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I. INTRODUCTION:

“The Latin maxim Interest Reipublicae Ut Sit Finis Litium very well summarises the public policy which led to the introduction of the concept of plea bargaining in the Indian criminal justice system. This maxim means that the interest of the state is in the end of litigations. The end that the ordinary process brings about in more than a decade can be brought about in a matter of a few months through the application of the process of plea bargaining. In India around four and a half crore cases are pending across all the levels of the court system. Judging by the current rate of disposal, if no new case comes, it will take around 1.3 years for the Supreme Court to dispose off all the pending cases before it and around 3 years for the High Court and the Sessions Court each to dispose off all the matters pending before it.¹ These data are sufficient to reflect the seriousness of the problem facing our judiciary at the moment.

To deal with the mounting number of cases in our judicial system, the code of criminal procedure has a very potent device in its arsenal. This device is the process of plea bargaining. In simple words plea bargaining is a negotiation between the accused and the prosecution. If the negotiations are successful the accused pleads guilty to the offence and the prosecution ensures that certain concessions are accorded to him. In this article we shall see the concept of plea bargaining in detail and the process approved by the Code of Criminal Procedure, 1973 for plea bargaining”.

II. THE MEANING OF PLEA BARGAINING:

The expression plea bargaining is made of two words. Plea and bargaining. Plea means a request urgently made. In the context of law plea is an answer made to a claim made by the opposite party. In the context of criminal law plea is a statement by the accused as to whether he is guilty of the particular offence he is charged with or not. Bargaining means discussions between people having conflicting interests in order to reach a settlement that is agreeable to

¹ *Pendency and Vacancies in the Judiciary*, PRS Legislative Research, available at: <https://prsindia.org/policy/vital-stats/pendency-and-vacancies-in-the-judiciary#:~:text=Between%202010%20and%202020%2C%20pendency,and%2012.3%25%20in%20High%20Courts.,> last seen on 04/04/2022.

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all. It involves active negotiations. As is true for other legal concepts jurists are yet to arrive at a perfect definition of plea bargaining. Plea bargaining is negotiation by which the accused pleads guilty for an offence. The benefit that he derives from this plea is in the form of a lighter punishment than what he could have been awarded if he was found guilty for the same offence or some other offence after a trial.

Oxford Advanced Learner’s Dictionary defines plea bargaining as “An agreement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges.”²

Black’s Law Dictionary defines plea bargaining as “the process whereby the accused and the prosecutor in criminal case work out a mutually satisfactory disposition of the case subject to the Court approval. It usually involves the accused 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 than that possible for the graver charge.”³

III. FORMS OF PLEA BARGAINING:

In plea bargaining, the accused pleads guilty to an offence in exchange of a prosecutorial concession. Depending on the prosecutorial concession given plea bargaining is of three types.

1) Charge Bargaining; 2) Sentence Bargaining; and 3) Facts Bargaining.⁴

III.I CHARGE BARGAINING:

This form of plea bargaining has the distinction of being the most common form. The bargaining in this is specifically related to the charge. The concession that the accused gets is in the form of reduction in charges that he faces at the trial. The accused plead guilty to certain charges and the prosecution reduces the charges for which he is being tried. There are two ways

² *Plea Bargaining*, Oxford Lexico, available at https://www.lexico.com/definition/plea_bargaining, last seen on 10/04/2022.

³ *Black’s Law Dictionary*, 1190 (B.A. Garner, 8th ed., 2004).

⁴ *Plea Bargaining*, Maharashtra State Legal Services Authority, available at <https://legalservices.maharashtra.gov.in/Site/Upload/Pdf/plea-bargaining.pdf>, last seen on 17/04/2022.

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in which this arrangement can work. The first is when the accused is facing charge of a serious nature. The agreement between the accused and the prosecution may be in consideration of the prosecution dropping the charge, the accused will plead guilty to a less serious offence. For example, if the accused is facing charges relating to the offence of voluntarily causing grievous hurt, he may enter into an agreement with the prosecution to plead guilty to the offence of voluntarily causing hurt in consideration of the prosecution substituting the charge relating to the offence of voluntarily causing grievous hurt with the charge of voluntarily causing hurt.

The second way in which charge bargaining may work is that when there is more than one charge for which the accused is being tried, the he may agree with the prosecution to plead guilty to some of those charges in consideration of the accused dropping other charges. For example, if the accused is charged with extortion as well as criminal misappropriation of property, he may agree with the prosecution to plead guilty to one of those charge in consideration of the prosecution dropping the other charge.

III.II SENTENCE BARGAINING:

In this form of plea bargaining the negotiations surround the sentence that would be awarded to the accused if he pleads guilty. The accused agrees to plead guilty to the original charged brought by the prosecution. The prosecution in consideration of that agrees to recommend for a lighter punishment for the accused. For example, the offence of theft carries a maximum punishment of three years of imprisonment. An accused facing the charge of theft may agree with the prosecution to plead guilty to the charge in return of the prosecution recommending lighter punishment for him.

III.III FACT BARGAINING:

This form of plea bargaining has the distinction of being the least common form. In this form the accused agrees to admit certain facts of the case. In return the prosecution agrees to not bring up other facts. This can be said to be an extension of sentence bargaining as the facts not disclosed by the prosecution are the ones that may expose the accused to more penalty.

IV. OFFENCES IN WHICH PLEA-BARGAINING CAN BE DONE:

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Plea bargaining is a procedure to ensure swift justice. Both the parties to the bargain gain something and lose something. Unsurprisingly such arrangements cannot be allowed in cases involving allegations of heinous offences. Therefore, the legislature has hence made only certain types of offences that can be resolved with the help of the plea-bargaining procedure. Section 265A of the Code of Criminal Procedure deals with the applicability of the Chapter relating to plea bargaining.

Plea bargaining can be done in both the cases i.e. firstly where the officer in charge of a police station has forwarded a report to the magistrate in which it is disclosed that the accused has apparently committed an offence and; secondly where a complaint was made to the magistrate and the magistrate has issued process after examining the complainant and the witnesses.⁵ However in both these cases two additional requirements have to be satisfied before an application for plea bargaining can be entertained by the court.

- 1) *The offence which is alleged to have been committed by the accused is not punishable with death sentence, life imprisonment or imprisonment for a term which is more than seven years. Putting it differently, plea bargaining can be invoked only in those cases in which the offences charged against the accused carry a maximum punishment of up to seven years imprisonment.*
- 2) *The nature of the offence alleged to have been committed by the accused must be such that it does not affect the socio-economic condition of the country. Even in cases where the offence is directed against a woman or a child below the age of fourteen years, the application for plea bargaining is not admissible.*

The power to determine the offences which will be offences affecting the socio-economic condition of the country for the purpose of this section rests with the central government.⁶ Further the provisions relating to plea bargaining will not apply in cases of juveniles or a child. The provisions of *Juvenile Justice (Care and Protection of Children) Act, 2000* will apply in

⁵ S. 265A(1), The Code of Criminal Procedure, 1973.

⁶ S. 265A(2), The Code of Criminal Procedure, 1973.

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their cases.⁷ If the charges faced by the accused are such that admit plea bargaining but the investigating agency later add charges that would not admit plea bargaining then the entire case of the accused will go outside the scope of plea bargaining.

In *Shri Vinod Kumar Agarwal and 2 others vs. C.B.I.*⁸, the accused had filed an application for plea bargaining. Before the said application could be disposed, the investigating agency added a new charge carrying a maximum punishment of life sentence. The trial court rejected the application. On appeal the hon’ble Allahabad High Court held that amendment of charges was a routine matter which was allowed and the trial court was right in rejecting the application of the accused as the addition of new charges carrying a maximum punishment of life imprisonment had brought the case outside the purview of plea bargaining.

V. PROCEDURE FOR PLEA BARGAINING:

The detailed procedure for plea bargaining is contained in Chapter XXIA of the Code of Criminal Procedure, 1973. The chapter can be said to be a complete code in itself as it deals with all the aspects of plea bargaining, even the sentencing at the end of the procedure. The procedure is mandatory in nature. The courts do not have discretion to do away with these procedures. In *Rajesh Narayan Jaiswal vs. State of Maharashtra*⁹, the hon’ble Bombay High Court held that the procedure of plea bargaining as given in Chapter XXIA of the Code of Criminal Procedure, 1973 is mandatory in nature and if the procedure is not followed the case may be remitted to the court on revision. In *State of Gujarat vs. Nitin Shantilal Bhagat*¹⁰, the hon’ble Gujarat High Court held that Chapter detailed procedure relating to plea bargaining is provided in Chapter XXIA of the Code of Criminal Procedure and the same has to be applied in any case of plea bargaining. The courts cannot arbitrarily apply provisions relating to plea

⁷ S. 265L, The Code of Criminal Procedure, 1973.

⁸ *Shri Vinod Kumar Agarwal and 2 others v. C.B.I.*, Cri. Rev. Defective No. 273/2015 (Delhi High Court, 20/05/2015).

⁹ *Rajesh Narayan Jaiswal v. State of Maharashtra*, W.P.No. 53 of 2011 (Bombay High Court, 01/03/2012).

¹⁰ *State of Gujarat v. Nitin Shantilal Bhagat*, Special Criminal Appeal No. 989/2009 (Gujarat High Court, 03/02/2011).

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bargaining. In this case the accused was being prosecuted under Drugs and Cosmetics Act, 1940. Before the trial concluded he pleaded guilty to the offence. The trial judge considered this plea as an application for plea bargaining and awarded less punishment to him. The hon’ble High Court observed that he accused had not even applied for plea bargaining. In this situation the trial court had committed serious error by treating a guilty plea as an application for plea bargaining.

The detailed procedure of plea bargaining is as followed:

V.I MOVING OF THE APPLICATION BY THE ACCUSED:

The application for plea bargaining has to be filed by the accused. The accused will file the application in the court where the case in which he is the accused is pending for trial.¹¹ The application must mention the facts of the case in brief and the fact that the accused has not been convicted of the same offence previously. Along with the application the accused also has to file an affidavit declaring that he has voluntarily preferred the application and that he understands the nature of the offence which is charged against him and the punishment that the offence carries.¹²

V.II ISSUE OF NOTICE BY THE COURT:

After receiving the application from the accused the court will issue notices to the public prosecutor, or as the case may be, the complainant and the accused to appear before it on a particular date.¹³

V.III EXAMINATION OF THE ACCUSED TO ENSURE VOLUNTARINESS:

On the day of the appearance of the parties, the court has to conduct the examination of the accused in camera to determine whether he filed the plea-bargaining application voluntarily or not. This examination will have to be conducted in the absence of the other parties. Here if the court comes to a conclusion that the application is voluntary, then it will grant some time to the parties involved so that a mutually satisfactory disposition of the case can be worked out. This

¹¹ S. 265B(1), The Code of Criminal Procedure, 1973.

¹² S. 265B(2), The Code of Criminal Procedure, 1973.

¹³ S. 265B(3), The Code of Criminal Procedure, 1973.

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disposition may include agreement on compensation and other expenses to be paid to the victim. The court will fix a date for the next hearing of the case.¹⁴ If, however, the court comes to the conclusion that the application for plea bargaining is not voluntary or that the accused was convicted earlier in a case where same offence was charged against him, it shall reject the application for plea bargaining. The trial will then proceed from the stage at which the accused had file the application.¹⁵

The hon’ble Kerala High Court in ***K. Bala Dandapani vs. State of Kerala***¹⁶, remarked on the importance of holding in camera examination of the accused. The court held that the requirement of holding the examination of the accused in camera is a mandatory requirement of the law relating to plea bargaining. The examination must be held in the absence of the complainant or the defacto complainant. This rule has been incorporated as a safeguard to ensure that the accused has not moved the plea-bargaining application on the compulsion or the insistence of the complainant or the defacto complainant. This rule takes care of the situation where the complainant or the defacto complainant may try to compel or pressurise the accused into settling the matter.

The hon’ble Allahabad High Court also reiterated similar view in ***Vijay Moses Das and Another vs. Central Bureau of Investigation***¹⁷, where it held that it is to ensure voluntariness of the application of the accused that the in-camera examination of the accused has to be conducted.

Here it is necessary to understand that voluntariness is the focal point of the entire concept of plea bargaining. In addition to the voluntariness of the accused, the court also has to ensure itself of the voluntariness of the other parties involved in the case. If the other parties are not

¹⁴ S. 265B(4)(a), The Code of Criminal Procedure, 1973.

¹⁵ S. 265B(4)(b), The Code of Criminal Procedure, 1973.

¹⁶ *K. Bala Dandapani v. State of Kerala*, OP(Crl.).No. 253 of 2014 (Q), (Kerala High Court, 08/10/2015).

¹⁷ *Vijay Moses Das and Another v. Central Bureau of Investigation*, Criminal Misc. Application (C – 482) No. 1037/2006 (Allahabad High Court, 29/03/2010).

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interested or are unwilling to go through plea bargaining, the court will have to reject the application of the accused. There can be no compulsion by the court on any of the parties to go through the plea-bargaining procedure.

*Sinovi vs. Sree Gokulam Chits and Finance Company Limited and other*¹⁸, elucidates this point. This case was related to an incidence of cheque bouncing. The complainant was not ready to participate in the plea-bargaining procedure. The hon’ble Kerala High Court held that Section 265B(4) contemplates a mutually satisfactory disposition. If any of the parties is not willing to settle the matter, the court cannot secure plea bargaining through compulsion.

V.IV NOTICE TO PARTICIPANTS IN THE MEETING FOR MUTUALLY SATISFACTORY DISPOSITION:

Once the voluntariness of the accused is ascertained, the court shall give notices to various persons to participate in the meeting purported to be held to work out a mutually satisfactory disposition of the case.

If the case is instituted on a police report the court will give notice to participate in the meeting to the following people:

- a) *The Public Prosecutor*
- b) *The police officer who investigated the case,*
- c) *The accused; and*
- d) *The victim.*

The accused may participate in the meetings with his pleader.¹⁹

If the case is instituted otherwise than on a police report the notices to participate in the meeting will be given to the following people:

- a) *The accused; and*
- b) *The victim.*

¹⁸ *Sinovi v. Sree Gokulam Chits and Finance Company Limited and Other*, CrI.MC.No. 3278 of 2012 (Kerala High Court, 13/09/2012).

¹⁹ S. 265C(a), The Code of Criminal Procedure, 1973.

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Both the accused and the victim can participate in the meetings with their respective pleaders.²⁰ Further in both the cases it shall be the duty of the court to make sure that the participation of all the parties in the meetings must be voluntary and the entire process must be completed voluntarily by all the parties to the meetings.

V.V PROVISIONS AS TO BAIL:

It must be noted that if the accused applies for bail during the pendency of the proceedings his application can be entertained by the court as it could be entertained during normal proceedings. This has been ensured by keeping intact all the powers of the court relating to bail, trial and other matters relating to disposal of the case.²¹

V.VI MEETINGS TO WORK OUT A MUTUALLY SATISFACTORY DISPOSITION OF THE CASE:

All the parties to whom the notices to participate in the meetings are sent will then participate in the meeting which will be conducted under the watchful eyes of the court to ensure voluntariness of everyone involved.

V.VII PREPARATION OF THE REPORT:

If the meetings to reach a mutually satisfactory disposition result in a success and such disposition could be worked out, the court will prepare a report of such disposition which shall be signed by the presiding officer of the court and all the parties participating in the meetings. If, however, the meetings result in a failure and no mutually satisfactory disposition could be worked out, the court shall record this observation and then continue the trial from the stage at which the application was filed.²² It is important here to note that if the meetings end in a failure the statements made or facts disclosed by the accused in his application for plea bargaining will not be used against him when the normal proceedings resume. Such statements and facts can only be used for the purpose of plea bargaining.²³

V.VIII DISPOSAL OF THE CASE:

²⁰ S. 265C(b), The Code of Criminal Procedure, 1973.

²¹ S. 265H, The Code of Criminal Procedure, 1973.

²² S. 265D, The Code of Criminal Procedure, 1973.

²³ S. 265K, The Code of Criminal Procedure, 1973.

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If a mutually satisfactory disposition could be worked out the court shall go on to dispose off the case in the following manner:

- a) *The court shall grant to the victim the compensation amount agreed upon in the plea bargaining. Then the court will hear the parties on the quantum of punishment or on releasing the offender on probation for good conduct or after admonition or on application of the provisions contained in the Probation of Offenders Act, 1958 or any other law. Then the court will determine the punishment of the accused.²⁴*
- b) *The court may in final verdict release the accused if his case falls within the purview of Section 360 of the CrPC or provide benefit to him as per the provisions under the Probation of Offenders Act, 1958 or under any other law.²⁵*
- c) *If the offence provides certain minimum punishment, the court may sentence the offender to half of such minimum punishment provided for the offence.²⁶*
- d) *If the case of the accused is not covered either under point B or C then it may sentence the offender to one fourth of the punishment provided for the offence and if only the maximum punishment is mentioned then the court may sentence the offender to one fourth of the maximum punishment provided for the offence.²⁷*

In ***K. Bala Dandapani vs. State of Kerala***²⁸, the hon'ble Kerala High Court explained the sentencing provision in plea bargaining. The case of related to an offence under Section 138 of the Negotiable Instruments Act, 1881. The offence does not provide for any minimum punishment. It provides for a punishment that can be extended up to two years of imprisonment. So, the offence provides for a maximum punishment and not a minimum punishment. The hon'ble High Court held that the sentencing would not be governed by clause (b) or clause (c) of Section 265E. Rather it would be covered by clause (d) of Section 265E and the trial court should have sentenced the accused to six months of imprisonment. The court further noted that

²⁴ S. 265E(a), The Code of Criminal Procedure, 1973.

²⁵ S. 265E(b), The Code of Criminal Procedure, 1973.

²⁶ S. 265E(c), The Code of Criminal Procedure, 1973.

²⁷ S. 265E(d), The Code of Criminal Procedure, 1973.

²⁸ *K. Bala Dandapani v. State of Kerala*, OP(CrI.).No. 253 of 2014 (Q), (Kerala High Court, 08/10/2015).

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Section 138 of the Negotiable Instruments Act provides for fine as well. So, in addition to the sentence the trial court could have imposed fine as well.

In *Virsa Singh vs. Department of Customs*²⁹, the accused was charged with an offence which carried a minimum sentence of three years. The accused had already spent seven months in prison during the course of the trial. On plea bargaining the trial court sentence him to imprisonment for the term already spent in prison and in effect released him immediately. A Division Bench of the hon’ble Supreme Court comprising of hon’ble B.S. Chauhan, J. and hon’ble S.A. Bobde, J. held that since the offence carried with it a minimum sentence of imprisonment of three years, even on plea bargaining the trial court should have sentence him to one and a half year of imprisonment by the application of Section 265(c). The matter was sent back to the trial court for rehearing and settling the matter.

In *Guerrero Lugo Elvia Grissel vs. State of Maharashtra*³⁰, the hon’ble Bombay High Court held in unequivocal terms that under Section 265E, the trial court has not discretion to award any sentence other than that provide by the section. However, it must be noted that the provisions of Section 428 of the Code of Criminal Procedure will apply and the period of detention undergone by the accused will be set off against the sentence imposed upon him like it is set off in any other case following ordinary procedure.³¹

V.IX PRONOUNCEMENT OF THE JUDGMENT IN OPEN

COURT:

The judgment in terms of the mutually satisfactory disposition of the case will be pronounced in an open court and it will be signed by the presiding officer of the court.³² The judgment will have to comply with all the requirement of Section 265E.

V.X FINALITY OF THE JUDGMENT:

²⁹ *Virsa Singh v. Department of Customs*, SLP (Crl) No. 7938 of 2013, (Supreme Court, 04/10/2013).

³⁰ *Guerrero Lugo Elvia Grissel v. State of Maharashtra*, 2012 CriLJ 1136 (Bom.).

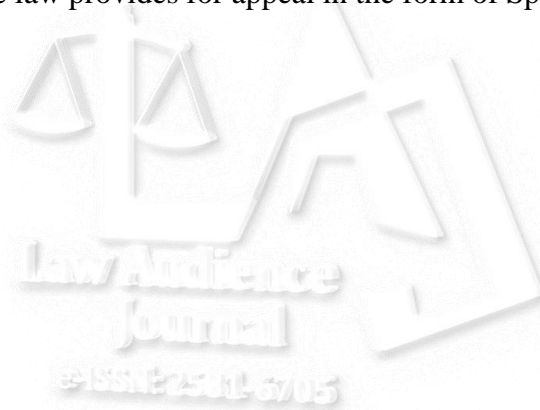
³¹ S. 265I, The Code of Criminal Procedure, 1973.

³² S. 265F, The Code of Criminal Procedure, 1973.

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The judgment delivered by the court shall be final. As a general rule, no appeal shall lie against such judgment. However, appeals can be preferred in the form of SLP to the Supreme Court under Article 136 of the Constitution of India and Writ Petition to the High court under Article 226 and Article 227 of the Constitution of India.³³

The basis of this rule is that parties should not be allowed to appeal against the judgment that is arrived at after their approval. The main purpose of the concept of plea bargaining is to bring an end to a litigation. If appeals are allowed as they are allowed in any normal proceedings then the entire purpose of plea bargaining will fail. However, where other legal rights of the parties are affected, the law provides for appeal in the form of Special Leave Petition and Writ Petition.



³³ S. 265G, The Code of Criminal Procedure, 1973.