

# The Notion of Plea Bargaining

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*Abstract: The famous saying "Justice delayed is denied justice" is of utmost significance when discussing the concept of Plea bargaining. The number of pending cases in the courts is shocking, but it has been normalized by individuals at the same time. Since people have come to recognize this as their destiny, these incredible figures are no longer amazing. In criminal law, the idea of plea bargaining has not existed since its inception. In view of this situation, this idea was introduced into Indian Criminal Law by Indian legal scholars and jurists. It is an arrangement between the defendant and the lawyer, as the phrase itself implies. In their Criminal justice system, several countries have embraced this idea. Plea bargaining is simply a dispute that occurs between the prosecutor and the accused in the pre-trial phase. In this form of agreement, the defendant pleads guilty in return for some concessions offered by the prosecutor. In other terms, the defendant is pleading guilty to a lower penalty. It is necessary to remember, however, that for all forms of offences and offenses, plea bargaining is not available. A defendant does not assert plea bargaining for grievous crimes such as murder and suicide or death penalty or life imprisonment offenses. The notion of plea bargaining was introduced in India through the Criminal Law (Amendment) Act, 2005, which introduced Chapter XXI A of the 1973 Code of Criminal Procedure. Since 5 July 2006, the Act has been made enforceable. The principle of plea bargaining has been borrowed from the United States of America Constitution. The 142nd Report of the Law Commission of India was first proposed as an alternative measure to counter the immense arrears and gaps in criminal cases in the courts. The researcher will examine the development in this review article, meaning features of the notion of plea bargaining under Indian Law.*

**Keywords:** Criminologists; fundamental rights; imprisonment; prison; and victimization.

## INTRODUCTION

The greatest challenge facing the Indian justice system is the massive backlog of cases. "Noted jurist Nani Palkiwala correctly said, "The law may or may not be an ass, but it definitely is a snail in India. On different grounds, more than three crore cases are languishing in the courts. The absence of a number of judges in the relevant courts is one of the key reasons behind this abysmally low disposition of cases by the Judiciary. In addition to the immense backlog of trials, the conviction rate in our country is also very poor, thereby doubting the legitimacy of the decision. In addition, judicial proceedings are time-consuming, slow and costly [1].

These issues all call for an alternative. A way that would contribute to swift trial and fair sentencing. The prospect of plea bargaining will be a proposed solution to this in the Indian Criminal Justice System. Plea bargaining may be defined as "pre-trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for the prosecution's certain concessions." They are often referred to as a plea deal, plea agreement or copping a plea. The protocol for a plea deal is straightforward-a bargain or arrangement is struck between the defendant and the prosecutors, whereby the defendant agrees to plead guilty to the charge when requested by the trial judge and will accept a smaller penalty or plead guilty to one or more charges in exchange for the guarantee that the other charges will be dismissed against him. In this process, the trial judge takes an active role [2].

In the US, in the 19th century, plea bargaining was introduced and has proven to be quite popular. It's become an important part of their scheme of justice. While Plea Bargaining was not expressly alluded to in their Constitution, their judicial pronouncements have upheld its legality. Almost 90 to 95 percent of felony trials in the United States are currently disposed of by plea bargaining rather than jury trial.

## DEVELOPMENT OF PLEA BARGAINING

It would be inaccurate to say that only in the recent past has the principle of Plea Bargaining found favor with the courts. In fact, in the 19th century itself, it was used in the American Judiciary. When defining

the equal trial concept in the sixth amendment, the Bill of Rights does not address the procedure, but the constitutionality of the Plea Bargaining was consistently upheld there. James Earl Ray pleaded guilty in 1969 to the murder of Martin Luther King, Jr. in order to escape an execution sentence. He was eventually incarcerated for 99 years [3]. Although the sixth amendment to the US Constitution refused to accept plea bargaining, the US judiciary did the necessary thing. The case of *Santebello v. New York* [4], 1971, gave recognition to plea bargaining in the USA. This case is considered to be the beginning and there have been no limits to its occurrence from then on. It has been noted that the method of plea bargaining settles about 90 percent of criminal cases in the United States of America. The plea of *nolo contendere* is called the plea of bargaining option, which is that the individual does not want to appeal his case. In the United States of America, a matter is settled every minute using this plea.

This plea may be said to be a conditional plea in a substantial way. In comparison to pleading guilty before the jury, this is an implicit confession of guilt. This formal statement, which the accused would not plead, assumes an understanding between that person and the government that the latter will consider the former to be guilty only in the case stated and not in any other case. It is important to remember that it is up to the court to consider or not accept such a plea. It has to do so unqualifiedly if the court does so [5]. However, in view of the particular facts and circumstances of the case, the court is obligated to accept the plea. The prosecutor's approval, which the court is not bound to entertain, is another significant point. Particularly if it is a powerful factor in deciding whether or not the court will consider such a plea. The case of *Lott v. United States*[6], marked a turning point in this particular jurisprudence. In this case, it was held that the acceptance of the plea of *nolo contendere* does not in itself determine the defendant's guilt, although it is an equal element in the establishment of the same.

In the United States of America, plea bargaining is accepted in a majority of cases, although there have been several exceptions. Some jurists and judges have recognized that this 'arrangement' decreases the judiciary's workload to a significant degree. Since this mechanism may be infected by coercion and compel the accused to choose between two evils, it has been noted. In the case of *Brady v. United States*[7], it has also been recognized that simply because there is a risk that this arrangement can be mitigated by coercion, it cannot be regarded as unconstitutional purely for this purpose. This phenomenon of plea bargaining was not recognized by the American Judiciary in the colonial era, but it is not said that today, if this mechanism is stripped from its controls, it will fail in no time. This system has now moved from being permitted in certain areas with the utmost caution to now being present in much of the United States of America's criminal cases.

### *Plea Bargaining in India*

The nation has a long tradition of resisting the implementation of plea bargaining, as far as India goes. As far as criminal trials are concerned, the practice of plea bargaining has been declared unlawful, unethical and immoral. The lawfulness and utility of this practice was first recognized in *Gujrat v. Natwar Hachandji Thakor* [8].

In the case of *Chandrika*, Plea Bargaining was held by the Court to be an unethical compromise in criminal trials and was held to be against public policy in the criminal justice system for a long time, while it could be tolerated in a civil case. The Court held that it is only on the merits of the case that the sentence of an individual must be determined. The fact that the defendant has pleaded guilty should not be a justification for a lighter punishment to be offered to him. The Court argued that it is against the interests of the victim and society at large to embrace plea bargains. It serves only to meet the superficial demands of the perpetrator who does not want to face the nightmare of an Indian Prison, the lawyer who does not want to make several trips to the Court filling revisionary appeals and the overworked trial magistrate is more than willing to embrace these "sub rosa ante room settlements" as he is burdened by a collection of cases. It was generally accepted that they could offer a lesser sentence if the courts decided to be lenient with the convicted, but it was utterly looked down upon to enter into a deal for money [9].

The Court strongly disapproved of plea bargaining in the case of *Kachhia Patel Shantilal v. State of Gujrat*[10] and went so far as to state that it would promote corruption, collusion and pollute the justice front. Therefore, it was settled law for a long time that plea bargaining should not be used to determine

criminal cases, the Court must rule on the merits of the case and, if the accused pleads guilty, the Court must enforce an acceptable penalty.

### *Procedure for Plea Bargaining*

In its 142nd, 154th and 177th reports, the Law Commission of India recommended the implementation of plea bargaining in India (even though the Supreme Court vehemently opposed it). Chapter XXI A of the Criminal Procedure Code, 1973, was adopted by the Criminal Law (Amendment) Act of 2005. This became effective on the 5th of July 2006. This encourages plea bargaining to be used in the following cases.

- Only for such offenses that are punishable by imprisonment of less than 7 years.
- If the defendant has been sentenced by any court for a similar crime, he/she would not be entitled to plea bargaining.
- No plea bargaining is available for crimes that could impact the country's socio-economic conditions. For example, for offences under the Dowry Prohibition Act, 1961, Juvenile Justice (Care and Protection of Children) Act, 2000, Commission of Sati Prevention Act, 1987, 2000,
- It is also not eligible if the crime is committed against a woman or child younger than 14 years of age.
- There is no plea dealing for serious crimes such as murder, rape

### **CONCLUSION**

In India, the idea of plea bargaining is not entirely new. It was already accepted by Indians when they received their constitution in 1950. Self-incrimination is prohibited by Article 20(3) of India's constitution. People accuse the breach of said article of plea bargaining. But the Indian court has felt the need for plea bargaining in the Indian legal system with the passing of time given the encumbrance on the courts. It is difficult to embrace it initially when a reform is made, but society needs to evolve, as is our legal system. There are benefits and drawbacks of all, and everything must be examined in order to make a sound conclusion. In any case, opposing anything purely on the basis of its drawbacks will not be justified. In India, the theory of plea bargaining is changing and it is not necessary to presume that it will be flawless. It can only be reinforced by debate, conversations, and speeches.

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