

IMPLEMENTATION OF 'PLEA BARGAINING' IN INDIA : A BIRD'S EYE VIEW



LAW

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DR. SOUMITRA KUMAR CHATTERJEE

LECTURER, MADHUSUDAN LAW COLLEGE, (UTKAL UNIVERSITY)
STATION ROAD, CUTTACK – 753003, ODISHA.

ABSTRACT

For the successful functioning of the justice delivery system the State is primarily responsible to protect and take suitable punitive measures for the rights and interests of the individuals. Criminal justice delivery system being the prominent issue and subject of streamlining the procedures needs to be focused with a sense of urgency and enhancing the level of confidence. The concept of plea bargaining has emerged as a ray of hope which is expected to tackle the issues more efficiently and quickening the justice delivery process. This article intends to have a bird's eye view on the implementation and recognition of 'plea bargaining' in India.

INTRODUCTION

Justice is the foundation of good governance. The Preamble of Indian Constitution promises 'Justice' – social, economic and political, to all its citizens. The Justice Delivery System is therefore always aimed at protecting and preserving the rule of law. Likewise, the ultimate goal of Criminal Justice Administration is to protect the rights and interests of the individuals who are aggrieved of the denial of justice. In this regard Dr. Rajendra Prasad, the president of the Constituent Assembly in his concluding address remarked that "whatever the Constitution may or may not provide, the welfare of the country will depend on the way in which the country is administered. That will depend on the men who administer it....". In India, this philosophy has there been in the spirit of our justice delivery system, more particularly the criminal justice delivery system.

Since years together, inordinate delay in the dispensation of justice along with huge pendency of criminal cases and low rate of conviction in cases involving serious crimes have posed a major challenge to the justice delivery system because delay in the administration of criminal justice makes the system weak and frustrates the basic philosophy of the justice delivery system.

To overcome this situation, the Government of India, few years ago, has incorporated the concept of 'Plea Bargaining' in to our criminal laws by making necessary amendments with a view to provide maximum sense of security to the people and to deal with criminal cases more effectively as per the expectation of the society. This concept is not only expected to be suitable and helpful in lessening the burden of trials, ensure speedy disposal of cases, but also will be helpful to both the accused and the victim.

THE CONCEPT OF 'PLEA BARGAINING'

Practically there is no perfect and simple meaning is assigned to this phrase. Basically 'Plea Bargaining' implies that the accused enters in to a bargain for certain considerations with the victim whereby he fore shakes his certain rights to escape the punishment, and on the other hand the victim agrees to the concessions in exchange of the benefits which he would be entitled to. Thus it is one type of contractual agreement between the prosecution and the defendant concerning the disposition of a criminal charge, however subject to the approval of the court. According to Black's 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 court's 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"¹.

Thus it involves an active negotiation between prosecution and accused in a criminal case where the prosecutor offers the defendant an opportunity to plead his guilt and avoid a lengthy and delaying trial procedure. By confessing the guilt in the Court the accused gets the benefit of a lighter punishment than what is provided for the offence in question.

The concept of 'Plea Bargaining' may be a charge bargaining (where the defendant pleads guilty in exchange of reduction of charges); a sentence bargaining (where the bargain is made for a favourable, particularly a lesser sentence) or a fact bargaining (where the defendant agrees to admit certain facts in consideration of not to introduce certain other facts).

RECOGNITION OF 'PLEA BARGAINING' IN INDIA

The concept of 'Plea Bargaining' has been borrowed from the United States. The basic objective of accepting the concept of 'plea bargaining' is that it helps in reducing the huge back log of cases, unnecessary delay and expediting the delivery of criminal justice.

Taking these objectives into consideration, the 12th Law Commission of India in their 142nd Report² recommended the incorporation of plea bargaining in the Indian criminal justice process and opined that it will help the accused to start a fresh life after undergoing a lesser sentence.

Further, the Law Commission again in its 154th Report reiterated the need for remedial reformative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners³. In the year 2003, the Mallimath Committee⁴ affirmed the recommendations of 142nd and 154th Report of the Law Commission of India. The Parliamentary Standing Committee on Home Affairs in 2005 also favoured the recommendation of introducing the concept of plea bargaining into our criminal justice delivery system. Thus all these recommendations created an encouraging atmosphere and the Central Government through an amendment to the Code of Criminal Procedure⁵ inserted the concept of 'plea bargaining' into our criminal laws. Thus a new Chapter, Chapter XXI-A captioned as 'Plea Bargaining' with Sections 265 A to 265L has been inserted into the Code of Criminal Procedure, 1973. In the process, it is said that the Legislature has finally infused some dynamism into our Criminal justice system.

THE PROCESS

An application for plea bargaining can be filed by any accused person above the age of 18 years and against whom a trial is pending. The application shall contain in the first place a brief description of the case including the offence to which the case relates and secondly an affidavit of the accused stating that an application has been filed voluntarily, after understanding the nature and extent of punishment and not by an accused who has been previously convicted by a Court whereby charged by same offence⁶.

The following few points should have to be kept in mind while filling the application for plea bargaining –

The maximum sentence for the offence against the accused should be less than 7 years;

the offence should not have been committed by the accused against a woman or a child below the age of 14 years;

the accused should not have been covered under Section 2(K) of the Juvenile Justice (Care and Protection of Children) Act, 2000;

for the same offence, the accused should not have earlier been convicted; and

the socio-economic condition of the country should not be affected by that offence.

Further, the formalities and procedures provided by the law must be followed⁷ before the case is finally disposed off by the Court in accordance with the terms prescribed⁸. The judgment of the Court upon the report of mutual satisfaction disposition is final and no appeal lies against it apart from a special leave petition to the Supreme Court under Article 136 of the Constitution or from a writ petition to the state High Court under Article 226 and 227 of the Constitution.

JUSTIFICATIONS FOR 'PLEA BARGAINING' IN INDIA

One of the primary justification for plea bargaining is that it allows the judicial system to handle the ever-increasing case load. All the persons involved in the process starting from the accused, the victim, the prosecutor, the investigating officer and above all the judge himself get some kind of benefit out of this settlement as because the plea bargaining avoids uncertainty of the trial and minimizes the risk of undesirable results for either side.

Through plea bargaining the accused gets the maximum benefit. By pleading guilty he gets a lesser sentence, saves the lawyers' fees and is relieved of time and effort needed in bringing the case for trial. At the same time the accused also gets the benefit of escaping from further embarrassment.

Judicial system in India is now over burdened. By resorting to plea bargaining the judge feels relieved from further burden and reducing the caseloads of the Courts. Further the constitutional obligation to provide speedy trial is also fulfilled.

Another important aspect is that such negotiations will satisfy the victim because now he becomes a part of the process as he can bargain over the Court decisions, as regards the compensation to be given. Thus, from the forgotten actor, the victim has now become a key player of the criminal justice system.

SUGGESTIONS

The successful implementation of the concept of 'plea bargaining' practically depends on the honest co-operation of all those who are involved and concerned with it. Default by any one of them can spoil everything and hamper smooth performance of the entire process involved in plea bargaining which might even result in miscarriage of justice. Therefore it is very important to follow certain safeguards to ensure success of plea bargaining. In this context it is suggested that:

Fair and impartial role of the judges during plea bargaining proceeding is most important.

It needs to be ensured that the views of victim and investigating agency are solicited and also their understanding of the agreement must be ensured.

Plea must always be voluntary and the parties must be aware of the circumstances and likely consequences.

While dealing with plea bargaining, the judiciary must give liberal interpretation to the provisions for its full implementation.

It also needs to be ensured that the victim or the accused at the time of entering into plea bargaining must not be unduly influenced and pressurised by any one.

The procedure entailed under the Cr.P.C. must be strictly followed by the lawyers while negotiating plea bargaining proceedings.

The judge, accused, victim, witnesses, lawyers, prosecution and police officer must work in close tandem with each other and should play their role as per the law provided in Cr.P.C. with full honesty.

CONCLUSION

The insertion of the provisions of the plea bargaining into Indian legal system is being hailed as a dynamic process which can improve the expediency of our justice delivery system. Though the concept has its own limitations, but taking in to consideration its positive aspects, it is true that the move is inspiring and no doubt, it is a welcome step in the right direction. If implemented properly, the concept of 'Plea Bargaining' will not only able to solve the pendency of huge cases but also providing a speedy remedy. However, proper and honest co-operation from all those who are involved in the process is required to fulfill this goal. It is the spirit and not the form of law which keeps justice alive. It is hoped that the concept of Plea Bargaining will achieve the objective and keeps pace with that spirit.

REFERENCES

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