

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

**“Join the League of
National & International Scholars”**



EDITORIAL TEAM

DR. AJAY BHUPENDRA JAISWAL

Professor & Former Head
Department of Law
V.S.S.D. College, Nawabganj,
(C.S.J.M. University, Kanpur)

DR. MEGHA OJHA

Associate Professor | Legal Consultant
| Author | KLEF College of Law

PROF. DR. DEEVANSHU SHRIVASTAVA

Founding Dean and Professor,
GL Bajaj Institute of Law,
Greater Noida

DR. GAURAV GUPTA

Assistant Professor,
Faculty of Law, Lucknow

MR. TUHIN MUKHARJEE

Leadership Strategist | Business Coach
| Author | Speaker

MR. PRAKARSH PANDEY

Author and
Advocate, Allahabad High Court

MR. AMARESH PATEL

Assistant Professor
at Law School,
Amity University, Patna



LEX SCRIPTA MAGAZINE OF LAW AND POLICY (VOL-4, ISSUE-1)

Copyright © 2025, LexScripta

ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

New Delhi

First Floor, 4598/12-B, 1st Floor,
Padam Chand Marg, Daryaganj,
New Delhi, Delhi 110002

Phone: +91 98 11 66 62 16 (M)

Phone: +91 70 11 60 56 18 (M)

Bengaluru

Jallahalli East

Bengaluru, Karnataka. India.

Phone: +91 98 11 66 62 16 (M)

Email: publisher.integrity@gmail.com

USA

New Jersey

14 Grandview Ave, Upper Saddle River,

NJ-07458, USA

Phone: +14805226504 (M)

London

37 Degree Media

64, Hodder Drive, Perivale, London UB68LL.

United Kingdom.

Phone: +44 7950 78 18 17 (M)

Website: integrityeducation.co.in

© Lex Scripta Magazine Of Law And Policy, 2025

Disclaimer

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Scripta Magazine of Law and Policy), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known. No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of Lex Scripta Magazine of Law and Policy Issues holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Scripta Magazine of Law and Policy.

[© Lex Scripta Magazine of Law and Policy. Any unauthorized use, circulation or reproduction shall attract suitable action under application law.]

For any Query / Feedback
Phone: +91 98 11 66 62 16 (Vineet Sharma)

Printed in India @ New Delhi

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

**"Join the League of National
and International Scholars"**



Lex Scripta Journal

AN ANALYTICAL STUDY OF THE RIGHT TO

Authors

A
D



Alternative Dispute Resolution in Criminal Cases in India

Mr. Swaraj Shukla

Designation - Student of LL.M. (2nd Year)

Affiliation - Faculty of Law, University of Lucknow

Email - swarajshukla21@gmail.com

Co-author – Ms. Arzu Nayab

Designation - Student of LL.M. (1st Year)

Affiliation - Faculty of Law, University of Lucknow

Email - arzunayab07@gmail.com

ABSTRACT

Speedy trial is one of the necessities of Criminal Justice system and there is no doubt that delay in trial amounts denial of justice. Right to speedy trial is a Fundamental right guaranteed under Part III of the Constitution to every citizen of the State. Inadequacy of courts, tiresome process of litigation and cost of litigation made way for the rise of Alternative dispute resolution. The main objective of introducing the ADR mechanism in criminal cases is to provide a cost-effective and accessible remedy to the criminals who are guilty of petty offences and protect the accused from the inordinate delay caused by the lengthy litigating process.

Thus, the ADR mechanism in the Criminal Justice System in India has been emphasized to provide a better understanding of the entire concept of plea bargaining and its analysis. In India, there has been a provision in the Code of Criminal Procedure for an accused to plead 'guilty' instead of claiming the right to a full trial, but it is not the same as plea bargaining. The concept of Plea Bargaining is adopted from the US Constitution, which has been a successful method of avoiding protracted and complicated trials. It primarily involves pre-trial negotiations between the accused and the prosecutor along with bargaining on the charge or in the quantum of sentence.

Therefore, this paper focuses on constitutional provisions of speedy trial, ADR mechanism in Criminal Justice System in India, India's stand on the concept of Plea Bargaining, pros, and cons of plea-bargaining mechanism in India and a comparison of plea-bargaining mechanism between India and USA.

Keywords: *Speedy Trial, Alternative Dispute Resolution, Constitution, Criminal Cases, Plea Bargaining.*

INTRODUCTION

The under structure of any civilized society is Justice. The quest for justice has been an ideal that mankind has been aspiring for generations down the line.¹ Administration of Justice involves the maintenance of rights within a political community by the means of protection of the innocent; punishment of the guilty along with the satisfactory resolution of disputes.² This has been rightly said that: 'An effective judicial system requires not only that just results be reached but that they are reached swiftly'.

But in India available infrastructure of courts are not adequate to settle the growing litigation within a reasonable time.³ Despite continuous efforts by the judiciary, the average person may sometimes find himself entrapped in litigation for as long as a lifetime, at times litigation carries on even to the next generation. In this entire process, the person may dry up his resources and fall into the state of penury.

One of the main objectives of the criminal justice system is a speedy trial as the delay in justice might dilute the justice. Therefore, it is rightly said that speedy trial is the essence of a civilized society, and it is always recommended that a case should be decided as early as possible, but it is also said that basic norms which ensure justice cannot be overlooked because as the popular proverb goes like, 'justice hurried, justice buried.'⁴ The main aim of the Right to Speedy trial is to propagate Justice in society.

Speedy justice is a component of social justice since the community is concerned about the criminal being deserved and finally punished within a reasonable time and the innocent being absolved from the inordinate difficulty of criminal proceedings. Inadequacy of courts, tiresome process of litigation and cost of litigation gave rise to Alternative dispute resolution.⁵

Alternative Dispute Resolution refers to settling of dispute outside the courtroom other than the means of litigation, where the settlement of the case is done by the impartial third party through conciliation, mediation, arbitration, Lok Adalat, and negotiations.⁶

¹ V. Vijayasai Reddy: Justice Hurried is Justice Buried, DECCAN CHRONICLE (2020), Available at <https://www.deccanchronicle.com/opinion/columnists/131220/v-vijayasai-reddy-justicehurried-is-justice-html>.

² Hon'ble Thiru Justice S.B. Sinha, Judge Supreme Court of India, ADR and Access to Justice: Issues and Perspectives, (2021).

³ Legal Correspondent, Supreme Court Launches Portal to Track Cases Pending at District Courts, THE HINDU (2015), Available at <https://www.thehindu.com/news/national/supreme-court-launches-portal-to-track-cases-pending-at-district-courts/article7668677.ece>.

⁴ Supra Note 1.

⁵ Avtar Singh, Law of Arbitration and Conciliation, P.239 (6th ed. 2002).

⁶ Tala Esmaili and Krystyna Gilkis, Alternative Dispute Resolution, Legal Information Institute, Available at https://www.law.cornell.edu/wex/alternative_dispute_resolution.

ADR techniques are extra judicial; they can be used to resolve any matter, under law, by the agreement between the parties. They have been employed to settle abundant subject categories of disputes, commercial, civil, industrial, and family disputes. The main objective of ADR is to provide quick and cost-effective relief to clients.⁷

The present system fails to deliver quick and inexpensive relief to the party in a dispute. The procedure is also overly complicated, and this leads to a search for an alternative mechanism that should be a cost-effective, quick, confidential procedure and be an accessory to the process of the traditional court system. Alternative Dispute Resolution promotes cordial settlement and helps in the preservation of the relations. Since the parties are directly involved in the process of settlement. However, the cordial settlement here does not mean compromise at any cost; it is a reasonable compromise factor.⁸

Thereby, ADR helps in overcoming many challenges posed by judicial proceedings as a method of resolution. To manage the pending cases in the Indian Courts, a review of the court system was undertaken by the Malimath Committee.⁹ In the report, the Committee recommended Plea Bargaining to be introduced in the Indian Criminal Justice System to facilitate higher disposal of cases to reduce the burden of the courts to confirm that justice is made accessible to every citizen at the minimum cost of time and finances. Therefore, ADR mechanisms came in force into the criminal justice system by way of the Criminal Law (Amendment) Act, 2005 under Chapter XXI A in the Code of Criminal Procedure, 1973 while introducing the concept of “plea bargaining” in India.¹⁰ Now, plea bargaining is defined under chapter XXIII (section 289-300) of Bharatiya Nagrik Suraksha Sanhita, 2023¹¹.

RESEARCH PROBLEM

There is presence of Alternative Dispute Resolutions with advantages, however it remains unutilized. We should understand the reason behind this while being able to answer the question if ADR can only be used in petty criminal offences and not on serious offences. Furthermore, In Plea bargaining, there is a high probability that though the convicted person is not guilty but pleads guilty on the ground of leniency provided under plea bargaining. Even if a lenient sentence may be considered as a part of circumstances of cases after a regular trial but mere acceptance of guilt should not be based on reduction of crime and there are high chances of corruption and coercion by investigating agencies which may be

⁷ S.C Srivastava and Geeta Obrai, Dispute Resolution Process in India, Indian Law Institute, P. 26, (2002).

⁸ P.C Rao & William Sheffield, ADR in The Construction Industry, (Universal Law Publishing Co. Pvt. Ltd. 1997).

⁹ Supra Note 7.

¹⁰ Criminal Law Amendment Act, 2005, Chapter III- Section 256A- 256L (India).

¹¹ Government of India, Act No. 46 of 2023.

against the principles of a fair trial. Hence, it is of importance to understand whether the application of Plea Bargaining is successful in India. Thus, the coverage of the study is confined to the ADR mechanism in a criminal case in India. The study also throws light on various landmark decisions to understand the stand of the judiciary towards the concept of plea bargaining in criminal trials in India.

OBJECTIVES OF THE STUDY

There are several objectives of the concerned study. Some key objectives are given below-

- To study and understand the right to a speedy trial as a fundamental right in India.
- To study the evolution of ADR in Criminal Jurisprudence along with the significance of ADR in criminal cases.
- To understand the efforts of the judiciary to ensure speedy trial through various landmark judgments.
- To analyse the concept of Plea bargaining and its types with the help of landmark judgments.

RESEARCH METHODOLOGY

The research methodology opted for this paper is a doctrinal research method involving an analytical as well as a deductible approach where various primary and secondary sources of information have been used to complete the research. Majorly relying upon the articles, journals of both domestic and international origin as well, this research paper is the outcome of thorough research and confining the idea to the scope and objective of the study.

CONSTITUTIONAL OBLIGATION OF ADR

The Constitution of India is structured on the concept of welfare and well-being of the people, and the state must provide justice to the aggrieved party by judicial or non-judicial forums of dispute resolutions that ensure timely and effective justice and enforcement of fundamental rights for every individual of the state. The primary objective of ADR was to provide a solution for the increasing burden of the courts. It was an initiative taken by the Legislature and judiciary to restraint on the situation and achieve a “Constitutional goal” for achieving justice. The Preamble of the Indian Constitution ensures the State secure social, economic, and political justice to all the citizens of the State.

Article 14¹²: It guarantees equality before the law and equal protection of laws. Equality before law necessarily involves the concept that all the parties to a legal proceeding must have an equal opportunity of access to the court and to present

¹² Article 14, The Constitution of India, 1950 (India).

their cases in front of the court. For the indigent, who are not able to meet the economic needs, the justice access to the court would remain a myth because of their inability to pay the court fee and lawyer's fees etc. Thereby speedy trial would help them to cope with the delay in the case and be cost-effective.

Article 21¹³: By the wider interpretation of Article 21 of the Constitution, Speedy justice is a fundamental right guaranteed under the purview of article 21. In the case of *Hussainara Khatoon v. Home Secretary, the State of Bihar*¹⁴ recognized the right to a speedy trial as a fundamental right implicit in the right to life and personal liberty provided under Article 21 of the Indian Constitution. In its decision, the court directed greater access to bail; more humane living standards and a significant reduction in time from arrest to trial. The court also held that no procedure that doesn't guarantee a cost-effective, quick trial can be regarded as reasonable, fair and just as interpreted by the Hon'ble court in the case of *Maneka Gandhi case*¹⁵.

Article 38(1)¹⁶: The preamble of the Constitution enjoins the state to secure social, economic, and political justice to all its citizens, making the constitutional mandate for speedy justice inescapable.

Article 39A¹⁷: The State shall secure that the operation of the legal system promotes justice., to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. While interpreting this provision the Supreme Court in the case of *L Babu Ram v. Raghunathji Maharaj and ors*¹⁸ held that, social justice would include 'legal justice' which means that the system of administration of justice must provide an affordable, prompt, and effective instrument for the realization of justice for all sections of the people irrespective of their social or economic position or their finances.

PLEA BARGAINING

Traditionally, under the Criminal Justice System, the state is bound to prove that the accused is guilty of the criminal charges for which he is accused, beyond a reasonable doubt. But, the concept of Plea bargaining refers to pre-trial bargaining between the accused person and the prosecutor where the accused person accepts the commission of the offence by pleading guilty of the offence by negotiating with the prosecution for a lesser punishment than what is provided in law by pleading guilty to a less serious offence.

¹³ Article 21, The Constitution of India, 1950 (India).

¹⁴ *Hussainara Khatoon v. Home Secretary, the State of Bihar*, 1979 SCR (3) 532 (India).

¹⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).

¹⁶ Article 38(1), The Constitution of India, 1950 (India).

¹⁷ Article 39A, The Constitution of India, 1950 (India).

¹⁸ *L Babu Ram v. Raghunathji Maharaj and Ors.*, AIR 1976 SC 1734.

This is commonly used in the United States and has been one of the successful methods in avoiding complicated trials. The concept of Plea bargaining gained its constitutional validity in the US in the case of *Brady v. U.S.*¹⁹ It was also held that plea bargaining is a voluntary process where the accused is free to choose whether to accept the offer of the prosecutor for a plea bargain or reject it.

The Plea Bargaining in India is inspired by the *Doctrine of Nolo Contendere*. The doctrine has been under deliberation by India for introduction and employment in the Criminal Justice System. Thereby, Plea bargaining has been incorporated by the legislature after several law commission's recommendations. This doctrine has been considered and implemented in a manner that considers the social and economic conditions prevailing in our country.

CONSTITUTIONAL VALIDITY OF PLEA BARGAINING

In India, the Constitutional validity of Plea bargaining into the criminal justice system was put ahead in the year 2003 by the Criminal Law (Amendment) Bill, 2003. However, those provisions failed and were introduced again with minor changes through the Criminal Law (Amendment) Bill, 2005, which was passed by the Rajya Sabha on 13-12-2005 and by the Lok Sabha on 22.12.2005.

The acknowledgement of plea bargaining has made a significant impact over the years and has become a significant part of criminal jurisprudence in India. In the case of *State of Gujarat v. Natwar Harchandji Thakor*,²⁰ the Court acknowledged the importance of plea bargaining and said that every "plea of guilty" which is interpreted to be a part of the statutory process in the criminal trial, should not ipso facto be understood as a "plea bargaining". The court also said that plea bargaining must be decided on a case-to-case basis. Further, considering the changing nature of law and society, the court observed and said that the very objective of the law is to provide cheap, easy, and expeditious justice by resolving the dispute in a brief period with no harm.

Thus, the provisions were finally incorporated with the introduction of sections 265A-265L to the Code of Criminal Procedure, 1973 as a Chapter XXI-A through the Criminal Law (Amendment) Act, 2005²¹. Now, plea bargaining is defined under chapter XXIII (section 289-300) of Bharatiya Nagrik Suraksha Sanhita, 2023²².

¹⁹ Brady vs U.S., 397 U.S.742 (United States of America).

²⁰ State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLR 709.

²¹ Government of India, Act no. 2 of 2006.

²² Supra Note 11.

TYPES OF PLEA BARGAINING

1. Sentence Bargaining

Here the defendant agrees to plead guilty to the stated charge and in return, he bargains for a lighter sentence. The person pleading guilty will know the sentence he will be awarded for the offences he had committed, for which the plea bargain agreement would be made to reduce his stated high sentence of punishment. Sentence bargain takes place when an accused is told in advance what will be his reduced sentence if he pleads guilty. The main motive in this type of bargaining is to get a lesser sentence than awarded.

2. Charge Bargaining

This is the most generic form of Plea bargaining where the defendant agrees to plead guilty to a lesser charge consideration of dismissing higher charges. In other words, this sort of bargaining happens for getting less severe charges.

3. Fact Bargaining

This plea bargaining is not used in court as it is alleged to be against Criminal Justice System. This sort of bargaining takes place only when a defendant agrees to agree to certain facts to prevent the introduction of the other facts.

JUDICIAL PRONOUNCEMENT AND PLEA BARGAINING

Indian Judiciary has been reluctant in applying the concept proper to the 2005 Amendment and on various occasions rejected the concept of Plea bargaining even after several recommendations of the Law Commission of India.

Initially, the Indian court criticized the concept of Plea bargaining in the Indian Scenario. The Hon'ble Supreme Court held that "It is indolent to speculate on the virtue of negotiated settlements of criminal cases, as attained in the United States but our jurisdiction, it may result in dangerous economic crimes and corruption, this practice invades on society's interests by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by delicately subverting the mandate of the law."²³

In this case, the court disapproved of the concept of plea bargaining and held that it was against the interest of society. In *Kasambhai v. State of Gujarat*, the Apex court held that the practice of plea bargaining is unconstitutional and illegal, and it tends to increase in corruption, collusion and pollute justice.²⁴ The same was reiterated in *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr.*²⁵ In the case of *Thippaswamy v. the State of Karnataka*,²⁶ the Court held reducing or letting an accused plead guilty on the agreement would be a violation of Article 21 of the Constitution of India. Thereby Court stated that "In such cases, the Court of appeal or revision should set aside the conviction and sentence of the accused

²³ Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929 (India).

²⁴ Kasambhai v. State of Gujarat, (1980) AIR 854 (India).

²⁵ Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr, Special Leave Petition (crl), 3774 of 1999 (India).

²⁶ Thippaswamy v. State of Karnataka, (1983) 1 SCC 194 (India).

and remand the case to the trial court so that the accused can if he so wishes to defend him against the charge and if he is found guilty, a proper sentence can be passed against him.”

In *State of Uttar Pradesh v. Chandrika*,²⁷ Hon’ble court held that “it is settled law that on the idea of bargaining Court cannot eliminate the criminal cases. Mere acceptance or admission of the guilt must not be a ground for reduction of sentence. Neither can the accused bargain with the Court that as he is pleading guilty sentence to be reduced.” The basic principle of administration of justice says that merit alone should be considered for conviction and sentencing of the accused, even if the accused confesses the guilty.

However, it is the constitutional obligation of the court to provide an appropriate sentence. The Apex Court was against the concept of plea bargaining and thus held this practice as unconstitutional and illegal. However, the Hon’ble Court was of the view that on the plea bargaining that it cannot be the basis of disposing of criminal cases, mere acceptance of the guilt should not be the reason for giving a lesser sentence and it was further held that the accused cannot bargain for reduction of the sentence because he pleaded guilty. The Court acknowledged the importance of plea bargaining in the case of *State of Gujarat v. Natwar Harchandji Thakor*²⁸ and held that every “plea of guilty” which is construed to be a part of the statutory process in the criminal trial, should not be understood as a “plea bargaining” ipso facto. Considering the dynamic nature of law and society it is recommended that fundamental reforms such as to eradicate arrears of criminal cases and the court held that the very object of the law is to provide an easy, cheap, and expeditious justice by resolving disputes.

DISPUTES THAT CANNOT BE SETTLED THROUGH ADR

In the case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. & Ors.*,²⁹ the Hon'ble Supreme Court has set forth the subsequent classes of cases that are not suitable for ADR they are:

- Those suits are mentioned under Order I, Rule 8 CPC³⁰ which involves the interest of the public or the interest of several persons who are not the parties before the court.
- Accused charged with an offence punishable with life imprisonment or the death penalty or charge less than 7 years.
- Disputes regarding elections concerning public offices.
- Those Cases are related to a serious and heinous crime against women and children below the age of 14 years.

²⁷ *State of Uttar Pradesh v. Chandrika*, (2000) (crl) 384(386) (India).

²⁸ *State of Gujarat v. Natwar Harchandji Thakor*, (2005) 1 GLR 709 (India).

²⁹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. & Ors.*, (2010) 8 SCC 24 (India).

³⁰ Civil Code of Procedure, 1908, Order 1, Rule 8.

- Proceedings that involve prosecution for criminal offences.
- A person charged with an offence concerning the socio-economic conditions of the state.

WHETHER THE CONCEPT OF PLEA BARGAINING IS SUCCESSFUL IN INDIA?

In a country like India where the process of litigation takes years altogether at times even to the next generation. There might be cases where an innocent person may opt for plea bargaining for the crime which he has not committed but confesses to having committed only to avoid lengthy litigation which would cost him time and financial resources. Thereby the principle of law states that 'let the hundred guilty be acquitted but one innocent should be convicted' may be violated of plea bargaining.³¹

One of the major drawbacks of plea bargaining has been discussed under 142nd Law Commission Report wherein it was stated that plea bargaining would give space for corrupt practices. There is no time limit within which the entire process of plea bargaining should be completed by the parties to the suit and the Court should ensure the key objective of the plea-bargaining system, that is, to ensure speed of delivery of justice in criminal cases.

Moreover, as there is no time within which the Court is supposed to make the report regarding the success or the failure of the meeting between the accused and the prosecutor or the victim to come to a mutual decision for speedy disposal of the case. In such conditions, the Court has the discretion to take its own time for the preparation of the report which may lead to a delay in the criminal justice system which indeed makes the main objective of a speedy criminal justice system to be ineffectual in India. Though the Plea-bargaining mechanism has proved to be feasible and a sustainable instrument of justice and now there is a significant need to take the drawbacks of the present system of plea bargaining to make it more effective in India.

WHY DESPITE HAVING VARIOUS ADVANTAGES, THE ADR MECHANISM REMAINS UNDERUTILIZED IN INDIA?

Despite having numerous advantages, the potential of the Alternative Dispute Resolution (ADR) mechanism remains underutilized in India due to assorted reasons:

- The Supreme Court of India has been encouraging parties to take up pre-litigation mediation to settle their dispute before they turn to court

³¹ Jain, Tarun, 'Let Hundred Guilty Be Acquitted but One Innocent Should Not Be Convicted': Tracing the Origin and the Implications of the Maxim, (2007).

proceedings. In *Afcons Infrastructure v. Cherian Varkey Construction*³², as the ADR is a vital mechanism for the parties who are willing to resolve through negotiation to avoid the tiresome process of litigation. Section 89 of Civil Procedure Code 1908³³ powers the court to refer the matters that can settle through ADR, but it is seen that judges are referring the cases to the ADR mechanism.³⁴

- ADR is expected to take the burden of cases from the shoulder of judges but has failed to give desired results and still people are ignorant to trust the process that gives justice outside the courtroom. There is a lack of awareness about the ADR mechanism amongst the people in both rural and urban areas which is one of the hurdles in the realization of the full potential of the ADR mechanism. There is also a lack of awareness amongst judges, advocates and litigants regarding the efficacy and usefulness of the process of mediation among the common masses about the advantages obtained from the ADR mechanism.
- The intervention of judiciary in Arbitral proceeding is one of the major drawbacks of ADR mechanism which to be minimized to attained aimed objective.
- Lack of trained practitioners as there is no separate course or department who can take the seat in a dedicated manner to keep up the objectives of the ADR mechanism. Furthermore, the training should be made a part of continuing education on unique features of ADR as far as judicial officers and judges are concerned.

PROS OF PLEA BARGAINING

There are several pros of plea bargaining. Important pros of plea bargaining are mentioned below-

- **Reduction in Charges**

The most generic form of the plea bargain, a reduction in the severity of the charge, is a great benefit to a defendant. A lesser charge looks better on a permanent record that does not constitute a serious impact on future convictions and may not exclude the defendant from several things.

- **Very Few Technicalities**

Courts resolve disputes by referring to binding procedural laws which makes the process rigid and technical. On the contrary, ADR procedures are not afflicted with such rigorous rules of procedure within the case of arbitration; however, the principles of arbitration, which are fixed, are typically applied. Otherwise, the parties might meet and fix the procedures for themselves with the assistance of a mediator. It is substantive justice and not procedural justice that gets prominence

³² Supra Note 29.

³³ Section 89, Code of Civil Procedure, 1908.

³⁴ Rituparna Padhy, Analysing Section 89 of CPC, LAW TIMES JOURNAL (2019).

in ADR. The ADR thereby facilitates access to justice in an efficient and convenient means.

- **Confidential Nature**

The ADR proceedings and awards are kept private and confidential. Even in the case of conciliation, Section 75 of the Arbitration and Conciliation Act, 1996³⁵ states that all the proceedings should be conducted confidentially. This provides the parties ground to resort to such mechanisms.

- It helps in dealing with the caseload of the Judiciary

In plea bargaining, the state and the court are assisted in dealing with caseloads and the method decreases the prosecutors' workload by giving them space to focus much on preparing more serious cases by leaving effortless and petty charges thereby to settle through ADR mechanisms.

CONS OF PLEA BARGAINING

There are several cons of plea bargaining. Important pros of plea bargaining are mentioned below-

- Judges are not mandatory to follow the agreement of Plea bargaining

Even if the prosecutor and accused may accept for plea bargain agreement. In India, a judge is not bound to follow the plea-bargaining agreement. Thereby the discretionary power is in the hand of a judge whether to reduce the charges or nullify the agreement if they find that a plea bargain is being given in mala-fide intention.

- It provides soft Justice

In many situations where a plea bargain provides a lighter sentence for someone guilty. Thereby, it can be treated as an escape route for a prosecutor. Few arguments concerning this may argue a guilty plea and a guaranteed sentence is not similar to being found guilty and having a definite sentence imposed.

- Plea bargains eliminate the chances of appeal

If a case goes to trial and a defendant loses, there may be several grounds upon which an appeal may be filed but in plea bargain requires a defendant to plead guilty to the charges imposed on him, even though they are reduced. Thereby, it restricts the ability to file an appeal in any circumstance.

- It has the probability to create a criminal record for the innocent

There might be cases where an innocent person may opt for plea bargaining for the crime which he has not committed but confess to having committed to avoid lengthy litigation which would cost him time and financial resources.

- In India, Judges are not required to follow the Plea-bargaining agreement

In India, Judges are not bound to plea bargaining agreements. Thereby, though the parties and prosecutor may agree to the plea bargain still judges can nullify

³⁵ Section 75, The Arbitration and Conciliation Act, 1996 (India).

the agreement and impose a longer sentence, or no sentence should be imposed. A judge can also require a case to go to trial if they feel like a plea bargain is being offered in mala fide intention.

CONCLUSION AND SUGGESTIONS

Certainly, the basic definition of law says that law develops with the development of the society. Although the concept of plea bargaining is not new to India as it was already recognized under Article 20(3) of the Constitution³⁶. Initially when plea bargaining was implemented it was hard for Indian system to accept the concept on its disadvantages, but the law must grow rapidly according to the changes in the society and over a period Criminal Justice system has reformed its standards both legally and socially.

In India, the Plea-bargaining process is voluntary process with the objective to reduce the burden of judiciary and to provide fast and expeditious justice. However, the very essence of ADR is lost if it is not implemented in the true ethos. The role of the judiciary and the bar is especially important for the successful implementation and to achieve the objective of plea bargaining. There are certain loopholes of ADR in the criminal justice system in India which must be given utmost care to achieve efficacy.

Following are the suggestions:

- Lack of awareness about ADR mechanism amongst the people in both rural and urban areas is one of the hurdles in the realization of the full potential of the ADR mechanism. There is also a lack of awareness amongst judges, advocates and litigants regarding the efficacy and usefulness of the process of mediation.
- The National and State Legal Services Authorities should circulate more information regarding these, so they become the first option explored by potential litigants.
- Trained officers should be appointed to deal with ADR.
- Training of the ADR practitioners should be extensive which would also be necessary to be imparted to those who intend to function as a facilitator, mediators, and conciliators. Furthermore, the training should be made a part of continuing education on unique features of ADR as far as judicial officers and judges are concerned.
- The major loopholes in ADR are that it is not binding because one could still appeal against the award or delay the implementation of the award.

³⁶ Article 20(3), The Constitution of India, 1950.

EDITORIAL TEAM

PROF. (DR.) BANSHI DHAR SINGH

Professor,
Ex. Dean & Head,
Faculty of Law,
University of Lucknow

DR. KALPESHKUMAR L GUPTA

Founder ProBono India, Legal Start-ups,
Law Teachers India

DR. SUDHANSHU CHANDRA

Assistant Professor, Manuu Law
School, Maulana Azad National Urdu
University (Central University),
Hyderabad

PROF. (DR.) SANJAY SINGH

Director
of IIMT College of Law

INTERNATIONAL EDITORIAL TEAM

PROF. DR. MARC OLIVER OPRESNIK

President and CEO
Opresnik Management Consulting
and Opresnik Business School

**PROF. DR . COMRADE AMB.
CHUKWUNONSO C
HARLES OFODUM ESQ**

Chancellor, ALSA University.
Legal Director for Nigeria, World
Association for Humanitarian Doctors

ABOUT LEX SCRIPTA JOURNAL

Lex Scripta Magazine is a premier peer-reviewed online and print journal dedicated to advancing scholarly research in law, policy, and social sciences. With the vision of promoting academic excellence and fostering a culture of intellectual exchange, the magazine provides a distinguished platform for academicians, researchers, legal professionals, and students to publish their original work and contribute to contemporary legal discourse.

Each submission undergoes a rigorous double-blind review process conducted by a panel of eminent national and international professors, ensuring the highest standards of quality and academic integrity. Lex Scripta not only encourages original and innovative research but also strives to bridge the gap between theoretical insights and real-world applications in the legal domain.

Contributors and editorial members receive global recognition through certificates and publication opportunities, while readers gain access to insightful, authoritative, and thought-provoking content across diverse areas of law and policy.

Now managed by Integrity Education India, Lex Scripta Magazine is committed to expanding its academic footprint through enhanced digital presence, global collaborations, and university partnerships. Upholding its ISSN identity, Lex Scripta continues to evolve as one of India's most trusted and respected journals in the field of legal research and education.

KEY FEATURES

- | **Scholarly Insights** – Access in-depth, peer-reviewed research articles written by distinguished academicians and legal experts.
- | **Global Perspectives** – Explore diverse viewpoints on law, policy, and governance from national and international scholars.
- | **Authentic Content** – Read verified and academically sound articles that uphold the highest standards of research quality.
- | **Knowledge Enhancement** – Stay updated with emerging trends, case studies, and policy developments across multiple legal domains.
- | **Easy Accessibility** – Enjoy seamless access to online editions and exclusive hardcover issues for academic and professional use.



CONNECT WITH US **9811 666 216**
7011 605 618

