



PLEA BARGAINING: POSITION IN INDIA

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ABSTRACT

Plea bargaining is a novel concept in India. In the modern era of criminal justice system in India, Plea bargaining can be used as an important and substitute tool to reduce the huge number of criminal cases pending in the courts. It is a process in which the accused and the victim in a criminal case work out together for a mutual satisfactory disposal of the case subject to the court's approval.

In India, position of plea bargaining is different from that of US. In US, plea bargaining is widely prevalent practice which accelerate the legal process. Plea bargaining as a concept was introduced in Indian criminal justice system by the Criminal Laws(Amendment) Act, 2005, on the recommendation of Malimath Committee and 142nd and 154th Law commission report. Ever since its introduction, the concept has been a subject of debate. While some criticize it on the ground that it violates fundamental rights of the accused, others hail it as an instrument in ensuring speedy disposal of cases. In this light, this paper is an attempt to discuss relevant provisions and various aspects relating to Plea Bargaining in Indian criminal law system including judicial attitude towards this concept.

Introduction:-

'Plea Bargaining' can be defined as pre-trial negotiations or an agreement between the accused and the prosecution in which the accused agrees to plead guilty in barter for certain compromise by the prosecution i.e lenient amount of punishment.

Plea bargaining as a concept has been present in the Indian legal system for a considerable amount of time. It is generally understood as negotiations that take place between the prosecution and defendant prior to the trial, which often lead to alteration in the defendant's sentence. There are several types of plea bargaining namely, charge bargaining, sentence bargaining and concessions based on testimony in another case. In charge bargaining, the defendant agrees to plead guilty to a specific charge and in return the plaintiff promises to drop the other charges while in sentence bargaining, the sentence is reduced to a pre-decided term. In the third category, concession in charge or sentence is offered to the accused, in exchange of evidence of the accused in another matter. This paper collectively refers to all the categories as plea bargaining.

"Plea-bargaining is the process whereby the accused and the prosecutor in a criminal trial workout a mutually satisfactory disposition of the case subject the court approval. It usually involves the defendants pleading guilty to lesser offense as to only one of some of the courts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge." - Black Law Dictionary¹

¹<https://www.thelawdictionary.org/plea-bargaining/>



The features of plea-bargaining:-

1. It is applicable only in respect of those offenses for which punishment of imprisonment is less than 7 years.
2. It does not apply where such offense affects the social-economic condition of the country or has been committed against a woman or a child below the age of 14 year.
3. The application should be filed by the accused voluntarily.
4. An accused must file an application for Plea-bargaining in the court in which such of offense is pending for trial.
5. The accused and prosecution both are given time to work out a mutually satisfactory disposal of the case, which may include giving compensation to the victim by the accused and other legal expenses incurred during of the case.
6. Where a satisfactory disposal of the case has been done, the Court shall dispose the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offense.
7. The statement or facts specified by an accused in an appeal for plea-bargaining shall not be used for any other cause other than for plea-bargaining.
8. The judgment delivered by the Court in the case of plea-bargaining shall be

final and no appeal shall lie in any court against such judgment.

9. Three essentials work at the time of filing an application of plea-bargaining, are:-

- Accused’s voluntariness to plead guilty.
- The statements or facts specified by an accused in an application for plea-bargaining should not be used for any other cause except plea-bargaining.
- It is a contractual agreement between the prosecution and the defendant regarding the disposal of criminal charge. However, it is not enforceable until a judge approves it.

10. It reduces the charge.

11. It drops multiple counts and press only one charge.

12. It recommends the courts about punishment and sentences.

It generally occurs prior to the trial, but in some cases, it may occur anytime before a verdict is delivered. It is derogation from the concept that ‘a judge can only decide a sentence after hearing in an open court’.

Position of Plea Bargaining under US law and Indian Law:

This concept has not emerged recently but have life even in 19th century. In the United States, plea-bargaining plays a significant part of the criminal justice system, Majority of criminal cases are settled by plea-



bargaining rather than by a trial by jury. But it is a subject to the approval of the court. The rules pertaining to Plea-bargaining in all states of US are different. More than 90% of the cases are settled through Plea-bargaining in US. It has become a notable feature of American Judiciary that the disposing rate of cases is very rapid therefore, backlog is under control. Prosecutor commence about the plea-bargaining proceedings. One of the main arguments advanced in the favour of plea-bargaining is that it helps in speedy disposal of amass cases and will accelerate delivery of criminal justice.

In India, position is very different from US. As it came in the amendment Act of 2005 in Code of Criminal Procedure,² there are not much cases regarding it but even though, position under Indian Judiciary is very clear. There were immense debates on this point before it was inserted in the Cr.P.C. till 2005, it was not accepted by the Indian Judiciary. Every time it was opposed by court of law by saying that it is not recognized under Indian law and other reasons. The concept is not widely accepted as it came recently and because there are cases, in which it was not applied properly. The commencement of plea-bargaining has to be by accused which is different from US Law. Our law provides for number of negotiations between the accused and the prosecutor or with the court itself which is a primary difference from US. Unlike in US, where plea-bargaining is for all sort of offenses but in India, it is not for social economic offenses or the offenses against women and children. Court has to take great

² 2005 amendment of The Code Of Criminal Procedure, 1973.

care at the time of appeal of plea-bargaining, therefore, there is no recent case in which plea-bargaining has accepted. Speedy trial is the soul of criminal justice and there is no doubt that if there is delay in trial by itself then it initiates denial of justice.

Law Commission of India in its 142nd and 154th report³ recommended the concept of Plea-bargaining in India. They observed that this tool will be a substitute to be explored to deal with huge number of criminal cases. Malimath Committee was also considerable in agreement with the perspective and recommendation of the Law Commission report. According to them it will help in acquiring speedy trial with benefits such as end of uncertainty, saving of cost of litigation, avoiding lengthened trial and legal expenses of the parties. They advised where the offenses are not of a serious character and the effect is mainly on the victim and not on the society, it is wise to promote settlement without trial.

Plea Bargaining In Indian Context:-

To reduce the delay in disposing criminal cases, the 154th Report of the law commission first suggestion was the introduction of Plea Bargaining as an substitute method to deal with huge number of criminal cases. This recommendation of the Law Committee finally found support of

³ Law Commission of India, 142nd Report on Concessional Treatment For Offenders who on their own initiative choose to plead guilty without any bargaining, 1991. 154th Report on Code of Criminal Procedure, 1973 (Act No. 2 of 1974), 1996



“Malimath Committee Report”⁴. The NDA government had formed a committee, headed by the former Chief Justice of the Karnataka and Kerala **High Court**, Justice V.S. Malimath to come up with some suggestions to tackle the growing number of criminal cases. In its Report, the Malimath Committee proposed that a system of Plea Bargaining should be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to lessen the burden of the courts. To strengthen its case, the Malimath Committee also pointed out the positive results of Plea Bargaining system in U.S.A.

The concept of Plea Bargaining attracted extensive public debate. Critics said it is not recognized and against public policy under our criminal justice system. The Supreme Court also time and again confounded the concept of Plea Bargaining saying that subject to discussion in criminal cases is not acceptable.

Judicial Attitude toward Plea Bargaining:-

In India, the judicial attitude was not in favour of the practice of plea bargaining. The Supreme Court of India in a number of cases raised concern about the moral base of the concept.

In *Murlidhar Meghraj Loya v. State of Maharashtra*⁵, it was observed by the Hon’ble Supreme court that:

“In civil cases we find compromises actually encouraged as amore adequate method of setting disputes between individuals than an actual trial. However, if the dispute discover itself in the field of criminal law, “Law Enforcement” deserted the idea of negotiation as unethical, or at best anecessary evil. The “State” can never negotiate. It must “enforce the law.” Therefore open methods of negotiations are impossible.”

The implementation of plea bargaining was again strongly criticized by the apex court in *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*⁶. It was observed by the Hon’ble Supreme court that:

“It is to our mind contrary to public policy to allow a conviction to be recorded against an accused by persuading him to confess to a plea of guilty of a crime being held out to him that if enters a plea of guilty he will be let off.”

In *State of Uttar Pradesh Vs Chandrika*⁷, the Hon’ble Supreme court held that:

“It is a settled principle that on the basis of Plea Bargaining, the court cannot do away

⁴ Malimath Committee Report on Reform of the Criminal Justice System, 2003

⁵ Murlidhar Meghraj Loya v. State of Maharashtra, 1976 AIR 1929, 1977 SCR (1) 1

⁶ K.K. Patel And Anr vs State Of Gujarat And Anr on 12 May, 2000

⁷ State Of Uttar Pradesh vs Chandrika on 29 October, 1999



with a criminal case. The court has to decide it on its merits. If the accused confesses its guilt then suitable sentence is required to be applied. The court further held in the same case that, mere acceptance or confession of the guilt should not be a ground for reduction of sentence, nor the accused canstruck a deal with with the court that as he has pleaded guilty the sentence has to be reduced.”

While commenting on this aspect, the division bench of the Gujarat High Court observed in *State of Gujarat Vs. Natwar Harchanji Thakor*⁸ that:

“The very motive of law is to provide easy, cheap and speedy justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the case and 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 it is really a measure that shall add a new dimension in the sphere of judicial reforms.”

In one of the case of Mumbai, published in ‘Times of India’ wherein, a Grade-I employee of RBI, was accused of siphoning off Rs 1.48 crore from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. He was arrested by the CBI in the year 1997, and released on bail in November the same year. Charges were

framed and case came before Special CBI Judge. The accused specified that he is 58 years old and moved an appeal of plea-bargaining by taking convenience of the amendment of 2005, came into force in 2006. The court directed the prosecution for its response. The court rejected the appeal but from that time, it has opened the doors and new hope in the minds of other accused.

In another case of *Vijay Moses Das Vs. CBI*⁹, Uttrakhand [High Court](#) in March 2010 allowed the concept of plea-bargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, Accused supplied inferior material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, then investigation was done through CBI by lodging a criminal case against the accused. Notwithstanding the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the Plea-bargaining Application, the trial court rejected the application on the ground that the Affidavit u/s (265-B) was not filed by the accused and also the compensation was not fixed. The Hon’ble [High Court](#) allowed the Misc. Application by directing the trial court to accept the plea-bargaining application.

Plea Bargaining Can Happen In The Following Ways :-

1. Removal of one or more charges against an accused in return for a plea of guilty

⁸State of Gujarat Vs. Natwar Harchanji Thakor, 2005 CriLJ 2957, (2005) 1 GLR 709

⁹Vijay Moses Das Vs. CBI on 29 March, 2010



2. Reduction of a charge from a more serious charge to a lesser charge in return of a plea of guilty
3. Recommendations by prosecutor to sentencing judges for lesser sentence in lieu of plea of guilty.

offenses to the Central Government. The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offenses affecting the social economic condition of the country.

It may happen in many cases that the accused entering into plea bargaining may not do so voluntarily. Therefore, to ensure that the plea bargaining has happened in a proper and fair way and justice has been delivered, the Court must adhere to the following minimum requirements,

1. The hearing must take place in Court
- 2 The Court must satisfy itself that the accused is voluntarily pleading guilty and there is no existence of coercive bargaining to the prejudice of the accused
3. Any Court declining a plea bargaining application must be kept confidential to prevent prejudice to the accused.

➤ **Section 265-B** scrutinize an appeal for plea bargaining to be filed by the accused which shall include brief details about the case relating to which such application is filed, including the offenses to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily filed the application, the plea bargaining the nature and extent of the punishment mentioned under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence. The court will subsequently issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.

Relevant Provisions & Procedure of Plea Bargaining in C.R.P.C¹⁰¹¹ :-

➤ **Section 265-A**, the plea bargaining shall be accessible to the accused who is charged of any offence other than offenses punishable with death or imprisonment for life or of an imprisonment for a term exceeding to seven years. Section 265 A (2) of the Code gives power to notify the

➤ **Section 265-C** speaks about the procedure to be followed by the court in working out a plea bargaining disposal. In a case initiated on a police report, the court shall issue notice to the public prosecutor, investigating officer of the case, and the victim of the case and the accused to participate in the meeting to work out a mutual satisfactory disposition of the case.

¹⁰Code Of Criminal Procedure, 1973, Chapter 21A Plea Bargaining, Section 265A to Section 265L
¹¹ <http://www.mondaq.com>



In a complaint case, the Court shall issue notice to the accused and the victim of the case.

- **Section 265-D** deals with the preparation of the report by the court as to the arrival of a mutual satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding judge of the Court and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the appeal under sub-section (1) of section 265-B has been filed in such case.
- **Section 265-E** talks about the procedure to be followed in disposing the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under S. 265 D, by preparing a report signed by the presiding judge of the Court and parties in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence. While punishing the accused, the Court, as its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offenses committed by the accused or if such minimum punishment is not

provided, can pass a sentence of one fourth of the punishment provided for such offence. "

- **Section 265-F** deals with the pronouncement of judgment in terms of mutually satisfactory disposal.
- **Section 265-G** says that no appeal lies against judgment of cases relating to plea bargaining.
- **Section 265-H** deals with the powers of the courts in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of trial of offenses and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.
- **Section 265-I** specifies that Section 428 is applicable to the sentence awarded on plea bargaining.
- **Section 265-J** talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.
- **Section 265-K** specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter. "
- **Section 265-L** says that plea bargaining will not be applicable in cases in which there is any involvement of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

The judgment of plea-bargaining cases are final and no appeal lies on such judgment.



However, a writ petition to the State **High Court** under **Articles** 226 and 227 of the **Constitution** or a Special leave petition to the Supreme Court under **Article** 136 of the **Constitution** can be filed by the accused. This acts as a check on illegal and unethical Bargains.

The provisions also authorize the court to give accused the benefit of Probation of Offenders Act where so ever it is possible. Section 12 of the Probation of Offenders Act, 1958 provides that a person found guilty of an offence and dealt with under section 3 or 4 of the said Act, shall not suffer any disqualification attached to the conviction. Thus, the Government employees who are released on probation under the Probation of offenders Act are saved from the disqualification, attached to this. There is one case decided on this point *Sh. Charan Singh Vs. M.C.D.*¹²

The litigant should be encouraged to avail the remedy of plea-bargaining to settle the pending cases. For the successful implementation of plea-bargaining, its application should be necessarily intelligible. With the changing world scenario where all the countries are shifting to ADR mechanism from the traditional litigation process which is very lengthy and time consuming, the plea-bargaining may be one of the best

substitute as an ADR mechanism to meet the challenges of disposal of pending cases.

There are other reasons also for backlog of cases. Even if everything is in order there are simply not enough mechanisms available to try a person. For example, in India, there are not enough courts to deal with the number of cases pending. There are also shortages of public prosecutors due to backlog in appointments.

Major Drawbacks of Plea Bargaining in India:-

Some of the major drawbacks of the concept of Plea Bargaining is recognized in India are as under;

- 1. Threat to right of fair trial.**
- 2. Involving the Police in Plea Bargaining process would give rise coercion.**
- 3. By involving the court in Plea Bargaining process the court impartially is challenged.**
- 4. Involving the victim in Plea Bargaining process would give rise to corruption.**
- 5. If the plead guilty application of the accused in rejected then the accused would face greathardship to prove himself innocent.**

¹²Sh. Charan Singh vs M.C.D. on 5 October, 2006



Conclusive Analysis:-

It has become a debated concept because there are many views regarding the stated point. Some people stress that initiation of pleabargaining in India is exceptionally good as it will reduce heavy accumulation of criminal case prevailing in Indian Judiciary as well as it will reduce over crowding in jails and other reasons; whereas some people contradict about it on the basis that the social economic conditions existed in US and India are very different. Law Commission in its report recommended it with the justification and reasons for accepting it. They stressed mainly on the points stated above. On the other hand, adversary opinion of this concept thinks that:

1. It is showing too much softness towards defendants.

2. The process is unfair with the innocent victims. It is like legalizing a crime to an extent, we already have provisions under probation of offenders Act, executive pardon.

3. According to one study of the US, one-third of the people who plead guilty would be acquitted if they went to trial.

Conclusion:-

The plea bargaining concept no doubt will erode the public's confidence in the criminal justice system and as result of this it will lead to the conviction of innocent,

inconsistent penalties form similar crimes and lighter penalties for the rich.

According to the view of a Judge of Delhi [High Court](#) over three crore cases are pending in Indian courts. Plea-bargaining will help to resolve cases involving petty offences and the courts can concentrate on more serious offenses. Indian jails have capacity of 2.56 lakh prisoners but there are more than five lakh prisoners behind bars. The State governments spend more than rupee 55 per day on each prisoner and annual expenditure comes up to Rs 361 crore. This huge amount is spending by our Indian government to maintain these prisoners just because of delayed criminal justice system. Plea- bargaining will help in reducing the accumulation of case under Indian Judiciary and number of prisoners in jails and also the [Constitutional](#) obligation to provide speedy trial is also being fulfilled.

To draw to a close, plea bargaining is undoubtedly, a debated concept. Few judicial officers have welcomed it while others have abandoned it. It is true that plea bargaining speeds up caseload disposal, but it does that in an unconstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal courts are very much over burdened to allow each and every case to go on trial. Only time will tell if the introduction of this new concept is justified or not.
