

*Original Article***Plea Bargaining: A Silver Lining or a Compromised Mockery****Shubham Gupta¹, Kiran Chauhan²**

<p>Author Affiliation ¹Student, ²Assistant Professor, Chandigarh University, Chandigarh- Ludhiana Highway, Gharuan, Mohali, Punjab 140413, India.</p> <p>Corresponding Author Kiran Chauhan, Assistant Professor, Chandigarh University, Chandigarh- Ludhiana Highway, Gharuan, Mohali, Punjab 140413, India. E-mail: kiran.law@cumail.in</p>	<p>Abstract</p> <p>India is a country of population more than 1.25 billion with the pity burden of 31122421 pending cases, out of which 22306834 are criminal cases¹. People are habitual of delay in judicial system which diminishes faith of people in getting justice from this holy institution. During debates of constituent assembly, Sh. V.S. Sarwate said that "<i>Justice is delayed, Justice is denied</i>"². Plea bargaining is American concept of expeditious trial in which defendant pleads guilty for the condition on less punishment. This process seems to be helpful in expeditious trial but it is not alienated from criticism. Indian Judicial system reluctantly introduced plea bargaining from section 265A to Section 265L in new chapter XXI A of CrPC through criminal law amendment act, 2005. The Hon'ble Supreme court of India in 2004 held that, "It is settled law that on the basis of plea bargaining court cannot dispose of the criminal cases. The court has to decide it on merits"³. In this research paper we discuss origin, benefits and criticism of plea bargaining in Indian context and conclude that whether it is a silver lining or compromised mockery.</p> <p>Keyword: Compromised mockery; Justice; Assembly; Sh. V.S. Sarwate; Plea Bargaining; Silver lining.</p>
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Concept of Plea Bargaining

Plea Bargaining is a concept consisted of two words i.e. 'plea' which means that to make request or prayer or an appeal in an emotional way and 'bargain' which means that to negotiate or settlement or deal, usually this can be noticed in our daily life, when we bargains over price from shopkeeper. In the criminal law the purpose of this concept is same but here defendant pleas to bargain punishment in exchange of some lesser or lenient charges and pleads guilty or "no contest" (*Nolo Contendere*).

Section 265A-265L of Chapter XXIA of the

Criminal Procedure Code deals with applicability of the Plea bargaining in India, This concept is apply on accused against whom station officer forwards report under section 173 of CrPC alleging that, offence appears to be committed by accused. But no such offence should be committed, for which punishment of death or imprisonment of life or imprisonment extending seven years has been provided. Plea bargaining can also be used where magistrate took cognizance of offence on complaint and such offence is not covered under punishment of death or life imprisonment or imprisonment extending seven years, after examining the complainant and witnesses.

Limitation to use Plea bargaining

1. Charged offence must be other than those offences for which punishment of death or life imprisonment or imprisonment extending seven years has been provided.
2. Offence must not be against women.
3. Offence must not be against child below the age of 14 years.
4. Alleged must not be habitual offender.
5. Offence for which accused has been charged, such offence must not be of nature affecting socio-economic condition of nation. Government provided list of laws, under which every offence is of such nature, namely.
 - a) Dowry Prohibition act, 1961.
 - b) The Commission of Sati prevention act, 1987.
 - c) The Indecent representation of women (Prohibition) act, 1987.
 - d) The immoral Traffic (Prevention) act, 1956.
 - e) PWDVA (The Protection of women from domestic violence), 2005.
 - f) The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
 - g) Provisions of Fruit Products Order, 1955 (issued under the Essential Services Commodities Act, 1955).
 - h) Provisions of Meat Food Products Orders, 1973 (issued under the Essential Commodities Act, 1955).
 - i) Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of boundaries of protected areas under the Wildlife (Protection) Act, 1972.
 - j) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
 - k) Offences mentioned in the Protection of Civil Rights Act, 1955.
 - l) Offences listed in sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
 - m) The Army Act, 1950.
 - n) The Air Force Act, 1950.
 - o) The Navy Act, 1957.
 - p) Offences specified in sections 59 to 81 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
 - q) The Explosives Act, 1884.
 - r) Offences specified in sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1995.
 - s) The Cinematograph Act, 1952.

Types of Plea Bargaining

1. **Charge Plea Bargaining:** This is the very popular type of plea bargaining. In this accused pleads guilty for a lesser charge on the condition that rigours charges should be removed. E.g. A, is charged with Dacoity but pleads guilty to trespassing.
2. **Sentence Plea bargaining:** In this defendant pleads guilty on the condition of lighter punishment than the original.
3. **Count Plea Bargaining:** This type is little similar to Charge bargaining. In this defendant pleads guilty one charge among multiple charges but in Charge bargaining defendant pleads guilty for another new charges.
4. **Facts Bargaining:** In this type prosecutor agrees to present less aggravated facts than original before the court. This type of plea are used when extreme circumstances lead to minimum rigours sentence.

The accused may file application of plea bargaining under section 265B (1) of CrPC and such application must face brief facts of case and attached with voluntarily sworn affidavit by defendant therein he states that he is voluntarily after knowing the nature of punishment pleads bargaining and he has been not convicted for same offence before. After receiving the application the court notices the Public prosecutor, or complainant and defendant on date fixed. On that fixed date court examines defendant in camera and verifies that he has filed application voluntarily. If court satisfies such condition then court orders both parties to work on MSD (Mutually Satisfied Disposition) else court shall begin the trial from the stage before filing application.

Disposal of Case

1. The Court may award the compensation to victim in adherence of MSD report.

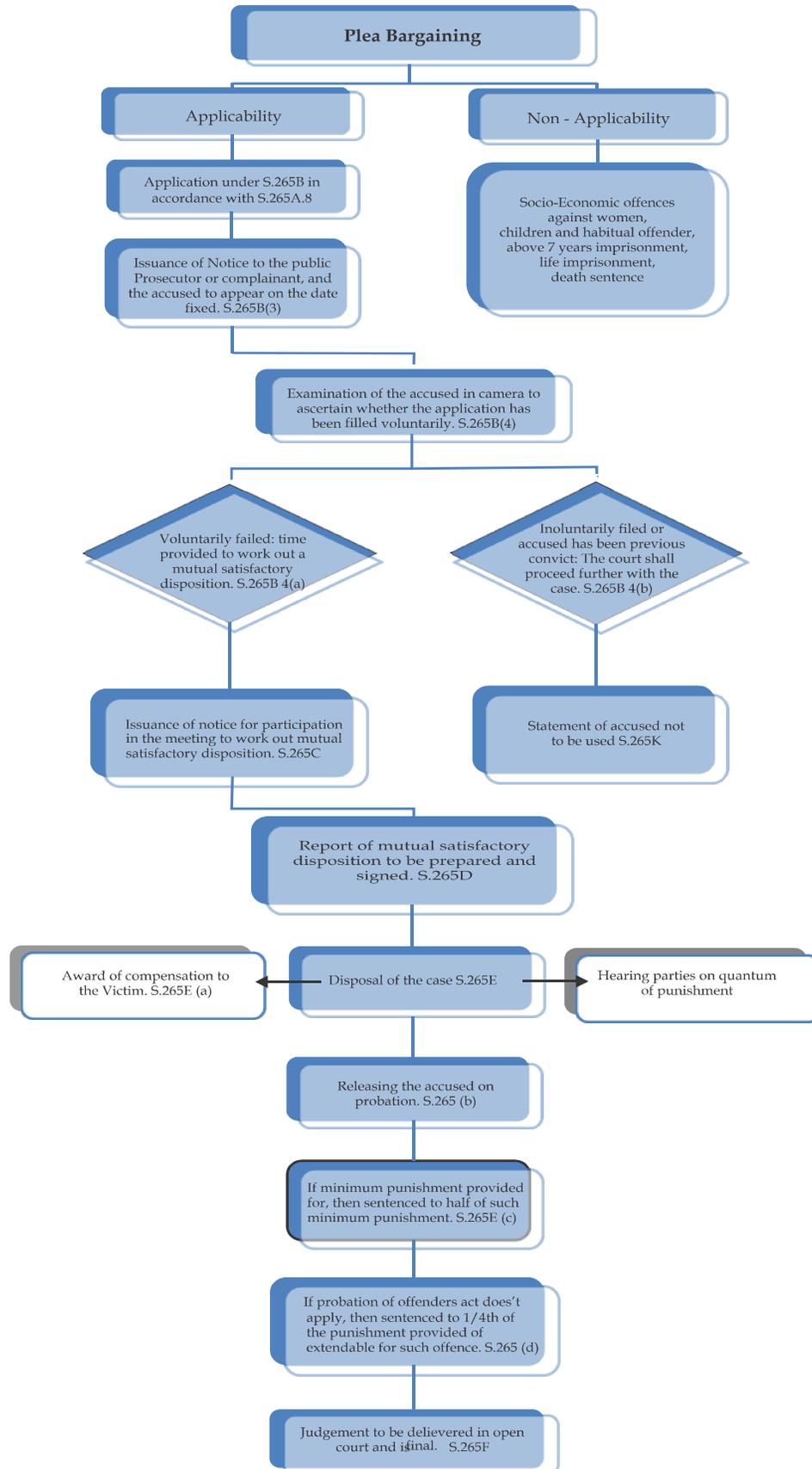


Fig. 1: Flow chart (Pleas Bargaining)

2. The Court may release the accused on probation if case attracts for the benefit of society.
3. If the minimum punishment has been provided in the law for such offence then court may sentence half of that punishment.
4. If the court after hearing the case under clause (b) finds that the case can't stand in clause (b) and clause (c) then, it may sentence the accused 1/4th of the provided or extendable punishment.

The judgement of the court is final and binding upon both the parties. No appeal can be made against such order except SLP (special leave petition Article 136) and Appeal in HC under Article 226 & 227. Under this Code Courts vested all power of discharging its functions regarding bail, trial of offences. Under Section 265K the statement recorded for the plea bargaining can't be used in any other section or, for purpose. No provision of this chapter can be used in the matter of juvenile.

History of Plea Bargaining

Evidences of plea bargaining dates back to time immemorial in the epics, jurisprudence and historical texts of various countries. The most important Hindu epic *The Bhagwat Geeta* stated that there no better punishment for offender than he admits guilt and takes oath not to do offence again. First time this concept termed as 'plea bargaining' dates back from USA criminal justice system but indirectly or in other ways Indian history unfold pages of plea bargaining. In the *Dharmasastras* apart from punishments there is separate chapter on admittance of guilt i.e. "Prayaschita" which prescribes various methods of introspection and self-purification which are accepted by all *samritis and Vedas*. Manusmriti prescribes abridgment of punishment upon feeling guilty by accused in the verse 239.

During Maurya's period, conciliation was practised for resolution of disputes and Chanakya also determined some offences for which punishment can be exempted on certain conditions. At one such instance, Chanakya through his secret detective came to know that sheith chandan das, who is Chandragupta Maurya's friend, has given shelter to amatya, who conspired against Chandragupta to kill. Chanakya called both and offered them plea bargaining in the face of confession and, if they would confessed truly then king will exempt them from punishment of death and give amatya throne of Prime minister in his court. Both admitted guilt

and king did as promised.

The History of American Plea bargaining is not very smooth. Before 1960 it was not given much importance and considered as inappropriate practice. But in 1692 there was some example of this, Salem's *Witch craft trials*, in which witches were told to confess if they want life or they would be executed. The judge wants to gain additional benefit by unearthing more witches through this practice by witches testifies against other witches. Even in the history of America Plea arguing is unpopular. Judges shocked when defendant pleads guilty in exchange if less punishment. In 1832 it was popular in Boston because people preferred less punishment by confession in lieu of rigours punishment.

Although Plea bargaining was revealed but not routinely in criminal justice system before 1970 that the apex court of USA conforms plea bargaining of convicts in *Brady v. United states*⁴. In following case Santobello v. New York, stated about Plea bargaining that not only an essential part of process but also a highly preferred part for many reasons⁵. This concept is codified in U.S. law in Rule 11© of the Federal rules of Criminal Procedure. It was only during Civil war in America when cases of plea bargaining were appears to be originated. During 1920's many surveys were conducted in states and cities of U.S.A. which revealed that 70%-80% convictions are held by guilty of plea, these surveys introduced how plea bargaining is working behind the scene.

The 142nd, 154th and 177th Law commission of India recommended to introduce Plea Bargaining as new chapter in CrPC but all are in vein. Many other proposal were introduced but failed, but with slight changes and recommendation it was added in CrPC through Criminal Amendment bill 2005. Before this amendment attitude of Supreme Court toward this is not supportive. In *State of Uttar Pradesh v. Chandrika*⁶ Supreme court criticised introduction of plea bargaining and held that criminal cases cannot be disposed of on the basis of this concept. Cases should be disposed of on the basis of merit and prescribed punishment should be given, mere guilt and acceptance of offence can't abridges vulnerability of effect of crime and harm suffered by victim. But with all these ups and down it is going well in India and in *State of Gujarat v. Natwar Harchanji Thakur*⁷ Gujarat High court praised the procedure and appreciated aim of expeditious trial and justice system in criminal cases.

Plea Bargaining: A Silver Lining

This quote of Lincoln is enough to show the

reason behind introduction of plea bargaining, because court trial are tough like walking on burning woods. There is no minimum time prescribed for disposition of case, it may be two or three or five or ten years, nothing can be said. The accused faces mental torture of hard going trial and spent his life for legal expenses because lawyer charges very sky kissing fee from their client. These pain and torture are not part of punishment to which an accused have to bear. In the year 2001 very disastrous data came, more than 1, 00,000 inmates housed in jail beyond their capacity out of which 70.5 percent are under trial. Plea Bargaining helps in reduction of congestion in jails. In the U.S.A 70–75 percent of convictions ends with plea bargaining and in India 80–90 percent of criminal cases results in acquittal⁸. Main benefit is there are more chances that the guilty plea will be accepted by the court, the court wouldn't be sceptic to reject the plea on menial issues and that is far more profitable for the accused. Finally, it also benefits the public prosecutors by reducing their workload and obviously relieves the court off the growing number of cases⁹. The 142nd Law commission report states that the burden of trial and prosecution led the complaint to step backward from the process of *Criminal Justice delivery system* which is black stain on our judicial system. The courts are place where rich plays with justice, plaintiff from poor economical background can't think of justice because rich people make the trial long and hard in which it become very hard for poor to stand and fight for justice. In this kind of justice delivery system Plea bargaining is a ray of light in the deep darkness. In the data of high no. of acquittal in criminal cases Plea bargaining is proved as *sunshine of justice rather than a candle for justice*. Plea bargaining is a win-win situation for both the parties rather than win-loss because in trial either criminal got acquitted or complainant succeed in conviction of accused.

Pros of Plea bargaining in a Nut shell

- Saves money from expenditure on heavy fee of lawyers.
- Win-win situation for both parties.
- Promotes awareness of negotiating and mediation.
- Abridges burden of courts.
- Prevent longing of cases which results in acquittal.
- Saves time and trial become expeditious.

Plea Bargaining a Compromised mockery

There is no doubt that in this pity condition of Indian Criminal justice System Plea Bargaining is very helpful but a coin has two faces, earlier we discussed benefits which is one face, other face shows cons of Plea Bargaining. William Blackstone said that, no innocent should must be suffered but, this concept Increasing this con. There is no data how many innocents is convicted through this concept just because they can't afford trial. This is black stain on the profession of those people who wears black. Lacking justice delivery system is suffered by innocent and poor people. In *State of Uttar Pradesh v. Chandrika*¹⁰, the Supreme Court has observed: 'It is settled law that one basis of plea bargaining Court may not dispose of the criminal cases. The Court has to decide it on merits. If accused confesses hi guilt, appropriate sentence is required to be imposed..... Mere acceptance or admission of the guilt must not be a ground for reduction of sentence. In the 142nd report of law commission it was also stated that this concept is successful in U.S.A because of their literacy rate but in India its limitation is that people are don't aware about this and A lawyer never wants expeditious trial. In India Police plays an important role in process of plea bargaining but we can't say that police is corruption free. Politicians, Affluent People and other powerful people are involved the negotiating which can be manipulated by them against helpless prosecutor. Indian judiciary is world's one of the respected judicial system but this concept can influence the un-biasedness of judges. In America this is very active problem because judges are predetermines to dispose the case with Pleas Bargaining to reduce load which results that 90% of cases in America are end with Plea bargaining. IPC talks about punishment for crimes according to their deterrence and heinousness but Plea bargaining makes mock of principles of jurisprudence behind penal code just to reduce burden and hide incompetence judicial system. This concepts also encourage defendants to waive of their rights under Indian constitution which is right to trial, they waive of their right to trial in lieu of leniency of sentence. The defendant also waives his privilege against self-incrimination and the right to confront adverse witnesses. This concept along with its merits promotes crime because, criminals are sure to get minimum punishment. Justice M.Hidayatullah in *Madanlal Ramachandra Daga v. State of Maharashtra*¹¹ and Justice P.N. Bhagwati in *Kasambai Abdulrahmanbhai Seikh*

*v. State of Gujarat*¹² held that practice of Plea Bargaining is Unconstitutional and illegal, and the cases should be disposed of on their merits rather than guilty plea of accused. With the view of above discussed concept of Plea Bargaining seems a Compromised mockery at many situations.

Conclusion

There is no doubt that in this poor condition of our Justice delivery system Plea bargaining is such a god's gift. With the burden of more than 3cr, pending cases justice can't be provided. Today most of the great countries uses this concept and India can dispose of these very expeditiously. Both parties saves their valuable time and money and, both are in win-win condition.

But every good thing is not absolutely good, some are with problems. This concept reduce sentence just because accused pleads guilty which is not justice and ignorance of deterrence and heinousness of crime and harm suffered by accused.

At this stage it is not suitable to judge the success of Plea bargaining in India, everything takes time to adapt in the environment of particular area. Still this concept can't win the hearts of judges but we have

no other options to adopt this. We hope that some amendment may come in force to make functioning of this concept easy and remove its cons.

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