
PLEA BARGAINING IN THE CRIMINAL JUSTICE SYSTEM (INDIA)

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Doi: <https://doi-doi.org/101555/ijarp.8822>**ABSTRACT**

Juvenile delinquency is a serious socio-legal problem of today. India is not left out. The relationship between child development and social context, economic inequality, psychological disadvantage and the legal system's response to youth offending behaviour is complex. Juvenile delinquency refers to illegal or anti-social behavior of a legal minor or non-adult. It follows from the above definition that the meaning should be deepened. Juvenile delinquents are not just children who commit crimes. The dissolution of social institutions and ineffectiveness of law also creates specific situations in which deviance occurs. Some causes of juvenile delinquency in India include urbanisation, increased nuclear families, open economy, media exposure and value system of society. There is the chance that the risk of violence will increase for children and young people while risk of crime will arise for children. The norms that have been established no longer serve as effective instruments of social control and the growing number of juveniles being placed in a situation which at least encourages or does not discourage deviance.

INTRODUCTION

It has been often been suspected in the past although it is pretty popular in the US. In recent decades, Indian courts have been concerned that the practice can compromise the integrity of the criminal justice system where it encourages coercion, corruption and even the denial of fundamental rights. All in all, though, the perennial issue of time wastage in the court system and a resort to alternative dispute resolution techniques slowly made people change their stand in this regard.

The Criminal Law (Amendment) Act, 2005 as the mile stone in the development of the criminal justice administration introduced the plea bargaining as the part of the criminal procedure of Indians. The legislature after introducing Chapter XXI- A of the code of

criminal procedure, 1973, deliberately provided a well thought out framework of plea bargaining which takes into account constitutionality and avoiding abuse of process. India's model is against uncontrolled or informal bargaining, which are concerned with judicial control, voluntariness and narrow applicability. Such official acknowledgement seeks to find an equilibrium between the demands of efficiency, on one hand, and fairness, due process and the common good, on the other.¹

The introduction of plea bargaining in India is justified on the basis of need of speedy justice as provided by the constitution. The right to speedy trial is interpreted as Article 21 of the Constitution which is related to right to life and personal liberty. Slow handling of criminal cases by prolonged trials not only shatters the faith of people in the justice delivery system but also causes unimaginable sufferings to the accused due to the years spent in pre-trial detention. Plea bargaining is a more realistic solution whereby some of the criminal cases can be compromised in a consensual way and hence it lessens the pendency and also the strain on the courts and the jails.

The emergence of a plea bargain brought in serious constitutional and ethical problems at the same time. The constitutionality of plea bargaining in India, with the focus on whether it is voluntary or not, whether it violates the protection against self-incrimination, equality before law and rights of victims. According to critics, plea bargaining can have an unfair effect on the poor and the marginalised in society that is socio economically unequal, and where the law is badly understood. The real danger is through long custody, the fear of getting a severe punishment or because of ineffective representation the accused persons are pushed into guilt. These concerns indicate the necessity to ensure the proper protection and stringent court supervision.

Another important problem of plea bargaining in India is its effects to victims and justice in general sense. The Indian criminal justice system has always been offender-centric and very minimal consideration is given to victims' rights, other than as witnesses. The law of plea bargaining addresses the imbalance between the two parties through victim participation and compensation as a tool of the system in order to achieve a desirable equilibrium. To an extent, plea bargaining also contains elements of restorative justice that are meant to repair damage and closure to the victims by enabling mutually acceptable dispositions. Though the objective may seem widespread, the extent to which it is achieved is questionable.

¹ K. N. Chandrasekharan Pillai, *Criminal Procedure* 678 (Eastern Book Company, Lucknow, 8th ed. 2020).

India has a unique way of plea bargaining which does not get used much. It only extends to penal offenses, in which the maximum imprisonment is for seven years as opposed to the complex offenses which are those which can affect the socio-economic status of the nation; it also restricted to the offenses against women and children. The law makes efforts in limiting concern through such restrictions which prevents the occurrence of serious crimes and no more which interferes with personal liberty.

Even if, on the one hand, these restrictions are preventing abuses and giving plead bargaining a more legitimate look, it is further minimizing the chances of plead bargaining making an impact on the issue of judicial backlog in general.

There has also been a change in judicial attitude towards plea bargaining. Previous court cases were quite unsympathetic to the informal practices of plea bargaining and the danger of coercion and miscarriage of justice. Judicial authorities have adopted a less rigid attitude toward the issue of plea bargaining although, with statutory recognition, they have been more assertive on compliance with procedural safeguards. The judicial system, as guardian of the constitutional provisions, is especially vulnerable to scrutiny; it must not allow plea bargaining to become a convenient tool to the detriment of justice. The modern terminology suggests that plea bargaining is an omnipresent but nonetheless negative tool of reformative criminal justice. It indicates a larger trend of using alternative and consensual dispute resolution options even in the regular hard criminal law. The effectiveness of this approach is contingent on the execution as well as on the knowledge of the law, judicial sensitivity and evaluation of its impact on rights and outcomes.²

STATEMENT OF PROBLEM

The criminal justice system of India has been marked among others by perennial delays, ever-increasing cases pendency and overcrowded jails with high number under trial who take years to eventually get tried. As per government statistics, as the crime cases make a high percentage of total pending cases in the Indian courts, thus it dilutes the constitutional mandate of speedy justice in the Article 21 of the Constitution of India.

The flaw and limitation of the trial process is the occurrence of delay in justice due to the fact that the procedure is cumbersome, the adjournment and shortage of judges, infrastructural inadequacy etc.

²S. N. Mishra, *The Code of Criminal Procedure* 622 (Central Law Publications, Allahabad, 19th ed. 2021).r. Kailash Rai, *Criminal Procedure and Trial* 401 (Allahabad Law Agency, Prayagraj, 5th ed. 2019).

To address these issues, plea bargaining has been introduced as a reform to speed up the disposal of cases and save litigation costs. Despite its limited traction in India, there are notable benefits and advantages of plea bargaining. The factors that are responsible for restraining its success adoption are; the ignorance of the accused persons, resistance of the law practising persons, poor prosecutorial policy, and the attitude in the society that plea bargaining negates justice.

In addition, even now serious questions can perhaps be raised on the voluntariness of guilty pleas in an unequal system. When an innocent person has a good defense but fears further incarceration, they are susceptible to admitting guilt due to the wrongness of charges laid against them. This raises fundamental questions about whether plea bargaining is actually in the best interests of justice or merely in the best interests of efficiency.³

The deepest structural and functional problems are presently embedded in the Indian criminal justice system, which as a result, seriously reduces its perennial capability of providing timely, just and sound justice. The most burning problem among any of the judicial levels was one huge backlog of criminal matters, which would then lead to further increase of the trials and the overabundance of delays in solving the conflict. There are a huge number of criminal cases which are pending for years and in some cases decades to get resolved thus affecting the confidence of the people with the system of justice delivery. This slow procedure is stickered on particularly under trial prisoners, who in the majority of instances take larger periods of time in detention than the maximum term that was provided for the alleged crime. In order to tackle delay and backlog in order to give a boost to the rapid administration of justice, the innovation of plea bargaining was launched against this background. However, even after the legal recognition of plea bargaining in India, its practice and validity is controversial, making it a complex and multidimensional issue.

The primary concern is the discrepancy between the theoretical objectives of the plea bargaining and the actual functioning of this process in the Indian criminal justice system. According to the legislation, plea bargaining is seen as an agreement between the parties in a voluntary and transparent approach and would be able to benefit all of them, as also the court, accused, victim and society in general. It has not, however, received popular acceptance and uniform application in practice. Other courts show little use of plea bargaining provisions, but use it ad hoc. This disproportionate usage raises a concern: has there been an actual reduction

³ Dr. P. C. Markanda, *Law Relating to Criminal Procedure* 590 (Wadhwa and Company, Nagpur, 3rd ed. 2014) K. I. Vibhute & P. S. A. Pillai, *Criminal Justice System: The Common Law Perspective* 244 (LexisNexis, Gurugram, 2nd ed. 2019).

in judicial backlog through plea-bargaining or is it merely a symbolic change in the criminal process?

Another issue in the problem has to do with the voluntariness of guilty pleas in the context of inequality, poverty and lack of legal awareness. The accused individuals in India's criminal justice system are a large percentage of the economy and society which is marginally composed and a large section of miscreants. Those who live in poverty tend to spend a longer amount of time in jail. This is due to incompetent legal counsel. Subsequently, a fear of a heavier sentence tends to cause them to plead guilty ultimately. Plea bargaining in such a scenario may not fulfil a voluntary choice but rather a survival strategy. Above all, this impacts the notion of fundamental rights. Specifically, people would plead guilty, thus confessing to the crime when they have not done so. This undermines the right against self-incrimination in Art 20(3) and the right against fair proceeding in Art 21 of the Constitution. One more issue that is critical is the power imbalance between the accused and the prosecution in the plea bargain negotiations. The State has a huge repository of resources and institutional power, it may frequently be in the dominant position, whereas the accused may not possess adequate legal aid or bargaining power. Such a state of imbalance enhances the probability of coercion, inducement or implicit pressure even in absence of force. Even though it is fair, the requirement of voluntariness of the system might not be adequate to uncover more covert forms of coercion, for example where the accused is not aware of his rights or is merely afraid to oppose prosecutor power.⁴

The role and rights of victims in plea bargaining proceedings is another pending issue yet to be resolved. Historically, India's criminal justice system is offender-driven in the sense that not much attention has been paid to victims as stakeholders. Even if the law allows for the participation and compensation of the victims, the implementation of the provision is weak on the ground level of the case. The process may poorly inform the victims, deny them access to legal advice, and leave them with little say in the outcomes of negotiations. The plea bargaining's restorative justice goals make one question if convenience is being prioritized over victim accountability and satisfaction.

The situation is made worse by varying judgements. For a long time the Indian courts have hold a deep suspicion about plea bargaining. They believe that it is against the philosophy of the criminal justice system. Although there are laws on most of these issues, the attitude of the courts differs a lot between jurisdictions. Some judges may encourage plea bargaining to

⁴ Aalan Joe Edwin J J, *The Evolution of Plea Bargaining in the Indian Criminal Justice System with Judicial Interpretation* 5 (2025).

increase their own workloads, while others are not convinced of the legitimacy of this tool. Consequently, this leads to unpredictable outcomes in sentencing, disparate treatment of similarly situated accused persons who are not confronted with the same evidence and arguments, since there are no consistent guidelines and practices. It is not very convincing because the plea bargaining can no longer be looked at as a proper process of justice.

The plea bargaining structure has a limited scope of applicability which is a structural problem. The serious crimes, socio-economic crimes, and crimes committed against women and children have been prevented by the legislature to protect the interest of the people as well as deterrence. While the reasonable exclusion justification normative statements, nevertheless, they greatly restrain the range of cases that can be subject to plea bargaining. The broader issue of case pendency has not been dealt with despite the mechanism failing, especially in types of offences that make up a significant percentage of the criminal docket. Another important issue is related to the absence of empirical evaluation and data use to formulate policies in the plea bargaining scheme. There is limited data available on how often plea bargaining is utilized in criminal cases, what range of cases it is applied to, what is the socio-economic status of accused persons, what is the sentencing pattern in cases where plea bargaining happens, and what are its effects on victim satisfaction and recidivism. Without this information, it would be difficult to assess the success of plea bargaining in achieving its aims, or whether it has caused adverse consequences that were not intended.⁵

SCOPE OF STUDY

The term plea bargaining under Indian criminal justice system law has been analysed for its meaning, law, implementation and effectiveness. Plea bargaining is included in India by The Criminal Law Amendment Act, 2005. It was inserted into the Criminal Procedure Code, 1973 (CrPC) by the addition of Sections 265A to 265L. The purpose of implementing this system was to address the significant accumulation of criminal cases, to guarantee a swift resolution of these matters, and also to offer an Alternative Dispute Resolution system for cases that are criminal in nature. The study seeks to probe the international and Indian history of plea bargaining and how it evolved over time. The purpose of this essay is to look into the reasons for the emergence of the plea bargaining system in India and the reason of its introduction. The analysis lays down all the essential procedural requirements for plea bargaining and specifies the category of offences to which plea bargain applies. Moreover, the research

⁵ Law Commission of India, *142nd Report on Concessional Treatment to Offenders Who Plead Guilty on Their Own Volition* 1 (1991).

investigates plea bargaining and how it works at ground level in India. Further, its implementation in the court is examined as well as whether it actually works or not. Research has been conducted to observe the impact of plea bargaining for delay reduction and getting rid of pending criminal cases. The paper seeks to examine the advocates of the plea bargaining process as to whether the rights of all the parties which are involved are adequately protected. Plea bargaining is another vital component of this research study, merits and drawbacks of which have been discussed a great deal by scholars and jurists. The analysis carried out indicates that speedy justice has many advantages like lower costs of litigation and decongestion of jails, and so on. The plea bargaining will also look at the risk of coercion, unequal bargaining power, legal ignorance of the accused and compromise with justice and fairness, etc. at the same time. Empire of the Sun is an exceptional war film loosely based on a semi-autobiographical novel by JG Ballard, who was imprisoned in Shanghai during the Second World War. The film is set during this period. Young Brit Jamie lives there with his wealthy parents who make a striking couple. A Japanese invasion in Shanghai causes chaos in the man's life, causing him to be separated from his parents. As a hostage to the Japanese, he ends up getting taken advantage of, only to escape and make it to a nearby internment camp. At the same time, a camp resident, Basie, is a dodger and a crook who helps the internment residents obtain a little more comfort inside than less financially inclined ones can manage. Dubbed Jamie, Jim is a clever boy-loving planes with all his heart. In conclusion, the film does a great job on the sufferings of war and the consequences it has on people of various camps. Court rulings provide a wealth of information concerning its actual difficulties and the disputes it raises. The study aims to find out the approach of the judiciary towards enhancement of efficiency with the safeguard of the fundamental rights and guarantees of due process through these cases. We will also look into the plea bargain of other countries like the United States and the United Kingdom who have extensively used it. The Indian model should learn from experiences, best practices, and comparisons which show concerning improvement. At the conclusion of the research, we will assess the effectiveness of legal repeal as a means of reforming criminal law in India. This mechanism identifies the gaps present in the law (related to various police organizations like CBI, NIA, ED etc) and recommends what to do to remove this gap. Thus, this paper will include the legal, procedural, judicial and comparative aspect of plea bargaining. This will help the readers to

understand how use of this mechanism help in getting an effective and quick remedy in criminal justice system of India.⁶

CASE LAWS

1.ABDUL REHMANBHAI SHEIKH TOOK ON THE STATE OF GUJARAT.

Citation AIR 1980 SC 854; (1980) 3 SCC 120; 1980 Cri LJ 553; (1980) 2 SCR 1037

The case that is deemed the foremost authority on plea bargaining pre-legislatively in India. Citation: AIR 1980 SC 854 The accused was charged under the Prevention of Food Adulteration Act who was induced to plead guilty on the assurance of a lighter sentence. The Supreme Court made it clear that plea bargaining is unconstitutional, unlawful and against public policy. According to Justice P.N. Bhagwati, the administration of criminal justice cannot rely on bargains and negotiations. As per the Court, a person accused of an offence must not be persuaded into pleading guilty looking to concessions in punishment. The court observed that this practice could result in a miscarriage of justice as an innocent person may plead guilty to avoid uncertainty and prolonged litigation. According to the Court practices of Crime Justice must be Fair, Disinterested, and Due Process. The loss of any principle would lessen public confidence in the judiciary. The judges also commented on India's socio-economic realities and pointed out that poor and uneducated accused persons come under coercive methods. The judgement of this case is very important as it clearly rejects plea bargaining that took place prior to statutory reform. It represented the prevailing mindset of the courts of the time, and was to influence legal disputes for many years. Subsequently, Parliament amended the CrPC and introduced plea bargaining with the incorporation of safeguards on voluntary participation and judicial supervision to overcome the objections raised in the case.

2. GUJARAT VS KACHHIA PATEL SHANTILAL KODERLAL CASE.

Citation: AIR 1980 SC 854; (1980) 3 SCC 120; 1980 Cri LJ 553; (1980) 2 SCR 1037.

The Supreme Court again rejected plea bargaining and that criminal liability can never be bargained. The Court stated that obtaining a guilty plea solely for the purpose of obtaining a less serious punishment is constitutionally unacceptable. The Court remarked that judges must not force parties to resolve issues by any other means but trial. A criminal law is not merely a punitive measure but also a protective mechanism for society. The determination of guilt

⁶Dr. H. K. Saharay, *Criminal Procedure Code* 455 (Eastern Law House, Kolkata, 4th ed. 2015). S. N. Mishra, *The Code of Criminal Procedure* 622 (Central Law Publications, Allahabad, 19th ed. 2021).

must be conducted via the law and not via the arrangements of the parties. The judgment recognised the danger of coercive contracts and unequal bargaining power. People were concerned that poor and disadvantaged ones would be intimidated to confess guilt. Justice should not depend on a person's economic standing or ability to sustain a prolonged court battle. This case is important as it reinforces the judicial position that plea bargaining, in the absence of regulation, could come in the way of fairness and due process. The issues pointed out by the court in this judgment subsequently reflected in the safeguards of the statutory scheme of plea bargaining under the CrPC.

GUJARAT ADMINISTRATION VERSUS NATWAR HARCHANDJI THAKOR.

CITATION (2005) 1 GLR 709 (GUJARAT HIGH COURT).

The defendant had a legal issue and sought to reach settlement in order to not let issue linger on. The Court was able to examine whether mutually beneficial settlement could be taken note of by the system of criminal justice. The Gujarat High Court noted that effective administration of justice can be ensured by plea bargaining; however, it should take place in a legitimate and voluntary manner. According to the court, cases in criminal jurisdiction remain pending for years for no fault of victims or accused persons. The Court said that consensual settlements may facilitate the expeditious outcome of justice and reduction of the burden on the courts. Yet, it highlighted that no settlement must be extracted through threats or coercive influence. To ensure the accused person willingly agrees to such terms and fully understands their implications.

Significance of the case.

This Judgement is crucial as it signals a gradual, but definite, shift in the judicial mindset on plea bargaining. In past judgements, the court rejected the entire process of plea bargaining. In contrast, the instant case acknowledged plea bargaining as a practical option to alleviate delay in the adjudication of criminal cases by contributing to their disposal. Due to statutory amendments in 2005 India witnessed the introduction of well-regulated plea-bargaining mechanism, which effectively impacted the decision which affected the debate on criminal justice reform.

CONCLUSION

Plea bargain definition; principle based on an arrangement where the accused voluntarily chooses to plead guilty for a lesser sentence or any other satisfactory resolution as sentenced. The mechanism provides that no citizen can be penalized by the law for applying to the court

in a criminal conflict. Plea negotiations offer a different way of disposing of cases involving offences punishable with imprisonment for seven years or less. However, there is a possibility that such negotiations may help in reducing the backlog of criminal cases and an efficient administration of justice. Plea bargaining was introduced in India as it faced criticism and was surrounded by controversy. Before legalization, the Supreme Court would refer to the disapproval of it. In the matters of Murlidhar Meghraj Loya v. State of Maharashtra and Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat, the Court ruled that plea bargaining gives rise to injustice. In addition, the Court noted that allowing plea bargaining would cause a miscarriage of justice. The court was careful that an accused who is not well-off and illiterate may get pressurized into making a guilty plea because of the terror of a long entry or inability to engage and pay a lawyer. There were various apprehensions regarding the misuse of the plea bargaining system resulting in perversion of justice. The law includes several safeguards of the accused keeping in mind their fears at all times. As per the provisions, the application for plea bargaining should be made voluntarily. The defendant must be given the meaning and the consequences of a guilty plea. The crimes, which inflict injury upon the social and economic condition of the country and the offences against women and children below the age of fourteen would be excluded from plea bargaining. Because the restrictions on these processes indicate that the legislature does not want this remedy at all, it cannot be at the cost of justice. A case can be disposed quickly through it which has practical benefits. As it stands, there are 39 million criminal cases pending in the country which is causing much suffering to the victims as well as the accused. As litigation costs increase because the trials are delayed, the public loses trust in the system of justice delivery. Plea bargaining enables quick resolution of specific cases, thereby granting the court additional time for more critical and complex criminal issues. The success of plea bargaining hinges on its fair and transparent functioning. The procedure must be performed voluntarily and in the absence of undue influence or any type of pressure. To prevent abuse of the tool, competent lawyers, proper knowledge of litigants and judicious supervision are needed. If not carried out properly, plea bargaining can cause harm to the accused persons' rights and can damage the public confidence in justice. Plea bargaining is a positive and practical reform within the Indian criminal justice system. A marked shift is seen from mere antagonism to consensual and effective settlement of any dispute arising in a criminal matter. A mechanism that replaces normal trials in serious offences is not suggested, but there can be avoidance of delays and better administration of justice if such a thing is adopted with care and fairness. The

systematic use of plea bargaining for the constitutional goal of speedy and fair justice in India could soon become a powerful tool, with precautions, awareness, and judicial control.

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