Page 1667 - 1676 **DOI:** *https://doij.org/10.10000/IJLMH.117606*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

Plea Bargaining in India: An Appraisal

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ABSTRACT

The burden of the cases pending is the utmost problem that the Indian judiciary is facing. Enormous backlog of approximately 44 million or 4.4 crore pending cases has entirely paralysed the judicial system of India. Introducing plea bargaining represents a novel approach in India. In the modern era of criminal justice system in India, plea bargaining can be used as an important alternative tool to significantly reduce the number of criminal cases pending before the courts.

Plea bargaining was incorporated into the Criminal Procedure Code of 1973 through the Criminal Law (Amendment) Act of 2005. This provision became effective on July 5, 2006. Chapter XXI-A, comprising of 12 sections, has been added as an amendment. The implementation of plea bargaining in the Indian criminal justice system is primarily a reaction to the unacceptable current situation, characterized by the prolonged processing of criminal cases and appeals, the substantial backlog of cases, and the dire conditions experienced by prisoners awaiting trial in jails. The bill sparked significant debate among the public. The critics of the plea bargaining system contend that it is not effectively implemented and runs contrary to the principles of public policy within our criminal justice system. This paper aims to analyse and comprehend the Indian concept of plea bargaining. Additionally, this model will be compared to the American model.

***Keywords**: Plea bargaining, India and US model of plea bargaining, Pendency of cases.*

I. INTRODUCTION

In his book, the prominent Indian lawyer and jurist Nani Palkhiwala stated: "*the greatest drawback of our administration of justice in India today, I would say that it is DELAY.... The law may or may not be an ass, but in India it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in a community of snails. Justice has to be blind but I see no reason why it should also be lame, here it just hobbles along, barely able to walk.*"[3]

The most relevant and recent statistics indicate the appalling state of cases pending before Indian courts. According to the most recent statistics, there are more than four crore cases outstanding in the courts. Most of the cases have been festering for nearly two decades now.

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[3] Nani A. Palkhiwala, We the nation lost decade (UBS publications 1994) 215

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The alarming condition of pending cases is a cause for concern. The then Chief Justice of India, Y.K. Sabharwal, said, "*the introduction of plea bargaining in India would not only expedite the criminal system but also serve as a restorative form of justice where victims would be equal stakeholders and get adequate compensation"*[4] Even after years of adoption, Plea bargaining has not been able to make an impact and resolve the problem existing in the system. The backlog of cases in India is consequently a major source of concern and importance. In India, several high profile criminal cases such as the Anti Sikh Riot case and the Bhopal Gas Tragedy case have experienced significant delays, to the extent that the legal principle of "justice delayed is justice denied" appears to be true.

In order to minimize the time taken to resolve criminal proceedings The Law Commission, in its 142nd, 154th, and 177th Reports, proposed the implementation of "plea-bargaining" as an alternate approach to address the significant backlog of criminal cases. Analysing these factors, the Parliament of India devised a strategy to deal with the backlog of cases and finally introduced the principle and concept of plea bargaining in India through the implementation of the Criminal Amendment Act, 2005, which took effect on July 5, 2006. Chapter XXIA, which pertains to laws regarding plea bargaining, was added to the code of criminal procedure applicable in India through the 2005 amendment.

(A) Meaning

The concept of plea-bargaining can be fully articulated by first grasping some fundamental definitions. A plea bargaining is like a contract in a criminal matter between the complainant and the defendant to compromise the suit against the defendant. In lieu for certain agreement from the prosecutors on the penalty, the defendant decides to admit guilt. A plea bargain might also include the prosecutor consenting to charge the accused with a lighter charge (also known as charge reduction) and dismissing some of the accusations against him.

In Black's Law dictionary, Plea bargaining has been defined as "The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the accused pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that position for the grave charge."[5]

According to the comprehensive report of the Law Commission of India (142nd), plea

[4] Aditi Roy & Sanjana Gupta, 'Plea Bargaining: A Comparison Between USA And India <https://criminallawstudiesnluj.wordpress.com/2022/05/20/plea-bargaining-a-comparison-between-usa-and-india/>

[5] https://www.thelawdictionary.org/plea-bargaining/

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bargaining is a process where the defendant and the prosecution engage in negotiations before the trial. Typically, the defendant's lawyer and the prosecutor discuss a potential agreement where the defendant agrees to plead guilty in exchange for certain benefits offered by the prosecutor.[6]

Plea bargaining, as defined by Alschuler, refers to the defendant's agreement to plead guilty to a criminal charge with the reasonable expectation of receiving some consideration from the State.[7]

Furthermore, it has been explicitly delineated. According to authors like John H. Langbein, plea bargaining can be described as "*condemnation without adjudication*."[8]

"*Plead guilty and ensure lesser sentence*" is the simplest way to put it.

Generally, these explanations show that plea bargaining is a pre-trial settlement between the complainant and the defendant that is permitted by law. This strategy facilitates the reduction or dilution of his punishment since he is willing to collaborate with the prosecution and to confess his culpability and in certain circumstances even offers to compensate the victim.

Despite being a guilty plea, (the renowned Latin phrase) 'nolo contendere,' which means 'I do not intend to challenge,' is seen as the foundation on which the concept of plea bargaining was built.

II. TYPES OF PLEA BARGAINS

Plea bargaining can be classified into mainly four types, based on the acceptance by the courts.

1. Charge Bargaining: This is the most widely recognized and common form of plea bargaining. It involves reaching a mutually agreed upon resolution regarding the charges or offenses that the defendants will face during the trial. Typically, a prosecutor may dismiss the more serious or additional charges in return for a guilty plea to a less severe offense. For instance, a defendant accused of burglary may be offered the opportunity to admit guilt for attempted burglary instead. Therefore, it is fundamentally a mutually beneficial exchange of concessions between both parties.

2. Sentence Bargaining: It is a type of plea bargaining in which the accused agrees to confess commission an offence in exchange for a lower sentence than what he would have received if the Court had found him guilty of the charge through the legal process, e.g., murder to

[6] R.V. Kelkar, Criminal Procedure Code 396 (5th edn., 2011).
[7] Alschuler A.W, *Plea Bargaining and Its History*, 1 Colum. L. Rev. 3 (1979).
[8] Alschuler, A.W, *The Prosecutors Role in Plea Bargaining*, 36 (1969) *University of Chicago Law Review, 36*

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manslaughter,etc. To ensure justice, the accused must be advised about the potential punishment that may be imposed if they do not admit guilt. However, if the accused does admit guilt, the prosecution may request a reduced or more favourable sentence than what was originally sought. A sentencing bargain enables the prosecutor to secure a conviction for the most severe accusation, while ensuring that the accused person receives a satisfactory sentence.

3. Facts Bargaining: In this type of plea bargaining, the two parties to the litigation agree to place a number of facts about the case under the constant scrutiny of the Court, and they frequently do not bring any other facts to the Court's notice. The courts generally, do not recognise this type of plea bargaining as legal under the law.

4. Counts Bargaining: Count bargaining is a legal practice that permits defendants facing several accusations to plead guilty to a reduced number of counts. The charges do not necessarily have to be the same. The prosecution has the discretion to dismiss any charge or charges in return for a guilty plea on the remaining counts.

III. PLEA BARGAINING IN INDIA

(A) Historical Background

The concept of Plea Bargaining was not recognized in the Indian judicial system until July 5, 2006, when the Criminal Law (Amendment) Act, 2005 came into operation. The Indian Supreme Court considered plea bargaining to be violative of Article 21 of the Constitution, as it was not authorized by the Code of Criminal Procedure or any other law at the time. This led to the Supreme Court's observation that a streamlined procedure should be developed if the State were to administer justice through plea bargaining.

The Law Commission of India, in response to mounting arrears of criminal cases and unconscionable delays, submitted its 142nd Report on "Concessional Treatment for Offenders who on their own initiative chose to plead guilty without any bargaining" in 1991. The commission suggested that the concessional treatment program to offenders who plead guilty on the charges against them should be made statutory by adding a chapter to the criminal procedure code. The report also noted that in the USA, nearly 75% of total convictions are secured as a result of plea-bargaining, and under the present system, 75% to 90% of criminal cases result in acquittals.

In 1996, the Law Commission of India submitted its 154th Report, which recommended amendments to the Code of Criminal Procedure, 1973, particularly for speedy justice. It proposed that the idea of plea bargaining be applied as a trial measure to offenses, such as those

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covered by Section 320 of the Criminal Procedure Code, that carry a sentence of less than seven years in jail and/or a fine. Recommendations also suggest that plea bargaining can be conducted based on the nature and degree of the offenses, as well as the severity of the sentence. According to it, individuals who are habitual offenders, those suspected to have committed major socioeconomic crimes, or convicted of crimes against women and children should not be granted this facility. This recommendation was supported by the Malimath Committee report.

The Law Commission's 177th Report backed up and reaffirmed the 154th Report's suggestion. Furthermore, Malimath Committee presents the United States' experience as proof of plea bargaining being a mechanism for disposing of accumulated cases.

Consequently, The Criminal Law (Amendment) Act, 2005 was enacted by Parliament, introducing a new Chapter XXIA on Plea Bargaining in the Code of Criminal Procedure, 1973. However, the concept is not a complete adoption of the Law Commission recommendations, but a middle path to address the apprehension of misuse attached to this concept.

(B) Justifications for adopting the concept of Plea Bargaining in India

1. To decrease the backlog of criminal cases that has been outstanding in Indian criminal courts for a significant period of time. Such cases have not been resolved by the courts due to the complexities involved and the prolonged process of trial, as the offenses are non-compoundable.

(ii) To reduce the amount of under-trial prisoners who are remaining in jail for longer periods than the legally required punishment for their offenses, and therefore alleviate congestion in prisons, thus relieving the financial load on the state exchequer.

(iii) To provide compensation to victims of crime who have incurred loss owing to offenses committed against their person or property by the accused.

(iv) To expedite the resolution of criminal cases.

(C) Procedure & provision related to Plea Bargaining

Sections 265A to 265L of Chapter XXIA of the 1973 Criminal Procedure Code govern plea bargaining.

a. Plea bargaining is permitted for any person accused and charged with an offence other than a crime that carries capital punishment or life imprisonment, or imprisonment exceeding seven years in jail, as per **Section 265-A. Section 265 A (2)** gives union the power to declare the offences. On July 11, 2006, the Central Government issued Notification No. 1042 (II), enumerating the offences that affected the country's socio-economic situation.

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b. **Section 265-B** envisages the defendant filing an plea for plea bargaining, that clearly specifies a detail overview of the matter relating to which such petition is submitted and shall be supported by an affidavit attested by the defendant declaring within it that he has knowingly and willingly desired, after gaining a better understanding & severity of the offence provided under the law for his offence.

Then the court will serve notice to the state prosecution, IO, complainant, and the offender for the hearing. When all the parties attend, the defendant will be examined by the court in camera, without the presence of the other parties to the dispute, in order to ensure that the defendant has willingly submitted the petition.

c. **Section 265-C** states the procedure that the court must take in working out a mutually satisfactory disposition. The court must provide notice to the state prosecution, the IO, the complainant, and the offender to attend a joint sitting in order to determine a suitable resolution in cases where the case was brought based on a police report. In a complaint matter, notice of the proceedings must be given by the court to both the complainant and the offender.

d. **Section 265-D** pertains to the court's responsibility to a report regarding the outcome of reaching a mutually satisfactory disposition or the lack thereof. When a meeting held under section 265-C achieves a satisfactory disposition of the matter, the Court will prepare a report detailing such resolution. All individuals participating in the meeting and the presiding officer of the court, will sign the report. If an agreement has not been reached regarding the matter, the Court will record this and continue with the legal process as outlined in this Code, starting from the stage at which the application under 265-B(1) was filed in the case.

e. When a satisfactory disposition is reached, **Section 265-E** states the process to be followed. Once the procedure specified under S. 265-D has been completed, a report must be drawn up and signed by the presiding officer of the Court and all parties in attendance. The Court must hear from both sides to decide on the severity of the punishment or whether the accused should be freed on probation for good behaviour or after admonition. It is up to the court to either punish the accused by giving the sentence or free them on probation under the Probation of Offenders Act, 1958, S. 360 of the Code, or any other applicable statute. When the Court punishes the accused, it can choose to give them the minimum punishment if stipulated by law for the crimes they are accused of committing, or if there is no minimum punishment, it can give them a sentence equal to one fourth of the punishment for those crimes. Furthermore, if a report is filed under S. 265-D, "report on mutually satisfactory disposition," includes a clause that says the victim should be compensated, the Court must also order that the victim be

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compensated.

f. **Section 265-F** deals with the pronouncement of judgment in terms of such mutually satisfactory disposition.

g. **Section 265-G** says that no appeal lies against judgment of cases relating to plea bargaining.

h. **Section 265-H** pertains to the jurisdiction of the court in plea bargaining. A court, in order to fulfill its duties under Chapter XXI-A, possesses all the authority concerning bail, trial of offenses, and other matters pertaining to the resolution of a case, as specified in the Criminal Procedure Code.

i. **Section 265-I** stipulates that Section 428 is applicable to the sentence passed through plea bargaining.

j. **Section 265-J** includes a non obstante clause which states that the provisions in the chapter will be enforced irrespective of any conflicting provisions in other parts of the Code. Additionally, no other provisions should be interpreted as having the same meaning as any provision in chapter XXI-A.

k. The declarations or information given by the offender in a petition for plea bargaining must not be used for further reason than the function of this chapter, according to **Section 265-K**.

l. In the event of any minor as described by Section 2(k) of the JJ Act, 2000, **Section 265-L** makes the provisions of chapter inapplicable.

IV. COMPARISON OF PLEA BARGAINING WITH US MODEL

While the Indian legal system adopted the concept of "Plea Bargaining" from the United States, it operates in a distinct manner compared to the American system. The following are some of the distinctions between "Plea Bargaining" in India and the United States.

Plea bargaining is permitted in the American legal system for any offense, with the exception of a limited number of offenses, making its applicability broad. In India, the guilty are only allowed to seek plea bargaining for a limited number of offences, section 265A[9] excludes some defendants from plea bargaining, e.g., a person who is accused of committing a crime that is punished by death, imprisonment for more than seven years, a crime against women or a child under the age of fourteen, or a crime which impacts the socio-economic conditions of the country.

The victim assumes a significant role in the process of plea bargaining in India. The victim has

[9] Code of Criminal Procedure,1973

the option to decline or reject an unsatisfactory outcome. However, in the United States, the victim is not involved in the process of Plea Bargaining.

In the United States, a plea bargain application is submitted only when negotiations have been finalized. In India, however, the negotiation process with the accused doesn't start until the plea bargaining application is submitted, ensuring that the accused files it voluntarily. By submitting a plea bargaining application, the offender reduces the likelihood of being coerced or participating in illegal negotiations.

In the United States, the court lacks the ability to exercise discretion when it comes to approving a plea offer. In India, the court possesses the power to either grant or deny a plea bargaining motion.

In India if a court deems the punishment given in a Plea Bargaining case to be inadequate or unfair, it can be overturned through a SLP under Article 136 or a writ petition under Articles 226 and 227 of the Indian Constitution. However that is not the case in America.

Despite the fact that there are significant differences in the way plea bargaining is organised in India and the USA, there are some similarities. Both the states insist on the offender's intention as a pre-requisite for using the system in settling a criminal matter. Furthermore, in both countries the accused is allowed to retract his guilty plea up to a certain point, should they wish to exercise their right to a just preliminary hearing.Furthermore, both states have agreed not to utilise any of the offender's statements made throughout the plea bargaining in any other subsequent proceeding.

V. JUDICIAL APPROACH TOWARDS PLEA BARGAINING IN INDIA

Even prior to the introduction of plea bargaining, the Supreme Court had strongly stated that it was against this concept. In **Thippaswamy v. State of Karnataka**[10], J. Bhagwati observed "*It would be clearly violative of Article 21, of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly*". In **Kasambhai Abdulrehmanbhai Sheikh**[11], the Supreme Court ruled that the practice of 'plea bargaining' is impairing the integrity of justice and is also contrary to public policy.In **State of U.P. v. Chandrika**[12]**,** the Supreme Court again ruled that plea bargaining cannot be accepted and is contrary to public policy within the Criminal Justice System of India.

The Supreme Court adopted this perspective since, at that time, neither the Code of Criminal

[10] (1983) 1 SCC 194: AIR 1983 SC 747.
[11] (1980) 3 SCC 120.
[12] (1999) 8 SCC 638: AIR 2000 SC 164: 2000 Cri LJ 384 (386).

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Procedure nor any other legislation permitted plea bargaining. In this context, the mention of the infringement of Article 21 in relation to the "*procedure established by law*" was made. If there had been a legal provision enabling the procedure, the challenge would not have been made. The Supreme Court's disapproval is not for the system that exists now because it did not relate to that of earlier time.

The Gujarat High Court appreciated this procedure and observed in **State of Gujarat v. Natwar Harchandji Thakor**[13] that, "*The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency 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 plea bargaining is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms."* In a significant case of **Vijay Moses Das v. CBI**[14], Uttarakhand High Court in March 2010 authorized the practice of plea-bargaining. the accused, who was charged under sections 420, 468, and 471 of the Indian Penal Code, was permitted to negotiate a plea agreement. The High Court granted the Misc. Application by instructing the trial court to approve the plea-bargaining application.

It is worth mentioning that before the enactment of the amending Act of 2005, courts consistently dismissed all plea deal cases. Despite some improvement since 2005, it is still approached by the judiciary in various different perspectives. It remains a provision that is greatly underutilized.

VI. CONCLUSION

The parliament has proceeded with caution in introducing Chapter XXI-A of the Code. They have limited the applicability generally and the parameters of plea bargaining specifically. It should be understood that when a concept is translated into a comprehensive body of regulations, it should be done so in a way that anticipates potential roadblocks during the trial stage. It has been agreed that in order for this to be a powerful and successful elective cure, there must be a balance between a reckless use of this procedure and the opportunities that plea bargaining provides. However, due to the highly careful methods used in restricting its extension, we can't appreciate plea bargaining to the extent that it ought to be valued. Although it cannot be denied that the Amendment is a genuine attempt to resolve the stated difficulties, it is more likely to be respected if the restraints are loosened to little more extend.

[13] (2005) Cri LJ 2957 (Guj).
[14] (Criminal Misc. Application 1037/2006), Uttarakahnd High Court (Justice Praffula Pant) in March 2010.

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Plea Bargaining serves to expedite the resolution of disputes by serving as a receiver for both the defendant and the prosecution. It enables attorneys to safeguard their clients in a straightforward manner. Lengthy disagreements can be easily resolved. It aids in the reduction of a defendant's record of less significant offences in court, which might be beneficial to the guilty when he is imprisoned later. Plea Bargaining helps to avoid exposure by allowing cases to be settled quickly. On the other hand, the reasons for introducing plea bargaining include overcrowding in detention institutions, rapid pardons, the torment of pre-trial prisoners, and so on. In any case, the primary goal is to cause a delay in the preliminary cycle. It has a slew of drawbacks that threaten the country's ability to improve. It obliterates unrestricted legal authority. The role of the victim in the process has an impact on debasement, which ultimately negates the aim of plea bargaining.

Article 20 of the Indian constitution essentially recognises the rights of an accused. Because of the changes in the passage of time, Indian courts saw the necessity for plea bargaining. When change is introduced, people are constantly adapting to it, and this needs some work on the part of the individuals to accept the change.

It's not fair to judge anything because of difficulties. Each of these procedures would assist in ensuring a speedy journey.

The plea bargaining provision has evolved into an acceptable and long-term tool of justice, and there is now a pressing need to consider the flaws in the existing plea bargaining structure in order to make it more effective. Such a shift would be substantial and would stimulate the growth of India's justice delivery system provided the restrictions of the existing plea bargaining mechanism are identified and resolved in an efficient manner.

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