The famous saying “Justice delayed is justice denied” holds utmost significance when the concept of Plea bargaining is discussed. The number of cases pending in the courts is shocking but at the same time, it has been normalized by people. These astonishing figures are no more astonishing because people have started accepting this as their fate. The concept of plea bargaining was not there in criminal law since its inception. Considering this scenario, Indian Legal scholars and Jurists incorporated this concept in Indian Criminal Law. As the term itself suggests that it is an agreement between accused and the prosecutor. Many countries have accepted this concept in their Criminal Justice System (CJS).

Meaning of Plea Bargaining

Plea bargaining is a pretrial negotiation between the accused and the prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution. It is a bargain where a defendant pleads guilty to a lesser charge and the prosecutors in return drop more serious charges. It is not available for all types of crime e.g. a person cannot claim plea bargaining after committing heinous crimes or for the crimes which are punishable with death or life imprisonment.

History of Plea Bargaining

In the Jury System, the need for plea bargaining was not felt because there was no legal representation. Later on, in 1960 legal representation was allowed and the need for Plea Bargaining was felt. Although the traces of the origin of the concept of Plea Bargaining is in American legal history. This concept has been used since the 19th century. Judges used this bargaining to encourage confessions.

Plea Bargaining in India

Plea Bargaining is not an indigenous concept of Indian legal system. It is a part of the recent development of Indian Criminal Justice System (ICJS). It was inculcated in Indian Criminal Justice System after considering the burden of long-standing cases on the Judiciary.

Criminal Procedure Code and Plea Bargaining

Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code deals with the concept of Plea Bargaining. It was inserted into the Criminal Law (Amendment) Act, 2005. It allows plea bargaining for cases:

1. Where the maximum punishment is imprisonment for 7 years;
2. Where the offenses don’t affect the socio-economic condition of the country;
3. When the offenses are not committed against a woman or a child below 14 are excluded

The 154th Report of the Law Commission was first to recommend the ‘plea bargaining’ in Indian Criminal Justice System. It defined Plea Bargaining as an alternative method which should be introduced to deal with huge arrears of criminal cases in Indian courts.

Then under the NDA government, a committee was constituted which was headed by the former Chief Justice of the Karnataka and Kerala High Courts, Justice V.S.Malimath to tackle the issue of escalating number of criminal cases. The Malimath Committee recommended for the plea bargaining system in India. The committee said that it would facilitate the expedite disposal of criminal cases and reduce the burden of the courts. Moreover, the Malimath Committee pointed out the success of plea bargaining system in the USA to show the importance of Plea Bargaining.

Accordingly, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament and finally it became an enforceable Indian law from enforceable from July 5, 2006. It sought to amend the Indian Penal Code 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1892 to improve upon the existing Criminal Justice System in the country, which is inundate with a plethora of criminal cases and overabundant delay in their disposal on the one hand and very low rate of conviction in cases involving serious crimes on the other. The Criminal Law (Amendment) Bill, 2003 focused on following key issues of the criminal justice system:-

(i) Witnesses turning hostile

(ii) Plea-bargaining

(iii) Compounding the offense under Section 498A, IPC (Husband or relative of husband of a woman subjecting her to cruelty) and

(iv) Evidence of scientific experts in cases relating to fake currency notes.

Finally, it introduced Chapter XXIA Section 265A to 265L and brought the concept of plea bargaining in India. The following are provisions which it added:-

- **Section 265-A (Application of Chapter)** the plea bargaining shall be available to the accused who is charged with any offense other than offenses punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years. Section 265 A (2) of the Code gives the power to notify the offenses to the Central Government.

The Central Government issued Notification No. *SO1042* (II) dated 11-7/2006 specifying the offenses affecting the socio-economic condition of the country.

- **Section 265-B** (**Application for Plea Bargaining)**

1. A person accused of an offense may file the application of plea bargaining in trails which are pending.
2. The application for plea bargaining is to be filed by the accused containing brief details about the case relating to which such application is filed. It includes 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, the plea bargaining the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence.
3. The court will thereafter issue the notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused of the date fixed for the plea bargaining.
4. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.

- **Section 265-C (Guidelines for Mutually satisfactory disposition)** It lays down the procedure to be followed by the court in mutually satisfactory disposition. In a case instituted on a police report, the court shall issue the 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 a notice to the accused and the victim of the case.
- **Section 265-D (Report of the mutually satisfactory disposition)** This provision talks about the preparation of the report of mutually satisfactory disposition and submission of the same. Two situations may arise here namely

1. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the report of such disposition is to be prepared by the court. It shall be signed by the presiding officer of the Courts and all other persons who participated in the meeting.
2. If no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.

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    - **Section 265-E (Disposal of the case)** 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 accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of Section 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force or punish the accused, 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 offenses 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 offense. ”
    - **Section 265-F (Judgment of the Court)** talks about the pronouncement of judgment in terms of mutually satisfactory disposition.

    - **Section 265-G (Finality of Judgment)** says that no appeal shall be against such judgment but Special Leave Petition (Article 136) or writ petition (under Article 226 or 227) can be filed.
    - **Section 265-H (Power of the Court in Plea Bargaining)** talks about the powers of the court in plea bargaining. These powers include powers in respect of bail, the trial of offenses and other matters relating to the disposal of a case in such court under Criminal Procedure Code.

- **Section 265-I (Period of detention undergone by the accused to be set off against the sentence of imprisonment)** says that Section 428 of CrPC is applicable for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this chapter.

- 265-J (Savings) 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 (Statement of the accused to be used)** specifies that the statements or facts stated by the accused in an application under section 265-B shall not be used for any other purpose except for the purpose as mentioned in the chapter.
- **Section 265-L (Non-application of the chapter)** makes it clear that this chapter will not be applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

Types of Plea Bargaining

Plea Bargaining is generally of three types namely:-

1. Sentence bargaining;
2. Charge bargaining;
3. Fact bargaining.

Concept	S. No.	Type	Meaning
Plea Bargaining	1.	Sentence bargaining	In this type of bargaining the main motive is to get a lesser sentence. In Sentence bargaining, the defendant agrees to plead guilty to the stated charge and in return, he bargains for a lighter sentence.
	2.	Charge bargaining	This kind of plea bargaining happens for getting less severe charges. This the most common form of plea bargaining in criminal cases. Here the defendant agrees to plead guilty to a lesser charge in consideration of dismissing greater charges. E.g. Pleading for manslaughter for dropping the charges of murder.
	3.	Fact bargaining	This is generally not used in courts because it is alleged to be against Criminal Justice System. It occurs when a defendant agrees to stipulate to certain facts in order to prevent other facts from being introduced into evidence.

Plea Bargaining and Judicial Pronouncements

In ***Murlidhar Meghraj Loya vs State of Maharashtra*** (AIR 1976 SC 1929), The Hon'ble Supreme Court criticized the concept of Plea Bargaining and said that it intrudes upon the society's interests. (see here)

In ***Kasambhai vs State of Gujarat*** (1980 AIR 854) & ***Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr***, the Apex court said that the Plea Bargaining is against public policy. Moreover, it regretted the fact that the magistrate accepted the plea bargaining of accused. Furthermore, Hon'ble Court described this concept as a highly reprehensible practice. (see here)

The Court also held that practice of plea bargaining as illegal and unconstitutional and tends to encourage the corruption, collusion and pollute the pure fount of justice.

Thippaswamy vs State of Karnataka, [1983] 1 SCC 194, the Court said that inducing or leading an accused to plead guilty under a promise or assurance would be violative of Article 21 of the Constitution.

The Court also stated that *"In such cases, the Court of appeal or revision should set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes defend himself against the charge and if he is found guilty, proper sentence can be passed against him".*

In ***State of Uttar Pradesh vs Chandrika*** 2000 Cr.L.J. 384(386), the Apex Court disparaged the concept of plea bargaining and held this practice as unconstitutional and illegal. Here the Hon'ble Court was of the view that on the plea bargaining Court cannot basis of disposing of criminal cases. The case has to be decided on the merit. In furtherance of the same, court said that if the accused confesses his guilt, he must be given the appropriate sentence as required by the law. (see here)

In ***the State Of Gujarat vs Natwar Harchandji Thakor*** (2005) 1 GLR 709, the Court acknowledged the importance of plea bargaining and said that

every “plea of guilty” which is construed to be a part of the statutory process in the criminal trial, should not be understood as a “plea bargaining” ipso facto. It is a matter of matter and has to be decided on a case to case basis. Considering the dynamic nature of law and society, the court said that the very object of the law is to provide an easy, cheap and expeditious justice by resolving disputes.

Arguments against Plea Bargaining in India

Voluntarily adopted Mechanism

As per the legal provision dealing with Plea bargaining, it is a voluntary mechanism which is only entertained when accused opts it willingly. But the law is silent on the point that in case, the settlement reached is contrary to the purpose of the legal system.

Involvement of Police

The Involvement of the police in plea bargaining also attracts criticism. As India is infamous for the custodial torture by police. In such scenario, the concept of Plea Bargaining is more likely to aggravate the situation.

Corruption

The role of victims in plea bargaining process is also not appreciated. The role of victim in this process would attract corruption which is ultimately defeating the purpose which is sought to be achieved by such action.

Independent Judicial Authority

The provisions of Plea Bargaining do not provide for an independent judicial authority to evaluate plea-bargaining applications. This is one of the glaring reasons for its criticism.

The in camera examination of the accused by the court attract may lead to public cynicism and distrust for the plea-bargaining system. The failure to make confidential any order passed by the court rejecting an application could also create biases towards the accused.

Not the Final Solution

The reasons given for the introduction of plea-bargaining are the tremendous overcrowding of jails, high rates of acquittal, torture undergone by under trial prisoners etc. But the main factor behind all these reasons is a delay in the trial process. In India, the reason behind the delay in trials is many e.g. the operation of the investigative agencies as well as the judiciary, personal interest of lawyers etc. Therefore, the need of the hour is not a substitute for trial but an overhaul of the system which can be in terms of structure, composition and its work culture. All these measures would ensure reasonably fast trials.

Arguments for Plea Bargaining in India

Fast disposal of cases

The plea bargaining is beneficial for both the prosecution and the defense because there is no risk of complete loss at trial. It helps the attorneys to defend their clients in an easy way because both the parties possess bargaining power. This is how the long-standing disputes can be resolved and the court would also not need to face encumbrance of case files. Moreover, Plea bargaining helps the courts in preserving scarce resources for the cases that need them most.

Less serious offenses on one’s record

In a country like India, society plays a vital role. Once a person is stigmatized by society it becomes very difficult for that person to survive. Many a time

stigmatization leads to ostracization. In such scenario, Plea Bargaining allows a person to plead guilty or no contest in exchange for a reduction in the number of charges or the seriousness of the offenses. This results in recording less serious offenses on the official court records of an accused. This can be good for the accused when he is convicted in the future.

A hassle-free approach

Indian is known for its long-standing case. Many cases proceedings go for 8-10 year thereby both the parties suffer. There have been instances where accused spent more time in jail than the maximum punishment for which he was accused. Such instances show a grave infringement of their human rights. Plea bargaining allows a person to plead guilty without hiring a lawyer. But If they waited to go to trial, they would have to find and hire a lawyer, and in that process, they have to spend at least some time working with the lawyer to prepare for trial and pay the lawyer. The concept of plea bargaining safeguards the interest of such persons by avoiding the hassles that they face when the case remains pending.

It avoids publicity

Moreover, Plea Bargaining is also a good mechanism to avoid publicity because the longer the case goes the more publicity the accuses gets. Therefore plea bargaining avoids such publicity by a fast settlement of the case. Famous and ordinary People who depend on their reputation in the community for their living, and those people who want to escape any unnecessary stigmatization. Although the news of the plea itself may be public yet it stays only for a short time when compared to news of a trial.

How to be a master at Plea Bargaining

There is no straight jacket formula or mathematical precision to gain expertise at Plea bargaining. Expertise comes with experience and to have an experience of something we need to step in that thing.

To become a master of plea bargaining one has to be good at negotiations and communication. At the end of the day, Plea Bargaining boils down to the bargaining. It is about how well you bargain for your client. The better you bargain the better results you bring to your client. To become a master of plea bargaining one need to be abreast of the facts and the relevant laws. Your convincing power is one thing which makes you different. In the legal arena, cases are unique in themselves, every case brings new opportunity to learn. The more plea bargaining you do, the more expertise you will have. Except for these skills, logical and analytical reasoning skills are very relevant for Plea Bargaining because it is very difficult to defy a statement backed by sound reasoning. Therefore, a conglomeration of all these skills makes you a master of plea bargaining.

Conclusion

The concept of plea bargaining is not entirely new in India. Indian has already recognized it when it got its constitution in 1950. Article 20(3) of Indian constitution prohibits self-incrimination. People accuse plea bargaining of violatory of the said article. But with the passage of time the considering the encumbrance on the courts, the Indian court has felt the need of Plea bargaining in Indian legal system. When a change is brought it is hard to accept it initially but society needs to grow so is our legal system. Everything has advantages and disadvantages and both have to be analyzed in order reach a sound conclusion. Rejecting something only on the basis of its disadvantages would not be justified in any case. The concept of plea bargaining is evolving

in India and it is not appropriate to expect it to be perfect. It can only be improved by debate, discussions, and discourses.

Reference

1. https://www.nolo.com/legal-encyclopedia/the-benefits-plea-bargain.html
2. https://www.hg.org/article.asp?id=33881
3. https://vittana.org/11-advantages-and-disadvantages-of-plea-bargaining
4. http://www.mondaq.com/india/x/273094/trials+appeals+compensation/Plea+Bargaining+An+Overview
5. https://criminal.findlaw.com/criminal-procedure/plea-bargains-in-depth.html
6. http://www.legalserviceindia.com/articles/plea_bar.htm
7. http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=7f9180ab-d6b0-4c3c-9840-e89c8ef23087&txtsearch=Subject:%20Criminal
8. http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=10f20608-cdd3-416d-be42-9e692a5baad6&txtsearch=Subject:%20Criminal
9. https://www.britannica.com/topic/plea-bargaining#ref338191
10. https://www.nrilegalservices.com/plea-bargaining-in-india/