

The Evolution of Plea Bargaining in the Criminal Justice System

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INTRODUCTION

Plea bargaining has become an essential mechanism within the criminal justice system, shaping the way cases are resolved across jurisdictions. By allowing defendants to plead guilty to lesser charges in exchange for leniency or reduced sentencing, plea bargaining saves time, reduces caseloads, and mitigates the uncertainties of trial. Yet, this practice has evolved over centuries, sparking debate about its benefits and potential drawbacks. Understanding the historical development of plea bargaining provides insight into its current role, significance, and criticisms within the modern legal framework.

Plea bargaining in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, focuses on allowing sentence bargaining, where the accused can receive a lighter sentence in exchange for a guilty plea. This provision, spanning Sections 289 to 300, allows for mutually satisfactory disposition between the accused and the prosecution. However, there are constraints to prevent its misuse and ensure fairness. The BNSS approach seeks to balance the justice system's efficiency with the rights of both the accused and victims, introducing timelines and limits to streamline court processes. This new law refines plea bargaining by integrating victim compensation, aligning with previous restrictions under the Criminal Procedure Code (CrPC).

Historical Development of Plea Bargaining:

Plea bargaining emerged slowly, gaining prominence in the United States during the 19th century. Prior to this, the legal system heavily emphasized trials as the standard means for criminal case resolution. Early cases that utilized plea bargaining were rare, and the practice was often viewed with suspicion, with judges and legal theorists fearing it might subvert justice by circumventing the truth-seeking function of trials. However, several factors facilitated the gradual acceptance and expansion of plea bargaining over the next century.

1. **Caseload Pressures and Urbanization:** As urban populations grew in the 19th century, so did crime rates and, consequently, court caseloads. Judges and prosecutors began viewing plea bargaining as a practical solution to the growing burden on the courts. Plea agreements allowed courts to resolve cases more quickly, avoiding lengthy and costly trials. In the early 20th century, rapid industrialization led to further caseload increases, solidifying plea bargaining's role in handling routine cases efficiently.

2. **Legal and Social Shifts in the 20th Century:** By the mid-20th century, the United States saw a shift in judicial attitudes toward plea bargaining. In 1970, the Supreme Court's ruling in *Brady v. United States* affirmed the constitutionality of plea bargains, provided they were entered into voluntarily, knowingly, and intelligently. This decision paved the way for plea bargaining to become an institutionalized part of the American criminal justice system, allowing courts to handle cases with fewer resources and to facilitate a more expedient system of justice.
3. **The War on Drugs and Mandatory Minimum Sentences:** The 1980s and 1990s ushered in new challenges. The War on Drugs created an influx of drug-related cases, putting unprecedented strain on the courts and increasing the demand for plea bargaining as an alternative to trial. Additionally, mandatory minimum sentencing laws gave prosecutors significant leverage in plea negotiations, as they could offer defendants the chance to avoid harsh mandatory sentences by pleading guilty to lesser offenses.

Challenges of Plea Bargaining in India:

Plea bargaining was introduced in India in 2005, under the Criminal Procedure Code (CrPC), with the aim of reducing the burden on courts and providing a quicker means of justice. While the concept has potential benefits, the implementation of plea bargaining in India faces numerous challenges. Here are some of the major obstacles to effective plea bargaining in India:

1. Lack of Legal Awareness and Education

There is limited awareness about plea bargaining in India, especially among defendants and their legal representatives. Many individuals, particularly those from rural and underprivileged backgrounds, lack knowledge about the plea bargaining process and its potential benefits and limitations. This lack of awareness often prevents people from fully utilizing the advantages that plea bargaining might offer.

2. Restricted Jurisdiction

In India, plea bargaining is only permitted in cases where the maximum sentence does not exceed seven years. It cannot be applied to serious offenses such as murder, rape, or corruption. As a result, plea bargaining has limited effectiveness in reducing the burden on courts, as many cases involve serious offenses that fall outside its scope.

3. Power Imbalance Between Prosecution and Defendant

There is often a significant power disparity between the prosecution and the defendant, especially when defendants lack resources or legal knowledge. Poor or uneducated defendants may feel pressured to accept plea deals even if they are innocent, simply due to the imbalance in negotiating

power. This undermines the principle of fair and just legal representation.

4. Risk of Innocent Defendants Pleading Guilty

Fear of a lengthy trial and potential harsher sentencing can lead some innocent defendants to accept plea deals to avoid the risk of severe punishment. This situation, known as the “trial penalty,” can lead to wrongful convictions, thereby eroding trust in the judicial system and compromising the fairness of justice.

5. Potential for Recidivism

By offering reduced sentences, plea bargaining may, at times, encourage repeat offenses. Defendants who receive lighter sentences may feel they are “getting off easy” and, without the deterrent of harsher punishment, may be more likely to re-offend. This risks diminishing the role of punishment as a deterrent in the justice system.

6. Lack of Transparency

Plea bargains often involve closed-door negotiations, leading to a lack of transparency in the justice process. Without public scrutiny, the plea bargaining process may be perceived as unfair or biased, potentially leading to reduced public trust in the justice system.

7. Inconsistency Across Courts

The plea bargaining process is not uniformly practiced across Indian courts. Different courts may adopt varying approaches to plea bargaining, leading to inconsistencies and potential unfairness in sentencing for similar offenses across jurisdictions.

8. Misuse by Police and Prosecution

There is potential for abuse of power by police and prosecution in plea bargaining cases. Defendants from weaker socio-economic backgrounds may face undue pressure to plead guilty. This lack of checks on police and prosecutorial power can open doors to corruption and unfair practices.

Major judicial decisions relating to plea bargaining in India:

Here are some of the key cases in India that have shaped the legal understanding and application of plea bargaining:

1. State of Gujarat v. Natwar Harchanji Thakor¹

In this landmark case, the Gujarat High Court upheld the concept of plea bargaining in India

for the first time. The court observed that plea bargaining aligns with the constitutional mandate of delivering speedy justice, which is an essential right under Article 21 (Right to Life and Personal Liberty) of the Indian Constitution. The court stated that plea bargaining can be used to ease the burden on courts and expedite the justice process. This case was instrumental in paving the way for the inclusion of plea bargaining provisions in the Criminal Procedure Code (CrPC). This case played a pivotal role in reshaping Indian jurisprudence on plea bargaining. By recognizing its potential advantages while highlighting its risks, the judgment laid the groundwork for the structured and regulated approach introduced in 2006. This case remains a cornerstone in discussions on balancing judicial efficiency with the principles of fairness and justice.

2. Murlidhar Meghraj Loya v. State of Maharashtra²

In this case, the Supreme Court of India discussed the limitations of plea bargaining and expressed skepticism towards its acceptance. The court observed that plea bargaining was not a legally sanctioned process in India at that time and raised concerns about its potential misuse. The court noted that plea bargaining could encourage corruption, coercion, and improper settlements, especially when there is a power imbalance between prosecution and defense. This case underscored the cautious approach India needed to take before fully integrating plea bargaining into the legal system.

3. Kasambhai Abdul Rehmanbhai Sheikh v. State of Gujarat³

In this case, the Supreme Court of India reaffirmed its stance against the use of plea bargaining, reiterating that it was not formally recognized under Indian law at that time. The court argued that plea bargaining could lead to “negotiated settlements” that may not serve the interest of justice. This case highlighted the need for a legislative framework to regulate plea bargaining if it were to be used within the Indian legal system. This case marked a pivotal moment in Indian criminal law, rejecting unregulated plea bargaining and emphasizing the primacy of due process and fair trials. The judgment highlighted the ethical and procedural risks associated with plea bargaining, influencing the structured framework introduced in 2006 to address those concerns while balancing judicial efficiency and justice.

4. Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr.⁴

This case further examined the risks associated with plea bargaining. The court criticized the practice as a “suspect transaction” that could lead to judicial and prosecutorial misconduct. The court voiced concerns about the unethical use of plea bargaining, especially when it might compromise the rights of weaker defendants. The case emphasized the necessity of a structured legal framework to ensure that plea bargaining could be used ethically and fairly. This case set a precedent that rejected plea bargaining in its unregulated form, emphasizing the importance of due process and evidentiary trials. While the case opposed plea bargaining as contrary to the principles of justice, it underscored the need for reforms to address inefficiencies in the legal system. The concerns raised in this

judgment influenced the structured and regulated approach to plea bargaining introduced in India in 2006.

5. Thippaswamy v. State of Karnataka⁵

In this case, the Supreme Court ruled that if an accused person pleads guilty under the threat of receiving a harsher sentence, it cannot be deemed a voluntary plea. The court criticized the potential coercive nature of plea bargaining and stated that it should not be used as a tool to intimidate defendants. This case underscored the need to ensure voluntary and informed consent in plea deals and highlighted the importance of protecting defendants' rights.

The rejection of plea bargaining in Thippaswamy v. State of Karnataka influenced Indian criminal law for two decades. However, mounting pressures from an overburdened judiciary led to the introduction of plea bargaining provisions in the **Criminal Procedure Code (CrPC)** in 2006, under Sections 265A to 265L. These provisions were carefully crafted to ensure:

1. Plea bargaining is limited to specific offenses (e.g., those with a maximum punishment of seven years).
2. Safeguards are in place to ensure voluntariness and fairness in agreements.

Thus Thippaswamy v. State of Karnataka remains a critical case in the discourse on plea bargaining in India. While it rejected the practice due to concerns over fairness and coercion, its principles influenced the structured and regulated approach to plea bargaining introduced in the CrPC amendments of 2006. The case underscores the need for balancing efficiency with justice in the criminal process.

2. Sucha Singh v. State of Punjab⁶

In this case, the Punjab and Haryana High Court acknowledged the value of plea bargaining but emphasized that it should be used judiciously. The court recognized the utility of plea bargaining in reducing court backlogs and expediting justice but cautioned against its misuse. This case contributed to the call for formal legislative measures to regulate plea bargaining in India. This case is not directly associated with the doctrine or practice of plea bargaining as traditionally discussed in criminal jurisprudence. Instead, it focuses on principles related to evidence evaluation, credibility, and procedural fairness in criminal trials. However, it can be

tangentially analyzed in the context of plea bargaining by examining its implications for procedural fairness and the rights of the accused.

3. Charan Singh v. State of Punjab⁷

In this case, the Punjab and Haryana High Court again discussed the potential benefits of plea bargaining. The court highlighted that plea bargaining could be used to reduce unnecessary delays

in criminal cases but also recognized the importance of safeguards to prevent coercion. This case helped strengthen the argument for introducing plea bargaining as a formal legal provision in the CrPC. This case reinforced skepticism about plea bargaining under the unregulated framework existing in India at the time. While the case rejected plea bargaining as contrary to the principles of fairness, it underscored the need for reforms to ensure efficiency without compromising justice. This judgment, along with legislative changes in 2006, helped strike a balance between judicial efficiency and safeguarding the rights of the accused.

Types of plea bargaining:

Plea bargaining are three types and these are depending upon the types of prosecutorial confession that is granted. These agreements are not binding until the parties present it to a judge who approves it. In India the legislative provisions and the courts are permitting to have a sentence bargaining.

1. Charge Bargaining: A defendant is allowed to plead guilty if the prosecution enables him to plead guilty to a lower charge or merely some of the counts against him. The prosecution has a lot of leeway when it comes to charging an accused person, so they might choose to bring the most serious accusations possible against him. To lessen the amount of charges against an individual, a defendant might enter into charge bargains with the prosecution. It is usual to refer to a charge bargain as a plea agreement in which a prosecution agrees to lower or remove part of the charges against the defendant. Some of the possibilities are as follows:

- (a) The reduction of charge to a lesser or included offence;
- (b) The withdrawal or stay of other charges;
- (c) An agreement by the prosecutor not to proceed on a charge;

d) An agreement to reduce multiple charges to one all inclusive charge. For instance, an accused with drunk driving and driving with license suspected may be offered the opportunity to plead guilty to just the drunk driving charge.

2. Sentence Bargaining:

The term “Sentence Bargain” refers to the practise of negotiating a lower sentence for a guilty plea. If a prosecutor is able to get a conviction on the most serious charge while securing an acceptable sentence for the defendant, a sentencing bargain may be the best option. Prosecutors and defence attorneys may agree to a range of sentences or a specific sentence, as well as not to seek additional/optional sanctions, such as prohibitions and forfeiture orders, as part of the deal. Most jurisdictions require the approval of the trial judge before a sentence reduction may be granted. Sentence bargaining is highly restricted in many jurisdictions. When the punishment for pleading guilty is made known to an accused or defendant in advance, this occurs. Conviction on the most serious accusation may be obtained through a sentencing deal, which ensures an appropriate punishment for the offender. The sentence bargain is encouraged by Indian legislative regulations.

3. Fact Bargaining:

Bargaining negotiation is based on admitting some information in exchange for a promise not to reveal others. It is impossible for a judge to overturn a guilty or no contest plea once it has been

accepted by the court. In other words, when the parties reach an agreement that requires the defendant to meet particular requirements, the court retains jurisdiction until those conditions are met. The judge has the option of rejecting the plea and resentencing the offender if the defendant fails to meet the conditions. Rather than being an option, a plea bargain is the result of coercion. Almost all criminal jurisdictions across the world are struggling to keep up with the growing number of criminal cases. Plea bargaining may not be as good as a full-fledged fair trial, but the growing backlog of cases necessitates it in the face of the alternative. Plea bargaining contains the following characteristics:

a) Avoids In most circumstances, a plea bargain is used to prevent the danger of an undesired outcome for the opposite party by avoiding the uncertainty of a trial. According to the plan, both prosecutors and defenders have some say in what

happens to their cases. There is a choice for the accused between the certainty of a sentence for a less serious offence or the uncertainty of a trial in which he may be found not guilty, but which also brings with it the possibility of being found guilty of the original, more serious accusation.

b) Criminal Courts are becoming increasingly congested, and as a result, there is a growing sense of need to conclude cases promptly. It might take months, years or even decades to conduct a regular trial. Plea bargains can be reached in a matter of days, lowering the amount of time it takes to resolve a case. It guarantees that the matter will be resolved quickly.

Provision of Plea Bargaining in Indian Legal System:

The provision for plea bargaining in the Indian legal system was introduced through the Criminal Law (Amendment) Act, 2005, which amended the Code of Criminal Procedure, 1973. The provision for plea bargaining is contained in Chapter XXI-A of the Code, which was inserted by the 2005 Amendment. Section 265-A to 265-L of the Code outline the procedure for plea bargaining in India. These sections provide for the following:

1. Eligibility for plea bargaining:

Only offenses that are punishable with imprisonment up to seven years or with a fine are eligible for plea bargaining. Additionally, certain offenses such as those committed against women or children, and those under special laws like the Narcotics Drugs and Psychotropic Substances Act are not eligible for plea bargaining.

2. Initiation of plea bargaining:

The accused, through their counsel, may initiate the plea bargaining process by making an application to the court expressing their willingness to plead guilty to the charges in exchange for a lesser sentence.

3. Role of the prosecutor:

The prosecutor has a key role in the plea bargaining process, and they must agree to the terms of the plea bargain. The prosecutor will also inform the court of the terms of the plea bargain.

4. Procedure for plea bargaining:

The court will conduct a preliminary hearing to ensure that the accused has voluntarily and knowingly agreed to the plea bargain and that they understand the consequences of their plea. If the court is satisfied that the plea bargain has been entered into voluntarily and knowingly, it will dispose of the case in accordance with the terms of the plea bargain.

5. Appeal and revision:

A person who has entered into a plea bargain may not appeal against their conviction, but they may file a revision petition challenging the legality of the sentence. The prosecutor may also file a revision petition if they believe that the sentence imposed under the plea bargain is inadequate.

Conclusion:

Plea bargaining was introduced in India as a means to reduce court backlogs and ensure faster case resolution, but its implementation faces significant challenges. Addressing these challenges requires a focus on increasing transparency, ensuring defendants are informed, and balancing power between the prosecution and defendants to protect their rights. By addressing these issues, plea bargaining can better serve the goals of justice and efficiency in India's legal system. The above cases reflect the Indian judiciary's cautious approach toward plea bargaining, acknowledging both its potential benefits and associated risks. These landmark cases paved the way for the formal adoption of plea bargaining in India and contributed to creating a framework that emphasizes voluntary, informed, and fair practices to protect the rights of defendants.

References:

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2. AIR 1976 SC 1929
3. AIR 1980 SC 854
4. AIR 2000 SC 3346
5. AIR 1983 SC 747
6. AIR 2003 SC 3617
7. 1975 SCR (1) 561