

DE JURE NEXUS LAW JOURNAL

Author:

Amitabh Yash Singh

Amity Law School, Noida

3rd Year, BBA LL.B. (Hons.)

**PLEA BARGAINING****Introduction**

“Justice too long delayed is justice denied”, a famous saying by Martin Luther King Jr. is significant in the concept of plea bargaining. The Indian judiciary is well known for large number of pending cases, which as per Ministry of Law and Judiciary are around 3.65 crores (February 2020). These are staggering figures but however, people have grown accustomed to it over the years. Famous Jurist Nani Palkhivala once said, “The greatest drawback of the administration of justice in India today is due to delay of cases. I am not aware of any country in the world where litigation goes on for a long period as India. The law may or may not be an ass, but in India, it is certainly a snail, and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind, but I see no reason why it should lame. Here it just hobbles along, barely able to work.”¹ Considering the scenario, the concept of plea bargaining was introduced in 2006 with the set of amendments to the CrPc. Not only India, but many nations have accepted this concept in their criminal justice system.

Meaning

Plea bargaining refers to, an individual accused of a criminal offence negotiating with the prosecution for a lesser punishment than what is given in the law by confessing to a less serious offence.

¹ Nani A Palkhivala, — We the nation...lost decade (1994) UBS Publications, p 215

It includes pre-trial negotiations between the charged person and the prosecutor. It may involve bargaining on the charge or the duration of punishment. It is not available for every crime for e.g., a person cannot claim plea bargaining after committing crimes like murder or other heinous crimes which are punishable with death or life imprisonment.

History

Plea bargaining was an American concept. It originated in the 19th century. It is common in US and has been a successful method of avoiding complex trials. The classic case of adoption of plea bargaining in US was the case of assassination of Martin Luther King jr. The accused pled guilty to the murder to avoid execution. Later, he was imprisoned for 99 years.

Plea bargaining in India

After America successfully implicated the concept of plea bargaining in the 19th century, India decided to introduce it in the Indian Criminal Justice System in 2006. Although there has been a provision in Crpc for an accused to plead 'guilty' instead of claiming the right to full trial, it is not same as plea bargaining.

Criminal Procedure Code and Plea Bargaining

Chapter XXI-A was introduced in Crpc through the Criminal Law (Amendment) Act, 2005. Chapter XXI-A, containing sections 265A to 265L deals with the concept of plea bargaining. The 154th Report of Law Commission was first to propose the idea of plea bargaining in the Indian Criminal Justice System.

In the year 2000, under the Atal Bihari government, a committee was formed to handle the issue of increasing number of criminal cases in the country, which was headed by former Chief Justice of Karnataka and Kerala High Court, justice V.S.Malimath. In its report, committee recommended to introduce the concept of plea bargaining for early disposal of cases and therefore reducing burden on the courts. To strengthen the report, the committee pointed out the success of plea bargaining in America.² In its Report the committee stated, "Taking into account the advantages of plea-bargaining, the recommendations of the Law Commission contained in the 142nd report and the 154th report may be incorporated so that a large number

² Justice Malimath Committee on Reforms of Criminal Justice System, Parliament of India, Report of the Committee on Reforms of Criminal Justice System, 2003.

of cases can be resolved, and early disposals can be achieved. By no stretch of imagination can the taint of legalising a crime will attach to it.” Later, the draft of Criminal law (Amendment) bill, 2003 was introduced in the parliament and it became an enforceable law on 5 July, 2006.

Plea bargaining is applicable for the cases where-

- The maximum punishment is prison term of 7 years. 265A
- The offence does not affect the socio-economic structure of the country.
- The offence is not committed against women or child below the age of 14 years. 265L

Types-

There are three types of plea bargaining-

1: Sentence bargaining- In this type, the defendant agrees to plead guilty to the stated charge in return for a lighter sentence.

2: Charge bargaining- In this type, the defendant pleads guilty to a less serious crime so that the greater charges will be dropped.

3: Fact bargaining- This is the least common type of plea bargaining, in this, the defendant pleads in return for the prosecutor’s stipulation that certain facts prompted to the conviction.

Advantages of plea bargaining

- **Fast disposal of issues-** Probably the most basic reason why plea bargain is sought is to resolve the issue as quickly as possible and move on. It saves the court from unnecessary burdens and help them to focus on the cases that require immediate attention.
- **Avoid Hassles-** There are multiple complications when one decides to go for a trial. Plea bargaining allows an accused to plead guilty without a lawyer. It saves their time, expense and helps them to avoid the exposure which can be extremely draining for the defendant.
- **Avoid Publicity-** Many defendants want to keep the issue quiet and plea bargaining is right mechanism to avoid public attention. Through fast settlement of the case, plea bargaining prevents any unwanted attention.

- **Avoid Stigmatizing Sentences-** In India, society plays an essential role. Many crimes have social stigma attached to them and once a person is stigmatized by the society, it becomes hard for him to survive. In such case, plea bargaining allows a person to plead guilty and in return reducing the number of charges or dropping the most stigmatizing offence in favour of less stigmatizing offence.

Disadvantages of Plea Bargaining

- **Eliminates the chance of an appeal-** Generally, in a trial if the defendant loses the case, he can file an appeal on certain grounds. But in plea bargaining, the defendant needs to plead guilty to the charges, and even if they are reduced, it removes almost every possibility to file an appeal in any scenario.
- **Non-binding on Court-** Even if the defendant and the prosecutor reach an agreement, the court is not bound to accept it and may declare it as void. The court can decide to give different sentence or no sentence at all. The court is usually not required to follow the plea bargain. Court can also order a trial if it feels like the plea bargain is offered in bad faith.
- **Criminal Record-** If the defendant decides to go for a trial, then there is a possibility that he will be acquitted and the criminal charges on him will be dropped. But if he pleads guilty as a part of plea bargaining, he will have it on record for the rest of his life.
- **Soft justice for the guilty-** In many cases, using plea bargaining lighter sentence can be provided to a guilty person.

Plea Bargaining and Judicial pronouncements

- **State of Uttar Pradesh vs Chandrika³**

³ 8 State of Uttar Pradesh v. Chandrika, 2000 Cr.L.J. 384(386)

In this case, the Supreme Court of India criticized the concept of plea bargaining and held that this concept is illegal and unconstitutional. Here the court said that plea bargaining cannot be the basis of disposing of the criminal cases. The case has to be decided on the basis of evidence. Even if the accused confesses his guilt, he should be given appropriate punishment as per the law.

- **State of Gujarat vs Natwar Harchandji Thakor** ⁴

In this case, court recognized the importance of plea bargaining. The court said that every 'plea of guilty' which is done in the statutory procedure of the criminal trial, should not be regarded as 'plea bargaining'. It must be decided on case-to-case basis. Considering the complications in the criminal justice system, the court said that the purpose of the law is to provide cheap, easy and expeditious justice.

- **Thippaswamy vs State of Karnataka** ⁵

In this case, the court said that inducing an accused to plead guilty under an assurance or promise will violate Article 21 of the Constitution of India.

- **Murlidhar Meghraj Loya vs State of Maharashtra** ⁶

In this case, the Supreme Court criticized the concept of plea bargaining and said that it intrudes upon the interest of society.

- **Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr** ⁷

In this case, the Supreme Court said that the concept of plea bargaining is against the public policy. It regretted that the magistrate accepted the plea bargaining of an accused.

Conclusion

Plea bargaining is a debatable topic. Many accuses it of violating section 20(3) of Indian Constitution. It speeds up the case disposal but in an unconstitutional manner. However, as our courts are already overburdened there is no choice but to accept it. Everything has something

⁴ State of Gujarat vs Natwar Harchandji Thakor, (2005) 1 GLR 709

⁵ Thippaswamy v. State of Karnataka, (1983) 1 SCC 194

⁶ Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929

⁷ Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr., 1980 CriLJ 553

positive and negative and before reaching on a proper judgement it must be analysed properly. Criticizing something just because of its few negative points is not right. In India, the concept of plea bargaining is new and evolving so it is wrong to expect it to be perfect. It can only be improved through debates and discussions. With time, it will be clear if the decision to introduce this concept was right or not.

Reference

- <http://www.findlaw.com/criminal/criminal-procedure/plea-bargains-in-depth.html>
- <https://www.lawyersnjurists.com/article/advantages-and-disadvantages-of-plea-bargaining/>
- <https://www.britannica.com/topic/plea-bargaining#ref338191>
- <https://indiankanoon.org/doc/1460353/>
- http://www.legalserviceindia.com/articles/plea_bar.htm
- <https://www.nolo.com/legal-encyclopedia/the-benefits-plea-bargain.html>
- <https://www.nrilegalservices.com/plea-bargaining-in-india/>



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