ISSN (O): 2584-2196

INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND EXPLORATION

Volume 2| Issue 3

2024

PLEA BARGAINING: CRITICAL APPRAISAL OF INDIAN MODEL

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ABSTRACT

The pendency of cases and sluggish delivery of justice to the public are two main issues facing the Indian court that cause the public to lose trust in the legal system. Over 169,000 cases in district and high courts have been ongoing for the past 30 years, with an approximate 85% pendency rate in district courts. The Criminal Laws (Amendment) Act of 2005, which established the idea of plea bargaining in India to reduce the backlog of ongoing cases, was one of the main actions done by the legislature to address this never-ending issue.

This essay will look at how the notion of plea bargaining has grown in India throughout time through court precedents, as well as the distinctions between the actual model of plea bargaining used in the United States and India. This article will also critically examine the notion of plea bargaining and the execution of the new chapter added to CRPC by the 2005 amendment.

Key Words: *Plea Bargaining, Judicial pendency, Implementation of Plea Bargaining in India, Analysis of Plea Bargaining.*

1. INTRODUCTION

Plea Bargaining is when an accused pleads guilty to a charge or many charges in exchange for a less severe punishment is Plea Bargaining. In Plea bargaining, the charges are mostly dropped, the sentence is reduced, or a less harsh punishment is awarded to the accused for admitting guilt. The system through which plea bargaining is exercised is different in different nations. Plea bargaining is a pre-trial agreement between the prosecution and the accused. It can also be termed a pre-trial negotiation between the parties to make the trial less time-consuming and save resources. It is a contractual agreement between the accused and the aggrieved that the judge is enforcing. If the Concept of plea bargaining is to be expressed most shortly, it is “plead guilty and ensure a lesser sentence”.

Plea bargaining is a unique concept in Indian criminal law. Sections 265-A through 265-L of Chapter XXI-A Plea Bargaining is included in the 1973 Code of Criminal Procedure. The Criminal Amendment Act adds this chapter. In modern times people are distressed and unsatisfied with the

speed with which the Indian legal system delivers them justice and hence alternative dispute resolution methods such as arbitration, conciliation, mediation, fast track courts, lokadalats, etc. are continuously working to fill in this gap between pendency and justice. To reduce some burden on the criminal courts, the concept of plea bargaining which is perfectly functioning in America is being adopted in India. In this paper we will try to analyze the model of Plea bargaining adopted by India, How it is different from the American model, and also analyze if Plea Bargaining could work as an instrument to provide justice to people in the Indian context.

2. ORIGIN OF PLEA BARGAINING

The concept of Plea bargaining originated in the United States and over a significant period it has become a feature of the criminal justice system there. The history that led to the origin of Plea bargaining is rather uncertain since the concept of Plea bargaining was considered immoral till the 1960s. During the 1692 Salem witch trials,[1] when accused witches were assured that they would be spared death if they confessed, but would be put to death if they did not, some of the first plea agreements were made. To identify additional witches, the Salem magistrates wanted confessed witches to testify against other people to encourage confessions. By admitting guilt, many supposed witches were spared from execution. Later, one of the strongest arguments against plea bargaining—that it frequently persuades innocent people to plead guilty—was made using the Salem witch trials.

History is full of other instances of plea agreements, such as St. Joan of Arc's confession in 1431, which allowed her to avoid being burnt at the stake. (She ultimately had a change of heart and was put to death.) Plea agreements now are far more widespread than they were in the past, and they also seem to have developed out of a desire to quickly resolve cases (rather than to force confessions to prove the truth of the initial claims).

Plea bargains were rare happening in early America. Whenever the accused used to express his guilt to score a less severe punishment, it used to amaze the judges that the accused was trying to persuade them rather than going to trial. Plea bargaining in Boston started becoming more common when offenders could just admit their guilt and expect a less harsh punishment. By 1850, criminal courts had adopted the technique of defendants entering guilty pleas in exchange for the dropping of some charges or other agreements with the prosecution. The Boston agreements,

[1] "The Salem Witch Trials: The Real History Behind One of the Most Terrifying Events in Colonial History" (*New-York Historical Society*) <https://www.nyhistory.org/blogs/salem-witch-trials> accessed January 29, 2024 .

possibly the first systematic use of plea bargaining, were frequently for crimes without victims, letting the prosecution avoid taking the concerns of the victims into account.

Plea-bargained cases did not start to appear in appellate courts, even though they were common before 1860. Trial court judges were as shocked by plea bargaining as the trial courts when they first learned about it, and they occasionally overturned convictions that resulted from plea bargaining. Early in the 20th century, plea bargaining grew widely, albeit appellate courts did not fully accept it. Between 1900 and 1907, 77 to 83 percent of defendants in New York County entered guilty pleas, according to one researcher who studied these cases. Studies by two academicians in the 1920s showed that plea agreements were growing more and more widespread in other nations. For instance, in 1926, guilty pleas were submitted in 96 percent of criminal cases in Cook County, Illinois.[2]

US Supreme Court in the judgment of Boykin v. Alabama[3] reversed the conviction of a man who pleaded guilty to five robberies but it could be seen from the case that the trial court did not ensure whether the plea was voluntary or not. Now the judges strictly ensure by querying defendants that the guilty plea is voluntary.

The Supreme Court ruled in Brady v. United States[4] the following year that defendants may get lighter punishments in exchange for their guilty pleas, and in Carolina v. Alford,[5] defendants may enter into plea agreements even if they are truly innocent. The Supreme Court ruled in Santobello v. New York[6] in 1971 that defendants have a right to judicial relief if prosecutors violate the terms of plea agreements. This was the Supreme Court's fourth ruling on plea bargaining. In Bordenkircher v. Hayes[7], the Supreme Court ruled in 1978 that, if the allegations are valid, prosecutors may threaten to file further charges against defendants who refuse to negotiate. These five cases show the Court's opinion that plea bargains are legitimate and deserving of legal acceptance. According to the Santobello court, plea bargaining is "not only an essential part of the process but a highly desirable part for many reasons." Plea bargaining ultimately evolved into a credible standard.

[2] Meyer JF, "Plea Bargaining" *Encyclopedia Britannica* (April 15, 2009) <https://www.britannica.com/topic/plea-bargaining#ref338191> accessed January 29, 2024
[3] (1969) 395 U.S. 238
[4] (1970) 397 U.S. 742
[5] (1970) 400 U.S. 25
[6] (1971) 404 U.S. 257
[7] (1978) 434 U.S. 357

3. CONCEPT OF PLEA BARGAINING IN INDIA

In the United States, those who are accused of a crime can enter one of three pleas: guilty, not guilty, or nolo contendere, which means "I do not wish to contest." Nolo contendere is a type of plea in which the defendant either admits guilt or asserts innocence. The person in issue attempts to be proven guilty by posing as the alleged criminal. It is very important to understand that a "nolo contendere" plea cannot be used as proof of innocence in a future civil lawsuit. On the other hand, a "guilty" plea is a possibility.

The advent of the legal doctrine of nolo contendere affected the idea of plea bargaining in India. The aforementioned measure was put into effect by the legislative body by numerous suggestions made by the law commission. With full respect for the current social and economic conditions in our country, this strategy has undergone thorough research and practical application. Plea agreements fall into one of three categories. Fact negotiation, sentence negotiation, and charge negotiation are three different sorts of negotiation. When faced with a large number of charges, charge bargaining is the strategic negotiation process wherein some charges are either dismissed or exchanged with less serious charges. The accused is given the option to make an admission of guilt in return for a less punishment when negotiating a sentence. Last, but not least, it is significant to remember that fact bargaining is a negotiation tactic in which some facts are accepted in exchange for a promise to withhold presenting others.[8]

Plea bargaining was first examined in the 142nd report of the Law Commission of India, which was published in 1991. The article's focus was "The Provision of Concessional Treatment for Offenders who voluntarily Opt to Enter a Guilty Plea without Engaging in any Negotiations." The study also looked into how to review criminal cases more effectively.[9] In its 154th Report, the Law Commission stressed again how important plea bargaining is. The 154th report of the Law Commission went into more depth about the reasons given in the 142nd report for why plea bargaining might be legalized in the Indian legal system. Chapter XXIA of the Code of Criminal Procedure, which deals with plea deals, should be added, according to the study. Instead, the 177th Law Commission Report didn't want to suggest changes to the Criminal Procedure Code that would include a way to negotiate a plea deal. It looked like the results supported what Indian judges had already said, which was that plea bargaining was illegal and against the law. In the

[8] Dr Abraham P. Meachinkara, Plea bargaining: A revelation (2010)
[9] Law Commission of India, 142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining (1991), Chapter II.

177th report, it was left up to the government to decide if India should use plea bargaining. As the chairman, Justice Malimath was in charge of the Committee on Criminal Justice System Reforms. The Committee's Report says that the plea bargaining system in the US works and can continue to do so because it has been shown to work in the past. The 2003 Report of the Committee was meant to make it easier for plea bargaining to work in India's criminal justice system. The Committee agreed that the Plea Bargaining Plan was a good way to speed up the criminal justice system and reduce the number of cases that were waiting to be heard.[10] In response to the recommendations of the Law Commissions of India and the Report of the Committee on Reforms of the Criminal Justice System, the Indian legislature amended the Code of Criminal Procedure in 2005 by enacting the Criminal Law (Amendment) Act, which included Sections 265A to 265L of the Code of Criminal Procedure. This chapter was about plea bargaining.

4. JUDICIAL STAND AND PRESPECTIVE OF PLEA BARGAINING IN INDIA CONTEXT

Initially, the Indian judiciary considered Plea bargaining against the morals of society, and its application was discouraged and rejected even after recommendations given by the law commission favouring plea bargaining. It could be observed from several judgments before the 2006 amendment which abhorred the concept of plea bargaining and did not allow the application of same.

One of the earliest cases that took cognizance of this concept and was considered by the Hon'ble Court in the case of Madanlal Ramachandra v. State of Maharastra[11] in which the court thought that:

"We feel that entering into such a settlement is completely improper; crimes should be investigated and dealt with by the accused's level of culpability. If the court believes that mercy can be demonstrated by evidence, it may impose a reduced punishment."

The same stand was maintained in the case of Muralidar Megh Raj v. State of Maharastra,[12] wherein the apex court discouraged the practice of plea bargaining. The court observed that:

[10] Ministry of Home Affairs, Report of the Committee on Reforms of Criminal Justice System (2004), Recommendation no. 106.
[11] AIR (1968) 3 SCR 34
[12] AIR (1976) SC 1929

"We'll start by noting that we got the feeling that the appellants rushed through their guilty pleas, hopefully, motivated by a vague, three-pronged concept of a small sentence rather than a Nolo contendere attitude."

In the judgment of Ganeshmal Jasraj v. Government of Gujrat and anr.[13] The apex court assessed the impact of plea bargaining and thought that:

"There is little question that the court's examination of the evidence will become somewhat superficial and perfunctory when the accused concedes guilt, whether via a plea agreement or otherwise. To establish the admission of guilt, the court may refer to the evidence mechanically rather than critically to determine its truthfulness. When the accused confesses to the crime, the court is likely to see the evidence very differently. Although the learned magistrate in the present case did not base the appellant's conviction entirely on his admission of guilt, it is clear from his ruling that this fact did not have any impact on his conclusion. Given the facts of the case, it would not be appropriate to uphold the appellant's conviction."

In Kachhia Patel Shantilal Koderlal v. State of Gujarat & Anr.,[14] the Supreme Court denounced plea bargaining as a virulent practice that should never be tolerated in the Indian legal system. The judge in that instance also mentioned how plea bargaining would probably result in conspiracies and more corruption. India may experience a decline in the administration of justice if plea bargaining is permitted.

Plea bargaining is unlawful, according to the Supreme Court's ruling in Uttar Pradesh v. Chandrika.[15] The court may sentence the offender to less time than the maximum statutory punishment depending on the circumstances and the strength of the case, it was emphasized. But taking a plea bargain—especially to settle criminal charges—is against the law.

In Kasambhai Abdul Rahmanbhai Sheikh v. State of Gujarat,[16] the Supreme Court declared that the concept of plea bargaining is unlawful since it violates the basic right to life. Furthermore, if plea bargaining is authorized, innocent people may assume that entering a guilty plea is a more realistic option than going through a lengthy legal procedure. This might lead to the punishment of the innocent, which is contrary to natural justice principles.

[13] AIR (1980) SC 264
[14] (1980) CrLj. 553 (SC)
[15] AIR (2000) SC 164
[16] AIR (1980) 3 SCC 120

Furthermore, the judge may be diverted from his primary role of conducting the trial to decide whether or not the accused committed the crime. The plea deal might influence the judge's decision to punish an innocent person while letting a criminal go free.

After the enactment of the Criminal Law Amendment Act, 2005 it can be observed that there was a shift from the traditional view that favoured the application of plea bargaining. In the case of the State of Gujarat v. Natwar Harchanji Thakor,[17] the High Court of Gujarat declared that one of the core purposes of the legal system is to offer the people quick, affordable, and accessible justice. As a result of the growing case backlog in Indian courts of law, also indicated that fundamental changes were required in the criminal justice system to enable quick justice delivery in criminal cases. Plea bargaining was cited as an effective way to resolve disputes that might lead to new judicial changes in the Indian criminal justice system.

In the case of Ranbir Singh v. State,[18] the defendant pleaded guilty in front of the Trial Court and worked out a deal with the victim and the prosecution. The accused was accused of reckless driving that resulted in a fatality. The Trial Court still gave the accused the heaviest punishment possible, notwithstanding an amicable agreement between the accused, the prosecution, and the victim. The Delhi High Court responded to a subsequent appeal by noting that the accused, despite his poverty, committed to appropriately recompense the victim's family, which was accepted by both the accused and the victim.

In the case of Rahul Kumpawat v. Union of India,[19] the petition was brought before the Rajasthan High Court which challenged the order of the trial court which did not allow for the application of plea bargaining in the present case. The counsel contended that the case was dismissed without looking into the merits of the facts and situation. Petitioner also claimed that this violated Section 265A of the Code of Criminal Procedure. The defense lawyer contended that Section 265A was introduced to shorten the duration of a criminal trial. In the current instance, the learned trial court violated the aforementioned Section by ignoring its purpose. These arguments were thought to be convincing by the Rajasthan High Court. It was highlighted that the aforementioned trial court ruling needed to be overturned for justice to be served. The High Court consequently took the necessary action.

[17] AIR (2005) CrLj. 2957 (SC)
[18] (2011) SCC Online Delhi 3737
[19] Rahul Kumpawat v. Union of India (2016) Criminal Misc. (Pet.) (CRLMP) No. 2257 of 2015

The recent development around this concept can be seen in the case of Re Policy Strategy for Grant of Bail[20] where the apex court looked into the problem of limited application of plea bargaining in India. It was observed that, unlike the United States, we only have adopted Sentence bargaining and not Offence bargaining. It is a suo moto writ by the bench comprising Justice SK Kaul and Justice Sudhanshu Dhulia the purpose of the writ is to develop a comprehensive policy strategy for the grant of bail. Guidelines for using the triple approach of plea bargaining, compounding offenses, and the Probation of Offenders Act, 1958 were released by the Supreme Court last year. One Court (each of the Court of Sessions and Judicial Magistrate 1st Class, ACJM or CJM) from each district was to be chosen as a test case, it had been decided. The aforementioned courts would recognize cases that are in the evidentiary or pretrial phases and in which the accused is facing accusations with a maximum sentence of seven years in prison. It was observed by the judges that although the identification process has begun that does not guarantee success because there is no way to ascertain that the suggestion of the triple method was accepted or refused in the process. "There is also a conflict between sentence bargaining and offense bargaining." "We have only included one (sentence bargaining), which limits the aspect of plea bargaining," said Justice Kaul. "Countries like the USA that have successfully implemented plea bargaining have encompassed both the aspects." Justice Kaul has already emphasized the need to look into the possibility of enabling the accused to agree to a reduced punishment while denying guilt. According to the court, the main obstacle is the accused's unwillingness to use the "plea bargaining" option because of concern that they would be associated with their guilt. Sometimes those accused are reluctant to accept their conviction for a particular crime, which might have additional civil repercussions. In this regard, Justice Kaul noted that only the sentence was subject to plea negotiations under Indian law; the core offense was not. However, the nature of the accusation affects how plea negotiations operate in other countries.

5. CRITICAL APPRAISAL OF THE PLEA BARGAINING MODEL ADOPTED BY INDIA

There are three main reasons why plea bargaining is wrong: first, it undermines people's important constitutional rights by denying them the benefits available after pleading guilty; second, it undermines society's desire for just and severe punishments for crimes; and third, it undermines society's desire for fair and harsh punishments for crimes for commercial reasons. Plea bargaining, according to proponents of the abolitionist viewpoint, gravely undermines the public interest in

[20] Re Policy Strategy for Grant of Bail RSMW(Crl) No. 4/2021

the efficient punishment of crime and the correct identification of the guilty from the innocent. It makes it harder for people to breach the law and diminishes the power of the law to do so.[21] Abolitionists concluded that the conditions outlined could not be justified by any justification for punishment, including punishment to deter criminal behaviour, defense of society, rehabilitation, or even retaliation.

One argument against plea bargaining is that if attorneys can get people to admit guilt, they can go after more cases and solve them faster, which has a bigger effect of keeping people from breaking the law even though they only have limited resources.[22] The US Supreme Court is among those who believe that reducing the amount of time between the charge and the sentencing will improve the possibilities of the guilty party's rehabilitation. The Law Commission also stated that it might not be fair or just to treat an accused person in the same way as an accused person who is being tried, which takes time and money away from society, even if that accused person feels bad about their actions and wants to make amends, or if that accused person is honest enough to admit guilt in the hope that the state will be lenient.[23]

Additionally, it is worth noting that certain individuals who stand accused may have the belief that entering a guilty plea will diminish their likelihood of receiving a severe punishment. However, it is important to recognize that the Criminal Procedure Code safeguards individuals accused of serious offenses or those with a prior criminal record by preventing them from evading significant consequences. In addition, a sentence that is issued promptly will probably be better for society than one that is handed out after a long and arduous hearing.

The second major concern expressed is that plea bargaining will result in an unfair disposition of cases which might let the offender off the hook by using his influence on the petitioner or would lead to the punishment of an innocent individual.

As the cost of litigation and continuing the trail takes up a lot of resources pre-trial negotiation would encourage such innocent individuals to plead guilty of the crime they are charged with would demand a lesser punishment just to avoid the expensive and time-consuming process. If the real culprits do not face the trial, it would defeat the purpose defined under Section 265A. It can be seen that there is a notifiable difference between punishment after the accused pleads guilty

[21] Schulhofer SJ, "Plea Bargaining as Disaster" The Yale Law Journal (1992)
[22] Easterbrook FH, "Criminal Procedure as a Market System" (*Chicago Unbound*) <https://chicagounbound.uchicago.edu/jls/vol12/iss2/4/> accessed January 29, 2024
[23] *Supra* note.10

and punishment after he is found guilty after trial. The discount is admissible if it aligns with the limits of punishment customarily imposed for a certain crime. In the Indian context, it is been fixed that discounted sentences shall not be less the one-fourth of the maximum punishment that can be given for that particular crime. Also in the Indian context crime against women and children, socio-economic offenses, and offenses that are punishable with imprisonment exceeding 7 years are excluded which helps maintain the sanctity of criminal justice and does not outweigh the seriousness of the crime.

The safeguards adopted by the judiciary are such that the judge has to look into the core of the matter and hold the discretion to admit or not to admit the plea of the accused and has the power to define the sentence that should be awarded to the accused.[24] To avoid letting innocent individuals admit guilt the judges need to look into the facts and circumstances and if prima facie there is no proof that the individual is guilty of the crime he is admitting, this would be the ground for the judge to reject the application of plea bargaining. The judge can also reject the application for plea bargaining if it is seen that a reduced sentence would be too lenient for the accused and would be entitled to decide the quantum of punishment. By establishing guidelines that restrict the granting of concessions in exchange for a guilty plea to legally relevant factors rather than unrelated factors like wealth, gender, age, or education, the inclusion of judicial involvement in plea negotiations can help to reduce the possibility of inconsistent sentencing. Additionally, this approach makes sure that both the victim's and society's interests are not wholly disregarded.[25]

While conceding that judicial intervention has limitations, the proposed approach would not outright prohibit plea bargaining. Instead, it advises implementing proper safeguards, giving the disadvantaged party more authority, and making necessary adjustments as circumstances dictate.

The third concern regarding plea bargaining is that it is a coercive process where there is a characteristic of threat and undue influence present to make the accused plead guilty to the crime he/she has not committed. The concerns regarding coerciveness are genuine but it can be concluded that a trial is a tedious process in which one party is a winner and the other party is a loser if plea bargaining is adopted there is no winner or loser since both the parties have a mutual understanding with each other and accommodates the interest of both. The risk of punishing an innocent individual is equally present in a trial as well, the uncertainty is just not the result of plea bargaining. If plea bargaining is used in offenses that are mild or not harsh, it could save the

[24] "Plea Bargaining and the Transformation of the Criminal Process" (1977) 90 Harvard Law Review 564
[25] "Restructuring the Plea Bargain" The Yale Law Journal

resources of the state and individuals and would also exonerate the parties from the shame and disgust they would have to face for the trial.

6. CONCLUSION

The purpose of this paper is not to encourage the application of Plea bargaining as followed in the United States on the other hand the goal of this paper is to show that the model of plea bargaining adopted from the Indian perspective has no inherent impropriety and is not based on wrong principles. Plea bargaining has both benefits as well as disadvantages, which is why it can used as a neutral remedy. But the model undertaken by India has an advantage since heinous crimes like rape, murder, etc., cannot come under the ambit to which plea bargaining can apply, and also since it would apply to less heinous offenses it would clear off backlog while giving the parties a decree that they mutually agreed.

It has been determined that any plea negotiation strategy that ensures that both parties have equal access to the same tools and that the plea is offered voluntarily and rationally is legitimate legally and does not violate the fundamental principles of criminal law. After determining that both parties had equal access to the same resources, this ruling was made. To be more precise, it appears that the Indian approach has taken into account the typical objections to plea bargaining. The Criminal Law (Amendment) Act of 2005 created this.