# Scope of outside court settlement mechanisms for criminal offences through Plea bargaining: An analysis

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## Abstract

Plea bargaining is not new term. There is no exact connotation of the term Plea bargaining. “Plea” in law means a proper solicitation made by the detainee or the denounced expressing blame or blamelessness accordingly of charge. On another hand “Bargaining” means negotiating the term and condition of a transaction. When an accused person is ready to negotiate with the court regarding to his sentence and charges in return of his pleading guilty called “Plea Bargaining”. At the point when the blamed individual is prepared to consult with the court in regard to his sentence and charge. This paper will concentrate on idea in of plea-bargaining bartering in Indian legal system alongside, its sort and reason of its non-application in India and analysis of court through investigation of milestone judgements.

I have attempted to concentrate on the territory of utilization of plea bargaining and its non- application in Indian framework.Regardless of whether this strategy is valuable to control issue of pendency of cases by settling cases. The paper will assist per user with understanding the idea of plea bargaining and situation in our country.

Whether this method is useful to tackle the issue of pendency of cases by resolving cases as early as possible by accused pleading guilty at the early stage of the trail. The paper will help the reader to understand idea of plea bargaining and its situation in India. Its usefulness in our system and how it helped the judges to diminish the weight of courts.

Key Words: Plea Bargaing, Outside Court Settlement, Criminal Charges, Compoundable Offences, etc

## Introduction:

*“Justice delayed is justice denied”* is very well-known concept of our legal framework.

And today our judicial system is confronting the same problem of prolong delay of criminal cases. And it has become challenge for the system. Huge backlog of cases is now shaking the trust of the public in

our judiciary and justice system and at the same time enumerable hearing of cases a case eroding the quality of social justice.

To counter the delay of cases and heavy workload of cases some western countries mainly United State of America have adopted the concept of pre- trail bargaining and settlement and they have given the name of "Plea Bargaining" to this practice. It is viewed as progressively reasonable and proficient for the general public.

We can trace the foundation of this practice in the U.S.A's legal system long time ago but without any legal recognition. Pleas bargaining received judicial recognition due to its popularity in U.S because it has tendency to prevent the possibility of abuse to the victim and the accused.[3]

Numerous decades prior with the acquaintance of section 265A to 265L by the criminal law (Amendment) Act, 2005 in the code of Criminal procedure code 1973 and found its place in Indian judicial system. Nonetheless, this amendment gave the new plan to fast removal of the cases and to expel the pendency of cases.

Concept of plea bargaining: As name recommends 'plea bargaining' signifies dynamic arrangements in which detainee admit his blame in court in to himself from severe punishment that would have been given for such an offence. It shall occur beforethe trail but at any time before judgement is passed by the court.

As per definition given in the Black law's dictionary," in this method accused and the prosecutor try to work out a common satisfactory disposition of a criminal case but only after the approval of the court. It involves the accused pleading guilty to a minor offence or to any one or some of the counts of multi count indictment in return for a lighter sentence than that possible for the graver charge"

It is considered as an agreement between the accused and the prosecution, where the accused will agree to plead guilty to a charge or allegation framed against him in return he can get certain concession from the prosecution. This practice remained in existence for a long time in America's legal system.[4]

A prosecutor can offer trade- offs, many arrangements like dropping of charges, proceeding with the prosecution of lesser offence etc. And accused would plead guilty by accepting the offers of the prosecution.[5]With this process accused does not need to experience long, tortuous process of the trail. It presents the 'mutual satisfaction' or 'mutual agreement' of the charges of the defence and the prosecution.

In these cases, victim will be clearly treated as witness of the prosecution because a crime is treated as crime against the state also, not only against the person in question. It offers a chance to the victim to actively and effectively to take part in the disposition of the case.

[3]ThomasW.Church,'InDefenceofBargainJustice'13(2)LawandSocietyReview509
[4]Peter Hungerford Welch, criminal litigation and sentencing(4 edn.,CavendishPublicationLtd.;London1994).
[5]Anonymous, 'PleaBargaining and transformation of theCriminal process'90 (3)HarvardLawReview564.

Foundation of the Plea bargaining: U.S.A has a long history of practice of 'Plea Bargaining' where various cases have been discussed and interpreted.

The main point of this method is to reduce the remaining burden of the courts and expedientremoval of cases and United States of America succeeded in this task. Presently most of the cases are settled by application of this method rather than by long trail.

In Brandy V. U.S[6] the Supreme Court of U.S.A upheld the constitutional validity and importance of this concept in the disposal of criminal cases and again in Sentobello V. New York[7] the Court officially acknowledged that the concept plea bargaining is important for the administration of justice and it should be appropriately managed and encouraged.

Countries like Victoria, Wales, Australia they are allowing Plea Bargaining only to that extent where defence and prosecutor may agree on the point that defendant would plead for few of the charges and reminder shall be drop by the prosecutor.

## Types of Plea bargaining:

- ***Charge bargaining:***In this now defendant can plead guilty to remove his charges. Pleading of defendant should be related to essentially mentioned charges. This may give the accused a chance to make arrangements and to reduce the number of allegations framed against him.
- ***Sentence bargaining:*** - In this an accused will be informed in beforehand about how much punishment he will get on pleading guilty. In sentence bargaining a prosecutor may get conviction in the less- serious charge, at the same time giving guarantee to the accused for an adequate punishment.
- ***Fact bargaining***: In fact bargaining negotiations are involved on admission to certain facts as an end result of a deal in which an contract not to introduce certain facts.

## Position of plea bargaining in India:

After plea bargaining got great recognition in the U.S.A many attempts have been made by India to accept the same notion. In Law Commission's the 154th report first recommendation for the introduction of plea bargaining was made so this method could be used for speedy disposal of the cases. Malimath committee also supported this recommendation. This committee was headed by former chief justice of the Karnataka and Kerala High Courts and the few members of National Human Rights Commission of India and its report was submitted by V.S Malimath submitted its government of India, March 2003 with a recommendation in favour of Plea Bargaining in India. Therefore on December 13, 2005 the criminal (Amendment) Bill, 2005 was passed by Upper House(Raya Sabha) after that by the Lok Sabah on December 22, 2005.

[6]397 U.S.742(1970)
[7]404U.S.257(1971)

Position of Plea bargaining Before Amendment 2005:- Before the amendment the Supreme Court was of the view that plea bargaining will not be useful in practice and it is not that much relevant for our system.

## Judicial Approaches

In the case of *M.L. Ram Chandra Daga V. State of Maharashtra*[8] the apex Court said allowing a transaction of justice by the High Court was against the procedure where complainant is allowed to receive money from the accused to make it one of the grounds of leniency in sentencing.

The verdict of the court made it very clear that "a crime" is the crime against society and authorities should not negotiate with the criminal. Same principle was supported in the in *M.M. Loya V. State of Maharashtra*[9] in which court mentions that this procedure of plea bargaining is making everyone happy except the society.

*Kachhia Patel Shanti lal Koderlal V. State of Gujrat*[10] very strong opinion was recorded by the apex court related to plea bargaining where the apex court observed this practice is illegal, and against the constitutional provisions, and can increase corruption.

In *Thippa swamy V. State of Karanataka*[11] some observation was made by Bhagwati J. that even if allowing a accused to plead guilty with promise of moderate sentence was recognised in India, but enchantment of sentence in revision or appeal is clearly against the provision of the Constitution that "no person shall be deprived of his life and personal liberty except according to the procedure established by law or by due process of law."(Article 21).

Supreme Court again in the case of *State of U.P V. Chandrika*[12] reiterating that method of plea bargaining is against policies of our nation, and the only mechanism for settlement of dispute is provided in section 320 of CrPc i.e compoundable offence.

Position after amendment 2005:- After the argumentative stand taken by the apex court related to plea bargaining and by introduction of amendment bill 2005, it was finally introduced in India by insertion of section 265A to Section 265L in CrPc. by adding up a new chapter XXIA as "plea bargaining". This chapter described the process related to plea bargaining which is to be followed by courts in India.

Main problem of huge backlog of cases is very hard to overlook that is why many reforms have been suggested and implemented to tackle this problem. The Law Commission of India one of the leading organization recommending the improvements in our legal system also stressed upon the inclusion of plea bargaining. In the first suggestion was made in 142nd report in 1991 in which they have stated that

[8]AIR1968 SC1267
[9]AIR1976 SC1929
[10]AIR1980SC154.
[11]AIR1983 SC247
[12]AIR2000 SC164

this concept is not against our Constitution of India. The same observations made in 154th report 1996 and 177th law commission report 2001 due to make thus practice more efficient.

The change in attitude can be seen in the *State of Gujrat V. N.H Thakor*[13] in this case division bench of Gujrat High Court stated that law shouldbe stable not standstill. Purpose of law is to give easy, quick justice by resolving of disputes.

*Anupam Sharma v. NCT of Delhi*[14] In this case, the Delhi High Court referred the plea negotiation to mediation and advocated its application in order to alleviate explosion in dockets. The Court noted the following:*"Restorative justice' may be used as a synonym for mediation. The object and nature of restorative justice aims at restoring the interest of the victim. Involvement of the victim in the settlement process is welcome in the process of restorative justice. It is a process of voluntary negotiation and concentration (sick consultation), directly or indirectly between the offender and the victim."*

*Gurcharan Singh v. State through the MCD*[15] *The Delhi High Court has commended the introduction of plea bargaining into the criminal justice system in this case, noticing the deteriorating effect of a protracted and delayed trial. The Court noted the following:*

"However, the Court, in my opinion cannot lose sight of the debilitating effect of a prolonged and delayed trial, upon the petitioner. This aspect has to assume some importance, because the offender, the nature of the offence, and the propensity to crime, in such cases, are relevant factors to be kept in mind, while engaging in the sentencing process. Modern trends in penology point to adoption of a reformative oriented approach by the Court; in India, circumstantial flexibility has been injected by introduction of Plea bargaining in respect of lesser offences."

*Rajinder Kumar Sharma v. The State*[16]*The Delhi High Court analysed the underlying theme of introducing the concept of plea negotiations in Indian criminal delivery systems. First unintentional and unlucky offence which attracts provisions from a premeditated and coolly planned offence that attracts less than seven years in prison, it was observed:*

"Recently, the legislature has introduced plea bargaining under law so as to benefit such accused persons who repent upon their criminal act and are preparedto suffer some punishment for the act. The purpose of plea bargaining is also to see that the criminals who admit their guilt and repent upon, a lenient view should be taken while awarding punishment to them. But the legislature has not thought it proper to give right to the individual to compound any offence and every offence in which loss to individual is also involved. When a person goes to the extent of opening fake account, putting fake signatures and getting cheque encased on the basis of forged signatures, this shows his criminal bent of

[13] 2005 CrLJ2957
[14] Crl. M.C. Nos. 3920/2003 and 2111/2004, (Delhi)
[15] Crl. Rev. (P) 877/2005 (Delhi)
[16] Crl.M.C. 1216-17 of 2006 (Delhi)

mind. If he is really repent full, he must undergo some punishment for his crime committed and the sufferance which he made to the society."

*Govt of NCT of Delhi v. Robin Singh*[17]*The Delhi High Court noted its optimism about the future of Plea bargaining observing:"Today, with plea bargaining being a well-recognized facet of the administration of criminal law and a part of criminal jurisprudence in India, we do perceive a large ' number of cases involving thousands and thousands throughout the country, appearing before the Summary Courts and paying small amounts of fine,more often than not, as a measure of plea bargaining. Foremost would be amongst them petty crimes committed mostly by the young and/or the inexperienced. Some may even undergo a petty sentence of imprisonment of a week or ten days."*

*Pardeep Gupta v. State*[18]The accused was charged in this case with offences pursuant to Articles 420/468/471/34 of the Indian Penal Code. The trial court rejected his plea bargaining application on the ground that the defendant was an offence pursuant to Section 120 B of the IPC and his role was no less than the other co-accused. The high court of Delhi ruled exceptionally that none of the offences had attracted more than seven years of punishment and therefore were subject to Chapter XXI A of Cr. P.C. and set aside the judgement of the Court of Justice and ordered it to consider the request for plea negotiations from the accused.

*Sakti Pado Gope v. The State of Jharkhand*[19]

In this case the Jharkhand High Court has set an example by reducing the sentence applying provisions of plea bargaining to offence under section 148 of the IPC.

*State of Gujarat v. Jayantibhai Chaturbhai Patel*[20],When the accused were charged with crimes pursuant to Section 3, 5 and 7 of the Immoral Traffic (Prevention) Act of the United Kingdom, 1956, and convictions were issued on the same day and they pleaded guilty to their Vakalatnama on the same date, recorded the conviction on the same date and imposed a small fine and a ten-day jail term on that same date; the High Court observed

*Union of India (UOI) through Assistant Director, Directorate of Revenue Intelligence Delhi Zonal Unit v.Mr. Anil Chanana S/o late Mr. K.C. Chanana and Chief Commissioner of Customs (DZ)*[21]

*This case notes that in view of the declaration of objects and grounds for the introduction of "plea bargaining," the Customs (compounding of offences) rule for 2005 appears to have been framed, with settlement rules designed to ensure that prolonged proceedings before the authorities or courts are avoided by recourse to settlement of cases. In the opinion of the High Court in Delhi, the interpretation of these settlement rules should be interpreted in a liberal manner and an appeal should not be made as a matter or an exemption to a decision of the Composing Authority.*

[17] W.P. (C) No. 2068/2010 (Delhi)
[18] Bail Appln. No. 1298/2007 (Delhi)
[19] 2008 (2) AIR Jhar R 155 : 2008 Cri LJ (NOC) 816 (Jhar.)
[20] 2010 Cri LJ 836 (Guj)
[21] W P (Civil) No. 12912/2006 (Delhi)

Procedure of plea bargaining in India chapter XXIA: The procedure of for plea bargaining is mentioned in chapter XXIA consisting of section 265A to 265L.

- Accused can file application for the initiations of proceedings under section 265-B. The application shall include brief description of the case and it should be accompanied by sworn affidavit.
- After receiving application the court shall issue a notice to the prosecutor and litigant. All the proceedings of the court should be in camera proceedings.
- It the court found it satisfactory it may provide a time to the parties for mutually settlement of the case.
- Guidelines for working out mutual disposition of the case are mentioned in Section 265C provides. It also includes notice to all parties, including and ensuring the whole proceedings.
- After mutual disposition of case a report should send to the court under section 265D and case will be disposed of by the court as per the section 265E. After that compensation will be given by the court to the complainant.
- After that accused will be release on probation by the court under may provide the benefit according to the section 265E (a).
- Half punishment will be given to the accused under section-265E(c) to if the case does not come under section 265E (a) and if this section does not mention the about punishment.
- Court can give one fourth punishment to the accused if the crime committed by the accused does not come under section 265E(b) or 265E (d).
- Court will give its judgement in open court. And accused has the remedy of SLP (specialleave petition Article 136) and writ (Article 226 and 227) in case of appeal. The section 428 of CrPC also additionally pertinent to the plea-bargaining proceedings by section 265I.

Non-Application of plea bargaining and its safeguards: In India plea bargaining cannot be claimed by the habitual offenders and accused cannot get the benefits of plea bargaining if he involves in socio economic offences or against children under the age of fourteen years and women. These conditions have been mentioned in section 265- A (b) CrPC.

The above-mentioned conditions are like safeguards which are added to exclude some of heinous crimes like murder, rape etc. And another safeguard is added so this process is not abused by the prosecutor to get the conviction of the accused. Plea bargaining is not permissible in the following Acts:

- Sati (prevention) Act, 1987.
- Dowry Prohibition Act, 1961.
- The Immoral Traffic (Prevention) Act, 1956.
- The Indecent Representation of Women (prohibition) Act, 1986.
- The Infant milk Substitutes, feeding bottles and Infant foods (Regulations of production, supply and distribution) Act, 1992.

- Protection of women from domestic violence Act, 2005.
- The Army Act, 1950
- The Navy Act, 1957.
- The Air Force Act, 1950
- The Scheduled caste and scheduled tribe and (Prevention of Atrocities) Act, 1989.
- Juvenile justice (care and protection of children) Act, 2000.

## Conclusion

There is no doubt that plea bargaining helps in the cutback of backlog of cases. And it also helps giving speedy trail to the prisoner without prejudice to the provisions of Constitution of India. We can say that people's faith again developing in our legal system because of the plea bargaining.

It also took away the uncertainty of a trail of the cases. It will reduce the congestion. It might act as a drawback for the honest litigant (defendant) who decided to plead guilty for a lesser allegation so as to stay away from hazard that he would be seen as blameworthy at trail.

In our legislature the idea of plea bargaining has been adopted with some modifications and reservations. And it also faced much criticism as defendant is losing its constitutional right on pleading guilty such as right to trail, appeal, right to equality etc. Plea bargaining also effects the sentencing policy as punishment is reduce by plea bargaining.

However, it is unquestionably is a new concept which helps in lessening the burden of the court by speedy disposal of the case. But it only depends on the willingness of the defendant whether he want to pleads guilty or not.

But it surely considered as beginning of new era and it will help the courts to reduce the workload. If the people are aware about the benefits of plea bargaining mechanisms for the settlement of small criminal offences , it will definitely get the place as desired under the different mechanisms of outside court settlement.