

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international

seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CONCEPT OF PLEA BARGAINING

& OVERVIEW UNDER THE INDIAN

LEGAL SYSTEM

Authored By- Amal Singh Patel¹ & Ananya Rai²

ABSTRACT

India's effectiveness in criminal investigation, prosecution, and trial is in question, and its credibility is in jeopardy due to the fact that more than 70% of those accused have been found not guilty. Plea bargaining may be a limited solution in which criminal confessions are negotiated under judicial supervision in the hopes of expediting the trial and sentencing process. Crime, criminals, and criminality have always been major issues for society, the state, and individuals. As a rule, the criminal justice system is designed to defend the rights and interests of the accused. There has been a recent rise in calls for justice for the true victim of a crime. Recently, several steps have been developed to ensure that each victim receives justice. A regular evaluation of such procedures is necessary for the creation of efficient justice measures to ensure that the victim receives justice. The Indian criminal justice system has lately included plea bargaining as a way of ensuring justice for the victim. India has a population of over 1.25 billion people with a backlog of criminal cases totalling 22306834 out of 31122421 total outstanding cases. Delays in the judicial system have the effect of diminishing faith in people's ability to receive justice from the courts.

¹ Author is student at Amity Law School, Amity University Lucknow Campus.

² Author is student at Amity Law School, Amity University Lucknow Campus.

Keywords: Compensation; Criminal justice; Habitual criminal; Plea bargaining; Restorative justice; Sentence; Victim; Justice; Plea; Bargaining; accused; court; case.

INTRODUCTION

It is often believed that the nineteenth century was the beginning of the emergence of plea bargaining; however, the practise actually extends back centuries to the advent of confession law and has almost certainly been around for more than eight centuries.

Nani Palkhivala, a well-known jurist, said, “The greatest drawback of the administration of justice in India today is because of delay of cases. 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 the community of snails. Justice has to be blind, but I see no reason why it should be lame. Here it just hobbles along, barely able to work.”³

In democratic nations such as India, it is largely the role of the court to ensure that justice is carried out. The Criminal Justice System in India has been criticised for not being able to deliver justice in a timely manner. Because the courts are overcrowded with outstanding arrears, the proceedings in court take a very long time and cost a great deal of money.

In the adversarial jurisprudential system, legal complexity prolonged court proceedings, making it harder for prosecutors to convict guilty offenders. Individuals remained detained owing to legal challenges and delays in criminal charges. The United States of America was the first nation in the world to come up with the idea of entering into a plea bargain in order to overcome these problems.

Although the concept of plea bargaining has been accepted in India and included into the country's Criminal Procedure Code (CrPC), it should be noted that the practise has not been completely imported from other countries legal systems, such as the one in the United States; rather, it has been adopted with some modifications. “The provisions of Chapter XXI-A of the

³ Nani A Palkhivala, *We, the Nation: The Lost Decades* 215 (UBS Publishers Distributors, New Dehli, 1994).

Code of Criminal Procedure (CrPC) related to plea bargaining in the Indian criminal justice system were added by the Criminal Law (Amendment) Act 2005 (2 of 2006), which came into force on July 7, 2006.”⁴

It is generally agreed that the doctrine of *Nolo Contendere*⁵ served as the impetus for the development of the Indian notion of Plea Bargaining. During pre-trial negotiations between the defence and the prosecution, also known as “plea bargaining”, an accused person may agree to plead guilty in exchange for the prosecution granting them specific concessions in exchange for their guilty plea. The word “plea bargaining” is a legal term that refers to negotiations that take place before to a trial between the prosecution and the defence. It would be up to the judge to decide whether or not the plea bargaining was conducted in bad faith or in good faith.

There are specific circumstances in which a plea bargain cannot be used. There is no plea bargaining in three types of cases: crimes against women, crimes against minors younger than 14 years old, and crimes against the socio-economic offences. When the punishment is under seven years, plea bargaining is allowed, like in other countries but Habitual criminals can't plea bargain. In the long run, the implementation of plea bargaining will be beneficial since it will help to contribute to the improvement of our criminal justice system.

WHAT IS PLEA BARGAINING?

The concept of plea bargaining is comprised of two words: “plea,” which means to make a request, prayer, or emotional appeal; and “bargain,” which means to negotiate or reach a settlement or contract. Typically, this may be observed in our day-to-day lives, when we bargain with shopkeepers about prices. This principle serves the similar function in criminal law, but the defendant in this context enters a guilty or “no contest” (*Nolo Contendere*) plea in order to negotiate a lighter sentence or a reduction in the severity of the allegations against them.

⁴ Criminal Law (Amendment) Act, 2005, No. 2, Acts of Parliament, 2006 (India).

⁵ Alschuler, Albert W., “The Defense Attorney's Role in Plea Bargaining,” 84 *The Yale Law Journal* 1179 (1975).

The applicability of plea bargaining in India is discussed in Chapter XXIA, Sections 265A-265L of the Criminal Procedure Code. Understanding some of its more fundamental definitions is the first step toward providing an effective explanation of the concept of plea bargaining. It can be defined as “a plea bargain (also plea agreement, plea deal or copping a plea) is an agreement in a criminal case in which a Prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or no contest (and often allocate) in exchange for some agreement from the prosecutor as to the punishment. A plea bargain can also include the prosecutor agreeing to charge a lesser crime (also called reducing the charges) and dismissing some of the charges against the defendant.”⁶

In the context of criminal proceedings, “plea bargaining” refers to a form of agreement between the accused and the prosecution over the disposal of criminal allegations. The negotiation of a plea deal is similar to the signing of a contract, and the agreement does not become legally binding until it is accepted by the court. According to Black's Law Dictionary, a plea bargain is:

“The process whereby the accused and the prosecutor in a criminal case work out mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant’s pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the grave charge.”⁷

According to the 144th Report of the Law Commission of India, “plea bargaining” generally refers to pre-trial negotiations between the defendant and the prosecution prior to trial in which the defendant agrees to plead guilty in exchange for specific concessions from the prosecution. In most jurisdictions, three types of plea bargaining are recognised by the courts:

1. **Sentence bargaining:** - “It is a type of plea bargaining in which the accused admits to a crime in exchange for a lighter sentence than he would have gotten if the Court had found him guilty of the crime through the normal legal process.”⁸

⁶ Bryan A Garner and Henry Campbell Black, *Black's law dictionary* (St. Paul, Minn, West Group, 1999).

⁷ Bryan Garner, *Black's Law Dictionary* (St. Paul, Minn. : West Group, 8th edn., 2004).

⁸ Abhishek Wadhawan, “An Analysis of The Plea Bargaining Mechanism In India: The Past, Present And The Future” 1 LAWAUDIENCE 22 (2019).

2. **Charge bargaining-** “In this type of plea bargaining, the accused person agrees to accept responsibility for a few of offences that were less serious in nature than the other offences in exchange for reduced charges and penalties. So, the rest of the charges against the accused are dropped. This is the form of plea bargaining that is the most common and well-known. For instance, pleading guilty to homicide in exchange for the removal of the accusations of homicide.”

3. **Fact bargaining-** “In this type of plea bargain, the parties agree to present a number of facts to the Court while under the watchful eye of the judge, and they typically do not bring any other fact to the notice of the judge. In most jurisdictions, the courts do not recognise this form of plea bargaining as permissible under the law. The argument in favour of not allowing truth bargaining is based on the fact that doing so would be disruptive during the period of time spent organising equity. The parties may attempt to influence the outcome of the case by withholding relevant information from the Court through ‘fact bargaining,’ which could lead to an unfair ruling. When parties engage in truth bargaining, it becomes the responsibility of the court to determine whose claims are supported by evidence and whether or not the honest party will be punished for telling the truth.”⁹

The additional two types of plea bargaining that are accepted in international jurisprudence are known as express and implicit plea bargaining respectively. In express bargaining, the accused or his attorney directly negotiates with the prosecutor or the trial judge for any benefits that may result from entering a plea of guilty. On the other hand, implicit bargaining takes place in the absence of direct verbal communication between the parties. In implicit bargaining, trial judges treat guilty pleaders more leniently than those who go to trial; thus defendants expect their guilty pleas to be rewarded.

ORIGIN OF PLEA BARGAINING

There is evidence of plea bargaining going all the way back to the beginning of time in the epics, jurisprudence, and historical documents of a number of different cultures. The evolution

⁹ Law Commission of India, 142nd Report on the concessional treatment for offenders who on their own initiative plead guilty without bargaining (August, 1991).

of plea bargaining in the United States has not been a smooth one. Prior to the year 1960, it was not accorded a great deal of attention and was regarded as an improper practise. However, in 1692, there was an example of this known as the Salem witch trials. During these trials, witches were ordered to confess in order to save their lives, or else they would be sentenced to death. This method, in which witches testify against one another, is intended to provide the court with additional benefits, one of which is the discovery of new witches.

The notion of plea bargaining has its roots in the United States and has developed over the years to become an integral part of the American criminal justice system.¹⁰ More than seventy-five percent of all criminal prosecutions in the United States end in guilty pleas, almost all of which are the result of plea bargaining. In the landmark case *Brady v. United States*¹¹, the US Supreme Court ruled that plea bargaining is legal under the Constitution. The court has maintained, through its rulings in a variety of subsequent cases, that the practise of plea bargaining is constitutional.¹²

The most important Hindu epic “The Bhagwat Geeta” states that there is no greater penalty for an offender than for him to accept guilt and take an oath not to perpetrate the offence again. There is a separate chapter on admitting of guilt in the Dharmasastras called “Prayaschita.” This chapter recommends a variety of ways of introspection and self-purification that are recognised by all of the smriti's and the Vedas. In verse 239 of Manu Smriti, it is written that an accused person should be granted a reduction in their punishment if they feel guilty.

• WHEN ARE PLEA BARGAINS MADE?

A plea bargain may be made by an accused when-

- The officer in charge of the police station has forwarded the report in accordance with Section 173 of the Criminal Procedure Code, alleging that an offence appears to have been committed by him that is not an offence for which the punishment of death or of

¹⁰ Sulabh Rewari and Tanya Aggarwal, “Wanna make a deal? The introduction of plea bargaining in India” (2006) 2 SCC (Cri) J-12.

¹¹ *Brady v. United States*, 397 U.S 742

¹² *Corbitt v New Jersey*, 439 U.S 212; *Bordenkircher v Hayes*, 434 U.S. 357

imprisonment for life or of imprisonment for a term exceeding seven years has been stipulated by the law that is currently in force.

Or

- A magistrate took cognizance of an offence on complaint, other than an offence punishable by death, life imprisonment, or more than seven years, and issued process under Section 204 after considering the complaint and witnesses under Section 200.

- **LIST OF OFFENCES THAT AFFECT THE SOCIO-ECONOMIC POSITION OF COUNTRY**

If the accused is found guilty of an offence, that offence cannot be of a character that adversely affects the socioeconomic state of the nation. The government compiled a list of laws, each of which defines an offence as belonging to the aforementioned category.

- a) Dowry Prohibition act, 1961.
- b) The Commission of Sati prevention act, 1987.
- c) The Indecent representation of women (Prohibition) act, 1987.
- d) The immoral Traffic (Prevention) act, 1956.
- e) PWDVA (The Protection of women from domestic violence), 2005.
- f) The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
- g) Provisions of Fruit Products Order, 1955 (issued under the Essential Services Commodities Act, 1955).
- h) Provisions of Meat Food Products Orders, 1973) (issued under the Essential Commodities Act, 1955).
- i) Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of boundaries of protected areas under the Wildlife (Protection) Act, 1972.
- j) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- k) Offences mentioned in the Protection of Civil Rights Act, 1955.

- l) Offences listed in sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- m) The Army Act, 1950.
- n) The Air Force Act, 1950.
- o) The Navy Act, 1957.
- p) Offences specified in sections 59 to 81 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
- q) The Explosives Act, 1884.
- r) Offences specified in sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1995.
- s) The Cinematograph Act, 1952.

CONCEPT OF PLEA BARGAINING IN INDIA

India did not have a system of plea bargaining until the Criminal Law (Amendment) Act of 2005 was passed. The Indian courts did not recognise the practise of plea bargaining as a valid form of legal procedure and have repeatedly ruled that plea bargaining violates the country's constitution and is therefore not permitted under Indian law. On January 11, 2006, the Code of Criminal Procedure was amended to allow plea bargaining in India. This impacts cases with a seven-year maximum sentence, however offences harming the country's socioeconomic status and crimes against women or children under 14 years of age are exempted.¹³

A recommendation to include plea bargaining as a new chapter in the Criminal Procedure Code of India was made by the 142nd, 154th, and 177th report of Law Commissions of India. There were many other proposals, but they all failed. However, with a few changes and recommendations, it was added to CrPC through the Criminal Amendment bill of 2005. Prior to this modification, the Supreme Court did not have a supportive stance regarding this matter. To the contrary, the Courts upheld the position that plea bargaining was not an accepted practise under Indian law.

THE CONSTITUTIONAL VALIDITY OF PLEA BARGAINING BEFORE THE

¹³ The Code of Criminal Procedure, 1973, s. 265 L.

ENACTMENT OF THE CRIMINAL LAW AMENDMENT ACT, 2005

In India, the courts did not see plea bargaining as a legitimate way to solve cases. The Indian Courts of Law have repeatedly ruled that the practise of plea bargaining is contrary to Indian law and cannot be tolerated under its provisions. The courts held that plea bargaining wasn't part of Indian criminal law. The highest court in India has consistently held the position that this approach violates the constitution, is against the law, and has the potential to encourage corruption and collusion between the parties.

The first time the Supreme Court looked at the concept of a plea bargain was in *Madanlal Ramachander Daga v. State of Maharashtra*¹⁴, where it said: “In our opinion, it is very wrong for a court to enter into a bargain of this character Offences should be tried and punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case, it may impose a lighter sentence.”

In *Thippaswamy v. State of Karnataka*¹⁵ J. Bhagwati said, “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.”

Introduction of plea bargaining was condemned by the Supreme Court in *State of Uttar Pradesh v. Chandrika*¹⁶, The Apex Court held that, “It is settled law that on the basis of plea-bargaining court cannot dispose of the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.”

The Supreme Court has made the observation that this approach is detrimental to the interests of society because it goes against the predetermined legislative setting of minimum punishments. It has been pointed out that permitting plea bargaining in India would amount to covertly subverting the mandate of the law.¹⁷

¹⁴ *Madan Lal Ram Chandra Daga v. State of Maharashtra*, (1968) 3 SCR 34.

¹⁵ *Thippeswamy v. State of Karnataka*, (1983) 1 SCC 194.

¹⁶ *State of Uttar Pradesh v. Chandrika*, AIR 2000 SC 164.

¹⁷ *Murlidhar Meghraj Loya v. State of Maharashtra*, (1976) 3 SCC 684.

In the case of *Kachhia Patel Shantilal Koderlal v. State of Gujarat*,¹⁸ India's highest court made the observation that “the practise of ‘plea bargaining’ taints the pure wellspring of justice and goes against the country's national policy. It is necessary to place reliance on the court's worry that businessmen offenders may be able to trade their way out of the problem, with the exchange being a guilty plea combined with the assurance that they would not go to jail.”

In the case of *Kasambhai Abdul Rahmanbhai Sheikh v. State of Gujarat*,¹⁹ the Supreme Court ruled that the practise of entering into a plea bargain is illegal because it is a violation of the fundamental right known as the Right to life. The court went on to comment that if plea bargaining is permitted, then even persons who haven't done anything wrong might consider pleading guilty since it seems like a more workable alternative to sitting through a lengthy trial. This could result in innocent people being punished, which would be contrary to the principles of natural justice. The Indian courts viewed plea bargaining as unconstitutional and illegal until the Criminal Law (Amendment) Act of 2005, which legalised it.

PLEA BARGAINING: WITH SPECIAL REFERENCE TO REPORTS OF THE LAW COMMISSION OF INDIA

In its 142nd report, the Law Commission of India proposed plea bargaining. In its report, the commission noted that in numerous cases, the accused's time in jail before trial surpasses the maximum punishment they can receive if proven guilty²⁰, there is a lack of statistical data on under trial detainees, etc., resulting in a denial of justice. The report emphasised the need for an upgraded approach.²¹ Concerns for introducing plea bargaining in India included illiteracy, prosecution pressure on innocent people, increasing crime rates, and criminals escaping proper punishment. The commission recommended weighing the pros and cons before adoption.

In its 154th Report, the Law Commission highlighted the necessity for legislative measures to decrease delays in criminal trials and appeals and to alleviate inmates' suffering. The Report of the Committee on the Reform of Criminal Justice System, under the Chairmanship of Justice

¹⁸ *Kachhia Patel Shantilal Koderlal v. State of Gujarat*, (1980) 3 SCC 120.

¹⁹ *Kasambhai Abdul Rahmanbhai Sheikh v. State of Gujarat*, AIR 1980 SC 854.

²⁰ *Rudul Shah v. State of Bihar*, AIR 1981 SC 928.

²¹ Law Commission of India, 142nd Report on the concessional treatment for offenders who on their own initiative plead guilty without bargaining (August, 1991).

(Dr.) Malimath indicated that plea bargaining is a way to dispose of accumulated cases and expedite criminal justice.²²

In its report, the Malimath Committee proposed that a system of plea-bargaining be adopted into the criminal justice system of India in order to assist the early resolution of criminal cases and decrease the burden on the courts.²³ This will help facilitate earlier resolution of criminal matters. As a result of amendments to the criminal law that were enacted in 2005,²⁴ the process of plea bargaining was made available to defendants. Chapter XXIA of the Code, which contains the sections 265 A to 265 L, was added as a result of the Amendment Act's Section 4, and it became fully operational on July 5, 2006.

The Supreme Court recognised the relevance of supplication bartering in the case *State of Gujarat v. Natwar Harchanji Thakor*.²⁵ It enlarged on the way that every “request of blameworthy” that is done in the legal approach of the criminal preliminary ought not to be seen as “supplication bargaining.” It needs to be decided on a case-by-case basis. Considering the developing challenges in the criminal equity framework, the Court concluded that authorities want simple, rapid, and modest equity.

In *Ranbir Singh v. State*,²⁶ it was held that “the accused pleaded guilty and engaged into a plea bargain with the prosecutor and the victim. The accused was charged with causing the death of another by driving negligently.²⁷ Even after the accused, prosecutor, and victim reached a mutually acceptable decision, the Trial Court imposed the maximum sentence. On appeal to the High Court of Delhi, the court noted that the accused was destitute but had promised to pay a fair sum of compensation to the victim's family, which was mutually acknowledged. In light of this, the court lowered the accused person's sentence to one-fourth of the maximum sentence that might have been imposed under Section 304A of the Indian Penal Code in accordance with Section 265-E of the Code of Criminal Procedure.”

²² Upendra Baxi, *The (Malimath) Committee on Reforms of Criminal Justice System: Premises, Politics and Implications for Human Rights* 44 (AMNESTY INTERNATIONAL INDIA, New Delhi, 2003).

²³ *Id.*

²⁴ The Criminal Law (Amendment) Act, 2005 (Act 2 of 2006).

²⁵ *State of Gujarat v. Natwar Harchanji Thakor*, 2005 CriLJ 2957.

²⁶ *Ranbir Singh v. State*, 2011 SCC OnLine Del 3737.

²⁷ Indian Penal Code, 1860, (Act 21 of 1860), s. 304-A.

A similar decision was made in the case of *Joseph P.J. v. State of Kerala*,²⁸ in which it was decided that “the procedure for plea bargaining, as established under Sections 265-A to 265-L of the Code of Criminal Procedure, is of a required nature and must be followed by all of the Courts when dealing with an application for plea bargaining. In addition, the court ruled in this instance that an act or omission on the part of the court shall result in gross illegality, and such an order or judgement granted by the court must be invalidated if it was determined that the court did not examine the accused in front of the camera while the complainant was absent, as required by clause 4 of section 265-B. The court stated that this ruling applies to any circumstance in which the court does not examine the accused as required by clause 4 of section 265-B.”

In the case of *Shri Vinod Kumar Agarwal v. Central Bureau of Investigation*,²⁹ The court found the revisionist's plea unsatisfactory. The arrangement of Section 265-A (1) (a) Cr. P.C. becomes effective when the police headquarters official sends a report under Section 173 Cr. P.C. charging that the denounced has committed an offence. In accordance with Section 173 of the Criminal Procedure Code, the formal application for the supplication cannot be initiated prior to the lodging of the police report. Section 265-A (1)(a) of the Criminal Procedure Code is written in straightforward, unambiguous language. Expansion or change in charge is preliminary. The court that is overseeing the preliminary proceedings is required to take into consideration the request dealing application in light of further offences that have been committed.

In the case of *M/S/ Meters and Instruments Private Limited & Anr. v. Kanchan Mehta*,³⁰ the Honourable Supreme Court of India held that “it is permissible for the Court to constantly ask specific questions to the accused at any point of the trial. This decision was made while the Court was deciding a matter that was relevant to Section 138 of the Negotiable Instruments Act. At the same time, the court must take into consideration the provisions of plea bargaining if there is any potential of a settlement between the accused and the victim at any stage of the trial, and the court should permit plea bargaining if it is possible. If there is any prospect of a settlement between the accused and the victim at any stage of the trial.”

²⁸ *Joseph P.J. v. State of Kerala*, 2015 5 KHC 586.

²⁹ *Shri Vinod Kumar Agarwal v. Central Bureau of Investigation*, 2015 153 A.I.C. 548.

³⁰ *M/S/ Meters and Instruments Private Limited & Anr. v. Kanchan Mehta*, (2017) SCC 1197.

EXAMINING THE PRACTICE OF PLEA BARGAINING IN INDIA

The information that was collected by the public authority beginning in 2015 made it abundantly clear that the measure of plea bargaining was not used anywhere in India. In 2015, just 4,816 cases out of a total number of 10,502,256 cases that were forthcoming for preliminary hearings under the general punitive law were subject to plea bargaining. This represents a modest 0.045% of the total number of cases.

In 2016, there were approximately 4,887 instances out of a total of 11,107,472, which brought the percentage down to 0.043%. In 2017, there was some growth to 0.27%, with 31,857 cases out of 11,524,490 going for plea bargaining. This represents an increase from the previous year. Nevertheless, this was not a process with a pattern because, in 2018, the cases witnessed an entire decline, with just 20,062 out of 12,106,309, and a modest 0.16% of cases being eliminated through plea bargaining. In other words, this was not a procedure that followed a pattern. It is disappointing to realise that this statistic has not even reached 1% in the past 15 years. This is something that should be looked into.³¹

Accordingly, the primary aim of a swift beginning has not been fully and completely achieved. The reason why plea bargaining became popular in the United States was because it effectively provided examiners more authority, which they could wield over respondents to encourage them to plead blameworthy and postpone preliminary proceedings. However, the framework that is envisaged to be implemented in India does not in any way give such influence to the public investigators or to the designated authorities that are involved. Examiners, for instance, have very little room to participate in the bargaining cycle or to actually effect a plea, and judges are unable to reject a settlement that has already been chosen.

There is no provision in the current plea-bargaining law that empowers judges to reject a settlement. But the judge should be vigilant to prevent prosecutorial intimidation and defilement. The arraignment and the safeguard have unequal bargaining power. A strong

³¹ Anshika Chadha, Plea Bargaining In India: A Ship With Holes, *LEGAL SERVICE INDIA*, www.legalserviceindia.com/legal/article-1784-plea-bargaining-in-india-a-ship-with-holes.html.

prosecution can convince a blameless defendant to plead guilty in exchange for a less sentence. Also, unlawful plea negotiating can occur between real offenders and honest accused, with the former using degraded officials to avoid the criminal justice system.

MERITS OF PLEA BARGAINING IN INDIA

Plea bargaining benefits both the prosecution and the defence because there is no risk of losing at trial. As a result, it makes it easier for lawyers to protect their clients in an uncomplicated manner and gives both groups the authority to bargain. This is the method that the lengthy disputes can be resolved, and the court would also not be need to deal with the burden of case records.

When considering the potential benefits of plea bargaining in India, it is important to note that it will aid in the reduction of delay, backlogs of cases, and the rapid disposition of criminal cases, freeing up court time that can be utilised to hear more serious criminal cases; providing victims and witnesses of crime with relief; saving the accused and the state a significant amount of time, money, and energy; and decreasing congestion in jails. In addition, entering into a plea bargain is an excellent way to avoid public scrutiny, given that the accused is subjected to a larger degree of scrutiny the longer the case is allowed to continue. As a result, entering into a plea bargain allows one to avoid such exposure by bringing about a speedy resolution to the matter.

DRAWBACKS OF PLEA BARGAINING IN INDIA

According to the legal system that governs plea bargaining, it is a purposeful component that may be engaged when the accused chooses it eagerly. However, the law is silent on the subject that in the event that, the agreement reached is in contradiction to the reason why the general body of laws was created in the first place. In anticipation of a negotiation process, the prosecutors and police will overcharge the defendant, in much the same way as a labour union may seek for an impossibly high pay. It would be fundamentally unfair, presuming that there are two defendants who have engaged in the same conduct under essentially similar conditions, to penalise one of them more harshly than the other simply because he chooses to exercise his constitutional privilege. Because the police are involved in the process, we cannot rule out the

possibility of there being an element of coercion.

In India, the reasons for delaying preliminary hearings include the operation of informative organisations like the legal executive, lawyer interest, etc. As a result, the requirement of utmost significance is not at all a replacement for the preliminary yet an update of the framework that can be as far as construction, piece, and the work culture of its organisation. All of these measures would result in preliminary examinations being completed in a reasonable amount of time. If the accused's previous blameworthy behaviour is overlooked, then it will be extremely challenging for him to demonstrate that he is honest.

It's possible that this procedure will lead to a spectacular rise in the number of innocent prisoners behind bars. It is possible for innocent people to be compensated by the real criminals who committed the crime in exchange for the innocent person pleading guilty and receiving a reduced sentence. Therefore, illicit plea bargaining between genuine culprits and appear accused could potentially become allowed, leading to rich criminals corrupting police officers and resulting in a court system that is a farce. When plea bargaining does not result in acquittal, penalties, or damages, the accused may not find it useful, and it may not work as an incentive.

RECOMMENDATIONS

Even though the amendment aimed to address the concerns of under trial prisoners by requiring the court to offer accused the benefit of Probation of Offenders Act where permitted. Then, Section 12 of the aforementioned Act stipulates that there shall be no social stigma attached to the criminal in any way. In addition, Section 428 is applicable to the sentence that was agreed upon during plea bargaining. However, there is a dearth of understanding among those who are currently awaiting trial.

Provisions should be included in the chapter that make it obligatory for probation officers and jail superintendents to hold sessions in prisons informing under-trial prisoners of such a benefit that can be accessed by them. These sessions should be held in order to notify the prisoners of their right to take advantage of this opportunity. A pre-trial detainee should be released from custody when a predetermined period of time has elapsed, after which a trial should have begun or the time limit should be extended. Not the individuals who are now awaiting trial should be

held liable for delays in their cases; rather, the authorities responsible for the investigation, prosecution, and adjudication of the case should be held accountable. In cases where an appeal was already filed before the 2005 Amendment, defendants should be given the opportunity to seek this alternative remedy.

There should be a greater level of transparency regarding the offences that are classified as socioeconomic offences. For the purpose of determining on what grounds an offence should be categorised as a socioeconomic offence, the government ought to be provided with some criteria. This can serve as a check and balance to prevent the authority from being wielded capriciously. The section's applicability should be expanded, and classification for plea bargaining should consider the seriousness of the crime, not only the amount of years of imprisonment.

It is important to establish a time limit for figuring out a resolution that is satisfactory to both parties. Rather than being an issue of ethical excellence, legitimacy, or lawfulness, the idea is more of a system that provides comfort and shared advantages. There is no way around the unavoidable need for significant reform in the component of the criminal justice system. When an idea is turned into a collection of laws, it should forecast the obstacles that may be seen in the exploratory phase.

CONCLUSION

To sum up, plea bargaining is definitely a controversial idea. The plea-bargaining component has become a reasonable and viable instrument of justice, but there is a vital need to improve it and make it more effective. It is true that the use of plea bargaining can speed up the process of disposing of caseloads, but it does so in a way that is contrary to the Constitution. However, it's possible that we have no other option except to utilise this strategy.

The criminal justice system's backlog is so extensive that it makes it impossible to trial every single case. As a concluding remark, it should be noted that this transition is neither inherently good or harmful. The question is whether, given a variety of options to reduce the backlog of cases in the Indian Courts, plea bargaining will allow decisions that effectively promote the criminal justice system's goals.

The addition of Chapter XXI-A of the Code has been brought about in a manner that displays a certain degree of circumspection on the part of our legislators. They have severely reduced the applicability of the law, as well as the range of options available for plea bargaining. When implementing a notion into a legal system, it should be done so by anticipating experimental hurdles. The provisions, in and of themselves, do not have any propensity toward lessening case load. To encourage citizens to use plea bargaining, provisions must be more clear and predictable.

The contentious idea of plea bargaining can be understood as more of a device for convenience and mutual profit than as a problem of morality, law, or constitutionality. The system of criminal justice will unavoidably benefit from significant reform in the near future. It is possible that this will be a positive shift, but only if there is the chance of cases being resolved in a timely and cost-effective manner. If the only objective of the criminal justice system is to rehabilitate offenders into society, plea bargaining loses its appeal. Putting this procedure under the scrutiny of the courts makes it more likely that these negotiations will be conducted in an equitable manner.

