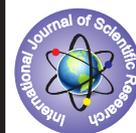


## LEGAL DIMENSION OF PLEA BARGAINING IN INDIA



Law

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**Dr. Pranab Kumar  
Rana**

Reader, M.S.Law College, Cuttack, Odisha

### INTRODUCTION

Bargaining outside the court, is recognized under almost all Criminal Judicial Systems, it is also recognized in India, which is called settlement in the cases where the offences are compoundable under section 320 of the Code but not in other cases. The judiciary never can be a party to the bargaining for plea guilty. The function of judiciary is to convict with the appropriate punishment. It is the judge's discretion to give him lesser punishment according to offence, but he is not at liberty to punish him with nominal punishment as a result of plea bargaining. The discretion means judicial discretion, not at the discretion of judge's arbitrariness. The term 'Plea bargaining has not defined under the code of Criminal Procedure, although our Parliament has inserted in Chapter XXI-A, (12 Sections 265A to 265L) by the Criminal Law Amendment Act, 2005<sup>1</sup>, which came into force w.e.f. 12<sup>th</sup> April, 2006. According to Albert W. Alschwer "Plea bargaining consists of the exchange of Official concessions for a defendant's act of self conviction."<sup>2</sup> However in literary sense it means bargain with accused person in pleading him guilty. Plea bargaining is process in which defendant and prosecutor negotiate mutually acceptable settlement of a case; usually defendant pleads guilty to only one or some of many counts in a multi-count suit, or pleads guilty to a lesser charge; in return prosecutor offers concessions such as sentence reduced in length or severity, or reduced number of counts; praised because of its promptness.

### II JUDICIAL RECOGNITION IN USA

In USA, Plea bargaining is no more than the offering of incentives to waive trial rights guaranteed by the constitution. The Supreme Court of America refused to invalidate the practice of plea bargaining, asserting that the practice benefited both sides and that a guilty plea suggested some hope for success in rehabilitation. According much weight to State's interest in the rapid and efficient disposition of cases<sup>3</sup> effected by plea bargaining, the Chief Justice Burger wrote for the court: "the disposition of the criminal charges by agreement between prosecutor and the accused, sometimes loosely called 'plea bargaining', is an essential component of administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to full scale trial, the State and the Federal Government would need to multiply by many times the number of judges and court facilities". He added "it is not only an essential part of the process but a highly desirable part for many reasons".

### III PLEA BARGAINING AND THE LAW

*Application of plea bargaining:* (a) Where a report of police officer after on completion of investigation, alleges that the accused has committed the offence punishable up to seven years of imprisonment (but not punishable with death sentence or imprisonment for life); or (b) a Magistrate has taken cognizance of an offence on complaint, punishable up to seven years of imprisonment (but not punishable with death sentence or imprisonment for life); and after examining the complaint and witnesses, issued the process against the accused.

Restriction on plea bargaining: Application of plea bargaining cannot be allowed in: (a) socio-economic offences, (b) offences against woman, or (c) any offence against children below the age of 14 years.<sup>4</sup> This section further states that plea bargaining shall also apply to juvenile or child.

an application for plea bargaining in the court, where the trial is pending. Such application shall contain a brief description of the case relating to which the application is filed including the offence to which it relates and shall be accompanied by an affidavit shown by the accused stating that he has voluntarily preferred, that he has not previously been convicted by a court in a case in which he had been charged with the same offence.<sup>5</sup> On the receipt of such application the court shall issue notice to the 'Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.<sup>6</sup>

When Public Prosecutor/complainant of the case and the accused appear on the date, the court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where –

(a) The court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or complainant of the case, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim, by the accused, a compensation and other expenses during the case and thereafter fix the date for further hearing of the case.

(b) If the court finds that the application is filed involuntarily by the accused or he has previously been convicted by the court in a case in which he had been charged with the same offence, it shall proceed further, trial from that stage.<sup>7</sup>

Mutually satisfactory disposition: In working out a mutually satisfactory disposition, the court shall follow the following procedure –

(a) In a case instituted on a police report, the court shall issue notice to the Public Prosecutor, the police officer investigated the case, the accused and the victim of the case to participate in the meeting to work out as satisfactory disposition of the case.

(b) In a case instituted otherwise than on police report, the court shall issue notice to the accused and the victim of the case to participate in meeting to work out a satisfactory disposition of the case.

Report of Mutually satisfactory disposition to be submitted before the court: Where in a meeting a satisfactory disposition of the case has been worked out, the court shall prepare a report of such disposition, which shall be signed by the presiding officer of the court and all other persons who participate in the meeting. If no such disposition has been worked out, the court shall record such observation and proceed further according to law.<sup>8</sup>

Disposal of the cases: Where the satisfactory disposition of the case has been worked out, the court shall dispose in the following manner

**(a) Award compensation to the victim:** The court shall award the compensation to the victim in accordance with disposition and hear the parties on quantum of sentence, release of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the Probation of Offenders Act,<sup>9</sup> or any other law for the time being in force.

Procedure for plea bargaining: Person accused of an offence may file

**(b) If minimum sentence is provided:** If, after hearing the parties, the court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to *half* of such minimum punishment.

**© If no minimum sentence is provided:** If, after hearing the parties, the court finds that the offence committed by the accused is not covered by the above provision, then it may sentence the accused to *one-fourth* of the punishment provided or extendable, as the case may be, for such offence.<sup>10</sup>

**(d) Judgment of the court:** The court shall deliver its judgment in terms of the above in open court and same shall be signed by the Presiding Officer of the Court.<sup>11</sup>

**(e) Finality of the Judgment:** The judgment delivered by the court shall be final and no appeal (except the special leave petition under Article 136 and writ petition under Articles 226 and 227 of the Constitution) shall lie in any court against such judgment.<sup>12</sup>

#### IV ENFORCEMENT HAZARDS

When there are several accused, some admit guilt under "plea bargaining" and others who contest the case are acquitted on merits, the persons convicted on plea bargaining seem to be discriminated in law in public perception. The expression "Socio-Economic offence affecting the society" is not precisely defined. It would lead to unnecessary long terms legal debate and confusion until the Apex Court finally interprets the scope and extensibility of the above expression. The elaborate precautionary steps set down in law for the Court to make in camera enquiry, notice to prosecutor and victim consultations for final disposition spread over in different hearing dates invariably result in delayed disposal. The very object of expeditious disposal to cut short the docket explosion gets defeated. On the other hand, the quick summary enquiry of the accused and the victim in the open court and immediate decision would be a desirable and ideal procedure. The right and role of complainant in the proceedings for final disposition is not properly clarified in law. The intendment of the law is to give right of audience to complainant only in respect of just compensation. The complainant has no right to prevent Court from recording the plea of guilt and to impose the sentence as prescribed. In the case of disagreement in the matter of compensation the verdict of the Court would be final. The complainant can invoke the remedy of writ only when the compensation awarded is disproportionate and inadequate. The textual law is vague and likely to be mis-interpreted by the complainant that he can scuttle the right of accused to avail the benefit of "Plea Bargaining" if he is not agreeable to the compensation proposed.

#### CONCLUSION

The offence of murder, dacoity with murder, robbery with murder, kidnap for ransom are punishable with capital punishment of life imprisonment or death. In murder, in majority of the cases the motive or the offender may not be sinister and dangerous to society at large. The accused on the spur of moment because of land dispute or family dispute might have caused murder. The accused is a very good social being for the society at large except the victim. The sentencing policy in the Indian Penal Code is irrational. The motive is not reckoned and essential criteria in the sentence prescribed for the offence. The maximum sentence is prescribed for the offence. However, the quantum of sentence to be imposed is left to the discretion of the Court. In the cases where the accused is convicted for an offence of murder, culpable homicide not amounting to murder and grievous hurt etc. when the motive is innocuous and not pernicious to the society at large, the benefit of plea bargaining to be extended to such cases. If so done it would help in accused honestly admitting guilt suffer lenient sentence and would also help in a great way to reduce the pendency of heinous offences which are otherwise decided after prolix trial.

#### References

1. Act 2 of 2006.
2. Public Prosecutor and Plea bargaining, (1986) 60 ALJ 199.
3. Santobello v. New York, (1971) 404 US 257; also see, Brady v. United States, (1970) 397 US 742; North Carolina v. Alford, (1970) 400 US 25.
4. See Section 265-A(1) of the Code of Criminal Procedure.
5. Id., S.265-A(2).
6. Id., S.265-A(3).
7. Id., S.265-A(4).
8. Id., S.265-D.
9. Act 20 of 1958.
10. Id., S.265-E.
11. Id., S.265-F.
12. Id., S.265-G.