

Application and Effectiveness of Alternative Dispute Resolution Mechanisms in the Indian Criminal Justice System

Abhishek Singh

Abstract—Ensuring a prompt legal process is a fundamental necessity of India's Criminal Justice framework, as any postponement can result in a denial of fairness. The entitlement to a rapid trial is embedded in Part III of the Constitution and is extended to everyone. Obstacles like inadequate courtroom capacity, the cumbersome litigation procedure, and the substantial expenses of legal actions have facilitated the emergence of alternative conflict resolution (ACR) techniques. The primary goal of introducing ACR methods in criminal instances is to provide an economical and easily accessible resolution, particularly for individuals accused of minor wrongdoings, all while safeguarding them from the protracted postponements associated with extensive trials. Consequently, the focus on ACR within India's Criminal Justice System endeavors to present a comprehensive grasp of the notion of plea bargaining and its evaluation.

In India, the Code of Criminal Procedure does include stipulations enabling an accused individual to acknowledge 'guilt' rather than demanding a full-scale trial, though this differs from plea negotiation. The notion of Plea Bargaining, obtained from the US Constitution, has proven to be a very effective plan in evading prolonged and intricate legal proceedings. It involves preliminary discussions between the accused and the prosecutor, covering matters related to accusations and potential penalties.

Hence, this paper explores the constitutional components of expediting trials, the assimilation of ACR within India's Criminal Justice System, India's perspective on Plea Bargaining, the merits and demerits of the Plea-Bargaining system in India, and a comparative evaluation of Plea Bargaining between the United States and India.

Index Terms— Prompt legal process, Fundamental Necessity, India's Criminal Justice Framework, Postponement, Denial of fairness, Rapid trial

I. INTRODUCTION

The foundation of any civilized society hinges upon the concept of justice. Throughout generations, mankind has tirelessly pursued the ideal of justice. Protecting individual rights within a political society means protecting the innocent, punishing the guilty, and amicably settling conflicts. These actions are all part of the administration of justice. It is common knowledge that an efficient legal system guarantees that decisions are made quickly in addition to providing fair results.

However, in India, the existing court infrastructure is insufficient to handle the growing caseload in a fair time frame. In spite of the judiciary's continued efforts, regular people may find themselves involved in litigation for the rest of their lives. In some cases, these legal fights even affect the following generation, draining their resources and driving them into poverty.

A swift trial is the main goal of the criminal justice system since it may be undermined by postponements in the administration of justice. Speedy trials are considered vital to a civilized society, and while it is advisable to resolve cases promptly, it is equally crucial not to overlook the fundamental principles that ensure justice. As the saying goes, 'justice hurried, justice buried.'

Justice in society is to be promoted via the Right to a Speedy Trial. As society is concerned about offenders receiving proper punishment in a timely manner while the innocent should be spared the unwarranted burden of drawn-out legal processes, swift justice is a crucial element of social justice. ADR (Alternative Dispute Resolution) has emerged as a result of the weakness of the legal system, the lengthy litigation process, and the high expense of litigation.

ADR encompasses the resolution of disputes outside the courtroom through methods such as conciliation, mediation, arbitration, Lok Adalat, and negotiations, facilitated by impartial third parties. ADR techniques are extrajudicial and can be applied to various types of disputes, including civil, commercial, industrial, as well as family matters. The primary goal of ADR is to give prompt and cost-efficient relief to parties involved in disputes. The current system often fails to deliver such swift and affordable solutions, as it is overly complex. As a result, there is a quest for a substitute system that is affordable, quick, private and enhances the traditional court system. ADR promotes amicable settlements, preserving relationships through reasonable compromise, without sacrificing justice.

ADR helps in resolving numerous issues that the formal court process presents. The Malimath Committee examined the judicial system to solve the backlog of litigation in Indian courts. To accelerate case resolution, lessen the burden on the courts, and guarantee that justice is available to every citizen at the lowest possible time and expense, the Committee recommended in its report that Plea Bargaining be implemented in the Indian Criminal Justice System. Therefore, the Criminal Law (Amendment) Act, 2005 introduced "plea bargaining" in India and other ADR mechanisms to the criminal justice system.....

II. Research Problem

While Alternative Dispute Resolution (ADR) offers clear advantages, its potential remains largely untapped. It is crucial to investigate the underlying reasons for this phenomenon and address the question of whether ADR is limited to minor criminal offenses and unsuitable for more serious crimes. Moreover, within the context of Plea Bargaining, there is a major risk that individuals, even if innocent, may plead guilty in exchange for leniency offered through plea bargaining. Accepting guilt should not be exclusively focused on lessening the severity of the offense, even if a lighter punishment may be a consideration taken into account in sentencing following a standard trial. The norms of a fair trial may be in conflict with the significant possibility of corruption and coercion by investigating authorities. Therefore, it is imperative to assess the effectiveness of applying Plea Bargaining in the Indian context. Consequently, this study is focused on the utilization of ADR mechanisms in criminal cases within India. In order to understand the judiciary's position on the notion of plea bargaining in criminal prosecutions in India, the research also examines important legal precedents.

Study Objectives:

1. Investigate and comprehend the fundamental right to a prompt trial within the Indian context.
2. Examine the historical development of ADR in the realm of Criminal Jurisprudence and assess its importance in criminal cases.
3. Gain insights into the judicial endeavours aimed at expediting trials through notable legal precedents.
4. Analyse the concept of Plea Bargaining and its different forms, drawing from significant legal rulings.

III. Research Methodology

This study employs a doctrinal research approach, which combines analysis with deductive reasoning. It draws upon a range of primary and secondary sources to fulfil its research objectives. The research extensively relies on articles and journals from both domestic as well as international sources. This paper represents the culmination of rigorous research, carefully aligned with the study's scope and objectives.

The Indian Constitution is founded on the principle of promoting the welfare as well as the well-being of its citizens. It mandates that the state must ensure justice for those who seek it, whether through judicial or non-judicial means of dispute resolution, with a focus on providing timely as well as efficient justice and upholding fundamental rights for all the individuals in the state. The main purpose of ADR was to address the growing burden on the courts, and it emerged as an initiative led by both the legislative and judicial branches to align with the 'Constitutional goal' of achieving justice. The state's commitment to ensuring social, economic, as well as political justice for every citizen is emphasized in the Preamble of the Indian Constitution.

Article 14 emphasizes that all parties interested in legal procedures should have equal access to the court and the chance to submit their claims. It also assures equality before the law along with equal protection of the laws. However, for those who cannot meet the financial requirements, particularly the indigent, access to justice remains a distant prospect due to their inability to cover court fees and lawyer

expenses. Therefore, expediting trials becomes essential, as it helps them cope with case delays and proves to be cost-effective.

Article 21, through a broader interpretation, establishes speedy justice as a fundamental right within the scope of this article. The State of Bihar acknowledged the right to a quick trial as an implied basic right under Article 21 of the Indian Constitution in the Hussainara Khatoun versus Home Secretary case. Due to the court's ruling, more people now have access to bail, living circumstances have improved, and the period between being arrested and going to trial has been significantly shortened. It was further highlighted that contrary to what was previously believed in the Maneka Gandhi case, any system that does not provide an affordable and speedy trial cannot be deemed reasonable, fair, or equitable.

Article 38(1) places an obligation on the state, as outlined in the preamble, to ensure social, economic, as well as political justice for every citizen. This constitutional mandate makes the pursuit of speedy justice inevitable.

According to Article 39A, the state must ensure that the legal system advances justice and that no person is prevented from doing so because of their financial condition or other barriers. In interpreting this clause, the Supreme Court highlighted that 'legal justice' includes social justice in the matter of L Babu Ram versus Raghunathji Maharaj and others. This indicates that, regardless of their social or economic level or financial resources, the administration of justice should provide a quick, affordable, as well as effective system for attaining justice for all parts of society.

Plea Bargaining:

In the Criminal Justice System, it has historically been the responsibility of the state to establish the defendant's guilt of the accusations they are facing beyond a reasonable doubt. Plea bargaining, however, is an alternative strategy that involves pre-trial agreements between the prosecution and the accused. In this process, the accused admits to committing the offense by pleading guilty, often in exchange for a reduced punishment compared to what the law stipulates for the original offense. This practice is common in the United States and has proven successful in circumventing complex and protracted trials.

In the Brady versus U. S. case, plea bargaining was given constitutional legitimacy in the United States and was recognized as a voluntary procedure. The defendant has the option of accepting or rejecting the plea bargain offer made by the prosecutor.

In India, the notion of Plea Bargaining draws inspiration from the Doctrine of Nolo Contendere. This doctrine has been a subject of discussion in India, with considerations for its introduction and application in the Criminal Justice System. Plea bargaining has now been included in Indian law as a result of proposals made by many law commissioners. Its use in India takes into consideration the country's current social and economic circumstances.

Plea Bargaining and the 142nd Law Commission Report:

Despite continuous criticism from Indian courts regarding the implementation of Plea bargaining in India, the 142nd Law Commission report expressed support for this concept within the Indian Criminal Justice System. The research emphasized that the introduction of plea bargaining was encouraged by giving criminals who freely opted to enter guilty pleas favorable punishment without participating in negotiations.

The commission found that the maximum sentence an accused person could have received if found guilty was often exceeded by the time the person spent in prison awaiting trial. The committee's main goal was to shorten the time it took to resolve criminal cases. It explored the idea of plea bargaining while addressing issues, consequences, and objections voiced by the courts.

The report acknowledged drawbacks associated with the introduction of plea bargaining, such as the potential for an increase in crime rates, the unfavorable socio-economic conditions for plea bargaining, the possibility of criminals exploiting it to evade punishment, and the risk of increased corruption. To address these limitations, the committee suggested a system of plea bargaining in India that would ensure no direct contact between the accused and public prosecutors, minimizing the chances of corruption. Under this proposed system, the accused would have the freedom to apply to the court for plea bargaining procedures.

Constitutional Validity of Plea Bargaining:

Through the Criminal Law (Amendment) Bill, of 2003, the constitutional legality of integrating plea bargaining into India's criminal court system was first questioned. Although, due to opposition, these clauses were later resurrected with minor changes in the Criminal Law (Amendment) Bill of 2005. The Rajya Sabha and the Lok Sabha both approved the latter bill on 13th December 2005, and 22nd December 2005, respectively.

Over time, the acceptance of plea bargaining had a significant influence and developed into an essential part of Indian criminal law. The significance of plea bargaining was recognized by the court in the matter of the State of Gujarat versus Natwar Harchandji Thakor. It was made clear that, according to the law, not every 'plea of guilty' entails plea bargaining during a criminal prosecution. Plea bargaining should instead be evaluated on a case-by-case basis.

Moreover, the court noted that the essence of the law is to resolve disputes quickly without excessive damage, at a reasonable cost, and in a manner that is accessible to all. Consequently, the provisions related to plea bargaining were ultimately incorporated into the Code of Criminal Procedure, 1973, as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005 (Act 2 of 2006).

Types of Plea Bargaining:

Sentence Bargaining:

In this form of plea bargaining, the defendant consents to plead guilty to the specified charge in exchange for negotiating a reduced sentence. The individual pleading guilty is aware of the punishment they would receive for the committed offenses, and the plea bargain is aimed at reducing the initially prescribed severe sentence. When the accused is made aware in advance of the sentence reduction they would get after pleading guilty, sentence negotiating takes place. In this kind of negotiation, getting a sentence that is less severe than the one that was first given is the main goal.

Charge Bargaining:

When a person pleads guilty to a lower charge in exchange for the dismissal of more serious charges, this is the most frequent

kind of plea bargaining. In essence, the goal of this sort of bargaining is to avoid having accusations brought against one that are more severe.

Fact Bargaining:

It's worth noting that fact bargaining is not typically employed in court proceedings, as it is considered contrary to the principles of the Criminal Justice System. This form of bargaining occurs when the defendant agrees to stipulate some facts in exchange for the exclusion of other facts.

Judicial Pronouncements and Plea Bargaining:

The Indian Judiciary initially exhibited reluctance in fully embracing the concept introduced by the 2005 Amendment, often rejecting Plea bargaining despite multiple recommendations from the Law Commission of India.

In its early stages, the Indian courts criticized the applicability of Plea bargaining within the Indian context. The SC expressed reservations, stating that while negotiated settlements in criminal cases might work well in the United States, in our jurisdiction, they could potentially lead to dangerous economic crimes and corruption. According to the court, such a practice would be detrimental to society's interests since it would go against the judgments made by society, which are represented via predefined legislative minimum punishments, and covertly undercut the intent of the legislation. In a particular instance, the court rejected the notion of plea bargaining since it was seen to be against society's best interests.

Subsequent cases, such as *Kasambhai versus the State of Gujarat*, reiterated the unconstitutionality and illegality of plea bargaining, associating it with an increase in collusion, corruption, and a compromise of justice. The same stance was reaffirmed in *Kachhia Patel Shantilal Koderlal versus the State of Gujarat and Anr.*

Article 21 of the Indian Constitution prohibits lessening a punishment or allowing an accused to plead guilty under an agreement, as the court highlighted in *Thippaswamy versus the State of Karnataka*. Therefore, the court ruled that in certain cases, the appellate or revision court should overturn the verdict and sentence, remanding the case to the lower court so the defendant can determine whether to challenge the charges. If found guilty, the appropriate punishment may subsequently be given.

The state of *Uttar Pradesh versus Chandrika* further emphasized that the court can't dispose of criminal cases based solely on the idea of bargaining. The mere admission of guilt should not automatically result in a reduced sentence. Even if the accused makes a full confession, the fundamental concept of dispensing justice mandates that conviction and sentencing should be based only on the merits of the case.

The court acknowledged the benefits of plea bargaining in the *State of Gujarat versus Natwar Harchandji Thakor*, but it made it clear that not all 'pleas of guilty' made during the course of a criminal trial were to be regarded 'plea bargaining.' It is advised that substantial changes be made to clear the backlog of criminal cases, taking into account how the law and society are changing. The statute's principal purpose, as stated by the court, is to facilitate easy, affordable, and speedy resolution of disputes through arbitration.

Why is Plea Bargaining Primarily Used for Petty Offenses?

The court must make sure that those who have a history of recurrent criminal activity and are seen as potentially hazardous to society do not use plea bargaining. Plea bargaining's prime objective is to speed up the criminal justice system and lower the backlog of criminal cases in India. A significant restriction on the use of plea bargaining is imposed by Section 265-A, which states that a defendant charged with a crime punishable by more than 7 years in jail is not permitted to employ this procedure. As a result, plea bargaining is not an option for crimes against women, minors, or those who are socioeconomically motivated.

As a result of these exclusions, individuals charged with serious offenses do not have access to plea bargaining. In such a context, it is crucial to consider the recommendation presented in the 142nd Law Commission Report. The report suggests that the plea bargaining system should initially be introduced only for offenses carrying a maximum punishment of 7 years imprisonment. There is a chance that plea deals might be offered in other parts of the criminal court system if the scheme's feasibility and success are established.

The authorities and legislature should contemplate broadening the scope of plea bargaining to encompass offenses with punishments exceeding seven years. This expansion aligns with the key objectives of introducing the concept into Indian jurisprudence, relieving judges of the case burden, and expediting trials. Plea bargaining has not produced the expected effects, as has been highlighted. The main reasons for this include things like a lack of knowledge about the idea, strict eligibility requirements, and the absence of deadlines for case settlement.

Types of Disputes Incompatible with ADR:

In the matter of Afcons Infrastructure Ltd. versus Cherian Varkey Construction Co. (P) Ltd. & Others., the SC provided a comprehensive list of categories of cases that are not conducive to ADR. These categories include:

1. Cases mentioned under Order I, Rule 8 of the CPC (Civil Procedure Code), which pertain to matters involving the interests of the public or multiple individuals who are not parties before the court.
2. Those accused of crimes carrying terms of fewer than seven years or those facing allegations carrying the death penalty.
3. Disputes related to elections for public offices.
4. Cases of serious and heinous crimes committed against women and children under 14 years old.
5. Proceedings concerning the prosecution of criminal offenses.
6. Cases in which a person is accused of a crime related to the state's socioeconomic factors.

Is the Concept of Plea Bargaining Successful in India?

An innocent person may choose to enter a plea bargain for a crime they did not commit in a nation like India, where legal proceedings can drag on for years or even generations. In order to save time and money, people may admit to a crime they did not commit to settle the case quickly. This situation raises concerns that the fundamental legal principle of 'let a hundred guilty persons escape rather than one innocent suffer' could be compromised due to plea bargaining.

One of the significant disadvantages of plea bargaining, as highlighted in the 142nd Law Commission Report, is that it opens doors to corrupt practices. The primary objective of plea bargaining is to expedite justice in criminal cases, and

this is the responsibility of the court. There is no required time frame in which all parties must conclude the plea bargaining process. Furthermore, there is no deadline by which the court must report on whether talks between the accused, the prosecution, and the victim resulted in a conclusion that was accepted by all parties for the quick settlement of the case.

In certain situations, the court is free to take its time in putting up the report, which might cause delays in the criminal justice system. The prime goal of creating a quick criminal justice system in India is undermined by this delay. While the plea bargaining process has shown to be a workable and durable instrument of justice, urgent changes must now be made to the present system in India in order to improve it.

Factors Contributing to the Underutilization of ADR Mechanism in India

The ADR mechanism is underutilized in India despite its many benefits for a number of reasons:

1. **Limited Judicial Promotion:** While the SC of India has encouraged parties to consider pre-litigation mediation to resolve disputes before resorting to court proceedings, the effective use of ADR mechanisms has not been consistently promoted by judges. Section 89 of the Civil Procedure Code empowers courts to refer cases suitable for ADR, but judges have not consistently utilized this provision.
2. **Lack of Awareness:** Awareness among the general public, in both rural and urban settings, is low, which is a major barrier to ADR's full potential. However, many people are still skeptical of ADR because they believe justice cannot be served outside of a courtroom. Additionally, judges, lawyers, and litigants may also lack awareness about the effectiveness and advantages of mediation.
3. **Judicial Intervention:** Excessive judicial intervention in arbitral proceedings is a major drawback of the ADR mechanism. This intervention should be minimized to achieve the intended objectives of ADR.
4. **Shortage of Trained Practitioners:** India faces a shortage of trained practitioners in the field of ADR. There is no dedicated course or department that specifically trains individuals to effectively implement ADR mechanisms. Moreover, training should be integrated into the continuing education of judicial officers and judges, focusing on the unique aspects of ADR.

Addressing these challenges is crucial to unlocking the full potential of the ADR mechanism in India.

Comparison between USA and India in Plea Bargaining Enforceability:

- In the US, plea bargaining begins once the accused and the prosecution have reached an agreement.

- In India, the accused person makes the decision to enter into a plea bargaining procedure of his or her own will, without any prior negotiation.

Nature of Offences:

- In the USA, accused individuals charged with any offense may opt for Plea bargaining.

- In India, the use of plea bargaining is limited by the provisions of Section 265-A.

Role of the Victim in the Proceeding:

- Victims in the United States rarely take part in the Plea bargaining process.

- If the parties involved in a matter in India are unable to come to an agreement on how to resolve it, the victim has the right to decline any proposed resolution.

Discretionary Power of the Judge:

- Plea Bargaining is not a matter of judicial discretion in the United States.

- In India, judges have the authority to approve or reject a plea bargaining proposal made by the accused.

Final Judgment:

- In the USA, the punishment determined through Plea bargaining serves as the final judgment.

- The Indian court system allows for a reevaluation of a plea bargained sentence if it is judged to be excessive or affected by unjust conditions.

Pros of Plea Bargaining:

Charge Reduction: A significant advantage of plea bargaining is the reduction in the severity of charges, which benefits defendants by having a less serious offense on their record, potentially avoiding severe consequences.

Fewer Technicalities: Unlike traditional court proceedings governed by rigid procedural rules, ADR methods, like mediation or arbitration, offer a more flexible and less formal process. ADR prioritizes substantive justice over procedural technicalities, promoting efficient and accessible access to justice.

Confidentiality: ADR proceedings and awards are generally kept confidential. Even in cases of conciliation, the law often mandates confidentiality, making ADR an attractive option for parties seeking privacy in dispute resolution.

Reduces Judicial Caseload: Plea bargaining helps alleviate the caseload of the judiciary. By resolving less serious cases through ADR mechanisms, prosecutors can focus more on preparing for more significant and complex cases.

Cons of Plea Bargaining:

Discretionary Judge's Role: Judges in India are not required to uphold plea bargains. This discretion allows judges to reject plea bargains if they suspect malafide intentions, potentially undermining the agreement.

Potential for Leniency: Plea bargains may result in lighter sentences for guilty parties, which critics argue can lead to lenient outcomes and serve as an escape route for prosecutors.

Limits Appeals: Unlike cases that go to trial, plea bargains restrict the grounds for filing appeals, reducing the defendant's ability to challenge the verdict.

Risk of a Criminal Record for the Innocent: Innocent individuals might opt for plea bargains to avoid lengthy litigation, potentially resulting in a criminal record for a crime they did not commit.

Judicial Discretion in India: In India, judges have the authority to nullify plea bargaining agreements if they believe they are offered in bad faith, giving judges significant discretion in the process.

IV. CONCLUSION AND RECOMMENDATIONS

Developments in society have always played a crucial role in shaping the legal system. Although plea bargaining is not a new idea in India, it did take some time for the country's judicial system to adjust to its benefits and drawbacks.

However, law must evolve in tandem with societal changes. Over time, India's Criminal Justice system has undergone legal and social reforms. In an effort to lighten the load on the judicial system and speed up the delivery of justice, plea bargaining is a voluntary process in India.

To ensure the successful implementation of plea bargaining and achieve its objectives, several key considerations and recommendations should be taken into account:

1. ****Raise Awareness**:** Lack of awareness about ADR mechanisms, especially in rural and urban areas, poses a significant challenge. The National and State Legal Services Authorities should actively promote these mechanisms to make them the preferred choice for potential litigants.

2. ****Training**:** ADR cases should be handled by specially trained officers. Extensive training should be provided to ADR practitioners, including facilitators, mediators, and conciliators. This training should also be incorporated into the continuing education programs for judicial officers and judges.

3. ****Binding Nature**:** Currently, one of the major drawbacks of ADR is its non-binding nature. Appeals can be filed to overturn or postpone an award's enforcement. To enhance the effectiveness of ADR, mechanisms should be explored to make the outcomes more binding and enforceable.

In conclusion, while plea bargaining and ADR mechanisms have the potential to significantly contribute to India's criminal justice system, there is a need for increased awareness, training, and legal reforms to overcome existing challenges and make these mechanisms more efficient and accessible to all.

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- [10] Article 14 of the Indian Constitution guarantees equality before the law
- [11] Article 21 of the Indian Constitution encompasses the right to life and personal liberty, including the right to a speedy trial
- [12] The Hussainara Khatoon v. Home Secretary State of Bihar case recognized the right to a speedy trial as implicit in Article 21 of the Indian Constitution
- [13] The Maneka Gandhi v. Union of India case highlighted the importance of a cost-effective and quick trial
- [14] Article 38(1) of the Indian Constitution emphasizes the state's duty to secure social, economic, and political justice for all citizens
- [15] Article 39A of the Indian Constitution ensures opportunities for securing justice, especially for economically disadvantaged individuals

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- [21] The *Murlidhar Meghraj Loya v. State of Maharashtra* case is relevant to this discussion
- [22] The *Kasambhai v. State of Gujarat* case deemed plea bargaining unconstitutional and illegal
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