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ROLE OF PLEA BARGAINING IN CONTEMPORARY CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The legislature has introduced a new Chapter to the Code of Criminal Procedure, 1973 by Amending Act of 2 of 2006. By this amendment Chapter XXIA contributing for legal framework and provisions for plea bargaining, has been reflected in the code. This paper focuses on conceptual analysis of the right to a fair trial and deals with meaning, kinds and conceptual analysis of plea bargaining. The concept of plea bargaining has been analysed along with statutory provisions. However, paper also contains insight of judicial approach on Plea Bargaining. Further the researcher has drawn certain persuasive conclusions based upon the study that to provide speedy justice and to lessen the burden of the judiciary one should not compromise on principles of natural justice and the basic principles of criminal law.

Keywords: Plea Bargaining, speedy justice, fair trial, natural justice.

INTRODUCTION

The main purpose of criminal law is to serve justice to the accused, victim and to the society. One of the important element in administration of justice is 'free trial and speedy disposal of the case. But at present, pendency of number of cases shows that it not only burden on judiciary but also failure of legal system in serving justice to accused, victim and society. To reduce the number of pending cases, legislature introduces the concept of Plea Bargaining in Criminal Law. Chapter XXI A was inserted in the Code by virtue of Criminal Procedure (Amendment) Act, 2006 which came into effect on 5th July, 2006 which was codified under Section 265 A to Section 265 l.

Plea bargaining is not very old concept in India. In short, it means an arrangement among the prosecution and accused, in which accused plead guilty and in return, prosecution gives him concession in a sentence.

CONCEPT OF PLEA BARGAINING

Neither Indian law nor provision of any other countries clearly defines Plea Bargaining.

As stated by Black's Law Dictionary, plea bargaining means:

"Plea bargaining is the process whereby the accused and the prosecutor in a criminal case work out a 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 graver charge."[3]

In a legal sense, it can be defined as a pre-trial agreement between the prosecutor and defendant in which the accused agrees to plead guilty in exchange for the promised concessions made by the prosecutor.

Plea Bargaining can be classified into three kinds:

a) Charge Bargaining: A 'Charge Bargaining' occurs when the prosecutor allows a defendant to "plead guilty to a lesser charge that have been filed against him.

[3] BLACK'S LAW DICTIONARY, 1190 (8th ed.2004)

b) Sentence Bargain: A Sentence Bargain occurs when a defendant is told in advance what his sentence will be reduced if he pleads guilty.

c) Fact Bargaining: In Fact bargaining, a prosecutor agrees not to contest an accused version of the facts or agrees not to reveal aggravating factual circumstances to the court. There is an agreement for a selective presentation of facts in return for a plea of guilty.

HISTORICAL DEVELOPMENT OF PLEA BARGAINING IN INDIA

To understand the concept of plea bargaining in a better way, it becomes necessary to take a glance at the history of plea bargaining. By studying past we will know the whole process which led to birth of the concept of Plea Bargaining. It also helps us to know what all challenges had been faced for implementation of plea bargaining.

The origin of plea bargaining can be found in American Continent. Then this concept became Constitutional and ultimately became an absolutely necessary part of U.S. criminal justice system.

- **Early history of guilty plea**

In India, the practice of plea bargaining was non- prevalent. However, special provisions were inserted in Sections 206(1) and 206(3) of the Cr.P.C. to expedite the disposal of petty offences and reduce burden of pending cases in the Court of Magistrate. The Motor Vehicle Act of 1988 also included a summary procedure in Section 208(1).

Thus, in accordance with these provisions, the accused disposes the case after entering a guilty plea and paying a small fine for minor offences. This process facilitated quick decisions of cases. However, in this process, there is no bargaining among prosecution and the accused after the plea of guilty. The other drawback of this process was that it was restricted to petty offences only.

In the Criminal Procedure Code (hereinafter referred as 'CrPC') there is a provision of compounding of offences under section 320 (1) and (2). Under this provision, a compromise is reached between the accused and the prosecution (complainant). This provision is totally different from the provisions of plea bargaining. The consequence of compounding of an offence is an acquittal, while plea bargaining results in a conviction.

- **Steps towards plea bargaining in India**

Though the fundamental concept of plea bargaining is same all around, but its provisions varies. Over the last two decades, the large number of pending cases in courts, unusual delay in the trial, low conviction rates and overcrowded jails became main reasons for Indian courts to fail in administration of justice. For the speedy trial, the mechanisms like Fast Track Court, Lok Adalat, Conciliation, Mediation, and Arbitration etc. working from last two decades, but these mechanisms failed to resolve the issue. However, the administration of the jail, the police force, and the judiciary were also overworked and unable to function well. The State was left unable to deal with this circumstance. In order to expedite the resolution of cases, the Law Commission realized during this time that certain corrective legislative measures were required. The way plea bargaining is handled in India seems unsatisfactory in the early going.

But Indian Law Commission in the 142nd and 154th Report contended for plea bargaining provisions. In 2003, the Malimath Committee and the Parliamentary Standing Committee also discussed their views on plea bargaining and recommended for acceptance of plea bargaining within India. The 154th Report of Law Commission also suggested that a separate Chapter XXI-A on Plea bargaining being included in Cr.P.C. Consequently, the Chapter XXI-A Plea Bargaining, Section 265-A to 265-L was inserted in Cr.P.C., by the Criminal Amendment Act, 2005 (2 of 2006) and brought into force on 5th July 2006.

STATUTORY PROVISIONS ON PLEA BARGAINING

In 2005, through the Criminal Law (Amendment) Act Plea bargaining has been inserted and came in to force from July 5, 2006 with an introduction of a new chapter XXI-A incorporating section 265-A to 265-L in Criminal Procedure Code, 1973.

As per Section 265-A, the plea bargaining shall be available to the accused charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding seven years. But this provision is not applicable, if the offence is socio economic one or is committed against a child below 14 years or against a woman.

In Section 265-B, the accused may file an application for plea bargaining. This application must include a brief description of the case, including the offense to which the case relates, and be accompanied by an affidavit, sworn by the accused, attesting to his voluntary preference for plea bargaining in this case, having understood the nature and extent of the punishment prescribed by law for the offence, and having not been

found guilty in a prior court proceeding in which he had been charged with the same conduct. In accordance with subclause 4(a), the court must grant time if it finds the application to be voluntary.

Section 265-C outlined the process which the court is to follow in order to reach a mutually satisfactory disposition. In order to reach an appropriate resolution, it states that the court must notify the prosecutor, the police officer who conducted the investigation, the accused, and the victim of the crime if a case is filed on police report. A notify summons is sent to the parties involved if it is not on the police report.

Section 265-D deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same.

When a satisfactory resolution of the case is reached, Section 265-E specifies the process to be followed in case disposition. The declaration of judgment in terms of such a mutually agreeable resolution is covered by Section 265-F. As per Section 265-G, an appeal against such a judgment cannot be filed. Section 265 -H deals with the powers of the court in plea bargaining.

Section 265-I makes Section 428 applicable to the sentence awarded on plea bargaining.

A non-obstante clause in Section 265-J states that the chapter's provisions will take effect regardless of any conflicting language in other Code provisions, and that no provision of Chapter XXI-A shall be interpreted to be contained in any other provision. Section 265-K says that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of the chapter.

Section 265-L makes the chapter not applicable in case of any juvenile or child as defined in section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000. Unless the said procedure contemplated in Chapter XXI-A is followed the same cannot be a valid disposal on plea bargaining.

JUDICIAL PRESPECTIVE ON PLEA BARGAINING

As far as India is concerned apart from academic expert the Supreme Court was not in favour of the plea bargaining and they strongly condemn this practice in the judgment namely, '*Murlidhar Meghraj Loya v. State of Maharashtra'* [4] that plea bargaining is known variously as 'Plea bargaining', 'plea negotiation', 'trading out' and 'compromise in criminal cases and the trial magistrate drowned by a docket burden nods assent to the sub-rosa anteroom settlement. This practice to dispose of a case promptly induced everyone except the distant victim in the silent society".

"The Supreme Court of India in the case of '*Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr'* [5] strongly condemned the practice of plea bargain again. The Supreme Court of India held that the practice of plea bargaining is illegal, not constitutionally valid, and would encourage corruption, collusion, and pollute the pure fount of justice. In yet another case *Kripal Singh v. State of Haryana* observed that minimum sentence prescribed by Law on the premise that a plea bargain was adopted by the accused."

"In *Kasambhai v. State of Gujarat*[6], expressed apprehension of likely misuse. In the case of State of 'Uttar Pradesh v. Chandrika' [7], the Supreme Court of India observed that only the merits of the case alone should be considered for conviction and sentencing." "The Gujarat High Court appreciated this procedure and declared in '*State of Gujarat v Natwar Harchanji Thakor'* [8]case that the main aim of law is to provides a simple and speedy justice and also comprises the trial of criminal cases. There was required reform in the administration of criminal justice in India due to the long delay and pending cases in the court. To change this situation, it is required to make changes in the criminal law and procedure. According to the view of the court, plea bargaining is a measure and reparation and it shall put on a new aspect in the domain of judicial reforms."

EFFECT OF PLEA BARGAINING ON THE CRIMINAL JUSTICE SYSTEM

The impact of plea bargaining on the criminal justice system is a two-pronged reality, with advantages and disadvantages. When properly negotiated and structured, plea agreements benefit defendants, the government, and the judiciary. Furthermore, society benefits from plea-bargaining because plea agreements contribute to a preservation of public resources in addition to a speedy disposition of criminal cases.

Conviction without a trial will likely continue to be the most common method of resolving criminal cases. Plea bargaining allows the defendant to admit guilt and demonstrate a willingness to accept responsibility for his or her actions, allowing him or her to begin a new life without losing time.

[4] AIR 1976 SC 1929
[5] 1980 CriLJ553
[6] AIR 1980 SC 854
[7] 2000 Cr. L.J 384 (386)
[8] (2005) Cr. L.J. 2957

In addition to attorney fees, proper case presentation frequently necessitates the hiring of paralegals, investigators, and expert witnesses, all of which add significantly to budget constraints. Finally, convictions after a trial may result in an additional public and private financial burden in the appeals process. As a result, both the prosecution and the defence have an interest in resolving criminal litigation as early in the process as possible or appropriate. As a result, a negotiated plea bargain eliminates the need for trial and the associated costs, reduces uncertainty, and gives the parties some control over the resulting disposition. The courts are also interested in the plea- bargaining process. While the Court is not and should not be a party to the plea- bargaining process in general, by accepting plea bargains and taking stipulated sentencing negotiations seriously, the Court promotes the early and expeditious resolution of the criminal process.

Plea bargaining can be disadvantageous in some cases. For beginners, the prosecution has the authority to apply undue pressure on the accused. Despite the fact that protocol calls for voluntary admissions, the likelihood of actual coercion exists. In the weakest cases, the prosecution seeks to maximize the benefit of pleading guilty. When acquittal at trial is more likely, the prosecution prefers a guilty plea. However, if a questionable case goes forward, the prosecution may threaten individuals who are accused—who may or may not be innocent—with the most severe consequences.

The accused's defence attorneys lack the resources to investigate each case independently. The requirement for proof beyond a reasonable doubt is undermined by plea bargaining, and an innocent person is much more probably to be found guilty through plea bargaining than through trial. Plea bargaining results in unjust sentences. They claim that this technique is based on a single strategic decision and has nothing to do with deterrence, desert, or any other legitimate goal of criminal proceedings. The critics argue that plea bargaining results in unjustified leniency for the offender and fosters a negative view of the legal system.

RECOMMENDATIONS

The successful implementation of any scheme or system of justice administration is heavily reliant on the support of all those involved as well as concerned with it. Plea bargaining will not completely clear out the backlog of criminal cases, but it will significantly reduce the number of pending criminal cases. There are issues with plea bargaining, but rather than calling for its complete elimination, we must and should accept it as a natural, if not necessarily inevitable, component of our adversary system.

- The first requirement for the successful implementation of plea bargaining is to raise awareness of this provision among the various stakeholders in the criminal justice system. Because the general public is not well-versed in the law governing plea bargaining. A massive awareness campaign will need to be launched at all stages and levels, including law schools, bar associations, judicial officer training institutes, and jails. Only then can it be hoped that the provisions' goals will be met.
- The concept of plea bargaining is applicable to only some restricted cases. Section 265A of Code of Criminal Procedure, 1973, had restricted the use of plea bargaining in respect of offences for which punishment is more than 7 years and cases pertaining to crimes committed against women and child, socio-economic offences. So, the legislature needs to reconsider the idea of Indian plea -bargaining procedure and must break the barrier and allow much bigger offences to be processed in this manner particularly socio-economic offences.
- Only in certain limited circumstances is the concept of plea bargaining applicable. Section 265A of the Code of Criminal Procedure, 1973, limited the use of plea bargaining in cases involving crimes against women and children, as well as socio-economic offenses, to offences for which the punishment is more than seven years. As a result, the legislature must reconsider the Indian plea bargaining procedure and break down the barriers to allow much larger offenses, particularly socioeconomic offenses, to be processed in this manner.
- Plea bargaining under Chapter XXI does not take charge bargaining into account.
- Plea bargaining can typically be used for either sentence or charge bargaining in the United States and elsewhere. There has been no significant justification provided for the absence of charge bargaining. In fact, the law commission recommended the introduction of charge bargaining in its 154th report, which served as the foundation for the incorporation of the new chapter. Once we agreed on the introduction of plea bargaining to give the accused who pleads guilty preferential treatment, there was nothing wrong with incorporating the principle of charge bargaining alongside sentence bargaining.
- Sec. 265-A (2) confers a discretionary power on the Central Government to determine those offences under the law for the time being in force that affects the socio- economic Conclusion and Suggestions condition of the country and notify the same for the purpose of sub section (1). Therefore, guidelines must be framed down about the basis on which socio- economic offences should be classified.

- Section 265B of the Code of Criminal Procedure of 1973 requires the accused to file an application in court to request plea bargaining. To raise awareness about this provision, the judge should inform both the accused and the victim about the provision of plea bargaining before the trial begins.
- There is no provision in the Code for withdrawing a plea-bargaining application made under section 265B. As a result, once the application is filed, the accused must comply with the process. To avoid this situation, changes must be made to Chapter XXIA to include a provision for the withdrawal of the application of plea bargaining.
- The court has no judicial discretion over the amount of compensation. The amount must be determined in accordance with the disposition made under section 265D of the Code under current law. The court should be given discretionary power to revise this amount so that the compensation amount, which will ultimately be a part of the government fund, is reasonable.
- Amendments must be made to Chapter XXIA of the CrPC, and a provision section should be added to make it compulsory for probation officers and jail superintendents to conduct sessions in prisons to inform under trial prisoners about the pros and cons of plea bargaining.
- To ensure greater transparency and avoid bias, an independent judicial authority may be established to receive and evaluate plea-bargaining applications.

CONCLUSION

Nowadays considering the pendency, heavy workload on the judiciary and delays in disposal of cases in administration of justice, such a concept of plea bargaining is inevitable. Although this is a unique and beneficial remedy, but unfortunately, it is not properly implemented in India. This happens only because of very poor legal literacy, lack of awareness of society and general apathy seen between legal fraternities. Plea bargaining is more adaptable, elastic, suitable and better fitted to the need of judiciary as well as society.

Before enacting a separate chapter on plea bargaining, in India neither the Criminal Procedure Code, 1973 nor any other law authorized plea bargaining in India. Later on, Supreme Court has recommended the introduction of plea bargaining in its various decision, and on the advice of the Supreme Court, the legislature has acted and passed the Criminal Amendment Act, 2005, and introduced the much-needed plea bargaining. After studying various cases it comes to know that some of the Indian lower order court, which is dealing with plea bargaining has made frequently error in judgment because they failed to observe strictly chapter XXI A of the Cr. P.C. Henceforth, the court, who initiate proceeding of plea bargaining require to abide strictly the section 265A to 265L of Cr.P.C.1973 and disposed cases as speedily.

There are numerous reasons for the failure of plea bargaining, or we can say that the concept of plea bargaining is not carried out as expected. However, one of the many reasons for the failure of the concept of plea bargaining is its sluggish judicial procedure. The offender is aware that the final decision in the case will take time and come after a long journey of proceeding, so he refuses to accept his guilt and refuses to face the door of the jail. According to the researcher, the state is also need to adopt more effective methods to execute these provisions effectively. According to the study, all system officials, including the magistrate, defence counsel, public prosecutor, and police, should now cooperate to make this method more common among the accused and victims. In order to assess its applicability to a wide range of offences, it must be carried out with more efficiency in its present state.

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