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PLEA BARGAINING: IMPLEMENTATION AND OUTCOMES

AUTHROED BY - ARGHA MAITRA

Abstract

Plea bargaining is a pre-trial agreement in which the prosecution and the accused agree on specific concessions from the prosecution in exchange for the accused entering a guilty plea. This facility is available on certain crimes only. This is one of the recent developments of the Indian Criminal Justice System. This paper would analyse the historical evolution of the concept of plea bargaining, the process of plea bargaining in India, and the differences between the concept of plea bargaining in India and USA. In order to increase the effectiveness of this system in the Indian Criminal Justice System, some changes have to be bought. Attorneys should be made aware of the system and a separate system should be set-up to handle plea negotiation, so as to decrease the burden on the court and make the system more effective.

Keywords: Plea bargaining**,** USA, India, Criminal Justice System

INTRODUCTION

The adage "justice postponed is justice denied" is highly significant when discussing the idea of plea bargaining. Plea bargaining is a pre-trial agreement in which the prosecution and the accused agree on specific concessions from the prosecution in exchange for the accused entering a guilty plea. It's a deal when the prosecution drops more serious charges against the defendant in exchange for a lighter plea. Not all crimes can be covered by it; for example, someone cannot announce a plea deal after committing horrible crimes or for offences that carry a death or life sentence.

Plea bargaining is covered under Sections 265A through 265L of Chapter XXIA of the Criminal Procedure Code (s. 289 to s. 300 of the Bharatiya Nagarik Suraksha Sanhita). The Criminal Law (Amendment) Act, 2005 included it. In some circumstances, it permits plea bargaining. They are:

1. When a seven-year jail sentence is the maximum penalty;
2. when the crimes have little impact on the nation's socioeconomic standing;

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3. When the crimes do not include the victim being a woman or a kid under the age of fourteen.

Judges encouraged confessions by using this negotiating. The idea of plea bargaining is not inherent to Indian criminal law. It is a component of the Indian Criminal Justice System's (ICJS) most recent developments. The Indian Criminal Justice System adopted it after considering the impact of cases with a protracted status on the judiciary.

In the Indian Criminal Justice System, plea bargaining was initially recommended by the Law Commission. Plea bargaining was identified as an opportunity technique that Indian courts need to use in order to handle significant criminal cases.

HISTORICAL EVOLUTION OF THE CONCEPT OF PLEA BARGAINING

In the annals of criminal justice, the history of plea bargaining is mostly unwritten. It should come as no surprise that the history of criminal justice was largely ignored until recently. The materials are also elusive and local. Thoughts regarding how and why the system came into being are certainly there, the most of them are merely conjecture.[1]

History of Plea Bargaining of different forms in Europe

During the Roman Period, there was a concept of In Jure Cessio, which was a process in Roman law wherein a defendant publicly confesses to the praetor the validity of the plaintiff's claim to a particular piece of property, and the praetor subsequently determines that the plaintiff is the rightful owner of that property.[2] Thus, the defendant would be saved from facing formal trial and would get away with lighter punishments.

In Greece, the concept of "sycophancy" prevailed. A sycophant was a person who would file an unfounded complaint in order to get paid for winning a case or to threaten the defendant with violence in order to get them to pay a bribe. The Ancient Greek term sykophántēs, which is derived from the words sykon (meaning "fig") and phainein (meaning "to show or reveal"), is

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[1] Lawrence M. Friedman, Plea Bargaining in Historical Perspective, Law & Society Review, 13 Special Issue on Plea Bargaining 247, 248 (1979), https://www.jstor.org/stable/3053251.

[2] In Jure Cessio, MERRIAM WEBSTAR DICTIONARY, https://www.merriam-webster.com/dictionary/in%20jure%20cessio#:~:text=%3A%20a%20procedure%20in%20Roman%20law,to%20belong%20to%20the%20plaintiff.

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where the name "sycophant" originates.[3] Those who reported the unauthorised shipment of figs outside of Attica were known as sycophants. They assisted local law enforcement in identifying those who were profiting from an illicit market. It naturally begs the question of why they were assisting local authorities, if they were coerced into doing so or if there was some other benefit. Actually, under pre-classical Athens law, if a claim was proven true, the accuser would be awarded a sum proportional to the harm done to the perpetrator.[4] Thus, through this process, plaintiffs could settle their disputes without going to formal adjudication.

The Islamic laws also have elements of plea bargaining in it. The Sharia law is essentially based upon the age-old principle, "eye for an eye and tooth for a tooth". If a person has killed another from another person, then a person of that family, who has lost one of its members, can kill that person. However, such killing can be forgiven if one of the family members of the killed. Generally, such forgiveness is obtained by giving some ransom to the family members. Thus, decreasing the level of punishment that they would have received.

During the Medieval period, there was a concept of compurgation under the English Laws. The taking of an oath was fundamental to the process. The person tasked with establishing a fact had to call several witnesses, who would affirm that he was speaking the truth; these witnesses did not testify to the fact at hand and may not even be personally aware of it. Those would decline to administer oaths for those with a poor reputation because doing so frequently had religious ramifications for those who assisted in taking oaths and because there was a chance of facing legal repercussions.[5] Thus, the person who is reasonably speaking truth under oath, would be left without facing the formal charges.

Another concept that existed in the Germanic Law was "Wergild". This was like blood money. The sum of money that an offender pays to the individual who was hurt or, in the event of his death, to his family. The sum dependent upon the social standing of the person. A feudal lord's wergild in England can be several times greater than that of the average person. In certain regions,

[3] Sycophant, MERRIAM WEBSTAR DICTIONARY, https://www.merriam-webster.com/dictionary/sycophant#:~:text=In%20ancient%20Greece%2C%20sykophant%C4%93s%20meant,figs%20they%20brought%20to%20market.
[4] Giorgio Pintzas Monzani, The Ancient Greek Story Behind the Word "Sycophant", GREEK REPORTER (Mar. 10, 2023, 8.30 PM) https://greekreporter.com/2023/09/13/word-sycophant/#:~:text=S%C3%ACkon%20(Greek:%20%CE%A3%CF%85%CE%BA%CE%BF%CE%BD)%2C,outside%20the%20territory%20of%20Attica.
[5] *Compurgation*, BRITANNICA, https://www.britannica.com/topic/compurgation.

a woman's wergild may be twice as much as a man's. Generally speaking, a woman's wergild was equal to or more than a man's of the same status. Additionally, clergy had their own wergild rate, however occasionally this varied according to the class into which they were born. A Roman's wergild may be half that of a Frank among the Franks, mainly because a Roman's death responsibilities did not include paying a kindred group a sum of money, unlike those of a Frank.[6] There was a concept called "trial by combat". A convicted criminal if they serve in the warfront, then their punishment would be decreased, and such practise have been in place since time immemorial. Even in 2022, Russia decreased the punishment of many criminals when they served at the Ukraine front.[7]

Church was also a means to resolve disputes during the Medieval period. They would use informal ways informal channels for people to communicate or settle disputes. The groundwork for the creation and growth of more structured plea-bargaining procedures in the next centuries was formed by these early techniques of negotiation and settlement.

The most famous example of plea bargaining is that of Joan of Arc, in 1431 in order to evade being set ablaze. She then withdrew her confession, which led to her execution.[8]

History of Plea bargaining in the United States

Some of the first plea deals occurred in the colonial era during the Salem Witch Trials in 1692[9], when suspected witches were warned they would be executed if they did not confess, but they would live if they did. The Salem magistrates sought to promote admissions and wanted the confessed witches to testify against other people in an effort to find additional witches. Pleasing guilty save the lives of several suspected witches. Subsequently, one of the most persuasive arguments against plea bargaining, that it occasionally coerces innocent prisoners into entering guilty pleas, was shown using the Salem witch trials.

Plea bargaining was uncommon in the early American past. When defendants volunteered to enter guilty pleas, judges seemed taken aback and made an effort to convince them to go with a trial instead. However, plea deals were starting to become popular in Boston as early as 1832,

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[6] *Wergild*, BRITANNICA, https://www.britannica.com/topic/wergild.

[7] Elizaveta Fokht, Ilya Barabanov, Olga Ivshina, *Ukraine war: No more easy deals for Russian convicts freed to fight*, BBC RUSSIAN (Mar. 10, 2023, 10.30 PM) https://www.bbc.com/news/world-europe-68140873.

[8] Jona F. Meyer, *Plea Bargaining,* BRITANNICA, https://www.britannica.com/topic/plea-bargaining.

[9] Jeff Wallenfeldt, *Salem Witch Trials*, BRITANNICA, https://www.britannica.com/event/Salem-witch-trials.

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when offenders of public ordinances may anticipate receiving lighter punishments if they entered a guilty plea. Defendants often entered guilty pleas in exchange for the dismissal of some charges or other arrangements made with the prosecution by 1850, when the practice had extended to criminal courts. The Boston deals, which were perhaps the first organised use of plea bargaining, usually included victimless crimes, meaning that the prosecution was free to disregard the concerns of the victims.

Plea-bargained cases did not show up in the appellate courts until the Civil War, even if they were common before to 1860. These courts responded with the same disbelief that judges in trial courts had felt upon first hearing about plea bargaining, and occasionally they overturned convictions that had been predicated on deals.

Plea bargaining started to proliferate in the early 20th century, despite the appellate courts' partial acceptance of it. A researcher who monitored guilty pleas for New York County, New York, discovered that between 1900 and 1907, between 77 and 83 percent of offenders entered guilty pleas. Plea agreements had grown commonplace in other jurisdictions, according to research conducted by two researchers in the 1920s. It was only during the 1960s plea bargaining formally developed in US.

Plea Bargain in India

The 12th Law Commission originally suggested the establishment of plea bargaining in the CRPC in its 142nd report in 1991. The study included a discussion on fee negotiating. Plea bargaining was suggested by the Law Commission in its 156th report later in 1996, but it was not adopted once more.[10] It was adopted through the Criminal Law (Amendment) Act, 2005, with the introduction of sections 265A-265L in CrPC.

Before this plea bargaining was considered to be against the public policy of the country. Hon'ble Supreme Court had held that, plea bargaining was an unlawful and unconstitutional conduct that would contaminate the pure wellspring of justice and foster corruption and collusion.[11] This practise was considered as violating the interests of society by arguing against the decisions made by society, as demonstrated by the legislatively fixed minimum punishments, and by quietly

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[10] Rosie Athulya Joseph, *Plea Bargaining: a means to an end*, MANUPATRA (Mar. 11, 2023, 8.45 PM) https://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf.
[11] Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat; (1980) 3 SCC 120.

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undermining the authority of the law.[12]

THE PROCESS OF PLEA BARGAINING IN INDIA.

Chapter 23 of the BNSS deals with Plea Bargaining, covering sections 289 to 300.

Plea bargaining can be invoked under the following circumstances as given under s.289:

1. Police report has been forwarded by the officer under section 193.
2. There is a preliminary assertion that he has committed such offence.
3. Such offence is not for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force.

The Limitation period for within thirty days of the day the charge was filed in the court where the offence is still for trial.[13] If the Court is satisfied that the accused filed the application voluntarily, it will give the Public Prosecutor, the complainant, and the accused up to sixty days to negotiate a "mutually satisfactory disposition" of the case.

This feature is new in the BNSS as it establishes a deadline for the accused to file their plea deal application. The application needs to be submitted to the court within thirty days of the day the charge was framed. Such a time limit was not there in the section 265B of the Criminal Procedure Code. Due to the limited window of time, plea bargaining may not be as successful in obtaining a lower sentence.

There was no time restriction specified under Section 265B of CrPC on how long the accused and the Public Prosecutor/Complainant might negotiate a mutually agreeable resolution. However, according to Section 290 of the BNSS, the Public Prosecutor/Complainant and the accused have up to 60 days to come to a mutually agreeable resolution.

The Mutually Satisfactory Disposition could involve the accused paying compensation and other costs incurred by the victim during the case, and it will then set a date for the case's next hearing.[14] If such applications are made involuntarily, then the court should move forward with the trial. The report of mutually satisfactory report has to be prepared if such meeting is successful and such document have to signed by the Presiding Officer of the Court and everyone else present at

[12] Murlidhar Meghraj Loya v. State of Maharashtra; AIR 1976 SC 1929.
[13] Bharatiya Nagarik Suraksha Sanhita, § 290(1), No. 46, Acts of Parliament, 2023 (India).
[14] Bharatiya Nagarik Suraksha Sanhita, § 290(4)(a), No. 46, Acts of Parliament, 2023 (India).

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the meeting, and in the event that no such resolution has been reached, the Court will document such observation.[15]

When such satisfactory disposition of the case has been reached, the victim will receive compensation from the Court in accordance with the disposition under Section 292, and the parties will be heard regarding the appropriateness of the punishment, the accused's release on probation for good behaviour or after being admonished under Section 401, or the accused's treatment under the Probation of Offenders Act, 1958 or any other currently in effect law. The Court will also follow the procedures outlined in the following clauses to impose punishment on the accused.[16]

The court after hearing both the sides can sentence the accused to half the minimum punishment and if he is a first-time offender, then his sentence would be one-fourth of the minimum punishment. The court has to deliver the judgement in the open court[17] and such judgements won't be appealable.[18] However, the plea bargaining can't be done if the accused is a minor or juvenile.[19]

Types of Plea bargaining

There are six types of Plea Bargaining:

1. **Charge bargaining-** Charge bargaining is one such arrangement when a person enters a guilty plea in exchange for less charges. It happens when a defendant enters a guilty plea to offences that must be included.
2. **Sentence bargaining-** Sentence bargaining is when a defendant enters a guilty plea in exchange for the promise of a reduced or different sentence. Through a plea agreement, the prosecution can secure the guilty verdict on the most serious accusation while guaranteeing the prisoner a reasonable sentence.
3. **Fact Bargaining-** Fact Bargaining is a type of negotiation when parties agree to disclose some information in exchange for not disclosing others.

[15] Bharatiya Nagarik Suraksha Sanhita, § 292, No. 46, Acts of Parliament, 2023 (India).
[16] Bharatiya Nagarik Suraksha Sanhita, § 293, No. 46, Acts of Parliament, 2023 (India).
[17] Bharatiya Nagarik Suraksha Sanhita, § 294, No. 46, Acts of Parliament, 2023 (India).
[18] Bharatiya Nagarik Suraksha Sanhita, § 295, No. 46, Acts of Parliament, 2023 (India).
[19] Bharatiya Nagarik Suraksha Sanhita, § 300, No. 46, Acts of Parliament, 2023 (India).

4. **Count Bargaining-** A portion of the prosecution's accusations are accepted by the defendant in exchange for the dismissal of other counts. This happens when a person is accused of many serious offences and he accepts only certain offences to reduce punishment.
5. **Alford Plea-** Without openly acknowledging his guilt, the defendant accepts a plea bargain. In the view of the court, the defendant in this case is able to maintain his innocence.
6. **No Contest Plea-** A criminal defendant entering a no contest plea, sometimes referred to as "nolo contendere," is pledging not to dispute a charge. A no contest plea relinquishes the defendant's right to a trial but does not explicitly confess guilt. In order to determine the appropriate sentence, the court will consider the defendant to be guilty.[20]

Benefits to the victim

a) Victim's Fast Justice.
b) He can obtain the compensation with ease, which the judge or magistrate may provide him at their discretion.
c) He is able to avoid the drawn-out legal process.
d) It requires less money and time to complete.
e) The End of Doubt

Benefit to the accused

a) Imposing a lighter penalty.
b) He shall get one-fourth of the sentence prescribed if there is no minimum punishment.[21]
c) His release on probation or with a warning might not have an impact on his professional life.
d) Under section 428 of the Cr.P.C., he may be entitled to the gain of the time he has already spent in detention.
e) There is nothing to appeal against the decision that is in his favour.
f) The whole protection afforded upon the accused's admittance is only applicable to plea negotiations.
g) Requires less money and time.

[20] No Contest, LEGAL INFORMATION INSTITUTE- CORNELL LAW SCHOOL (Mar. 12, 2024, 8.45 PM) https://www.law.cornell.edu/wex/no_contest#:~:text=A%20plea%20by%20a%20criminal,guilty%20for%20purposes%20of%20sentencing.

[21] Bharatiya Nagarik Suraksha Sanhita, § 293(d), No. 46, Acts of Parliament, 2023 (India).

THE CONCEPT OF PLEA BARGAINING IN INDIA IS DIFFERENT FROM THAT OF USA.

In the US, plea bargaining is a well-recognised technique. In fact, it's estimated that over 90% of criminal cases in the US are resolved through plea bargaining. This is partly because of the adversarial legal system in the US, where lawyers for the prosecution and defence are tasked with putting forward opposing arguments in court. This usually leads to drawn-out court cases and a backlog of cases. Plea bargaining can help ensure that convicted offenders receive fair punishment and expedites the quicker and more efficient conclusion of cases.[22]

In the US, the prosecution will frequently offer the defendant a plea deal that might include a reduced charge, a lower sentence, or both. The terms of the offer are open to negotiation, acceptance, or rejection by the defendant. The defendant will acknowledge guilt to the agreed-upon charge and get the agreed-upon sentence if they accept the offer.

One important component of the US legal system are the sentencing guidelines, which provide a framework for determining appropriate punishments for particular offences. Impacting the plea-bargaining process by providing prosecutors with the power to offer shorter terms in exchange for guilty pleas and guaranteeing that the final sentences follow the rules
As compared to the well-developed system in USA, there is a lack of awareness amongst the advocates Mutual understanding between lawyers and accused parties has made it challenging to implement the Indian plea negotiating system. The existence of the procedure is unknown to a large number of defendants and defence lawyers. There are also concerns that the system might not be fair to defendants because of the prosecution's strong negotiating position in plea agreements.

There are various moral and ethical issues related to plea bargaining in both these countries. A possible ethical issue with plea bargaining is the potential for coercion or unethical influence. A defendant could feel pressured to accept a plea deal even if they are innocent or do not fully understand the consequences of entering a guilty plea. The possibility for equal justice and the rule of law to be undermined by plea bargaining.

[22] *Costs and the Plea Bargaining Process: Reducing the Price of Justice to the Nonindigent Defendant*. The 89 Yale Law Journal 333, 338 https://doi.org/10.2307/795840.

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Plea bargaining also brings up ethical concerns regarding the rights of the accused and the justice system's impartiality. Defendants may experience pressure to make a guilty plea even if they are innocent to protect themselves from the prospect of a worse sentence if a trial is necessary. The defendant's legal rights to due process and a fair trial may have been violated in this instance.

In both India and US such issues are being curtailed through the process that the judges should ensure that an accused is doing the plea bargaining willingly and not under any undue pressure. However, there are issues with lack of knowledge and prosecutors may obtain such decision which are inconsistent with the law or the facts of the case.

There are various other factors which affect the outcome of plea bargaining, which includes race, caste, gender, socio-economic status, effectiveness of legal support, etc.

CONCLUSION

Our legislators have approached the addition of Chapter XXIII to the Code with some caution. They have significantly curtailed the application and breadth of plea negotiations. It is important to realise that introducing a notion into a legal system needs to be done so with consideration for any obstacles that may arise during the trial phase. The measures don't appear to be decreasing the caseload as a whole. It is imperative that the laws be made more predictable and clearer if individuals are to be encouraged to use plea bargaining as an alternative remedy. Attorneys and prosecutors should made aware of such system, so that they can give their clients a speedy justice. The applicability of the sections needs to be widened and categorization for the purpose of plea bargaining should take into account the seriousness of the offence in addition to the length of time the offence will be punished. More clarification is needed on the offences that fall within the socioeconomic offence category under s. 289 BNSS. Guidelines regarding the criteria for classifying an offence as a socioeconomic offence have to be provided to the authorities. This might serve as a check on the abuse of this authority.

It is necessary to build up a separate structure to handle plea negotiating cases. The forum should return the matter to the court, which should continue from the point where the plea-bargaining application was submitted, only if it is determined that a suitable resolution cannot be reached. There should be a deadline for reaching a mutually agreeable resolution.