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Neha Charak

Ph.D., Scholar, Department of
Law, University of Jammu,
Jammu and Kashmir, India

Dr. Savita Nayyar

Professor, Department of Law,
University of Jammu, Jammu
and Kashmir, India

Plea bargaining in India: An underutilized tool for justice reform

Neha Charak and Savita Nayyar

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Abstract

The practice of plea bargaining, where defendants admit guilt in exchange for reduced sentences, offers a potential solution to alleviate the congestion in India's overwhelmed court system. Although introduced in 2005 through amendments to the Criminal Procedure Code (CrPC) and further detailed in the Bharatiya Nagarik Suraksha Sanhita (BNSS), this approach remains underutilized. This scholarly article examines India's plea bargaining framework, emphasizing its prospective advantages, current underuse, obstacles, and recent legal developments. Through an examination of judicial precedents, legislative updates, and socio-legal considerations, this study advocates for a revised strategy to enhance the efficacy of plea bargaining as an instrument for reforming the justice system. Keywords: plea bargaining, India, judicial reform, backlog, CrPC, BNSS, legal system, justice efficiency.

Keywords: Plea bargaining, underutilized tool, justice reform

1. Introduction

Plea bargaining serves as a vital mechanism in the criminal justice system, enabling swift case resolution and allowing defendants to negotiate reduced sentences by pleading guilty. In India, this practice is recognized under both the Criminal Procedure Code (CrPC) and the Bharatiya Nagarik Suraksha Sanhita (BNSS). While the CrPC provides a general framework, the BNSS introduces a more detailed and structured approach, addressing specific procedural aspects and conditions for its implementation. The CrPC outlines plea bargaining in Chapter XXIA (Sections 265A to 265L), which aims to streamline criminal proceedings by facilitating agreements between the accused and prosecutors. This chapter applies to cases with maximum punishments of seven years imprisonment, intending to reduce court backlogs and expedite certain criminal case resolutions. However, the CrPC provisions remain relatively broad, lacking detailed specifications on exclusions or procedural intricacies. In comparison, the BNSS offers a more comprehensive and context-specific approach to plea bargaining. Section 289 BNSS stipulates that the plea bargaining chapter applies to cases where police have forwarded a report or when a Magistrate takes cognizance of a complaint, with certain exceptions. These exceptions encompass serious offenses, including those punishable by death or imprisonment exceeding seven years, as well as crimes affecting socio-economic conditions or offenses against women or children (Sections 289 and 300 BNSS).

Section 290 BNSS elaborates on the plea bargaining process, requiring the accused to submit a detailed case description and a voluntary participation affidavit. The court then assesses the application to confirm the accused's genuine consent. Sections 291 and 292 BNSS outline procedures for verifying the accused's statement and reporting outcomes, while Sections 293 to 295 BNSS delineate the court's authority in case disposition, including victim compensation and sentence reduction based on offense nature. The BNSS incorporates protections for the accused, such as Section 299 BNSS, which prevents statements made during plea bargaining from being used in other proceedings, and Section 298 BNSS, which defines the Public Prosecutor's role. Moreover, Section 300 BNSS explicitly exempts juveniles from plea bargaining provisions, aligning with the Juvenile Justice (Care and Protection of Children) Act, 2015. By including more comprehensive provisions, the BNSS presents a more transparent and defined framework for plea bargaining, improving its application in specific cases and striking a balance between efficiency and the rights of the accused. This article will explore the interaction between CrPC and BNSS provisions, examining their distinctions and how the BNSS addresses plea bargaining more specifically within India's criminal justice system.

Corresponding Author:

Neha Charak

Ph.D., Scholar, Department of
Law, University of Jammu,
Jammu and Kashmir, India

2. Plea Bargaining under the Criminal Procedure Code (CrPC)

In 2005, India incorporated plea bargaining into its legal system through the addition of Chapter XXIA (Sections 265A to 265L) to the Criminal Procedure Code (CrPC), following recommendations from the 154th Law Commission Report. This mechanism is applicable to offenses carrying a maximum sentence of seven years, with the primary objectives of accelerating the judicial process and alleviating court backlogs. To initiate plea bargaining, defendants must submit a petition within 60 days of charges being framed, seeking to negotiate a reduced sentence. While the CrPC provides a general structure for plea bargaining, it lacks detailed guidelines on victim compensation and specific procedural aspects.

2.1 Plea Bargaining under the Bharatiya Nagarik Suraksha Sanhita (BNSS)

The BNSS enhances the CrPC by offering a more nuanced, situation-specific method. It is applicable to instances where a police report has been lodged, but excludes grave offenses like murder or crimes targeting women and children (Section 289). Defendants must submit an application within 30 days of charge framing, along with an affidavit confirming their willing participation (Section 290). The court verifies the voluntary nature of the application and validates the defendant's statements (Sections 290, 291). If a mutually satisfactory resolution is achieved, victims may receive compensation and offenders might be granted reduced sentences (Sections 293-295). Any statements made during negotiations are inadmissible in other legal proceedings (Section 299). The plea bargaining process does not apply to juveniles (Section 300).

2.2 Comparative Analysis of CrPC and BNSS

The BNSS enhances the CrPC framework by omitting grave offenses and prioritizing victim restitution, willing involvement, and judicial confirmation. While the CrPC offers a general methodology, the BNSS guarantees a more equitable and organized plea bargaining process, stressing restorative justice and guarding against abuse. It also excludes minors, further safeguarding their rights. Rationale for Implementing Plea Bargaining Statistics from the National Crime Records Bureau (NCRB) from 1981 to 2009 underscore major challenges in India's legal system: Surge in Court Cases: The number of cases on trial increased from 21,11,791 in 1981 to 81,30,053 in 2009, yet completed trials remained low (5,04,718 in 1981, 11,72,081 in 2009). Case Backlog: Unresolved cases grew fivefold from 14, 84, 483 in 1981 to 69, 57, 972 in 2009. Decrease in Trial Completion: The proportion of completed cases fell from 23.9% in 1981 to 13.63% in 2009, with pending cases rising to 85.58%. Verdicts and Sentences: Cases resulting in acquittals/discharge and convictions declined over time. These figures revealed an expanding backlog and slowdowns in the judicial process, leading to the introduction of plea bargaining as a method to accelerate case resolutions and alleviate court congestion.

Why Plea Bargaining Has Not Succeeded in India Although plea bargaining is widely used in the United States, with more than 90% of criminal cases resolved through guilty pleas, it has not gained traction in India despite its 2005 incorporation into the Criminal Procedure Code.

3. Several factors contribute to the ineffectiveness of plea bargaining in India

3.1 Case Backlog Burden

The Indian judicial system is struggling with an enormous backlog, with approximately 2.5 crore cases pending across all courts. High Courts alone have 36 lakh unresolved cases, leading to substantial delays. Former Chief Justice Adarsh Sen Anand observed that with only 13,000 judicial officers, the system is ill-equipped to manage this workload, resulting in further postponements and extended legal proceedings.

3.2 Government as Primary Litigant

The Indian state is the most frequent litigator, responsible for initiating or appealing 70% of cases. This excessive use of the judicial system by the government itself exacerbates delays and further complicates the legal process.

3.3 Frequent Postponements

Numerous adjournments, often granted without adequate justification, significantly prolong case durations. While courts and lawyers generally coordinate well, the same level of coordination is not always present between clients and courts. This issue causes delays in proceedings, negatively impacting litigants and undermining timely justice delivery.

3.4 Limited Court Operational Days

Critics propose reducing court holidays and extending working days. At present, courts function for only 210-230 days per year, with lengthy summer breaks. Increasing the number of operational days and hours could help address the case backlog and improve the efficiency of the justice system.

4. Recent events

Have underscored both the obstacles and opportunities associated with plea bargaining in India. The case of *State of Maharashtra v. Sujit D. Borkar* (2019) ^[5] demonstrated the infrequent use of plea bargaining in state courts. In 2020, the Supreme Court stressed the importance of raising awareness about plea bargaining among trial courts, law enforcement, and the general public to enhance its accessibility and effectiveness. The court noted that while plea bargaining could alleviate judicial workload, it necessitates extensive reform and collaboration across all legal system participants. Additionally, the Bombay High Court, in *Rajendra Gajanan Soni v. State of Maharashtra* (2021) ^[6], observed that plea bargaining was overlooked in cases where it could have accelerated trial proceedings. The court instructed that measures be implemented to promote plea bargaining for minor offenses, particularly when defendants express willingness to plead guilty, further highlighting its underutilization. Despite these initiatives, plea bargaining remains largely unused due to systemic obstacles. These include insufficient training for judicial officers and prosecutors, societal hesitation to accept plea bargaining as a valid form of justice, and the lack of a comprehensive framework for effective implementation of the process.

5. Challenges to Plea Bargaining in India

The effective implementation and use of plea bargaining in India faces several obstacles:

5.1 Social Stigma and Public Opinion

Plea bargaining is often viewed as a way to circumvent proper justice, raising concerns about the fairness of legal

proceedings. Society generally opposes the concept of reduced sentences for guilty pleas, particularly in cases involving serious offenses.

5.2 Judicial Skepticism

Many judges are wary of plea bargaining, considering it a threat to the principles of justice and equity. There is an absence of clear protocols and education on integrating plea bargaining into their workload.

5.3 Insufficient Knowledge

Many defendants and legal practitioners, especially in rural and isolated regions, are not fully informed about plea bargaining provisions. Educational initiatives are necessary to ensure all parties comprehend the potential advantages.

5.4 Restricted Application

Under the CrPC, plea bargaining is only applicable to offenses with a maximum sentence of seven years, excluding more serious crimes. This restricts its use to minor offenses and fails to address the backlog of cases involving major crimes.

5.5 Victim Considerations

While the BNSS emphasizes compensation for victims, there remains ambiguity regarding the protection of victims' rights in plea bargaining. Victims are frequently excluded from negotiations, potentially leading to a lack of reparation or resolution for them.

6. Recommendations for Reform

To optimize plea bargaining as a mechanism for judicial reform in India, the following actions are suggested:

6.1 Education and Skill Development

The administration should implement comprehensive training initiatives for judges, prosecutors, and defense attorneys to effectively comprehend and apply plea bargaining. Furthermore, public information campaigns should be organized to educate both the general population and defendants about their legal rights and alternatives.

6.2 Broadening the Application

The range of offenses eligible for plea bargaining should be widened, particularly for minor infractions, to alleviate the strain on the judicial system. Nevertheless, grave offenses should remain ineligible for plea bargaining to preserve public trust in the legal process.

6.3 Incorporating Victims

Victims should be included in plea negotiations to safeguard their interests and ensure appropriate compensation. This could entail mandatory victim restitution agreements as an integral part of the plea bargaining process.

6.4 Procedural Uniformity

A standardized, detailed protocol for plea bargaining should be established across all Indian courts to guarantee consistent application and prevent misuse. This might involve creating a dedicated plea bargaining committee in each court. Conclusion Plea bargaining has the potential to transform India's criminal justice system by decreasing case backlogs, expediting justice, and reducing court congestion.

However, despite its legal foundation and recent progress

under the BNSS, it remains underutilized due to social stigma, judicial hesitation, and insufficient awareness. To realize its full potential, India must tackle these obstacles by cultivating a culture of collaboration, openness, and equity in the plea bargaining process. With appropriate reforms, plea bargaining can serve as a crucial instrument for judicial reform in India.

7. Conclusion

Plea bargaining offers a pragmatic approach to addressing the pressing issues of judicial backlog, delayed justice, and inefficiency in India's criminal justice system. With its incorporation into the Criminal Procedure Code (CrPC) in 2005 and further elaboration in the Bharatiya Nagarik Suraksha Sanhita (BNSS), it provides a structured framework to expedite minor criminal cases, ensure restitution for victims, and reduce the burden on courts. However, systemic challenges such as limited awareness, judicial skepticism, restricted applicability, and social stigma continue to hinder its effective implementation.

To unlock its full potential, India must adopt a multi-faceted strategy, including expanding awareness, training judicial stakeholders, incorporating victim participation, and standardizing procedures across courts. With these reforms, plea bargaining can become a vital tool for promoting restorative justice, improving judicial efficiency, and ensuring that the legal system works equitably for all stakeholders. A collaborative approach, emphasizing transparency, fairness, and equity, is essential to building trust in this mechanism and transforming it into an effective instrument for judicial reform.

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