

Plea Bargaining and Criminal Justice in India

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Crime, criminals and criminality have always been serious concern for society, state and individuals. Individuals formed society to have protection for his life, property and liberty. Society to bear such liabilities created state which ultimately developed criminal justice system. Hereby, criminal justice system is developed for providing protection to life, liberty and property of individual but in developmental process individual for whose protection criminal justice system was developed, became neglected. Traditionally criminal justice system attempts to protect accused and his interests. Recently demands are made for justice to individual victim who is actual sufferer of crime commission. Recently some measures are created for providing justice to individual victim. Such measures are in process of development, and thereby, for effective justice measure development to provide justice to victim there is a need to make continuous review. Plea bargaining is one such measure recently included in Indian criminal justice system to provide justice to victim. This paper analyses plea bargaining in reference to providing of justice to victim in India.

Keywords: *Compensation; Criminal justice; Habitual criminal; Plea bargaining; Restorative justice; Sentence; Victim.*

Introduction

Recently in Indian criminal justice system plight and injustice to individual victims has been emphasised and demands are made for providing actual, effective and sufficient justice to them. In recent years many provisions have been added to the Criminal Procedure Code (hereinafter CrPC) in order enable victims of crime to raise their grievances at appropriate forum, and further in justice imparting their sufferings should be taken care and accordingly decisions should be given. One of them is plea bargaining. In India the concept of plea bargaining has been accepted and included in the CrPC but it is not completely transplanted from other legal systems, like the American one, but adopted with some modifications. Provisions relating to plea bargaining in Indian criminal justice system are provided in Chapter XXI-A of CrPC which was added by Criminal Law (Amendment) Act 2005 (2 of 2006) which came into force on 5.7.2006. Plea bargaining is based on concept of restorative justice and in this regard many provisions have been added in the CrPCedure Code by some recent criminal law amendments. Previously, usually allegations were made that criminal justice system is favourable to the accused and in criminal procedures attempts are made to protect the interest of accused with complete neglect of victim and his problems. Restorative justice talks about justice to victim who is actually suffered of the criminal acts. Responsibility

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has been imposed on the state for compensating victims, for proper treatment of physical and psychological injury in cases of sexual or acid attacks. Cases amount of fine are determined according to the need of medical expenses to cover the full amount the victim had to spend. An appeal against the court's decision may be brought before the Supreme Court. Criminal justice now is emphasising the effective justice to victim and it is considered as one of the important objectives. In *National Human Rights Commission v. State of Gujarat*¹ Supreme Court observed:

“It needs to be emphasised that the rights of the accused have to be protected. At the same time the rights of the victim have to be protected and the rights of the victim cannot be marginalised. Accused persons are entitled to a fair trial where their guilt or innocence can be determined. But from the victims' perception the perpetrator of a crime should be punished. They stand poised equally in the scale of justice.”

Principles of Justice for Victims of Crimes and Abuse of Power

Criminal justice system makes all the attempts to tackle problem of crime and criminality and to protect society from the impacts of crime. Traditionally criminal justice system considers victim of crime is society and society is represented through State, thereby, traditionally concept crime even when widened, society and state are considered as victim of crime. Individual victim against whom crime is committed has always been neglected and traditionally been treated as mere informant and witness in criminal case. That is why real victim of crime who has suffered injuries of crime commission has always been a neglected and need of justice. Article 4 of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, directs member states of United Nations for treating victims of crime with compassion and respect their dignity:

“Victim should be treated with compassion and respect for their dignity. They are entitled to access to the mechanism of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”

For achieving these objectives, the United Nations directed in Article 5 of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, to member nations to develop judicial and administrative mechanisms for victim redressal, and further, to provide effective communication with victim to inform him about the rights available to him:

“Judicial and administrative mechanism should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victim should be informed of their rights in seeking redress through such mechanisms.”

Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, puts emphasis on restitution of victims and for this purpose direction

¹AIR 2009 SC (Supp) 318

is given for imposition of responsibility on offenders. Offender has caused suffering to victim, thereby, for restitution also responsibility must be imposed on offender. This measure also reminds offenders that what they have done and the problems they caused. Imposition of responsibility on offender for restitution of victim functions in two parallel ways. It provides effective remedy to the victims who are restituted, and at the same time it teaches the offenders that their wrongful acts are completely unacceptable and proscribed which have caused a serious hardship to other member of society. The later aspect compels offenders for introspection and they may be reformed. Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, directs member states to enact and develop measures for restitution and compensation to victim of wrongful acts and for this purpose responsibility has to be imposed on offender and when it is not sufficient then the State itself should compensate.² Article 8 of the Declaration directs implicitly for development of measure like plea bargaining through which responsibility is imposed on offender to compensate and retribute the victim. Article 8 of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power 1985 provides:

“Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents, such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as result of the victimisation, the provision of services and the restoration of rights.”

Crimes are committed against individual victim but traditionally the victim has always been neglected. Criminal law evolved for providing protection to life, property and liberty of members of society but when acts are committed offending such protected subjected then in that situation the criminal traditionally does not care of such member of society. Criminal law in adversarial system tilted towards accused person and all cares and protections are provided to him, when justice concepts are developed in criminal law it is keeping in focus criminal not the

²Three ways to compensate victim of crime are prescribed in Indian criminal justice system – 1. Fine is imposed on offender as punishment and from fine amount some amount is provided by court to victim as compensation. In India section 357 CrPC provides provisions in this reference. In this case compensation is directly not paid by offender, he is punished by imposition of fine. Now from fine amount court awards compensation. Fine goes in state fund, therefore here it means compensation is paid by state indirectly. 2. State has responsibility to protect persons from crime, criminals and criminality; on crime commission state has failed in bearing its responsibility, thereby state has to substantiate the injury caused to person due to crime commission. In Section 357-A CrPC liability is imposed on state to pay compensation to accused. Generally such compensation is paid, when fine imposed is not sufficient to compensate the victim or offender is not identified or accused is acquitted or immediate relief is needed to victim. 3. Traditionally, compensation to victim of crime is paid by state; compensation to victim is not directly paid by offender. Recently a new development has taken place in criminal justice by prescribing measure for payment of compensation directly by offender to victim of crime. For this purpose measure of plea bargaining is introduced in Chapter XXI-A of Criminal Procedure Code. In plea bargaining offender under mutual satisfactory disposition which a kind of agreement directly pays compensation to victim of crime and in return he is subjected to reduced punishment.

victim. Victim is usually misconstrued as only society and state completely forgetting the person who in reality suffered offending act and incurred resultant injury. Criminal law has traditionally neglected the person individual victim for whose protection criminal law originated, developing and existing. Recently demands are made for shifting attention criminal law towards actual victim of crime. In India recently criminal justice system is continuously providing new and new measures for providing justice to victim of crime. It is claimed that one such measure is plea bargaining. Plea bargaining is American measure used for disposal of case and providing speedy and restorative justice to victim. Law is always society specific, therefore, in India plea bargaining measure is adopted but it is included in criminal justice with modifications. In India accused after plea bargaining is not completely exonerated from his penal liability under criminal law but only his penal liability is reduced on payment of compensation amount agreed between accused and victim in pursuance of plea bargaining procedure but at the same time concept of plea bargaining appears to be misfit in our criminal justice system.

Meaning and Concept of Plea Bargaining:

In plea bargaining the accused admits commission of crime and takes responsibility to compensate the victim for injury caused and in return to penal liability of accused is reduced. Plea bargaining has some references to confession, plea of guilt and compounding of offences. Plea bargaining is a kind of agreement between the accused and the prosecution regarding disposition of criminal allegations. It is a sort of compounding of case, in compounding of case parties to case settle the allegation of crime commission, similarly here in case of plea bargaining in compounding is made between parties to case making consequence of reduced punishment. Plea bargaining procedure initiates with plea of guilt and on this basis compromise (compounding) is made between parties to case. In plea bargaining disposition is prepared under supervision of Court and it becomes final only on acceptance and accordingly passing of order by court. Plea bargaining is a sort of contractual agreement and it becomes absolute only on accepting by court. Black's Law dictionary defines plea bargaining:

“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 a process of preparation of mutually satisfactory disposition of the case subject to acceptance by court. Plea bargaining is made at pretrial stage and with successful plea bargaining by which mutually satisfactory disposition is prepared and accepted by court, first stage of trial which is used for identifying criminal concludes; with acceptance of guilt by accused himself, there is no need of proceeding in the said regards. Now proceeding is directly takes place for

determination of sentence and sentence is also decided in accordance with disposition prepared by accused and other parties to case. Hereby, plea bargaining is measure used at pre-trial stage at which by agreement between prosecution, accused and victim, accused pleads guilty for lenient and reduced sentence. Section 265-A of the CrPC mentions stage for plea bargaining and it shows that it is made before trial; in case investigated by police officer, on the submission of police report, and in complaint case, on issuance of process u/s 204 CrPC. Hereby, plea bargaining stage initiates at cognisance stage in case instituted on police report and in case instituted on complaint, after taking of cognisance. It indicates that plea bargaining has to make before initiation of trial, but it cannot make absolute limitation and even after initiation of trial, plea bargaining may made. 'Bargaining' word used is self explanatory that plea of guilt is bargained, accused bargains that he may accept guilt when lesser punishment is inflicted and prosecution and victim in case based police report, and victim in complaint case, bargains for compensation amount. Further prosecution is relieved from heavier responsibility of proving case beyond reasonable doubts (burden of proof). On successful bargain when disposition is prepared between parties to case under supervision of court, it takes form of agreement which indicated by expression 'mutually satisfactory disposition of the case' used in Section 265-B (4) (a) CrPC. On acceptance by court agreement arrived between party becomes absolute. Plea bargaining excludes need of trial and proving case by prosecution and case directly enters in sentencing stage which is also decided according to disposition prepared by parties to plea bargaining.

In reference to plea bargaining in various criminal justice systems, various measures of plea bargain are used. In plea bargaining any one of three bargaining is used, charge bargain, count bargain and sentence bargain. In charge bargain accused pleads guilty for lesser charge than originally framed charge. Count bargain measure is used when accused is originally charged for many charges and in plea bargaining accused pleads guilty for some charges and remaining charges are withdrawn. One another measure, sentence bargain is used in which accused pleads guilty for charges alleged against him but in mutual disposition agreement is made for reduced punishment. In India sentence bargain measure of plea bargaining is used and in this regard provisions are provided in Chapter XXI-A of CrPC.

Plea bargaining is an agreement by which prosecution and accused bargain and voluntarily settle case against accused through which accused agree to plead guilty in exchange of concession in penal liabilities.

Before 2006 Plea Bargaining was not permitted in India:

Plea bargaining is American concept and there it is much developed but in Indian Criminal Justice System it has never be considered as appropriate measure to tackle crime challenge. Plea bargaining is considered as challenging our whole concepts of criminal justice system. For the first time in India by Criminal Law (Amendment) Act 2005 provisions relating to plea bargaining has been added.

Law Commission in its 142nd report in 1991, 154th report in 1996 and 177th report in 2001 recommended for inclusion of measure of plea bargaining in CrOC. Law Commission recommended inclusion of plea bargaining for speedy disposal of case, thereby, as a measure to provide speedy justice to victim. Law Commission in 142nd Report observed:

“The need for introducing the scheme has become compulsive in a situation where trial of a criminal case culminating in an acquittal can take as many as 33 years in a relatively petty case (involving alleged misappropriation of Rs. 12000, Rs. 4000 and Rs. 2000) and result in expenditure of as much as a crore of rupees to the State exchequer, with no corresponding benefit to the community. And in a situation, as reported on 16.8.1989 in Indian Express, where the Courts in a city like Bombay in 1988 recorded 124 rape cases but could dispose of only one and in first six months in 1989 recorded 67 cases but could dispose of not a single case”.

There is more than ample justification for introducing the scheme in as much as:

- (1) It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plead guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on par with an accused who claims to be tried at considerable time-cost and money-cost to community.
- (2) It is desirable to infuse life in the reformatory provisions embodied in Section 360 of the CrPC and in the Probation of Offenders Act which remain practically unutilised as of now.
- (3) It will help the accused who have to remain as under-trial prisoner awaiting the trial as also other accused on whom the sword of Damocles of an impending trial remains hanging for years to obtain speedy trial with attendant benefits such as
 - (a) end of uncertainty,
 - (b) saving the litigation cost,
 - (c) saving the anxiety-cost,
 - (d) being able to know his or her fate and to start a fresh life without fear of having to undergo a possible prison sentence at a future date disrupting his life or career,
 - (e) saving avoidable visits to lawyer’s office and to court on every date of adjournment.
- (4) It will, without detriment to public interest, reduce the back-breaking burden of the court cases which have already assumed menacing proportions.
- (5) It will reduce congestion in jails...³

Further, *Malimath Committee* (2001-2003) recommended for prescribing of plea bargaining as measure for disposal of criminal cases. *Malimath Committee*

³142nd Report of Law Commission p. 37.

recommended that offences which do not affect the society, it is desirable to encourage settlement of case without trial. Plea bargaining was included in Criminal Procedure Code by addition of new Chapter XXI-A of Code But considering difference of our societal considerations and crime problem, the concept of plea bargaining has been completely modified as it is not applicable for serious crimes, crimes against women and children, crimes affecting socio-economic condition of country and habitual criminals, and further, criminal is not exonerated from his penal liability but he will have reduced penal liability. Usually plea bargaining is rationalised on the basis of speedy justice; it is usually observed that delayed justice is denial of justice. Day by day piling of cases is increasing causing great hardships before victims, ultimately before the society. it is considered that disposal of cases by use of plea bargaining may be helpful for disposal of cases and thereby in providing speedy justice to common mass. In case plea bargaining, need for trial of case does not arise, only on the basis of mutually agreeable disposition case enters in Second phase of proceeding that is sentencing stage, at which court takes evidences for determination of punishment decided on the basis of disposition prepared during plea bargaining, plea bargaining is preferred on the basis that it is less time and money consuming. Further, appeal under statutory provision is not permitted, only it is permissible under Constitutional provisions. Plea bargaining is beneficial for accused also that on the basis of his pleading of guilt and payment of compensation, he may be liable for lesser punishment. Whenever accused offered for accepting guilt but ultimately negotiations between accuse, prosecution officer and victim fails, then protection is available to accused u/s 265-K of Code that his statement cannot be used for any purpose except the purpose mentioned in Chapter XXI-A CrPC; such protection is necessary otherwise accuse will never offer for plea bargaining, thereby provision relating to plea bargain may become ineffective. Section 265-K CrPC is given with non-obstant clause which prevails over all other related provisions, it is major protection provided to accused who offers plea bargaining. Section 265-K CrPC provides:

“Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under Section 265 B shall not be used for any other purpose except for the purpose of this Chapter.”

Pleading of guilt and plea bargaining are related but different aspects in criminal trial. Pleading of guilt has always been permitted and further, it is necessary stage in criminal trial. Pleading of guilt is acceptance of guilt without any excuse or justification. After framing charge, reading and explaining the charge trial court ask for pleading of guilt, and when court finds that pleading of guilt was voluntary, only on this basis accused may be convicted and then after evidences are taken for sentence infliction. Such pleading of guilt is generally made because of penitence and remorse felt by accused due to crime commission. Plea bargaining is bargain of pleading of guilt. In plea bargaining accused makes pleading of guilt but it is bargained for no punishment or lesser punishment. In India it is later situation means accused makes pleading of guilt and offer

compensation to victim and bargains it for reduced sentence. Thereby, in plea bargaining pleading of guilt is made subject to reduction of punishment. Pleading of guilt is very important and inclusive part of plea bargaining but plea bargaining and pleading of guilt are two different things.

The whole concept of plea bargaining is exception to general and basic rules of criminal justice. In confession and pleading of guilt accused accepts crime commission and in it is implicit that accused has accepted the penal liability but on this basis never concept is advanced in criminal justice to reduce the penal liability but concept is well laid down that only on the basis of acceptance of guilt accused may be convicted and he has to bear his liability as provided by law. When plea bargaining is seen at its face, it appears it is selling of conviction and some compensation by the criminal to the prosecution for reduced sentence. In *Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat*⁴ SLP was filed under Article 136 of Constitution before Supreme Court against the decision of Gujarat High Court passed in *suo moto* revision of order passed by the Judicial Magistrate first class, *Balasinor* convicting accused appellant for offence u/s 16 (1) (a) (i) r/w 7 Prevention of Food adulteration Act 1954 and sentencing with much minimal punishment that is with simple imprisonment till rising of court and fine of Rs. 125/= or in default of payment of fine to undergo imprisonment for 30 days. Accused committed adulteration in turmeric powder, thereby, he was liable u/s 16 (1) (a) (i) r/w 7 PFA Act 1954. In this case after taking some prosecution evidences, plea bargaining took place between accused, prosecutor and Magistrate. Magistrate on this basis convicted and sentenced. High Court made revision *suo moto* and enhanced punishment to three months imprisonment and fine Rs 500/= and in case of default of fine imprisonment of 30 days. Decision of High Court was challenged before Supreme Court through filing of SLP. At that time plea bargaining was not incorporated in Indian law but from the decision it was appearing that assurance was given to accused person that on plea of guilt negligible punishment may be inflicted. The Supreme Court observed that food adulteration dangerous acts which affect the common mass and in such kind of cases there should not be any lenient punishment. Supreme Court set aside the order of High Court and remanded case to Judicial Magistrate to proceed from stage of plea of guilt. Justice *P N Bhagwati* thought that plea bargaining might act as allurement and it might not do justice imparting and violative to norms settled in *Maneka Gandhi case*. Plea bargaining may cause corruption and collusion and ultimately lower the standard of justice. Justice *P N Bhagwati* observed in this case:

“[...] It is obvious that such conviction based on the plea of guilt entered by the appellant as a result of plea bargaining cannot be sustained. It is 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 on an allurement being held out to him that if he enters a plea of guilt, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of art. 21 of the Constitution unfolded in Maneka Gandhi’s Case. it would have effect

⁴(1980) 3 SCC 120

of polluting pure fount 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...or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of 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..."

In *Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat* case Supreme Court observed that plea bargaining was violative rule laid down in *Maneka Gandhi* case dictum, thereby it was observed that plea bargaining was unconstitutional. Court further observed that plea bargaining was unreasonable, unjust and unfair thereby violative to Article 21 of Constitution. Crime is not only committed against individual victim but committed against the whole society. Crime and criminals pose a serious problem before the society at large. In such situation private bargain between criminal and victim with participation of instrumentality, having heavier responsibility to tackle problem of crime and protect individuals from fear of victimisation and save the society from crime, criminal and criminality, does not seem to be just and proper. In *State of UP v. Chandrika*⁵ Supreme Court observed that plea bargaining is against the public policy. In this case appellant state filed SLP under Article 136 of Constitution against judgment of Allahabad High Court. In this case accused was alleged for commission of homicide; in Session Trial he was convicted under first part of section 304 IPC and sentenced for imprisonment for eight years. Appeal was filed before Allahabad High Court where plea bargaining was made regarding not challenging of conviction order and on this basis High Court reduced sentence for imprisonment which convict has already undergone as under-trial prisoner and as convict after conviction by the trial Court. Decision of High Court was challenged by State of UP before the Supreme Court. Supreme Court decided that case cannot be decided on the basis of plea bargaining but it should be decided on the basis of merit. Sentence should commensurate to crime committed and there should not be lenient imposing of sentence for crime commission; order of High Court was set aside. Supreme Court observed in this case:

"Hence, it is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Further, the approach of the Court in appeal or revision should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscious must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is

⁵AIR 2000 SC 164

required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence is reduced."

From 2006 Plea Bargaining is Permitted Procedure of Criminal Justice in India

Recommendations of Law Commission and *Malimath Committee* were accepted by legislature and by Criminal Law (Amendment) Act 2005 provisions relating to plea bargaining were included in Criminal Procedure Code by adding one new Chapter XXI-A in which Sections 265 A to 265 L deal with this aspect of criminal justice administration. Section 265-A CrPC clearly specifies that plea bargaining shall not be applicable in case of offences affecting socio-economic conditions of country. Central Government by issuance of notification on 11th July 2006 declared offences punishable under nineteen Acts as offences affecting socio-economic conditions of country and in case of such offences plea bargaining is not applicable. Such aforesaid Acts are Dowry Prohibition Act 1961, The Commission of Sati Act 1987, Indecent Representation of Women (Prohibition) Act 1986, Immoral Traffic (Prevention) Act 1956, Protection of Women from Domestic Violence Act 2005, SC-ST (Prevention of Atrocities) Act 1989, Cinematograph Act 1952 etc. Protection of socio-economic condition of country is necessary responsibilities imposed on state, it can never be jeopardised by act committed by any person. Now days many offences are committed which challenge well-being of society which can never be permitted and in such case no lenient reaction can be permitted, therefore explicitly it is provided in Section 265-A CrPC for non-applicability of plea bargaining in case of socio-economic offences to be specifically notified in this regard. The list of Acts forming this category is inclusive and from time to time other Acts may be added in this category.

Furthermore, Section 265-A CrPC declares for non-applicability of plea bargaining in respect of offences against women. In list of Acts notified by Central Government as penalizing offences affecting socio-economic conditions of country many Acts deal solely with offences against women. In addition to that general provision is given declaring inapplicability of plea bargaining in reference to any offence against women. Security and protection of women are considered prime responsibility of society, thereby, stern punishments are prescribed for offences against women because of that deterrence may be created and potential criminals shall not dare to commit crime against women. In recent years crimes against women are posing a serious challenge before society at large due to commission of such offences in brutal manner and further nature and rate of such crime commission is becoming more and more serious and alarming. Thereby, in case of offences against women, it is explicitly declared for inapplicability of plea bargaining for such offences. Furthermore, Section 265-A CrPC declares that plea bargaining is not applicable for commission of offences against children below the age of fourteen years. Children are future of society needed to be protected. They are in constructive phase, thereby, wrongful acts may badly affect their socialisation, personality building and ultimately whole perception about society;

children are always needed to be protected. In this regard never lenient punishment can be inflicted on offender endangering well-being of children; such offender cannot be given any benefit of plea bargaining. In Section 265-L CrPC protects children one another very important aspect. For reformation and rehabilitation of children a very enlightened enactment has been made. When any offence is committed by child, he cannot be deprived from reformatory and rehabilitative procedures provided in Juvenile Justice (Care and Protection of Children) Act in the name of plea bargaining. But confusion arises after amendment in Juvenile Justice (Care and Protection of Children) Act 2000 in 2015 and a new Act was passed Juvenile Justice (Care and Protection of Children) Act 2015 by which some children for commission of some offences are treated as adult criminals and penalised, and in such case whether provisions relating to plea bargaining will be applicable for such children or not. Such children are not reformed by reformatory and rehabilitative measures given in Juvenile Act but tried and punished like adult, therefore they should not be deprived of benefit of plea bargaining in same manner as it is available to adult criminals. Section 265-L CrPC provides:

“Nothing in this Chapter shall apply to any Juvenile or Child as defined in sub-clause (k) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000).”

Plea bargaining is not permitted for habitual criminals. Habitual criminals by repeated commission of crime particularly same or similar kind of crime clearly shows that that accused has developed criminal mentality and maturity in criminal culture, such person is hardened criminal difficult to be reformed and always he may pose problem for society at large by his repeated crime commission. With such hardened criminal measure is provided in criminal law that he may be liable for more stern punishment in comparison to first offender. Recidivist person cannot be subjected to reformatory action for which he is never amenable and lenient punishment which he may be indicative to him as the criminal justice is favourable is for crime commission. In case of habitual criminal, always need is felt to give stern message that whenever he will manifest his criminal mentality in the form of crime commission he shall be subjected to severe punishment. Plea bargaining can never be suitable measure for dealing with habitual criminal. Section 265-B (4) (b) CrPC explicitly provides that when court finds that the accused offering for plea bargaining has previously convicted by court for same offence for which now he is charged then plea bargaining shall not be permitted and he shall be tried in the case.

Serious crime create grave impact over the society at large, usually such crimes create fear of victimisation in members of society. Generally, for effective tackling of serious crimes criminal law prescribes stern, severe and longer extent of punishment. *Malimath Committee* recommended that for serious crimes plea bargaining has not to be permitted. In case of serious crime need is felt to create deterrence in criminal elements to prevent commission of such crimes. Lenient reaction to serious crime and criminals committing such crime cannot be effective measure to deal with crime and criminality in the society. Thereby, Section 265 A CrPC clears that plea bargaining is not permitted in case of serious crimes. Section

265 A permits plea bargaining only for offences which are not punishable by death penalty, life imprisonment or imprisonment exceeding seven years. The provisions contained in Section 265-A CrPC clearly specifies that for serious crimes plea bargaining cannot be permitted; it is permitted only for offences punishable with fine or imprisonment for a term extending up to seven years or both. Section 265-A (1) CrPC provides:

“This Chapter shall apply in respect of an accused against whom-

- (a) the report has been forwarded by the officer in charge of the police station under Section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or*
- (b) a Magistrate has taken cognisance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under Section 200, issued the process under Section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.”*

Hereby, plea bargaining is not permissible in cases when:

1. Age of offender is below 18 years of age.⁶
2. Accused is previous convict for the same kind of offence for which person is accused and have applied for plea bargaining.
3. Offence for which person is accused affects socio-economic conditions of country.
4. Offence is committed against woman or child below 14 years of age.
5. Offence comes in category of serious crime. Generally, such offences are identified by prescription of severe punishments. When offence is punishable by death penalty, life imprisonment, or imprisonment exceeding seven years.
6. Application for plea bargaining moved by accused is not voluntary.
7. Parties participating in meeting for working out mutual satisfactory disposition failed to make such disposition.

Plea bargaining is made at pre-trial stage generally before the framing of charge. Section 265-A CrPC mentions stages in the case for moving of application for plea bargaining:

⁶Section 265-L CrPC provides that Chapter XXI A is not applicable for juvenile or child defined in Section 2 Juvenile Justice Act 2000. JJ Act 2000 has been repealed and substituted by JJ Act 2015. Though Section 265 L has not been amended to mention JJ Act 2015 but it will be applicable as the objective of Act of 2000 and Act 2015 are same. Section 2 of JJ Act 2015 defines similarly that child or juvenile is person below 18 years age.

1. In case in which police lodged FIR and investigation is made; in such case plea bargaining is permissible only after submission of police report. On conclusion of trial u/s 173 CrPC police officer submits police report on which Magistrate takes cognisance u/s 190 CrPC. Section 265-A (1) (a) CrPC directs that after submission of police report, at any stage accused may voluntarily give proposal for plea bargaining. Thereby, in case based on police report application for plea bargaining may be moved at any time during cognisance and afterward.
2. In case based on complaint, accused may voluntarily move application for plea bargaining after completion of examination of complainant and witness u/s 200 CrPC and issuance of process u/s 204 CrPC. Thereby, in complaint case accused may give offer for plea bargaining at any time after completion of cognisance.

For plea bargaining establishing of case is also a necessary requisite; when case is investigated by police officer through detailed investigation with submission of police report case is prima facie established while in complaint case the complainant directly files case before the Magistrate, thereby, case is prima facie established only after examination of complainant and witnesses u/s 200 CrPC and such establishing of case is indicated by issuance of process. Because of it, in police case accused may offer for plea bargaining after submission of police report means during cognisance and afterwards while in complaint case such offer may be given after taking of cognisance and afterwards.

Main provision relating to plea bargaining is given in Section 265-B CrPC, it clears that proposal for plea bargaining is moved by accused by filing of application before the trial court. Accused person does not give proposal for bargain directly to prosecution or victim but it is given to court. Court after receiving application from the accused for plea bargaining, issues notice to Public Prosecutor in case instituted on police report or complainant in case instituted on complaint and accused to appear in the court on fixed date. First most responsibility imposed on court is to find out whether such proposal for plea bargaining moved by accused is voluntary, for this purpose court on fixed date examines accused in camera, in absence of other party to case. On examination of accused person court may have any one of the three situations:

1. Court is satisfied that accused voluntarily offering for plea bargaining. In this situation plea bargaining is permitted and court provides time and opportunity to accused and public prosecutor or complainant, as the case may be, to work out mutually satisfactory disposition. Or
2. Court finds that accused involuntarily applied for plea bargaining. Accused may be pressurised or due to some other reason he has no willingness for plea bargaining. On identifying this type of situation court shall not permit plea bargaining; court shall initiate trial proceeding. Or
3. Court finds that accused is previous convict for same kind of offence, in this situation plea bargaining shall not be permitted and court initiates trial proceeding.

In second and third situations plea bargaining is not permissible; as soon as Court identifies these situations proposal for plea bargaining is rejected by court and proceeding for trial is continued again. In first situation, it means when accused person is not a habitual criminal committing same kind of offence and offer for plea bargaining is moved voluntarily, court permits and facilitates for proceedings relating to plea bargaining. Further for plea bargaining due to provisions contained in Section 265-A CrPC it is necessary that offence for which accused is charged should be punishable with fine or imprisonment for term not exceeding seven years or with both. Hereby, plea bargaining is permissible when offer for it is moved by accused voluntarily, accused is not a habitual criminal and offence for which accused is charged is not punishable with death punishment, life imprisonment or imprisonment exceeding seven years.

When court finds out that the accused was not previously convicted for same kind of offence, offence for which the accused is charged does not come in prohibited category and the accused has offered for plea bargaining voluntarily, court may direct for the conduct of proceeding for plea bargaining. In case instituted on police report for proceeding of plea bargaining court issues notice to Public Prosecutor, investigating officer who made investigation of the case and the victim of the case or when case is instituted on complaint court issues notice to the accused and the victim of the case, these persons make meetings to work out mutually satisfactory disposition of case. Court has responsibility to supervise and control the meeting to ensure that the entire process is completed voluntarily by parties participating in the meeting to prepare mutually satisfactory disposition of case. If they desire, accused and victim are permitted to participate in meeting along with their respective pleaders. In disposition prepared during proceeding main component is amount of compensation to be paid by accused to the victim.

Plea bargaining as claimed is based on restorative justice there by attempt is made to provide speedy justice and further, his injury suffered is taken care of and attempted to satisfy by providing compensation to him. In plea bargaining victim gets compensation and response to that accused becomes liable for reduced punishment. In criminal law compensation providing is not new thing; it has been traditionally available in criminal proceeding in India. But always in criminal justice system in India compensation is awarded out of fine collected from the criminal. Traditionally criminal is punished by imposition of fine or other punishments or both; when fine is imposed as punishment, either whole amount of fine or some part of realised amount of fine is given as compensation to victim. Such traditional measure to compensate victim is provided in Section 357 CrPC. One more development has taken in recent past that compensation may be given by state to victim of crime commission. In this regard now provisions are given in section 357-A CrPC. State has responsibility to protect citizenry against crime commission and State has failed, thereby it has to compensate aggrieved person. State has failed in tackling crime problem, thereby, responsibility to compensate victim. Under Section 357-A CrPC compensation is given by State. In Section 357 CrPC compensation is given from fine amount collected from criminal; fine forms part of public exchequer, thereby, from another perspective this compensation may

also be taken as paid by state. In criminal justice system in India traditionally criminal is punished but never compensation is directly paid by the criminal to victim. In civil law such compensation payments are made which is paid by wrongdoer to injured person. Plea bargaining is exception to aforesaid well established rule of criminal law and in pursuance of it compensation is directly paid by offender to victim of offence. Further, compensation amount is decided by offender and victim by mutual bargain. This aspect of proceeding of plea bargaining brings the criminal proceeding similar to contract making. In Law of Tort also such sort of proceeding is not permitted; in Law of Tort amount of compensation is always determined by court and never parties to dispute are permitted to decide the remedy themselves.

Section 265-E (a) CrPC specifically clears that main purpose of plea bargaining is determination of compensation amount payable by offender to victim of crime. For payment of compensation and determination of compensation amount voluntary bargains are made amongst offender, Prosecution officer, investigating officer and victim in case based on police report and between offender and victim in case based on complaint. Court during bargain keeps vigil on whole bargain and settling of matter which is called disposition should take place voluntarily, in this regard specific duty is imposed on court u/s 265-C CrPC. When in persons participating in the meeting for plea bargaining failed to work out mutually satisfactory disposition, Court has to record its observation and proceed in trial from the stage the application under Section 265-A (1) CrPC was filed in the case. When in bargain parties have succeeded in arriving at mutually satisfactory disposition, the Court has now the responsibility to prepare report of such disposition which is signed by presiding officer of court and all the persons participating in the meeting. Section 265-D CrPC provides:

“Where in a meeting under section 265 C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.”

On successfully working out mutually satisfactory disposition, it is accepted by court through preparation of report on it which is signed by presiding officer of the court and persons participating in meeting. Now after it there is no need of trial; on the basis of pleading of guilt in disposition of case accused is convicted. Now case enters in sentencing stage; court passes compensation order in accordance with disposition prepared u/s 265-D CrPC. further court takes evidences and Court considers whether convict has prospect of reformation; on identifying such situation with him, he may be released after due admonition or probation of good conduct u/s 360 CrPC or Probation of Offenders Act 1958, as the case may be. When court identifies that accused has no prospect of reformation but he has to be sentenced then court takes evidences for determination of nature and extent of punishment. In plea bargaining offender is not completely exonerated from his

liability, he is still liable for punishment but on the basis of payment of compensation and acceptance of crime commission (pleading of guilt) he is treated leniently and his penal liability is reduced. When offence is punishable with maximum imposable punishment, Section 265-E (d) CrPC prescribes that court may sentence the accused to one fourth of the punishment provided for the offence or extendable punishment. In some cases minimum sentence is also provided for the offence particularly offences under special penal statute are punishable by minimum and maximum punishment. In case of maximum punishment court has discretion, no doubt it is judicial discretion but court is empowered to determine any extent of punishment extending up to maximum prescribed punishment. In some cases minimum punishment is also prescribed; minimum sentence is mandatory sentence court has no discretion for minimum imposed sentence, court is bound to impose minimum sentence and then court has discretion to extend it up to maximum sentence. But in case of plea bargaining minimum sentence is also reduced and in Section 265-E (c) CrPC provides that when for offence minimum punishment is provided in penal statute, court in case of plea bargaining may sentence the accused to half of minimum sentence provided for offence. In case of plea bargaining sentence to be imposed on accused is determined that when offence is punishable by maximum sentence only, sentence to be imposed on accused shall be one-fourth of maximum sentence, and when offence is punishable by minimum and maximum sentence both, sentence to be imposed shall be half of minimum sentence provided for the offence. Minimum and maximum sentence may be imprisonment or fine or both, and hereby, accordingly one half and one fourth of punishments may be calculated. Court passes judgment in open court. In beginning when proposal for plea bargaining was moved by accused, court examines accused in camera to find out whether such offer was made voluntary. At the stage of pronouncement of judgment, Section 265-F CrPC declares that judgment shall be pronounced in open court.

Section 265-G CrPC declares that judgment passed by court on plea bargaining is final and it cannot be challenged by any party to case except under Constitutional provisions. In plea bargaining every party to case voluntarily prepare mutually satisfactory disposition, therefore later on they cannot be permitted to challenge disposition prepared and accepted by them and accordingly judgment passed by court. Due to it Section 265-G CrPC declares orders passed by Court as unappealable order under provisions of Criminal Procedure Code but it shall remain subject for challenge under Constitutional provisions contained in Article 136, 226 and 227 of Constitution. Section 265-G CrPC provides:

“The judgment delivered by the Court under Section 265 G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such Judgment.”

Only pendency of cases against accused does not debar the accused from getting benefit of plea bargaining. In Chapter XXI-A some prohibitions are given like offence with which accused is charged affects socio-economic conditions, offence is against woman or child under fourteen years age, or accused is previous

convict; in these case accused is prohibited from making plea bargaining. Further, court may reject application for plea bargaining when such application is not voluntary moved. But court cannot reject the application for plea bargaining on any other ground which is not mentioned in Chapter XXI-A of Criminal Procedure Code. When aforesaid situations are not present then court will not deny to facilitate the plea bargaining. Now it is only for prosecution or victim to reject the offer for plea bargaining. In *Rahul Kumpawat v. Union of India Through CBI*⁷ Rajasthan High Court decided this case on 4th November 2016 and observed that trial court can reject the application for plea bargaining only on those grounds which are mentioned in Chapter XXI-A of Code. In this case application for plea bargaining was moved accused but it was rejected by court on the ground that many cases were pending against the accused. Appeal was made before the High Court u/s 482 CrPC. High Court observed that plea bargaining is American concept developed since 19th Century. In India it has been included in Criminal Procedure Code from Section 265-A to 265-L, and now any issue relating to it should be decided according to these provisions. Court can reject application for plea bargaining only on those grounds mentioned in the provisions; rejection on any other ground, which is not mentioned in the provisions, is not proper. For this case High Court found that ground of rejection of plea bargaining application is not mentioned in the provisions, therefore, set aside order of rejection order and case was remanded to trial court for reconsider according to legal provisions. *Rahul Kumpawat v. Union of India Through CBI* High Court observed:

“A bare perusal of Section 265-A CrPC makes it explicitly clear that mere pendency of criminal cases against an accused cannot be cited as an embargo for entertaining plea bargaining under Chapter XXI A CrPC. Moreover, in the instant case, accused-petitioner as volunteer to enter into plea bargaining and therefore, it was expected of the learned trial Court to consider the same as per mandate of Chapter XXI A CrPC. While it is true that plea bargaining in Indian Legal System is infancy but its recognition is clearly discernible in CrPC after introduction of Chapter XXI A w.e.f. 05.07.2006. Broadly in the system of pre-trial negotiations where the accused pleads guilty in return, he can fructify concessional treatment from the prosecution. The underline object is to shorten the litigation and, therefore, in adherence of legislative intent, the Courts are also expected to accede to the prayer of the accused person in appropriate cases to ensure speedy disposal.”

*Rajinder Kumar Sharma v. The State*⁸ case was decided by Delhi High Court on 26 February 2007. In this case petitioner accused opened a fake account in Bank in the name of complainant and got encashed a cheque worth Rs 17640/- belonging to complainant sent by Unit Trust of India. Complainant filed FIR, case was investigated by police officer and on completion of investigation, and he submitted charge-sheet. Complainant and petitioner accused were close relatives, some relatives mediated and accused returned the amount of cheque and they made settlement out of court. Now petitioner accused filed petition u/s 482 requesting for quashing of FIR. High Court refused and petition was dismissed. Court decided

⁷<http://indiankanoon.org/doc/48688195/8.20.2020>

⁸<http://indiankanoon.org/doc/311930/8.20.2020>

that offences which affect society compromise cannot be permitted. Those offences which are of trivial nature, compounding may be permitted but offences which are graver and serious are not against individual but against society, in such case compounding cannot be permitted. Plea bargaining and compounding of case has some difference. Court observed plea bargaining is permitted and lenient punishment is inflicted in such case as criminal is repenting for crime commission and he is prepared for some punishment. Criminal mentality may not create problem in future in case of plea bargaining as the person is repenting. Further he is going to suffer some punishment. In case of compounding repent is not shown and further any punishment even lesser extent is not going to be inflicted. Delhi High Court observed:

“A Crime under IPC or any other penal law is not a crime against an individual, it is crime against the society and the State and that is the reason that State or any of its agencies is the prosecutor in criminal cases. The suppression of crime is the most important function of State. The maintenance of law and order and compliance of laws by the citizen is the responsibility of the State. Criminal law has been mainly concerned with protection of elementary social interest in the integrity of life, liberty and property. The legislature in its wisdom considered some offence as trivial offence and some offence more serious and of graver nature. Those offences which did not affect the society at large have been made compoundable under Section 320 CrPC. However, all offence under IPC or under other Acts have not been made compoundable because the legislature considered that some offence cannot be compoundable and the perpetrator of such offence must be punished according to the law, so that the criminal tendency is curbed. Recently, the legislature has introduced plea bargaining under law so as to benefit such accused persons who repent upon their criminal act and are prepared to suffer some punishment for the act. The purpose of plea bargaining is also to see that the criminals who admit their guilt and repent upon, a lenient view should be taken while awarding punishment to them”

Concluding Remarks

In Indian Criminal Justice System plea bargaining is a new measure for providing justice to victim of crime. Plea bargaining is prescribed to compensate victim for loss caused to him due to crime commission; it is based on consideration that monetary amount may help in restitution of victim. Traditionally, in Indian society emphasis is given for retribution and deterrence for victim satisfaction whether it is individual victim or society at large, and further, for protection of society by tackling crime, criminal and criminality. Compensation by criminal to victim of crime and payment under mutual satisfactory disposition which is a kind of agreement arrived between criminal and victim of crime and in return criminal becoming liable for reduced punishment is considered in Indian society completely different concept in Indian criminal justice system and Indian societal considerations. Plea bargaining is always much criticised in India. Crime problem day by day becoming more and more serious even the existence of society is challenged by increased rate of crime commission, need is to cope problem effectively and for this purpose need is to reform the criminal or deter the criminal from crime

commission. Whenever any act is declared as crime, certainly act may be serious otherwise it would have not been declared as a crime but declared as a civil wrong. Only due to certain reasons for some crimes, procedure applicable may have been changed, thereby, it should not be taken as crime is only against individual, but it should be taken that the crime is always serious, only due to some rational reasons different procedure may have been provided. Differentiation that particular crime is against the individual and particular crime is against society, may not be appropriate way of application of criminal justice. Whenever any act is declared as crime always it should be taken that act is dangerous one and only because of it act may have been declared as crime. Crime problem can be tackled by infliction of effective and appropriate punishment or reformative measures. It may reform the criminal or create deterrence and thereby reform the criminal and he may not commit crime. Such actions against criminal may cause and strengthen social solidarity, increase assurance in victim that he is protected against crime and criminals, thereby, save the individuals and ultimately members of society from fear of victimisation. But plea bargaining provides a completely opposite considerations. In penal statutes minimum and maximum punishments are prescribed to inflict effective sentence after detailed analysis. But in plea bargaining neither consideration is given for deterrence creation nor for reformation of accused. Whole criminal justice considers reformation and deterrence of criminal and potential criminals as main objectives; and further, criminal justice ultimately focus on protection of victim and society; these are ultimate objectives of criminal justice system. Plea bargaining is not based on aforesaid basic considerations of criminal justice. Already for petty offences provisions were provided in Criminal Procedure Code permitting compounding⁹ and for some other offences complainant is permitted to withdraw the case¹⁰. Effect of inclusion of provisions of plea bargaining is extension and widening of compoundable offence for covering those offences also which have traditionally been considered more serious. Plea bargaining is claimed for having victim centric and victim restorative focus but detailed analysis shows that plea bargaining actually provide protections to accused, It is soft and favourable to accused. Minimum punishment is always taken as mandatory sentence and on conviction it is mandatory to inflict minimum sentence but on plea bargaining even minimum sentence is reduced and half of minimum sentence is inflicted. Bargaining between the accused and the victim in which ultimately there is exchange of reduction of punishment and compensation create situation in which it appears that there is selling of crime; one person committed crime and now on payment of money, he becomes lesser liable, another person suffered injury due to crime commission but now by taking of money, he is selling his injuries. This whole procedure of plea bargaining appears to legalise the

⁹In Section 320 CrPC compounding of offences is permitted; for some offences accused and victim may make compounding without permission of court and after compounding they inform the court and accordingly case is dismissed; for remaining offences mentioned in Section 320 CrPC accused and victim may make compounding with permission of court.

¹⁰In Section 257 CrPC complainant is permitted to withdraw summon case with permission of court at any time before the permission of court. When number of accused is more than one, in such case complainant may withdraw case in the aforesaid manner against all the accused persons or any of them.

crime commission. Proposal for plea bargain is given by accused; whenever accused may find in the case that evidences available against him in the case are direct, sufficient and substantial as it appears that ultimately he may be convicted and sentenced, he may give such offer and on successful plea bargain, accused may become liable for much lesser punishment only on expending some money giving it as compensation to the victim. No doubt two checks are created and thereby tried to check such loopholes and drawbacks, firstly, offer has to be accepted by victim, when he is not interested in reducing liability of accused by taking compensation then he may refuse and in such case criminal will have effective liability for crime as prescribed by substantive law, and secondly, court has final say in the case, whole proceeding takes place in supervision of court, it is responsibility of court to see whether plea bargaining is voluntary, and ultimately, disposition prepared by party becomes absolute only on passing order by court in accordance with disposition prepared by prosecution, victim and accused in case based on police report and in accordance with disposition prepared by accused and victim in complaint case. The victim is the person for whose protection criminal law originated and has continued existence. Criminal justice has ultimate objective to protect life, property and liberty of individuals and ultimately to protect the whole society. Every measure prescribed in criminal justice should have focus for justice to individual victim and ultimately justice to society at large, thereby, there is continuous need for reviewing of measures used for justice imparting.

Cases

Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat (1980) 3 SCC 120

National Human Rights Commission v. State of Gujarat AIR 2009 SC (Supp) 318

Rahul Kumpawat v. Union of India Through CBI <http://indiankanoon.org/doc/48688195/8.20.2020>

Rajinder Kumar Sharma v. The State <http://indiankanoon.org/doc/311930/8.20.2020> *State of UP v. Chandrika* AIR 2000 SC 164