



CRITICAL ANALYSIS OF PLEA-BARGAINING IN INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT : Since time immemorial, one of the primary function of the state has been to maintain law and order and ensure the sustainability of justice. A plea bargaining is a contractual agreement between the prosecution and the accused upon receiving some consideration. This article examines the origin of the concept, its development and the attitude of the Indian judiciary towards plea-bargaining. Finally it provides a detailed information about the pros and cons of plea bargaining and the steps which to be included in the current justice system to make the improvement.

Key Words- Plea-bargaining, Criminal Justice System, Indian judiciary, Trial, Criminal

Law Amendment

INTRODUCTION

The Indian judiciary is regarded as one of the most powerful judiciaries across the globe, but this powerful judiciary is being crippled by the weight of pending cases. When one's own legal system stumble, naturally it is desirable to look towards practices in other countries which shed some light on the solution.

Statistics as regards the criminal justice system in India disclose that thousands of under-trial prisoners are languishing in prisons throughout the country. Large number of persons accused of criminal offences are not able to secure bail, the accused have to undergo mental torture and also have to spend considerable amount by way of legal expenses. During the course of detention as under-trial prisoners the accused persons are exposed to the influence of hard-core criminals. Apart from this, the accused have to remain in a state of uncertainty and unable to settle down in life for a number of years awaiting to accomplishment of trial.²

Thus the courts have resulted in the informal system of pre-trial bargaining and settlement in some western countries, especially in United States. The system is commonly known as "plea-bargaining". Inspired by the success of plea-bargaining in the United States, India has made several attempts to introduce a similar formula. This article examines the origin of the concept, its development and the attitude of the Indian judiciary towards plea-bargaining. Finally it provides a detailed information about the pros and cons of plea bargaining and the steps which to be included in the current justice system to make the improvement.

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² SulabhRewariandTanyaAggarwal, *Wannamakeadeal?TheintroductionofPlea-BargaininginIndia*, (2006)2SCC(Cri)J-12

MEANING, DEFINITION AND HISTORY

Plea-bargaining in criminal jurisprudence is an agreement between prosecution and defendant on the basis of concession from prosecution. In plea-bargaining the accused's plea of guilty has been bargained for and some consideration has been received for it.

The expression "plea-bargaining" is derived from the words "plea" and "bargain". The word "plea" has been defined to mean "an accused persons formal responses of guilty, 'not guilty', or no contest to a criminal charge. The word "bargain" on the other hand means an act of negotiating a settlement.

According to Merriam Webster dictionary, plea bargaining is the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge or sentence.

Black's Law dictionary³ defines it as the process whereby the accused and the prosecutor in criminal case work out a mutually satisfactory disposition of the case subject to court approval. It generally involves the accused pleading guilty to a lesser offence or to only one or some of the counts of a multi-count accusation in return for a lighter than possible for the grater charge.

According to Oxford Dictionary, the word "Plea" means appeal, prayer, request or formal settlement by or on behalf of defendant and the word "Bargain" means negotiation, settlement, deal, covenant, barter or pact. Hence, the word plea bargaining may be an appeal or formal settlement by the defendant for negotiated settlement with the prosecution for the offence charge against him.

As per Chief Justice Supreme Court of United States, Warren Burger in Santobello v. New York⁴ – 'plea bargaining is an essential component of thee administration of justice, properly administered, it is to be encouraged...it leads to prompt and largely final disposition of most criminal cases.

Therefore, a plea bargaining is an agreement reached in a criminal case to finally settle it. In practice, it represents not so much of 'mutual satisfaction' as perhaps 'mutual acknowledgement' of the strengths or weaknesses of both the charges and the defences, against a backdrop of crowded criminal courts and court case dockets. Thus, it involves an active negotiation process by which the accused officers to exchange a plea of guilty, thereby waiving his right to trail, for some concessions in charges or for a sentence reduction.

History

The most of the history of plea bargaining was not quite common to the common law system. But law in action may have been different from law in books. The various record bureaus who keep raw data about criminal courts is only recent developments and we can draw a sketch only from the history of plea bargaining. It was evident from the history that money was paid to the victims to get rid of trail by accused. The concept of plea bargaining has been traced to the early 19th century when the adversarial system of adjudication began to rapidly evolve.

The adoption of plea bargain for the resolution of criminal cases that are in the nature of crimes has become widely accepted in most of the capitalist economics. In the United States, plea bargaining started to come in the picture at the end of the 19th century and beginning of the 20th century. Plea bargaining was employed as early as the 1970's in property crimes and other offences that do not attract capital punishment. The aim was to save the society the huge expenses involved in litigation and recover for it the stolen common wealth in property crime cases.⁵

In the case of Bardley v. United States, the American Supreme Court upheld the practice in 1970. The practice was also applied in dealing with cases of former American President, Spiro Agnew who was made to resign on account of corruption charges rather than face trail and Michael Jackson who was to face trial for child molestation.

³ 8thedition,1190(2004)

⁴ 404US260(1971)

⁵ Rajat Bawaniwal, Plea Bargaining in the Indian Criminal Justice System

In countries such as England and Wales, Victoria, Australia, plea bargaining is allowed only to extend that the prosecutors and defences can agree that the defendant will plead to some charges and the prosecutor shall drop the remainder. The European countries are also slowly legitimizing the concept of plea bargaining.

CONCEPT OF PLEA-BARGAINING IN INDIA

Since time immemorial, pursuing justice in cases which involve two human beings has been one of the primary aims of every civilization.

The concept of plea-bargaining in India has been in vogue since ancient times. The Dharmasastras and Smritis reveals that the practice of plea-bargaining in vogue as a means of self-purification by reducing or removing the effects of sin committing offence. In Vedic period the reduction of punishment on voluntary repentance or confession, similar to the principle of plea-bargaining was allowed and justified by various Smritis. However, during Vedic period such confession on punishment was not the outcome of plea-bargaining but rather an outcome of remorseful and unconditional confession without any secured bid for judicial mercy.⁶

Mauryan period throw an abundant light on the existence of unofficial and informal practice of plea-bargaining, in the form of conciliation which was one of the most important methods of dispute resolution, used as a state craft.

Kautilya's Arthashastra specified five forms of conciliation, namely praising qualities, mention of relationship, pointing out mutual benefits showing future prospectus and placing oneself at the other's disposal. Hence, in Kautilyan period, plea-bargaining was practiced informally in the form of conciliation, as one method of state craft.⁷

The Quisas system of Muslim Criminal Code can be treated as an analogue of practice of plea-bargaining in Mughal period. In Mughal period Muslim Criminal Code as applied to criminals under which punishment for the offences against God was 'the right of God'. For example, in Mughal period the offence of robbery with killing was treated to be an offence against God and in such case punishment of death was considered as 'haqq Allah'. But if the thief has given back the article stolen before the charge was made, he was immune from the punishment of death. Thus in Mughal period plea-bargaining in the form of Quisas was practiced but it was narrow in sphere.

There is a famous saying, "Justice should not only be done but should manifestly and undoubtedly be seen to be done, and 'time' is certainly a big factor in ensuring that justice is not only done but is also manifestly and undoubtedly seen to be done. Keeping this in mind, right to speedy trial has been declared as a fundamental right under Article 21 of the Indian Constitution⁸. But unfortunately, this fundamental right to speedy trial has largely remained a dead letter. The Indian judiciary is regarded as one of the most powerful judiciary across the globe, but this powerful judiciary has remained exceptionally slow in delivering justice. There are more than 2.18 crore cases pending in district courts across the country, the majority of cases are end in acquittal and the conviction rate is also very low.

To reduce the delay in disposing of criminal cases, the 154th Report of the Law Commission, first recommended the introduction of 'plea bargaining' as an alternative method to deal with huge arrears of criminal cases. This recommendation of the Law Commission finally found support in Malimath Committee Report.

A formal proposal for incorporating plea-bargaining into the Indian criminal justice system was put forth in 2003 through the Criminal Law (Amendment) Bill 2005, which was passed by the Rajya Sabha on December 13, 2005 and by Lok Sabha on December 22, 2005. The statement of objects and reasons, mentions that the disposal of criminal trials in Courts takes considerable time and that in many cases trails

⁶Sharma S.D., *Administration of Justice in India*, 190 (1988)

⁷ Gupta V.K., *Kautilya Jurisprudence* 52 (1987)

⁸ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360

do not commence for as long as three to five years after the accused was remitted to judicial custody. Though not recognised by the criminal jurisprudence, but it is seen as an alternative method to deal with the huge arrears of criminal cases.

The Bill attracted enormous public debate as many critics were of the view that this is against public policy of our criminal justice system. The Supreme Court has also time and again blasted the concept of plea-bargaining that negotiation in criminal cases is not permissible. In *State of Uttar Pradesh v. Chandrika*⁹, the Supreme Court held that it is settled law that on the basis of plea-bargaining court cannot dispose of criminal cases; it has to decide on its merit. If the accused confess his guilt, appropriate sentences are required to be implemented and mere acceptance or admission of the guilt should not be a ground for reduction of the sentence.

Despite this huge hue and cry, the government found it acceptable and finally section 265-A to 265-L were incorporated into the code of Criminal Procedure, 1973 as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005.

Section 265A prescribes the application of the provisions of Chapter XXIA to cases where the offences, which appears to have been committed by the accused is such that the maximum punishment for such offences does not exceed 7years. The section further says that this chapter will not applicable in the socio-economic offences of the country or offences against women or a child below the age of 14 years. The application for the plea-bargaining is to be filed by the accused in the court in which such offence is pending.

PLEA BARGAINING AND JUDICIAL PRONOUNCEMENT

As the concept of plea bargaining was gaining popularity in the USA, voices from different corners were coming for the induction of the concept of plea bargaining in India. But India, being a unique Nation due to its socio economic conditions repeatedly rejected this concept being a unique Nation due to its socio economic conditions repeatedly rejected this concept of plea bargaining. The debate around plea bargaining mainly revolved around the question of morality and the Supreme Court held the view that it amounted to immoral compromise of criminal cases.

Pre-Amendment

One of the earliest cases in which the concept of plea bargaining was considered by the supreme Courts was *Madanlal Ramchander Daga v. State of Maharashtra*, where a very strict view was taken and it was held that offences should be tried and punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence but court should never be a party to bargain by which money is recovered for the complainant through their agency.

In *Murlidhar Meghraj Loya v. State of Maharashtra*¹⁰, the Hon'ble Supreme Court criticized the concept of plea bargaining and said that it intrudes upon society's interest.

In *Thippaswamy v. State of Karnataka*¹¹, the SC held that enforcement or imposition of sentence in revision or appeal after the accused had plea bargained for a lighter sentence or mere fine in the trail court is unconstitutional as it violates Article 21 of the Constitution.

Justice P.N. Bhagwati in *Kasambai Abdul Rahamanbhai Seikh v. State of Gujarat*¹², declared plea bargaining as unconstitutional. It was held that such a procedure would be unreasonable, unfair and unjust amounting to violation of Article 21. It would have the effect of polluting the pure fount of justice, because it might induce an innocent to plead guilty to suffer a light and an inconsistent punishment rather than go through a long criminal trial.

⁹ 2000CrLJ384

¹⁰ AIR1976SC1929

¹¹ AIR1983SC747

¹² AIR1980SC854

The SC again in *Kachhia Patel Shantilal Koderlal v. State of Gujarat and another*, held that the practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice.

Post-Amendment

Major change in judicial thought took place after the concept of plea bargaining official added in the Code of Criminal procedure in 2005. The Gujarat High Court while recognising the concept of plea bargaining held in the *State of Gujarat v. Natwar Harchanji Thakor*¹³, that the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the p[resent realistic profile of the pendency and delay in the administration of justice, fundamental reforms are inevitable. There should not be any static. It can be said thus that it is really a measure of redressal and it shall add a new dimension in the realm of judicial reform.

In Delhi's first case on plea bargaining on April 11, 2007, a trial court sentenced accused to seven days in jail and fined him Rs.500 for barging into his neighbour's house 10 years ago. By continuing with the trial and pleading guilty, accused could have been sentenced upto 3 years in jail.

In Mumbai's first case, an application was made before a session court for plea bargaining when an ex-Reserve Bank of India clerk, who is accused in a cheating case, moved the court seeking lesser punishment in return for confessing to the crime. The case came before the Special CBI Judge for trial. The CBI, while opposing the application, said that "the accused is facing serious charges and plea bargaining should not be allowed in such cases". CBI also said that Corruption is a serious disease like cancer, it is so serious in nature that it leading to disastrous consequences.

In *Guerrero Lugo Elvia Grissel & Ors. v. State of Maharashtra*¹⁴, the compensation of 55 Lac to the victim along with imprisonment of 21 months to the accused is awarded. In this case the Magistrate agreed with the submission of the Special Public Prosecutor that accepting the argument of the petitioners would result in re-writing of clause (d) of Sec.265- E of the Cr.P.C. The Magistrate opined that the words "provided" and "extendable" used in the said provision were joined with conjunction "or". That means that the court may sentence the accused with one-fourth of the punishment "extendable".

It is clear from the review of pre as well as post amendment judgements that the plea-bargaining is in a poor state in Indian criminal justice system as the number of cases reported under plea bargaining are very few.

CRITICAL ANALYSIS

According to Asian Human rights Commission "while the purpose of the new provision is ostensible to reduce the long waits for trails endured by most accused, the introduction on plea bargaining is similar to treating the symptoms of an illness rather than the actual ailment".

Critics of plea bargaining, refuse to acknowledge its inevitability and instead argue its many disadvantages. The quick disposition of cases through plea bargaining may conserve judicial resources but the problem is that it allows guilty defendants to obtain unwarranted reductions in sentences by threatening an overworked system with requiring a time consuming and pointless trial. Some of the major drawbacks of this system are:-

- The aim of the Criminal Justice System is to cater justice, but it is feared that plea bargaining may violate principles of criminal jurisprudence and deprived the accused of assured constitutional safeguards.
- In a country like India, where there are lengthy pre-trial delays, guilty pleas may be entered upon the promise that the plea will be accepted swiftly, and the sentence will be for no more than the amount

¹³ (2005)Cr.L.J.2957

¹⁴ 2012Cr.L.J.1136

of time already served. In such cases, the sentence discount is extremely appealing and the pressure on innocent defendants to plead guilty may be tremendous.

- The extent of involvement of the judge in the plea bargaining process is debatable because excessive intervention could compromise his position as a neutral arbiter while no intervention could lead to an unjust result.
- The outcome of plea bargaining may depend strongly on the negotiation skills and personal demeanor of the defence lawyer. Thus it will give force to the people who are high handed and that will badly affect people who are poor, unsupported and feeble.
- The incident of crime might increase due to criminals being let off.
- Another problem is that of the status of the victim. The victim may get the benefit of plea bargaining but not all victims are happy to see their cases bargained away. They feel that their injury is not respected well and are further victimized by court process by getting the defendant easily off.

Justice Krishna Iyer, in the case of Murlidhar Meghraj Loya v. State of Maharashtra, opined that these advance arrangements please everyone expect the distant fellow and the silent society.

A Criminal Justice System, which is crippling under its own weight, experimentation is the only hope through which the confidence of the masses can be restored in the system. Plea bargaining should be viewed as one such experiment designed to reduce tendency under-trial cases. The outcome of the experiment would depend on the honesty of the Criminal Justice System in implementing the policy. The impact of the plea bargaining on Justice Delivery System should be watched and analysed carefully from time to time. It should be welcomed if it helps to the cause of justice in the society and should be discarded if it pollutes the soul of criminal jurisprudence.

CONCLUSION

Judicial backlog is a major problem that India is facing today. There are various reasons for backlogging of cases and every positive step for providing a solution should be welcomed with open arms. Plea bargaining is one such step aimed at bringing down the number of pending cases and ensuring speedier disposal of cases. This concept, undoubtedly, has become a critique in the minds of the jurists. Few people have welcomed it while others abandoned it. Despite being in statute books for more than 10 years, the usage of plea bargaining is still very low.

There is a need to make police, prosecuting agencies and defending lawyers familiar with the benefits of availing plea bargaining which would ultimately save the precious time of the courts and save the money of the litigants. There is an urgent need to take up a thorough study on its working and the impact so that appropriate changes can be introduced. In order to make it an effective tool in transforming our criminal justice system there is a need to amend the law relating to plea bargaining so that instead of remaining a mere dead letter in the statute books, plea bargaining achieve its purpose of improving the situation with regard to pendency of cases and its speedier disposal.