Introduction:

Since the inception of society, crime has been a constant phenomenon that has always prevailed in society. Where there are humans there will be crime due to the inherent selfishness and greed which is present in human nature. The natural reaction to crime in our society has always been to imprison the offender and isolate him from society in order to reform him. However, in recent years there is an awareness which is rising in the criminal justice system regarding the disadvantages of imprisonment and the advantages of alternates to imprisonment. However, the reality still remains that a large number of offenders are imprisoned each year which leads to overcrowding in prisons. Most of these prisoners are petty offenders who are short term prisoners. These petty offenders are mixed together with the serious offenders which further leads to a negative influence on these offenders. Therefore, rather than rehabilitation imprisonment leads to creation of gangs in prisons and other illicit activities which could be avoided by using alternative mode of punishment. The alternative mode of punishment in the current criminal justice system in India which have been discussed in this article are, (a) Plea Bargaining, (b) Compounding of Offences, (c) Absolute or Conditional Discharge, (d) Probation, (e) Fines.

Plea Bargaining: Nolo Contendere

The plea-bargaining system has been introduced in India through the Code of Criminal Procedure (Amendment) Act, 2005. Plea bargaining in its most basic form means bargaining for a lesser sentence. Although it is not a complete alternate to imprisonment, but it is a start towards establishing a more reformative system of punishment. Under plea bargaining, the accused and the public prosecutor bargain wherein the accused presents a no content in exchange for a lesser sentence. This process saves the time of the courts and the public prosecutor. The Law Commission of India recommended the introduction of the concept of plea bargaining under the Criminal Procedure Code in their **154th Report**.[1] In the beginning the concept of plea bargaining was opposed by the legal experts as well as the judiciary.[2] However, with inclusion in the criminal law it has been recognised of utmost importance in criminal law in order to avoid trial. **Section 265A to 265L** of the Code provide provisions for plea bargaining with respect to certain conditions. The section mention that plea bargaining is only applicable to cases which carry imprisonment of less than 7 years and is not applicable in criminal cases against women and children.[3]

The practise of plea bargaining has its roots in the American criminal law where it has been followed for more than a century. The Supreme Court of USA in *Brady v United States*[4] upheld the constitutional validity and recognised the role that plea-bargaining plays in effective disposal of cases. One of the most important argument in favour of plea bargaining is that it leads to speedy disposal of backlog of cases and therefore, expedited the delivery of justice. In India, the concept of plea bargaining was upheld for the first time in the case of *State of Gujarat V. Natwar Harchanji Thakor*, wherein a division bench of the Gujarat High Court ruled that the very object of law is to provide easy, cheap and expeditious justice and therefore fundamental reforms like plea bargaining are inevitable and necessary.[5]

Compounding of Offences:

Section 320 of the Criminal Procedure Code provides for compounding of offences which basically means that the court allows settlement of differences between the injured parties and the accused in exchange for some gratification.[6] There are certain category of offences like mischief, criminal trespass and assault which can be compounded without the permission of the court and between the parties themselves. However, certain more serious offences like theft, cheating, criminal breach of trust etc, require prior permission from the court before being compounded.

The Supreme Court in *Gian Singh's case* upheld that the high court has the power to quash criminal proceedings if the matter which is to be compounded is of a civil nature or related to the parties in a personal capacity. Further, the court also iterated that this principle is based on the fact that friendliness between the parties should be promoted and there should be peaceful settlement in cases where the crimes are not severe in nature.

Recently, in this year itself, the Supreme Court of India displayed the epitome of judicial activism by adjudicating on the issue of compounding of non-compoundable offences in the case of **The State of Madhya Pradesh v Lakshmi Narayan** wherein the court held that in cases where the offence is primarily of a civil nature the High Court may under inherent jurisdiction under **Section 482** compound a non-compoundable offence also.[7] All these steps taken by the judiciary have been in service of one goal only that is to reduce the need for imprisonment and move towards a future of alternative modes of punishment.

Absolute or Conditional Discharge

A discharge in its most basic sense means that the courts set free the offender while holding him guilty. The provisions for absolute and conditional discharge are provided under **Section 360** of the Code. Section 360 provides that the court may instead of sentencing the person to punishment may release him on a bond to serve time when he is called upon in the future.[8] The court does this when there is no threat or danger to the society from that person. The main purpose of this provision is to prevent the young offenders from being mixed in with hardened criminals in prisons where they may be exposed to illicit activities.

In the case of *Keraj Singh V State of Punjab*,[9] the court held that when the character of the offender shows nothing to indicate that he may be a threat to the society and when he is a first time offender and has no past criminal history, the courts shall give him the benefit of the doubt and discharge him under Section 360.

Probation:

Probation is a form of extra-mural form of treatment i.e. treatment outside the four walls of the prison.[10] It has been perfectly defined by the United Nations in their publication, **'Probation and Related Measure'** as an act of conditional suspension of punishment while the offender is placed under personal supervision and given individual guidance on treatment.[11] Probation is a humane method of reforming the offender by exposing them to sincere information and advice from learned counsellors and exposing them to society. In India, the Probation of Offenders Act, 1958, provides for a uniform law on probation of criminal offenders. **Section 3** of the Act provides that the courts can release a person on admonition if he is convicted of a crime carrying less than 2 years of punishment among other requirements.[12] The objective of this section is to prevent the offenders of less serious crimes from turning into hardened criminals in prisons and to reform them and introduce them to society.[13] **Section 4** of the Act empowers the Courts in appropriate cases to release any offenders on probation of good conduct instead of sentencing him at once to any punishment.

In the case of *Abdul Qayyum v. State of Bihar*,[14] the court observed that where the offender was 18 years of age and physically and mentally normal, was interested in his work, the father exercised reasonable control over him, there was no report against character of the offender and no previous conviction has been proved against, he was entitled to be released on probation.

Fines & Compensation

A fine is a preliminary penalty imposed upon a person who is held guilty of a crime. Fines have been a more modern development in criminal law and is a very important instrument to punish small time offenders. However, very little attention is paid to this form of punishment. Even in cases where a fine is imposed but the offender is unable to pay such fine, they are sent to prison. The benefit of

attaching fines to penalties are multiple because the courts can avoid overcrowding of jails, fine acts as a revenue for the state, fines can be adjusted according to the offenders means, avoids the imprisonment of offender which further helps in rehabilitation in society and much more.[15] In the case of *State v Basappa*, the court held that the fine which an offender is required to pay should depend upon his ability to pay which means that a rich person can be fined ten times more than a poor person.[16]

The problem with fines arises when the offender is unable to pay the fine. In this case**, Section 64** of the Indian Penal Code provides for imprisonment in default in payment of fine.[17] The courts have the power to sentence the person who defaults in payment to imprisonment. This is a very regressive approach to this alternate to imprisonment. The thing that should be adopted instead is that fines should be allowed to be paid in installments so that the main motive of reducing imprisonment can be achieved. A number of distinguished authors of criminal law like **M.J. Sethna** have supported the idea of payment of fine on instalment basis by saying that persons who are genuinely unable to pay fine should be allowed sufficient time for the payment of fine by installment if necessary.[18]

Conclusion & Suggestions

The road to actively introducing alternatives to imprisonment has just laid its foundation in the criminal justice system in India. The current machinery is far from perfect in order to successfully introduce alternative modes of punishment. In order to achieve the goal of efficiently providing alternates to imprisonment some of the suggestions are:

- The provision of discharge given under Section 360 of the Code should be used more liberally and frequently by the courts. The main reason for overcrowding in prisons is because of small time offenders convicted of petty offences. This can be avoided if these offenders are discharged under Section 360.
- In India, the provision of probation is underutilized and many times an offender is released on probation without any supervision. Therefore, in India probation has become the equivalent of 'letting go' which should not be the case. Proper machinery for supervision of probated offenders needs to be established.
- The courts should also make wider use of fines as a method of penalty. The offenders if unable to pay the fine should not be imprisoned. They should be allowed to pay the fine in installments if necessary.
- In India, there is no provision for community service. In the USA, if an offender is convicted of a petty offence, they can be sentenced to community service which is beneficial to the society and also helps in rehabilitation of the offender. Therefore, proper legislation for community service as a mode of punishment should be devised and enacted.

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[1] The Law Commission of India, 154th Report on The Code of Criminal Procedure, 1996.

[2] Kavita Kamboj, Plea Bargaining in India: A Comparative Study, Department of Law, Kurukshetra University, 2013.

[3] The Code of Criminal Procedure, 1973, Section 265(A-L).

[4] Brady v United States, 397 U.S. 742, (1970).

[5] State of Gujarat v Natwar Harchanji Thakor, 2005 CriLJ 2957.

[6] The Code of Criminal Procedure, 1973, Section 320.

[7] The State of Madhya Pradesh v Lakshmi Narayan. Criminal Appeal No 349 of 2019.

[8] The Code of Criminal Procedure, 1973, Section 360.

[9] Keraj Singh v State of Punjab, (1996) Cr. L.J. 4414.

[10] James B. Moore, Treatment & Supervision of Probated Felons, Journal of Employment Counselling, Vol. 16, 1979.

[11] United Nations, Department of Social Affairs, Probation and Related Measures, 1951.

[12] The Probation of Offenders Act, 1958, Section 3.

[13] J.K. Prasad v. State of Bihar, A.I.R 1972 SC. 2522.

[14] Abdul Qayum v State of Bihar, 1972 AIR 214.

[15] Chabbra K.S., Quantum of Punishment in Criminal Law in India, Chandigarh, Publications Bureau Punjab University (1970) p. 203.

[16] State v. Basappa (1953) Cri. L.J. 1064.

[17] The Indian Penal Code, 1860, Section 64.

[18] Jehangir M.J. Sethna, Society and Criminal, Bombay, N.M. Tripathi (1971) p. 298.