# AN ANALYSIS OF PLEA BARGAINING

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## ABSTRACT

The pendency of cases, which makes up about three third of cases, is one of the most horrifying issues with the Indian judicial system. The lawmakers introduced a ground-breaking tool—plea bargaining—to deal with the backlog of cases. One of the most recent changes to the criminal code was the introduction of plea bargaining in 2006 as a result of the Criminal Law Amendment Act of 2005. It has been roughly ten years since concept was first included into Indian criminal law. This article will attempt to evaluate the concept's success in India by looking at the relevant legislation and judicial rulings.

## INTRODUCTION

Plea negotiations are a sort of agreement that can be used in criminal trial. The accused and the prosecution come to an agreement in this contract. The aforementioned agreement relates to the accused confessing to an offence and the prosecution making a concession in a sentencing. The accused is prepared to confess his guilt during this process, but he instead requests a concession in his sentence. Thus, it is nothing more than a sort of legal contract involving judicial intervention that occurs during a criminal prosecution. The term "pre-trial negotiation" is also used.

Plea bargaining has its roots in the American continent. Later, this idea was included into the Constitution and eventually became a fundamental aspect of American society. Plea bargaining is used in courts not only in the United States but also in Australia, germany, France, Canada, Italy, Poland, Japan, the Central African Republic, and Pakistan. It is also practised in England and Wales. Even while the underlying idea for plea bargaining is the same all throughout the world, its terms vary. Plea bargaining was not a practise that existed in India. However, additional provisions were added to Section 206(1) and 206(3) of Cr.P.C. to expedite the resolution of minor offences and lessen the backlog in magistrate courts. The Law Commission of India, beneath the Chairmanship of Justice M.P. Thakkar, gave his 142nd Report[1] published in year 1991.Under the direction of Justice M.P. Thakkar, the Law Commission of India released its 142nd Report in 1991. The Law Commission has considered the subject of introducing leniency for defendants who opt to enter guilty pleas through plea negotiations in this report. The issue of delay in criminal proceedings in India was covered by the Law Commission in chapter II of this report. Additionally, successful plea negotiating practises in the U.S. and Canada were analysed and studied. Additionally, cases involving plea bargaining that were decided by the Supreme Courts of India and the United States of America were analysed. In 1996, the Law Commission of India, presided over by Justice K. Jayachandra Reddy, issued its 154th report on the Cr.P.C. 1973. In order to conduct a thorough reform of the code, the Law Commission analysed the Cr.P.C. in this report. The idea of plea bargaining is covered in a separate Chapter XIII. A Committee was established in 2000 by Ministry of Home Affairs, to reform the criminal justice system. In 2003, this Committee chaired by Justice V.S. Malimath delivered its Report. The Malimath Committee or Criminal Justice

[1] The Law Commission of India 142nd Report on Concessional Treatment for Offenders who on their own initiative chose to pleas guilt without any bargaining

Reform Commission is another name for this group. The Malimath Committee proposed amending Section 320 (1) of the Criminal Procedure Code's rules on compounding of offences.Thus, the Malimath Committee proposed using plea bargaining after briefly discussing it and the rules for compounding offences. The Rajya Sabha established the Parliamentary Standing Commission (hence, Parliamentary Committee) on home affairs on August 5, 2004, with Smt. Sushama Swaraj as its chairman. The Committee held a hearing on the Criminal Law (Amendment) Act, 2003, and on March 2nd and March 4th, 2005, it delivered its 111th Report to the Rajya Sabha and the Lok Sabha. Plea-bargaining-related provisions were established by Criminal Law (Amendment) Bill of 2003. The Law Commission's proposals were taken into consideration by the Parliamentary Committee and addressed in the same Report. Plea bargaining is a significant component of the legal system, the Parliamentary Committee concluded after analysing the Law Commission's prior Reports.The settlement was reached outside of court in accordance with the Criminal Code of the United States of America. However, according to the plan, court intervention is crucial in India. After giving the parties adequate time and opportunity to resolve their differences, the court issues a final ruling. The court should also confirm that the accused submitted their application voluntarily. In America, the terms of a plea agreement apply to all crimes. For crimes against women, children under 14, chronic criminals, significant economic and social offences, and other offence punishable by a term of more than seven years in jail, life in prison, or the death penalty, it would not be available in India.

## RESEARCH OBJECTIVES

The study's major goal is to examine the idea of plea bargaining and how it is applied in India. This study's main goals are to understand the impact of plea bargaining's implementation, identify obstacles to effective implementation, and determine the most appropriate metrics for its adoption in the Indian system of criminal justice.

## RESEARCH QUESTIONS

The study aims to answer those questions:

1. To research and analyse the idea of plea bargaining.

2. To research legal safeguards for plea deals in India and analyse their function in the criminal justice system.

3. To research the difficulties in efficient implementation in India and offer appropriate solutions.

## DISCUSSION

### Concept of Plea Bargaining

Plea bargaining is a kind of arrangement in which the prosecution and the accused come to a pre-trial understanding. Thus, a kind of legal contract that occurs during a criminal trial is plea bargaining. Thus, it is also known as pre-trial bargaining, wherein the accused agrees to plead guilty in exchange for the promise of benefit from the prosecution. The legal terms used during trial in criminal court include plea, nolo contendere, nolle proseque, alford plea, and plea bargaining. A criminal defendant's admission of guilt or innocence in response to an accusation of unlawful behaviour is known as a plea. These three types of pleas are nolo contendere, not guilty, and guilty.

Nolo contendere is Latin for "I don't want to fight." While discussing the pre-trial settlement between defendant and prosecution. In this deal, the prosecution made a concession in exchange for the defendant admitting guilt.

### Types of plea negotiations

Charging Negotiation: This type of plea bargaining is popular and well-known. It entails negotiating the precise charges or offences that the defendant will be tried for. A prosecutor will typically drop the higher or additional charges in exchange for a "guilty" plea to a lesser offence. It is essentially an exchange of concessions by both parties, like when a defendant accused with burglary is given the option to admit guilt to burglary attempt.

Sentence Bargaining: A plea of guilty to the charged offence rather than a lesser charge is agreed upon in order to obtain a reduced sentence. It makes the prosecution aware of the need to go to trial and present its case. The technique, which was first employed in India, gives the defendant the chance to negotiate for a reduced sentence. The accused, with the prosecutor's and complainant's or victim's cooperation, would negotiate for a sentence that is less severe than that which would otherwise be appropriate for the offence.

Facts Bargaining: The least common bargaining includes admitting to some facts in exchange for an agreement not to enter other facts into evidence. This eliminates the necessity for the prosecutor to establish the facts.

Counts Bargaining: In this type of bargaining, the defendant admits guilt to a portion of the original charges that included numerous counts.

Although the accused admits guilt during a plea negotiation, there are differences between the two. In a plea agreement, the defendant admits guilt and bargains for a reduction in sentence, but when the defendant enters a guilty plea without engaging in any form of negotiation in accordance with the law, the trial is over and the defendant is found guilty. Plea agreements are more appropriate, flexible, and superior to the demands of the judiciary, State, and society, as well as saving time and money and easing the stress on the judicial system.The risks of a protracted trial and the unpredictable or undesirable effects of the verdict are removed for the accused. The implementation of plea bargaining, according to the state, benefits the many departments. The judiciary directly benefits from plea bargaining since it lessens workload. If most minor disputes are resolved via plea bargaining, the courts has more time to focus on important disputes. For convicted inmates, jail administration is more efficient and there is less congestion. Additionally, the police department benefits from having extra time to investigate crimes. Additionally, the public receives a huge benefit by saving money that can be used for many other crucial public projects.

**Procedure related to Plea bargaining:**

- In accordance with Section 265-A, the Central Government may be notified of offences under Section 265-A (2) of the Code that are not penalised by death, life in prison, or a period of imprisonment longer than seven years. All other offences are subject to plea negotiations. The Central Government published the offences that have an impact on the nation's socioeconomic situation.

- A plea bargaining application must be filed by the defendant under Section 265-B. This application must include a short description of the case, including the offence it relates to, and be preceded by an affidavit signed by the defendant stating that he has knowingly and willingly preferred plea bargaining in his situation after understanding the type and severity of the punishment specified by law for the offence.The concerned public prosecutor will then receive notification from the court. the case's investigating officer, the accused, and the

accused on the specifically designated date. The court will interview the accused on camera when the parties are present, without the other parties to the case present, to satisfy itself that the accused made the application freely.

- The process that the court must follow in order to reach a mutually satisfactory resolution is prescribed by Section 265-C. In a case brought on the basis of police report, the court must notify the public prosecutor concerned, the case's investigating officer, the case's victim, and the accused to attend the meeting to come to a suitable conclusion. The concerned public prosecutor will then receive notification from the court. the case's investigating officer, the accused, and the accused on the specifically designated date. The court will interview the accused on camera when the parties are present, without the other parties to the case present, to satisfy itself that the defendant made the application freely.
- The process that the court must follow in order to reach a mutually satisfactory resolution is prescribed by Section 265-C. In a case brought on the basis of police report, the court must notify the public prosecutor concerned, the case's investigating officer, the case's victim, and the accused to attend the meeting to come to a suitable conclusion. However, if no such resolution has been reached, the Court must record this observation and continue in accordance with the rules of this Code from the point at which the application under subsection (1) of section 265-B has been made in the relevant matter.
- When a suitable resolution to the case is reached, Section 265-E specifies the process to be used to dispose of the cases. The Court must hear the parties regarding the severity of the punishment or the accused's eligibility for release on probation of good behaviour or after admonition. The Court can either discharge the suspect on probation under the regulations of S. 360 of the Code, under the Probation of Offenders Act, 1958, or under any other legal provisions in for after the finalisation of proceedings under S. 265 D, by completing a report signed by the current chief officer of the Court.If the law specifies a minimum punishment for the offence committed by the accused, the court may, at its discretion, impose that sentence upon the accused. If such a minimum punishment is not specified, the court may instead impose a sentence equal to one-fourth of the punishment specified for the offence. In addition to this, if a report prepared under S 265 D, report on mutually agreeable disposition, contains a provision providing the victim compensation in circumstances of release or punishment, the Court must also issue instructions to give the victim such compensation.

- The declaration of judgement in terms of such a mutually satisfactory resolution is covered by Section 265-F.
- No appeal is allowed against such ruling, according to Section 265-G.
- The authority of the court during plea negotiations is covered in Section 265-H. For the purposes of carrying out its duties under Chapter XXI-A, a court should have all the authority granted to it under the Criminal Procedure Code with regard to bail, the adjudication of offences, and other matters related to the resolution of a case.
- If a sentence is imposed as a result of a plea agreement, Section 265-I renders Section 428 relevant.
- The non obstante clause in Section 265-J states that no other provision of the Cade may be interpreted to limit the scope of any provision of Chapter XXI-A, and that the provisions of this chapter shall apply notwithstanding anything to the contrary contained in such other provisions.
- According to Section 265-K, the declarations or facts made by the accused in a plea negotiation application may not be used for any other reason save those specified in the chapter.
- In cases involving any juvenile pi child as defined in Section 2(k) of the juvenile Justice (Care and Protection of Children) Act, 2000, Section 265 L declares that the chapter is not applicable.

**Procedure under plea bargaining:**

Plea bargaining's process is much simpler and less expensive than other types of trials under the Criminal Procedure Code. Important parts of the plea negotiation process are as follows:

- Step 1: Chapter applicability This is the initial application stage for plea negotiations. The accused must first determine whether the crime he committed falls under the terms of a plea agreement or not. Whether or not the plea agreement provision applies to the crime he committed is up for debate. If his offence qualifies for a plea agreement, he continues.
- Application filing in step two In the second phase, an accused person may ask the court to enter a plea deal on their behalf, particularly under Section 265-B of Chapter XXI-A.

- Step 3: Giving parties notice Following receipt of an accuser's application, the court notifies the parties. The public prosecutor is then notified in a police case, and the complainant is notified in a private case. also close to the victim.

- Step 4: Examining the defendant At this point, the court conducts an in-camera examination of the defendant to ensure that the application for a plea agreement was made willingly. Other parties are not permitted in the courtroom during this examination.

- Stage 5: Settlement time Following the accused's examination, the court gives the prosecution, complainant, and accused time to reach a resolution.

- Stage 6: Settlement procedures In this stage of the settlement process, the parties discuss or negotiate issues like penalty, victim compensation, and other case-related costs. For this settlement, the offender's victim is also present. The victim or the accused may appear with their representative. The term "mutually satisfactory disposition" refers to this agreement.

- Stage 7: Settlement report At this point, the court first confirms that plea negotiations and the settlement process as a whole were conducted willingly. If the procedure is voluntary, the court will award the victim's costs and consult with the parties regarding the sentence length in accordance with the points covered in the settlement report.

- Step 8: Punishment time The length of the sentence is determined by the legal time frame for the accused's offence. If a minimum sentence period is specified, the sentence will last for half that time. If such a term is not offered, the punishment is reduced to one-fourth. Additionally, the accused may benefit from clauses like probation and a set-off term.

- Step 9: How the case is disposed of The verdict is announced in public by the court. The Magistrate has signed the verdict. The verdict in a case involving a plea deal is different from the verdict in a standard trial. The terms of Section 265-E are followed by the plea agreement's ruling.

- Step 10: The judgment's finality The verdict of the plea agreement is definitive; the accused cannot appeal it to a higher court. nevertheless, can submit a writ petition to the High Court or Supreme Court as well as a special leave application to the Supreme Court.

- Step 11: Facts and case statements The sole purpose for which the accused's words and facts may be used is during the plea negotiation process.

## The challenges before Indian Criminal Justice System

Our system of criminal justice has always worked to ensure that the guilty are punished and that the innocent receive justice. But due to pending issues, delays, and other issues, this is no longer the case today. Despite receiving justice, victims continue to experience various issues as a result of trial delays and accused people being exonerated. The two most pressing problems plaguing the system are the large backlog of criminal cases that need to be resolved and the excessive delay in doing so. On the other side, the rate of conviction for significant offences, which has encouraged crime, is extremely low. The majority of crimes today are violent and coordinated. Low strength in lower court judges is one of the major factors contributing to the significant backlog.

Since the last two to three decades, judiciary has consistently used ADR to address these issues. We are always attempting to reduce the enormous backlog of cases through Lokadalat, Fast track courts ,Gram Nyayalaya, Mediation, Arbitration, Conciliation, morning and evening courts.The Supreme Court also took note of the fact that numerous inmates who are awaiting trial and a court decision have been incarcerated for five to ten years. Many convicts remain behind bars without being tried for sometimes more than ten years while they wait for the trial to begin. The Supreme Court of india is also aware that thousands of adults, juveniles, and people with disabilities are awaiting legal trials behind bars and have been doing so for years. As a result, the notion of plea bargaining was introduced in part due to the backlog in both the court and the prison systems.Plea bargaining is a crucial step in improving the current criminal justice system, addressing the growing number of criminal cases, and giving convicts awaiting trial a fast trial. This idea is more practical, adaptable, and appropriate for the process. Additionally, it better satisfies societal standards. It will aid in clearing up courtroom backlogs. It is a time-saving process that lowers costs for all parties and, in the end, helps the government

## Reasons behind failure of plea bargaining in India

Although the idea of plea bargaining has been included into legislation, its provisions are not always put to good use. The major cause of its failure is that no one wants to admit guilt. One of the key parties affected by these regulations is the prisoner who is awaiting trial; yet, they only occasionally employ the plea bargaining process. The main cause of this is that many convicts who are awaiting trial are not aware of these legal requirements. Apathy within the

legal community is another factor. The Judiciary and proponents have little interest in applying it.

## CONCLUSION

Plea bargaining works extremely simply in practise and is beneficial to both sides. It has been discovered that Chapter XXI-plea A's bargaining procedures are more useful for settling criminal cases rapidly. The primary winner of a plea deal is the defendant. The victim and the State may benefit from a plea agreement, along with the accused and any other parties involved, such as the court and the prosecution. Every side benefits from the quick resolution system's ability to save time, money, and energy. Due to India's adversarial legal system, accused persons are granted a number of protections, including the right to a fair trial, the assumption of innocence, and the privilege against self-incrimination.While plea bargaining keeps up significant pressure on defendants to accept guilt by way of a guilty plea in exchange for some anticipated relief from the State. This is completely at odds with all of the adversary system's core beliefs. Even if the plea negotiation process runs against to the idea of a fair trial, it is a contractual arrangement between the prosecution and the accused that only becomes voluntary and binding with the judge's approval. The accused's willingness to cooperate is a crucial element in preserving both his fundamental and human rights. The law requirements do not expressly address each party's duty. Each case party is crucial to the effective use of plea negotiations.

Despite being one of the biggest legal systems in the world, the Indian court system is currently suffering a number of difficulties. Unskilled literacy among the populace, ignorance of legal requirements, apathy toward the justice system, inadequate infrastructure, workload and case backlog, as well as other new difficulties like technological advancement, are all facing our system. There is a higher need to identify a solution in this situation to deal with these issues.The main issues facing the justice system are the enormous backlog of cases, rising crime rate, modifications in the nature and manner of crime, gaps in the investigation, low conviction rate, hostility toward witnesses, fear on the part of victims of the police and lack of transparency, legal system, overcrowded prisons, corruption, inadequate infrastructure, a lack of qualified and qualified manpower, apathy in the legal community, and a lack of interaction between the court and society. Our legal system faces a significant task in resolving these issues. Plea bargaining may be an effective solution in this situation to address issues like decreasing the backlog of cases pending before the court and the number of inmates being held

there. Plea bargaining's effectiveness and advantages had previously been demonstrated in United.We should accept this new idea in our judicial system and take responsible steps toward achieving positive justice for everybody, using this instance as a guide. If we agree to a plea agreement that solves these backlogs and issues, our legal system might be the best in the entire world.

BIBLIOGRAPHY

1. Law Commission of India, 142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining, 1991.
2. Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 Vol. I, 1996.
3. Malimath Committee report on Reforms of Criminal Justice System, 2003.
4. Parliamentary Standing Committee on Home Affairs, 111th Report on Criminal Law (Amendment) Bill, 2003, Rajya Sabha, February 2005.
5. Bade Deepak, Plea bargaining: status in India, available at: https://www.academia.edu/871099/Plea_Bargaining_Present_Status_in _India.
6. Absar, Absar & Absar, Absar. (2020). Plea Bargaining in India -An Appraisal.
7. Pande Smita, Plea bargaining, Criminal Law Journal, Vol.3, 2015.
8. Santhy K.V.K., Plea Bargaining In US And Indian Criminal Law Confessions For Confessions, Published in NALSAR Law Review, Vol.7, November 2013.