



**PLEA BARGAINING IN THE
SHADOW OF ALTERNATIVE
DISPUTE RESOLUTIONS – A BETTER
RECOURSE TO MEET NEGOTIATION
CHALLENGES**

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Introduction

In accordance with the famous legal maxim “Justice delayed is justice denied”, the concept of Plea Bargaining is becoming pre-eminent in the purview of the Indian Judiciary. Due to various reasons such as inadequate courts and judges, and increase in new mechanisms such as Public Interest Litigations, the affected individuals have come knocking at the doors of the judiciary. This has subsequently overburdened the judicial system. The notion and practice of Plea Bargaining was initially not there in the Indian judiciary system. In due course of time as the crimes increased, the courts wanted to lessen the danger of unwanted orders for either side of the parties and wanted to remove the overbearing strain on the judiciary and introduced the concept of Plea Bargaining in India in the year 2006 under the Code of Criminal Procedure which is the main legislation regarding criminal law in India. As the term suggests, Plea Bargaining is an accord between the prosecution and the vindication for a more indulgent retribution by the means of negotiation.

Plea Bargaining as an ADR Mechanism

Plea bargaining is a concept of alternative dispute resolution which is an ensuing process of negotiations and bargaining. Alternative dispute resolution is a procedure for settling disputes by avoiding litigation process¹. This method offers more flexibility, speedy disposal of cases, and is less expensive and less time consuming. The advantages have created a conspicuous rise in the usage of ADR mechanisms in the Indian judiciary. Pre-trial mediation is a process which occurs before a trial begins, it aims to settle some of the legal issues prior to the trial. Mediation is another ADR process in which a third party called as the mediator tries to resolve the dispute with the mutual consent of the parties. And negotiation is a method in which the parties come to a settlement by discussing and negotiating a settlement for the dispute without the involvement of any third party. Black Law’s Dictionary states negotiation as “a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter”².

Plea bargaining was introduced in the Criminal Justice System of India to reduce the burden of courts by facilitating the quick disposal of cases. Plea bargaining is actually a pre-trial negotiation between the defendant and the prosecutor in which the defendant agrees to plead guilty for the charges against him/her in exchange of a lesser punishment or dismissal of charges. Negotiations which result in formal agreements are called as explicit plea bargains. As any other ADR mechanism, plea bargaining is also a private process, meaning no other person besides the

¹ Jade Hunt Miller, ‘ What is Alternative Dispute Resolution’ (jhmbusinesslaw, 11 February 2014)

< <http://jhmbusinesslaw.blogspot.com/>> accessed 23 February 2021

² Black’s Law Dictionary 1059, (7th ed.1999)



defendant and his/her counsel, the prosecutor and in certain cases the judge will be present for the process. The information regarding the plea bargain is not accessible to the public until the bargain has been mutually agreed upon by all parties involved. In situations where the proof of blame is overpowering, the prosecution will avoid the expense and delay of the trial by giving modest concession to the litigants. On the other hand, if the proof or the evidence is not accurate, the court will avoid the chance of acquittal of the accused by agreeing to a plea to a reduced charge³. As the substantive criminal code authorizes a large vary of charges and sentences for a typical criminal conduct, and since the procedural law permits prosecutors wide discretion in choosing charges, the prosecution will nearly always offer the defence a considerable incentive to plead guilty. Negotiating guilty pleas to decide the offenses the respondent will be accused of or the length of sentence the respondent will get is a consistently critical part of the judicial framework.

Nonetheless, the option of plea bargain is up to the prosecutor. Even though there are certain constitutional limitations, the prosecutors have the authority to decide which cases of plea bargaining can be brought to court. Likewise, it is up to the discretion of the defendant to accept or reject the negotiated offer⁴. In order to clear the backlog of cases, the judges, public prosecutors, accused and victims must all collaborate and work together to accomplish

the individual and the mutual objective of the plea bargaining. One of the extensive aspects of plea bargaining is that it is a reform which is more of victim oriented. It shows more empathy and respect for the victims and their basic rights. There is a statutory pay-out plan, as well as fair settlement of the case. Plea Bargaining also mandates the victims to be paid. In the realm of criminal condemning almost 95% of the prosecutions in Western countries are guilty pleas with many of them determined by agreement over charges and pleas rather than a verdict reached after the judge or the jury hearing all the relevant evidence in the courtroom⁵. Since decisions are taken and people as a result of negotiations are imprisoned, it is important that these negotiations are equitable and just.

The Indian Judiciary's Approach towards Plea Bargaining and Its Implementation

For the longest time, the Indian Judiciary and the judges were against the notion and the reliability of plea bargaining. Plea bargaining was never considered as a convincing solution and was rather seen as a tool for poor case investigation and procedures. This was one of the major reasons as to why Plea Bargaining was implemented much later than it was implemented in the Western Countries such as The United States and Other European Countries. As crimes increased along with the backlog of cases, the Indian Criminal Justice System understood the need for Plea Bargaining. Hence it was incorporated into the criminal justice system

³ Rahul Deo, 'Criminal Cases and ADR' (Lawctopus, 19 December 2014) <<https://www.lawctopus.com/academike/criminal-cases-adr/>> accessed 25 February 2021

⁴ Renada Williams-Fisher, 'Plea Bargaining Negotiations' (2005) 33 SU L Rev 237

⁵ Geraldine Mackenzie, Andrew Vincent, John Zeleznikow, 'Negotiation about charges and pleas: balancing interests and justice' (2008) <<https://research.bond.edu.au/en/publications/negotiating-about-charges-and-pleas-balancing-interests-and-justi-2>> accessed 27 February 2021



in the year of 2006⁶. The Code of Criminal Procedure has always required an accused to plead guilty instead of demanding the right to a full trial, but this is not corresponding to that of plea bargaining. It was introduced in the Code of Criminal Procedure after the amendment in 2005. Section 265A to 265L, Chapter 12 of the CrPC discusses about plea bargaining⁷. Not all the cases where applicable for being settled through plea bargaining. The types of cases that were eligible for plea bargaining were the types of crimes that did not:

- Disrupt the social condition or the public policy of India,
- Crimes not committed against minors and children of 14 years or younger and women
- When the imprisonment did not exceed seven years.

To lessen the delay in disposing of cases, the 154th Report of the Law Commission first advocated the introduction of 'plea bargaining' as an alternative method to deal with huge arrears of criminal cases⁸. It was recommended by the Malimath Committee to introduce a structure of plea bargaining in the Criminal justice system of India to aid the speedy disposal of criminal cases and to bring down the burden of the courts. To reinforce its case, the Malimath Committee additionally brought up the accomplishment

of the plea-bargaining system in the USA. Appropriately, the draft Criminal Law (Amendment) Bill, 2003 was presented in the parliament and it finally an enforceable Indian law from enforceable from July 5, 2006.⁹ It tried to alter the Code of Criminal Procedure, 1973 (CrPC), the Indian Evidence Act 1872, and the Indian Penal Code 1860 (IPC) to develop the current Criminal Justice System in the country, which is immersed with plenty of criminal cases and overabundant deferral in their removal from one perspective and extremely low pace of conviction in cases including serious offenses on the other. The bill brought in a huge public discussion. Critics said it isn't perceived and is against the public policy under the Indian criminal justice system. The Supreme Court has likewise consistently shot the idea of plea bargaining arguing that negotiation in criminal cases isn't reasonable. The Criminal Law (Amendment) Bill, 2005 concentrated on the following core issues of the Indian criminal justice system:

- (i) Witnesses turning hostile
- (ii) Plea-bargaining
- (iii) Compounding the offense under Section 498A, IPC

In State of Uttar Pradesh vs. Chandrika, the Court deprecated the idea of plea bargaining and held the concept as unconstitutional.¹⁰ The Court was of the assessment that the idea

⁶ K. Venkataramanan, 'Plea Bargaining and how it works' The Hindu (Chennai, 19 July 2020) <<https://www.thehindu.com/news/national/the-hindu-explains-what-is-plea-bargaining-and-how-does-it-work/article32126364.ece>> accessed 28 February 2021

⁷ Code of Criminal Procedure 1973

⁸ Soura Subha Ghosh, – Advocate, 'Plea Bargaining-an analysis on the concept' (legalserviceindia) <http://www.legalserviceindia.com/articles/plea_bar.htm> accessed 03 March 2021

⁹ Lokesh Vyas, 'Concept of plea bargaining under the Indian Law' (ipleaders, 31 May 2018) <<https://blog.ipleaders.in/plea-bargaining-practice-india/>> accessed 04 March 2021

¹⁰ Mehak Goel, 'Concept of Plea Bargaining in India' (latestlaws, 02 September 2018) <<https://www.latestlaws.com/articles/concept-of-plea-bargaining-in-india-by-mehak-goel/>> accessed 04 March 2021



of plea bargaining can't shape the base for the removal of cases that are of criminal nature. Such cases ought to be just settled on merit. It likewise thought that a sentence given to the accused ought to be according to what the particular statute or law states. Notwithstanding, there are cases where the advantages of the plea bargaining were recognized and commended by the courts. In the case of Babu Singh v. State of UP, Justice V.R. Krishna Iyer said that speedy justice is a component of social justice since the community, in general, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate experience of a criminal proceeding. On the acute side, plea bargaining negotiations with the aid of numerous jurists, as a procedure wherein the accused realizes that it is not too overdue to confess to his wrongdoings which in addition ends in saving time of a futile and long trail. Out of all the alternative dispute resolutions, negotiation acts as a higher recourse than different modes as it is more informal and the accused gets to emphasise matters from his perspective. Negotiations is a key aspect in plea bargaining in the context of conflict resolution as it results in a procedure where the losses faced by the victim become potentially less and results in an amicable solution (i.e.), justice to the victim and lesser sentence to the convicted person.

Criticism:

The Indian justice system has often shown reproach towards plea bargaining and how an

ADR mechanism like negotiation acts as a backbone to it. There are so many contradicting views regarding the concept of plea bargaining. The censure has been emphasized in various landmark judgements and in the case of Thippaswamy v State of Karnataka¹¹ the judges felt that plea bargaining is against the constitutional values and is in violation of right to life¹². For the longest time, even the idea of plea was considered to be against the public policy and norms of India. The judge who credited the accused's plea was in a case was criticized by many jurists¹³. Another aspect that was seen as censure was the involvement of police officials as custodial death is a circumstantial evil. The perspective of such views is that this would agitate the situation and would start to pave ways for custodial tortures. The other concerns raised by the Judiciary were that there might be a chance of police coercing innocent people to plead guilty for a crime they never committed to finish off their work or to save the actual perpetrators after taking a bribe. And if an innocent person pleads guilty and the application gets rejected then it will be really difficult to prove his innocence as he has already admitted to guilt. The weaker sections of the society would be the most affected by this as they are most likely to be pushed to confess to a crime they didn't commit and also because they wouldn't have the resources to support their case by which as a result, they end up getting convicted.

Some felt the introduction of plea bargaining was a boon to the judicial processes as it would lessen the burden of courts and

¹¹ Neeraj Aarora, 'Plea bargaining- New development in the Criminal Justice System' (legallyindia, 25 December) < <https://www.legallyindia.com/home/sp-1692661759-20101225-1638>> accessed 8 March 2021

¹² Constitution of India 1950, Art 21

¹³ Kasambhai v State of Gujarat 1980 AIR 854, 1980 SCR (2)1037



provide speedy disposal of cases and, others argued that accomplishment of plea bargaining in the US can't be compared with India because the socio-economic conditions of both the countries are really different. But one of the biggest criticisms was that it would deprecate the importance of lawsuits and judicial procedure. Particularly as to criminal cases, it is said to privatize the matters at the expense of public interest and justice, as crimes are against the general public. It's also been accentuated time and again that as the offenders spend less time serving the sentence, there is a reduction in deterrence. It can be argued that lengthy processing periods are not only more costly in terms of prison time and psychological stress, but they also reduce the risk of prosecution.

Conclusion

There are two sides to every coin and so does using negotiations as the means for plea bargaining. The pros and cons of the concept should be analysed and well understood for the better implementation and for reaching a sound judgement. In any case, refusing anything purely on the basis of its drawbacks would be unjustified. In India, this is still developing so it is unrealistic to expect it to be flawless. To prevent judicial miscarriage of delivering justice measures such as impartiality, voluntary acceptance of plea by the accused, clear agreement between the victim's and investigative agency's perspectives should be heard and implemented. The parties must be mindful of the circumstances and other possible outcomes. However people's confidence in the criminal justice system can be restored by plea bargaining as it serves to ease the courtroom congestion, and the crime rates can be reduced when justice is served fast.