>52</sup>

Moreover, a police officer who arrests an accused either with vested interests or honestly by putting hard efforts will not let him free by plea bargaining. A good example of the nexus between the defendant and prosecuting agencies including police is seen in Pakistan. The plea bargaining was introduced by National Accountability Ordinances in 1999 but it was limited only up to corruption cases. According to this provision, the accused applies for it, confess his guilt and offers to return the gains of corruption as decided by prosecutors.<sup>53</sup> National Accountability Bureau (NAB) who is accountable for recovering the looted money by corrupt officials via plea bargaining is yet to recover 10 billion rupees from 108 such people from whom an amount of more than 18 billion was agreed upon by plea bargaining. Due to incompetency, inability, and corruption of NAB officials the agreed amount is not recovered and provision of plea bargaining is questioned as a whole. From 2006 to 2016 According to the NAB data, total alleged amount during the subject period is Rs 41.07 billion; however, after the evaluation, an amount Rs 28.03 billion has been determined. At the second stage when the evaluation is done between the determined and agreed amount, yet another big difference was noted. Out of Rs 28.03 billion amount determined to have been embezzled, the NAB chose to agree on the return of Rs18.71 billion thus writing off Rs 9.31 billion.<sup>54</sup> The apex court of Pakistan also commented that this scheme of plea bargaining against corrupt official itself is boosting corruption as reported by a Pakistan daily.<sup>55</sup> Always there is perception against police generally in south Asia that police use wrongful means to force the defendant to plead guilty. It is very easy for them to torture the accused for their own interest. Involving the police in plea bargaining process would invite coercion. Police use illegal and corrupt means to convince the defendant to choose plea bargaining in spite of trial.<sup>56</sup>

## **6. THE VICTIM IS VICTIMIZED**

Though the role of victim in criminal justice system always remains secondary. But through various acts, legislation, and conventions at the national or international level, the efforts have been made to recognize the significance of victim. A few of such legislation are:

- 1.) Victims of Crime Act (VOCA) was passed in the USA in 1984 in which provisions were made to help the victims from the fines paid in federal criminal case.
- 2.) The General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime in 1985. This declaration mandates the prosecutors to give relevant and significant information to victims about various aspects of the criminal trial procedures – including plea bargains and sentencing.<sup>57</sup> The European Union issued a Framework Decision in March 2001 talking about the rights of victims in the member states to get information concerning the prosecution of their cases.
- 3.) In the United Kingdom, a Victims Charter has been made to address the need for the Crown to provide the victims with all information about the progress of their case.
- 4.) Again in 1990 Rights and Protection of Victim Act was passed in the USA. All 50 of the states have enacted victims' rights legislation and the federal Congress has kept pace with the state legislatures with Victims of Crime Research Series, Research and Statistics Division. One of the main features of this act was to keep the victim known to all the progress of his case.<sup>58</sup>
- 5.) In India, also amendments are made in their code of criminal procedure under section 357 to provide the compensation for certain kind of crimes.

Even after passing of so many legislation by different countries, the victim is ignored at a level of the bargain. In adversarial system, the judge is mute spectator and victim hardly play any direct role in the trial as his case is seen by the public prosecutor. A report published in an Australian daily reveals that defendants accused of violent crimes are negotiating for a lesser offence without appropriate consultation to the victim.<sup>59</sup> It quoted a Solicitor claim of having great pressure on crown prosecutor and judge to ensure cases are resolved quickly yet this expediency is often at the cost of victims.<sup>59</sup>

Under the 1984 Victims of Crime Act (VOCA) also access to the funds every year is tightly limited and approval of Congress is needed.<sup>60</sup> Thus the situation on ground and on legislation books is different altogether.

In India where the success and failure of plea bargaining is hotly debated, the definition of Victim was introduced in 2009 for first time.<sup>61</sup> As per Indian criminal law ["victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "Victim" includes his or her guardian or their legal heirs].<sup>62</sup> Such a late entry in the criminal code shows the insignificance of the victim in the justice system. The victim may get the benefit of plea bargaining but not all victims are happy to see their cases bargained away. Many victims are reluctant when defendants are allowed to enter plea bargains. They feel that their injury is not respected well and are further victimized by court process by getting the defendant off easily.<sup>63</sup> Similarly, in Pakistan the plea bargaining is for corruption cases, as mentioned above the victim is state and state is at a loss when the negotiated amount is not recovered even after accepting the plea bargain on a certain mutually fixed amount with the defendant. Krishna Iyer J. speaking for Apex court of India in Murlidhar Meghraj Loya Vs State of Maharashtra<sup>64</sup>

"...call plea bargaining, plea negotiation, trading out and compromise in criminal cases, and the trial magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The businessman culprit, confronted by a sure prospect of the agony and ignominy of the tendency of a prison cell, 'trade out' of the situation, the bargain being the plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society...."

The pain of justice Krishna Iyer was about the pain of victim to whom he called a distant fellow in criminal system. Some critics also believe that justice does not end as defendants are allowed to receive lesser sentence and that too without the real and free consent of victim.<sup>65</sup> The most important right of victim is participation in plea bargaining.<sup>66</sup> The Victim must have all information about the extent, level, time and place of bargaining between defendant and prosecution. But this right of the victim is insignificant as such trivial rights are already in place even for the common people when the law of land secure open courts for trial.

The victim has two kinds of interest: one is restitution and other is retribution. For restitution, he needs suitable compensation and for retribution, he must be satisfied that comparatively good amount of sentence is given.<sup>67</sup> But in developing nations like India, Pakistan, Indonesia such satisfaction to the victim are hardly met. The important thing is that no state has given the right to the

victim to fully control the plea bargaining.<sup>68</sup> Real involvement of victim is now needed to make the plea bargaining a victim friendly procedure.

As suggested by Professor George P Fletcher most intelligent option is the model that requires plea bargaining to be officially recognized by the parliament.; This is to be made mandatory for the prosecutors to consult with victims during the plea bargaining process; and that, while victims should not be accorded a right of veto, they should nevertheless be granted the right to make oral or written presentations to the trial judge concerning their opinions about the terms, and ultimate acceptability, of any proposed plea agreement. A significant role of victim in plea bargaining and veto power to the victim in every plea bargain is advised.<sup>69</sup>

## 7. ILLITERACY ABOUT PLEA BARGAINING

Many African, East & South Asian nations where the literacy rate is even less than 50 percent then expecting the success of plea bargaining is like barking on a wrong tree. The data of literacy rate in all world are dismal. The situation becomes graver when we talk about quality education.

We had conducted a research survey in Delhi, the Capital of India whose literacy rate as per 2011 Population census is 86.21 percent.<sup>70</sup> The sample size was 550 as per the table 3. Three standard questions were asked to sample.

1\*. Do you know what is Plea Bargaining? [The Question was made to understand to all in their language of understanding to minimize the margin of error.]

2#. How you heard about Plea Bargaining?

3#. Is the Plea Bargaining a good Concept to follow in India by which the bargaining for charge or sentence is done between Prosecution and defendant?

**Table 3: The result of survey in tabulated form**

S. No	Nomenclature of Sample	Size of Sample	Response of Question No 1*	Response of Question No 2#	Response of Question No 3 <sup>s</sup>
1	Law Students of Delhi University	100	Yes-94 No-06	In Class Room	Good-71 Bad-23
2	Police Officers	100	Yes-26 No-74	In Court Room	Good-26 Bad-Nil
3	Street Vendors	100	Yes-Nil No-100	Never	Don't Know
4	Students of Delhi University other than Law Faculty	100	Yes-12 No-88	Newspapers and journals	Good-7 Bad-5
5	Under trial prisoners	50	Yes-24 No-26	From Police and court	Good-19 Bad-5

Now from the data collected as shown in Table 3, ignorance about plea bargaining is clearly visible. Important point is that 96 percent of Police officials who really works on the ground and are the main part of an investigation of any crime are ignorant of plea bargaining. The six percent of law students are unaware of plea bargaining. The law students are the budding lawyers and their ignorance itself tells the fate of plea bargaining. Similarly, knowledge of street vendors (taken as civilian population) and non-law students about this concept is zero and 12 percent respectively. The under trials unexpectedly have more knowledge about bargaining system. As per research, 48 percent knows about this, but important thing is that out of these 48 percent approximate 88 percent say that plea bargaining is a good concept. The point which is worth to note is that still 52 percent of under trials are ignorant of plea bargaining concept and these people become an easy fodder for prosecution. One more point to note is that those police officials who are aware of plea bargaining, their approval towards this concept is 100 percent. The reason behind it is that police officials get upper hand while dealing the plea bargaining and they can settle their vested interests. So it can be concluded from this exercise that in a country like India where ignorance about the law in general and plea bargaining, in particular, exists then its successful implementation is questioned.

Most Indians will find this a bitter pill to swallow but they are the most ignorant people in the world and that too about our own country. This is the finding of the 2016 Ipsos MORI Perils of Perception survey<sup>71</sup> India, which was the second most ignorant country in 2015 after Mexico, has now surpassed the latter to make it to the dubious top-spot in 2016.

## 8. COURSE CORRECTION

Without any doubt, plea bargaining has brought revolutionary changes in the modern criminal justice system through the world. It has reduced a considerable load of pending cases on trial courts. But as pointed out in this paper this concept is either new to some countries or has inherent loopholes which need to be rectified. First of all, a full proof system is need of the hour in which innocents and poor do not become prey. Trying courts can play a significant role in making this system more suitable to such class of defendants. If the role of the court is made mandatory in every step starting from permission via voluntary consent to the confirmation of punishment by plea bargaining, then up to some extent the defendant may feel secure himself. Any kind of coercion by investigating agencies or prosecution on the defendant should be properly and actually probed into. And for this, a mechanism within the statute of plea bargaining is to be made. The custody of defendant should not be given to police as a general rule unless there is a true requirement of it. The pros and cons of plea bargaining should be made to understand to defendants in their language.

The victim should be taken care of properly. If not the veto power, but at least the say of victim must carry a fair amount of value while deciding the case by plea bargaining. The objections of the victim should be entertained by the court. If the victim wants the case to be decided by the fair trial citing gravity of crime and injury suffered by him, the court should look into the substance put forward by the victim in support of his request. The victim should be permitted to have a lawyer of his choice other than public prosecutor to put his point of view specifically.

In order to reduce a load of pending cases the alternative dispute resolution other than plea bargaining should also be developed. Compounding of offence, Local and small courts competent to solve the dispute through arbitration and mutual agreement should also be encouraged. The court should strictly monitor that no such offence which is strictly and expressly precluded by the act be allowed to be decided by plea bargaining. Even if both the parties to a dispute are agreed to plea bargaining, it should not be permitted for heinous crimes.

## 9. CONCLUSION

After the success of plea bargaining in the USA, many nations tried this practice in their criminal justice system either this way or that way. Though it is a very good mechanism to speed up the justice system, it is not leak proof. Corruption, vested interest of police, prosecution, defendants etc play a major role in plea bargaining. Different kind of force and compulsion are employed on the defendant to convince him for plea bargaining. Similarly, habitual offenders take this system for granted. The plea bargaining concept is very nice in the book but it is different when implemented on the ground. It gives benefit to large numbers of defendants and also saves money of exchequer but every person is not happy and satisfied with this concept. We need to find the loopholes and leakage and fixing of them must be started at grass root level.

## 10. ACKNOWLEDGEMENT

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