

# Plea Bargaining: A New Horizon in Indian Criminal Jurisprudence

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## ABSTRACT

Plea bargaining is a process in which a defendant in a criminal case agrees to plead guilty in exchange for some concession from the prosecutor or the court. Plea bargaining challenges the necessary basis of crime and punishment that is the foundation of the criminal law and the criminal justice system. This paper refers to a person charged with a criminal offence (accused) negotiating with the prosecution for a lesser punishment than what is provided in law by pleading guilty to a less serious offence. Plea bargaining is a concept in which an agreement takes place between the State and the accused by which he pleads guilty in exchange. The system of plea bargaining is in its experimental stage.

**Keywords:** Plea, bargaining, justice, trials, criminal, system, negotiation, crime and punishment

## INTRODUCTION

Plea bargaining is a process in criminal law where the accused person agrees to plead guilty to a lesser charge or to receive a lesser sentence. It all must unequivocally and collectively realize for ourselves that the quality of justice prevailing in any country suffers not only when an innocent person is punished or a guilty person is acquitted but also when there is enormous and unjustified delay in deciding the criminal cases because let's not forget that delay defeats the very purpose of a justice for which it is meant and is the single biggest enemy of justice and mother of huge pending cases in various courts in our country. As is the case in every democratic civilized society, our criminal justice system is also expected a lot to provide the maximum sense of security and succor to the people at large by dealing with crimes and criminals effectively, quickly and legally which is certainly possible if we simplify our long, tardy and complicated procedures in criminal law. We also need to bear in our mind that prolonged trials not only just cause untold, endless and repeated harassment and sufferings to victims alone but even to witnesses and the accused also which certainly needs to be checked immediately.

Various strategies have been formulated by our lawmakers from time to time to alleviate the burden of trials in less time as our criminal justice system is already over flooded with huge number of pending cases and ensure their speedy disposal. One such strategy is plea bargaining which is to a certain extent borrowed from the USA where it has proved quite successful as over 90% cases are supposed to have been settled finally through it. Even though plea bargaining has completed two years since it was enacted, it is still too soon to give a final verdict on its relevance and usefulness. "The practice of plea bargaining has spread globally across common law jurisdictions, like the US and UK, but varies significantly based on local legal traditions and regulations. In civil law jurisdictions, plea bargaining is generally not permitted or is highly regulated" (Langer, Máximo, 411)

Here it will certainly not be out of context to still mention that while trials often take year's plea bargaining takes a very short span of time and so it can certainly usher in a new revolution in our criminal justice system if it is properly implemented. Moreover there is no certainty in trial about anything but in plea bargaining everything is certain once the parties agree to it. In a case instituted on a police report, the accused, the investigating officer, the prosecutor and the victim must agree as they are the parties to the agreement. "For a defendant who believes that conviction is almost certain, a discount to the sentence is more useful than an unlikely chance of acquittal" (Luna, Erik, 263)

A formal proposal for incorporating plea bargaining into the Indian criminal justice system was put forth in 2003 through the Criminal Law (Amendment) Bill, 2003. How-ever, those provisions failed to come through and were reintroduced with slight changes through the Criminal Law (Amendment) Bill, 2005 which was passed by both the Houses of Parliament and was finally incorporated into the Code of Criminal Procedure, as Chapter XXI-A through the Criminal Law (Amendment)

Act, 2005 and came into being from July 5, 2006. Keeping in mind the chances of its being misused, our Government decided to introduce it in a limited manner and adopted a cautious approach towards it. It cannot be applied against the accused in respect of all offences which are punishable with a sentence exceeding seven years. It is also not applicable when an offence affects either the socio-economic condition of the country or - has been committed against a woman or a child below the age of 14 years. The accused should also not have been covered under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 nor should have earlier been convicted for the same offence. Further, it is worth mentioning here that plea bargaining shall take effect only when the consent of all three, i.e., victim, judge and prosecutor has been obtained. On July 11, 2006 the Central Government actually issued a notification mentioning 19 statutes as affecting the socio-economic conditions of our country and the offences in those statutes are excluded from plea bargaining. Those statutes are as follows:

1. Dowry Prohibition Act, 1961.
2. The Commission of Sati Prevention Act, 1987.
3. The Indecent Representation of Women (Prohibition) Act, 1986,
4. The Immoral Traffic (Prevention) Act, 1956.
5. Protection of Women from Domestic Violence Act, 2005.
6. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
7. Provisions of Fruit Products Order, 1955 (issued under the Essential Commodities Act, 1955).
8. Provisions of Meat Food Products Order, 1973 (issued under the Essential Commodities Act, 1955).
8. Provisions of Meat Food Products Order, 1973 (issued under the Essential Commodities Act, 1955).
9. Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of boundaries of protected areas under Wildlife (Protection) Act, 1972.
10. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
11. Offences mentioned in the Protection of Civil Rights Act, 1955.
12. Offences listed in Sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
13. The Army Act, 1950.
14. The Air Force Act, 1950.
15. The Navy Act, 1957.
16. Offences specified in Sections 59 to 81 and 83 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
17. The Explosives Act, 1884.
- Offences specified in Sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1955.
19. Cinematograph Act, 1952.

A plea bargain may be made by any accused person above the age of 18 years and against whom a trial is pending when-

(1) The report has been forwarded by the officer in charge of the police station under Section 173 CrPC alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(2) A Magistrate has taken cognizance of an offence on complaint other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force and after examining complaint and witnesses under Section 200 CrPC, issued the process under Section 204 CrPC.

Plea bargaining is nothing but a pact mutually in a criminal case after intense negotiations between the defendant and the both the parties yield certain ground to the plaintiff wherein to the other party so that a mutually satisfactory pact to the satisfaction of both the parties which may include compensation also and other expenses to be given to the victim by the accused which can be worked out amicably. It is a bargain of the accused with the prosecuting agency in the matter of awarding concessional punishment on condition that he would waive his right to be defended or to defend himself or to contest the charges at the trial. In lieu for a plea of guilty, the accused would receive leniency in sentencing. "The prosecutor secures a conviction while avoiding the need to commit time and resources to trial preparation and a possible trial" (Grossman, G. 749 ). Here we should also not be oblivious rather be appreciative of the indisputable fact that while generally the output of any given trial is totally unpredictable, yet a plea bargain provides to both the prosecution and the accused control to some extent over the result thus imparting certainty which should obviously not be overlooked.

This clearly is a living testimony which time and again speaks for itself and amply demonstrate as to why plea bargaining is being widely practiced in so many countries all over the world. "Plea bargaining is criticized, particularly outside the United States, on the grounds that its close relationship with rewards, threats and coercion potentially endanger the correct legal outcome" (Bawden, Tom, 2000). It all must honestly accept that our courts have certainly become notorious in one aspect and that is in taking an inordinately long time in pronouncing decisions which obviously hampers fair trial and the very purpose of justice for which it exists stands totally defeated. This only serves to vindicate the firm belief of such people who very strongly believe that, "Justice delayed is not just justice denied but is also justice punished and then buried forever. The victim suffers the most in this whole process and regrets knocking the doors of court." Here it is pertinent to mention that our Government while keeping the supreme interests of common men in mind decided to introduce plea bargaining in our legal system by which both the opposing parties can benefit equally by taking advantage of this provision. Prosecutors tend to be strongly motivated by conviction rates, and "there are many indications that prosecutors are willing to go a long way to avoid losing cases, [and that] when prosecutors decide to proceed with such weak cases they are often willing to go a long way to assure that a plea bargain is struck" (Gazal-Ayal, 339).

It is here that plea bargaining plays the role of a good medicine and equally benefits them. It envisages the payment of compensation by the culprit to the victim as a part of the deal struck between both the parties under which in lieu of pleading guilty and providing compensation and other expenses to the victim, the accused is imprisoned for not more than half the minimum sentence he is liable to serve, if he is convicted. "A prosecutor may want to maintain a high conviction rate or avoid losing high-profile trials, creating the potential that they will enter into a plea bargain that furthers their interests but reduces the potential of the prosecution and sentence to deter crime" (Schulhofer, Stephen, 1992).

It is certainly - mean achievement that for the st time such a system. There is no precise or exact definition of plea bargaining and therefore we will read its definition as defined and interpreted by various reputed sources. Few of them are as follows:

- (a) Britannica Concise Encyclopedia defines it as "Negotiation of an agreement between the prosecution and the defence whereby the defendant pleads guilty to a lesser offence or (in the case of multiple offences) to one or more of the offences charged, in exchange for more lenient sentencing, recommendations, a specific sentence or a dismissal of other charges."
- (b) According to the Law Reform Commission of Canada 1975: "Plea bargaining is defined as any agreement by the accused to plead guilty in return for the promise of benefit"
- (c) According to Joginder Singh "A plea bargaining is an agreement in a criminal case in which a prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or no contest in exchange for some concession from the prosecutor. This concession can include reducing the original charge or charges dismissing some of the charges against the defendant or limiting the punishment a court can impose on the defendant Generally, a plea bargaining allows the parties to agree on the outcome and settle the pending charge. In colloquial terms this is known as 'walk off with a plea'."

It will certainly not amount to an exaggeration by any measure if we say that plea bargaining is a land. mark entry in our criminal justice system certainly a step in the right direction by which no one is the loser and not only both the parties gain equally but even our entire criminal justice system gains a lot as there is huge pendency of such cases where plea bargaining can be applied. It will certainly prove to be a big milestone in not only reducing the huge backlog of pending cases drastically in a short span of time but also in other respects which will greatly benefit our entire criminal justice system. Speedy justice is an essential, inviolable component of effective justice delivery mechanism and good governance. It is the best and most effective way to restore people's faith in not only the Government but even in our entire legal system on which our courts also hinge. This explains also why the Twelfth Law Commission of India in their 142nd Report and later the 177th Report of the Sixteenth Law Commission of India had both sought to incorporate the concept of plea bargaining in our criminal justice system. In its report submitted to the Government of India's Ministry of Home Affairs in March 2003, the Malimath Committee headed by Justice V. S. Malimath on criminal justice reforms had also recommended that a system of plea bargaining be introduced into the criminal justice system of India to facilitate the earlier resolution of criminal cases and reduce the burden on the courts. It stated that the experience of the United States was an evidence of plea bargaining being means for the disposal of accumulated cases and expediting the delivery of criminal justice and affirmed the recommendations of the Law Commission of India in its 142nd and 154th Reports.

If successful plea bargaining will not only just ensure quick resolution of cases involving a pretty offences, lead to lower crime rate, restore faith of people in judiciary, reduce the number of under-trials in the prisons but also enable the courts to concentrate on the cases involving serious offences and fulfill its constitutional obligation to provide a speedy trial. Its successful implementation will hinge largely on the cooperation of all those who are involved and concerned with it which

includes the judge, accused, victim, witnesses, lawyers and police officers and constables among others. Default by any one of them can spoil everything and hamper smooth performance of the entire process involved in plea bargaining which might even result miscarriage of justice. Therefore it is absolutely imperative that certain safeguards must be followed to ensure success of plea bargaining in our country.

It has been noticed that plea bargaining has come under heavy fire from some quarters for allowing criminals to be let off very lightly which they feel is sending a very wrong message in society fraught with dangerous consequences that by displaying money power and by manipulating the victim by any means in one's own favour, one can even escape punishment with impunity also which is certainly not a good news according to them. It is here that they have failed in correctly analyzing the provisions of plea bargaining as explained from Sections 265-A to 265-L. It is therefore imperative to specifically cite the relevant provisions which operate as safe-guards against misuse of the pro-1. Section 265-A clearly lays down that plea bargaining and these are as follows:

- 1) Section 265- A . Clearly lays down the visions of plea bargaining applicable only to offences which are less serious and are not punishable with more than seven years. Here again it does not apply where such offence affects the socio-economic condition of the country Central Government or has been notified by the committed against a woman or a child below the age of fourteen years. As
- 2) Section 265-B which empowers the accused to file application for plea bargaining also requires him to give an affidavit sworn by the accused stating that he has voluntarily preferred so and that he has not previously been convicted by a court in a case in which he had been charged with the same offence because previous conviction debars accused from taking advantage of the provision of plea bargaining by committing the same offence again. The Court shall examine the accused in camera where the other party in the case shall not be present to satisfy itself that the accused has filed the application on 265-B which empowers the accused to file application for plea bargaining also requires him to give an affidavit sworn by the accused stating that he has voluntarily preferred so and that he has not previously been convicted by a court in a case in which he had been charged with the same offence because previous conviction debars accused from taking advantage of the provision of plea bargaining by committing the same offence again. The Court shall examine the accused in camera where the other party in the case shall not be present to satisfy itself that the previous conviction debars accused because pre-from taking advantage of the provision of plea bargaining by committing the same offence again. The Court shall examine the accused in camera where the other party in the case shall not be present to satisfy itself that the accused has filed the application voluntarily and after being satisfied, the court shall provide time to the public prosecutor or the complainant of the case and the accused to work out a mutually satisfactory disposition of the case which may include giving compensation and other expenses to the victim by the accused.
- 3) Section 265-C gives clear directions to court to ensure that the process of working out mutually satisfactory disposition is completed voluntarily by the parties concerned.
- 4) Section 265-D requires that once mutually satisfactory disposition of the case has been worked out and its report prepared by the court, it shall be signed by presiding officer of the court and all other persons who participated in the meeting to ensure voluntariness
- 5) Section 265-G provides that judgment delivered shall be final and no appeal lies ordinarily but to check error of judgment or wrong judgment delivered by a lower court judge, it also simultaneously grants exemption by allowing special leave petition under article 136 and writ petition under articles 226 and 227 of Constitution against such judgment.
- 6) Section 265-K debars the statements or facts stated by an accused in an application for plea bargaining filed under Section 265-B to be used for any other purpose except for the purpose of this chapter.
- 7) Section 265-L provides protection to juvenile or child as defined in sub-clause (k) of Section 2 of the Juvenile Justice [Care and Protection of Children] Act, 2000.

The Law Commission of India has also dismissed the fuelling, base-less speculation among some people that the incidence of crime might increase due to criminals being let off so easily with minimum punishment imposed as provided in Section 265 The Law Commission of India has also dismissed the fuelling, base-less speculation among some people that the incidence of crime might increase due to criminals being let off so easily with minimum punishment imposed as provided in Section 265-E by stating that the scheme provides for concessional treatment and not for no punishment.

## **CONCLUSION**

The meaning of a plea bargain is pretrial negotiations between the accused and the prosecution. It is an association between defendant and prosecutor. The law of plea bargaining will not only just prove to be a saviour for lakhs of under-trials but

also for the victim who will get immediate compensation rather than waiting endlessly for the decision to come from various courts which is very time and money consuming both. The proponents of plea bargaining argue that it would not only eliminate the risks and uncertainties involved in a trial but would also help a lot in introducing flexibility into a very rigid and often erratic system of justice. The costs of a trial in different courts can be staggering and so disposing of a case prior to trial will have a large impact as the costs will be notably less. It primarily involves pre-trial negotiations between the accused and the prosecutor.

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