



# PLEA BARGAINING: CONCEPT, JUSTICE AND ANALYSIS

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## ABSTRACT

*Thus, on the recommendation of Malimath Committee, 'Plea Bargaining' was presented in the "Indian Criminal Equity System" by the "Criminal Laws (Amendment) Act, 2005" to decrease the weight of the courts for example to clear the backlog of the cases. 'Plea Bargaining' can be characterized as a particularly regulatory process where the accused person deals with the prosecution for a lesser punishment or lesser accusation. However, Plea Bargaining is definitely not a native idea of Indian general set of laws, it was acquired from USA. The paper has made an undertaking to assess the "concept of plea bargaining" and "types of plea bargaining in India", and to talk about the demerits with benefits and disservices of plea bargaining, and it also attempts to investigate the legal attitude and approach towards this concept.*

## INTRODUCTION

The justification for introducing plea bargaining given by the Law Commission in its 142nd Report is: "It is alluring to infuse life in the reformatory provisions exemplified in Sec. 360 request to deliver on probation of good conduct or after admonition Cr. P.C. furthermore, in the Probation of Offenders Act, 1958 which remains for all intents and purposes unutilized at this point." Though, the Justice V.S. Mallimath says the plea bargaining, if appropriately encouraged by courts and the prosecution, will be the most effective instrument to crash accumulations (particularly those who cannot afford a lawyer): "Almost 90 per cent of criminal cases in the US are settled this way rather than by jury? Why not use it in our country which is reeling under accumulations. It ensures rapid equity and decongests our prisons." Plea bargaining will reduce the burden on Indian judicial system. However, Victims would be guaranteed of quick alleviation her than a since quite a while ago drawn (and frequently unsuitable) preliminary.

Thus, it Based on the Law Commission Report and Malimath Committee Report, legislature presented the Criminal Law (Amendment) Bill, 2003, under which another chapter XXIA named as "Plea Bargaining (containing Sections 265A to 265L) has been embedded Procedure by the Criminal Law (Amendment) Act, 2005; i.e., 5-7-2006.

## Meaning of the plea bargaining

A plea bargain is an agreement between the defense and the prosecutor where a litigant confesses or no challenge to criminal accusations. In exchange, the prosecutor drops a few accusations, reduces a charge or suggests that the adjudicator enter a particular sentence that is acceptable to the defense.<sup>1</sup>

## Concept of Plea Bargaining

Although, plea bargaining refers to a pre-trial bargain between the accused and the prosecution whereby a negotiation is reached between the parties to the suit. Plea bargaining is a negotiation between the accused the prosecutor or the victim of an offence where the accused accepts to confess to commission of an offence in return for an advantage which might be a lesser discipline, an exoneration by installment of obligation and so forth. However, the concept of plea bargaining was primarily taken on and held to be legitimately substantial by the courts of the United States.<sup>2</sup>

<sup>1</sup> Garner, Bryan A., ed. (2000). *Black's law dictionary* (7th ed.). St. Paul, Minn.: West Group. p. 1173. ISBN 978-0-314-24077-4.

<sup>2</sup> AN ANALYSIS OF THE PLEA BARGAINING MECHANISM IN INDIA: THE PAST, PRESENT AND THE FUTURE. » (lawaudience.com)



### Type of plea bargaining

Plea bargains can be widely classified into two types: -

However, a charge bargain where the accused is permitted to confess to a lesser allegation; and a sentence bargain where a denounced can expect a lesser sentence<sup>3</sup> (for the expressed charge as opposed to a diminished charge). Both can be allowed uniquely with the preliminary appointed judge's endorsement.<sup>4</sup> By and large, a supplication deal is utilized to decrease prison sentence time or fines related to the crime being accused of.<sup>5</sup>

Reality bargain is most un-utilized negotiation which includes an admission to specific realities subsequently killing the requirement for the prosecutor to need to demonstrate them as a trade-off for a deal to avoid bringing certain other implicating realities into proof. In a supplication bargain, the respondent may likewise concur at times to give declaration against someone else in return for some arrangement from the prosecutor regarding the discipline.<sup>6</sup>

This is the manner by which plea bargaining will function in India: -

It provides for pretrial arrangement for example the accused should document an application for plea bargaining any time before the initiation of the preliminary.

Relevance of plea bargaining [Section 265-A] Section 265-A provides that provisions apply to the case established on police report too complaint case.<sup>7</sup>

These provisions do not apply to the following offences: -

- (1) Offence punishable with death, life detainment or detainment for a term exceeding 7 years
- (2) Offence relating to socio-economic conditions of the country and they including socio-economic conditions for the time being in force shall be notified by the Central Government.
- (3) Offences committed against women, or children below the age of 14 years.<sup>8</sup>

<sup>3</sup> <https://www.nolo.com/legal-encyclopedia/what-the-different-kinds-plea-bargains.html>

<sup>4</sup> <https://www.britannica.com/topic/plea-bargaining>

<sup>5</sup> Vanover, Joseph W. (1998), "Utilitarian Analysis of the Objectives of Criminal Plea Negotiation and Negotiation Strategy Choice", *University of Cincinnati Law Review*, **1998**: 183, archived from the original on 2017-10-19

<sup>6</sup> <http://www.legalservicesindia.com/article/1836/Plea-Bargaining-in-Indian-Legal-System.html>

<sup>7</sup> Ibid

<sup>8</sup> Ibid

### Application for plea-bargaining [Section 265-B]

Section 265-B provides that a denounced person might file application for plea bargaining in the court it which the case is forthcoming for trial.<sup>9</sup>

### Contents of the application

The application must contain a brief description of the case and must be accompanied by an affidavit sworn by the accused stating therein that: -

He had voluntarily preferred the plea bargaining in his case after understanding the nature and extent of punishment provided for the offence. He has not been previously convicted for the same kind of offence.<sup>10</sup>

After receiving the application, the court shall issue notice to the Public Prosecutor or the complainant and to the accused to appear on the date fixed for the case. The court shall examine the accused in camera in the absence of other parties to satisfy itself that the accused has filed the application voluntarily.

If the application is filed voluntarily, the court shall provide time to the parties to work out a mutually satisfactory disposition of the case and thereafter fix the date for further hearing.

If the application is filed involuntarily or the accused has been previously convicted, the court shall proceed for further trial in accordance with the provisions of the Code.<sup>11</sup>

### Guidelines for mutually satisfactory disposition (Section 265-C)

Section 265-C provides that

- (1) In a case instituted on police reports, the public prosecutor, the investigating officer and the victim can participate in the meeting.
- (2) In a case instituted on complaint, the court shall issue notice to the accused and the victim of the case to participate in a meeting.<sup>12</sup>

It shall be the duty of the court to ensure the voluntariness of the entire process of the disposition. The accused may participate in the meeting with his plead Section 265-D provides that the report of the

<sup>9</sup> <https://www.findlaw.com/criminal/criminal-procedure/plea-bargain.html>

<sup>10</sup> <https://www.livelaw.in/columns/criminal-law-plea-bargaining-charge-bargaining-sentence-bargaining-tablighi-jamaat-169521>

<sup>11</sup> <https://www.drishitias.com/daily-updates/daily-news-analysis/plea-bargaining>

<sup>12</sup>

<https://lawledge.in/blogdetails/WjFGbWh1ZEhLeTkycUItcDh0dkRIIdz09>



mutually satisfactory disposition to be submitted before the court.<sup>13</sup>

### Disposal of the case (Section 265-E)

Section 265-E provides that where a satisfactory disposition of the case has been worked out the

### Court shall dispose of the case in the following manner

- (1) The court shall award the compensation to the victim according to the disposition.
- (2) Subject to the provisions of Section 360 order to release on probation of good conduct or after admonition of the Code and the Probation of Offenders Act, 1958 or any other law for the time being in force, the court may impose the punishment.<sup>14</sup>

Where a minimum punishment has been provided, the court may sentence the accused on half of such minimum punishment.

Where no minimum punishment is provided for offence, the court may sentence the accused to one fourth the punishment provided or extendable for such offence.<sup>15</sup>

Section 265-F judgment of court provides that the court shall deliver the judgment in terms of section 265-E in the open. Court and the equivalent will be endorsed by presiding officer of the court.

265-G finality of the judgment: - provides that the judgment shall be final, and no appeal (except the Special Leave

Petition under Article 136 and writ petition under Article 226 & 227 of the Constitution) shall lie in any court against such judgment,<sup>16</sup>

### Section 265 H Power of the Court in plea bargaining

A Court will have, for the purposes of releasing its functions under this Chapter, all the powers vested in regard of bail, trial of offences and other matters relating to the removal of a cast in such Court under this Code.

Section 265 I provide that period of detention undergone by the accused to be set-off against the sentence of imprisonment, i.e., benefit of section 428 is permissible in plea bargained settlement as well.

<sup>13</sup> <https://tripakshalitigation.com/indian-context-of-plea-bargaining/>

<sup>14</sup> <https://www.bbau.ac.in/dept/HR/TM/LL.M.%202003%20Unit%204.Plea%20Bargaining.RM.pdf>

<sup>15</sup> <https://www.fairtrials.org/plea-bargaining>

<sup>16</sup> <https://www.ojp.gov/ncjrs/virtual-library/abstracts/plea-bargaining-disaster>

Section 265-K provides that the statements and facts stated in the application of the accused shall not be used for any other purpose.

Section 265-L provides that Chapter XXI-A shall not apply to any juvenile or child as defined in Section 2 (k) of the Juvenile Justice (Care & Protection of Children) Act, 2000.<sup>17</sup>

However, there is already a provision for compounding of offences in the Criminal Procedure Code. How is it different from plea bargaining? Thus, in compounding, the offended party and the litigant settle a case agreeably throughout a period will the assent of the court. Though, with plea bargaining the issue is settled inside the court in a single sitting.

The distinction between compounding of offence and plea bargaining is lies in the fact that compounding is stigma free because section 320 shall have the effect of acquittal of the accused whereas plea bargaining has some taint of guilt because lesser punishment is awarded in plea bargaining.<sup>18</sup>

### Plea bargaining as an unconstitutional shortcut

Although, Plea bargaining works under the supposition that any remaining protected shields gave to both the person in question and the charged have not been penetrated (like in the USA) this would be difficult to say in a country where corruption is rampant and the legal machinery is easily manipulated. Hence, victims, witnesses and their families are consistently irritated compromised or forced into dropping charges or evolving articulations. It is hard to envision that thing will be diverse when a blamed, particularly from a rich and powerful foundation, allures for a lesser sentence.<sup>19</sup>

### Accused incentives for accepting plea bargaining

- 1) Lesser jail term (lighter sentence) for the accused.
- 2) Getting out of jail-

An accused who either do not have right to bail or cannot afford bail (viz. inability to enlist a legal advisor) or who don't fit the bill for discharge on their own recognizance can escape prison. Depending on the offence, the defendant may get out altogether, on probation, or, the defendant may have to serve more time but still get out much sooner than if he chooses to go on trial.<sup>20</sup>

<sup>17</sup> <https://www.springer.com/gp/book/9780306415777>

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup>

<https://shodhganga.inflibnet.ac.in/handle/10603/220567>



3) Rapid and more affordable equity purposes quickly. A normal preliminary is tedious and there is lot more stress.

4) Having fewer or less genuine offences on one's record.<sup>21</sup>

5) It assists the accused who with stay as under preliminary detainees anticipating the trial for long time to get quick preliminary with attendant advantages, such as

(a) End of uncertainty;

(b) Saving in prosecution cost; (c) saving in uneasiness cost;

(d) Being ready to know his destiny and to get going new existence unafraid of undergo through a potential prison sentence at a future date disrupting his life or career;

(e) Saving avoidable visits to lawyer's office and to court on each date or dismissal.

6) Having a less socially stigmatizing offence on one's record -

For instance, a prosecutor might diminish a molestation case to an assault. However, this can have a significantly impact on the respondent's relationship with friends and family. Maybe considerably more critical, sometimes defendants indicted of stigmatizing offences may be at a greater risk of being harmed (or killed) in prison than if they are indicted of an offense that doesn't convey the same stigma.

6) Keeping others out of the case-Some respondents concede to assume the fault (sometimes called the "rap") for another person, or to end the case quickly so that others who might be together mindful are not investigated.<sup>22</sup>

### Demerits in Respect of Accused

1) There is a plausible of innocent defendants conceding on grounds that off extended pre-trial postponements or guilty pleas might be entered upon the guarantee that plea will be acknowledged quickly, and the sentence will be for close to the measure of time previously served.<sup>23</sup>

2) If one wishes to avail plea bargaining one should concede and get indicated. Only the quantum of punishment negotiable on the basis of compensation offered to the victim after all of this he has to carry the burden of a 'convict' even for an unimportant offence.

3) At the end He stands stigmatized sometimes he loses employment; in regard to cognizable offences, he might have already suffered detainment as an under trial; he faces exclusion by the society.

<sup>21</sup> ibid

<sup>22</sup> ibid

<sup>23</sup> [https://www.law.cornell.edu/wex/plea\\_bargain](https://www.law.cornell.edu/wex/plea_bargain)

4) Investigating officer always try to get confession through extra constitutional means plea bargaining will be another tool in the hands of police office to close files by getting confession and collecting brownie points.<sup>24</sup>

5) With a large number of under trials spending years in jails due to the slow pace of trial, sometimes without ever facing a magistrate, a confession in the course of plea bargain is likely to be their best chance of freedom (some justice is better than no justice"). However, that may also amount to waving out their right to a fair trial.

### Incentive to victim for accepting plea bargains

1) Victims would be assured of expeditious relief, plus compensation to victims.

2) Assured conviction: -

A) Plea bargaining assures a conviction, even if it is for a lesser charge or crime.

B) Prosecutors might utilize plea bargaining to further their case against a co-respondent. They might accept a plea bargain arrangement from one defendant in return for damaging testimony against another. Thusly, they are guaranteed of like one conviction in addition to improve possibilities of winning a conviction against the second litigant.

3) The result of some random preliminary is normally erratic however a request deal furnishes both indictment and protection with some command over the outcome.

### Demerits of plea bargaining in respect of victim

If the accused come from a rich and influential background it is difficult to imagine that victim is not going to bribed to agree to settle for lesser charges or to regularly harassed, threatened or coerced to drop charges.<sup>25</sup>

### Recent case Laws in India

Though, a recent instance of Mumbai, distributed 'In the midst of India' wherein, a Grade-I representative of RBI, was accused for redirecting Rs 1.48 crore from the RBI by giving vouchers against invented names from 1993 to 1997 and transferring the money to his own account. He was captured by the CBI in the year 1997, and released on bail in November that same year. Charges were outlined and case preceded Special CBI Judge. The accused expressed that he is 58 years of age and moved an application of plea-bargaining by taking advantage of the amendment of

<sup>24</sup> ibid

<sup>25</sup> Garner, Bryan A., ed. (2000). *Black's law dictionary* (7th ed.). St. Paul, Minn.: West Group. p. 1173. ISBN 978-0-314-24077-4.



2005, came into force in 2006. However, the court coordinated the prosecution for its reaction. Hence, the court rejected the application yet from that time, it has opened the entryways and new expectation in the personalities of other accused.<sup>26</sup>

In other instance of Vijay Moses Das v. CBI<sup>26</sup>, Uttarakhand High Court (Justice Praffula Pant) in March 2010 permitted the idea of plea-bargaining, wherein accused was charged under area 420, 468 and 471 of IPC. In the said case, Accused provided mediocre material to ONGC and that too at an off-base Port, which made enormous misfortunes ONGC, then, at that investigation was done through CBI by lodging a criminal case of evidence against the accused.

Thus, In any case the way that ONGC (Victim) and CBI (Prosecution) had no issue with the Plea-bargaining Application, the trial court rejected the application on the ground that the Affidavit u/s (265-B) was not recorded by the denounced and furthermore the remuneration was not fixed. The Hon'ble High Court permitted the Misc. Application by guiding the preliminary court to acknowledge the plea-bargaining application.<sup>27</sup>

### Concluding Remarks

Does plea-bargaining sacrifice justice in name of Laster disposal off cases? 'No,' says Mallimath "It's a possibility for a denounced the sentence. Thus, the final result is only a lesser sentence, not acquittal.

### Other Reasons in Support

- 1) *The role of judge in plea bargaining is supervisory. It has to make sure that defendant who is pleading guilty is doing so on an intelligent, voluntary manner so that he knows exactly what he is doing.*
- 2) *Implementation of plea bargaining is expected to benefit the huge number of under trials languishing in jails as well as cut down on the backlog of cases which has reached unmanageable proportions.*<sup>28</sup>
- 3) *plea bargaining would not impact cases where the punishment exceeds seven years, serious offenders would be outside the purview of the system Certain categories of crimes such as crime against ladies and youngsters, and violations, for example, wrongdoing against SCs and STs are likewise barred.*

- 4) *The Indian Penal Code (IPC) prescribes punishment for nearly 400 offences, of which 245 can be sealed through plea-bargaining. These include crimes like: Causing death by rash or negligent act; Rash driving; Defamation; Destruction of evidence; Giving false evidence, Harboring criminal; Rioting, Bribery; Forgery, Criminal intimidation, Misappropriation; Cheating; Impersonation; Criminal trespass; Causing hurt; Assault, assaulting persons of fool authority; Being a member of unlawful assembly, etc.,*<sup>29</sup>.

Plea bargaining can be supplementary or complementary with efficient justice system because our judicial system is combination both pecuniary and reformative measures but taking into consideration our social structure it does not permit such kind of bargaining. In our country the courts are considered as a position of pride and any sort of idea which fuses bartering is more averse to be acknowledged by individuals everywhere on the grounds that that will transform the courts into a sale house.

Hence instead of accepting this kind system we should try to make our system more efficient by making a minimum requirement of the number of judges in the High Court at any point of time, by constituting pure institutions like fast-track courts and Lok Adalats, by making a minimum time limit requirement for disposal of all kind of cases and by alike measures.<sup>30</sup>

And also using plea bargaining to reduce the burden of the judicial system is criticized as an argument that is based on administrative considerations rather than legal principles.

It is argued that plea bargaining is soft on criminal as the guilty are not punished property for the crimes they commit. In some manner its amount to confession of guilt of accused person for which appropriate sentence is required to be imposed.... Mere acceptance or admission of guilt must not be ground for reduction of sentence.<sup>31</sup>

Though, the fundamental motivation behind punitive law is to stop, and along these lines forestall commission of offenses. If all the offences punishable with less than seven years rigorous imprisonment could be settled with the criminals that would only increase

<sup>26</sup> 585db32a-3e8f-4a0f-a580-2d02778b5bfa.pdf

<sup>27</sup> ibid

<sup>28</sup> <https://www.sciencedirect.com/topics/social-sciences/plea-bargaining>

<sup>29</sup> <http://patnahighcourt.gov.in/bslsa/Bargaining.aspx>

<sup>30</sup> <https://www.cliffsnotes.com/study-guides/criminal-justice/defendants-rights/should-plea-bargaining-be-abolished>

<sup>31</sup> ibid



the crimes thousand-fold and it would also encourage criminals, increase crimes and breed corruption.<sup>32</sup>

### **Suggestions for the implementation of plea bargaining in Indian judicial system**

Though, on the off chance that plea bargaining must be executed, first it ought to be carried out in a portion of the minor offenses for the analysis and assuming it is fruitful and reasonable, should be implemented in the whole system and it can be implemented in the modified form as it suits to our system,

We will have to keep in mind the peculiar social fabric and comic condition of our country while considering this practice. In nutshell, while implementing the plea bargaining, we must strike a balance between efficiency and speed the one hand and justice and dignity of court on the other hand.

Further, if plea bargaining has to be implemented in India, then the deciding authority must be independent from trial courts and instead of the public prosecutor retaining most of the power, the independent authority must be given a greater role in the process.<sup>33</sup>

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<sup>32</sup> ibid

<sup>33</sup> <https://www.jstor.org/stable/44306676>