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A COMPARATIVE STUDY ON PLEA BARGAINING IN INDIA AND OTHER COUNTRIES

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ABSTRACT

The concept of plea bargaining has been recognized in many countries and it has been incorporated in their Criminal Procedural Law. The term "plea bargaining" means, "pre- trial negotiation between the prosecutor and the accused whereby the accused agrees to plead guilty and the prosecution agrees to provide some concession or lesser punishment to the accused based on his plea of guilty". This concept of plea bargaining in India was of recent origin and it was introduced in the year 2005 to protect the rights of the accused. This concept was introduced to reduce the number of criminal cases where trial do not commence for three or five years. A huge number of persons accused of an offence are not able to get bail because of many reasons and one such reason is that they have been inside the jail for so many years as an "under trial prisoners and during the course of detention as under- trial prisoners they have to under go a lot of mental stress and burden. One of the other reason is that if there is no sufficient evidence to prove that the accused has done the offence, it ultimately results in acquittal of him. Hence, this concept is dealt under Chapter- XXIA of the Code of Criminal Procedure, 1973. This paper deals with the process of plea bargaining in India and other countries.

AIM OR OBJECTIVE:

- To study about the concept of plea bargaining in India and other countries.
- To study about the origin of concept of plea bargaining in India and its procedure in the Criminal Procedure Code, 1973.
- To study about the types of plea bargaining and case laws relating to plea bargaining.

RESEARCH PROBLEM:

Whether the concept of plea bargaining puts the prosecution or the victim at a disadvantaged position in the light of Criminal Law (Amendment) Act, 2005; 142nd, 154th Reports of the Law Commission in comparison with the US, UK and Australia?

HYPOTHESIS:

Ho: The concept of plea bargaining is not effective in reducing the rate of offence.

Ha: The concept of plea bargaining is effective in reducing the rate of offence.

INTRODUCTION:

The delay in conducting a trial of a criminal case by the criminal courts are increasing day by day and it has come to a state where the disposal of criminal trials take much time and in many cases trial procedure does not commence for so many years after the accused was being sent to a judicial custody. The criminal justice system in India provides that there are many under trial prisoners who are forced to remain in prisons throughout our country. According to the National Crime Records Bureau in the year 2011, the number of persons in jails was almost 50,000 more than its capacity and most of them were under trials and some were detained in jail for more than five to six years. A huge number of persons accused of an offence are not able to get bail because of many reasons and one such reason is that they have been inside the jail for so many years as an "under trial prisoners and during the course of detention as under- trial prisoners they have to undergo a lot of mental stress and burden. One of the other reason is that if there is no sufficient evidence to prove that the accused has done the offence, it ultimately results in acquittal of him.

Hence, the courts have introduced an informal system of pre- trial bargaining and settlement and it was followed in United states and now this system is generally called as "plea bargaining". In this system, the suspect or the accused may admit either part or whole of the crime charged against him and can claim lesser punishment instead of waiting for the trial to complete.

The main objects of plea bargaining is to avoid unnecessary expenses, unpredictable trials and harassment and it also reduces the flow of criminal cases and helps in saving time. Another object of this system is that it reduces the pendency of the suit by resorting the case for alternate settlement instead of trial under the supervision of the judiciary to ensure fairness. This practice is prevalent the United States, England, and Australia. The concept of plea bargaining has gained very high popularity in the US but it is used only in a restricted sense in the other two countries. This concept was inserted to the Criminal Procedure Code and it is dealt under chapter XXIA and it consists of Sections 265A to 265 L on the recommendations of the Malimath Committe.

DEFINITION OF PLEA BARGAINING:

There is proper definition for the term "plea bargaining" and it has not been defined in the Code. Generally, it means an agreement between the prosecutor and the defendant, whereby the defendant agrees to plead guilty in return for some concession or lesser punishment from the prosecutor .[2]

In **Warren Burger in Santobello v. New York**[3] , the Chief Justice of Supreme Court of United States has observed that, "the concept of plea bargaining is an essential element of the administration of justice and if it is properly administered it must be encouraged and it also leads to final disposition of criminal cases".

According to Black's Law Dictionary, " it is a process where the accused and the prosecutor in criminal case work out a mutually satisfactory disposition of the case Subject to the Court approval and it usually involves the accused who pleads guilty in order to be subjected to a lesser sentence".

HISTORY OF PLEA BARGAINING IN INDIA:

IN VEDIC PERIOD:

This concept of plea bargaining has been in practice in India since the time- immemorial and numerous ancient treaties and texts shows that this concept was practised as one way of self-purification by removing or reducing the effects of sins by committing an offence. According to Hindu Jurisprudence, delay in deciding cases would amount to denial of justice. Apart from prescribing various kinds of punishments the Dharamasastras, provides a concept in a separate chapter titled "Prayaschita" where it has suggested various models of self-purification by confessing the guilt and this was used as a basis for imposition of lesser punishment and it was justified by various scholars of smritis. Even Manu Smriti provides for the reduction of punishment on pleading guilty.

Hence, in the vedic period this concept of reduction of punishment by voluntary confession was allowed and justified by various smritis. Which is similar to the concept of plea bargaining. The purpose of such relaxation in punishment was to give a chance to the accused to regain his status in the society.

IN MEDEIVEL ERA:

In the Muslim Criminal Code, the system of Quisas can be

considered as an analogue of practice of plea bargaining during the Mughal period. Under this code, the punishment for the offence against the god was "right of God" and for the offence against the state or against the private person, then the injured person has an option to compound the offence with the accused or the wrong- doer. Quisas was a kind of blood money, whereby the accused pays some monetary value to the legal heirs or relatives of the deceased. In case, if the deceased's relative or his legal heirs agrees to compromise in exchange of money by the accused and the king or the Quazi cannot interfere with it. This practice was supported by Muslim jurist on the basis that "the right of God's creature should prevail" and in case where the next deceased victim was minor, the accused could not be punished capitally until the infant kind had grown up.

Illustration: In Mughal period, the offence of robbery with killing was treated to be an offence against God and in such case punishment of death was considered as 'haqq Allah' and blood money was out of question and incase, if the thief has given back the article stolen before the charge was made, he can be exempted from the liability.

Thus, in this period the concept of plea bargaining was practised in the form of Quisas and it was only in a narrow sense because in murder case, the victim's family was compensated.

PLEA BARGAINING DURING BRITISH RULE :

In India, adversarial system was followed to dispose the case and it was borrowed from the British Colonial rulers. In 1672, the East India Company has established the Court, which inflicted punishment on the offender or else he was ordered to work for the owner. This principle was abandoned and the principle of plea bargaining was also abolished in the year, 1860. The main aim of the Britisher's was tp provide punishment rather than bargaining with compensation. The practice of plea-bargaining as prevalent during the Mughal period got a setback when Lord Cornwallis made a recommendation on 3 December, 1790 in which he laid down that in murder cases there could be no mutual settlement between the heir of the deceased and the accused. They were not allowed to grant pardon or composition money as a price of blood. It was in the year 1860 when Indian Penal Code was given the shape of law and the Muslim Criminal Code was totally done away with this.

CHAPTER-2:

ROLE OF LAW COMMISSION OF INDIA:

At the initial period, there was no effort to implement the concept of plea bargaining in India. Later, the Law Commission of India introduced the provisions relating to plea bargaining in its 142nd and 154th reports.

142nd Report[4] :

In its 142nd the Law Commission discussed the matter of plea bargaining with many states and jurists and came to some of the following observations:

- It states that only the offender or the accused can apply this scheme.
- There will be no negotiations for plea bargaining with the prosecuting agency or its advocate
- The competent authority will be called as "plea judge" and he is designated by the Chief Justice of the respective High Courts of each States from amongst the sitting judges competent to try a case punishable with imprisonment upto 7 years and a Bench consisting of two retired judges of the High Court nominated by the Chief Justice of the state.
- The application for plea bargaining will be entertained by the competent authority only when he is satisfied that such plea is being voluntarily without coercion or undue influence.
- The competent authority must hear the application in the presence of the aggrieved party and the public prosecutor.
- The authority has the power to impose a jail term or fine or can ask the accused to pay compensation to the aggrieved party for compounding the offence. The authority competent to try this application can award a jail term for a period of six months or one year with respect to specified offences.
- The Competent Authority may award a jail term not exceeding one half of the maximum provided by the relevant provision where the Competent Authority is not called upon to exercise the powers to release on probation under the Probation of Offenders Act, 1958 or under s.360 of the Code of Criminal Procedure, 1973 in accordance with the guidelines.
- In the first instance, the scheme may be made applicable only to offences which are liable for punishment with imprisonment of less than seven years or fine .
- The scheme may be made applicable to offences liable to be punished with imprisonment for seven years and more after properly evaluating and assessing the results of the application of the scheme to offences liable to be punished with imprisonment for less than seven years.

154th Report[5] :

In its 154th report, the following recommendations has been mentioned in para 9 of the report:

- This process can be set in motion when the accused appears, either by written application or by suo motu action of the court to ascertain the willingness of the accused. After ascertaining the willingness of the accused, the court can require him to make an application.
- On the hearing date, the court must determine whether the accused has made an application voluntarily and knowingly without any coercion or an undue influence from any police or public prosecutors. While making preliminary examination, neither the prosecutor nor the police must be present.
- Once the court is satisfied, that the application was made voluntarily it will fix the date for hearing and may pass a final order. If the court finds that such an application has been made under undue influence, then an application can be rejected by the court.
- Such a rejection can be made either at the initial stage or after hearing the public prosecutor and the aggrieved party. If the court finds that the case is not fit for plea bargaining it can reject the claim by stating its reasons.
- The order passed by the court on the application of the accused-applicant shall be confidential and will be given only to the accused if he so desires. The making of such application by the accused shall not create any prejudice against the accused at the ensuring trial.
- An order passed by the court on such a plea shall be final and no appeal shall be against such an order passed by the court accepting the plea.
- In cases where the provisions of Probation of Offenders Act, 1958 or Section 360 of Cr.P.C are applicable to an accused applicant, he would be entitled to make an application that he is desirous of pleading guilty along with a prayer for availing for the benefit under the legislative provisions referred in above. In such cases, court after hearing the public prosecutor and the aggrieved party, may pass an appropriate order conferring the benefit of those legislative provisions. The court may be empowered to dispense with necessity of getting a report from the probation officer in appropriate cases.
- If an accused enters a plea of guilty of an offence for which minimum sentence is provided for, the court may, instead of rejecting the application, after hearing can accept the plea of guilty and pass an order of conviction and sentence him to one-half of the minimum sentence provided.
- The court shall on such a plea of guilty being taken, explain to the accused that it may record a conviction for such an offence and it may after hearing the accused proceed to hear the pubic prosecutor or the aggrieved person as the case may be: i) Impose a suspended sentence and release him on probation; ii) Order him to pay compensation to the aggrieved party; or iii) Impose a sentence, which commensurate with the plea bargaining; or iv) Convict him for an offence of lesser gravity than that for which the accused has been charged if permissible in the facts and circumstances v) of the case.

TYPES OF PLEA BARGAINING:

Charge Bargaining: It is a bargain or promise between the defendant and the prosecutor where when the accused pleads

guilty, then he can be charge bargaining solely depends upon the will of the prosecution and it is the discretion of the prosecution either to accept it or neglect it.

Sentence bargaining: It is the process which is introduced in India. In this type, the accused would bargain for a lesser sentence than prescribed for the offence with the consent of the prosecutor and complainant or victim .

SALIENT FEATURES OF PLEA BARGAINING:
The winter session of the Parliament has introduced the concept of plea bargaining by way of the Criminal Law (Amendment) Act, 2005, and it was embodied in the Chapter- XXIA of the Code .[6]

The salient features of the Plea bargaining under Cr.P.C are:
The concept of plea bargaining applies only in the respect of those offences for which punishment of imprisonment is up to seven years ;[7]

This concept does not apply[8] :
If the offence is against socio- economic condition of the country; or
- If it has been committed against a woman; or
- Against a child below 14 years.
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The accused should voluntarily file the application for plea bargaining[9].
A person accused of an offence may file an application for plea bargaining in the court in which such offence is pending for trial;

Once the court is convinced that the accused is participating in the plea bargain voluntarily, it will allow time to both parties to reach mutually satisfactory disposition , which may include giving to the victim by the accused, compensation and other expenses incurred during the case;

When a satisfactory disposition has been reached by the accused and the victim, the court will dispose the case by passing a sentence to one- fourth of the punishment to the accused.

The statements or facts given by the accused in an application for plea bargaining should ot be used for any other purpose other than the proposed purpose.

Once the court delivers a judgment in case of plea bargaining, it is final and no appeal lie in any court except under Art. 136 and Art. 32 or Art. 226, 227 of the Constitution. If the accused is a first time offender, the court will have the option of releasing him/her on probation. Alternatively, the court may grant half the minimum punishment for the particular offence.

When are plea bargains made?
A plea bargain may be made by an accused when-
- An officer in charge of the police station under section 173 forwards a report stating that the offence appears to have committed by him is an offence other than an offence for which the punishment of death or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or
- A Magistrate has taken cognizance of an offence on complaint,after examining complaint and witnesses under Section 200, issued the process under s. 204.

Who can file an application for plea bargaining?
Any person who is above 18 years of age and against whom a trial is pending can file an application for plea bargaining.

Exceptions to this general rule:
- The offence against the accused should carry a maximum sentence of less than 7 years.
- The offence should not have been committed 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 .[12]
- The accused should not have earlier been convicted for same offence. The offence should not affect the socio economic condition of the country.

CHAPTER-3:
THE CONCEPT OF PLEA BARGAINING IN OTHER COUNTRIES:
JUDICIAL PLEA BARGAINING IN ENGLAND AND WALES :
The practice of judicial plea-bargaining is governed by the principles laid down by the court of Appeal in **Turner.** In this case, the court held that there must be freedom of access between counsel and the Judge but that any discussion must be between Judge and both counsel. The defendant's solicitor can be present if he chooses. The Judge should never indicate the sentence he is minded to impose or that he would impose one sentence on a verdict of guilty and one sentence on a plea of guilty.

JUDICIAL PLEA BARGAINING IN AUSTRALIA:
In **Marshall**[14] , the Supreme Court of Victoria observed that,the practice of asking a trial Judge in open Court as to what the appropriate sentence would be on a plea of guilty, was wrong.

IN US:
This concept was used in the 19th century itself in the United Nations. The Bills of Rights does not mention about the practice of plea bargaining but by way of Sixth Amendment, the constitutional validity was upheld. In United Nations, 90% of the criminal cases are settled by plea bargaining and only 10% go to trial. This system in the federal system was officially recognized by passing of the 1974 amendment to Federal Rules of Criminal Procedure. The main requirement is that the accused should make plea bargaining voluntarily and knowingly without any interference. The court must find that a guilty plea satisfies the requirements of Rule 1149 before the court can accept the plea.

In the year 1969, James Earl Ray pleaded guilty to assassinating Martin Luther King, Jr. to avoid execution sentence. He finally got imprisonment of 99 years. In a landmark judgment **Bordenkircher v. Hayes**[15] , the US Supreme Court held 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 prosecution offer. The Apex Court, however, upheld the life imprisonment of the accused because he rejected the 'Plea Guilty' offer of five years imprisonment. The Supreme Court in the same case, however in a different context, observed that it is always for the interest of the party under duress to choose the lesser of the two evils. The courts have employed similar reasoning in the tort disputes between private parties also. In another case, the United States Supreme Court formally accepted that plea bargaining was essential for the administration of justice and when properly managed, was to be encouraged [16].

ADVANTAGES OF PLEA BARGAINING:
Speedy justice: At present, the Indian Judiciary is over burdened with so many litigations and it has no time to deal with all the cases. Hence, resorting to plea bargaining would provide a speedy justice and can reach a decision quickly.

Low cost: A large amount of money along with the time is spent on preparing for the arguments in the Court only to find that other party is seeking extension of date of hearing. Plea bargaining is cheap and would render justice.

Better working relationship: Plea bargaining may also satisfy what some scholars argue is "an irrepressible tendency toward cooperation among members of the courtroom work group." It allows this "courtroom work group" to satisfy their "mutual interest in avoiding conflict, reducing uncertainty and maintaining group cohesion.

Alternative Dispute Resolution: This concept of plea bargaining is considered to be another mode of alternate dispute resolution and Advocates maintain that it is desirable to afford the accused and the State the option of compromising factual and legal disputes.

Quick disposal of cases: A trial is usually requires a much longer

wait and causes much more stress than taking a plea bargain

DISADVANTAGES OF PLEA BARGAINING:

Unjust Sentencing: this concept is some what against the objective of criminal proceddings because it results in unwarranted leniency for offenders and it also promotes arsenical view of legal process i.e. after committing an offence, the accused can claim plea bargaining and can escape severe liability and put the victim in a disadvantaged position where the loss suffered by the victim or his family cannot be compensated.

Scope of uniqueness in condemning: Plea bargaining likewise brings about tolerance of condemning. Various critics contend that supplication bartering brings about less extreme sentences as well as more prominent condemning difference, which has a tendency to undermine the whole criminal framework. Commentators demand that request dealing and the subsequent tolerance enables the criminal to escape full discipline. A request of blame in view of supplication , as it is against open approach, if a denounced were to be indicted by inciting him to confess, by holding out a light sentence as an allurement.

In **State of Uttar Pradesh v. Chandrika**[17] , the Supreme Court has opined that it is settled law that based on supplication dealing, the Court may not discard the criminal cases. The Court needs to choose it on merits and if the blamed admits his blame, proper sentence is required to be forced. The simple acknowledgment or confirmation of the blame must not be a ground for diminishment of sentence.

BENEFITS IN RESPECT OF ACCUSED:

- In case of Minimum Punishment, he will get half punishment.
- If no such punishment is provided, then he will get one fourth of the punishment provided.
- He may release on probation or admonition.
- He may get the gain of period already undergone in custody under section 428 of Cr.P.C.
- No appeal lies against the judgment in favour of him.
- Admission of accused cannot be used for any other purposes except for Plea-bargaining.
- Less time and money consuming.

JUDICIAL ATTITUDE TOWARDS PLEA BARGAINING IN INDIA:

State of Gujarat v. Natwar Harchanji Thakor[18] **:**

In this case, the court held that the most important object of the law is to provide easy, cheap and speedy justice by resolution of disputes, including the trial of criminal cases. Hence, it can be said that the concept of plea bargaining is really a measure of redressal and it shall add a new dimension in the realm of judicial reforms.

In **Pardeep Gupta v. State, Justice. Shiv Narayan Dingra** observed that "the trial court's rejection of the plea bargain of the accused shows that the court did not took into consideration the provisions of chapter XXIA of the code meant for this purpose. It rejected the accused's plea bargain on the ground that since the applicant is involved in an offence under Sec. 120 B of IPC, and the role of the applicant is not lesser than the other co- accused. But none of the offences in which the petitioner has been booked attracted more than seven years punishment. The request of plea bargaining is ought to be considered taking into account the role of the accused, and the nature of the offence, etc. The trial court should not have rejected the application for plea bargaining on the ground that he was engaged with section 120-B Indian Penal Code and in this way, the demand for request for lesser sentence is not accessible to him. The state of mind of the trial court demonstrates that it didn't read the arrangements of chapter XXI-A preceding thinking about the application. The High Court directed the trial court to reconsider the application of plea bargaining made by the accused in the light of provisions made in the Code of Criminal Procedure and not in a casual manner.

Ranbir Singh v State:

In this case, the Petitioner challenged the sentencing accused to imprisonment for six months besides penalty of Rs.5000 under Section 304A IPC and in default to undergo an additional imprisonment for one month and also the sentence to pay the fine of Rs. 5,000/- under Section 279 IPC and in default of payment of fine to undergo Simple Imprisonment for one additional month in a case where the Petitioner had entered into plea bargaining. Delhi High Court held that, though it cannot be said that in view of these mitigating circumstances the Petitioner should not be awarded any imprisonment and should be let off, however, he should not has been awarded the maximum punishment as done by the learned Trial Court. The court altered the sentence to four months imprisonment under Section 304A IPC and a fine of Rs. 1,000/- Section 279 IPC and in case of default, he has to undergo Simple Imprisonment for a period of one week.

Rahul Kumpawat vs Union Of India[19] **:**

In this case, the accused has claimed plea bargaining and his application was rejected by the Metropolitan Magistrate of Rajasthan and he has appealed before the Rajasthan High Court and it has allowed his petition and quashed the order passed by the learned trial court and remanded back to the trial court and ordered it to consider the application for plea bargaining by the accused.

Even though, this concept of plea bargaining helps in rendering speedy justice it puts the victim in a disadvantaged position and their loss cannot be compensated by sentencing the accused to a lesser sentence.

COMPENSATION[20] **:**

It is based on the maxim "ubi jus ibi remedium" which means there is no wrong without a remedy. The rule of law requires that wrongs should not remain un redressed. The term compensation is one of the remedial measure available in tort law and there several dimensions to the issue of payment of damages and compensation in the law.

In criminal-victim relationships, compensation concerns in making amends to him; or, perhaps, it is simply compensation for the damage or injury caused by a crime against him. As commonly understood it carries with it the idea of making whole, or giving an equivalent, to one party and has no relation to any advantage to the other. It is counterbalancing of the victim's sufferings and loss that result from victimization. It is a sign of responsibility a non-criminal purpose and end.

THE FORGOTTEN MAN - VICTIM :

The casualty is basically an indistinguishable piece of wrongdoing. Along these lines the wonder of wrongdoing can't be extensively clarified without fusing the casualty of wrongdoing. Wrongdoing casualty, regardless of being an indispensable piece of wrongdoing and a key on-screen character in criminal equity framework, remained an overlooked element as his status got lessened just to report wrongdoing and show up in the court as witness. Numerous trust that the casualty is the most neglected member in criminal equity procedures.It is, therefore, the Indian higher courts have started to award the compensation through their writ jurisdiction in appropriate cases .[21]

However, it is the shortcoming of our present jurisprudence that somewhere it provides the accused almost all the facilities like right to fair trial, bail, legal aid etc., but the victim is devoid of any respite in socio-economic terms. Time to time courts has directed the State authorities to provide all necessary facilities and ensure that human rights of criminals are not violated.

The Apex Court in **Rattiram & Ors. v. State of M.P . AIR 2012 SC 1485** has aptly emphasized on protection of victims rights: "Criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. It is the duty of the court to see that the victims' right is protected."

CONCLUSION:

Thus I would conclude that this concept of Plea Bargaining has been introduced to reduce the burden upon the courts but it does

that in an unconstitutional manner because the victim is put to an disadvantaged position and his right is violated by providing a lesser sentence to the accused on an application of plea bargaining. Even this concept does not reduce the crime rates because it sets a mindset on the accused that he can do an offence and can get lesser punishment by plea bargaining. Only time will tell that the introduction of this new concept is justified or not. Thus presently this concept of plea bargaining has not found place in the heart of judges because there is hardly few cases where this concept of plea bargaining has been taken but one way or other higher courts have not given proper attention in this regard.

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