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DISCLAIMER

SHOULD THE PLEA BE BARGAINED? PLEA BARGAINING IN THE INDIAN CRIMINAL JUSTICE SYSTEM: AN OPPORTUNITY OR A COMPROMISED MOCKERY?

~ Jonus D'Souza[1]

Abstract

The criminal justice system in India has evolved to protect life, liberty, and property, ensuring justice for citizens. It comprises laws, procedures, and institutions to maintain social order and enforce laws. However, delays in justice have led to denial of justice, and the faith in speedy justice has diminished. The introduction of plea bargaining has changed the outlook of the system, allowing accused to negotiate guilty pleas in exchange for lighter sentences. This concept has become disputed and debatable, with many critics and issues needing to be addressed. Despite its advantages, plea bargaining remains a contentious issue in today's society.

Keywords

Plea Bargaining, Criminal Justice, Sentence, Accused

Objectives

1) *To Evaluate the Concept of Plea Bargaining in the Indian Criminal Justice system.*
2) *To Analyze the various issues or drawbacks of the Concept of Plea Bargaining.*

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"One Of the Best Ways to Persuade Others Is by Listening to Them"

- Dean Rusk.

INTRODUCTION

The Concept of Plea Bargaining is based on the "Doctrine of Nolo Contendere", which is a Latin word, it means "I do not wish to contest". Evolving from a police state to a welfare state the function of the state to maintain law and order in the society has remained stable. In other countries plea bargaining is widely practices as a means to quickly and effectively dispose of cases. Plea bargaining has its roots from the American concept. In **Brady vs United States**[2] "The court upheld the constitutionality of Plea Bargaining". Plea Bargaining is widely used in the USA, about more than ninety five percent of criminal cases are negotiated rather than undergoing long trials. In India the concept and position are quite different as compared to other countries. In the year 2005 on recommendation of the Malimath Committee, the legislature introduced this concept by introducing a new chapter XXI- A through the Criminal Law (Amendment) Act, 2005. Sections 265A to 265L were introduced in the Code of Criminal Procedure, 1973. In the Indian scenario plea bargaining was brought as a legal mechanism to expedite the resolution of criminal cases and secondly to alleviate the burden on the courts. This concept also seeks to provide a certain level of leniency to the accused who accept their guilt. Indian courts were widely against this concept and the ground for criticism was widely open. Since than this concept has become very controversial mentioning the ample shortcomings which need to be dealt with. Critics argue that it may undermine the pursuit of truth and fairness in the legal process. However, applying the concept of plea bargaining entirely depends on the facts and circumstances of each case. With regards to its applicability, the concept applies to only those offences for which punishment of imprisonment is up to a period of seven years. This concept does not apply to offences which affect the socio-economic condition of the country, also it does not apply to an offence which has been committed against a woman or a child below the age of fourteen years. Also, no appeal lies against an order given by the court in a plea-bargaining case.

[2] 397 U.S 742.

PLEA BARGAINING - MEANING

There is no perfect definition of the term Plea Bargaining. The concept of Plea Bargaining consists of two different words. “Plea” which means to make a request or an appeal, and “Bargain” which means to negotiate or to bring to an agreement between two or more persons. In Criminal Law Plea Bargaining is the process in which the Accused and the Prosecution in a criminal case negotiate together and come to an agreement, whereby resulting in a guilty plea for a lighter sentence, or it can be said that it is a process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition which is subject to approval of the court [3].

OBJECT AND ADVANTAGES OF PLEA BARGAINING

Plea Bargaining Forms an essential and important component of the criminal justice system. It has a number of advantages but it must be carried out within a system that promotes fairness and transparency. The purpose and importance it holds need to be talked about. Plea Bargaining is said to be a win-win situation for both the parties. First it helps in Effective case resolution that is, Plea Bargaining aids in speeding up the legal process thereby allowing matters to be resolved rapidly which ultimately saves costs and time. In **Hussainara Khatoon vs Home Secretary State of Bihar** [4] it was stated by the Honorable Supreme Court that “State cannot deny the constitutional right of speedy trial”. Long Trials can be expensive and time consuming which ultimately leads to backlogs of cases, can be avoided by reaching to a plea agreement. Secondly, it helps to resolve issues pertaining to overcrowding of jails and overburdening of courts. Thirdly, Plea Bargaining ensures certainty and predictability for both the parties. The accused can anticipate the outcome of their case and avoid the risk of receiving a harsher sentence if found guilty at trial. Similarly, victims can obtain a resolution and closure by knowing that the accused has accepted responsibility for their actions.

HISTORY OF PLEA BARGAINING IN INDIA

In general, the concept of Plea Bargaining is not new, it has its emergence in the 19th century. In its 142nd, 154th, and 177th reports, the Law Commission of India recommended the adoption of "Plea Bargaining". The Law Commission's 154th Report suggested adding the new XXIA to the

[3] Black’s Law Dictionary, 8th Edn, 1190 (2004).
[4] 1979 AIR 1369.

Criminal Procedure Code. The commission took suggestions from various lawyers, judges etc. while formulating the same. The 142nd Report extensively elaborated on the idea of plea bargaining, by laying down the method in which it could be given a legislative form and supporting the findings by citing its effective operation in the USA. The Report recommended that the concept of plea bargaining should be made applicable to offences which are punishable with imprisonment of less than seven years. The nature and gravity of the offences and the quantum of punishment for application of this concept was recommended. It was noted that persons accused of serious socio-economic offences, and those charged with crimes against women and children should not have access to the aforementioned concept. The 177th Law Commission Report. The Report of the Committee on the Reform of the Criminal Justice System, 2000 under the Chairmanship of Justice Malimath, stated that the United States experience was proof that plea bargaining was a way to expedite the delivery of criminal justice by disposing of accumulated cases [5].

TYPES OF PLEA BARGAINING

Following are the common types of Plea Bargaining that occur in a Criminal Justice System:

1) **CHARGE BARGAINING**

   This type of plea Bargaining occurs that the accused pleads guilty for a charge framed against him. It allows the accused to face less severe charges and potentially receive a lighter sentence [6].

2) **SENTENCE BARGAINING**

   This type of plea bargaining involves negotiation on the length or severity of the sentence. Main motive is to get a lesser sentence. The accused pleads guilty in exchange for a reduced or lighter sentence [7].

3) **FACT BARGAINING**

   This type of Plea Bargaining involves the negotiation of the facts of the offence. The accused may agree to stipulate certain facts in making an agreement not to introduce certain other facts[8].

[5] Absar Aftab Absar, Plea Bargaining in India -An Appraisal, (2020).
[6] Shubham Kumar Thakuriya and Deeba Faryal, A Consecration in CrPC: Plea Bargaining, 5 (1) IJLMH Page 2411 (2022).
[7] Ibid.
[8] Ibid.

Besides the ones mentioned above, the international jurisprudence recognizes two other kinds of plea bargaining:

1) **EXPRESS BARGAINING**

   It is a face-to-face bargaining. It occurs when an accused or his counsel directly negotiates with the prosecutor concerning the benefits that may follow after a guilty plea is entered[9].

2) **IMPLIED BARGAINING**

   It is not a face-to-face Negotiation. It occurs when the trial judges in particular, form a pattern or habit of treating the accused who pleads guilty more leniently than those who use their right to trial[10].

PROCEDURE OF PLEA BARAGINING

The procedure of plea bargaining is mentioned under sections 265-A to 265-L of the Criminal Procedure Code, 1973.

1) **APPLICATION STAGE**

   If an accused wishes to enter a plea of guilty voluntarily under the aforementioned provisions, he may submit an application to the appropriate court along with the particulars of his case and an affidavit stating that he is doing so voluntarily, that he is aware of the nature of the sentence, and that he has not previously been convicted of the same offence. The trial court will notify the public prosecutor or complainant, as appropriate, and the accused to appear on the date set for the case after receiving the accused's application and affidavit. The court will next examine the accused in camera to ensure that he made the application freely and that he was eligible to make it. The application will be denied and the case will be sent back for a regular trial if the court determines that the accused did not submit his application freely or if he has already been found convicted of the same offence [11].

[9] Dungdung, Anubhuti and Dungdung, Anubhuti, Plea Bargaining: The Indian Experience (May 2, 2012).
[10] Ibid.
[11] Section 265-A, Section 265-B of Criminal Procedure Code, 1973.

2) GUIDELINES FOR MUTUALLY SATISFACTORY DISPOSITION

It outlines the process to be followed by the court in working out a mutually satisfactory disposition. If a case is brought on the basis of a police report, the court will notify the public prosecutor, the investigating officer, the accused, and the victim to attend the meeting to find an acceptable resolution. The accused person's Pleader may be permitted to attend this meeting. The accused and the victim of the case must be given notice to attend the meeting to work out the mutually satisfactory disposition of the case, when a case is brought forward without the involvement of a police report. In each of the aforementioned situations, the court must make sure that the disposition was reached freely[12].

3) BARGAINING STAGE

When the court determines that the accused has not previously been convicted of the same offence, that he is at least 18 years old, and that he understands the nature of the offence and the proposed sentence, the court shall give the public prosecutor or the complainant/victim, as applicable, time to work with the accused to work out a mutually satisfactory disposition of the case. This may include paying the victim compensation and other costs and fixing the further hearing date of the case.

4) EXAMINATION AND REPORT

After obtaining such a report, the court must prepare its own report, which must be signed by each party to the negotiation. If no such resolution is reached, the court must record the observation and move forward from the point at which the application was initially submitted in this particular case[13].

5) JUDGMENT

The court shall award compensation to the victim as per the mutually satisfactory disposition has been reached. The court shall release the accused on probation of good behaviour after hearing the parties regarding the severity if the offence under Section 360 of the Cr.P.C or deal with the case in accordance with the Probation of Offenders Act, 1958. The court may impose on the accused half of the minimum punishment provided by

[12] Section 265-C of Criminal Procedure Code, 1973.
[13] Section 265-D of Criminal Procedure Code, 1973.

law for the offence committed by the accused, or the court may sentence the defendant to one-fourth of the penalty specified or extendible, as appropriate, for the offence, if the Act does not provide a minimum sentence[14].

ISSUES OR DRAWBACKS RELATED TO PLEA BARGAINING

Plea Bargaining used as a method of negotiation in the criminal justice system raises several important issues and concerns, some of which are as follows:

1) POTENTIAL FOR COERCION

There are situations where in a case of plea bargaining the accused feel coerced or pressured in pleading guilty. A series of threats and promises by legal officials that induce defendants to forfeit many of their constitutional rights and plead guilty is one if the crucial characteristics of Plea Bargaining[15]. At times even when the accused is innocent, he is forced to plead or accept guilty because if he doesn't, he will have to face harsher sentence or punishment thereby leading to unfairness of result.

2) REDUCED DETERRENCE

Plea Bargaining weakens the deterrent and incapacitative effect of law by allowing some accused to escape just desserts[16]. It is argued that the concept of Plea Bargaining diminishes the deterrent effect of punishment in the criminal justice system. This is because the accused may perceive a lower risk of punishment in a plea-bargaining case.

3) WEAK INVESTIGATORY PROCESS

Plea Bargaining can lead to questionable outcomes, that is if it is based upon reliability of evidence. Involvement of the role of police in this process attracts criticism. The victim seeks to achieve justice but in this case the deal is to make an agreement, ultimately depriving the victim to secure the ends of justice.

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[14] Section 265-E of Criminal Procedure Code, 1973.

[15] SMITH, supra note 28, at 950; LANGBEIN, id, Langbein sees coercion in the threat of increased punishment for defendants who insist on their right to trial. In his view, "the plea agreement is the source of the coercion and already embodies the involuntariness". LANOBEIN, id. at 16.

[16] S.J. Schuihofer, Plea Bargaining as Disaster, 101 YALE L.J. 1979 (1992); D.A. Smith, The Plea-Bargaining Controversy, 77(3) J. CRIM. L. & CRIMINOLOGY 949, 949 (1986) [hereinafter SMrrn].

4) **NO SCOPE FOR APPEAL**

The judgement delivered by the court in a plea-bargaining case leaves no scope for appeal which is one of the major drawbacks in the system.

JUDICIAL TREND

1) In **Thippaswamy vs State of Karnataka**[17], J. Bhagwati gave its observation about plea bargaining that "this concept would be clearly violative of Article 21, of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly".
2) In **Kasambai Abdulrahmanbhai Seikh v. State of Gujarat** [18] Justice P.N. Bhagwati stated "the concept of plea bargaining to be unconstitutional as well as illegal, and also pointed out that the cases should be disposed of on their merits rather than on the bargaining made by the accused".
3) In **Kaachhia Patel Shantilal Koderlal vs State of Gujarat and Another**[19], "the Honourable Supreme Court held that the practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice".
4) In **State of Uttar Pradesh v. Chandrika**[20] held that "it is not permissible to dispose of the case on the ground of plea bargaining and observed It is decided law that one base of plea-bargaining Court may not dispose of the criminal suits. The Court has to conclude it on merits. If accused confesses his guilt, relevant punishment is required to be ordered. It was further held that neither a mere acceptance or admission of the guilt should be a ground for reduction of sentence nor can the accused bargain with the court that as he is pleading guilty, sentence should be reduced".
5) In **State of Gujarat vs Natwar Harchanji Thakor**[21] it was stated that, "The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and

[17] 1976 Cr.L.J 1527.
[18] AIR 1980 SC 854.
[19] 1980 3 SCC 120.
[20] AIR 2000 SC 164.
[21] 2005 Cr LJ.2957.

delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It can thus be said that plea bargaining is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms".

6) **In Giraj Prasad vs State of Rajasthan**[22] It had been held that "When the accused pleads guilty, the court must hear the victim or complainant before accepting such plea"

CONCLUSION & SUGGESTION

Taking into account the present Indian Scenario, the concept of plea bargaining has not been elaborately welcomed. The applicability of this concept has been limited to a major extent and the scope has been restricted. It has become a controversial and complex practice with the criminal justice system. There are many issues associated with this concept, which are not brought to light. Plea bargaining is not inherently negative, reforms and safeguards need to implemented to address its issues. Instead, then being a question of ethics, law, or constitutionality, this contentious idea of plea bargaining is more of a convenience and mutual benefit mechanism. The argument that plea bargaining encourages, if not forces, the accused to waive their right to a trial and the argument that society has an interest in fair and appropriate criminal sentences have been shown to be unfounded due to the inherent uncertainty in a trial and the mutual benefit associated with any plea negotiation system. It can be seen that this concept is a neutral process in the dispensation of criminal cases. While considering this concept it should be seen that it does not undermine the effectiveness of law and punishment. Considering its advantages, it cannot be said that this concept has brought expeditious conclusion of cases but in turn it violates a victims right to fair trial. Also, involvement of coercion by the investigating agencies and corruption in the process in another issue concerning. A few adjustments must be made in order to enhance the working and operations thereby making it efficient, fruitful, and helpful way to resolve disputes. Plea bargaining in open court should be encouraged to guarantee a fair and unbiased trial, as should an evaluation of both parties financial, physical, and mental conditions, most importantly proving that the accused was not coerced or forced to confess to the crime. Ultimately, the effectiveness and fairness of plea bargaining depend on striking a balance between expediency and safeguarding the rights of

[22] 2014 13 SCC 674.

defendants. There arises a need for thorough scrutiny, evaluation, observation and potential reforms or modifications ensuring that it serves the interests of justice.