

LAW COMMISSION & JUDICIAL RESPONSE ON PLEA BARGAINING

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ABSTRACT

On the recommendations of 142nd, 154th and 177th reports of the Law Commissions and in 2003 on the recommendation of Malimath Committee, Plea Bargaining was introduced in the 'Indian Criminal Justice System' by the 'Criminal Laws (Amendment) Act, 2005' to reduce the burden of the courts i.e. to clear the backlog of the cases. Plea Bargaining is not an indigenous concept of Indian legal system, it was borrowed from USA. This paper has made an attempt to evaluate, explore and examine the reports of various law commissions and committee which recommended plea bargaining and to understand the changing judicial response or attitude towards plea bargaining in India since its 1st recommendation in 1991.

- I. INTRODUCTION
- II. 142nd REPORT (1991) OF 12TH LAW COMMISSION
- III. 154th REPORT (1996) OF 14TH LAW COMMISSION
- IV. 177th REPORT (2001) OF 16TH LAW COMMISSION
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I. INTRODUCTION

Plea Bargaining can be defined as an administrative process where the accused bargains with the prosecution for a lesser punishment. In other words, Plea Bargaining is an agreement or a settlement between the accused and the prosecution regarding disposition of the criminal proceeding for lesser punishment.

In other words, the accused pleads guilty to a lesser punishment in lieu of a full fledged trial of a serious and severe offence. Plea Bargaining can conclude a criminal case without a trial. Plea

bargaining like other criminal justice reforms is more suitable, flexible and better fitted to the needs to the society, as it might be helpful in recurring admissions in cases where it might be difficult to prove the charge laid against the accused.¹

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LAW COMMISSION'S REPORTS ON PLEA BARGAINING

II. 142ND REPORT (1991)

The 142nd report (*Confessional treatment for offenders who on their own initiative choose to plead guilty without any bargaining*)² in 1991 was presented under the Chairmanship of Justice Manharlal Pranalal Thakkar by the 12th Law Commission established in 1988.

Chapter II of the report talks about the problem of delay in the disposal of criminal trials and appeals. Commission has identified that even after so many years the situation of the process has not improved. Long delays still continue to occur in the disposal of trials and appeals. In the current situation it is extremely difficult to expedite the process of criminal trial in the subordinate courts and the disposal of appeals in the appellate courts. Extent and duration of cross examination cannot be reduced without creating other problems. Nor can arguments be curtailed for the same reason. So, the commission has observed that there is little scope for reformation of the system to attain speedier disposal. The commission has also observed some reason to believe that the increase in number of courts and the judges would not necessarily result in reducing the delays in the disposal of trials and appeals mitigating the hardships suffered by the under trial Prisoners. In spite of the strict warning administered by the Supreme Court it is not reported that there is any improvement in the duration of the time spent by the under trial prisoners in jails awaiting their trials to commence. The commission has felt that the conditions have further deteriorated and there is a need for instant reform in the matter.

¹ Justice Pasayat A. Plea Bargaining, 5 Nyaya Deep, National Legal Services Authority, 2007, VIII.

² Submitted on 22 August, 1991.

It cannot, therefore, we again said that a Grave one and clamors for urgent attention. the concept of plea bargaining as obtaining in the USA needs to be examined in the light of this ungainly situation.

Chapter III of the 142nd report talks about the concept of plea bargaining from all aspects, factors and reasoning supporting and opposing its incorporation in the Indian criminal justice system. The Commission also talks about the views of Indian Supreme Court and the US Supreme Court about the Constitutionality of the plea bargaining.

III. 154TH REPORT (1996)

The 154th report³ in 1996 was presented under the Chairmanship of Justice K. Jayachandra Reddy by the 14th Law Commission established in 1995.

Chapter XIII of the report deals with the recommended provisions relating to Plea bargaining. The report has said that there has been huge arrear of criminal cases because the disposal of criminal trials takes so much time. In many cases the trial does not start even after 3 or 4 years of the judicial custody of the accused.

Most cases ultimately end in acquittal. The accused had to undergo mental torture during his under trial period and had to spend huge amount. Because of these reasons the Law Commission felt that some remedial legislative measures should be introduced in the criminal justice system to reduce the delays in the disposal of criminal cases and also to alleviate the suffering of Under trial Prisoners and in its support the law commission also referred to the 142nd report on concessional treatment of offenders which also talked about the incorporation of plea bargaining. By giving an example of plea bargaining in the USA this 154th report said that the concept of plea bargaining in the USA is about more than hundred years old. And in this process the prosecution reduces some of the charges against the accused and also may make recommendations to the court to reduce the sentence in exchange for a guilty plea. The constitutional validity of plea bargaining was upheld by the Supreme Court of USA in '*Brady v. United States*'⁴ and '*Santobello v. New York*'⁵.

³ Report on 'The Code of Criminal Procedure, 1973', Act No. 2 of 1974.

⁴ 397 U.S. 742 (1970)

⁵ 404 US 25 (1971)

The Law Commission in its 154th report has said that we have examined the cases decided in USA as well as by the Supreme Court of India and also we have perused the 142nd report of the law commission. So we recommend that plea bargaining can be made an essential component of administration of the criminal justice system. And no Commission specifically provided the applicability of plea bargaining in certain situations or cases and also talked about the infliction of sentence or releasing the accused on probation and the provision of compensation to the aggrieved party. The Law Commission specifically recommended (in point no. 9.10 of the report) for the incorporation of a separate Chapter XXIA on Plea Bargaining in The Code of Criminal Procedure.

IV. 177TH REPORT (2001)

The 177th report⁶ in 2001 was presented under the Chairmanship of Justice B. P. Jeevan Reddy by the '16th Law Commission' established in 2000.

Chapter 9 of 177th report deals with plea bargaining and compounding of offences.

This 177th report suggested that the recommendations of the 14th Law Commission contained in their 154th Report in Chapters 13 relating to plea bargaining should be implemented at an early date, and a new chapter, Chapter XXIA should be incorporated in The Code of Criminal Procedure as recommended in that (154th) report. The said 154th Report referred to the previous 142nd Report of the 12th Law Commission. The procedure to be followed in the matter has also been indicated in paras 9.1 to 9.9 of the said 142nd Report.

The Report recommended that plea bargaining be made applicable as an experimental measure to offences punishable with imprisonment of less than 7 years and/or fine including the compoundable offences covered by section 320 of the Code. It was also recommended that plea-bargaining can also be in respect of nature and gravity of the offences and the quantum of punishment. The Law Commission observed that the said concept should not be accessible to habitual offenders and to those who are accused of socio-economic offences of a grave nature and those accused of offences against women and children below 14 years.

⁶ Report on 'Law Relating to Arrest'.

The 16th Law Commission in its 177th report has said that we don't want to repeat the recommendations made by the 12th Law Commission in its 142nd report, it is sufficient that we support the said recommendations.

The 16th Law Commission in its 177th report has also said that we would like the Government itself to take a policy making decision on the question of plea bargaining whether to introduce the said concept. This is because the Supreme Court has criticized this concept in two of its judgments namely, *Murlidhar Meghraj Loya v. State of Maharashtra*,⁷ and *Kasambhai v. State of Gujarat*⁸. The Supreme Court had expressed an apprehension in the *Kasambhai's* case that such a provision is likely to be abused. If, however, the Government yet decides to introduce this concept, the relevant provisions can be drafted thereafter.

V. MALIMATH COMMITTEE REPORT (2001-2003)

The Committee on "Reforms of the Criminal Justice System" was constituted by the Government of India, Ministry of Home Affairs by its order dated 24 November 2000, to consider measures for revamping the Criminal Justice System under the chairmanship of Justice. V. S. Malimath. The Committee has finally submitted its report in 2003.

Justice. V. S. Malimath has served as the Chief Justice of Kerala High Court and Karnataka High Court. He was also the Chairman of the "Central Administrative Tribunal" (CAT) and then member of the "National Human Right Commission of India". He has headed the Committee on "Reforms of Criminal Justice System" also known as "Malimath Committee".

Malimath Committee has said in its report that Plea-bargaining which has been implemented in USA and is very successful has to be seriously considered in India too. The Supreme Court of United States has upheld the Constitutional validity in many cases and also certified that plea bargaining plays a major role in the clearance of criminal cases. The United States experiment shows that plea-bargaining helps the disposal of the accumulated cases and expedites delivery of Criminal Justice and the Law Commission of India in its 142nd, 154th and 177th reports explained the same.

⁷ AIR 1976 SC 1929.

⁸ AIR 1980 SC 854.

Law Commission noted the advantages of plea-bargaining which ensures speedy trial with benefits such as end of uncertainty, saving of cost of litigation, relieving of the anxiety that a prolonged trial might involve and avoiding legal expenses. The Law Commission also noted that it would enable the accused to start a fresh life after undergoing a lesser sentence. Law Commission noted that about 75% of total convictions are the result of plea bargaining in USA and they contrasted it with 75% of the acquittals in India. Law Commission also observed that certainly plea-bargaining is a feasible alternative to be explored to deal with huge arrears of criminal cases. The same might involve pre-trial negotiations, and whether it is “charge bargaining” or “sentence bargaining” it results in a reduced sentence and early disposal.

The Committee suggests that community service may be prescribed as an alternative to default sentence. In view of the circumstances enumerated the fine amounts should be revised. Time has come when the amount of fine statutorily fixed under the Penal Code also should be revised by 50 times. The committee also said that plea bargaining in the United States is available for all the crimes and offences, but plea-bargaining in India should not be extended to socio-economic offences or the offences against women and children.

As recommended by the Law Commission when the accused makes a plea of guilty after hearing the public prosecutor or the de facto complainant the accused can be given a suspended sentence and he can be released on probation or the court may order him to pay compensation to the victim and impose a sentence taking into account the plea bargaining or convict him for an offence of lesser gravity may be considered.

Upon consideration of the advantages of plea-bargaining, the Malimath Committee has observed that the recommendations of the Law Commission contained in the 142nd report and the 154th report may be incorporated so that a large number of cases can be resolved and early disposals can be achieved.

The Committee has said that it should not be forgotten that already the “Probation of Offenders Act” gives the court the power to pass a probation order. Further the power of executive pardon, power of re-mission of sentences has already an element of not condoning the crime but lessening the rigour or length of imprisonment. In imposing a sentence for a lesser offence or a lesser period the community interest is served and it will facilitate an earlier resolution of a

criminal case, thus reducing the burden of the court. Perhaps plea bargaining would even reduce the number of acquittals, because after prolonged trial it is quite possible that the case may end in acquittal.

If the compounding offences is there in the present statute and even under old Cr.PC. then why the concept of plea bargaining should be introduced in the Indian Criminal Justice System. The committee has observed that it is necessary because the object of plea bargaining is to secure conviction and also to reduce the period of trial and reduced pendency of cases can also be achieved in “one go”.

After thorough examination of the subject of plea-bargaining/compounding/settlement without trial, the 12th, 14th and 16th Law Commissions in their respective reports relating to plea bargaining recommended its incorporation in the ‘Indian Criminal Justice System’ to promote settlement of criminal cases without trial. As the Committee is substantially in agreement with the views and recommendations of the Law Commissions in the said 142nd and 154th and 177th reports.

VI. CRIMINAL LAWS (AMENDMENT) ACT, 2005

As a result of the efforts made in the 142nd report (1991), 154th report (1996), 177th report (2001) and in the Malimath Committee Report (2001-2003) the concept of plea bargaining was introduced in the Criminal Procedure Code by the “Criminal Law Amendment Act, 2005”.

Section 4 of the “Criminal Law Amendment Act, 2005” provides for the insertion of sections 265A-265L in a new chapter XXI-A (named “Plea Bargaining”) - after the chapter XXI of the Cr.P.C., which came into effect on 5th July, 2006.

VII. JUDICIAL ATTITUDE TOWARDS PLEA BARGAINING

In India, at the time of recommendations itself the judicial attitude was not in favour of the practice of plea bargaining. The Supreme Court of India in a many cases raised apprehension about the moral base of the concept. The judicial thinking however underwent a great change after the concept of plea bargaining was introduced in criminal law by ‘Criminal Laws Amendment Act, 2005’.

In *Murlidhar Meghraj Loya v. State of Maharashtra*⁹, it was observed by the apex court: “In civil cases we find compromises actually encouraged as a more satisfactory method of setting disputes between individuals than an actual trial. However, if the dispute..... finds itself in the field of criminal law, “Law Enforcement” repudiates the idea of compromise as immoral, or at best a necessary evil. The “State” can never compromise. It must "enforce the law." Therefore open methods of compromise are impossible.”

The practice of plea bargaining was again strongly disapproved by the apex court in *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr.*¹⁰ It was observed by the Hon’ble court that: “It is to our mind contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty of an allurement being held out to him that if enters a plea of guilty he will be let off every lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Article 21 of the Constitution unfolded in Meneka Gandhi's case. It would have the effect of polluting the pure source of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial which, having regard to our cumbrous and unsatisfactory system of administration of justice is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the Judge also might be likely to be deflect from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, this, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea bargaining with the prosecution and the Magistrate must be held to be unconstitutional and illegal.”

*Kasambhai Abdulrahman Bhai Seikh v. State of Gujarat*¹¹, In this case the Supreme Court expressed an apprehension of likely misuse of plea bargaining. Citing out a precautionary note for the magistrates, the court laid down: “The Magistrate trying an accused for a serious offence

⁹ AIR 1976 SC 1929

¹⁰ 1980 Cr.LJ 553, 556

¹¹ AIR 1980 SC 854

like adulteration must apply his mind to the evidence recorded before him and, on the facts as they emerge from the evidence, decide whether the accused is guilty or not. It must always be remembered by every judicial officer that administration of justice is a sacred task and according to our hoary Indian tradition, it partakes of the divine function and it is with the greatest sense of responsibility and anxiety that the judicial officer must discharge his judicial function, particularly when it concerns the liberty of a person.”

In *State of Uttar Pradesh v. Chandrika*¹², the Supreme Court held that it is settled law that on the basis of Plea Bargaining court cannot dispose of the criminal cases. Going by the basic principles of administration of justice, merits alone should be considered for conviction and sentencing. Even when the accused confesses to guilt, it is the constitutional obligation of the court to award appropriate sentence. Court held in this case that mere acceptance or admission of the guilt should not be reason for giving a lesser sentence. Accused cannot bargain for reduction of sentence because he pleaded guilty.

In *Pawan Kumar v. State of Haryana & another*¹³ the Supreme Court has expressed the desirability of inserting such provision in criminal law. In this case, the services of an adhoc appointee were terminated on the ground that he had been convicted for an offence under Section 294 IPC and that therefore, his character and antecedents did not benefit his regularisation in service. His challenge to the order of termination was rejected by the trial Court, 1st appellate Court and the High Court. But the Supreme Court reversed the decisions of the Courts below and granted him relief on the ground that his conviction for an offence under Section 294 IPC, on its own, did not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances which led to the conviction, met the requirements of the policy decision of the State.

While holding so, the Apex Court made certain observations, which are as follows: “Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small

¹² AIR 2000 SC 164

¹³ 1996(3) SCT 339.

amounts of fine, more often than not, as a measure of Plea Bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on Plea Bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams.

*State of Gujarat v. Natwar Harchanji Thakor*¹⁴, It was Gujarat High Court that recognized the utility of this method in this case as an alternative measure of redressal to deal with huge arrears in criminal cases and it shall add a new dimension in the realm of judicial reforms. While commenting on the concept of plea bargaining, the Gujarat High Court observed in this case that the very object of the law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in the administration of law and justice.

In *Pardeep Gupta v. State*¹⁵, Shiv Narayan Dingra J. observed that “the trial court’s rejection of the plea bargain shows that the learned trial court had not bothered to look into the provisions of ‘chapter XXIA of Code of Criminal Procedure’ meant for the purpose of plea bargaining and rejected the application on the ground that since the applicant is involved in an offence under section 120-B IPC and the role of applicant was not lesser than the other co-accused. But none of the offences in which the petitioner has been booked attracted more than seven years punishment. The request of plea bargaining is ought to be considered taking into account the role of the accused, and the nature of the offence, etc. The trial court could not have rejected the application for plea bargaining on the ground that he was involved in section 120-B Indian Penal Code and therefore, the request for plea bargaining is not available to him. The attitude of the trial court shows that it did not even read the provisions of chapter XXI-A before considering the application. The High Court directed the trial court to reconsider the application of plea bargaining made by the accused in the light of provisions made in the Code of Criminal Procedure and not in a casual manner”.

¹⁴ 2005 Cr.LJ 2957.

¹⁵ 2007(99) DRJ 198

In *Vijay Moses Das v. Central Bureau of Investigation*¹⁶, trial court rejected the application of accused for plea bargaining on the ground that the accused had failed to submit affidavit that he is not a previous convict and that the amount of compensation payable to the accused had not been fixed. It is pertinent to mention here that these objections were not raised by the prosecution. In view of the above facts, High Court of Uttarakhand observed that the trial Court has erred in law in rejecting the application of the petitioners for 'plea bargaining' it was further observed that that after following the guidelines mentioned in section 265C of Cr.P.C., the Magistrate should have disposed of the case after accepting the 'plea bargaining', and that no useful purpose would be served by sending the accused/petitioner to jail by rejecting the application for 'plea bargaining' moved by the accused, who is a heart patient, aged 60 years, as mentioned in the affidavit. Therefore, the trial court was directed to dispose of the case by accepting the 'Plea Bargaining' sought by the accused.

*Kripal Singh v. State of Haryana*¹⁷ In this case the apex court observed that neither the Trial court nor the High Court has jurisdiction to bypass the minimum sentence prescribed by Law on the premise that a plea bargain was adopted by the accused.

*Thippaswamy v. State of Karnataka*¹⁸, In this case the Supreme Court held that enforcement or imposition of sentence in revision or appeal after the accused had plea bargained for a lighter sentence or mere fine in the trial court as unconstitutional being in violation of Article 21.

*Madanlal Ramchandra Daga v. State of Maharashtra*¹⁹, In this case Justice M.Hidayatullah disapproved the practice of plea bargaining by the succinct observation that "In our opinion, it is very wrong for a Court to enter into a bargain of this character. Offences should be tried and punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence. But the Court should never be a party to bargain by which money is recovered for the complainant through their agency".

¹⁶ 2010(2) Cri.CC 857

¹⁷ SC 2000(1) ALD Cr.L. 613 (1999) 3 CALLT 89 SC

¹⁸ AIR 1983 SC 747

¹⁹ AIR 1968 SC 1267

VIII. CONCLUSION

A perusal of the several case laws discussed above indicates or depicts that in spite of the fact that a considerable time period has passed since the provisions relating to 'Plea Bargaining' were introduced in Indian criminal law, yet the courts in India, particularly trial courts are still reluctant to apply these provisions to the desirable cases and this is because there are still apprehensions of misuse of these provisions to the prejudice of the accused.

In 2015 out of 10,502,256 cases under IPC, 4,816 disposed by the courts by plea.

In 2018 out of total 9967599 cases (covered under IPC), 20062 cases were disposed of by plea bargaining, and out of total 6238291 SLL crime cases 297 cases were disposed of by plea bargaining.²⁰

Plea Bargaining is definitely a welcome and positive change, as the chief aim of the criminal justices system is to provide swift and inexpensive resolution of cases and plea bargaining does it so well.

²⁰ NCRB Report Available at <http://ncrb.gov.in/StatPublications/CII/CII2018/pdfs/Crime%20in%20India%202018%20-%20Volume%203.pdf> (last visited on 25th feb. 2020).