



COMPENDIUM ON PLEA BARGAINING

(A Handbook for Judicial Officers, DLSAs & TLSCs of J&K and Ladakh)

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(A) What is Plea Bargaining?

The term “plea-bargaining” is a derivative of two words namely “plea” and “bargain”. Plea, in criminal law, is a formal response of guilt, or “not guilty” or “no contest” to a criminal charge by an accused to each charge of the commission of a crime¹. The word “bargain” literally means ‘a mutual undertaking, contract or agreement between two parties.’² Reading the two in conjunction, “plea bargain” refers to a practice of negotiating an agreement between a person charged with a criminal offence i.e. the accused with the prosecution whereby he pleads guilty to a lesser offence (in the case of multiple offences) or to one or more of the offences charged in exchange for more lenient sentencing than what is provided in law, favourable recommendations by the prosecution, a specific sentence, or a dismissal of other charges. It primarily involves pre-trial negotiations between the accused and the prosecutor. It may involve bargaining on the charge or the quantum of sentence.

Plea bargaining is essentially derived from the principal of '*Nolo Contendere*' which literary means 'I do not wish to contend'. The concept of plea-bargaining is an alternative remedy to the trial process in Courts for ensuring speedy disposal of cases and to reduce congestion in prisons. It is also known as pre-trial settlement, plea discussions, plea negotiation, resolution discussion, mutually satisfactory disposition etc.



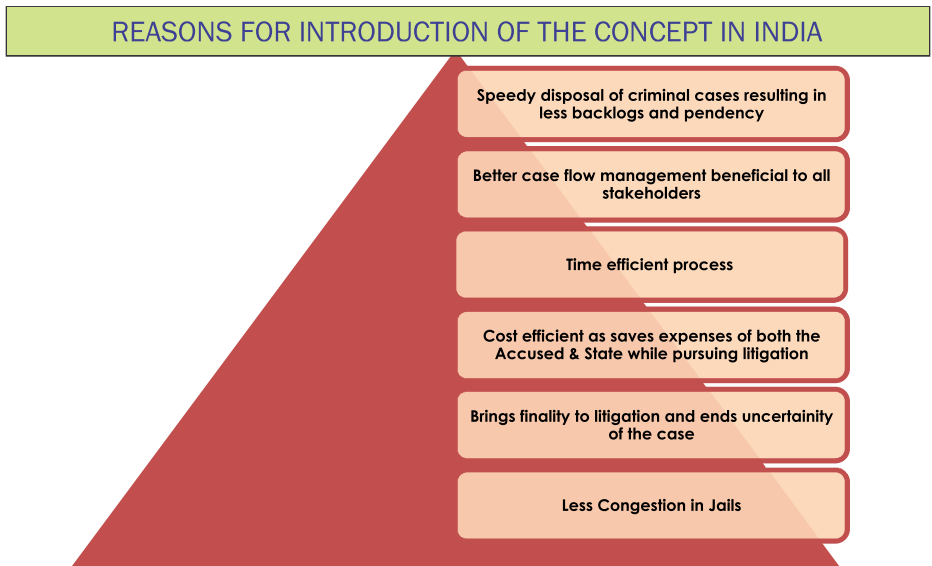
(B) History & Development of Concept of Plea Bargaining

The concept of plea bargaining initially started in USA whereafter it spread to various countries. The concept of plea bargaining in USA was recognized in the 1970s as a formal procedure for the resolution of criminal cases. The concept was given the constitutional validity in the case of *Brady v. United States (1970)*³. Today, plea bargaining is a formidable

1. Ref:Law.com legal dictionary
2. Ref: Black's Law Dictionary
3. 397 U.S. 742(1970)

practice in most criminal cases in USA and a sizeable proportion of criminal convictions come from plea bargain otherwise known as negotiated pleas.

In India, the concept of plea bargaining has been borrowed from the United States of America and was brought about by way of the Criminal Law (Amendment) Act, 2005 which introduced Chapter XXI A in the Code of Criminal Procedure, 1973 enforceable w.e.f 5th July 2006. It was first suggested by the 142nd Report⁴ of the Law Commission of India as an alternative step to tackle huge arrears and lacunas in the Criminal Justice System. Subsequently to deal with huge pendency and backlogs of criminal cases, again the Law Commission in its 154th Report in the year 1996 and 177th Report in the year 2001 recommended the concept of plea bargaining as an alternative method of dispute resolution. The Criminal Law (Amendment) Bill, 2003 introduced certain measures including the concept of plea bargaining for bringing reforms in the criminal justice system. This recommendation of the Law Commission was supported by the report of Committee on Criminal Justice Reforms, under the Chairmanship of Dr. (Justice) V.S. Malimath , which strongly recommended the introduction of system of plea bargaining in criminal justice system to facilitate the quick disposal of criminal cases, thereby reducing burden of Courts.⁵The Committee also pointed out the successful implementation and output yielding results of plea bargaining in US Judiciary to highlight its utility. Finally, this concept was inserted in Code of Criminal Procedure, 1973 starting January 11, 2006, as Chapter XXI-A, containing sections 265 A to 265 L.



4. 142nd Law Commission of India Report, *Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining* (1991), available at <http://lawcommissionofindia.nic.in/101-169/Report142.pdf>

5. Union ministry of home affairs, report of the committee on reforms of criminal justice system 179 (New Delhi, 2003).

(C) RELEVANT PROVISION IN Cr.P.C FOR PLEA BARGAINING

The seed of the process of plea bargaining can be found in Section 206(1) and 206(3) of the Code of Criminal Procedure and Section 208 (1) of the Motor Vehicles Act, 1988. Under these provisions, the accused can plead guilty of petty offences or less grave offences and settle with penalties for small offences to close the cases. More particularly, after the amendment in 2005, whereby Chapter XXI-A was introduced, sections 265-A to 265-L were inserted in the code to give a formal legal sanction to the concept. The provisions are enumerated as under:

- As Per **Section 265-A**, plea bargaining shall be available to the accused who is charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding seven years and against whom either a report has been forwarded by the Officer in charge of the police station under section 173 Cr.P.C or cognizance has been taken by Magistrate of an offence other than offences as above and after examining the complainant and witnesses under section 200 Cr.P.C, process has been issued under section 204 Cr.P.C. It is specifically laid down that plea bargaining shall not be resorted to where the offence affects the socio-economic condition of the country or has been committed against a woman or a child below the age of 14 years.

Further, for the purposes of sub section(1), **Section 265 A (2)** of the Code gives power to the Central Government to notify the offences which shall be the offences affecting the socio economic conditions of the Country. The Central Government issued Notification No. SO 1042 (E) dated 11-7-2006 specifically determining the offences affecting the socio economic condition of the country. The Government Order issued in 2006 explains emphatically that there is no plea bargaining for accused, who are charged with socio economic offences under the enactments such as, Dowry Prohibition Act, 1961, The Commission of Sati Prevention Act, 1987, The Indecent Representation of Women (Prohibition) Act, 1986, The Immoral Traffic (Prevention) Act, 1956, The Protection of Women from Domestic Violence Act, 2005, Provisions of Fruit Products Order, 1955 (issued under the Essential Commodities Act, 1955), Provisions of Meat Food Products Order, 1973 (Issued under the Essential Commodities Act, 1955),The Infant Milk Substitutes, Feeding Bottles and Infants Foods(Regulation of Production, Supply and Distribution) Act, 1992,Offences with respect to animals that find place in Schedule I and Part II of Schedule II as well as offences related to altering of boundaries of protected areas under Wildlife (Protection) Act, 1972, the SC and ST (Prevention of Atrocities) Act,

1989., Offences mentioned in the Protection of Civil Rights Act, 1955, Offences listed in Sections 23 to 28 of The Juvenile Justice (Care and Protection of Children) Act, 2000, The Army Act, 1950, The Air Force Act, 1950, The Navy Act, 1957, The Explosives Act, 1884, Offences specified in section 11 to 18 of Cable Televisions Networks (Regulations) Act.1995 and Cinematograph Act, 1952.

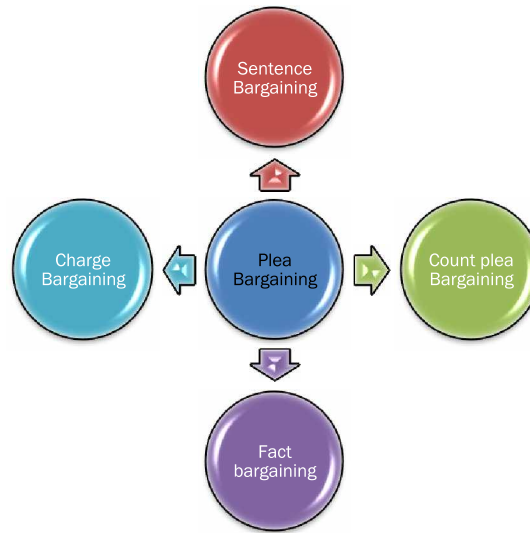
- **Section 265-B** contemplates filing of an application for plea bargaining by the accused which shall contain a brief detail about the case relating to which such application is filed, including the offences to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred the application, explaining the nature and extent of the punishment provided under the law for the offence, the plea that he has not previously been convicted by a Court in a case in which he had been charged with the same offence. The Court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the Court shall examine the accused in-camera wherein the other party in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.
- **Section 265-C** prescribes the procedure to be followed by the Court in working out a mutually satisfactory disposition. In a case instituted on a police report, the Court shall issue notice to the public prosecutor concerned, investigating officer of the case, and the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue notice to the accused and the victim of the case.
- **Section 265-D** deals with the preparation of the report by the Court as to the arrival of a mutually satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of Criminal Procedure Code from the stage at which the application under sub-section (1) of section 265-B has been filed in such case.
- **Section 265-E** prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under Section 265 D, by preparing a report signed by the presiding officer of the Court and

parties in the meeting, the Court has to hear the parties on the quantum of the punishment or entitlement of the accused of being released on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Criminal Procedure Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, by passing the sentence. While punishing the accused, the Court at its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence.

- **Section 265-F** deals with the pronouncement of Judgment in terms of mutually satisfactory disposition.
- **Section 265-G** says that no appeal shall lie against such judgment.
- **Section 265-H** deals with the powers of the Court in plea bargaining. A Court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of trial of offences and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.
- **Section 265-I** specifies that Section 428 of Cr.P.C i.e. period of detention to be set off against the sentence of imprisonment, is applicable to the sentence awarded on plea bargaining.
- **Section 265-J** talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.
- **Section 265-K** specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter.
- **Section 265-L** excludes the applicability of the Chapter in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

D. TYPES OF PLEA BARGAINING

Plea Bargaining can be divided into four types- (1) Charge Bargaining; (2) Sentence Bargaining; (3) Count plea Bargaining and (4) Fact bargaining. Each type provides sentence reduction, but differs in the ways of achieving those reductions.



Briefly, they are explained as under:

1. **Charge Plea Bargaining**: This is a very popular type of plea bargaining. In this accused pleads guilty for a lesser charge on the condition that rigorous charges should be removed. The accused pleads guilty to reduced charges.

Example: A, is charged with theft but pleads guilty to trespassing and the prosecution dismisses the burglary charge.

2. **Sentence Plea bargaining**: In this accused pleads guilty on the condition of lighter punishment than the prescribed statutory punishment. It involves assurance of lighter or alternative sentences in return for accused's pleading guilty

Example: In a less serious type offense, a guilty plea can be traded for a sentence of "time served."

3. **Count Plea Bargaining**: Many consider count bargaining to fall under charge bargaining. In fact, it is similar to Charge Bargaining. Here, the accused pleads to only one or more of the original charges, and the prosecution drops the rest. It is different from Charge bargaining on the count that in this accused pleads guilty to one charge among multiple charges but in Charge bargaining defendant pleads guilty for other new charges.

Example: The prosecution charges "A" with both robbery and simple assault. The parties agree that "A" will plead to the charge of assault, and that the prosecution will dismiss the robbery charge.

4. **Facts Bargaining**: In this type prosecutor agrees to present less aggravated facts than

original before the Court. It occurs when prosecutor and accused bargain over what version of events should be stipulated to by the parties and presented to the Court as what happened.

Example: It is particularly important for drug-related offences as the amount of drugs carried by the accused can change the sentence drastically. For example, a drug offence may carry a mandatory minimum sentence if the offender had a prior drug offence history, possessed a certain amount of drugs or played a supervisory role in a drug conspiracy. The prosecutor may agree to stipulate that there was no such prior drug offence history, that the offense is less than the threshold amount of drugs, or that the offender played no such supervisory role in exchange for a guilty plea.

(E) PROCEDURE TO BE FOLLOWED IN PLEA BARGAINING CASES **(Section 265-A to 265-L of Cr. P. C.)**

Plea-bargaining can take effect only when the consent of all three parties, that is, victim, prosecutor, and accused has been obtained.

1) **APPLICATION FOR PLEA BARGAINING:** Application for plea bargaining can be filed in two circumstances.

- ***Filing of charge sheet :-***

Where the Officer-in-charge of the police station forwards the report under Section 173, Cr.P.C. against the accused alleging therein commission of an offence by him for which punishment of imprisonment for term not exceeding 7 years is provided by the law.

- ***Cognizance of offence and issuance of process :-***

Where the Magistrate has taken cognizance of an offence on complaint for which punishment of imprisonment for a term not exceeding 7 years is provided by the law and after examining the complainant and witnesses under Section 200 Cr.P.C, process has been issued under Section 204 Cr. P.C. against the accused.

2) **WHO CAN FILE APPLICATION ?**

Any accused person above the age of 18 years and against whom a trial is pending, can file an application for plea bargaining.

But, there are some exceptions to this general rule.

- The offence against the accused should carry a maximum sentence of less than 7 years.
- The offence should not have been committed by the accused against a woman or a child below the age of 14 years.
- The accused should not have been covered under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- The accused should not have earlier been convicted for the same offence.
- The offence should not affect the socio-economic condition of the country.

3) **STEP WISE PROCEDURE**

STEP 1: Application for Plea Bargaining

- An application for plea bargaining must be filed in the Court where such offence is pending for trial.
- It must contain a brief description of the case including the offence to which the case relates.
- It must be accompanied by an affidavit of the accused stating therein that he has voluntarily preferred Plea Bargain in his case after understanding the nature and extent of punishment provided by law for the offence and that he has not previously been convicted by a Court for the same offence.

STEP 2: Procedure after application is presented before Court

- The Court will issue notice to the Public Prosecutor or the Complainant and to the accused for appearance on the date fixed for the case.
- The Court will examine the accused in camera to satisfy itself that the accused has filed the application voluntarily and the other party in the case shall not be present.
- If the Court is satisfied that the application was filed involuntarily or the accused was previously convicted by a Court for the same offence, it shall proceed further with the case according to the law from the stage of filing of the application.

STEP 3: Procedure for negotiation and mutually satisfactory disposition

- Where the Court is satisfied that the application was filed by the accused voluntarily, it will provide time to the Public Prosecutor or the complainant and the accused to work out a mutually satisfactory disposition of the case and fix the date for further hearing of the case. Mutually satisfactory disposition may include compensation to the victim and other expenses incurred in connection with the case.
- In a police case, the Court will issue notice to the Public Prosecutor, Investigating Officer, the accused and the victim of the case for participation in the meeting to work out a satisfactory disposition of the case. In a case instituted on a police report, the accused can participate in such meeting with his pleader/Advocate.
- In a complaint case, the Court will issue notice to the accused and the victim of the case for participation in the meeting to work out a satisfactory disposition of the case. In a case instituted on a complaint, the accused or the victim can participate in such meeting with his pleader/Advocate.

STEP 4: Procedure after stage of opportunity of settlement

- If in a situation, where the mutual acceptable settlement of the case is reached between the parties participating in the meeting, the Court will prepare a report of such disposition and it will be signed by the Presiding Officer of the Court and the participating parties.
- If mutually satisfactory disposition could not be worked out, the Court will record its observation and proceed further with the case from the stage of filing of the application.

STEP 5: Duty of the Court through the entire procedure

- To ensure that the accused has preferred Plea Bargaining voluntarily.
- To examine the accused in camera where the other party shall not be present.
- To ensure that the accused has filed the application for Plea Bargaining after understanding the nature and extent of punishment provided by law for the offence.
- To ensure that the entire process of working out a satisfactory disposition of the case is voluntary and to immediately resume the trial if no mutually satisfactory disposition could be worked out between the parties.

STEP 6: Award of compensation and quantum of punishment

- The Court will award compensation to the victim in accordance with the disposition and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360, Cr.P.C. or dealing with the accused under the provisions of the Probation of Offenders Act, 1958.
- Where Section 360 Cr.P.C. or the Probation of Offenders Act is attracted, the Court may release the accused on probation of good conduct or after admonition under Section 360 Cr.P.C. or the Probation of Offenders Act, 1958.
- Where minimum punishment has been prescribed by law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment.
- In any other case, it may sentence the accused to one-fourth of the punishment prescribed for such offence.

STEP 7: Pronouncement and finality of the judgement

- The Court will deliver the judgement in the open Court and it shall be signed by the Presiding Officer of the Court.
- The Judgement will be final and no appeal will lie against it except the writ petition under Articles 226 and 227 of the Constitution of India and Special Leave Petition under Article 136 of the Constitution of India against the judgement.
- The period of detention undergone by the accused will be set off against the sentence of imprisonment passed by the Court since the provision of Section 428 Cr.P.C. is applicable to the Plea Bargaining.
- The statements given or facts stated by the accused cannot be used for any other purpose except for the purpose of plea bargaining.



(4) PROVISIONS TO REMEMBER

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| <p>When the Court may release after due admonition under Section 3 of the Probation of Offenders Act, 1958.</p> | <p>When the Court may release on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958</p> | <p>Restriction on imprisonment of offenders under twenty-one years of age under Section 6 of Probation of Offenders Act, 1958</p> |
| <ul style="list-style-type: none"> ● When any person is convicted for an offence punishable under section 379 or 380 or 381 or 404 or 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine or both under the Indian Penal Code or any other law. ● No previous conviction is proved against the offender. ● Circumstances of the case including nature of the offence, character of the offender are relevant considerations for releasing the offender after due admonition. | <ul style="list-style-type: none"> ● When any person is convicted for an offence not punishable with death or imprisonment for life. ● Circumstances of the case including nature of the offence, character of the offender are relevant considerations. ● The Court shall take into consideration the report of the Probation Officer before directing the release of the offender on Probation of good conduct. ● The Court may direct the offender to remain under the supervision of the Probation Officer or impose conditions | <ul style="list-style-type: none"> ● When any person under 21 years of age is convicted for an offence punishable with imprisonment other than imprisonment for life, the Court shall not sentence the offender to imprisonment unless it is satisfied that it is not desirable to deal with the offender under section 3 or section 4 of the Act. ● Circumstances of the case, nature of the offence and character of the offender are relevant considerations. ● The Court shall record its reasons for |

| | | |
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| | <p>for preventing the commission of other offences or repetition of the offence by the offender.</p> | <p>passing any sentence of imprisonment.</p> <ul style="list-style-type: none"> ● The Court shall call a report from the Probation Officer and consider the information regarding the character, physical and mental condition of the offender |
|--|--|---|

(5) WHEN IS PLEA BARGAINING NOT PERMISSIBLE

Plea Bargaining is not permissible under following circumstances

- Age of offender is below 18 years of age.
- Accused is previous convict for the same kind of offence.
- Offence for which person is accused affects socio-economic conditions of country.
- Offence is committed against woman or child below 14 years of age.
- Offence comes in category of serious crime which is punishable by death penalty, life imprisonment, or imprisonment exceeding seven years.
- Application for plea bargaining moved by accused is not voluntary.
- Parties participating in meeting for working out mutual satisfactory disposition failed to make such disposition.

(F) JUDICIAL PRONOUNCEMENTS ON PLEA-BARGAINING

Whereas, the concept of Plea Bargain was finding acceptance and accreditation in the judicial pronouncements, the concept was initially criticised on the question of morality and ethics in our country and the judicial response was also not favourable in the face of

circumstances prevailing in India. Hon'ble Apex Court in the case of **"Murlidhar Meghraj Loya v. State of Maharashtra"**,⁶ observed as follows:

"In civil cases we find compromises actually encouraged as a more satisfactory method of settling 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. The State can never compromise. It must enforce the law. Therefore open methods of compromise are impossible."

In **"Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr"**⁷, Apex Court strongly disapproved the practice of plea bargain again. It observed that practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fountain of justice. In **"Kasambhai v. State of Gujarat"**⁸, Apex Court expressed an apprehension of likely misuse.

In yet another case **"Kripal Singh v. State of Haryana"**⁹, it was observed that neither the Trial Court nor the High Court has jurisdiction to bypass the minimum sentence prescribed by Law on the premise that a plea bargain was adopted by the accused.

In **"State of Uttar Pradesh v. Chandrika"**¹⁰, 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.

Note: It is pertinent to mention here in this context that all these observations were made before the provision for plea bargaining was accorded a place in the Criminal Procedure Code and were made in context of deprecating the American practice being adopted in India as it is, in the absence of any "procedure established by law" to sanction plea bargaining.

6. AIR 1976 SC 21
7. 1980 CriLJ553 17
8. AIR 1980 SC 854
9. 1999Cri.L.J.503 1(SC)
10. 2000 Cri.L.J. 384 (386)

The perception was modified in the case of: "**State of Gujarat v. Natwar Harchandji Thakor**" ¹¹ where the High Court of Gujarat while dilating on the dynamic concept of plea bargaining duly acknowledged its importance as need of the hour and observed

“ the very object of 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 disposal 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 and redressal and it shall add a new dimension in the realm of judicial reforms.”

The High Court also brought out distinction between plea of guilty and plea bargaining observing that "plea bargaining" is not permissible, but at the same time, it cannot be overlooked that raising of "plea of guilty", at the appropriate stage, is provided in the statutory procedure.

From 2006 onwards , Plea Bargaining is permitted procedure of criminal justice in India. In **Sakharam Bandekar's case**¹² ,for the first time in Mumbai, an application for plea-bargaining was made before a sessions Court when a former Reserve Bank of India clerk, who was accused in a cheating case, sought a lesser punishment in return for confessing to his crime. The Court while accepting the prosecution ground that corruption is a serious disease like cancer and Plea-bargaining may please everyone except the distant victims and the silent society and therefore should not be allowed in serious offences, rejected Bandekar's application. However, the case set in the legal trend of Plea Bargain.

In **Pradeep Gupta vs State**¹³, Delhi High Court directed the trial Court to reconsider the application of the accused for Plea Bargaining in the light of the provisions made in the Criminal Procedure Code and not in a casual manner. In "**Vijay Moses Das v CBI**"¹⁴ case, a person who was accused of supplying substandard material to ONGC and that too at a wrong Port causing immense losses to ONGC. The CBI investigated and initiated prosecution under sections 420, 468

11. State of Gujarat v Natwar Harchandji Thakor, (decided on 22 February, 2005), 2005 CriLJ 2957, <http://indiankanoon.org/doc/1439610/> (Ahmadabad High Court) para 68

12. Times of India, Oct 15, 2007

13. Delhi High Court Bail Application No: 1298/2007: Judgment on 3rd September, 2007

14. High Court Crim. Misc. Appln 1037/2006, decided on 29 March, 2010

and 471 of IPC. Accused proposed to plea bargaining and the ONGC (Victim) and CBI (Prosecution) had no objection to such request, but trial Court rejected on the ground that Affidavit under section 265B was not filed by accused and compensation was not fixed. Uttarakhand High Court, hearing the Criminal Miscellaneous Application directed the trial Court to accept the plea bargaining application.

In **Indian Music Industry Case¹⁵**, which is a significant case of copyright infringement under the concept of plea- bargaining, the Indian Music Industry (IMI) won a compensation amount of Rs 12 lakhs. The complainant asked a compensation of Rs 100 per CD, but the accused moved another application admitting his guilt and settling for negotiation. So IMI agreed to settle the case at Rs 60 per CD seized. When the applications were presented at the specialized intellectual property Court in Delhi for hearing, the matter was negotiated with the company's owner and it was settled at Rs 12 lakhs (Two lakh on behalf of the company - Siddartha Optical and 10 lakhs on the owner's behalf). Besides, the Court ordered the company to pay Rs 2 lakhs to the state for violating the Copyright Act. This is India's biggest plea-bargaining case as no other victim has ever been paid Rs 12 lakhs.

In **Rahul Kumpawat vs Union Of India¹⁶(decided on 04-11-2016)**, a Bench of Rajasthan High Court at Jodhpur while remanding back a matter to the learned trial Court for considering plea bargaining of the petitioner afresh strictly in accordance with law, observed as under

“While it is true that plea bargaining in Indian Legal System is in infancy but its recognition is clearly discernible in [Cr.P.C.](#) after introduction of [4] Chapter XXIA w.e.f. 05.07.2006. Broadly, in the system of pre-trial negotiations where the accused pleads guilty in return, he can fructify concessional treatment from the prosecution. The underline object is to shorten the litigation and, therefore, in adherence of legislative intent, the Courts are also expected to accede to the prayer of the accused persons in appropriate cases to ensure speedy disposal.”

In **Rajinder Kumar Sharma v. The State¹⁷** decided by Delhi High Court on 26 February 2007, it was observed that Plea bargaining and compounding of case has some difference. In those offences which are of trivial nature, compounding may be permitted but offences which are graver and serious and are not against individual

15. Source : Business Standard, 29 October, 2009

16. <http://indiankanoon.org/doc/48688195/8.20.2020>

17. <http://indiankanoon.org/doc/311930/8.20.2020>

but against society, in such case compounding cannot be permitted. It was observed:

“The legislature in its wisdom considered some offence as trivial offence and some offence more serious and of graver nature. Those offences which did not affect the society at large have been made compoundable under Section 320 Cr.P.C.....Recently, the legislature has introduced plea bargaining under law so as to benefit such accused persons who repent upon their criminal act and are prepared to 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”

(G)ADVANTAGES FOR ACCUSED, VICTIM, PROSECUTOR & COURT

a) Advantages for the accused if he enters plea bargaining

- He may receive a lighter sentence for a less severe charge than what he may have received after losing trial.
- Cost & time efficient mechanism
- Getting out of Jail in circumstances where the accused who is held in custody and does not qualify for release or who either does not have the right to bail or cannot afford bail may get out of jail immediately or may be getting out altogether on probation or admonition.
- Having fewer or less serious offences on one’s record .This can be particularly important if the accused is ever convicted in the future.
- He may get the benefit under section 482 Cr.P.C.
- No appeal lies against the judgment in his favour.
- Admission of accused cannot be used for any other purpose except for Plea Bargaining.
- Avoiding hassles & publicity

b) Advantages for the victim if he enters plea bargaining

- Greater respect and consideration towards victims and their rights.

- Gets greater choices in satisfactory disposition of the case, and by providing a scheme for compulsory compensation.
- Spares the victim from the anxiety, stress and publicity of facts, evidence and proceedings of trial.
- Less time and money consuming

c) Advantages for the Prosecution & Court

- Prevents backlogs and huge pendency of case resulting in speedy trials and better case flow management.
- Avoids overcrowding in prisons.
- From the prosecution point of view, there is an assured conviction.

(H) PLEA BARGAINING & LEGAL AID

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. Primarily, the State Legal Services Authorities, High Court Legal Services Committee, District Legal Services Authorities and Tehsil/Taluk Legal Services Committees have been asked to discharge the following functions on regular basis:

- To provide Free and Competent Legal Services to the eligible persons;
- To organize Lok Adalats for amicable settlement of disputes and
- To organize legal awareness camps in the rural areas.

The work force of legal services authorities at all levels is primarily constituted of Panel Lawyers and Plvs besides NGOs and *pro-bono* workers. Each constituent has a specific role to perform in the scheme of things. Collectively, the DLSAs & the TLSCs are assigned the task of ensuring that legal services as defined in Section 2(c) of the Legal Services Authorities Act, 1987, which means and includes any service in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and the giving of

advice on any legal matter is provided to the person in need thereof. In this context, the legal services institutions are expected to include the concept of Plea Bargaining, introduced in Chapter XXI-A Code of Criminal Procedure Code, 1973, in the category of legal services as being rendered by them within the precincts of Legal Services Authorities Act, 1987.

Plea Bargaining and Panel Lawyers: Legal services means and includes any service in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and the giving of advice on any legal matter. Legal Aid is provided to the needy from the lowest Court to the Supreme Court of India. Legal Aid Counsel represents such needy persons before the Courts across all levels of hierarchy. The Panel Lawyers can pursue the process of Plea Bargaining in those criminal cases which are permitted under the scheme. This may involve the following:

- explaining the process and benefits to the accused,
- following the procedure thereafter, including filing application & assisting in preparing the Affidavit
- Accompanying the accused in meeting for mutual satisfactory disposition.
- Plead on the quantum of punishment and sentencing and taking resort to provisions such as Probation Of Offenders Act
- Spread legal awareness amongst under trials about their legal rights and remedies available to them under the provision..

Plea Bargaining and PLVs: Role of Para Legal Volunteers (PLVs) is very crucial in a society where there is, inter-alia, ignorance of a beneficial legislation. They may perform the following functions specifically in respect of Plea-Bargaining concept:

- Para-Legal Volunteers can play a major role in creating awareness about this provision, especially among those accused persons who have already undergone some part of the punishment prescribed for the offence they are charged with.
- Para-Legal Volunteer shall educate people to enable them to be aware of the provision
- Para-Legal Volunteers shall make people aware of the nature of their disputes/issues/problems and inform them that they can approach the DLSA/ HCLSC/SLSA/SCLSC so as to resolve the dispute/issue/problems through these institutions.

- Arrange legal services to poor, marginalized, downtrodden and weaker sections of the society.
- Spread legal awareness amongst under trials about their legal rights and remedies available to them under the provision



(H) CONCLUSION

Plea Bargaining is an effective means of alternative dispute resolution. It is a potent weapon to tackle and overcome the pertinent issues of crowded prisons, humongous pendency in Courts and may be construed as a potential mode of enhancing efficiency in the entire process of justice delivery and rationalize judicial resources, infrastructure and expenses. Despite the disadvantages cited by various authorities on the point, it is beneficial to the accused and victim of a crime in a number of aspects. Plea bargaining in India endeavours to address some of the core and vital issues plaguing Indian Criminal administration system and has the potential to go a long way in speeding the caseload disposition simultaneously attributing efficiency and credibility to Indian Criminal Justice System.



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