

Plea Bargaining under Criminal Justice System of India – An Analysis

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Abstract: Plea bargaining is a plan that has been gift within the Indian system for a substantial quantity of your time. It's usually understood as negotiations that come about between the prosecution and accused before the trial, which frequently result in modifications within the accused sentence. There are many varieties of bargaining specifically, charge negotiation, sentence negotiation and concessions supported testimony in another case. To blame negotiation, the accused agrees to plead guilty to a particular charge and reciprocally the complainant guarantees to drop the opposite charges whereas in sentence negotiation, the sentence is reduced to a pre-decided term. Within the third class, concession to blame or sentence is obtainable to the accused, in exchange of testimony of the defendant in another matter. The paper jointly refers to all or any the classes as bargaining. The traditional read on bargaining was the subversion of justice. On many occasions the Supreme Court has command that it'd violate the general public policy of the India. At one occasion, the Court explicit that "(plea bargains) please everybody except the distant victim, the silent society". On another occasion, the court has challenged the morality of bargaining; on the bottom that it pollutes the pure front of justice. Bargaining is a meeting between the public prosecutor and accused during which the person who is guilty agrees to plead guilty to some charges or the first charge and reciprocally get some concessions from the prosecutors within the criminal case. Once the Govt. includes a study case, it's going to provide the litigator or the defendant a plea deal to avoid trial and maybe reduces his exposure to a additional prolonged sentence. Several prosperous cases finish with plea bargains. This helps in reducing range of cases unfinished in court. Concessions that provided to defendant are reduction in charges obligatory and also the severity of the penalization. Students estimate the proportions of cases resolved by bargaining are concerning ninety to ninety five percent of each federal and state court. Bargaining helps in quick disposal of cases by being a beneficiary for each aspect, the defence and also the prosecution. It helps the attorneys to defend their shopper in straightforward manner. Long- standing disputes is simply resolved. It helps in reducing the record of less serious offences within the court and this may be smart for the defendant once he's condemned later within the future. Bargaining helps in avoiding promotional material by quick settlement of cases. On the opposite aspect, the explanations for introducing bargaining are the overcrowding of jails, high rates of final decision, torture of trial prisoners etc. However the most reason behind all this is often delay in trial method. It's several disadvantages that hurt the bottom of prosperity within the country. It demolishes freelance judicial authority. The role of victim within the method affects corruption that ultimately defeats the aim of bargaining. India has already recognized the rights of convict in Article 21¹ of the Constitution. Considering the changes within the passage of your time, Indian courts felt the requirement of bargaining. Once amendment is brought there's forever persons preparation to that and it takes time for the persons to simply accept the amendment. Rejecting one thing on the premise of disadvantages isn't even. Therefore, the requirement of the hour is to bring amendment in structure, composition and its culture. These measures would facilitate in guaranteeing quick trails.

Key Words: Plea-Bargaining, Negotiation, Charge, Criminal Law.

1. INTRODUCTION :

Plea Bargaining, in its simplest kind refers to pre-trial negotiations¹ between the prosecution and also the defendant throughout that the defendant agrees to plead guilty and also the prosecution successively agrees to increase some concessions reciprocally². The defendant could conform to plead guilty to a less serious charge, or to one of many charges, reciprocally for the dismissal of different charges that is additionally referred to as Charge negotiation or the defendant could plead guilty to the initial criminal charge reciprocally for a additional lenient sentence which can be referred to as Sentence negotiation. Thus, it involves a lively negotiation method between the prosecution and also the defendant³. Plea bargain as most criminal justice reformers believe, is additional appropriate, versatile and higher fitted to the wants to the society, because it could be useful in continual admissions in cases wherever it'd be tough to prove the charge arranged against the defendant. Plea bargain outlined Wikipedia defines the term as "A bargaining (also plea

¹ Martin ElizabethA. (n.d.) Oxford Dictionary of Law, (5th Eds.), Oxford University Press.

² Santhy,K.V.K.(2013). Plea Bargaining in US and Indian Criminal Law Confessions for Concessions, NALSAR L. Rev.,7(1),85

³ Kachhia Patel Shantilal Koderlal v. State of Gujarat, 1980 CriLJ 553, 556

agreement, plea deal or copping a plea) is any agreement during a criminal case between the attorney prosecuting officer prosecuting and accused whereby the accused agrees to plead guilty to a specific charge reciprocally for a few concession from the prosecutor.” Albert W. Alshuler defines Plea Bargain as follows⁴: “Plea-bargaining consists of the exchange of official concessions for a defendant’s act of self-conviction. Those concessions could relate to the sentence obligatory by the Court or counseled by the prosecuting attorney the offence charged, or a range of different circumstances. As per judge of Supreme Court, Warren Burger “Plea Bargaining is a vital part of the administration of justice, properly administered, it's to be inspired.....it ends up in prompt and for the most part final disposition of most criminal cases.” Plea bargain In Indian Criminal Justice System Mounting arrears of cases within the courts and also the resultants pain and agony suffered by the defendant light-emitting diode the law manufacturers to introduce the concept of plea bargain in Indian criminal justice system. The law Commission of India in its 142nd and 154th report⁵ counseled the introduction of provisions with reference to plea bargain. The recommendations of Law Commission were more supported by Malimath Committee⁶. Consequently, a brand new chapter, that's chapter XXIA on ‘Plea Bargaining’, has been introduced within the Criminal Procedure Code. it absolutely was introduced through the Criminal Laws (Amendment) Act, 2005. The provisions square measure reproduced as underneath.

2. Historical Background of Plea Bargaining :

The most of the history of Plea bargain wasn't quite common to the common law System. However Law in action could are totally different from Law in Books. the varied record bureaus United Nations agency keep data concerning criminal courts solely is merely is simply is just is barely recent developments and that we will draw a sketch only from the history of plea bargaining. It is evident from the history that money was paid to the victims to induce obviate trial by accused. Plea bargain began available in the picture at the top of 19th century and starting of 20th century once reporters, jailers, politicians began to influence the criminal justice system even when protest from numerous quarters. The method was motor-assisted by the growth of legal code like Liquor Prohibition Statutes in America as courts were burdened suddenly with cases associated with liquor Prohibition. In ancient legal systems, convictions were secured by confession and laws were use to protect such criminal confessions, though by the 18th century forceful confession had been taboo in English Law to prevent the miscarriage of justice. Consequently, early America bargaining history light-emitting diode to courts permitting withdrawal of pleas and rejection of plea bargains, though such arrangements continued to happen behind the scene. Plea bargaining wasn't present in colonial America. Codification, statutes, law journals and books, lawyers, and prosecutors were only a few. Most judges were untrained with no or very little information of the law. Victims won't to create their own cases. Trials were temporary. By the 19th century, however, the advanced criminal justice system came into existence. Additional lawyers, jurist, legal consultants emerged and litigator began to charge the additional competent, Legal professionals for their cases. Courts additionally became advanced and additional formal rules of procedures and proof began to seem. Trials stretched from days to months then years. Pendency and arrears of trial cases began to come back up, that gave judges associate degree incentive to start out exceptive pleas. Within the early 20th century, thanks to overwhelming of the cases and the improvement of legal code system bargaining gained momentum. Due to Prohibition Act that terminated in 1930, range of federal prosecution cases had become nearly eight times as several because the total range of all unfinished federal prosecutions in 1914. During a range of urban districts, the social control agencies maintain that the sole practicable means of meeting this example with the prevailing machinery of the federal courts is for the U.S. Attorneys to form bargains with defendants or their counsel whereby defendants plead guilty to minor offenses and escape with light-weight penalties. However, albeit over ninetieth of convictions were based mostly upon bargaining by 1930, courts remained reluctant for a few time to endorse these once appealed. The right to an attempt by jury was thought-about a central a part of the justice system within the period of time of the U.S. The Seventh modification of the Bill of Rights written it as an essential a part of Americans civil liberties. Once criminals were caught and charged, the Govt. went through an attempt and finding. However within the 1800s, a trend towards plea dialogue began. In Alameda County, from 1880 to 1910, nearly ten percent of all defendants modified their “not guilty” pleas to “guilty of lesser charges” or pled guilty to reduced charges. Bargaining in India was introduced a lot of later in twenty first Century when the 154th Report of the Law Commission that suggested the introduction of ‘plea bargaining’ as an alternate methodology to cope with Brobdingnagian arrears of criminal cases Plea bargaining in India The Criminal Law (Amendment) Act, 2005, that amended the Code of Criminal Procedure introduced bargaining in India. a replacement chapter XXI(A) was implemented within the code from Gregorian calendar month five, 2006. Plea bargaining is allowed just in case wherever the most penalization is imprisonment for seven years. the primary case was in 2007, Sakharam Bandekar case. However therein case court rejected his plea and

⁴ Moise Berger, *The Case Against Plea Bargaining*, 62 American Bar Association Journal, **619, 621 (1976)**.

⁵ 154th Indian Law Commission Report Vol-I page **51-54 [13]**

⁶ Malimath Committee Report March 2003

CBI argument and he was sentenced to three years of imprisonment. Bargaining isn't applicable in offences committed against socio-economic condition or ladies or a toddler below fourteen years.

3. Statutory provisions under Indian criminal procedure code, 1973⁷ :

Section 265-A⁸ : offences in which application may be filled.

Section 265-A (2) offers power to apprise the offences to the Central Government.

Section 265-B: Application for bargaining that is to be filed by the defendant. It shall contain a quick details regarding the cases as well as the offences to that the case relates. It shall be in the course of associate degree official document of the defendant. The court shall thenceforth issue notice to the investigation officer and lawyer and also the victim of the case.

Section 265-C: Prescribes the procedure to be followed by the court in understanding a reciprocally satisfactory disposition of the case.

Section 265-D: A gathering is conducted and then a satisfactory disposition of the case is finished by getting ready a report signed by the leader and participants of the meeting. but if there's no such conclusion brought then the court shall record observation and proceed more in accordance with sub- section(1) of section 265-B.

Section 265-E: when completion of filing a report, court should hear the parties and choose the quantum of the penalization or unharnessed them on probation.

Section 265-F: It deals with the judgment in terms of mutual disposition.

Section 265-G: there's no appeal against such judgment.

Section 265- H: Powers of the court in bargaining.

Section 265- I: Section 428 is applicable to disposition awarded in bargaining.

Section 265- J: all the same something inconsistent with that contained in {any different the other} provisions of the Code and zip in such other provisions shall be construed to contain the which means of any provision of chapter XXI-A.

Section 265- K: It specifies that the statements given by the defendant shall not be used for the other functions.

Section 265- L: This act shall not apply in any case below Juvenile⁹ justice Act, 2000.

4. Relevant Case Laws:

In one recent case of Mumbai, published in 'Times of India' wherein, a Grade-I employee of RBI, was accused of siphoning off Rs 1.48 crore from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. He was arrested by the CBI in the year 1997, and released on bail in November the same year. Charges were framed and case came before Special CBI Judge. The accused stated that he is 58 years old and moved an application of plea- bargaining by taking benefit of the amendment of 2005, came into force in 2006. The court directed the prosecution for its response. The court rejected the application but from that time, it has opened the doors and new hope in the minds of other accused. In other case of Vijay Moses Das Vs. CBI (Criminal

⁷ (http://mha.nic.in/sites/upload_files/mha/files/pdf/criminal_justice_system.pdf, last visited 30 Nov 2017)[14]Amendment in Indian Criminal Procedure Code, 2003.(The Gazette of India, Extraordinary, Part-II, Section –I dated 02 April 2013)[15]Chapter 21A of Indian Criminal Procedure Code

⁸ Kelker, R.V. (8th edition), Criminal Procedure Code, Lukhnow: Eastern Book Company

⁹ S.265L of Cr.P.C. (1973).Juvenile Means- A person Who has not Completed sixteenth year of age (after amendment ,earlier it was 18thyear)

Misc. Application 1037/2006), Uttarakhand High Court (Justice Praffula Pant) in March 2010 allowed the concept of plea-bargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, Accused supplied inferior material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, then investigation was done through CBI by lodging a criminal case against the accused. Notwithstanding the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the Plea-bargaining Application, the trial court rejected the application on the ground that the Affidavit u/s (265-B) was not filed by the accused and also the compensation was not fixed. The Hon'ble High Court allowed the Misc. Application by directing the trial court to accept the plea-bargaining application.

5. Role of National Legal Services Authority. :

The National Legal Services Authority (NALSA) created under the Legal Services Authority Act 1987 is to meant for providing legal aid to destitute under-trial prisoners and facilitating ADR mechanisms. It's supported by the State and District units. NALSA has concerned the task of making awareness regarding the provisions of bargaining among the legal fraternity and also the public at massive through its units. It's launched a programme of composing periodical seminars, workshops and discussions at the district and state level. The State Legal Services Authority took up a programme of training the under-trial prisoners regarding bargaining. Equipped with posters, banners and leaflets it took quite sensible range of sessions.

6. Conclusion :

Plea Bargaining is undoubtedly a disputed concept. Few people have welcomed it while others have abandoned it¹⁰. The concept has been introduced in the form of Chapter XXI-A of the Cr.P.C a decade ago as a prescription to the problem of overcrowded jails, burdened courts and abnormal delays. The prosecutor is relieved of the long process of proof, technicalities and long arguments, the court sights relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that he is free early in the day to pursue his old profession. It cannot be denied that the practice may result in faster disposal of cases, because delayed trials are problematic in many aspects, the system may see appealing. In India, the legislatures have adopted a very successful method from the most powerful country in the world, however they have failed to see that the facilities and functional safeguards present in the American Criminal Justice System prevents their judicial system from any kind of injustice. American success cannot be looked at in isolation of its origin, a supporting American culture and radically different counsel and judges also played a vital role. Thus there is no reason to believe that the practice will achieve the same scale and magnitude of success in India that it has in United States. The concept of plea bargaining introduced in India fourteen years ago has been slow to catch on, largely because of lack of awareness amongst under trial prisoners and officers of the court. The Concept is more a mechanism of convenience and mutual benefit than an issue of morality, legality or constitutionality. There is an inevitable need for a radical change in criminal justice mechanism. They have limited the applicability to a large extent and also restricted the scope of plea bargaining. When a concept is being implemented into a legal system it should be done in a manner, foreseeing the hindrances that may be faced at the experimental stage. The twelve provisions as such don't show any tendency of reducing case load. If citizens are to be encouraged to use the alternative remedy of plea bargaining then there is an urgency to bring in clarity and predictability in the provisions. Further, the current model of plea bargaining in India which allows plea bargaining only in cases where the punishment prescribed for the crime committed is less than seven years, or where the crime is not against women or children etc. The Law Commission of India has made it very clear that eventually plea bargaining will cover all the offences under the Indian Penal Code. In that case, one must be ready to face a situation where a person accused of several counts of armed robbery will be allowed to go free after serving a minor sentence for the crime of theft. Thus, plea bargaining as given in Criminal Procedure Code, 1973 with no judicial scrutiny is taking our adversarial system towards a concessionary one. If the concept of plea bargaining is allowed to function it should allowed with judicial scrutiny. This is because as plea bargaining becomes more pervasive in the criminal justice system, public will lose faith in that system because it allows criminals to receive bargains. However, even if judicial scrutiny is allowed to some extent, then the level of judicial scrutiny must be raised tremendously. In order to make the experiment a successful one, there is a need to reform the system in the light of the loopholes highlighted in the chapter to make system work which in turn helps the criminal justice system and situation of the citizens as whole.

¹⁰ Sangwan, Jayant & Nain, Bhavya,(2008), Plea Bargaining in India : A concept misplaced, SCC,(Cri)J.S.,2,1