



Plea Bargaining-an Overview.

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ABSTRACT

Plea Bargaining can be defined as a process where the accused bargains with the prosecution for a lesser punishment. It is an administrative process that permits a defendant to elicit a judicially administered expeditious alternative to the traditional trial. Plea bargaining as a concept was introduced in Indian criminal justice system by the Criminal Laws (Amendment) Act, 2005. This paper has made an attempt to critically evaluate the concept and applicability of plea bargaining in India criminal law as well as judicial attitude towards this concept.

KEYWORDS

Fundamental rights, speedy disposal, criminal law.

Introduction:

Meaning:

Plea Bargaining can be defined as a process where the accused bargains with the prosecution for a lesser punishment. In other words, Plea Bargaining is an agreement or a settlement between the accused and the prosecution regarding disposition of the criminal proceeding. **According to Oxford Dictionary** "Plea Bargaining is an arrangement between prosecution and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an arrangement to drop other charges."

Object of Plea Bargaining:

Plea bargaining is said to have the following objectives:

- 1) reduces the pending litigation
- 2) Decreases the number of under trial prisoners
- 3) Makes provision of compensation to the victim of crimes by the accused.
- 4) Speeds up the disposal of criminal cases.

Applicability of plea bargaining in India:

Chapter XXI A, of the Code of Criminal Procedure, 1973 allows plea bargaining to be used in criminal cases where:

1. Offences that are penalized by imprisonment below seven years.
2. If the accused has been previously convicted of a similar offence by any court, then he/she will not be entitled to plea-bargaining.
3. Plea-bargaining is not available for offences which might affect the socio-economic conditions of the country.
4. Also, plea-bargaining is not available for an offence committed against a woman or a child below fourteen years of age.

Procedure of Plea Bargaining: The process of plea bargaining was brought in as a result of criminal law reforms introduced in 2005. Section 4 of the Amendment Act introduced Chapter XXIA to the Code having sections 265 A to 265 L which came into effect on 5th July, 2006. The following are the procedure of plea bargaining available to the accused under the Criminal Procedure Code, 1973:-

Section 265-A:

It states that, 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. Section 265 A (2) of the Code gives power to notify the offences to the Central Government..

Section 265-B:

It provides that ,an application for plea bargaining shall be

filed by the accused which shall state description of the case .The plea bargaining in his case and that he has not previously been convicted by a court in a case in which he had been charged with the same offence.

Section 265-C:

This section prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a complaint case, the Court shall issue notice to the accused and the victim of the case.

Section 265-D:

It deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same.

Section 265-E:

It prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out.

Section 265-F:

It deals with the pronouncement of judgment in terms of such mutually satisfactory disposition.

Section 265-G

says that no appeal shall lie against such judgment.

Section 265-H

deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case .

Section 265-I

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

Section 265-J:

contains a non obstante clause that the provisions of the chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.

Section 265-K:

It 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:

It 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 aforesaid procedure contemplated in Chapter XXI-A is followed the same cannot be a valid disposal on plea bargaining. Even though 'plea bargaining' is available after the introduction of the said amendment is available, in cases of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years, the chapter contemplates a mutually satisfactory disposition of the case which may also include giving compensation to victim and other expenses. The same cannot be done without involving the victim in the process of arriving at such settlement

SUPREME COURT ON PLEA BARGAINING:

The Supreme Court of India was questioning its moral base and apprehending its consequences because of dishonest circumstances prevailing around. The Supreme Court criticized it in its judgment namely, *MurlidharMeghrajLoya v. State of Maharashtra*¹

The Supreme Court in *Kachhia Patel ShantilalKoderlal v. State of Gujarat and Another*,²strongly disapproved the practice of plea bargain again. It observed that practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice.

In *Kripal Singhv. State of Haryana*³ observed that neither the Trial court nor the High Court has jurisdiction to bypass the minimum sentence prescribed by Law on the premise that a plea bargain was adopted by the accused.

In *State of Uttar Pradesh v. Chandrika*⁴, the Supreme Court held that it is settled law that on the basis of Plea Bargaining court cannot dispose of the criminal cases. Going by the basic principles of administration of justice merits alone should be considered for conviction and sentencing, even when the accused confesses to guilt, it is the constitutional obligation of the court to award appropriate sentence. Court held in this case that mere acceptance or admission for the guilt should not be reason for giving a lesser sentence. Accused cannot bargain for reduction of sentence because he pleaded guilty.

But it was Gujarat High Court that recognized the utility of this method in *State of Gujarat v. Natwar Harchandji Thako*⁵ as an alternative measure of redressal to deal with huge arrears in criminal cases and it shall add a new dimension in the realm of judicial reforms.

Critical Evaluation of the Concept of Plea Bargaining:

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

Violation of the principles of criminal jurisprudence:-

Firstly, it is feared that plea bargaining may violate principles of criminal jurisprudence and deprive the accused of assured constitutional safeguards.

Failure to provide for an independent judicial authority:-

The failure to provide for an independent judicial authority for receiving and evaluating plea bargaining applications is a glaring error. A judge or magistrate may be biased against the accused, as in the event of the application being rejected. They may well oversee the trial knowing that the accused was previously prepared to plead guilty. This is clearly unfair to the accused.

Risk of prejudice against the accused: - The failure to make confidential any order passed by the court rejecting an application could also create prejudice against the accused.

Problem of coercion: - Another problem is coercion. The requirement of the plea being in a written format and accompanied by an affidavit allows scope for coercion by the police

and the prosecution leading to the innocent pleading guilty.

Risk of public cynicism and distrust: - The Court's examination of the accused in camera as opposed to open court may lead to public cynicism and distrust for the plea bargaining system.

Risk of Innocent pleading guilty: - In India today an accused person may face the prospect of years in jail as an under trial there is a significant risk that innocent people will plead guilty under a plea bargaining scheme.

Probability of increase in the number of cases: - Plea bargaining will not solve the delays in India's courts .

Chances of abuse by prosecutors:- Critics claim that the plea bargain system can encourage prosecutors to overcharge at the start of the case which leads to caseload pressures or unusually severe penalties.

In favour of the high handed and the rich: - The outcome of plea bargaining may depend strongly on the negotiating skills and personal demeanor of the defense lawyer, which puts persons who can offer good lawyers at an advantage,. Thus it will give force to people who are high handed and that will badly affect people who are poor, unsupported, meek and feeble.

Problem of adequate legal representation for under privileged unsolved:- Moreover such a system still does not solve the problem of acquiring adequate legal representation for those who are underprivileged.

Conclusion:-

Though, the introduction of 'plea bargaining in Indian judicial system' has profoundly been criticized by a group of society including intellectual and legal experts with the argument that it will demoralize the public confidence in criminal justice system .On the other hand, plea bargaining concept has been welcomed by the other groups of society as a revolutionary judicial reform in India, We hope that the overburdened criminal courts of India will get a relief with the law of 'plea bargaining' and the criminal judicial system will also speed up its disposal of the pending cases.

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