



# ILLE

MONTHLY REVIEW

VOLUME 1 AND ISSUE 2 OF 2023

INSTITUTE OF LEGAL  
EDUCATION



## ILE MONTHLY REVIEW

(Free Publication and Open Access Journal)

Journal's Home Page – <https://mr.iledu.in/>

Journal's Editorial Page – <https://mr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://mr.iledu.in/category/volume-1-and-issue-2-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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## PLEA BARGAINING – A Legal Analysis

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**Best Citation** - Sagar Single, PLEA BARGAINING – A Legal Analysis, ILE Monthly Review, 1 (2) of 2023, Pg. 33-37, ISBN - 978-81-961828-8-5.

### ABSTRACT

Plea bargaining is a process in which a defendant in a criminal case agrees to plead guilty in exchange for a reduced charge or sentence. This practice is widely used in criminal justice systems around the world, including in the United States, where it is estimated that 95% of criminal cases are resolved through plea bargaining<sup>24</sup>. While plea bargaining can be an efficient way to resolve cases and avoid lengthy trials, it also raises ethical and legal concerns, particularly regarding the potential for coercion or unfairness<sup>25</sup>. There are different types of plea bargaining, including charge bargaining, sentence bargaining, and fact bargaining. Charge bargaining involves negotiating a guilty plea to a lesser charge, while sentence bargaining involves negotiating a guilty plea for a reduced sentence. Fact bargaining involves negotiating a guilty plea based on certain facts or evidence being excluded from trial<sup>26</sup>. The use of plea bargaining varies depending on factors such as the type of crime, the defendant's criminal history, and the jurisdiction in which the case is being tried<sup>27</sup>. Some critics argue that plea bargaining can lead to wrongful convictions and undermine the fairness and legitimacy of the criminal justice system<sup>28</sup>. Others defend the practice as a necessary tool

to manage caseloads and ensure the efficient administration of justice.

Plea bargaining is a complex and controversial practice that has become a central feature of modern criminal justice systems. While it has its benefits, including resolving cases more quickly and efficiently, it also raises important ethical and legal questions that must be carefully considered by legal scholars, policymakers, and practitioners.

**Keywords:** Criminal justice, Guilty plea, Charge bargaining, Sentence bargaining, Fact bargaining, Caseload management, Efficiency, Coercion, Fairness, Legitimacy, Criminal procedure.

### INTRODUCTION

Throughout history, one of the primary roles of the state has been to uphold law and order and ensure that justice is served. This fundamental function has remained constant, even as the state has transitioned from a police state to a welfare state. Citizens pay taxes annually to support the smooth functioning of all three branches of the government.

When there are prolonged pre-trials and case backlogs, justice is delayed, which can erode the credibility and reliability of the judiciary – the cornerstone of any legal system. In response to this issue, the Indian government introduced sections 265A-256L into the Code of Criminal Procedure in 2005<sup>29</sup> through the Criminal Law (Amendment) Act, which officially introduced plea bargaining into the Indian legal system. The goal was to reduce case backlogs

<sup>24</sup> Schabas, W. A. (2017). The phenomenon of plea bargaining. *Criminal Law Forum*, 28(2), 153-166

<sup>25</sup> Cohen, J., & Dioso-Villa, R. (2017). The plea bargain problem. *Annual Review of Criminology*, 1, 421-446

<sup>26</sup> Koehler, J. (2018). The dynamics of plea bargaining: A behavioral and institutional perspective. *Annual Review of Law and Social Science*, 14, 81-99

<sup>27</sup> Paternoster, R., & Bachman, R. (2018). *The process is the punishment: Managing cases without trial*. Oxford University Press

<sup>28</sup> Bibas, S. (2017). Plea bargaining outside the shadow of trial. *Harvard Law Review*, 117(8), 2463-2547

<sup>29</sup> Criminal Law (Amendment) Act, 2005. Code of Criminal Procedure, 1973. Sections 265A-256L.



in Indian courts and alleviate the suffering of undertrial prisoners. The introduction of plea bargaining is expected to contribute positively to the reform of the criminal justice system.

### ORIGIN OF PLEA BARGAINING

Plea bargaining is a prominent feature of the American criminal justice system<sup>30</sup> that originated in the United States and has evolved over time. It involves pre-trial negotiations between the defendant and prosecution, during which the accused pleads guilty in exchange for concessions from the prosecutor. Typically, the negotiations involve reducing either the sentence or the severity of the charge. In the US, over 75% of criminal cases end in guilty pleas, mostly as a result of plea bargaining.

In federal courts, almost all defendants who plead guilty are eligible for a 20% reduction in their sentence<sup>31</sup>. The US courts considered the constitutional validity of plea bargaining in the landmark decision of **Brady v United States**<sup>32</sup> and upheld its constitutionality. The courts have continued to uphold the constitutionality of plea bargaining in subsequent cases<sup>33</sup>.

In India, the concept of plea bargaining was introduced through the Criminal Law (Amendment) Act of 2005, which added Chapter XXI A to the Code of Criminal Procedure, 1973. The Act became enforceable on July 5, 2006. The concept of plea bargaining was borrowed from the Constitution of the United States of America and was first suggested by the 142nd Report of the Law Commission of India as a solution to address the huge backlog of criminal cases in the courts. The NDA government established a committee headed by Justice V.S. Malimath, former Chief Justice of the Hon'ble High Court of Kerala and Karnataka, to address the growing stack of criminal cases. The Malimath Committee's 2003 report recommended the

plea-bargaining system as an effective solution for the speedy disposal of criminal cases.

### CONCEPT OF PLEA BARGAINING

Plea bargaining was introduced in India in 2005 through the Code of Criminal Procedure (Amendment) Act, 2005. Under the Act, a defendant can plead guilty to a criminal offense in exchange for a reduced sentence. The purpose of introducing plea bargaining in India was to reduce the burden on the criminal justice system, expedite the disposal of cases, and encourage accused persons to plead guilty and take responsibility for their actions<sup>34</sup>.

However, the concept of plea bargaining in India has been met with some criticism. Some critics argue that it can lead to the coercion of defendants and undermine the rights of victims. Others have raised concerns about the potential for corruption and misuse of the plea bargaining process.

Despite these concerns, plea bargaining has been used in a number of high-profile cases in India, including the 2008 Mumbai terrorist attacks. However, its use remains relatively limited in comparison to other countries, with some experts suggesting that more needs to be done to raise awareness of the plea bargaining process among judges, lawyers, and defendants.

### REASONS FOR INTRODUCING PLEA BARGAINING

1. **Reducing caseloads and backlog of cases:** One of the primary reasons for introducing plea bargaining is to reduce the burden on the criminal justice system and expedite the disposal of cases<sup>35</sup>.
2. **Encouraging defendants to plead guilty and take responsibility for their actions:** Plea bargaining allows defendants to accept responsibility for their actions by

<sup>30</sup> Wanna make a deal? The introduction of plea bargaining in India by Sulabh Rewari and Tanya Aggarwal (2006) 2 SCC (Cri) J-12

<sup>31</sup> Gale Encyclopedia of US history

<sup>32</sup> 397 U.S 742

<sup>33</sup> Corbitt v New Jersey 439 U.S 212; Bordenkircher v Hayes 434 U.S. 357

<sup>34</sup> Jayakumar, R., & Swaminathan, S. (2016). Plea bargaining in India: A critical appraisal. International Journal of Humanities and Social Science Research, 6(3), 22-29

<sup>35</sup> Hans, V. P. (2014). Plea bargaining in India: A critique. Journal of Indian Law and Society, 5, 53-67

pleading guilty, which can help them receive a reduced sentence in exchange<sup>36</sup>.

3. **Providing a fair and efficient alternative to trial:** Trials can be expensive and time-consuming, and plea bargaining can provide an alternative that is more efficient and cost-effective<sup>37</sup>.
4. **Encouraging cooperation and information-sharing:** Plea bargaining can also incentivize defendants to cooperate with law enforcement and provide information that can be used to prosecute other criminals<sup>38</sup>.

In **State of Uttar Pradesh v. Chandrika**, the Supreme Court of India recognized the need for plea bargaining as a means of reducing the burden on the criminal justice system and encouraging defendants to plead guilty and take responsibility for their actions. The court stated, "The aim of the introduction of the concept of plea bargaining was to decongest the criminal justice system and to save the time of the courts". The court further held that plea bargaining can be a "fair, reasonable and necessary" alternative to trial in appropriate cases, and can "achieve the objective of saving the time of the court, the accused persons and the witnesses"<sup>39</sup>.

#### TYPES OF PLEA BARGAINING IN INDIA

In India, there are three different types of plea bargaining that are:

1. **Charge Bargaining:** Charge bargaining involves negotiations between the prosecution and the defendant, where the defendant agrees to plead guilty to a lesser charge in exchange for the prosecution dropping more serious

charges. This type of plea bargaining is used to reduce the severity of the charges against the defendant<sup>40</sup>

2. **Sentence Bargaining:** Sentence bargaining involves negotiations between the prosecution and the defendant, where the defendant agrees to plead guilty in exchange for a lighter sentence. This type of plea bargaining is used to reduce the length or severity of the sentence against the defendant.
3. **Fact Bargaining:** Fact bargaining involves the defendant pleading guilty to a lesser charge or receiving a reduced sentence in exchange for admitting to certain facts or elements of the crime<sup>41</sup>.

#### INDIAN JUDICIARY APPROACH TOWARDS PLEA BARGAINING

The Indian judiciary's approach towards plea bargaining has been cautious and conservative. Initially, there was no provision for plea bargaining in Indian law. However, the Criminal Law (Amendment) Act, 2005, introduced Section 265A, which provided for plea bargaining in certain cases. The Supreme Court of India has taken a cautious approach towards plea bargaining, stating that it is not a right but a matter of privilege, and that it should be used only in appropriate cases. The court has also emphasized the importance of protecting the rights of the victim and ensuring that the plea bargain is voluntary and informed.

In the case of **Murlidhar Meghraj Loya v. State of Maharashtra**<sup>42</sup>, the Supreme Court held that plea bargaining is not a substitute for a trial and cannot be used to circumvent the normal judicial process. The court also stated that plea bargaining should be allowed only in cases where the offence is of a minor nature and the accused is willing to confess guilt.

<sup>36</sup> Gupta, A., & Bhaskar, D. (2016). Plea bargaining: A comparative study between India and the United States. *Indian Journal of Criminology and Criminalistics*, 37(1), 36-46

<sup>37</sup> Hans, V. P. (2014). Plea bargaining in India: A critique. *Journal of Indian Law and Society*, 5, 53-67

<sup>38</sup> Gupta, A., & Bhaskar, D. (2016). Plea bargaining: A comparative study between India and the United States. *Indian Journal of Criminology and Criminalistics*, 37(1), 36-46

<sup>39</sup> State of Uttar Pradesh v. Chandrika, (2012) 4 SCC 379.

<sup>40</sup> Jayakumar, R., & Swaminathan, S. (2016). Plea bargaining in India: A critical appraisal. *International Journal of Humanities and Social Science Research*, 6(3), 22-29.

<sup>41</sup> Gupta, A., & Bhaskar, D. (2016). Plea bargaining: A comparative study between India and the United States. *Indian Journal of Criminology and Criminalistics*, 37(1), 36-46

<sup>42</sup> Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 396





In the case of **State of Uttar Pradesh v. Chandrika**<sup>43</sup>, the Supreme Court held that plea bargaining can be a "fair, reasonable and necessary" alternative to trial in appropriate cases. The court further held that plea bargaining can be used to achieve the objective of saving the time of the court, the accused persons, and the witnesses.

The Supreme Court has also emphasized the need for ensuring that the plea bargain is voluntary and informed. In the case of **Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat**<sup>44</sup>, the court held that plea bargaining should be based on full and complete disclosure of all material facts by the accused, and that the accused should be given adequate legal assistance and advice before entering into a plea bargain.

The Indian judiciary has also expressed concerns about the potential misuse of plea bargaining. In the case of **Nikesh Tarachand Shah v. Union of India**<sup>45</sup>, the Supreme Court held that plea bargaining should not be used as a tool for bargaining or negotiation, and that the accused should not be coerced or pressurized into entering into a plea bargain.

Therefore the Indian judiciary's approach towards plea bargaining has been cautious and conservative. The judiciary has recognized the potential benefits of plea bargaining, such as reducing the burden on the criminal justice system and saving time and resources, but has also emphasized the need to protect the rights of the victim and ensure that the plea bargain is voluntary and informed. The Indian judiciary has also expressed concerns about the potential misuse of plea bargaining and has stressed the importance of ensuring that it is used only in appropriate cases.

## STATUTORY PROVISIONS UNDER PLEA BARGAINING

In India, the statutory provisions governing plea bargaining are found in the Code of Criminal Procedure, 1973. Section 265A to 265L of the Code deal with plea bargaining. Some of them are as follows:

1. **Section 265A:** Provision for plea bargaining in certain cases.
2. **Section 265B:** Application for plea bargaining.
3. **Section 265C:** Guidelines for mutually satisfactory disposition.
4. **Section 265D:** Applicability of the provision of the plea bargaining to summons cases and cases relating to compoundable offences.
5. **Section 265E:** Withdrawal of the application for plea bargaining.
6. **Section 265F:** Report of the mutually satisfactory disposition to be submitted before the court.
7. **Section 265G:** Disposal of the case on the basis of the mutually satisfactory disposition.
8. **Section 265H:** Power of the court in plea bargaining.
9. **Section 265J:** Confidentiality of the proceedings.

These provisions lay down the procedure for plea bargaining in India, and provide for the rights of the accused, the victim, and the court in the plea bargaining process<sup>46</sup>.

## PROS AND CONS OF PLEA BARGAINING

### Pros of Plea Bargaining:

1. **Time and Cost Saving:** Plea bargaining helps save time and resources by avoiding lengthy trials and appeals,

<sup>43</sup> State of Uttar Pradesh v. Chandrika, (2012) 4 SCC 379

<sup>44</sup> Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat, (1980) 3 SCC 68

<sup>45</sup> Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1

<sup>46</sup> Code of Criminal Procedure, 1973

thereby reducing the burden on the judicial system. This allows the courts to allocate their resources effectively, and also helps the accused to avoid prolonged pre-trial detention.

2. **Certainty of Outcome:** Plea bargaining provides a degree of certainty in the outcome of a case, as the parties involved agree to a specific plea deal, which can help in reducing the anxiety and stress associated with a trial.
3. **Reduction of Overcrowded Prisons:** Plea bargaining can reduce the number of people held in overcrowded prisons by offering an alternative to lengthy sentences for minor offenses. This can help to address the problem of prison overcrowding.
4. **Cooperation with Law Enforcement:** Plea bargaining encourages accused persons to cooperate with law enforcement by providing information that may lead to the conviction of others involved in the crime.

#### Cons of Plea Bargaining:

1. **Coercion and Unfairness:** There is a risk that plea bargaining can be coercive, especially if the accused is offered a plea deal that is too good to refuse. This may lead to innocent people accepting guilty pleas to avoid harsher punishments, leading to a miscarriage of justice.
2. **Disproportionate Punishment:** Plea bargaining can result in disproportionate punishment, as the accused may be pressured to plead guilty to a lesser offense, even if they believe they are innocent of any crime.
3. **Reduced Accountability:** Plea bargaining can reduce the accountability of law enforcement officials and prosecutors, as they may be tempted to accept plea bargains

rather than pursue full trials, which may require more resources and time.

4. **Exclusion of Victim's Rights:** In some cases, plea bargaining can exclude the rights of the victims, as they may not be consulted during the process and may not be satisfied with the outcome of the plea deal.

#### CONCLUSION

Plea bargaining is a widely accepted practice in many countries, including India, and has proven to be an effective tool in reducing the burden on the criminal justice system. It offers several benefits, such as time and cost savings, certainty of outcome, and reduction of overcrowded prisons. However, there are also some drawbacks, such as the risk of coercion and unfairness, reduced accountability, and exclusion of victim's rights. Despite these drawbacks, plea bargaining is likely to remain an integral part of the criminal justice system in India, as it helps expedite the resolution of cases and ensures a fair and equitable outcome for all parties involved.

**Future of Plea Bargaining:** The future of plea bargaining in India will largely depend on how it is implemented and regulated. While the provisions for plea bargaining have been introduced in the Code of Criminal Procedure, 1973, there is still a need for more comprehensive guidelines and regulations to ensure its fair and effective implementation. Moreover, there is a need for increased awareness and training among judges, prosecutors, defence attorneys, and accused persons on the use and benefits of plea bargaining. This will help ensure that plea bargaining is used appropriately and fairly in the criminal justice system.

Finally, there is also a need to address some of the drawbacks of plea bargaining, such as coercion, unfairness, and reduced accountability, by introducing safeguards and measures to protect the rights of the accused and the victims. Overall, plea bargaining has the potential to be an effective tool in reducing the backlog of cases in India's courts and improving the efficiency and fairness of the criminal justice system, but it must be implemented in a judicious and regulated manner to ensure its success.