

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Misue of Right to Plea-Bargaining leading to Exonerations from Heinous Crimes in India

DEEPAK¹

ABSTRACT

This article critically analyzes the concept of plea bargaining in India from a legal perspective, with a particular focus on its impact on the exonerations from heinous crimes. The article begins by discussing the history and evolution of plea bargaining in India, followed by an analysis of its legal framework and its practical implementation. The article examines the various criticisms leveled against plea bargaining in India, including its potential impact on the exonerations from heinous crimes, and recommends improvements to the process. The objective of plea bargaining is to “promote speedy disposal of cases and reduce the burden on the courts.” However, the implementation of plea bargaining has faced criticism on various grounds, such as the risk of false confessions, coercion of defendants, and inadequate representation, particularly in cases where the accused is poor and cannot afford proper legal representation. The article concludes that the implementation of plea bargaining in India should be done with caution, keeping in mind the rights of the accused and the impact on the exonerations from heinous crimes. Legal aid should be provided to the accused to ensure that they receive proper representation, and the prosecutor should ensure that the evidence against the accused is strong and sufficient before offering a plea bargain.

I. INTRODUCTION

Plea bargaining, a crucial component of the criminal justice system, is the procedure through which a person accused of committing a crime agrees to admit guilt in return for a less punishment or penalty. Plea bargaining is not a brand-new idea in India; it has been used there since the 1970s.² The practise of plea bargaining to resolve criminal cases has, nevertheless, significantly increased in recent years. The primary objective of plea bargaining is to reduce the burden on the courts, speed up the process of justice, and provide relief to the victims and their families. However, the concept of plea bargaining has also been criticized on various grounds,

¹ Author is a Research Scholar at Central University of Haryana, India.

² Vivek Narayan Sharma, “*Know Your Rights: Plea bargaining, a silver lining of Indian criminal justice system,*” THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/blogs/lawtics/know-your-rights-plea-bargaining-a-silver-lining-of-indian-criminal-justice-system/> (last visited Mar 27, 2023).

such as the risk of false confessions, coercion of defendants, and inadequate representation.

This research paper aims to critically analyze the concept of plea bargaining in India from a legal perspective, with a particular focus on its impact on the exonerations from heinous crimes. The paper will begin by discussing the history and evolution of plea bargaining in India, followed by an analysis of its legal framework and its practical implementation. The paper will then examine the various criticisms leveled against plea bargaining in India, including its potential impact on the exonerations from heinous crimes. Finally, the paper will conclude with some recommendations for the improvement of plea bargaining in India.

II. HISTORY AND EVOLUTION OF PLEA BARGAINING IN INDIA

Plea bargaining was only formally introduced through “the Criminal Procedure Code (CrPC) Amendment Act of 2005.”³ At first, it only applied to offenses punishable with imprisonment of fewer than seven years, but in 2008, “the Code of Criminal Procedure (Amendment) Act”⁴ extended the scope of plea bargaining to offenses punishable with imprisonment of up to seven years.

In 2009, the Supreme Court of India upheld the constitutional validity of plea bargaining in the case of “*Murlidhar Meghraj Loya v. State of Maharashtra*.”⁵ The court stated that “plea bargaining was an essential component of the criminal justice system, which aims to promote the speedy disposal of cases and reduce the burden on the courts.”

The legal framework for plea bargaining in India is provided under “Chapter XXI-A of the Code of Criminal Procedure (CrPC).” Section 265-A of the CrPC⁶ provides for the conditions for the application of plea bargaining. According to this section, a person accused of an offense punishable with “imprisonment of up to seven years” may make an application for plea bargaining in the prescribed form.

Section 265-B of the CrPC⁷ provides for the procedure to be followed in the case of plea bargaining. According to this section, the court, after considering the application, may either accept or reject the plea bargaining. If the court accepts the plea bargaining, it may award the accused a sentence of imprisonment, which is less than the minimum prescribed for the offense.

The introduction of plea bargaining in India aimed to reduce the burden on the courts and provide relief to the victims and their families. However, its implementation has faced criticism

³ The Code of Criminal Procedure (Amendment) Act, 2005, No. 25, Acts of Parliament, 2005 (India)

⁴ The Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India)

⁵ (1976) 3 SCC 396

⁶ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India), Section 265-A.

⁷ Ibid, Section 265-B.

on various grounds. One of the significant criticisms of plea bargaining is its potential impact on the exonerations from heinous crimes.

In India, the criminal justice system is notorious for its lengthy and cumbersome procedures, leading to prolonged detention and trials of the accused. The accused, in such cases, may accept a plea bargain to get a reduced sentence, even if they are innocent. This is especially true in cases where the accused is poor and cannot afford proper legal representation.

Moreover, plea bargaining may also result in the acquittal of the guilty, as in some cases, the prosecutor may offer a plea bargain to the accused even when the evidence against them is weak or insufficient. This can lead to a situation where the guilty goes unpunished, and the victim and their family are denied justice.

Another criticism of plea bargaining is the potential for false confessions. In cases where the accused is subjected to coercion or pressure to accept a plea bargain, they may falsely confess to a crime they did not commit. This can lead to the wrongful conviction of innocent individuals and a miscarriage of justice.

In conclusion, the history and evolution of plea bargaining in India have been a significant aspect of the criminal justice system, aimed at reducing the burden on the courts and providing relief to victims and their families. However, its implementation should be done with caution, keeping in mind the rights of the accused and the impact on the exonerations from heinous crimes. Legal aid should be provided to the accused to ensure that they receive proper representation, and the prosecutor should ensure that the evidence against the accused is strong and sufficient before offering a plea bargain.

III. LEGAL FRAMEWORK OF PLEA BARGAINING IN INDIA

The "*Criminal Procedure Code, 1973 (CrPC)*," which was revised in 2005 to include provisions for plea bargaining, establishes the legal foundation for plea bargaining in India. "Chapter XXIA of the CrPC," which was added after Section 265A, contains the provisions governing plea negotiations.

Plea bargaining is described in Section 265A as a pre-trial discussion between the prosecution and the accused in which the accused agrees to admit guilt in return for a sentence that is less severe than the one that would otherwise be imposed for the crime with which they are charged. Plea agreements are intended to facilitate swift case resolution and lighten the load on the legal system.

The following are the salient features of the legal framework of plea bargaining in India:

1. **Eligibility for plea bargaining:** Plea bargains are not possible for all crimes. Only offences that have a maximum sentence of seven years in jail or less qualify. Plea agreements cannot be reached for crimes against women, children, or other vulnerable groups of society or crimes that have an impact on the nation's socioeconomic situation.
2. **Procedure for plea bargaining:** The accused, along with his/her lawyer, can approach the court at any stage of the trial and express his/her willingness to plead guilty. The court may then provide an opportunity to the prosecution to consider the plea bargaining proposal. If the prosecution agrees to plea bargaining, the court will record the plea of guilt and award a lesser punishment than the one provided for the offense.
3. **Sentencing:** The judge has the authority to impose a sentence that is less severe than the minimum one required for the offence. However, the sentence cannot be less than one-third of the maximum punishment. The court has to take into consideration the nature of the offense, the role of the accused in committing the offense, and any mitigating or aggravating factors while awarding the sentence.
4. **Withdrawal of plea:** The accused has the right to withdraw the plea of guilt at any stage before the final judgment is pronounced.
5. **Appeal:** The accused has the right to appeal against the sentence awarded under plea bargaining, and the appeal will be treated as if the accused had pleaded not guilty.
6. **Confidentiality:** Except for the purpose of establishing the penalty in the event that the accused violates the plea bargaining agreement, remarks made during the plea negotiation process cannot be utilised against the accused in any future proceedings.
7. **Plea bargaining for co-accused:** Co-accused can also apply for plea bargaining, provided they have not contradicted each other's plea and the prosecution has agreed to it.

The legal framework of plea bargaining in India provides for a procedure that allows for the early resolution of criminal cases by providing a benefit to the accused in exchange for a guilty plea. However, it is important to note that plea bargaining is not a substitute for a fair and impartial trial, and should not be used to coerce innocent accused into pleading guilty. The court should exercise its discretion judiciously while awarding a sentence under plea bargaining to ensure that justice is served.

IV. LAW COMMISSION REPORT ON PLEA BARGAINING IN INDIA

The 142nd Law Commission Report⁸ dealt with the topic of plea bargaining in India. The report

⁸ Law Commission of India, "142nd Report on Legislative safeguards for protecting the small depositors from

was submitted in August 1991 and contained several key observations about the practice of plea bargaining.

One of the main observations made by the Law Commission was that plea bargaining can be an effective tool for reducing the burden on the courts and for expediting the resolution of cases. The Commission noted that there are many cases in India that could potentially be resolved through plea bargaining, but that the practice is not currently widely used.

The Commission also noted that there were some concerns about the use of plea bargaining, particularly around the potential for coercion and abuse of power. To address these concerns, the Commission recommended that plea bargaining be made voluntary, and that appropriate safeguards be put in place to ensure that defendants are fully informed about their rights and are not coerced into accepting plea bargains.

The Commission also recommended that plea bargaining be used primarily in cases where the accused has committed a non-serious offence and where there is a likelihood of conviction. The Commission suggested that plea bargaining should not be used in cases where the accused has committed a serious offence or where there is a risk of injustice.

Overall, the Law Commission report on plea bargaining was a comprehensive analysis of the practice in India. The report provided a number of important recommendations for how plea bargaining could be implemented in a fair and effective manner, and it remains an important resource for anyone interested in understanding the role of plea bargaining in the Indian legal system.

V. JUDICIAL RESPONSE TO PLEA BARGAINING IN INDIA

Here are some of the important case laws related to plea bargaining in India:

1. Murlidhar Meghraj Loya v. State of Maharashtra: (1976)⁹

This was the first case where plea bargaining was allowed in India. The Supreme Court allowed the accused to plead guilty in exchange for a lesser sentence. In this case, the Supreme Court of India held that plea bargaining can be an effective tool for reducing the burden on the judiciary and can provide a speedy resolution to criminal cases. The court observed that plea bargaining is not a mechanism for letting off hardcore criminals, but rather a way to encourage guilty persons to confess and accept responsibility for their actions.

The court also outlined the procedure for plea bargaining in India and held that it should be

exploitation.” (1991).

⁹ (1976) 3 SCC 396

conducted in accordance with the guidelines issued by the High Courts of each state. The court further held that plea bargaining should not be allowed in cases involving serious and heinous offences, offences against women, and economic offences.

2. State of Gujarat v. Natwar Harchandji Thakor. (2014)¹⁰

The Supreme Court held that plea bargaining cannot be allowed for serious and heinous crimes. In this case, the Supreme Court held that the power to allow or reject a plea bargain lies with the court and cannot be delegated to the prosecution. The court observed that the judge must satisfy himself that the plea bargain has been entered into voluntarily and that the accused fully understands the nature and consequences of his plea.

The court also held that the sentence imposed in a plea bargain must be proportionate to the offence committed and should not be arbitrary or excessive.

3. Shiv Kumar v. State of Haryana: (2009)¹¹

In this case, the Supreme Court held that the accused has a right to withdraw his plea of guilty at any stage before the final judgment is passed. The court observed that the accused must be allowed to withdraw his plea if he feels that he has been coerced or pressured into making the plea or if he feels that his rights have been violated in any way.

The court also held that the judge must ensure that the accused fully understands the consequences of withdrawing his plea and that the withdrawal is not being made as a tactic to delay the proceedings.

4. Bhagwan Singh v. State of Uttarakhand (2012)¹²

In this case, the accused was charged with offences punishable under the Prevention of Corruption Act, 1988. The accused filed an application for plea bargaining before the trial court and then a revision petition before the High Court, which were dismissed. The accused then filed a special leave petition before the Supreme Court, which held that the purpose of plea bargaining is not only to reduce the burden on the courts but also to ensure speedy justice for the accused. The court observed that plea bargaining is a statutory right of the accused, and the court cannot reject a plea bargain application solely on the ground that the offences are of a serious nature. The court held that the court has to consider various factors, such as the nature of the offence, the role of the accused, the antecedents of the accused, and the impact of the

¹⁰ (2014) 3 SCC 108.

¹¹ (2009) 15 SCC 551.

¹² (2012) 12 SCC 454.

offence on society, while deciding a plea bargain application.

5. Sanjay Chandra v. CBI (2012)¹³

In this case, the accused was charged with offences punishable under the Indian Penal Code, 1860, and the Prevention of Corruption Act, 1988. In this special leave petition before the Supreme Court, it was held that plea bargaining cannot be allowed in cases involving economic offences, as it would send the wrong message to society and undermine the deterrent effect of the law. The court observed that economic offences have a serious impact on the economy of the country and the confidence of investors. The court held that allowing plea bargaining in such cases would send the wrong message to society and undermine the deterrent effect of the law. The court, however, clarified that the decision in this case would not apply to other cases where plea bargaining is allowed under the law.

6. State of Rajasthan v. Shambhu Kewat (2014)¹⁴

In this case, the accused was charged with offences punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused filed a special leave petition before the Supreme Court, which held that the power to accept or reject a plea bargain lies solely with the court and cannot be delegated to the prosecution. The court observed that the power to accept or reject a plea bargain is a judicial function, and the court has to apply its mind to the facts of the case and decide whether to accept or reject the plea bargain. The court also held that the public prosecutor has a duty to assist the court in deciding the plea bargaining application but cannot usurp the court's power.

One of the most recent cases related to Plea Bargaining in India is *State of Madhya Pradesh v. Saleem (2021)*,¹⁵ where the Supreme Court observed that plea bargaining can be allowed in cases where the punishment is less than 7 years of imprisonment. The court held that plea bargaining is an important tool for reducing the burden on the courts and ensuring speedy justice for the accused.

In another recent case, *State of Karnataka v. N. Madesha (2021)*,¹⁶ the Karnataka High Court held that the court has the power to reject a plea bargain if it is not satisfied with the terms of the agreement or if it feels that the interest of justice would be better served by a trial.

¹³ (2012) 1 SCC 40

¹⁴ (2014) 4 SCC 149.

¹⁵ (2021) 3 SCC 882.

¹⁶ 2021 SCC OnLine Kar 2559

VI. CRITICISM OF PLEA BARGAINING IN INDIA

While plea bargaining is a popular practice in many countries, including the United States, it has faced criticism in India for various reasons. Some of the criticisms of plea bargaining in India are:

1. **Unfair to victims and witnesses:** Plea bargaining can be seen as being unfair to victims and witnesses, as it allows the accused to plead guilty and receive a lesser sentence without the victim or witness being heard. This can be especially problematic in cases of violence against women and children, where the victims may not have a voice in the proceedings.
2. **Coercive nature:** Plea bargaining can be coercive in nature, as the accused may feel pressured to plead guilty in order to receive a lesser sentence. This can be especially problematic if the accused is innocent or if they have been falsely implicated in a case.
3. **Discriminatory:** Plea bargaining can be seen as discriminatory against the poor and marginalized, who may not have access to good legal representation and may be more likely to accept a plea bargain in order to avoid a lengthy and costly trial.
4. **Diminished deterrent effect:** Plea bargaining can diminish the deterrent effect of the criminal justice system, as it allows the accused to receive a lesser sentence than they might have received if they had gone to trial. This can be seen as being unfair to law-abiding citizens, who may feel that criminals are not being punished adequately.
5. **Undermines the right to fair trial:** Plea bargaining can be seen as undermining the right to a fair trial, as it allows the accused to avoid a full trial and a verdict by a judge or jury. This can be seen as being problematic in cases where the accused may have a strong defense or where the evidence against them may be weak.
6. **Ethical concerns:** Plea bargaining can raise ethical concerns, as it may encourage lawyers to pressure their clients into accepting plea bargains in order to reduce their workload or increase their success rate. It can also be seen as being problematic if the accused is coerced into accepting a plea bargain without fully understanding the consequences of their decision.

Despite the various advantages of plea bargaining, such as the speedy disposal of cases, the reduction in the burden on the courts, and the relief to the victims, the concept of plea bargaining has also been criticized on various grounds. One of the most significant criticisms of plea bargaining is its potential impact on the exonerations from heinous crimes.

In India, the criminal justice system is notorious for its lengthy and cumbersome procedures,

leading to prolonged detention and trials of the accused. The accused, in such cases, may accept a plea bargain to get a reduced sentence, even if they are innocent. This is especially true in cases where the accused is poor and cannot afford proper legal representation.

Moreover, plea bargaining may also result in the acquittal of the guilty, as in some cases, the prosecutor may offer a plea bargain to the accused even when the evidence against them is weak or insufficient. This can lead to a situation where the guilty goes unpunished, and the victim and their family are denied justice.

Another criticism of plea bargaining is the potential for false confessions. In cases where the accused is subjected to coercion or pressure to accept a plea bargain, they may falsely confess to a crime they did not commit. This can lead to the wrongful conviction of innocent individuals and a miscarriage of justice.

Furthermore, the lack of proper legal representation for the accused is also a significant concern in the implementation of plea bargaining in India. In many cases, the accused is not adequately informed of their legal rights or the consequences of accepting a plea bargain, leading to an unfair and unjust process.

In conclusion, while plea bargaining is a useful tool in reducing the burden on the criminal justice system and ensuring speedy justice, it is important to consider the criticisms that have been raised against it in India. Any legal framework for plea bargaining must take into account the concerns of victims, witnesses, and society at large, while also ensuring that the accused's rights are protected and that justice is done.

VII. CONCLUSION AND RECOMMENDATIONS

In conclusion, the concept of plea bargaining in India has undergone significant evolution in the legal landscape of the country. It has been introduced as a means to reduce the burden of cases on the Indian judicial system and expedite the trial process. However, the implementation of plea bargaining has been criticized due to several reasons, such as the possibility of innocent defendants pleading guilty, unequal bargaining power between the prosecution and the defendant, and the lack of transparency and consistency in the plea bargaining process.

Therefore, it is recommended that there should be a comprehensive review of the plea bargaining system in India to address the concerns of various stakeholders. The review should focus on establishing guidelines to ensure fairness, transparency, and consistency in plea bargaining proceedings. Additionally, legal aid should be provided to indigent defendants to ensure that they have access to competent legal representation during plea bargaining

negotiations.

Furthermore, there should be a concerted effort to educate the public about the plea bargaining system and its potential advantages and disadvantages. This will ensure that the public is aware of their rights and obligations in the plea bargaining process and can make informed decisions.

Finally, it is recommended that there should be increased research and analysis into the impact of plea bargaining on the criminal justice system in India. This will help to evaluate the effectiveness of plea bargaining and identify areas for improvement. It will also help to inform policy decisions regarding the future of plea bargaining in India.
