# NOLO CONTENDERE: COERCION OR SPEEDY REMEDY

*Amisha Gupta*[*]

## ABSTRACT

*Plea bargaining is constituted by the two terms which are the plea and bargaining, both having the distinct meaning and when combined they indicates the negotiation between the accused and the prosecution. In other words, when there is negotiation between accused and prosecution regarding the offence committed by the accused and accused accepted his fault than by pleading guilty he can claim commutation or alternative punishment. In this paper, there will be proper understanding of such terms and conditions for valid acceptance of guilt.*

*After understanding the term of the plea bargaining and getting it in conformity with the criminal sense, it is necessary to understand the need for the same. It is clarified from the historical data that this practice was not present at the time of making of criminal procedure code 1973 and it was added later on by the amendment, hence there is proper history behind the amendment which brought the plea-bargaining concept in India.*

*It is necessary to highlight why it is placed under criminal procedure code 1973 and where it is placed. Criminal procedure code explains the procedure for claim the plea bargaining and no one can go outside the boundary of the stated procedure. Case laws generally states how the law can be interpreted pr what can be the decision in the different scenario and it is obvious that there is no need of such clarification under the procedural but case laws can help to clarify the objective of the judiciary and hence for the reference some case laws will be stated in this paper which involves plea bargaining.*

*Plea bargaining have different types where some are allowed and some are not allowed i.e., which does not support the judiciary or doesn't serve the justice, all those types will be discussed in this paper. Apart from supporting the plea bargaining and stating the current procedure followed under plea bargaining, there are arguments against the plea bargaining which will be analyzed by the research. The paper will be concluded with the conclusion and analysis.*

**Key Words:** Plea Bargaining, CrPC 1973, Prosecution, Accused, Judiciary and Negotiation

[*] Student, BBA LLB (Hons.) (Corporate laws), UPES, Dehradun

## INTRODUCTION

Plea-bargaining is constituted of two words which is the plea and second is the bargaining. Plea means the formal statement given by the accused where he accepts his guilt and states about the offence he commits and the term bargaining means the negotiation which is like settlement between the accused and the victim.

Plea bargaining was introduced to reduce the burden of the court and to serve the justice. It is known that law shouldn't be too rigid nor too flexible, it has to serve the just. So, when the accused is himself pleading guilty and he realized the offence which he committed, obviously the offence must not be too heinous, then he must get the benefit and his punishment should be reduced. It is like the settlement between the victim and the accused where on the mutual settlement they agree to serve the punishment and the victim who is the effected party here does mercy on the accused on his pleading.

In other simple terms, plea bargaining is the process where the accused accepted his crime and plead guilty and on the same pleading, the victim shows mercy and reduces the sentence or imprisonment of the accused. This whole process is regulated by the law so as to bring the uniformity and avoid the chances of conflicts.

For example: X committed the offence which is punishable by imprisonment but he accepts his crime and, on his acceptance, his punishment got reduced at the request of the victim.

The origination of this concept was in the United States but now it is followed by many countries. In many foreign countries, this concept is used irrespective of the type of the offence committed but in India it is not absolutely used and has restriction for usage. Criminal procedure code 1098 guides the procedure for using the plea bargaining where it cannot be used for every type of offence. India is still restricted in using such kind of defense.

In united states 90% of the cases are dispose off on the plea bargaining. The concept of the plea bargaining is originated from the principles of 'Nolo Contendere' which is the Latin term, meaning I do not wish to contest which means that accused/ offender accepts the punishment.

Moreover, the principle ‘justice delayed justice denied’ has the direct relation with the concept of plea bargaining.

## JUSTICE OR ABUSE OF POWER

### *Origination*

Plea bargaining is borrowed from US and added with some modifications in the CrPC under section 265A to 265L which is introduced with the aim to protect the interest of the accused but by the fade of time it was observed that right of the accused is violated even under these provisions. This is based on the restorative principle where the interest of the victim is also prevented as he can seek the relief by negotiating with the accused.

Under criminal law, the term ‘victim’ has the wider effect where it includes the society hence whenever some criminal offences are committed it is believed that it is committed against the society or the state. The real victim is always considered as the informant of the people who are dangerous for the society.

Article 4 of the declaration of basic principle of justice for victims of crimes & abuse of power 1985 directs that victim must be treated with dignity and got the preference to opt for any possible method for seeking relief. On the basis of this direction, article 5 further stated that there will be judicial and administrative mechanism for providing the justice to the victim. The two-fold statements were made where firstly it was stated that victim must be compensated in lieu of the wrong which is committed against him and secondly the offender must be punished for his sins. On this observation, article 8 implicitly states for development measure which include the plea bargaining for restituting the victim.

### *Human Rights*

The right to fair trial which includes fair opportunity of hearing is the basic human right which every person has secured under the international human rights law. Criminal justice supports the plea-bargaining system where the accused himself waive his right to have fair trial on the account of faster disposal of case and resolving the dispute by efficient negotiation between the parties.

The human rights can be waived only on few standards which are like voluntarily decision by both the parties, informed and unequivocal fact-based negotiation.

Human rights are regulated by the UDHR[1] where article 10-11 talks about right of the fair hearing in the case. This right is supported by the ICCPR[2] and other regional human rights instruments. This right includes the faster disposal of case and preventing the accused against any discrimination until he is proved guilty. Plea bargaining protects the right of fair trial but it may cause the circumstance where the other rights can violate like right to hear both the parties or producing evidence. The main concern arises when it is alleged that the bargaining was summed up without the consent of the accused or prosecutor.

The main focus for investigation is turned when there are chances of coercion in the plea bargaining or when the agreement is entered involuntary. In State V. Hinners[3], the honorable court held that plea bargaining is constitutionally valid and any settlement through that process will not violate human rights.

Another right which is involved into the judicial proceeding is to get the pleader of his choice and right to defend. If it was contended that no pleader advice was sought or no pleader defended the accused that the assumption will arise that there is violation of human right. The reason after this assumption that lawyers have the better insight regarding the whole process and they can guide the parties between by making them aware about the consequences of the plea bargaining. It is very important to understand the type of action which the parties opt for because there is no right to appeal under the plea bargaining.

## HOW PLEA BARGAINING IS DIFFERENT FROM CONFESSION

Confession is not defined anywhere but its inference is stated under Indian evidence act where under section 24 the concept of confession begins. Confession is the statement made by the accused during the trial which is used in evidence against him. Proper guidelines are constituted for

[1] The Universal Declaration of Human Rights (UDHR), 1948
[2] International Covenant on Civil and Political Rights
[3] State v. Hinners, 1991, p. 843

securing and using the statement made by the accused, to prevent the involuntarily influence from the accused.

It is often confused that plea bargaining and confessions are the same, which is not at all same because the confession is made during the trial whereas there is no trial in plea bargaining and the statement made under the plea bargaining are on the condition that there will be no trial for that case. Moreover, the statement made by the accused during the trial will be used as evidence which means that the charges will be proved or disproved on the basis of the statement made by accused and will be used solely in evidence. In plea bargaining there is no usage or formation of evidence as the statement is not made for the purpose of evidence but on the condition that some leniency will be shown to him.

Also, there is condition in plea bargaining that whatever statement is made during the plea bargaining or whatever guilt is accepted during the settlement, will not use again in future and in any other proceeding. This rule prevents the right of the accused and encourages him to accept all his guilt and make the true statement whereas confessions are legally and judicially recorded which can be used as evidence in the trial.

Confessions are always with other kind of evidence whereas the plea bargaining is itself a process which doesn't require to be collaborate with some other process or evidence.

It was found that 70% of the confessions are false confessions or based on coercion and accused generally avoid to confess their guilt whereas plea bargaining is preferred by the accused because of its faster disposal of case and less punishment imposed by it.

The one factor which is common in both the concept is that the innocent people are the one who are tied up the most in this process. In other words, it was noted that most of the innocent people easily pleads guilty or make false confession on the basis of promises and assumption that there are less chances of their winning whereas the person who commits the crime didn't even think about it. Coercion and unfair practice affect this procedure at most which is even way difficult to prove and prevent the innocent person from false allegations

## COMPOUNDABLE OFFENCES V. PLEA BARGAINING

The term 'compound' means the settlement which may be done by the money payment or any other method, in lieu of some liability. This process is referred from the point of criminal law where the parties settle their disputes with or without the court. Under this process, the parties involved in the case settles or compromise the matter by exchanging any consideration, regulated by court. This is not an absolute right of the parties but regulated by the statutory where it is laid that not all the cases can be compounded by the parties hence some restrictions are there for compounding the offences.

There are two kinds of offences i.e., compoundable, and non-compoundable offences. Section 320 of criminal procedure code 1973 talks about the compoundable offence and as per section 320(9) every offence will be compoundable under this provision only. Compoundable offence is those offences which are less serious and involves the personal interest of the parties rather than leaving the impact on the society[4]. It is concerned by the statute that even though the offence is covered under the definition of the compoundable offence, it still needs the consent of the court which means that no offence can be compounded without the consent of the court. The reason of leaving the matter on to the court is to verify if any interest is hampered and the offence for which the case is compounded does not involve any public interest.

Section 320 lays down restrictions and the process for compounding the offence. It further divides the offences into two categories, first which doesn't need permission of the court[5] for compounding, for example adultery, causing hurt or defamation criminal trespass and the second which needs permission for compounding the offences[6] which includes serious offence like theft, assault on woman, voluntarily grievous hurt. In one of the cases[7], the Supreme Court stated that court has the discretion to reject the plea of compounding offences but that rejection must be supported by the observation of the court on which the plea was rejected.

[4] Gian Singh v state of Punjab 2012 SC
[5] Section 320 states the offences which are compoundable without the consent of court and the sections which are compoundable offences are section 298, 323, 334, 341, 342, 352, 355, 358, 426, 427, 447, 448 of Indian penal code 1860.
[6] Section 320 states the offences which are compounded only after getting the consent of the court and these sections are section 325, 335, 337, 338, 343, 344, 346,
[7] Bhagyan Das vs The State of Uttarakhand & anr 2019 SC

The object of the section 320 IPC is like the object of the plea bargaining which is stated under section 265A- 265L of CrPC, which is to promote the friendliness between the parties and to dispose off the case quickly by reducing the burden of the court. The concept of compounding of offences is very old which is followed since 1974 whereas plea barraging was enacted from the year 2006 only which means that the applicability of plea bargaining is less than the compounding of offences.

Under compounding of offences, the accused will be seemed to be acquitted from that offence because the charges are taken back by the complainant or the prosecutor but the situation is opposite in plea bargaining where the accused is punished with some imprisonment or fine or both and known to be convicted. In plea bargaining the charges are not absolutely extinguishes or taken back but the offence is accepted by the accused with the condition that he will receive some favor from the accused in regards to his acceptance. By this statement it can be mentioned that the essence of the result of both the concepts are completely opposite to each other.

The other point which differentiates between both the concepts is that the plea bargaining doesn't permit to plead guilty when the offence is committed against the woman or child whereas under the compounding of offences, the offence can be compounded if the woman against who the offence has been committed agrees to compromise the same and this will be done by the consent of the court.

Looking from the international perspectives, the plea bargaining is originated from the US and has applicability is almost every country with high usage rate whereas compounding of offence is considered as felony by some foreign countries. Under the common law of England, the compounding of offences is termed as illegal process and whoever caught indulging in this practice will be punished under the offence of felony as misdemeanor. They stated that every agreement which talks about the agreement mentioning about not to prosecute the offence will be an unenforceable agreement as this is against the public policy, also will an offence as long as they don't involve the settlement regarding the return of stolen property by the accused on the compromise by the victim. Compounding of criminal offences is pervasive in America whereas it is abolished in Wales and England. The idea of plea bargaining is accepted in all these states which abolishes the compounding of offences.

Though both are concepts are different from each other, though they follow few common characteristics. One of the basic similarities between both the concept is that they are in favor of accused where the accused in punished less or not at all. Section 320(7) states that no offences can be compounded under section 320 if the same offence has been committed and the accused is charge with increase punishment or different kind of punishment on committal of subsequent offence. The similar kind of statement is also applicable under plea bargaining where the accused cannot claim benefit by pleading guilty if he committing subsequent offence of the same kind or he commits that offence on the habitual basis. The object of this limitation is to prevent he habitual offenders to get the benefit of this section.

## COMPARISON WITH DIFFERENT COUNTRIES

***Other countries:***

The concept of plea bargaining was regulated by the principles which was highlighted by the court of appeal at turner. In their statement, the honorable court mentioned that discussion about the case must be between the judge and counsel. The judge should never indicate the biasness in scenario when there is plea bargaining or if those bargaining fails. This statement was made in reference to the England and Wales.

In Australia, the judicial review regarding the plea bargaining is different. In one of their judgments[8], honorable Supreme Court of Victoria highlighted that no one can ask the trial judge regarding the punishment when the matter is going for the plea bargaining or using the advice as the negotiation during the bargaining. The practice of using the judge intelligence in the negotiation is totally wrong.

***USA:***

The concept of plea bargaining was originated from the United States in 19th century where this practice was commonly used. US also didn't have the concept of plea barraging in its bills of right but it was the sixth amendment which brought the plea bargaining into consideration and stated it as the constitutional practice. It can be very easily mentioned that only 10% of the total cases goes

[8] Marshall: www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf

to court for trial and others are resolved through the plea bargaining. Being the developed country means having best technology and better management, it can be said that people opt for the smart decision and saves their time and energy by not putting their shoes into long trial procedure when the matter can be resolved between the parties itself. It doesn't mean that we don't need courts or judicial procedure but it reflects that there is other method by which the issue can be resolved without wasting the time of judiciary who is already busy in resolving the heinous or more serious offences.

The system of plea bargaining was officially introduced after the passing of amendment in 1974 in the federal rules of criminal procedure. The only requirement before implementing the process is that the accused must plead guilty voluntarily, without any reference and he should satisfy the rule 1149[9] before the court.

In Bordenkircher v. Hayes[10] case which states the landmark judgment given by the US court that accused cannot be punished when he is going for plea bargaining and this contention will be constitutionally backed up. In this case, the accused James earl ray got life imprisonment because he didn't accept the order which was given as the result of plea bargaining. In the case, the Supreme Court also observed that the burden always lies on the party to choose whatever they desire. As in this case, the accused didn't accept the plea bargaining and hence convicted for the original punishment which was the life imprisonment. The same reasoning and observation were made in the torts case also where the burden of punishment lays on the party of the case itself.

In one of the other cases[11], the supreme court of US clearly mentioned that plea barraging is very important for administration of justice and serving the faster remedy by saving cost. The court directed that the process must be properly managed and regulated so as to prevent the inner crimes and other possible conflicts.

In Bardy V. United States Case[12], the landmark judgment was given by the US court where it was stated that the if the settlement is reached between the party where one of the parties is in fear that the trial will surely result in death penalty than the process of plea bargaining will not become

[10]Victimology and compensatory jurisprudence, Randhwa .G.S., Central Law Publications, Allahabad (2011)
[11] jurip.org/wp-content/uploads/2017/03/Rajat-Bawaniwal.pdf
[12] 397 US 742 (1970)

illegitimate because of the mere existence of fear of death penalty. The process will remain legitimate if conducted as per the regulation and voluntarily by the parties.

In US there are different types of pleas i.e., Guilty, *nolo contendere* and not guilty. In *nolo contendere* which is also known as the '*Plea Of Nolvut*'[13], there is implied indication that the accused wants to accept its guilt or the court will give its decision on the basis of the guilt.

In case Fox v. Schedit and State Exrel Clark v. Adam[14], plea bargaining was termed as quasi confession which means that it is not absolute confession but kind of confession given by the accused where he accepts his guilt.

Moreover, this is not an inherent right but the court of US has the discretionary power to either accept the plea or reject it, which should not be arbitrary but must be based on the facts and circumstances of the cases. The main reason for introducing the concept of plea bargaining was due to the overcrowding of the jails and burden on the judiciary.

One of the common features shared by India and US is that under both the country regulations, the accused who is pleading guilty will get the benefit of secrecy which means that the information given during the mutual depository satisfaction, will be kept secret and that information or any evidence (if given) will not be used anywhere else apart from that proceeding.

Though the scenario is much different in India where offences which are punishable with life imprisonment cannot go for plea barraging and the process is properly regulated with many restrictions. In Indian law, the victim has the upper hand in the proceedings where he has the right to refuse the unsatisfactory resolution. The practice of plea bargaining is very liberal in US as compare to India which has restrictions and narrower scope.

In US, the application for the plea bargaining is filed or the intention of going with the negotiation is informed to the court after the negotiation is done between the party whereas in India the burden of pleading the guilt is on defendant who is under obligation to file for plea bargaining and then the mutual satisfactory disposition takes place.

[13] State exrel clark adams 363 US 807
[14] Section 265B (2) of CrPC 1973.

Further, the Indian law has given authority to the judges to verify the application if they are made voluntarily or if the accused has really committed any offence or not. Also, the power extends to check if the offence for which the guilt is pleaded does not commit against the Socio economy condition or if the accused is running away from the severe punishment which he really deserves.

## INFLUENCE ON PLEA BARGAINING

Trial is the constitutional right for every accused ad no person can be convicted without going for trial but this principle has the exception, where the person an undergo punishment even without trial. When the parties themselves settle the issue and agree on the same point of punishment than the court can impose that punishment on the accused.

This process is like the private procedure which took place among the parties hence having the chances of manipulation or other conflicts which need to be regulated. It is very difficult to prove that the process was completely fair.

It is known that the prosecutor has various remedies with him to such as monetary compensation, imprisonment, compensation in other form, damages, etc. and these remedies can be sought by various sources like going for private settlement, mediation, trial, plea bargaining, claiming through documents etc. By these references, it can be said that prosecutor has the heavy side and he is the one who choose for the resort as per his convenience and in every situation, he is on the win situation, it's the accused who has to follow the direction and play as per the desire of the prosecutor (not always, but generally). These wide powers of the prosecutor are not legally checked and there may be instance when the prosecutor can use these powers where the interest or right of the defendant gets violated which means that there is no proper regulation for checking these wide powers given to prosecutor. Hence these powers can cause unfair practice[15] or coercive practice[16] on the accused which may cause him to accept his charges involuntarily[17] or the chance of arbitrariness and inequality. The term arbitrariness indicates that there may be situation when the discrimination is practiced on the pleading of the accused, in other words, there is no uniformity in the procedure of plea bargaining as every case differs from facts and the negotiation is conducted

[15] This is a wider area which covers other aspects like undue influence etc.
[16] Section 15 of Indian contract act
[17] Defined by Indian penal code under section 39 and various other statues as well.

as per the demand of the party itself hence the discrimination can be caused against specific accused as the process has not fixed procedure to follow.

As per the stated reason behind lack of regulation and non-uniformity, there is need for preventing the innocent accused person who got hunted under this process and charged for the heinous crime even under the plea bargaining. For example, In US black people are punished for more heinous crime than the white people and the term of imprisonment of black people is usually higher than the white people[18]. This practice clearly indicates the unfair practice of plea bargaining and discrimination on the specified class of people.

There are various factors which influence the decision which is taken after the plea-bargaining process. These factors are:

- ***COERCIVE FACTOR***

The term coercion means the persuasion to someone by the means of force or threats. When the offence is punished by heinous punishment i.e., imprisonment of 7 years or less as per Indian law [19]or it may be death penalty as per the US law than the accused prefers to go for plea bargaining to get less imprisonment and the threat of more punishment causes him to go for plea bargaining. Another circumstance may be, where the accused is already under detention before the trial than there can be threat on him to plead guilty and accept the plea bargaining. These are the major areas with respect to coercion and the guilty pleaded by the accused will be valid only when it is free from coercion or other unfair practice.

It was analyzed that plea bargaining is the uneven playing field where prosecutor has the more tools which increases their leverage in negotiation and the rate of coercion is increased in case the accused is detained in prison without being convicted which is the pretrial detention.

'Every person is assumed to be innocent until found guilty[20] but the person who is under detention leaves the negative impact on the court regarding his crime which usually results in conviction, longer sentences or future involvement. To prevent the long imprisonment or harsh punishment,

[18] Criminalizing Race: Racial Disparities in Plea-Bargaining," Boston College Law Review 59, no. 4 (2018), 1187,
[19] Ibid.
[20] International Journal of Law Management & Humanities ISSN: 2581 – 5369

the accused prefers the plea bargaining where there is likelihood of his interest violation as the victim is already aware about the behavior of accused when he under pretrial detention and he didn't have any benefit. This increases the chances of coercion on the accused and using unfair practice on the accused.

It was believed that there exists a direct relation between pre-trial detention and plea bargaining and this contention was supported by the data of US where it was surveyed that 634 criminal cases of New York jersey courts in 2012[21] was released faster than the cases where the accused is released on bail or already out of jail and the reason behind it is that the accused wants to get out of the bar faster hence opts for possible recourse. Coming to recent data, In Delaware nearly 76,000 arrests were resolved through the plea bargaining[22]. It was observed from the data of Philadephia that 331,971 criminal cases where the accused was under the pretrial detention resulted into conviction where the experts observed that they could result into acquittal or dropping of the charges but the fear in the accused made me to plead guilty and made them suffer from conviction which is the worst outcome of the criminal justice.

Moreover, it was observed that the people who have less knowledge regarding the criminal legal system or who is detained for the first time are likely to have strong incentives in pleading guilty which is less painful method of proceeding, as they are eager to get out of the jail or dispose of their case quicker.

- ***CHARACTERISTICS OF LEGAL CASE***

Another factor that influences the decision after the plea bargaining is the severity of the offences and the prior records of the accused. The prior records of the accused are checked while negotiating the claim here the prior records are other than of the same crime as it is not allowed under Indian law to go for plea bargaining if the subsequent offence has been committed but this limitation is restricted to the same kind of offence only where the plea bargaining can be claim if the different kind of offence has been committed by the accused.

[21] Report mentioned for 27680 cases which were not even entertained.
[22] "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges." American Economic Review 108, no. 2 (2018), 201-240

The past records are often used to decide the quantum of punishment and frequently stated in guidelines dealing with plea bargaining. A jury trial provides the opportunity to the defense pleader to prove that criminal history of accused is not serious or less serious than appears on paper and by that they will try to prove the innocence of accused. This will be referred in plea bargaining where the accused can plea as first-time offender and prevent himself from heinous crime. It is very significant to state that person with longer criminal history receives less lenient plea deals in negotiation. It may be inferred from the research that past records may lead in increase in the charges but absence of past records doesn't lead in decrease in charges.

Apart from the severity and prior records of the accused, the concern is also turned towards the evidence. The strength of the evidence available against the accused plays a vital role in the proceeding on the plea barraging where the victim or the prosecutor plays his card by keeping in mind the kind of evidence, he has with him for proving his claim against the accused. As already stated, that prosecutor got the upper hand in any kind of the proceeding which they opts for, the prosecutor will be ready for trial if he has the stronger evidence against the accused and can prove his claim successful and in this situation he will throw harsh offers to the accused in the plea barraging and vice a versa.

- ***INEQUITIES***

It has been indicated that existence of deliberate or unconscious biasness towards the gender, race, and caste causes the inequality and termed the process as biased. It is analyzed that to remove the shadow on inequality from the plea bargaining there is need of transparency where the process will be legally checked at every step and the proper safeguards will be introduced for protecting the people who are getting influenced under the same.

In US it was found that discrimination based on race is at peak where the black was prevented to enter guilty pleas. Black people receive less favor of guilty plea agreement than white people. Also, the statically data showed that the rate of conviction of black is way more than the conviction rate of white people.

Apart from discriminating based on race, the people are frequently discriminated based on gender. Generally, Woman are arrested less than the man and for less violent offences for which they are

treated less harsh and receive more lenient behavior than man. It was found by the study[23] that the rate of reduction of charges or dropping of charges against the women is higher than the man and in case no prior conviction is proved the chances of nullifying the charged get increases.

It is believed that women are less risky for the society and they hold less sever criminal thoughts which made them seek sympathy among the court actors but this whole assumption is not correct as the woman can also be equally riskier for the society. Rather than focusing on the less lenient behavior of the woman, the focus should be on the reason behind the harsher treatment in respect of the men.

Another aspect of inequity is the age factor where the way of approaching for plea bargaining is different from young to old age. It was noted that young age people know about their right to trial and they voluntarily give up their right without thinking about the future consequences as they think it from the short-term perspective.

Inequality, discrimination is interrelated concept with the pre detention trial stage, under both the scenario the accused is prevented from the neutral behavior and been discriminated on the certain circumstances.

- ***PLEA DISCOUNT*** [24]

This is also known as the trial penalty which is the difference between the actual imprisonment as per the statute and the imprisonment which he undergoes when he pleads guilty. This factor states that higher the plea discount, higher the chances of pleading guilty. It was observed that the judges or the other court servants imposes less serious punishment and serve more lenient behavior to the people who accept their liability. Apart from this contention, it is believed that people who hired private attorney having vast resources and good money value have the more winning chances and they prefer to go for trial where they are acquitted hence prevented from serving any punishment which maybe announced under the plea bargaining.

[23] Ibid.
[24] Ri, S., Cheng, K.Ky. Plea Discount Deviations: a Mechanism for Gender Disparities in Hong Kong. Asian J Criminol 17, 237–261 (2022).

- ***INNOCENCE***

This factor highlights the aspect, when some innocent person has been falsely induced into some crime which is punishable with severe punishment; in this case the innocent person who has not committed any offence at first place accepts the plea bargaining because he wants to save himself from the harsher punishment at conviction or if the person is under detention than to get out of the prison.

It was studied that more than 37% people plead guilty even though they are innocent just because to stop the questioning on them and to go home[25]. By looking from the other perspective, most of the cases get turn in the court when there is discovery of new evidence or generally when the results of DNA are out which gives the conclusive evidence to the court.

The major limitation in this situation is that once the person pleads guilty it became very difficult to prove his innocence and give the evidence against his pleading. Also, after pleading guilty, the person loses all the possible resorts to be acquitted as there is no process for appeal under plea bargaining neither due process which will rebut the same.

Research proved that eager to get out of the jail and dropping the charges made the person or effectually coerce the person to plead guilty and accept the facts which was not even committed by him.

## CONCLUSION

The court has the various options to conclude the process of plea bargaining, it can award the compensation to the victim which will be in consonance to the settlement i.e., the mutual satisfactory disposition between the parties. Apart from this straight jacket process, the court if feels safe for the society, an also release the accused on the probation[26]. If there is ambiguity in the settlement or the settlement is not legally valid than the court can order the punishment for the half term of the punishment which is stated under the law. It is highlighted that the decision of the court is final which is settled through the participation of the parties where there is no provision

[25] Redlich, Summers, and Hoover, "Self-Reported False Confessions," (2010), 79-90, 89.
[26] Section 360 of CrPC.

for appeal except the special leave petition[27] and appeal to high court under article 226 and 227 of Indian constitution. This provision doesn't bother about the bail, trail of offence and directly jump for the settlement of the case.

Silver lining of plea bargaining: the major reason behind calling the plea bargaining as the silver lining as this prevents the parties to cross the burning woods i.e., the long procedure of trail where there is no fixed time period for disposing of case which can last over years. Apart from the punishment which is ordered by the court after the whole trial, the accused bears the mental torture and several other tortures on the daily basis which does not even count at the time of announcement of his punishment for the crime which he committed.

Court also feels relived from too much cases and exceptional workloads[28]which eventually reduces the congestion in the detention room and saves much resources, time and efforts. It is believed that US being the high developed country, follow the plea bargaining for resolving most of their cases which helped them to save their resources and indulge in some other productive work. It was highlighted by the 142nd law commission report[29] that most of the prosecutors take back their complaint or omits to report the crime because of the long committal to the trial and long procedure which is the black stain on our Indian judiciary system. Also, it was highlighted that in court, rich party plays the show by throwing money and poor party weeps in the darkness. It can be said that plea bargaining is the ray of light where both the parties can bargain the dispute by avoiding long procedure and saving lot of litigation expenses.

Where in trial there is win- losing situation, in the plea bargaining it is the win- win situation for both the parties.

Plea bargaining is compromised mockery: as every coin has two faces, so the plea bargaining has the two-sided effect. It is said that where most of the innocent are convicted for the crime which was not even committed by them. In U.P v. Chandrika[30], it was stated by the honorable supreme court that the court should not completely rely on the mutual satisfactory disposition took between

[27] Article 136 of Indian constitution 1950
[28] https://www.manupatrafast.com/articles/
[29] http://www .bareactslive.com/LCR/LC142.HTM on August 22, 1991.
[30] AIR 2000 SC 164

the parties but the court should announce the judgment on the merits of the case by checking the circumstances and verify if it doesn't violate any interest.

In 142nd amendment, it was explained that because of the low literacy rate in India this practice of plea bargaining cannot be absolutely followed which is the common practice in US. It was clearly mentioned that the US has the high literacy rate which prevents the misuse of the benefit. The high rate of corruption and political influence cannot make this practice free from unfair practices. Police and other public servants play vital role in plea bargaining and, in the country, where the custom of bribing is very common, it is very difficult completely rely on any specific person regarding the serving of justice.

IPC is well drafted which states the separate punishment as per the nature of offence whereas under plea bargaining the punishment is imposed on the discretion of the parties by which the objective of the IPC will be disrupted. Apart from the infringement of rights stated under IPC, the defendant also waives his fundamental and constitutional right such as right to fair trial and right against self-incrimination.

It can be inferred that though this is the easiest model for disposing off the case and serving benefits but it should not be absolutely followed onset of it increasing the crime rate where criminals are not afraid of punishment. By keeping all the factors in mind, it is difficult to state the applicability of plea bargaining in India. Also, the condition of Indian society cannot be compares with the United States where the literacy rate is much higher and people are aware about their rights and obligation whereas in India, we are still struggling for providing compulsory education to children.

Plea bargaining may not be a perfect tool for current situation but maybe someday it will be applicable absolutely like the practice of United States.