
Plea Bargaining in India and its scope in India

Maj Dr Anil Balhera

Asst Professor, Dept of Laws, BPS Women University Khanpur-Kalan, Sonapat, Haryana)

Introduction

A new chapter XXI A on 'Plea Bargaining' has been introduced in the Criminal Procedure Code. It was introduced through the Criminal Law (Amendment) Act, 2005, which was passed by parliament in its winter session.

It is derived from the principle of 'Nalo Contendere' which literary means 'I do not wish to contend'. Earlier there was no such provision in the laws, but after this amendment the face of the Indian Criminal Justice System has changed.

Some of the salient features of Plea Bargaining are as follows:

1. Application of offences for which punishment is up to a period of 7 years.
2. Not applicable to socio-economic offences and offences committed against a woman or a child below the age of 14 years.
3. After passing the order no appeal shall lie to the (any) court against it.

'Plea Bargaining' can be defined as a pre-trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution. The Wikipedia Encyclopedia defines it as to make an agreement in which the defendant pleads guilty to a lesser charge and the prosecution in return drops more serious charges. It is a deal offered by the

prosecutor to induce the defendant to plead guilty.

Kinds of Plea Bargaining

(a) Charge Bargaining

The accused pleads guilty in exchange of the promise made by prosecutors to reduce or dismiss some of the charges brought against him.

(b) Sentence Bargaining

Accused pleads guilty in exchange of a promise by the prosecutor to recommend a lighter or alternative sentence.

(c) Fact Bargaining

The least used negotiations involves admission to certain facts in return for an agreement not to introduce certain other facts into evidence.

Objects of Plea Bargaining are:

1. To reduce the risk of undesirable orders for either sides.
2. To reduce the burden of courts.

History

It would be wrong to assume that the concept of 'Plea Bargaining' found favor of courts only in the recent past. It experienced a sharp rise in the 1920s in America as a Criminal Trial in U.S. provide to be most expensive and time consuming in the world. In case of Brady v. U.S. 1970 the constitutional validity of Plea Bargaining

was established, although the Supreme Court warned that the plea incentives which were sufficiently large or coercive as to over-rule defendants abilities to act freely, or used in a manner giving rise to a significant number of innocent people pleading guilty, might be prohibited or lead to concerns over constitutionality.

In the landmark judgment *Bordenkircher v. Hayes* 1978 the U.S. Supreme Court held that the accused is free to accept or reject the prosecutions offer. The apex court however upheld the L.I. of the accused because the rejected 'Plea Guilty' offer of 5 years imprisonment.

In countries such as England and Wales, Victoria, Australia, 'Plea Bargaining' is allowed only to the extent that the prosecutor and defense can agree that the defendant will plead to some charges and the prosecutors shall drop the remainder.

Plea Bargaining in US:

Plea bargaining plays an important role in the criminal justice system of United States; the vast majority (roughly 90%) of criminal cases are settled by plea bargaining. The Sixth Amendment of US Constitution added the principle of fair trial. But it did not provide the practice of plea bargaining. However, the US judiciary has upheld the constitutionality of plea bargaining. Plea bargaining with the pace of time became a general practice and most of the criminal cases were solved by this. In 1970, the constitutional validity of plea bargaining was upheld in *Brady v. United States*, where it was held that it was not wrong to give a benefit to a defendant who in return extends a benefit a state. In this case some

conditions were implied on the accused who will plead guilty. After a year, in *Santobello v. New York* the US Supreme Court officially accepted that plea bargaining was necessary for the administration of criminal justice. The one of most important case of acceptance of plea bargaining is the case of assassination of Martin Luther King Jr. In the year of 1969 accused James Earl Ray pleads guilty to the murder of Martin Luther King Jr. to avoid death penalty. In today's era the concept of Plea bargaining has an important part in the criminal justice system of US; as the majority (about 90%) of criminal cases are settled by Plea bargaining.

As held in "*Fox v. Schedit* and in *State exrel Clark v Adams*", the plea of "Nolo Contendere" sometime called also "Plea of Nolvut" means, "I do not wish to contend", and it does not have origin in early English Common Law. This doctrine is expressed as an implied confession.

Plea Bargaining in India:

It is the result of modern judicial thinking the concept of plea bargaining was not recognized in jurisprudence in India. However, accused used to plead guilty only for petty offences and pay small fine whereupon the case is closed. The Law Commission of India advocated the introduction of Plea Bargaining in the 142nd(1991), 154th(1996) and 177th(2001) reports. It was recommended as the alternate method to deal with huge errors of criminal cases by 154threport. This recommendation found a support in Malimath Committee Report citing examples of the concepts success in jurisdiction such as the United

States of America. The NDA government had formed a committee headed former chief justice of Karnataka and Kerala High Court. Justice V.S. Malimath to come up with some suggestions to tackle the ever-growing number of criminal cases. So the concept was recommended, the government was hesitant to take a policy decision on the introduction of the plea bargaining in the Criminal Justice System due to opposition from the legal experts, judiciary, etc.

The Plea of “Nolo Contendere”, barring some of cases, has been recognized in the administration of criminal justice system of our country, and has been resulted into the substantial reduction in the workload of the criminal justice system. Such a Plea, it has been stated, it has been stated, has a success of practical aspect over the technical one.

Hon’ble Supreme Court in the case of Kachhia Patel ShantilalKoderlal v. State of Gujarat and Anr. 1980 strongly disapproved the practice of plea bargaining. The apex court held it unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of Justice. More recently in State of U.P. v. Chandrika, the apex court held that it is a settled law that on the basis of plea bargaining court can not dispose the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. It also help that mere acceptance of guilt does not result in reduction of sentence. Despite this, the government passed the Bill and finally section-265A to section -265L were added to Criminal Procedure Code.

Advantages of Plea bargaining:

Plea bargaining has been defended as a voluntary exchange that leaves both the parties better off, in this defendants have many rights such as procedural and substantive rights, but by pleading guilty, defendants “sell” these rights to the prosecutors side. For a defendant who believes that conviction is almost certain, a discount to the sentence is more useful than as unlikely chance of acquittal. For the prosecutor, it means that a conviction is guaranteed. by allowing a quicker trial, it saves money and resources for the courts and the prosecutors. It also means that victims and witnesses do not have to testify at the trial, which in some cases can be traumatic.

Disadvantages of Plea bargaining:

It takes away the right to have a trial by jury, every person has a constitutional right to have a trial by jury (In the United States). Offering Plea bargaining is just like to avoid this trial and it’s a coercive attempt to wave those rights. As there is 90% cases go to a Plea bargaining instead of trial and this concept leads to lackluster investigation practices. Even if the person agrees to plead guilty, he has a criminal record and may have to face bad remarks from the people.

Relevant provisions regarding Plea Bargaining in Cr.P.C , 1973

Section 265A: who can file

- (a) Police report forwarded by Station House Officer (SHO) alleging commission of offence by the accused.
- (b) Magistrate has taken cognizance of an offence on complaint.

Procedure for Plea Bargaining

Section 265B (1)

Accused files application for plea bargaining in court where offence is pending for trial.

Section 265B (2)

Application shall contain brief description of case and shall be accompanied by affidavit of accused.

Affidavit: stating voluntarily preferred the application.

Not previously convicted in same offence.

Section 265B (3)

The court shall issue notice to public prosecutor/ complainant and accused and accused to appear on fixed date of case.

Section 265B (4)

Examine the accused in camera (whether voluntarily or not)

(a) If voluntarily filed provide time for working out a Mutual Satisfactory Disposition (include compensation and expenses give to victim).

(b) Involuntarily/previously convicted shall proceed for trial of case.

Section 265C

(a) If instituted on police report, issue notice to public prosecutor, police officer, accused and victim participate in meeting.

(b) Otherwise, to accused and victim.

Section 265D

If worked out the court shall prepare a report and shall dispose the case, signed by presiding officer and other participated in meeting.

Section 265E

(a) Award compensation to victim and hear the parties on quantum of the punishment.

(b) Releasing of accused on probation of good conduct or after admonition under section 360, or for dealing with the accused under the provision of Probation of Offender Act, 1958.

(c) If minimum punishment has been provided, sentence will be half of minimum punishment.

(d) Not covered by (b) or (c), sentence will be half of punishment provided.

if not worked out the court shall proceed for trial in the case.

Section 265F

The judgment shall be pronounced in open court.

Section 265G

The judgment delivered by the court shall be final and no appeal shall lie against it except the Special Leave Petition under Article 136 and Writ Petition under Article 226/227 of the constitution.

Section 265I

Period of detention undergone by the accused has to be set off against the sentence of imprisonment.

Section 265K

The statements or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of plea bargaining application.

Drawbacks of Plea Bargaining

- (1) Involving the police in plea bargaining process would invite coercion.
- (2) By involving the court in plea bargaining process, the court's impartiality is impugned.
- (3) Involving the victim in plea bargaining process would invite corruption.
- (4) If the plead guilty application of the accused is rejected then the accused would face the great hardship to prove himself innocent.

Conclusion

The introduction of Plea Bargaining is a shortcut in reducing the number of under-trial prisoners and rise the number of convictions, win or without justice. The Plea Bargaining concept no doubt undermines the public's confidence in the Criminal Justice and as a result of this it will lead to the conviction of innocent, inconsistent penalties form similar crimes and lighter penalties for the rich. Plea Bargaining is undoubtedly, disputed concept few people have welcomed it while others have abandoned it. It is true that Plea Bargaining speeds up caseload disposition but it does that in an unconstitutional manner. But perhaps we do not have any other choice but to adopt it.

Bibliography

1. Alschuler, Albert W. (1979). Plea Bargaining and its History. Colum L. Rev. 79. Pp. 1-43. JSTOR 1122051
2. Bordenkircher v. Hayes, 434 US 357, 364; 98 S Ct 663; 54 L Ed 2d 604 (1978)
3. Brady v. United States, 397 U.S. 742 (1970)
4. Grossman, G.M.; Katz, M.L. (1983). "Plea bargaining and social welfare". American Economic Review. 73 (4): 749-757. JSTOR 1816572
5. <http://indiankanoon.odg/doc/1439610/> (Ahmadabad High Court) para 73-78
6. <http://www.commonlii.org/in/journals/NALSARLawRw/2013/7.pdf>
7. <http://www.history.com/this-day-in-history/ray-pleads-guilty-to-kings-assassination>
8. https://en.m.wikipedia.org/wiki/Plea_bargaining_in_the_United_States
9. <http://vittana.org/11-advantages-and-disadvantages-of-plea-bargaining->
10. <https://www.legallyindia.com/home/sp-1692661759-20101225-1638>
11. https://www.google.co.in/amp/www.livemint.com/Politics/otm5XvV7DTZJ9KaKScbJ4H/Why-hasnt-plea-bargaining-taken-off-in-India.html%3ffacet%3damp%26utm_source%3Dgoogleamp%26utm_medium%3Dreferral%26utm_campaign%3Dgoogleamp
12. [Kasambhai v. State of Gujarat AIR 1980 SC 854](#)
13. [Luna, Erik \(Fall 2007\). "Bargaining in the Shadow of the Law- The Relationship between Plea Bargaining and Criminal Code Structure" Marquette Law Review \(91\): 263-294.](#)
14. ["Reduction in Sentence for a Guilty Plea". \(pdf\)](#)
15. Santobello v. New York 404 US 257 (1971)
16. [State exrel Clark v. Adams, 363 US 807](#)



17. [State of Gujarat v. NatwarHarchandijiThakor, 2005 CriLJ 2957](#)
18. [State of Uttar Pradesh v. Chandrika 2000 Cr.L.J 384 \(386\)](#)
19. www.lawyersclub.com/mobile/articles/details.asp?mod_id=4213
20. www.legalserviceinindia.com/articles/plea-bar.html
21. www.manupatrafast.com/articles/Pop0penarticle.aspx?ID=10f20608-cdd3-416d-be42-9e692a5baad6&txtsearch=Subject:%20Criminal
22. www.montaq.com/india/x/273094/trials+appen
23. www.neerajaarora.com/plea-bargaining-a-new-development-in-the-criminal-justice-system/
24. www.rishabhdara.com/sc/view.php?case=125728
25. www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=977
26. <http://www.mondaq.com/india/x/273094/trials+appeals+compensation/Plea+Bar+gaining+An+Overview>