

Plea-Bargaining in Indian Legal System

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Abstract: Plea bargaining advances speedy trials and helps in reducing the burden of courts and allows concentrating in more serious and societal issues. “Justice delayed is Justice denied”. The famous jurist Nani Palkhivala has said” the greatest drawback of the administration of justice in India today is because of delay of cases. The law may or may not be an ass, but in India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work”.

Keywords: Justice, Speedy Trials, Legal System, Plea Bargaining.

Introduction: As noted earlier, In India, the system of plea bargaining is in its experiment stage. The system was introduced as a result of criminal law reforms introduced in the Criminal Law (Amendment) Act,2005 (Act 2 of 2006). Section 4 of the Amendment Act introduced Chapter XXIA to the Code having Sections 265 A to 265 L. Though the Act was passed in 11th January, 2006, the provisions were notified and came into effect from 5th July 2006 only.

Meaning: Plea bargaining can be described as a process, whereby the accused may bargain with the prosecution for a lesser punishment. In simple words, Plea Bargaining an agreement between

the accused and the prosecution regarding disposition of the criminal charged leveled by the prosecution against the accused. In layman’s, it is bargaining done by the accused of a serious and severe offence, with the authority for a lighter punishment in lieu of a full fledged trial.

According to Black’ Law Dictionary: “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 the court approval. It usually involves the defendant’s pleading guilty to lesser offence as to only one or some of the courts of a multi-count indictment in

return for a lighter sentence than that possible for the grave charge”.

History: It would be wrong to assume that the concept of Plea bargaining found favour of courts only in the recent past. In fact it is used in the American Judiciary in 19th century itself. The bill of Rights makes no mention of the practice when establishing the fair trial principle in the 6th amendment but the constitutionality of the Plea bargaining constantly been upheld there. In the year 1969, James Earl Ray pleaded guilty to assassinating Martin Luther King, Jr. to avoid execution sentence. He finally got an imprisonment of 99 years. More than approximately 90% of the criminal cases in America are never tried. The majorities of the individuals who are accused of a crime give up their constitutional rights and plead guilty. Every minute, a criminal case is disposed in a landmark judgment *Bordenkricher versus Hayee*, the United State Supreme Court decided that, “the constitutional rationale for Plea Bargaining is that no element of punishment or retaliation so long as the accused is free to accept or reject the

prosecutions offer. The Apex court however upheld the life imprisonment of the accused because he reject the ‘Plea Guilty’ offer of 5 years imprisonment. In countries such as England, Australia and Wales, “Plea Bargaining” is allowed only to the extent that the prosecutors and defense can agree that the defendant will plead to some charges and the prosecutor shall drop the remainder.

Plea Bargaining in Indian Context: To reduce delay in disposing criminal cases, the 154th Report of Law Commission 1st recommendation the introduction of Plea bargaining as an alternative method to deal with huge arrears of criminal cases. This recommendation of the Law Committee finally found a support in “Malimath Committee Report”. In its report, the Malimath Committee recommended that a system of Plea bargaining be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts. To strengthen its case, the Malimath Committee also pointed out the success of Plea bargaining system in U.S.A.

Reasons for Introducing this Concept in

India:

- Speedy disposal of criminal cases i.e. reduction in heavy backlogs.
- Less congestion in jails.
- End of uncertainty of a case.
- Less time consuming.
- It is not fair to keep the accused with hard-core criminals because if the accused is innocent then he will accept his guilt and in this situation, it is not reasonable.

Benefits in Respect of Victim:

- He can easily get the compensation.
- He can save himself from long drawn Judicial Process.
- Less time and money consuming.

Benefits in Respect of Accused:

- In case of minimum punishment, he will get half punishment.
- He may get the gain of period already undergone in custody under section 428 of Cr.P.C.
- Less time and money consuming.
- He may release on probation or admonition.

- Admission of accused cannot be used for any other purpose except for Plea-Bargaining.

The Salient Features of Plea Bargaining

Under C.R.P.C:

- It does not apply where such offence affects the Socio-Economic condition of the country or offence committed against women or child below the age of 14 years.
- It is applicable only in respect of those offences for which punishment of imprisonment is upto a period of 7 years.
- The statement deposed by the accused before the court in an application for plea-bargaining shall not be used for any other purpose other than for plea bargaining.
- The judgment given by the court in this case shall be final and no appeal shall lie in any court against judgment except writ petition.
- The accused and prosecution both are given time to work out a mutually satisfactory disposition of the case, which may include giving



- compensation to the victim by the accused and other legal expenses incurred during pendency of the case.
- Where a satisfactory disposition of the case has been worked out, the court shall dispose of the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offence.
 - The application should be filed by the accused voluntarily.

Types of Plea Bargaining:

- Charge Bargain.
- Sentence Bargain.
- Fact Bargain.

Drawbacks of Plea Bargaining: Some of the major drawbacks of the concept of Plea Bargaining is recognized in India are as under:

- Threat to right to fair trial.
- Involving the Police in Plea bargaining process would invite coercion.
- Involving the victim in Plea bargaining process would invite corruption.

- If the plead guilty application of the accused is reject then the accused would free great hardship to prove himself innocent.
- By involving the court in Plea bargaining process the court impartially impugned.

Requirements: To ensure fair justice, Plea bargaining must encompass the following minimum requirements namely:

- The hearing must take place in court.
- The court must satisfy itself that the accused is pleading guilty knowingly and voluntarily.
- Any court order rejecting a plea bargaining application must be kept confidential to prevent prejudice to the accused.

Conclusion: To conclude, Plea bargaining is undoubtedly, a disputed concept few people have welcomed it while others have abandoned it. It is true that Plea bargaining speeds up caseload disposition, but it does that in an unconstitutional manner. But perhaps we

have no other choice but to adopt this technique. This practice has been accepted by Indian Judiciary. It can reduce the heavy backlog of cases in Indian courts; as it requires today and we hope that overburdened criminal courts will soon get a relief with it and rate of disposing will become rapid. Speedy trial is the essence of criminal justice and there is no doubt that delays in trial itself constitutes denial of justice. Only time will tell if the introduction of this concept is justified or not.

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