

Plea Bargaining: A Necessary Evil

Siddharth Dalmia*, Asma Arora

Research Scholars, Jindal Global Law School, O.P. Jindal Global University Sonipat,
Narela Road, Near Jagdishpur village Sonipat, Haryana-131001, NCR of Delhi, India

Abstract

Plea bargaining, which means pre-trial negotiations aimed at reducing the sentence and early disposal of a criminal case, is a concept romanticized in all legal systems including India. However, the Indian courts have been very conservative in adopting this course. With the induction of Section 265B of the CrPC, plea bargaining has acquired a legal status in India. The plea bargaining should be voluntary in nature and the accused is also made aware of the direct consequence of pleading guilty, however, the reality is quite different. The principle of plea bargaining may pass constitutionality test under Article 20(3), provided the same is out of free will. The provision of plea bargaining can be considered as a necessary evil to improve Indian judiciary and enshrine the soul of article 21 of the constitution of India, i.e., Right to Life.

Keywords: IPC, CrPC Criminal Procedure Code, India, Indian law, criminal law, plea bargaining, CrPC, Indian Penal Code, 265B, Sec 265B, Sec 265B IPC, Article 21, Article 20(3), constitution, constitution of India

***Author for Correspondence** E-mail: dalmiasiddharth1994@gmail.com

INTRODUCTION

Plea bargaining, a concept romanticized by American cinema in movies belonging to the genre of crime films, will be at the center of this article. A famous quote from the book, *The Lincoln Lawyer*, reads, “*The law was not about truth. It was about negotiation, amelioration, manipulation*”. This article seeks to analyze the importance of tool of plea bargaining in the Indian judicial system. This concept can essentially be understood as a series of pre-trial negotiations aimed at reducing the sentence (sentence bargaining) of the accused if the accused wanted to plead guilty and give up his right to trial.

The Indian courts were initially very conservative in their approach because it was believed that a crime is committed against the state and the society at large, and the accused should not have the means to ‘bargain’ away his guilt. Through major political lobbying, although judiciary was against it from the beginning (*State of Uttar Pradesh V. Chandrika 2000 Cr.L.J. 384(386)*, *Muralidhar Meghraj Loya v. State of Maharastra*), plea bargaining was introduced through the Criminal Law (Amendment) Act, 2005 as Chapter XXIA in the Code of Criminal Procedure (hereafter, referred to as CrPC). The

main reason the lobbyists managed to succeed was the major backlog of pending cases in the criminal courts. While the Indian model of plea bargaining was grounded on the basis of the American model, it is significantly different and based on the recommendations of the Malimath Committee report. For instance, a qualification seen in the Indian model for invoking plea bargaining is that the pleader must not be accused of a crime for which punishment exceeds a period of 7 years’ imprisonment, and the crime must not be ‘socio-economic,’ or against a woman or a child below 16 years of age. Once these qualifications have been met, an accused can file an application for plea bargaining in the same court in which the trial is pending. This application must be voluntarily filed and should conform to the guidelines given in Section 265B of the CrPC.

The concept of plea bargaining in itself is a good way to speed up the justice system and make it more efficient. However, it has not given the expected results in the case of India.

Constitutionality of Plea Bargaining

The underlying assumption behind plea bargaining is that it is voluntary in nature and several mechanisms have been put in place to

ensure the voluntariness. The accused is also made aware of the direct consequence of pleading guilty. However, the reality is quite different; the accused is often coerced, and there is no free consent, though, the legal affidavit signed by the accused after the in-camera proceedings in front of a judge is to ensure the “voluntary” element of the process.

The US Supreme Court has upheld, although reluctantly, that the right against self-incrimination can be waived off. This would not be possible in India, as the right against self-incrimination is a derivative of a fundamental right which cannot be waived off. This is especially true if we analyze Article 20(3), where mental harassment cannot be used to incriminate an individual. The apprehension of severe punishment for an accused who is innocent can be seen as mental harassment as envisaged by Article 20(3). The only way to get around this will be if self-incrimination is being exercised completely through free will [1].

Criminal cases in India are dragged on for long time periods. One of the best advantages of plea bargaining is that it cuts down the time required to reach the verdict by the courts. The Supreme Court has stated that an accused who is innocent would prefer to plead guilty instead of fighting for his innocence, owing to the convoluted nature of the criminal trials. This issue can be understood by the experiment below:

A few students were asked to participate in a study called, ‘psychological inquiry into individual vs. group solving performance’. In the first half of the test, the students were asked to solve the questions as a group, and in the second half, they were asked to solve questions individually. A person who knew about the test took help from about 50% of the people in solving questions. The other 50% were never asked for any sort of help, and hence they never cheated. The examiner later told the students that everyone was suspected to have cheated. They had two options, either to confess and not to be eligible for the exam that year or they could contest, and if found guilty, they would have to face disciplinary actions. 88% of the people who ‘cheated’ confessed but the shocking part is 55% of the

people who did not cheat also confessed to having cheated.

This example, in a nutshell, explains the problem with plea bargaining perfectly. The basic jurisprudence of criminal courts is ‘*1000 guilties may escape, but an innocent should never be punished*,’ and this practice is against the basic jurisprudence of law [2].

Justice delayed is justice denied. Article 21 of the Constitution of India provides, “No person shall be deprived of his life or personal liberty, except according to the procedure established by law”. The courts in various cases have held that right to life under Article 21 includes right to speedy trial only through which right to life can be attained. However, it should not be attained at the cost of filling the jails with innocent people.

The concept of plea bargaining will not fit in if certain problems which infringe upon the constitutional rights of the people are not fixed. For instance, delay in justice in India due to pretrial delays, delay during the trial, delay during appellate proceedings, delay during executive proceedings, judicial vacancies, lack of accountability of judges, misuse of PIL, etc. These delays make the plea bargaining a bad deal because the decisions take a lot of time and an accused who is guilty might get convicted too late. Another problem would be the accused not being aware of their right and too afraid to take the deal by confessing. This is due to the failure on the parts of the lawyers and judges in explaining the procedure thoroughly [3]. In theory, these problems seem easily rectifiable, but in practice, the judicial system has been encroached by these very issues for decades now. Hence, intuitive solutions are probably not the best fit. So, unless proper statutes and procedures are enacted to overcome these problems, and we have statistical data to show more efficient proceedings, we cannot use concepts like plea bargaining to infringe upon the fundamental rights of our citizens when it is actually supposed to give them a way out.

Plea bargaining has been used against some provisions provided under CrPc. “Over 4,000 cases of murder, robbery, and crimes against

women were disposed of by courts.” According to National Crime Record Bureau (NCRB), courts disposed of 27 cases of murder, 55 cases of attempt to murder, 40 of rape and 27 of robbery under the provision of plea bargaining. 3584 cases of crimes against women were also disposed of using the same; out of which, 2200 were the cases of cruelty by the husband or his relatives, and 1045 were those of assault or outrage against women. In 2014, almost 35000 cases were disposed of using the said provisions which account for little over 2% of the cases decided over the year 2014 (1.3 mil. cases in total) [4].

Even the latest NCRB reports show the similar trends. 818 cases were disposed against crime against women using this provision, 13 cases against the crimes against children, 38 of atrocities against STs, 901 economic offenses, 5424 IPC crime related cases, and 41 SLL crime-related issues by the provision of plea bargaining [5].

Seeing the contrast between 2014 and 2016, we can determine that courts are becoming more aware regarding the intent of parliament and provisions of plea bargaining. But still, there is a long way to go before the plea bargaining can become a provision which adheres to the constitution of India and adhere to the wishes of the judges and parliament during the enforcement of the said provision.

CONCLUSION

The plea bargaining is the necessary evil in Indian Judicial system, as justice in India is so much delayed that it is practically denied. The provision of plea bargaining can be considered as a necessary evil to improve Indian judiciary and enshrine the soul of article 21 of the Constitution of India, i.e., Right to Life.

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