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# THE EVOLUTION OF PLEA BARGAINING IN THE INDIAN CRIMINAL JUSTICE SYSTEM WITH JUDICIAL INTERPRETATION

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## ABSTRACT:

The concept of plea bargaining is one of the quickest mechanisms for the disposal of cases, and many countries around the world have recognized it. Plea Bargaining means negotiation between the prosecutor and the accused person before the commencement of the trial process. In other words, the accused voluntarily pleaded guilty to the offence committed by him. Plea bargaining is a new concept in India, and it was introduced only in the year 2005 Criminal Amendment. The Indian model of Plea Bargaining is borrowed from the US. Before 2005, the Supreme Court of India also never accepted the Plea-Bargaining concept. But year by year, the pendency of cases increases and time demands, then the Supreme Court also finally accepted it. In this article, I am going to discuss what plea bargaining is and its types, how it evolved, and its applicability and the advantages and disadvantages through the Indian case law precedents. This article mainly focuses on the need for plea bargaining in the criminal justice system and further explores the relationship between the prosecutor and the accused.

**Keywords:** Plea Bargaining, Negotiation, Criminal Law, Pre-Trial, Guilty, Accused, and Prosecutor

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## 1. INTRODUCTION:

India is the world's largest populous country in the world. And people of this modern society value their money and time. In this democratic country, the wing of the judiciary is facing many problems, among them one of the very biggest problems is the pendency of cases. Still, now around 4.5 crores of cases are pending before the court<sup>2</sup>. For this problem, the legislation took some action and devised a new innovative idea to deal with this matter. The innovative tool is nothing but plea bargaining. It will help to address the pendency of cases quickly and speedily. Plea bargaining is the latest concept in India. In this modern era, the criminal justice system faces a vast majority of criminal convictions and produced through bargained pleas. According to this process, the accused and the prosecutor mutually satisfactory to dispose of the case with the court's permission. Plea Bargaining was introduced by the recommendation of the Law Commission to reduce the delay in disposing of criminal cases as an alternative method to deal with the arrears present in criminal cases.<sup>3</sup> It was first introduced in the Criminal Law (Amendment) Act 2005 and came into force only on 5<sup>th</sup> July 2006. It's been nineteen years since the incorporation of the concept in the criminal law in India. Plea bargaining refers to a process of pre-trial negotiations between the parties to try and reach a mutually satisfactory disposition of the case, subject to approval by the court.<sup>4</sup>

There is a famous quote by the greatest Indian jurist and lawyer **Nani Palkhivala**,

*"The greatest drawback of the administration of justice in India today is because of delay of cases.....The law may or may not be an ass, but In India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work." <sup>5</sup>*

It is important to note that plea bargaining is not available in all cases and is only applicable to specific offences. Plea bargaining is not a right, and it is up to the discretion of the court and the prosecutor to decide whether to accept a plea-bargaining proposal.

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<sup>2</sup> Pradip Thakur, Pending cases in India cross 4.4 crores, up 19% since last year, <https://timesofindia.indiatimes.com>

<sup>3</sup> Amrit Paul Kaur, Justice in plea bargaining-it's a coercion to compromise, Bhaarti Law Review, AprilJune,2016

<sup>4</sup> A Detailed Study of Plea Bargaining in India - E-Justice India ([ejusticeindia.com](http://ejusticeindia.com))

<sup>5</sup> Nani A Palkhivala. "We the nation..... Lost decade (1994) U.S.B Publication p115

In this study, the main aim of the work is to trace the concept of plea bargaining in India. This work is going to discuss the development and types of plea bargaining in India and its current status. In recent years, the judiciary has eagerly adopted plea bargaining more efficiently compared to the 1900s period because of the speed and pendency of cases. This research work also attempts to discuss some judicial case laws relating to plea bargaining and discuss the advantages and disadvantages of plea bargaining. The main objective is to understand how this legal negotiation process functions and its impact on the criminal justice system and ethical implications for the accused, victims, and society as a whole.

## 2. PLEA BARGAINING - MEANING:

Plea – means an earnest request or an urgent and emotional request.

Bargaining – means the part with something after negotiation, but getting little or nothing in return.

**Plea Bargaining – means Plead Guilty in the court and bargain lesser sentence.**

There is no clear definition available in our legal statute. Generally, plea bargaining means an agreement between the defendant and the prosecutor, and the defendant agrees to plead guilty in return for less severe punishment or a concession from the prosecution side.

According to **Black's Law Dictionary**, Plea bargaining has been defined as 'a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the negotiated charges'<sup>6</sup>

Plea bargaining means an agreement between the victim and the prosecutor wherein the former agrees to plead guilty in return of some reduction in the form of a reduced or lesser punishment. The infamous Latin phrase, '*nolo contendere*', which means 'I do not wish to contest', though a plea of guilt, is nevertheless seen as a principle on which the concept of plea bargaining has been founded.<sup>7</sup>

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<sup>6</sup> Bryan Garner, Black's Law Dictionary ( 8th edn, Thomson & West 2004) 1190.

<sup>7</sup>Varsha Gulaya, Tracing the Development of Bargaining in India [Part I], CCLSNLUJ, (Mar,13,2019). <https://criminallawstudiesnluj.wordpress.com/2019/03/13/tracing-the-development-of-plea-bargaining-in-india-part-i>.

Plea bargaining is a kind of preparation made to mutually satisfy the disposition of the case, subject to acceptance by the court. Plea bargaining starts at the pretrial stage when the acceptance of guilt by accused there is no need for further proceedings.

Another meaning of Plea Bargaining under **Black's Law Dictionary** is,

*“The process whereby the accused and the prosecutor in a criminal case work out mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the grave charge.”*

Plea Bargaining is essentially derived from the principle of ‘Nolo Contendere’, which means ‘I do not wish to contend’. ‘The apex court has interpreted this doctrine as an ‘implied confession, a quasi-confession of guilt, a formal declaration that the accused will not contend, a query directed to the Court to decide on plea-guilt, a promise between the Government and the accused, and a government agreement on the part of the accused that the charge of the accused must be considered as true for a particular case only.’<sup>8</sup>

### 3. EVOLUTION OF THE MODERN CONCEPT OF PLEA BARGAINING:

The concept of plea bargaining, what do we follow today, originated in the 19th century in the USA. The court has the record likes the practice of this concept was even followed during the civil war period in the USA, and in that time, most of the majority of courts disapproved of it and did not allow it on the ground of vulnerability to corrupt the court practices. After 1920, it became the common method for securing the wrongdoer from severe punishment.

### 4. TYPES OF PLEA BARGAINING:

Generally, the plea bargaining was divided into three types,

1. Charge bargaining
2. Sentence bargaining

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<sup>8</sup>Hitesh Agarwal, Plea Bargaining: Present Status in India, available at: <http://www.legalserviceindia.com/article/article/plea-bargaining-present-status-in-india-658-1.html>(last accessed 16april, 2023), <http://www.commonlii.org/in/journals/NALSARLawRw/2013/7.pdf>

### 3. Fact bargaining

#### **4.1 CHARGE BARGAINING:**

This is the most typical sort of bargaining, where the defendant, if he has committed more than one offense, might admit to one of them in exchange for dismissing more severe charges against him. It's the most common form followed in criminal cases.

For instance, if a defendant is accused of robbery and trespassing on someone else's property and admits to trespassing, the robbery charges are dismissed. As a result, his punishment will also be shorter.

#### **4.2 SENTENCE BARGAINING:**

In this type, the defendant consents to admit guilt to the charged offence in exchange for a reduced punishment. In this type of bargaining, the offender confesses to the offence before the trial, allowing both sides to agree on a beneficial punishment that would have otherwise been harsher and longer.

For instance, a robber might receive a lighter term or a less severe punishment if he confessed to the crime prior to the trial.

#### **4.3 FACT BARGAINING:**

In this type, the accused or defendant accepts certain or particular facts in exchange for not adding new facts. In other words, the prosecutors may agree to hide some facts related to the crime, which, if disclosed, may result in a worse sentence or sentence for the defendant.

For example, penalties for dealing drugs have been found to vary depending on the amount of drugs in possession. So, if someone had 5 kilograms of cocaine in his possession, this is an amount that could trigger a very long prison sentence, and he could plead guilty to drug trafficking. In return, prosecutors could not disclose the amount for humanitarian reasons. Most judges don't like this style of negotiation for ethical reasons.

Apart from the above three, there is another two types of plea bargaining is accepted by international jurisprudence. That is,

1. Express plea bargaining
2. Implicit plea bargaining

**Express plea-bargaining** means the accused or his counsel bargains directly with the prosecutor or the trial judge to concerning the benefits.

**Implicit plea-bargaining** means ‘the negotiation occurs without face-to-face. In this method, the trial judge, especially, establishes a pattern of treating accused who plead guilty more leniently than those who exercise the right to trial, and the accused therefore come to expect that the entry of guilty pleas will be rewarded.’<sup>9</sup>

## **5. SALIENT FEATURES OF PLEA BARGAINING:**

- i. The plea-bargaining process is only applicable to offenses which is punishable for less than 7 years and up to 7 years and not above that.
- ii. This plea-bargaining process was not acceptable for three reasons: whether the punishment is less than 7 years
  1. The offense is committed by the offender against the socio-economic condition of the state;
  2. The crime is committed against women;
  3. The crime is done against a child below the age of 14years.
- iii. The application of plea bargaining initiated by the offender could be voluntary.
- iv. The accused person can file a plea-bargaining application in front of the court, whether the offence is pending before the court for the purpose of trial.
- v. The plea bargaining raised by the offender is purely voluntary, and his intention is not done by force or coercion.

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<sup>9</sup><https://pdfcoffee.com/plea-bargaining-and-its-scope-under-crpc-pdf-free.html>  
<http://kja.nic.in/article/PLEA%20BARGAINING.pdf>.

- vi. The accused pleaded a plea of plea bargaining and the court is satisfied that the plea was raised voluntarily by the accused means the court will allow time to both parties to dispose of the case mutually through the compensation and other expenses given by the accused to the victim.
- vii. In the process of mutually disposition, the victim is satisfied means the court could dispose of the case by sentencing the accused the one-fourth of the punishment.
- viii. Once the court is awarded the judgement in the case of plea-bargaining means that is final and there is no review or revision, or appeal applies to any court. But there is one exception available, whether the application is filed before the court of SC under Art. 32 and Art. 136, and Art. 226 of the Constitution of India.
- ix. The offender is the first offender means there is no need to plead for a plea bargaining; he/she had another option of probation; the court will also accept it.
- x. In the process of plea bargaining, there are three essential works in filling the application:
  1. The accused pleaded guilty voluntarily.
  2. What is stated by the accused in the statements or facts should not be used for other reason or purpose except the plea-bargaining process.
  3. The plea-bargaining process is one kind of contractual agreement between the accused and the prosecutor regarding the discharge of criminal charges. And it was only acceptable or enforceable with the approval of the judge.

## **6. APPLICABILITY OF THE CONCEPT:**

- The concept of plea bargaining applies to all persons who have attained the age of 18 and above.
- This concept does not apply to the person who is covered under section 2(k) of the Juvenile Justice (Care and Protection of Children) Act 2000.<sup>10</sup>

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<sup>10</sup> Plea bargaining – A new horizon in criminal jurisprudence- Pradeep K.P.(2007)

- It only applies to the offender who has attained the age of majority.
- If the accused is convicted of some kind of offense previously means the plea-bargaining process does not apply to that person.
- It cannot apply to the category of serious crime.
- The application made by the accused is voluntary means it will be applicable otherwise, it will not be applicable.
- The offence done by the accused, which affects the socio-economic condition of the state, means that the plea bargaining is not acceptable.

### **6.1 HOW PLEA BARGAINING IS MADE:**

The plea-bargaining application was only made by the accused when-

- The officer in charge of the police station u/s 173 of the CrPC/ 193 OF BNSS forwards a report stating that the offence appears to have been committed by him is an offence other than the offence of which punishment of death or imprisonment for a term exceeding seven years has been provided under the law in the time being of force.
- The magistrate had the power to take cognizance of an offence related to a complaint, then examine the complaint and witness u/s 200CrPC/Section 223 of the BNSS and issue the process u/s 204 of the CrPC/Section 227 of the BNSS.<sup>11</sup>

### **6.2 WHO CAN FILE A PLEA APPLICATION:**

The application of plea bargaining is filed by any person who is above the age of 18, and the accused whose trial is pending before the Court has the right to file the plea-bargaining application.

The plea bargaining can be filed by a new accused only, and he should not have been convicted earlier.

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<sup>11</sup> A Comparative study on plea bargaining in India and other countries by Jeevalaya, volume 7 of Indian Journal of Research, Issue-9, Sep2018, ISSN No 2250-1991.



**7. ADVANTAGE OF PLEA BARGAINING:**

- **SPEEDY JUSTICE-** Our current judiciary system is affected by the overcrowding of many litigations, and we have a less structured court structure to deal with all cases. So, adapting the plea-bargaining process helps to provide a speedy justice, and the court reaches a decision quickly.
- **LESS MONEY AND TIME-** In the formal proceeding of the court consuming a large amount of money and time is consumed. In the normal proceeding, both parties take time to prepare their own argument, so that will take too much time too. But adopting the plea bargaining is very cheap and renders justice quickly.
- **QUICK DISPOSAL** – In the normal proceeding, the trial process usually requires a long wait, and it causes stress. But plea bargaining is used to dispose of the case quickly.
- **ADR-** The plea bargaining is considered a kind of alternative dispute resolution; the advocate must inform the accused about this, and the state has the compromising option of factual and legal dispute.
- **WORKING RELATIONSHIP-** The scholar's opinion is “an irrepressible tendency towards cooperation among members of the Courtroom work group.” It allows the court working team to satisfy their “mutual interest in avoiding conflicts, reducing the uncertainty, and maintain the group cohesion.

**8. DISADVANTAGES:**

- **UNJUST SENTENCING-** In the traditional form of the Criminal Justice Administration System, the accused gets a full punishment what is mentioned in the Laws. But if the accused pleads guilty, their plea means he/she only get a lesser punishment, and this will lead to an unjust opinion of the public.
- **SYSTEM COLLAPSE-** Now we are following the one criminal justice system, and that is mostly based on the deterrence theory concept, but this plea bargaining allows leniency to the accused, and the accused doesn't have the fear that it will indirectly affect the current system.

## 9. THE LEGISLATIVE FRAMEWORK:

### 9.1 CONSTITUTIONAL VALIDITY:

The plea-bargaining process is not a fundamental right or constitutional right under the Indian Constitution. It's not a right. It was not accepted by the year of still 2005, but after the enactment of the criminal amendment, it was accepted but still, now it's not a constitutional right.

Before 2005, plea bargaining in India is not recognised as a legal practice in the court. The Supreme Court always giving the opinion that plea bargaining is unconstitutional and unacceptable under the purview of Indian Jurisprudence.

**Thippaswamy v. State of Karnataka**<sup>12</sup>, in this case the court said, in the plea-bargaining process the accused is asked to confess the commission of offence, it would be violating his fundamental right of right to life (Art.21), it has been cherished upon the virtue of COI.

**State of UP v. Nasruddin**<sup>13</sup>, in this case onwards the attitude of the top courts is changed little bit and court show some positive attitude on plea concept. The supreme court stated that reduction of sentence with respect to period already undergone as a result of plea bargaining would open a gate leading to serious miscarriage of justice.

**Kasambhai Abdul Rahmanbhai Sheikh v. State of Gujarat**<sup>14</sup>, in this case the SC looks over the concept of plea bargaining and said its unconstitutional and unlawful because it is violating the fundamental rights of right to life. Court further states, if the plea bargaining is allowed means the innocent individual person think pleading guilty is more feasible option than trial process. This could affect the principle of natural justice process.

**Kasambhai v. State of Gujarat**<sup>15</sup>, in this case the Supreme Court stated that the practice of plea bargaining is against the public policy.

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<sup>12</sup> 1983 (1) S. C. C. 194

<sup>13</sup> 2000 (10) SCC

<sup>14</sup> 1980 (3) S.C.C.120

<sup>15</sup> AIR 854, 1980

## 9.2 SHIFT OF JUDICIAL THINKING:

**State of Gujarat v. Natwar Harchanji Thakore**<sup>16</sup>, in this case the High Court accept the process of plea bargaining, and stated that the object of the law is to provide easy, and expeditious justice to the disputes. Considering the pendency of cases and delay in disposal of cases the fundamental reforms are acceptable and inevitable. The plea bargaining gives new dimension to our criminal justice system. And law should not be static.

**State of UP v. Nasruddin**<sup>17</sup>, in this case onwards the attitude of the top courts is changed little bit, and the court shows a positive attitude towards the plea concept. The Supreme Court stated that a reduction of sentence with respect to the period already undergone as a result of plea bargaining would open a gate leading to a serious miscarriage of justice.

## 9.3 IN CRIMINAL LAW:

In Criminal law, before the 2005 amendment, there was no direct provision related to plea bargaining is available, but the seed was sown in Criminal laws. The Criminal Amendment was made on behalf of the Law Commission, and the reports were finally Indian legislative enacted the law in parliament.

“The seed of the plea-bargaining process is found in

- **Section 206(1) and 206(3)** of the Code of Criminal Procedure and
- **Section 208 (1)** of the Motor Vehicles Act, 1988.”<sup>18</sup>

According to the section of these laws, the accused might plead guilty to petty or less serious violations and settle with penalties for minor offences to close the cases.

**Section 206 (1) of Cr.P.C** says, “if, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260 1[or section 261], the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the

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<sup>16</sup> 2005 Cr.L.J.

<sup>17</sup> 2000 (10) SCC

<sup>18</sup> <https://www.legallyindia.com/views/entry/plea-bargaining-a-new-development-in-the-criminal-justice-system-html>

Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader: Provided that the amount of the fine specified in such summons shall not exceed 2 [one thousand rupees].”<sup>19</sup>

The above-mentioned sections were available before the 2005 Criminal Amendment. After receiving suggestions from various committees and law reports, the plea-bargaining process was finally accepted by the Government of India, and it was enacted in Parliament in the name of the Criminal Amendment Act, 2005. But it was brought to the fore on July 5, 2006.

In the 2005 Criminal Amendment Act, a new chapter was inserted in the Criminal Procedure Code, 1973. The inserted chapter is chapter XXI-A, and the sections are 265-A to 265-L. This chapter and sections fully deal with plea bargaining and its applicability. Under this chapter, there are a total of 12 sections available to describe the plea-bargaining process. Now, Sections 289 to 300 of BNSS speak about plea bargaining.

## 10. CASE LAWS:

### 1. MOHAMMED ANSAL V. INAS .M<sup>20</sup>

In this case, the both parties are working in the Gulf country and have pending cases against themselves. On behalf of that the both parties are canvassed by the respective advocates and enter into the compromise. So, they ready to quash the both side Criminal proceedings under the section 482 of the Criminal procedure Code.

In that process some of the offences are non-compoundable offence and so they filled a petition of plea-bargaining application in the court to u/s 265A of the Code. The plea-bargaining process had a mutually satisfactory disposal.

The both parties are seeking the speedy trial to dispose the case the court also satisfied the application because it was done by voluntary and Chapter XXI A had a provision

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<sup>19</sup> [https://www.indiacode.nic.in/handle/123456789/16225?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/16225?sam_handle=123456789/1362)

<sup>20</sup> CrL.M.C No 3716 of 2012, CrL.M.C No 3717 of 2012, C.C 1015/2012

and allow to dispose the case of the applicant and respondent with in the period of six weeks.

## **2. STATE OF KERALA V. K. BALA DANDAPANI<sup>21</sup>**

In this case the petitioner was filed a writ petition in the High Court and seek the court to dismiss the Lower court order. In this case the petitioner was found guilty u/s 138 of Negotiable Instrument Act and the lower court passed an order to impose the amount rupees fourteen lakhs. In the trial process the Magistrate was not follow the provision mentioned in section 265B (4) of the Criminal Procedure Code and he examined the petitioner not in the in camera and the absence of complainant.

Then the court imposed a fine of rupees twenty-four lakhs to the petitioner under section 357(3) of the Criminal procedure Code but the court have only a power to impose a fine on Sec 357(1) of the CrPC.

The High court held the order passed by the lower court is illegal and the bargaining was not done in the proper manner. The offence under the sec 138 of the Negotiable Instrument Act, 1881 do not cover the Sec 265E clause a to c of the Criminal Procedure Code. The fine imposed by the lower court is doubled but according to the provisions of law, the low court had a power to fine the half amount. The action of the lower court is illegal and void.

In final, the Writ petition was allowed and the order of the Low Court is quashed. The High Court ordered the lower court to dispose case within six-month period.

## **3. AIR CUSTOMS V. BEGAIM AKYNOVA<sup>22</sup>**

### **FACT:**

In this case, Ms. Aida Askerbekova and Ms. Begaim Akynova was flight passengers and were intercepted by the Indira Gandhi International Airport customs officers for the checking on 11.09.2019. And the officer asked them to walk through the Door Frame Metal Detector (DFMD) and the beep sound was alarmed. Both were accepted and

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<sup>21</sup> O. P (CrL) No. 253 of 2014, S.T.No 1775/2014

<sup>22</sup> W.P. (CRL) 1974/2021

admitted that they are involved in the smuggling of gold intentionally and knowingly to escape from the customs duty. Here the first accused got a permission to go abroad with a subjective condition. The accused two the petitioner of this case didn't get any relaxation to go abroad and his passport was blocked by the officer. And she was sentenced above the three years of the punishment the fine also imposed.

**ISSUE:**

- a) Whether the option of lenient sentence u/s 265A of CrPC is applicable to the accused if she plead guilty?
- b) Whether the petitioner is convicted means she get the less imprisonment or imprisonment up to 7 years?

**ARGUMENT:**

The respondent argue that the petitioner was not served imprisonment under the section 265A of the Criminal Procedure Code. Petitioner argued she is punished up to seven years and his gold smuggling worth is less than one crore amount and she further added she is a poor lady and she was implicated to this case.

**JUDGEMENT:**

Court held that Custom Act, 1862 section 137(3) is not away from the applicability of plea-bargaining chapter XXI-A of the Criminal Procedure Code. Here the petitioner had an option to compounding the offence under the Custom Act and Plea bargaining from the CrPC. The market value of the gold recovered from her is rupees 67,70,400 lakhs only and she is liable to punish only up to 3 years imprisonment or fine or both. Court finds here there is no legal weakness is available in the order of the Lower court. The accused already went the imprisonment and paid the rupees 50,000 fine under the section of 132, 135(1) a & b of the Custom Act 1962. Finally, court order the authority to release the passport of the accused and the case was disposed.

**4. JOSEPH P.J V. STATE OF KERALA<sup>23</sup>**

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<sup>23</sup> 2015 5 KHC 586(India)

**FACT:**

The petitioner filed a plea-bargaining application in court u/s 265B of the Criminal Procedure Code. The petitioner has voluntarily entered into this and is ready to plead guilty and pay compensation and a fine to the court. Meanwhile, the victim also has no issue entering into plea bargaining, and the accused is ready to pay the Rs. 4.5 lakh compensation amount to the person who is a victim of u/s 357(1)(b) of the Cr.P.C. The victim had no objection to granting a five-month period to the accused to get compensation. The trial court also accepted the plea bargaining and passed an impugned order. The petitioner challenged the impugned order passed by the trial court because the trial court violated Chapter XXIA, a mandatory provision of the Cr.P.C.

**ISSUE:**

- i) Whether the plea-bargaining process is voluntary or not?
- ii) Whether the plea-bargaining process violate Chapter XXIA of the Cr.P.C mandatory provision?
- iii) Whether the plea-bargaining process violates the fundamental rights of Art. 20(3) and 21 of the Constitution of India?

**ARGUMENT:**

The petitioner argued that the plea-bargaining process was not done fairly and voluntarily. The process of the plea is violating the fundamental rights of Art. 21 of the Constitution of India and the mandatory provisions of Chapter XXIA of the Criminal Procedure Code.

The respondent argued the judgment given by the lower court was relied upon by the petitioner and laid down the correct position of law.

**JUDGEMENT:**

The court stated that the judgment given by the lower court is not comply with the mandatory provisions of Criminal Procedure Code Chapter XXIA, meaning it's a result of prejudice and provides faulty and inadequate justice to the accused. The court states

the mandatory provision of Chapter XXIA is engrafted by the parliament, and only judges have to follow it, if they think there are changes, the parliament only has the power to alter the provision. The court also held that if any violation occurs, it clearly violates the accused's fundamental rights under Art. 21 and Art. 20(3) of the Constitution of India. The court further added that the plea-bargaining process must be voluntary and reliable. If any violation is the result of prejudice and failure to do justice to the accused.

**DISPOSITION:** The Court set aside the impugned order of the trial court and remanded the matter to the trial court for disposal afresh.<sup>24</sup>

### 11. Comparative Analysis of the USA and INDIA:

|                   | USA                                                                                                                                                           | INDIA                                                                                                                |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Nature of offence | No provisions are available to prohibit plea bargaining on certain offences.<br><br>An accused person charged with any offence asks or seeks plea bargaining. | The exception is available under CrPC Section 265-A.<br><br>The accused cannot seek plea bargaining in all offences. |
| Role of Victim    | The victim does not have any power or role in the plea-bargaining proceeding.                                                                                 | The victim plays an important role. He has the power to refuse the Mutually Satisfactory Disposition.                |
| Mechanism         | The plea bargaining was filed only after the process of negotiation between the accused and the prosecutor                                                    | The application was filed by the accused before the negotiation process started.                                     |

<sup>24</sup> <https://www.casemine.com/judgement/in/5ac5e3d74a93261a672c0f43>



|             |                                                    |                                                                                                                                                                                       |
|-------------|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Judge Power | The judge had no power to exercise his discretion. | The judge had a discretionary power to either accept it or reject the application.                                                                                                    |
| Finality    | The judge giving the judgment is finality.         | If the court thinks the punishment awarded to any plea bargaining is not sufficient means the court will set aside the judgment under the special petition under Article 136,226,227. |

## 12. CONCLUSION:

Human beings are social animals, and we can't live alone in this modern world. We are all adopting modern ways and techniques to lead our lives to the next level without complaining or bothering about it. Through this evolution, on the one hand, and the other, crime will also be there and increase, and it will happen because that's the structure of our society. In every language, "crime" and "victimization" have the same meaning. In our olden society, too, there was crime, but the system of the criminal administration was different. Now we are introducing many new concepts in the criminal administration, and plea bargaining is one of them. According to the data, the rate of crime is increasing mostly in civilized societies. According to the "NCRB" report, in 2017, the number of cases filed under the IPC was 11,524,490; among these, only 31,857 cases were disposed of through plea bargaining, and the disposal percentage was only 0.27%. In 2018, the number of cases filed under the IPC was 12,106,309; among these, only 20,062 cases were disposed of through plea bargaining, and the percentage of disposal was only 0.16%.

The plea bargaining is only highly based on discretion, but in some situation, they will enter involuntary because of the fear, compulsion by the other party or influence of the police etc... still now we don't have any data but there is chance available highly. Plea bargaining is one of the more effective tools to resolve criminal cases than going to trial because, in trial, it will take too long and be time- and money-consuming. But in the plea-bargaining process, it will be done as soon as possible and won't take that much time and money. If the accused is

voluntarily involved in the plea-bargaining process, the court will examine the application first. If the court is satisfied that it was done by voluntary means, it will send the notice to the other party and call the accused to appear on the particular date. On that day, the court will do an in-camera proceeding, then allow for a mutually satisfactory disposition, and if it works out within a month, the court will pronounce the judgment. If the accused pleads guilty and is ready to pay compensation, the case will be disposed of very quickly.

Rejecting anything, any idea, or any step based only on the flaw means it's not acceptable because every idea and new procedure has flaws in the initial period. We have to resolve the flaws and move on, but rejecting them is unacceptable. Once the Chief Justice Lahoti said, ***“Now it is clear that the inlet (of water storage) cannot be stopped. Can we at least increase either the speed of the outlet or the number of outlets? Yes, we can increase the outlet”.***

When we approach things constructively and work for true socio-legal justice rather than just our own self-interest, plea bargaining can be implemented successfully. Plea bargaining will undoubtedly help the Indian judiciary overcome its obstacles and achieve the goals outlined in the law commission recommendations if it is properly implemented. The success of the plea-bargaining process depends on how we are going to utilize this and how we execute this method.

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