

EXPLORING THE THEORITICAL INTERSECTIONS OF PLEA BARGAINING VIS-À-VIS RESTORATIVE JUSTICE IN CRIMINAL TRIALS

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ABSTRACT

Restorative justice is a holistic approach to criminal justice that seeks to repair the harm caused by criminal behaviour rather than simply punishing offenders. It emphasizes the importance of addressing the needs of victims, offenders, and the community to promote healing, reconciliation, and reintegration. While restorative justice has gained recognition for its potential to transform the criminal justice system, it is essential to consider various mechanisms through which it can be implemented effectively. One such mechanism is plea bargaining, a process that allows offenders to negotiate their sentences in exchange for admitting guilt. This paper explores how plea bargaining can be used as a means to achieve restorative justice. The objective of both the ideas are unidirectional and have a common intersection. The researcher in this paper has made an attempt to establish that plea bargaining and restorative justice have a common legal objective where the former is a part of the bigger later. Secondly, by identifying the common intersections researcher has tried to establish how plea bargaining can be used to strengthen and attain the ideals of an effective restorative justice program.

Keywords: *Plea Bargaining, Restorative Justice, Victim Justice, CrPC, Healing.*

UNDERSTANDING PLEA BARGAINING

The system of plea bargaining as has been adopted in the Criminal Procedure Code is an attempt to provide alternative means of dispute resolution in criminal cases. The provisions as incorporated in Chapter XXIA of the Criminal Procedure Code, for a mutually satisfactory disposition of a criminal case. The issue that has regularly bothered the criminal justice system is whether we can consider such dispute resolution mechanism as a component of restorative justice processes. In plea bargain, all stakeholders that include the Investigating Officer, the Public Prosecutor, the victim of a crime, the complainant and accused join hands to voluntarily settle a pending criminal case through a participative process and to the mutual satisfaction of one another. The process is completely voluntary. If the plea bargain succeeds, the criminal case is disposed of in terms of the agreed settlement.¹ If it does not succeed, the case proceeds from the stage when the plea bargain application was filed. The major benefit of the process is that the applicant is likely to get a much-reduced punishment and there will be quick disposal of the pending criminal case. It satisfies the needs of the victims as victims play important role unlike our traditional criminal justice system.

¹ Vibhute K I, "Justice to Victims of Crime: Emerging Trends and Legislative Models in India", in Vibhute K.1 (Ed): Criminal Justice (Eastern Book Company, 2004) pp3 7 0 - 395

If settlement arises the plea bargain will result in an amicable and mutually satisfactory disposition of the pending criminal case.²

In a typical plea bargain, the defendant agrees to plead guilty to one or more charges in exchange for a reduced sentence or a lesser charge. While there appears to be contrasting opinions about the efficacy of plea bargaining as a restorative justice procedure but nevertheless its relevancy also cannot be totally negated. Some scholars argue that plea bargaining can undermine justice by leading to coerced confessions or inadequate punishment, thereby diluting the purpose of criminal laws while other proponents argue that when used thoughtfully, it can align with the principles of restorative justice and can reform the application of criminal law into more meaningful method of state control.³

RESTORATIVE JUSTICE PRINCIPLES AND GOALS

Restorative justice as a phenomenon of legal system that seeks to offer justice in true sense is guided by certain foundational and theoretical framework. These principles of restorative justice procedure are strengthened by following plea bargaining as an approach towards addressing victim justice.⁴ Restorative justice as a theory is guided by several key principles and goals, that tend to achieve a holistic and inclusive approach in criminal justice administration. These principles include:

Accountability: Offenders take responsibility for their actions and their consequences. As this approach is based healing the harm caused by imprints of crime and consequent reformation of offender it is essential that offenders understand the inherent wrongness of their actions and realise that such an act is harmful against any individual.⁵ When such a realisation is attained then the proportionate balancing of harm can be attained by offender participation.

Victim-Centeredness: As an implied drawback of criminal justice system of our country, which tends to focus on accused innocence the entire burden to prove guilt rests upon prosecution. The proving of guilt is contingent upon the effective discharge of duty by investigative authorities and proper collection of evidence.⁶ Additionally, the presumption of innocence operates in favour of accused. Statistically, as a nation the overall acquittal rate in our country is below international average. As per data maintained by National Crime Record Bureau, the conviction rate of States/UTs relating to cognizable crime under Indian Penal Code (IPC) and Special & Local Laws (SLL) crimes during 2018, 2019 and 2020 is 66.6, 66.4 and 73.4.⁷ Hence, restorative justice practices are a shift from this settled legal view that try to cater the victim's interest in equilibrium with accused's interest.

² Girish Kesava Pillai, Restorative Justice in India: An Over View, 2 NIRMA U. L.J. [1] (2012).

³ Menon, Madhava, NR, "Victim Compensation Law and Criminal Justice: A Plea for a Victim- Orientation in Criminal Law", in Vibhute K.1 (Ed): Criminal Justice (Eastern Book Company, 2004) pp362-369.

⁴ Desmond S. Greer, "A Transatlantic Perspective on the Compensation of Crime Victims in the United States", The Journal of Criminal Law and Criminology (1973-), Vol. 85, pp333-401.

⁵ [1996 National Victim Assistance Academy \(ncjrs.gov\)](http://1996.NationalVictimAssistanceAcademy(ncjrs.gov))

⁶ Victim-Centered Restorative Justice: An Essential Distinction by Jon Wilson (from Crime Victims Report, Vol. 9, Number 4, September/October, 2005)

⁷ pib.gov.in/PressReleaseIframePage.aspx?PRID=1796564

Healing and Reconciliation: Restorative Justice promotes healing for victims and the community along with facilitating the reintegration of offenders into society. Justice in real sense can be attained when the victim is restored back to original position and accused is reformed sufficiently enough so that post his conviction his tendency to repeat the same conduct is made negligible.⁸

Reparation: Encouraging offenders to make amends for the harm they caused to victim is another approach of restoration. Offenders are asked to share the burden of their actions on victims by whatever mechanism possible thereby assisting them to mitigate the ill impact of the crime.⁹ In matters of financial crimes or offences against property, the victims may adequately be compensated by the offenders. For offences against human body, in addition to punishment the medical expense and income loss of the victim must be adequately compensated by offenders.

Fairness and Proportionality: Ensuring that the response to a crime is just and proportional to the harm caused.

PLEA BARGAINING AND RESTORATIVE JUSTICE: THE INTERSECTIONS

Plea bargaining, when employed with the principles of restorative justice in mind, has a lot of potential to implement the framework of restorative justice. It is now well settled that conventional approaches to crimes and criminality have proven to be practically useless to address the growing disorder in the society. If restorative justice is structurally implemented with guided efforts at requisite stage of criminal trial and outcomes, it could not only give real sense of justice to accused but could rather reform the accused and would eliminate the criminalistic tendencies from his character. The ideals of restorative justice can be attained through plea bargaining on following counts:

Accountability: By admitting guilt through the process of plea bargain, offenders acknowledge their responsibility against the acts of violations committed by them. Once, this acknowledgement flows, the element of accountability can also be established. State as a party in a criminal trial may choose to punish but the individual liability of the offender against the victim has to be fixed by making offender accountable for the harm suffered by victim.¹⁰ Whatever repair and reconciliation can be made possible must be ensured. Once the accused is involved in the process of discharging the accountability the risk of recidivism can also be reduced.

Victim-Centeredness: Plea bargaining can involve direct communication between victims and offenders, which as a general rule is put to rest with the initiation of trial. An effective dialogue between victims and offenders where victims have the opportunity to express their feelings, needs, and desires in relation to the offence committed and participating in the process of resolution of

⁸ Ari Kohen, Forgiveness and Reconciliation in in Restorative Justice, The Personal and the Personal and the Political: Department of Political Science. [The Personal and the Political: Forgiveness and Reconciliation in Restorative Justice \(unl.edu\)](http://unl.edu)

⁹ Buti, A. (2009). *The Notion of Reparations as a Restorative Justice Measure*. In: Oliveira, J.C., Cardinal, P. (eds) *One Country, Two Systems, Three Legal Orders - Perspectives of Evolution*. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-540-68572-2_10

¹⁰ Braithwaite, John, *Accountability and Responsibility Through Restorative Justice*, Cambridge University Press, p 33-51

the case would empower victims and gives them a voice which can be addressed before court and a mutually acceptable solution can be reached.¹¹

Healing and Reconciliation: Plea bargaining aims to promote healing and reconciliation establishing an effective dialogue and understanding between victims and offenders. Erasing of the imprints of the crime is of extreme necessity. The psychological restoration of the victim can only be ensured when the process of reconciliation involves the offender.¹² **Overall, the potential of plea bargaining to promote healing and reconciliation depends heavily on how it is implemented.** When coupled with restorative justice practices and considerations for victim participation and due process, it can offer a pathway towards healing and rebuilding broken relationships.

Reparation: Plea agreements can include the desired and necessary provisions compensating victims for their losses. As stated earlier, for the financial crimes as well as offences against human body financial restitution is a feasible option. It is important to do an impact-analysis of the victims and do victim profiling along with offender screening to ascertain the nature of reparation required in case of such a victim.¹³ Accordingly, at the stage of plea bargaining or in lieu of the plea or in addition to the bargain the requirement of reparation may be specified. It is not always required to do reparation on financial lines, other forms of reparations are also relevant.¹⁴

In addition to above, plea bargaining would ensure an opportunity of extending an offer of compensation, apology, repentance addressed to victim through courts. This would help attaining the objective of healing of relations which is an important pillar of restorative justice. It is also well acknowledged fact that trial procedures in themselves are so cumbersome that they lead to harassment of the victim yet another time. Plea bargaining can be an effective alternative to this procedural victimisation. The lengthy and complicated trial procedures are avoided through plea bargaining and speedy justice can also be extended accordingly.

PLEA BARGAINING COMPLIMENTING RESTORATIVE JUSTICE OUTCOMES

Plea bargaining, when conducted in a manner consistent with the principles of restorative justice, can indeed promote healing and reconciliation as integral components of the restoration process. Plea bargaining can contribute to these aspects of restoration in following terms:

Acknowledgment of Responsibility: One of the fundamental aspects of restorative justice is the acknowledgment of responsibility by the offender. Through plea bargaining, offenders admit their guilt, which is a crucial step toward taking responsibility for their actions. This acknowledgment can be deeply meaningful for victims and their healing process, as it validates their experiences and feelings.

¹¹ Pradeep Kumar Singh, Plea Bargaining and Criminal Justice in India, 7 Athens J.L. 33 (2021).

¹² Nascimento, A. M., Andrade, J., & de Castro Rodrigues, A. (2023). *The Psychological Impact of Restorative Justice Practices on Victims of Crimes—a Systematic Review. Trauma, Violence, & Abuse, 24(3), 1929-1947.* <https://doi.org/10.1177/15248380221082085>

¹³ Lois Presser, Christopher T Lowenkamp, Restorative justice and offender screening, *Journal of Criminal Justice*, (27), 1999, p. 333-343,

¹⁴ Harryl Heller, *Reparations and Restorative Justice: A Path to Racial Healing*, 34 *Hastings Women's L.J.* 37 (2023).

Direct Communication: Restorative plea bargaining can facilitate direct communication between victims and offenders, either during the negotiation process or afterward. This dialogue allows victims to express their emotions, ask questions, seek explanations, and convey the impact of the offense on their lives. Such open and honest communication can be therapeutic for victims and contribute to their healing.

Empowerment of Victims: Restorative plea bargaining empowers victims by giving them a voice in the justice process. Victims have the opportunity to participate in decision-making regarding the plea agreement, including whether they accept the proposed terms. This active involvement can help victims regain a sense of control over their lives and the resolution of the case, contributing to their emotional healing.

Restitution and Repair: Plea agreements can include provisions for restitution or other forms of reparation. Offenders can be required to compensate victims for their losses, whether they are financial, emotional, or psychological. Restitution not only addresses the tangible harm caused but also symbolizes the offender's commitment to making amends, which can promote reconciliation.

Understanding and Empathy: Restorative plea bargaining encourages both parties to gain a deeper understanding of each other's perspectives. Offenders may develop empathy by hearing directly from victims about the impact of their actions. Victims, in turn, might gain insight into the circumstances or motivations that led to the offense. This increased understanding can foster empathy and, ultimately, contribute to reconciliation.

Community Support: In some restorative plea bargaining processes, community members, mediators, or facilitators may be involved. Their presence can provide additional emotional support to victims and promote a sense of community responsibility. This community involvement reinforces the idea that healing and reconciliation are not solely the responsibility of victims and offenders but also of the broader community.

Closure: For both victims and offenders, the resolution of a case through plea bargaining can provide a sense of closure. Knowing that the offender has accepted responsibility and that restitution or reparative actions are in progress can help victims move forward in their healing process. Similarly, offenders may find closure in the knowledge that they are actively addressing the harm they caused.

Reduced Trauma: By avoiding a protracted trial process, restorative plea bargaining can spare victims from the additional trauma and stress of testifying in court and prevent them from being victimised from cumbersome trial procedures. This can be especially beneficial in cases involving sensitive or vulnerable victims where the trial procedures are reinforcing the memory of crime, and by avoiding them plea bargaining contributes to their overall healing and well-being.

In summary, plea bargaining can promote healing and reconciliation within a restorative justice framework by fostering accountability, enabling direct communication, empowering victims, facilitating restitution, promoting understanding and empathy, garnering community support, providing closure, and reducing further trauma. When implemented thoughtfully and with a focus on the needs of victims, offenders, and the community, plea bargaining can play a significant role in achieving the holistic goals of restorative justice.

PLEA BARGAINING IN INDIAN LEGAL SYSTEM

Plea bargaining in the Indian legal system is a mechanism that allows for the resolution of criminal cases through negotiation and compromise between the prosecution and the accused. It was introduced in India to help alleviate the burden on the overburdened courts and to expedite the resolution of criminal cases. The legal provisions for plea bargaining in India are primarily governed by the Criminal Procedure Code, 1973 (CrPC) and the plea bargaining scheme laid down under Section 265A to 265L.¹⁵

Eligibility: Not all criminal cases are eligible for plea bargaining. Certain offenses are excluded from the purview of plea bargaining, such as offenses punishable with death, life imprisonment, or imprisonment for a term exceeding seven years. Additionally, repeat offenders and offenders with a previous conviction for the same offense are generally not eligible.

Application: The accused person, along with the prosecutor, can apply for plea bargaining before the trial court. The application must be voluntary and must be made in writing.

Role of the Court: The court plays a supervisory role in the plea bargaining process. It assesses the application's validity, ensures that the accused is aware of the implications of plea bargaining, and verifies the voluntariness of the plea.

Negotiation: Once the court accepts the application, the accused and the prosecution negotiate for a mutually agreeable settlement. This typically involves the accused pleading guilty in exchange for a lighter sentence or reduced charges.¹⁶

Recording of Statements: The court records the statements of both the accused and the prosecution along with victim regarding the agreed-upon settlement.

Sentencing: If an agreement is reached, the court may award a sentence that is lesser than what the accused would have faced if convicted after a full trial. The accused serves this sentence.¹⁷

Appeal: In certain cases, the accused may have the right to appeal the sentence, provided the sentence is not more severe than what was agreed upon during the plea-bargaining process.

Failure of Negotiation: If the negotiation fails or if the court does not accept the application for plea bargaining, the case proceeds to trial in the regular course.

Plea bargaining in the Indian legal system is intended to promote the expeditious disposal of cases, reduce the backlog of cases in the courts, and provide an opportunity for the accused to receive a potentially more lenient sentence in exchange for admitting guilt. However, it is not without its criticisms and challenges, including concerns about fairness, coercion, and the potential for misuse.¹⁸ The success and effectiveness of plea bargaining in India continue to be a topic of debate and discussion within the legal community.

CHALLENGES AND CRITICISMS

¹⁵ Dr. Pathak Apurva, Plea Bargaining: A New Chapter in Indian Legal System, International Journal of Research in Humanities and Social Science, (3), 1, 2015

¹⁶ *Ibid.*

¹⁷ Arnav Ghai & Chirag Katewa, Increasing the Coverage of Plea Bargaining System in India, 4 INT'L J.L. MGMT. & HUMAN. 4117 (2021).

¹⁸ Kathuria, Sonam (2007) "The Bargain Has Been Struck: A Case for Plea Bargaining in India," National Law School of India Review: Vol. 19: Iss. 2, Article 5.

While restorative plea bargaining is progressive enough to contain the requirement of the restorative justice principles, it is not without challenges and criticisms. Critics argue that it may not always lead to truly restorative outcomes, especially if it is used primarily as a tool for expediency rather than as a means to genuinely address harm and promote healing. Ensuring that the negotiation process is fair and voluntary is critical to overcoming these challenges. However, it's crucial to recognize potential limitations of plea bargaining in attaining restorative justice which primarily includes the power imbalances. There's a risk that plea bargaining can favour the prosecution, with the accused feeling pressured to accept a deal even if it doesn't fully address their interests or the needs of the victim.¹⁹ Secondly, despite all attempts and current design of plea bargaining it can still only ensure a limited victim participation: In some cases, victims may not be adequately informed of their rights or given a meaningful opportunity to participate in the plea-bargaining process. Thirdly, if not implemented in a controlled legal manner there is a potential risk that the process may lean towards expediency alone. If that happens, then plea bargaining can prioritize quick resolution over achieving meaningful restorative outcomes.²⁰

CONCLUSION

Plea bargaining, in light of restorative justice mindset, has tremendous competency to be a valuable means for achieving the goals of restorative justice. By promoting the key pillars of restorative justice that include accountability, victim-centeredness, community involvement, healing, reconciliation, reparation, fairness, and proportionality, restorative plea bargaining can contribute towards a more accommodating and holistic and balanced approach to criminal justice. However, it is crucial to implement safeguards as have been identified above to ensure that plea bargaining is conducted in a manner that is consistent with the principles of restorative justice. All this is meant to genuinely serve the best interests of victims, offenders, and the community. In doing so, the criminal justice system can take significant steps towards achieving more just and restorative outcomes.

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¹⁹ Jayant Garg and Bhavya Sharma, IS PLEA BARGAINING A RATIONAL MEANS TO JUSTICE?, International Journal of Creative Research Thoughts, (11), 4, 2023

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