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Comparative Analysis of Plea Bargaining in India, USA and Islamic States

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ABSTRACT

Justice delayed is justice denied. Plea bargaining is the process of an accused saying, "I plead guilty and save your time, so I deserve a lighter punishment". Plea bargaining helps the court and the state to convict better. Plea bargaining as a concept existed earlier as well, but it was first recognised in the United States through law, and later other countries applied it too, having seen the success of the process. The Indian legislation was amended in 2005 after multiple suggestions from various Law Commissions on the matter, citing it as a necessary addition, but the Supreme Court of India does not seem to accept the idea. The Islamic concept of diyyah, or blood money, means the payment of money in place of retaliation, that is, money paid to stop retaliation for the death of a person. This paper aims to study plea bargaining from its origin in the United States of America and the reasons for its success there, the need for the same in India and the recommendations of the Law Commission reports, and to understand the concept of Islamic blood money. The paper aims to compare the three systems, to see the different approaches adopted in each system to suit each country based on its needs.

Keywords: plea bargaining, blood money, USA, India

I. INTRODUCTION

The concept of plea bargaining is an alternative to the long trial process that has existed in the world since the 18th century. The most recognised and legislative form of plea bargaining was passed in the United States of America. The need for plea bargaining comes from the long process of trial, the higher number of acquittals than convictions worldwide, and the increasing number of under-trial prisoners in prison. There is no single settled definition of plea bargaining, but the working definition adopted here is that "plea bargaining is a negotiation between a defendant and a prosecutor in a criminal case. The defendant pleads guilty to a lesser charge or to some of the charges in exchange for a lighter sentence."¹

The courts in the United States and the Supreme Court in India have taken different views on the subject. While the US Supreme Court accepts plea bargaining, the Indian Supreme Court

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¹ BLACK'S LAW DICTIONARY.

has not been of the same view. In India the concept was brought in through the Law Commission reports and the Malimath Committee report, which recorded the need for plea bargaining; the lawmakers accepted this and, through the 2005 amendment, the provisions were inserted in the Code of Criminal Procedure.² Those provisions have since been repealed and replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS).³ The Islamic concept of blood money (*diyyah*) is a religious judicial process established in the holy book of the Quran. The *diyyah* has developed from what was originally established in the Quran. These developments are necessary to keep up with the constantly changing times of the modern era.

The concept of plea bargaining can be divided further. The first type is charge bargaining, a bargain between the prosecutor and the defendant to reduce the number of charges brought against the defendant in exchange for a guilty plea. It depends solely on the prosecutor whether they wish to offer a plea bargain on the charges, and which charges they are ready to sacrifice in exchange for a guilty verdict.

Another type is sentence bargaining, where the prosecutor makes a deal with the defendant that, on acceptance of guilt, they would recommend to the court that the likely sentence be reduced. This can also be done with the trial judge. The same may be done after informing the accused of the sentence that would be awarded if he were found guilty before the court and the punishment that could then be awarded.

Apart from this, international jurisprudence identifies two further forms, express and implicit. In express bargaining, the bargaining is done by the accused or the defence lawyer with the prosecutor or the trial judge on the benefits of the plea bargain. The implied bargain is done face to face with the trial court judge, who will give a lenient sentence on that basis.

II. PLEA BARGAINING IN THE UNITED STATES OF AMERICA

The concept of plea bargaining started and evolved in the United States of America. The concept existed in the early 18th century as well, but it was in the 1920s that plea bargaining came to be used in the courts, though it was not widely accepted at first. By the 1980s the criminal judicial system in the United States is said to have resolved nearly 97 per cent of its cases using plea bargaining.

The three best and most popular explanations⁴ given are the following. The first is caseload pressure, that is, the increase in the number of cases being filed in court, which led to the

² Code of Criminal Procedure, 1973, §§ 265A-265L (India) (repealed 2024).

³ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 289-300 (India).

⁴ William Ortman, *When Plea Bargaining Became Normal*, 100 B.U. L. REV. 1435 (2020).

introduction of plea bargaining. The second reason is trial complexity: the actual trial process is very complicated and lengthy, involving multiple steps, each of which is important for the case and for the judgment to be made in the party's favour. The third reason is professionalisation. The United States did not have many lawyers in the 18th century, and it was only in the 19th century that the trial process became more popular and more lawyers came to practise law in the courts. Another account⁵ is that the Boston police court was brought in to maintain social order, and that in New York City's Court of General Sessions there was an increase in criminal activity, so that, to ensure there were no base changes, the defendants' advocates had to take plea deals to help the wider system.

In *Brady v. United States*,⁶ the U.S. Supreme Court considered the question of the validity of a guilty plea entered under the fear of a potential death sentence. Brady, the accused, was charged with kidnapping and faced the risk of a death sentence if he proceeded to trial and was convicted. To prevent this, he consented to plead guilty, although he subsequently claimed that his plea was forced by the threat of such a harsh penalty. The Supreme Court determined that Brady's guilty plea was valid, despite being entered to avoid the possibility of facing the death penalty. The Court highlighted that a plea is considered voluntary when the defendant is aware of the consequences of the decision and is not improperly coerced. The Court determined that the fear of receiving a heavier sentence does not nullify a guilty plea if it is given voluntarily and with knowledge. This case validated the legality of plea bargaining within the U.S. justice system, acknowledging that defendants frequently enter pleas as a tactical choice to avoid harsher consequences, such as lengthy prison terms or even execution. It also established a standard for assessing whether pleas are entered under coercion, confirming that defendants may plead out of fear of a steeper punishment, so long as they comprehend their rights and the conditions of the deal.

*Santobello v. New York*⁷ further defined the guidelines for plea bargaining, particularly in relation to promises made by prosecutors. In that case, Santobello was charged with two felony gambling counts and pleaded guilty to the lesser included offence of possession of gambling records, the prosecutor having agreed to make no recommendation as to sentence. At sentencing many months later, however, a different prosecutor recommended the maximum sentence, prompting Santobello to contest the plea deal. The U.S. Supreme Court held that where a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said

⁵ MIKE MCCONVILLE & CHESTER L. MIRSKY, JURY TRIALS AND PLEA BARGAINING: A TRUE HISTORY (2005).

⁶ *Brady v. United States*, 397 U.S. 742 (1970).

⁷ *Santobello v. New York*, 404 U.S. 257 (1971).

to be part of the inducement or consideration, that promise must be fulfilled. If the prosecution fails to uphold the agreement, the defendant is entitled to a remedy, which may involve specific performance of the agreement or the opportunity to withdraw the guilty plea. This case emphasised the significance of upholding promises made in plea negotiations, thus preserving fairness in the plea-bargaining process and safeguarding defendants' rights.

III. PLEA BARGAINING IN INDIA

Plea bargaining is an alternative to the traditional trial system. It was first discussed in the 142nd Law Commission report,⁸ which for the first time brought plea bargaining into the discussion. Even while discussing plea bargaining, the Law Commission admitted that, though it is lawful in the United States as declared by the US Supreme Court, there have been some issues with public acceptance there. The Law Commission nonetheless accepted that this was the way forward for the country.

The Commission recommended that plea bargaining be accepted for two categories: those who of their own accord wish to take plea bargaining, and those whose sentencing relates to probation, as it seems a waste to have a full trial in such cases.

The 154th report⁹ of the Law Commission also discussed plea bargaining. Keeping in mind that the Supreme Court did not favour the concept, as noted in the report in two cases,¹⁰ the Law Commission remained of the view that the law was needed and recommended that plea bargaining be accepted for cases below seven years of imprisonment, that offenders against women not be given the right, and that the same exclusion apply to habitual offenders. The Commission proposed introducing a new Chapter XXIA in the Code of Criminal Procedure.¹¹

The Law Commission gave a detailed explanation of the law, namely that it should be presented in court by the judge and, once the opportunity is given, it must be ensured that there is no pressure at the next hearing. The 177th report¹² accepted the view of the previous two Law Commission reports and expressed the opinion that it was for the legislature to decide on the need, as the Supreme Court did not find a need for plea bargaining in India.

⁸ LAW COMMISSION OF INDIA, *Concessional Treatment for Offenders Who on Their Own Initiative Choose to Plead Guilty Without Any Bargaining*, Report No. 142 (1991).

⁹ LAW COMMISSION OF INDIA, *The Code of Criminal Procedure, 1973*, Report No. 154 (1996).

¹⁰ *Murlidhar Meghraj Loya v. State of Maharashtra*, AIR 1976 SC 1929; *Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat*, AIR 1980 SC 854.

¹¹ Code of Criminal Procedure, 1973 (India).

¹² LAW COMMISSION OF INDIA, *Law Relating to Arrest*, Report No. 177 (2001).

The report of the Committee on Reforms of Criminal Justice System, chaired by Dr. Justice V.S. Malimath,¹³ gave strong reasons for the inclusion of plea bargaining, such as victims feeling less revengeful and avoiding a long trial process that ends in the acquittal of the accused or in probation under the Probation of Offenders Act. The report suggested the inclusion of plea bargaining on the same terms as those proposed by the Law Commission, and it included socio-economic offences as an exception.

The Code of Criminal Procedure was thereafter amended in 2005¹⁴ to introduce Chapter XXIA, an exclusive chapter on plea bargaining. Sections 265A to 265L¹⁵ dealt with plea bargaining. Section 265A set out the concept and when it could be availed of by the accused. Section 265B dealt with the application that had to be made in court after the filing of the chargesheet, supported by an affidavit to guarantee that the application was voluntary.

Section 265C dealt with the mutually satisfactory disposition, where the court satisfies itself that the parties are meeting and working voluntarily. Section 265D dealt with the report submitted to the court after a mutually satisfactory disposition. Sections 265E to 265I dealt with the powers of the court in respect of judgment, sentence and period, and the judgment could be challenged in only two ways: by writ under Articles 226 and 227, and through a special leave petition under Article 136 of the Constitution of India. A notification of 2006¹⁶ determined that offences affecting the socio-economic condition of the country cannot be considered for plea bargaining; on the author's count, nearly 16 laws are thereby exempted.

The new criminal law brought into force in 2024, the Bharatiya Nagarik Suraksha Sanhita, 2023,¹⁷ has made no attempt to address the problems with these provisions. The first of the two changes is the inclusion of a period of 30 days, running from the date of framing of the charge, within which the application must be made. This only increases the pressure and also makes it more difficult to apply for plea bargaining. The number of accused under trial and the increasing number of acquittals in cases point towards a wider inclusion of plea bargaining. The second change has been made to the application of the chapter: earlier, the provisions did not apply to offences committed against a child below the age of fourteen years, whereas the BNSS now refers simply to an offence committed against a woman or a child, without specifying an age.

¹³ COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, GOVERNMENT OF INDIA, *Report*, vol. 1 (2003) (Chair: Dr. Justice V.S. Malimath).

¹⁴ Criminal Law (Amendment) Act, 2005, No. 2 of 2006 (India).

¹⁵ Code of Criminal Procedure, 1973, §§ 265A-265L (India), inserted by the Criminal Law (Amendment) Act, 2005, No. 2 of 2006, w.e.f. 5 July 2006.

¹⁶ GOV'T OF INDIA, Notification S.O. 1042(E) (11 July 2006), issued under § 265A(2), Code of Criminal Procedure, 1973.

¹⁷ Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

A plea bargain can only be successful when it is used widely and when the Supreme Court and the High Courts encourage it rather than the long trial method. A victim would prefer to have instant justice rather than delayed justice.

IV. ISLAMIC BLOOD MONEY CONCEPT

The concept of Islamic blood money originates from the Quran, where it is called *diyyah*. The concept of *diyyah* can be understood only with the help of *qisas*, which means retaliation, that is, causing a similar kind of injury to the body. The *diyyah* was originally paid in the form of camels, but in the modern era this is no longer necessary: it can be paid at a value the parties decide, or in money equivalent to the number of camels stated in the sources.

The *diyyah* can be divided into three parts,¹⁸ namely for intentional killing, for semi-premeditated killing, and for killing by mistake. The punishment for intentional murder in Islamic law is *qisas*, but the victim's family may instead ask for *diyyah* and forgive, and the prescribed compensation is 100 high-quality camels. Alternatives are also given, in gold, silver, cows, sheep or goats, or suits of clothing, for use when camels become scarce.

The compensation for unintentional killing is also reckoned in camels, but there is a difference in their composition. In intentional killing all the camels are female and 40 of them are to be pregnant, whereas in unintentional killing there are 20 male camels and no female camel needs to be pregnant. The same alternatives are provided here, except for the suits of clothing.

Semi-premeditated killing attracts two views: some scholars take the view that the payment should equal that for intentional killing, and others that it should equal that for unintentional killing. There is also mention of the payment to be made for injury caused, which is graded on the basis of the injury and its effect on the person, and divided into 100 camels, one-half of the full blood money, one-tenth of the full blood money, and one-twentieth of the full blood money.

In many Muslim-majority countries the application of *diyyah* still exists in the legal system, for example in Saudi Arabia, Pakistan, the United Arab Emirates, Iraq, Somalia and Iran. In Saudi Arabia the amount is determined by the judges, and it is reported that the award is not the same for all claimants, Christian and Jewish claimants reportedly receiving 50 per cent of what a Muslim claimant would receive. In Pakistan a comparable law is applied, but without a different rule for citizens of different faiths. In Iran the amount is fixed each year by the Head of the Judiciary, although families may in practice negotiate for a higher sum.

¹⁸ MALIK IBN ANAS, AL-MUWATTA, bk. 43 (Blood-Money).

V. COMPARATIVE ANALYSIS OF THE THREE SYSTEMS

The concept of plea bargaining originated in the United States of America, where the law has been very successful in reducing the number of cases going to trial and has also encouraged people to take a bargain, whether by charge bargain or sentence bargain.

In India, plea bargaining was brought into law in 2005 by amendment of the Code of Criminal Procedure, after multiple recommendations of the Law Commission and despite the Supreme Court being against it. It needs to be remembered that this brought no real change to the criminal law system, because it is used only for cases carrying under seven years of sentence, which has led to no proper use of the law. Plea bargaining is prohibited in cases against women, against children of fourteen years, and for socio-economic offenders. Such a broad category of people is left out of a law where plea bargaining could be more acceptable to the victims, and where the court's burden would be reduced, since it is difficult to find evidence and the cases are dragged out for long years.

Islamic blood money relates to money that is given by the offender to the victim's family, at their asking. This is done so that the victim's family can forgive the offender and move on in life. This may seem to be a kind of plea bargain, but in the author's view it is not, because what is exchanged is money accepted against the killing of a person. The same has been written in the holy books of the religion, and these rules are followed in places where Islamic law is applied.

Plea bargaining in India needs to be amended to cover many more laws so that it is easier for people to bargain. The USA follows a system of plea bargaining that gives a blanket cover to the accused, and something similar is also necessary in India, to give a wider head of laws for advocates to encourage and to educate people about plea bargains.

The system in India definitely needs a bigger bracket of laws, but the method used in America, where all laws are brought under it, can be avoided, as in the author's view it does not deliver justice to the victims. A plea bargain that reduces the sentence of a man who caused manslaughter to one for second degree manslaughter still makes no sense to the victim, and the author would say the same of the Islamic *diyyah* in the modern world, in that money cannot compensate for the loss of a person.

The law needs to be more specific. It cannot involve all crimes, and, as prescribed in Saudi Arabia, only unintentional death is allowed. Law must deliver justice, and justice does not mean money or a long wait for trial. Justice might not be instant, but it needs to give proper closure to the victim and his family.

Comparing the three models, there needs to be a clear understanding that each of the systems has its own drawback. The United States system is the first to be operated through law. Though the law was brought in to reduce the number of cases that go to trial and to reduce the number of prisoners under trial, the law has certainly taken a dive from its original object. It is used both for and against the perpetrators or accused, and charges are brought down to minor offences or misdemeanours in many cases in exchange for information. This prevalent method reduces the effectiveness of the judicial process, where a person accused of an offence simply trades information against a larger or bigger group of offenders that will help the prosecutor in making a case against them.

Where the law has largely been misused in the United States by the advocates and the prosecution, the Indian legal system has to be found guilty of under-using it. The courts are not very accepting of plea bargaining, so the prosecution and defence lawyers usually do not make a deal about it, but greater use of this alternative option would help the courts deal with the increasing number of cases in the country. The Indian legal system needs to strike a balance between its principles and the needs of the people. A long judicial process makes people lose faith in the process and in the court's judgments, and the rights of appeal simply drag a case out for many years. The Islamic concept of blood money is a type of plea bargain, but it deals with money being given rather than with cooperation in exchange for a reduction in the charge or sentence, which is completely different from the western method. In the author's view, the Islamic concept has to be fairly criticised, as it accepts money and no punishment in exchange for a crime as serious as murder, even though some countries accept it only for accidental killing.

VI. CONCLUSION

Plea bargaining can be a substitute for the long process that the trial system presents. Justice delayed is justice denied. The effect of plea bargaining is to help declutter the cases that need to be tried. It saves the court's time and effort. It also provides the victim's family with some solace. Plea bargaining in the United States rests on a larger and more prominent legislative base that is used by many in the judicial system, unlike the Indian system, which limits its use to specific crimes and eliminates a large number of crimes by barring many laws and by capping the highest sentence of the crime that could be awarded at seven years. The 2023 criminal law has not brought in any meaningful change to plea bargaining, and it limits the scope of its applicability. The Indian legislature needs to find a way for plea bargaining to be used effectively in the country, as the prisons are filled with under-trial prisoners and a long wait for

any person assumed to be guilty is not good for that person. The Islamic concept of *diyyah* (blood money) is a concept of retaliation in which there is no guilt involved. The system, though it has changed in the course of time, needs a better understanding and execution. The three legal systems are very different from one another: the legislation in the United States is over-used, whereas in India it is underutilised and changes need to be brought into the legislation. With the Islamic concept, in the author's view, there needs to be a change in the concept itself, and a better approach that aims at a guilt and punishment model rather than a compensation model, with proper legislation drawn up on it by each of the Islamic countries.
