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IS PLEA BARGAINING A RATIONAL MEANS TO JUSTICE?

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ABSTRACT

Whenever a crime is committed, Society cries for the justice. It cries even more when a criminal trial is prolonged and loses trust when the victim isn't given justice as a result of the trial's delay and the guilty party's acquittal. In ***Hussainara Khatoon v. State of Bihar, 1980***[1] the Supreme Court stated that the citizen's fundamental right to a speedy trial. Speedy trial is a requirement for proper administration of justice, as our courts are well aware of. Notwithstanding many rulings by the Supreme Court, fast trials are now all but impossible because of rising court arrears and the overburden that results from them. As a result, justice has suffered the greatest loss. In order to overcome these problems in the criminal justice system, the concept of plea bargaining has been incorporated in the Code of Criminal Procedure 1973, by the amendment of 2005, adding chapter XXI (A) in the Code. Plea bargains are a way for all parties and the court to agree on a settlement to a criminal case. As a result, the accused and the government reach a plea deal. The prosecution agrees to suggest a favorable sentencing to the court in exchange for the accused's cooperation to enter a guilty plea without a trial. Plea bargaining is regarded in this situation as the offender's incentive for telling the truth. It might be helpful for both the prosecution and the accused. Although this procedure appears to aid in a speedy trial, it is not immune to criticism. Through the criminal code modification act of 2005, the Indian judicial system grudgingly moved plea bargaining from section 265A to section 265L in the new chapter XXI A of the CrPC. In 2004, the Honorable Supreme Court of India declared, "It is an established law that a court cannot decide a criminal matter on the basis of a plea agreement. The case must be decided on the merits by the court". This paper is an attempt to discuss the concept of plea bargaining in Indian Justice system. Along with, the authors have made an attempt to critically analyze the discussed concept in accordance with the approach taken by Indian Judiciary in this regard. It aims at finding out whether or not the concept of plea bargaining can be seen as a rational means to justice. For the purpose of this research paper, the authors have adopted the doctrinal method of research.

[1] 1979 AIR 1369

Keywords: Plea Bargaining, Criminal Justice System, accused, guilty.

1. INTRODUCTION

A criminal justice system's primary objective is to foster societal peace and order while simultaneously offering a mechanism for citizens to seek reparation when their rights are infringed. As a result, the system criminalizes a wide range of activities that breach or infringe on an individual's civilized society rights. However, due to the power imbalance between the accused and the state, a system that is fair to the accused and respects his rights at all stages is required. This effort to make the approach fair enough to instill trust in the accused has resulted in a cumbersome procedure. As a result, there are a large number of cases pending in India's criminal courts, as well as a large number of people awaiting trial in Indian prisons. Plea bargaining is one of the methods for resolving a criminal matter without putting the accused through a formal trial.

Plea bargaining is a fresh concept in India and is still in its infancy, despite being implemented in other countries. It is more restrictive than the provision in the criminal procedural codes and more stringent than the court's requirement to compound the case. When a case is filed against an accused in a court of law, the accused has the option of appearing in court and admitting his guilt. This has repercussions in a variety of events and settings. The court may allow him to enter a guilty plea and have his sentence lowered, charge him with a lesser offence than the one he did, or let him go after paying a fine. It all depends on the facts and circumstances of each case, as well as the background of the accused. The goal of plea bargaining or mutually agreed disposition is to prevent costs, uncertain trials, and the possibility of harassment in all small and medium-sized offences.

2. HISTORICAL BACKGROUND

The emergence of plea bargaining is commonly attributed to the nineteenth century, but it actually stretches back hundreds of years prior to the introduction of confession law and has most likely existed for more than eight centuries. Immediately following the Civil War, the first surge of plea bargaining cases at the appellate level in the United States occurred.

The phenomenon known as plea bargaining arose as a result of the inadequate justice system and prolonged proceedings in criminal prosecutions. Plea bargaining not only provided a sigh of relief to the guilty who had been imprisoned for years due to trial delays, but it also proved to be a time and cost effective solution for the court system to expeditiously dispose of criminal cases.In 1970, the American Supreme Court supported the practise in the decision of ***Bradley v. United States.*** [2]

In India, the criminal amendment act of 2005 introduced plea bargaining. A new chapter XXI A has been added with provisions relating to the plea-bargaining procedure. Sections 265 A to 265 L comprise the most fundamental provisions, ranging from the application for plea negotiation to the bargains that the condemned may get. The Law Commission of India pushed for the implementation of 'Plea Bargaining' in its 142nd, 154th, and 177th reports. The Law Commission's 154th Report suggested that the new XXIA be implemented into the Criminal Procedure Code. The stated Report did, in fact, relate to the Law Commission's earlier Report, the 142nd Report, which detailed the rationale behind the concept, its successful implementation in

[2] **410 U.S. 605 (1973)**

the United States, and how it could be implemented in given legislative form. The Report proposed that the idea be made applicable as an experimental measure to offences punishable by imprisonment for less than seven years and/or fine, including those covered under Section 320 of the Code. It was also suggested that plea bargaining be allowed in terms of the nature and intensity of the offences, as well as the degree of punishment. It was discovered that the aforementioned facility should not be provided to habitual offenders, those accused of serious socioeconomic crimes, and those suspected of crimes against women and children. The 154th Law Commission Report's advice was backed and restated by the Law Commission in its 177th Report. Furthermore, the Report of the Committee on the Reform of the Criminal Justice System, 2000, under the Chairmanship of Justice (Dr) Malimath stated that the United States' experience was evidence of plea bargaining being a means of disposing of collected cases and speeding up the delivery of criminal justice.

3. CONCEPT OF PLEA BARGAINING

The concept of plea bargaining as a practice of conflict resolution may be dated back to the ninth century and hundreds of years throughout the creation of confession law, with active implementation occurring during the nineteenth century. The notion of plea bargaining subsequently evolved and matured in the United States of America, and it is now a vital feature of the American criminal justice system's functioning and operation. One of the most important and terrifying sources of the existence and conceptualization of plea bargaining can be found in the Hindu holy book "The Bhagavad Geeta," which states that there is no better punishment than the offender pleading guilty and accepting his commission of the offence, taking the oath, and promising never to commit the same offence again. The mention of prayashita or acknowledgment of commission of the offence providing many variations of means of purification in Hindu dharma shastras is also regarded as one of the indications of the presence of plea bargaining as an aspect of the criminal justice system. The existence and adoption of plea bargaining as a concept, notably in India, is derived from the idea of nolo contendre, which means acknowledging guilt or admitting and agreeing to accept the statement of guilt.

The term "plea bargaining" itself describes the notion and abstract underlying it. A bargaining or negotiating of a guilty plea or acceptance of an offence. Thus, the accused accepts his guilt in exchange for a lower level of penalty, resulting in a settlement between the defendant and the prosecutor. Plea bargaining is often referred to as a plea agreement, plea deal, or pleading guilty. As a negotiated procedure, plea bargaining may be engaged at any moment throughout the trial; many prefer to bargain before the trial begins, but entering into a plea-bargaining negotiation after the trial has begun is equally appropriate. It should be underlined that simply recognizing and negotiating between the parties does not fully achieve the aim of access to justice. The parties in the plea-bargaining procedure generally want a mutual and agreeable arrangement in which the accused acknowledges his wrongdoing in exchange for less leverage on punishment.

The notion of plea bargaining is not specifically defined in the legislation of Criminal Procedure, although its conceptualization and abstraction can be traced back to Chapter XXI-A of the relevant legislation. To understand the concept of plea bargaining, expressions such as "Plead Guilty or Bargain lessor sentence" might be employed. It is basically a pre-trial negotiation between the prosecution and the defendant in which

the only requirement is that the accused plead guilty or accept his wrongdoing in exchange for less severe penalty. In another view, we can say that the concept's connotation saves the accused from the death penalty.

4. CONCEPT OF PLEA BARGAINING IN INDIAN PENAL CODE

The concept of plea bargaining was introduced into the Indian criminal justice system in response to the recommendations of the Law Commission of India's 154th report and the Malimath Committee on Criminal Justice Reforms in 2003. The Criminal Law Amendment Act of 2005 revised the Code of Criminal Procedure of 1973. Plea Bargaining was introduced in Chapter XXIA, which consisted of 12 Sections (Sec 265-A to 265L).

Plea Bargaining is not applicable to serious offences and would only be applied to offences punishable by up to 7 years in prison. Three additional kinds of offences have been exempted from its purview:

1. Offences hurting the socio-economic well-being of this country.
2. Sexual offences against women.
3. Crimes committed against minors under the age of 14.

Despite such broad exclusion areas, there are numerous charges for which the accused is going to be eligible to receive the benefits of plea bargaining. Not only will it speed up the resolution of cases, but it might also end in appropriate compensation for the innocent party of crime, because he and the prosecutor will be able to bargain with the accused. No court may hear an appeal against that order. It is a device that assures victims receive adequate justice in a fair amount of time while avoiding the possibility of hostile witnesses, excessive delay, and unaffordable expenditures. The summary of Chapter XXI-A Sections 265-A to 265-L of the CrPC specify the procedures that must be followed in order for it to be a genuine plea-bargaining agreement. Section 265-A provides that plea bargaining is applicable for any offence in which maximum punishment prescribed is up to seven years.

Section 265-B outlines the procedure that must be followed. Accused must file an application with a brief statement of the case and an affidavit saying that he has freely opted to plea bargain after knowing the nature and degree of the punishment provided by law for the offence.

The court will then issue a notice to the public prosecutor, the investigator of the case, and the complainant of the case.

Following the appearance of all parties, the court shall interrogate the accused in Camera to ensure that the guilty has led the application freely.

Section 265-C outlines the procedure the court will use to reach a mutually satisfactory resolution.

Section 265-D requires the court to prepare a report on whether or not a mutually satisfactory resolution was reached. If no such disposition is reached, the Court shall make a notation in this respect and proceed in accordance with the provisions of this Code from the stage of the application under section 265-B (1).

Section 265-E outlines the procedure the court will use to resolve issues where a mutually suitable resolution is reached. The Court shall hear the parties on the quantum of punishment or whether the accused can be granted probation for good behavior or after admonition.

Section 265-F provides for a judgement in terms of such mutually satisfactory disposition.

Section 265-G states that no appeal may be filed against such a judgement.

Section 265-H states that while handling an application under this Act, the court has all of its powers vested in it in terms of bail.

Section 265-I applies Section 428 to the sentence awarded on plea bargaining, i.e. the sentence previously served by the accused is to be set off against the punishment awarded.

Section 265-J states that the provisions of the chapter take preference over any inconsistent provisions of the Code, and that nothing in any other provisions shall be understood to include the meaning of any provision of chapter XXI-A.

Section 265-K states that the facts admitted in the application or comments made by the accused for a plea bargain may not be used for any purpose other than the purpose of the chapter.

Section 265-L states that this chapter does not apply to juveniles or children.

5. EFFECTIVENESS AND EFFICIENCY OF PLEA BARGAINING

We are well aware that the prosecutor and his techniques have a significant impact in the legal process of plea bargaining. Furthermore, it not only fosters a sense of mutual acceptance and understanding among the offended parties, but it also serves the objective of the criminal justice system operating with efficiency and speed. Despite having all of these characteristics, it is vital to examine oneself before engaging in the benefits of plea bargaining whether authenticity, righteousness, factualness, and, most importantly, a "truth" can be negotiated.

It is worth noting that the prosecutor controls the entire game in plea bargaining. In every narrative, there are two sides. Analyzing a scenario in which, although being innocent, a person facing significant allegations and unable to establish his innocence may plead guilty out of fear of being sentenced incorrectly and unfairly. In other terms, there was a "miscarriage of justice." However, in yet another scenario, the approach provides efficient and effective justice to the victim by allowing the accused causing the harm to the victim to learn about the victim's suffering as a result of his crimes through an efficient and two-way communication mechanism. Looking at past instances and plea bargaining, it is fair to argue that the process has succeeded in putting pressure on self-incrimination. Thus, the entire procedure is dependent on the ability of the counsels defending both parties, i.e., the accused and the prosecution, and how effectively they handle discussions while maintaining the best outcomes for all parties in mind and resolving amicably. The concept of plea bargaining is unable to pose an issue or concern if practiced and adopted by lower courts only in those specific cases dealing with issues of minor consequence or minor nature, which will not only promote the faster disposition of cases but will also turn out to be a diligent solution for settling the dispute with cooperation from both parties.

The concept of plea bargaining should be encouraged and promoted by excellent and clever lobbying. As two people pursuing justice in their own way, their interests must be represented in such a way that each party maintains one's interest amicably. To stay on track in this competitive and contentious world, we must encourage, promote, and reinforce the fundamentals of alternative dispute resolution techniques rather than choosing for lengthy, time-consuming, and resource-intensive litigation procedures. Plea bargaining agreements provide the accused with the possibility of pleading guilty to the claimed offence in exchange for a few benefits. The pressure on the accused, whether he has done the alleged offence or not, builds up,

leading in his admission to plead guilty and his choice not to oppose the state, resulting in the loss of various constitutional rights. Thus, when both the positive and negative aspects of the plea bargaining are critically examined, the procedure demonstrates to be an effective, efficient, and sustainable option and means of delivering justice without taking an excessive amount of time and resources only if it is represented by brilliant advocacy and has a structured and organized form of operations.

Plea bargaining also allows courts to save scarce resources for situations that require them the most. Although Plea Bargains must be approved by the judges who hear them, judges rarely disapprove unless they believe the defendant is innocent or has been coerced into pleading guilty, or the deal imposes a punishment that the judge considers is unduly harsh or very lenient. Plea Bargain is a feasible solution to overcrowding in criminal courts and jails, as well as a likely strategy to increase litigation efficiency and rationalize judicial resources, infrastructure, and costs.

6. CRITICISM OF PLEA BARGAINING

Plea bargaining is an agreement reached between the prosecutor and the accused. One school of thought contends that a state should not compromise. It is argued that the "State" will never compromise rather it shall enforce the law and so the concept of law enforcement regards compromise as unethical. The State is the protector of its people, and it is its responsibility to provide a criminal justice system that acts as a lifeline for the entire society.

According to numerous research, the following are some of the significant disadvantages of the plea-bargaining process:

1. Criminals are disposed of without deterrence, treatment, and with little consideration for public safety.

2. Plea bargaining contradicts the fundamental concept of "crime and punishment," which underlies the criminal law and the criminal justice system.

3. Plea bargaining is a violation of the court's sentencing power, responsibility and discretion.

4. Bargaining-based justice is always a better deal for the accused than for the state and the people at large. If the defendant does not think a plea bargain offer is fair enough, he or she can simply go to trial, knowing that the prosecution's argument will be weakened more by time.

5. The prosecution has the authority to subject the accused to outrageous pressures. The prosecution is motivated to maximize the advantages of pleading guilty in the most vulnerable situations. The prosecution prefers a guilty plea since acquittal at trial is more likely. However, if a borderline case proceeds, the state may very well impose the most serious penalties to those charged, even if they are innocent

6. Unjust sentences might be imposed on offenders who plead not guilty but are found guilty at trial. The penalty may reflect punishment for failing to enter a negotiated guilty plea, so penalizing the offender for exercising his fundamental right to trial.

7. Plea bargaining is fully dominated by practical factors that should have no impact on the disposition of criminal cases. Such motives disregard justice, the predicament of the victim, and societal requirements.

8. Because plea bargaining avoids formal court processes and due process, it allows unconstitutional police practices to continue unabated.

The process is unfair with the innocent. It is like legalizing a crime to an extent.

7. JUDICIAL APPROACH TOWARDS PLEA BARGAINING IN INDIA

Plea bargaining has become an important aspect of Indian criminal law. Initially, the Indian judiciary took a very severe stance on plea bargaining.

It was held that a crime is a wrong against society and is punishable by the state; so, even if a compromise was reached between the accused and the victim, the accused should not be excused from criminal accountability. In a number of decisions, the Supreme Court has rejected this approach.

Even before the idea of plea bargaining was introduced, the Supreme Court expressed great dissatisfaction with it. Though the Supreme Court's displeasure is not for the model that exists today because it did not exist at that time. Plea bargaining has evolved into an important aspect of Indian criminal law. Initially, the Indian judiciary took a very severe stance on plea bargaining.

In the courts' view this very concept along with its advantages encourages crime because, criminals will tend to have this idea of getting lesser punishment through the process of plea bargaining. Justice M. Hidayatullah in ***Madanlal Ramachandra Daga v. State of Maharashtra***[3] and Justice P.N. Bhagwati in ***Kasambai Abdulrahmanbhai Seikh v. State of Gujarat***[4] stated the concept of plea bargaining to be unconstitutional as well as illegal, and also pointed out that the cases should be disposed of on their merits rather than on the bargaining made by the accused.

Also, the Apex Court in ***Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr***[5] took a step ahead and declared the idea of plea bargaining unconstitutional and also mentioned that the application of the said idea would result into extensive corruption. In Indian scenario the concept of plea bargaining is highly vulnerable to being abused as was held in ***Kasambhai v. State of Gujarat***[6]***.***

In the case of ***State of Uttar Pradesh v. Chandrika***[7], the Supreme Court has clearly interpreted 'It is settled law that one basis of plea bargaining Court may not dispose of the criminal cases. The Court has to decide it on merits'.

In the case of ***Basheshar Nath vs. Commissioner of Income Tax***[8], the Supreme Court observed that "plea bargaining amounts to waiver of constitutional right to have a trial implicit in article 21, which is not permitted under Indian law. In yet another case Supreme Court gave a landmark judgement related to plea bargaining in which it pronounced that plea bargaining is violative of article 21 of the Indian Constitution.[9]

The aforementioned cases paint a picture of what it was like before plea bargaining came as a concept in India. As the notion of plea bargaining emerged in the Indian legal arena, it was met with diverse reactions from the judiciary, as evidenced by a few cases listed below.

The Gujarat High Court observed in ***State of Gujarat v. Natwar Harchanji Thakor***[10], while commenting on the concept of plea bargaining, that the very object of the law is to provide easy, cheap, and expeditious

[3] AIR 1968 SC 1267
[4] AIR 1980 SC 854
[5] 1980CriLJ553
[6] IR 1980 SC 854
[7] AIR 2000 SC 164
[8] AIR 1959 SC 149
[9] Thippaswamy vs. State of Karnataka, A.I.R 1983 SC 747
[10] 2005 CrLJ 2957, (2005) 1 GLR 709

justice by resolving disputes, including criminal cases, and that, given the current realistic profile of pendency and delay in the administration of law and justice, significant changes are unavoidable. the court also stated that there should be nothing that is static. As a result, it can be claimed that it is truly a measure of reparation and will bring a new dimension to the arena of judicial changes.

In the case of ***Pardeep Gupta v. State***[11], Honourable Judge observed that "the learned trial court's rejection of the plea bargain shows that the learned trial court had not bothered to look into the provisions of chapter XXI A of the Code of Criminal Procedure meant for the purpose of plea bargaining . The request for plea bargaining should be assessed in light of the accused's role, the nature of the offence, and so on. The High Court ordered the trial court to review the accused's plea bargaining proposal in light of the rules of the Code of Criminal Procedure and not in a casual way.

The study of pre and post amendment judgements reveals that plea bargaining is in poor shape in the Indian criminal justice system, as the number of instances reported under plea bargaining is quite small. It's worth noting that prior to the Criminal Law Amendment Act of 2005, all plea bargain cases were rejected by judges. The situation has improved somewhat since 2005, but the judiciary continues to take a mixed attitude to this great contribution to the Criminal Law Justice System, which is chronically underutilised by any standard despite its relatively limited scope of applicability.

8. CONCLUSION

A state's primary objective and role is to ensure law, order, and peace within its territory and borders. The Court of Law and the justice delivery system are critical in upholding and safeguarding that obligation. The state has an obligation to provide its citizens with the utmost safety, peace, and security by enforcing the rule of law and adopting punitive actions against those who commit misdemeanours. However, the rapid overloading of cases in the courts has hampered the process of delivering justice to the victim in some way. Due to such delay and overburdening of the courts, the need for the concept of plea bargaining came into picture which would eventually lead to the fast disposal of cases.

Here, Both the parties saves their valuable time and money and, both are in win-win condition because it eliminates the long process of going through trials rather the accused pleads guilty in return of a lesser punishment. But just like every coin has two faces, not every good thing is absolutely good and the same is with this concept. A critical analysis of the plea bargaining in India exposes that it is attached with both the pros and cons. On one side where it is easy, saves time and money and provides expeditious justice , the other sad reality of it is that the same may hamper with victim's right to fair trial, involvement of coercion by the investigating agencies and corruption in the process. The judiciary is also of the view that the idea of plea bargaining is both unconstitutional and illegal.

However, in the same note, it must be seen that the current criminal legal system is crippling under its own weight and the very renowned principle "justice delayed is justice denied" is just for the said situation. Therefore, it could be said if the justice can be made by the use of plea bargaining, then it is definitely better than no justice or a delayed justice as such delay is in itself a denied justice. Hence, it would be no wrong to say that in this

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[11] Delhi High Court Bail Application No. 1298/2007 – Judgment on 3 September 2007 reported in Reference

poor condition of Justice delivery system, Plea bargaining can be considered as the only saviour of the people who wishes to avoid lengthy trials. With the burden of more than three crore, pending cases justice can't be provided otherwise. To address this awful state of the courts regarding pendency of cases, plea bargain is the only option that seems to be a near solution that is capable of addressing the problem successfully and it should be given a serious thought.

In a criminal justice system that is collapsing under its own weight, experimenting is the only way to regain the trust of the majority in the system. Plea bargaining is one such experiment aiming to lower the number of cases awaiting trial. The experiment's outcome would be determined by the justice administration's honesty and integrity.

This concept definitely reduces sentence because the accused pleads guilty which is not a way of providing justice and can be said as an ignorance of deterrence and heinousness of crime and harm suffered by victim. However, it represents a hope for the Indian justice system in the same way as a silver lining behind every gloomy cloud represents hope for sunshine. Despite being unconstitutional, this approach expedites caseload disposal, and this is the start of a new era in India, where the horizon is the limit of practise, but we must pray for the best and most good impacts on society. To summarise, plea bargaining is clearly a contentious topic, with some welcoming it and others rejecting it. Plea Bargaining does speed up caseload disposition, but it does it in an unconstitutional way. However, we may have no choice but to use this strategy.

To be a successful and effective alternative remedy, it is believed that there must be a balance between the widespread use of this remedy and the opportunities that plea bargaining provides. However, due to the exceedingly cautious approach used in limiting its scope, we are unable to acknowledge plea bargaining to the level that it deserves to be appreciated. The Amendment is undeniably a sincere attempt to address the difficulties raised, but it can only be appreciated if the constraints are relaxed a little further.

Plea bargaining can be an effective, productive, and constructive method of resolving minor conflicts, but it requires a few changes to improve the functioning and operations of plea bargaining negotiations. To ensure a fair and impartial trial, plea bargaining in open court should be encouraged, as should an assessment of both sides' financial, physical, and mental situations, most notably establishing that the accused was not forced or compelled to confess to the crime. A proper and adequate structurization must be created in reference to the discontinuance of an application made to the accused, making it not essential for him to attend for negotiation even if he does not feel like it.

To make plea bargaining as successful, a two-fold modification should be implemented. Primarily, the law requires appropriate revisions to meet Indian circumstances, but on the scale of countries that have achieved success in this sector. Second, the legislation relating to plea bargaining must be fostered by the Indian judiciary and the legal class, as a specific law cannot become a general remedy unless it is encouraged. The law governing plea bargaining should be prioritised and followed on a regular basis.

Plea Bargaining may act as a silver lining in the criminal justice delivery system of India, if rightly propagated and applied, therefore benefitting millions of undertrials withering in jails for defined crimes and saving high expenses and the spaceborne by State in maintaining them.

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