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**Dr. Neetu Gupta**  
Assistant Professor  
Department of Laws, Panjab  
University, Chandigarh

## Plea Bargaining In India: An Overview

**Neetu Gupta**

### Abstract

Plea bargaining as a concept was introduced in Indian criminal justice system by the Criminal Laws (Amendment) Act, 2005, on the recommendation of Malimath Committee. Ever since its introduction, the concept has been a subject of debate. While some criticize it on the ground that it violates fundamental rights of the accused, others hail it as instrumental in ensuring speedy disposal of cases. In this light, the paper throws light on the relevant provisions relating to Plea Bargaining in Indian criminal law as well as judicial attitude towards this concept.

**Keywords:** Fundamental rights, speedy disposal, criminal law.

### Introduction

Plea bargaining, in its simplest form refers to pre-trial negotiations between the prosecution and the accused during which the accused agrees to plead guilty and the prosecution in turn agrees to extend some concessions in return. The accused may agree to plead guilty to a less serious charge, or to one of several charges, in return for the dismissal of other charges which is also called Charge Bargaining or the accused may plead guilty to the original criminal charge in return for a more lenient sentence which may be called Sentence Bargaining. Thus, it involves an active negotiation process between the prosecution and the accused. Plea bargaining as most criminal justice reformers believe, is more suitable, flexible and better fitted to the needs to the society, as it might be helpful in recurring admissions in cases where it might be difficult to prove the charge laid against the accused<sup>[1]</sup>.

### Plea Bargaining Defined

Wikipedia defines the term as "A plea bargain (also plea agreement, plea deal or copping a plea) is any agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor<sup>[2]</sup>."

Albert W. Alshuler defines plea bargaining as follows: "Plea-bargaining consists of the exchange of official concessions for a defendant's act of self-conviction. Those concessions may relate to the sentence imposed by the Court or recommended by the prosecutor the offence charged, or a variety of other circumstances<sup>[3]</sup>."

As per Chief Justice of Supreme Court of United States, Warren Burger in *Santobello v. New York*<sup>[4]</sup>

"Plea bargaining is an essential component of the administration of justice, properly administered, it is to be encouraged.....it leads to prompt and largely final disposition of most criminal cases."

### Plea Bargaining In Indian Criminal Justice System

Mounting arrears of cases in the courts and the resultants pain and agony suffered by the accused led the law makers to introduce the concept of Plea Bargaining in Indian criminal justice system. The law Commission of India in its 142<sup>nd</sup> and 154<sup>th</sup> report recommended the introduction of provisions relating to plea bargaining. The recommendations of Law Commission were further endorsed by Malimath Committee. Consequently, a new chapter, that is chapter XXIA on 'Plea Bargaining', has been introduced in the Criminal Procedure Code. It was introduced through the Criminal Laws (Amendment) Act, 2005. The provisions are reproduced as under:

**Correspondence**  
**Dr. Neetu Gupta**  
Assistant Professor  
Department of Laws, Panjab  
University, Chandigarh

**Section 265 A** This Chapter shall apply in respect of an accused against whom-

- a. the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence 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; or
- b. a Magistrate has taken cognizance of an offence on complaint, other than an offence 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, and after examining complainant and witnesses under section 200, issued the process under section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

For the purposes of Sub-Section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

A perusal of the provision mentioned above clearly demonstrates that the plea bargaining is not available with respect to the accused:

1. where the offence committed by him is a socio economic offence. In this regard, it has been specifically provided by Section 265A that the offences affecting the socio economic condition of the country shall be determined by the Central Government by notification.
2. Where the offence committed by him is an offence against a woman, and
3. Where the offence committed by him is an offence against a child below the age of fourteen years
4. Where the offender is a habitual offender. It has been clearly provided by Sub section 2 of Section 265B that while moving an application for plea bargaining, the accused shall submit an affidavit to the effect that he has not been convicted previously by a court in a case in which he had been charged with the same offence.
5. Where the offender is covered under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Section 265B further prescribes the procedure for filing application for plea bargaining. An application for invoking the provisions of chapter XXIA may be filed by the accused himself. The application is to be filed in the court in which the offence is pending for trial. After the application is received by the court, a date is fixed by the court for appearance of the parties and a notice to that effect is issued to the public prosecutor or the complainant as the case may be and the accused. On the date so fixed, the accused is examined by the court in camera in the absence of other parties to ascertain about the voluntariness of the application. If the court is satisfied about the voluntariness of the application, time shall be provided to the parties to work out mutually satisfactory disposition of the case which may include providing compensation and other expenses during the case to the victim. If the court is satisfied that the application is filed by the accused involuntarily, i.e. if there is an iota of doubt regarding the voluntariness of the accused in filing the application or if it is found that the accused has

been previously convicted by a court in a case in which he had been charged with the same offence, then instead of proceeding under this chapter, the court shall proceed in accordance with the provisions of Cr. PC from the stage the application for plea bargaining was filed by the accused.

After satisfying itself about the voluntariness of the application for plea bargaining, the next step for the court is to facilitate the parties in reaching out a mutually satisfactory disposition and for this purpose, a notice is given to the accused, the public prosecutor, the victim and the police officer who investigated the case<sup>[5]</sup>. Throughout the process it is the duty of the court to see that the process is completed voluntarily by the parties participating in the meeting:

Where the parties work out a satisfactory disposition of the case, a report of such disposition is prepared by the court and is signed by the presiding officer of the court and all the parties concerned. If no satisfactory disposition is made out, the court has to proceed with the case, by dropping the proceedings in plea bargain and start the proceedings from the stage, wherein the application is entertained<sup>[6]</sup>. After completion of proceedings under Section 265D, the court has to hear the parties on the quantum of the punishment or accused's entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence<sup>[7]</sup>. Section 265F further provides that the Court shall deliver its judgment in terms of Section 265E in the open court and the same shall be signed by the presiding officer of the Court. The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment<sup>[8]</sup>.

The provisions relating to plea bargaining in Cr. P.C show that throughout the process, the court is not a moot spectator, but it plays an active role in ensuring that there are no pressure tactics adopted by the prosecution to extract confession from the accused and that the agreement reached between the parties is voluntary.

### Judicial Attitude

In India, apart from academia, the judicial attitude was not in favour of the practice of plea bargaining. The Supreme Court of India in a number of cases raised apprehension about the moral base of the concept. In *Murlidhar Meghraj Loya v. State of Maharashtra*<sup>[9]</sup>, it was observed by the apex court:

"In civil cases we find compromises actually encouraged as a more satisfactory method of setting disputes between individuals than an actual trial. However, if the dispute..... finds itself in the field of criminal law, "Law Enforcement" repudiates the idea of compromise as immoral, or at best a necessary evil. The "State" can never compromise. It must "enforce the law." Therefore open methods of compromise are impossible."

The practice of plea bargaining was again strongly disapproved by the apex court in *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*<sup>[10]</sup>. It was observed by the Hon'ble court that:

"It is to our mind contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty of an allurement being held out to him that if enters a plea of guilty he will be let off

every lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Article 21 of the Constitution unfolded in Meneka Gandhi's case. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial which, having regard to our cumbersome and unsatisfactory system of administration of justice is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the Judge also might be likely to be deflected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, this, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea bargaining with the prosecution and the Magistrate must be held to be unconstitutional and illegal.”

In *Kasambhai v. State of Gujarat* <sup>[11]</sup>, also the Supreme Court expressed an apprehension of likely misuse of plea bargaining. Citing out a precautionary note for the magistrates, the court laid down:

“The Magistrate trying an accused for a serious offence like adulteration must apply his mind to the evidence recorded before him and, on the facts as they emerge from the evidence, decide whether the accused is guilty or not. It must always be remembered by every judicial officer that administration of justice is a sacred task and according to our hoary Indian tradition, it partakes of the divine function and it is with the greatest sense of responsibility and anxiety that the judicial officer must discharge his judicial function, particularly when it concerns the liberty of a person.”

In *State of Uttar Pradesh v. Chandrika* <sup>[12]</sup>, the Supreme Court held that it is settled law that on the basis of Plea Bargaining court cannot dispose of the criminal cases. Going by the basic principles of administration of justice, merits alone should be considered for conviction and sentencing. Even when the accused confesses to guilt, it is the constitutional obligation of the court to award appropriate sentence. Court held in this case that mere acceptance or admission of the guilt should not be reason for giving a lesser sentence. Accused cannot bargain for reduction of sentence because he pleaded guilty.

The judicial thinking however underwent a great change after the concept of plea bargaining was introduced in criminal law by Criminal Laws Amendment Act, 2005. Even before this provision was inserted in Cr.P.C, the desirability of inserting such provision in criminal law was expressed by the Supreme Court in *Pawan Kumar v. State of Haryana & another* <sup>[13]</sup>. In this case, the services of an adhoc appointee were terminated on the ground that he had been convicted for an offence under Section 294 Indian Penal Code and that therefore, his character and antecedents did not befit his regularisation in service. His challenge to the order of termination was rejected by the trial Court, 1st appellate Court and the High Court. But the Supreme Court reversed the decisions of the Courts below and granted him relief on the ground that his conviction for an offence under Section

294 Indian Penal Code., on its own, did not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances which led to the conviction, met the requirements of the policy decision of the State. While holding so, the Apex Court made certain observations, which are as follows:

“Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of Plea Bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on Plea Bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs. 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever.”

While commenting on the concept of plea bargaining, the Gujarat High Court observed in the *State of Gujarat v. Natwar Harchanji Thakor*, <sup>[14]</sup> that the very object of the law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It can thus be said that it is really a measure of redressal and it shall add a new dimension in the realm of judicial reforms.

In *Pardeep Gupta v. State* <sup>[15]</sup>, Shiv Narayan Dingra J. observed that “the trial court’s rejection of the plea bargain shows that the learned trial court had not bothered to look into the provisions of chapter XXI A of Code of Criminal Procedure meant for the purpose of plea bargaining and rejected the application on the ground that since the applicant is involved in an offence under section 120-B Indian Penal Code and the role of applicant was not lesser than the other co-accused. But none of the offences in which the petitioner has been booked attracted more than seven years punishment. The request of plea bargaining is ought to be considered taking into account the role of the accused, and the nature of the offence, etc. The trial court could not have rejected the application for plea bargaining on the ground that he was involved in section 120-B Indian Penal Code and therefore, the request for plea bargaining is not available to him. The attitude of the trial court shows that it did not even read the provisions of chapter XXI-A before considering the application. The High Court directed the trial court to reconsider the application of plea bargaining made by the accused in the light of provisions made in the Code of Criminal Procedure and not in a casual manner.

In *Vijay Moses Das v. Central Bureau of Investigation* <sup>[16]</sup>, trial court rejected the application of accused for plea bargaining on the ground that the accused had failed to

submit affidavit that he is not a previous convict and that the amount of compensation payable to the accused had not been fixed. It is pertinent to mention here that these objections were not raised by the prosecution. In view of the above facts, High Court of Uttarakhand observed that the trial Court has erred in law in rejecting the application of the petitioners for 'plea bargaining' it was further observed that that after following the guidelines mentioned in section 265C of Cr.P.C., the Magistrate should have disposed of the case after accepting the 'plea bargaining', and that no useful purpose would be served by sending the accused / petitioner to jail by rejecting the application for 'plea bargaining' moved by the accused, who is a heart patient, aged 60 years, as mentioned in the affidavit. Therefore, the trial court was directed to dispose of the case by accepting the 'Plea Bargaining' sought by the accused.

A perusal of the case laws discussed above shows that in spite of the fact that a considerable time period has passed since the provisions relating to 'Plea Bargaining' were introduced in Indian criminal law, yet the courts in India, particularly trial courts are still reluctant to apply these provisions to the desirable cases and this is because there are still apprehensions of misuse of these provisions to the prejudice of the accused.

### **Conclusion**

Plea Bargaining is often criticized on the ground that it extends undeserved leniency and concessions to admitted criminals. It results in dilution of deterrent effect of law and is coercive in nature because an accused is induced to either admit his guilt or to face trial. But at the same time it is also true that to lift the criminal justice system in India from the weight of pendency and arrears of cases, the system of plea bargaining can be viewed as as experimentation. This is not a hidden fact that criminal courts in India are very over burdened and virtually it may not be possible for each and every pending case to meet the trial on merits. In such a situation plea bargaining may be viewed as a ray of light bringing hopes in the minds of many under trial persons.

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